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CONVOCATION

PUBLIC SESSION

THURSDAY, SEPTEMBER 24th, 2015 - 9:00 a.m.

OSGOODE HALL, TORONTO

1 CONVOCAATION ATTENDANCE

2 Treasurer - Janet Minor

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

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

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

2 TREASURER'S REMARKS:

3 TREASURER MINOR: Can we be seated,
4 please.

5 Good morning, everyone. Welcome to
6 Convocation. Welcome to everyone who is joining us via
7 the public webcast today. Convocation will be
8 regularly webcast as part of our commitment to outreach
9 and transparency in governance.

10 I would like to review now the
11 instructions for the phone system for those
12 participating by phone. Once we determine who is on
13 the telephone, I'll let everyone know that we will be
14 placing those calling in to the meeting in what we call
15 lecture mode. This means that from our end we are
16 muting all callers. Once muted, they will be able to
17 hear the meeting, but cannot speak. So it's star six
18 from our end for everyone.

19 We will be coming out of lecture mode to
20 hear callers who wish to speak and vote, and we will do
21 that following presentations of reports and motions.
22 At that time, unless callers wish to speak, please star
23 six your telephone, as you have done in the past. And
24 we will be repeating this throughout Convocation as
25 necessary.

1 Can I go to the list of those we believe
2 are on the phone. Mr. Armstrong?

3 MR. ARMSTRONG: Present.

4 TREASURER MINOR: Mr. Banack?

5 MR. BANACK: Present.

6 TREASURER MINOR: Ms. Chrétien?

7 MS. CHRÉTIEN: Present.

8 TREASURER MINOR: Ms. Donnelly?

9 MS. DONNELLY: Present.

10 TREASURER MINOR: Mr. Evans? Ms. Go?

11 MS. GO: Present.

12 TREASURER MINOR: Ms. Hartman?

13 MS. HARTMAN: Good morning.

14 TREASURER MINOR: Ms. Richardson?

15 MS. RICHARDSON: Present.

16 TREASURER MINOR: Mr. Ruby? Mr. Swaye?

17 MR. SWAYE: Present.

18 TREASURER MINOR: Thank you. Is there

19 anyone else on the phone that I -- whose name I have

20 not called?

21 MR. FINKELSTEIN: Yes, Neil Finkelstein.

22 TREASURER MINOR: Thank you, Mr.

23 Finkelstein.

24 MS. POTTER: Judith Potter.

25 TREASURER MINOR: And Ms. Potter, thank

1 Commission of Canada released its very important report
2 with recommendations for charting the future of the
3 much needed reconciliation process.

4 The Law Society of Upper Canada and
5 Toronto Council Fire and Native Cultural Centre hosted
6 a dialogue about the future of the reconciliation
7 process for Canada and the first peoples on September
8 the 10th.

9 I joined 370 others who were fortunate
10 to have the opportunity to hear and learn more about
11 the path to reconciliation from Truth and
12 Reconciliation Commission Commissioner, Dr. Marie
13 Wilson, and residential school survivor Garnet
14 Angeconeb, and honorary witness and CBC radio host,
15 Shelagh Rogers, who led the candid discussions. They
16 were followed by question and answer with the audience.

17 The Truth and Reconciliation
18 Commission's report calls for a number, in fact 94,
19 actions to address the profound impacts of more than a
20 century of forced residential schooling of aboriginal
21 children across Canada. We heard of the injustices of
22 the past and the hope for the future.

23 The conversation was rich with insight.
24 I noted two recurring themes. That we must acknowledge
25 our collective history to build a stronger country, and

1 we must do this through open and respectful dialogue.

2 I would like to welcome our guests and
3 new attendees. First, I would like to welcome The
4 Honourable James Spence. Where are you? Over there.
5 Right. Coming back to Convocation.

6 Mr. Spence served as a Bencher from 1983
7 to 1990. He was elected Treasurer from 1990 to 1992
8 and, thereafter, was appointed to the Ontario Superior
9 Court of Justice in 1993. He recently retired and is
10 returning to Convocation as an ex officio Bencher and
11 we welcome him.

12 I would also like to point out that we
13 managed to move his portrait into the room just in
14 time. There is a tradition that the portrait of a
15 former Treasurer who is on the bench will not be
16 located in Convocation room, but upon retirement,
17 should he or she return to Convocation, and if there's
18 a space, the portrait may return.

19 I'd also like to indicate we have with
20 us by telephone one of our newly appointed Benchers,
21 Gisèle Chrétien, and I would like to invite Carol
22 Hartman to introduce her to Convocation. Ms. Hartman.

23 MS. HARTMAN: Thank you, Treasurer, for
24 allowing me this opportunity.

25 Conseillers/Conseillères, c'est mon

1 grand plaisir d'accueillir Gisèle Chrétien au conseil.

2 Several years ago I had the pleasure of
3 working with Gisèle on the board of the Sudbury
4 Regional Hospital, now Health Sciences North.

5 Lors de mon mandat, Gisèle a toujours
6 été quelqu'un avec qui j'ai pu me fier pour me guider
7 et me porter conseil. Maintenant, (inaudible) c'est à
8 mon tour.

9 Gisèle, I hope I will now be able to
10 reciprocate by providing you with some guidance and
11 advice.

12 Bien venue. Once again, Gisèle, welcome
13 to Convocation.

14 TREASURER MINOR: Thank you,
15 Ms. Hartman, and welcome, Ms. Chrétien.

16 MS. HARTMAN: Thank you.

17 TREASURER MINOR: Could we stop for a
18 moment. There seemed to be some noise on the phone.
19 Do we know what that could be?

20 CLERK: It might be some feedback from
21 someone's phone or computer on the phone, someone who
22 might be participating by phone.

23 TREASURER MINOR: All right. If it
24 happens again we'll maybe stop to see if somebody can
25 correct their position.

1 We also have with us former Treasurer
2 Tom Conway. He is here today with another hat, and
3 that is President of the Federation of Law Societies.
4 He will be providing a brief report to us later this
5 morning.

6 Very pleased that we also have Ian Hull,
7 who is chair of the Law Society Foundation, and he'll
8 say a few words later about the Lawyers Feed the Hungry
9 Program.

10 I'd also like to welcome Kathleen
11 Waters, president and CEO of LawPro, and Duncan
12 Gosnell, executive vice-president and secretary of
13 LawPro.

14 We would like to acknowledge the
15 appointment of Lesley Cameron as Acting Executive
16 Director of Profession Regulation. As you know,
17 Ms. Cameron served for many years as the Law Society's
18 Senior Counsel, Discipline.

19 I'm sure we were all saddened by the
20 recent passing of The Honourable Marc Rosenberg on
21 August 27th.

22 Justice Rosenberg made an indelible
23 mark on criminal law in Canada. He was regarded as a
24 man of great integrity, intelligence, judgment and
25 unfailing humility.

1 The Law Society of Upper Canada honoured
2 Justice Rosenberg honoured on May 22nd of this year by
3 presenting him with the degree of Doctor of Laws,
4 honoris causa.

5 On behalf of Convocation I extend our
6 deepest condolences to his family.

7 Tomorrow there is a call to the bar and
8 I am pleased to announce that we will be conferring an
9 Honourary LL.D on The Honourable Russell Juriansz,
10 currently supernumerary judge of the Court of Appeal
11 for Ontario. Chief Justice George Strathy will be
12 presiding. I look forward to the ceremony and calling
13 to the bar 230 new lawyer licensees.

14 On September the 11th, I was honoured to
15 speak at former Treasurer Susan Elliott's swearing in
16 ceremony in Ottawa.

17 As Treasurer, Susan Elliott led
18 Convocation as it faced a number of significant
19 challenges. Her leadership was known as collaborative
20 and inclusive. She was known for her fairness and her
21 knowledge of the issues, qualities which will stand the
22 court, I think, in good stead.

23 As most of you know, the current
24 Treasurer selects the portrait of a past Treasurer he
25 or she admires in particular and I, as you know, have

1 chosen the portrait of Susan Elliott to hang across
2 from me as I sit at my desk. So I look at Susan every
3 day and seek inspiration and guidance from her. I take
4 full credit for my own mistakes. I think that's
5 probably a misinterpretation of the vibes that I'm
6 getting from her.

7 Thank you, Susan, and I would like to
8 extend sincere congratulations from Convocation on your
9 appointment.

10 This year, in keeping with our focus on
11 access to justice and our outreach initiatives through
12 TAG, we hosted an access to justice booth at the CNE.
13 And this booth was offered to us as the Law Society
14 appoints a member to the CNE board, that is Jack
15 Braithwaite.

16 And we benefited from that opportunity
17 to coordinate circulation of materials from the Law
18 Commission of Ontario, Community Legal Education
19 Ontario, Legal Aid Ontario, as well as our own
20 brochure, "Handling Everyday Legal Problems Guide," and
21 information about the Law Society referral service.

22 Staff from these organizations
23 administered a short survey about how individuals
24 manage law in their lives. Responses to the questions
25 such as, "Where would one turn for help if facing a

1 legal problem," and how can we make it easier for
2 people to deal with legal problems," were collected on
3 iPads. Results from the survey will be circulated in
4 TAG's October newsletter, which I encourage you to
5 subscribe to.

6 We had a number of events. I would like
7 to highlight a few. On September 21st, 2013, the Law
8 Society, the Ontario Bar Association, and the
9 Association des juristes d'expression français de
10 l'Ontario, and the Office of Francophone Affairs hosted
11 a conversation with the Honourable Justice Julie
12 Thorburn of the Superior Court of Ontario on the
13 recently released report on the implementation of the
14 access to justice in French recommendations.

15 The event was held to celebrate the Jour
16 des Franco-Ontariens and was a real success. I also
17 want to pay tribute to Josée Bouchard, who I know made
18 a considerable contribution to the work of that
19 group.

20 There are a number of upcoming events
21 which are open to the public. The information is
22 listed on the website. There is no charge for any of
23 these events, but they do require registration in
24 advance.

25 On October the 2nd it's wrongful

1 conviction day organized by AIDWYC. We are partnering
2 in that event. October 21st, Hispanic Heritage Event.
3 October 23rd, the CABL Conference, that's the Canadian
4 Association of Black Lawyers Conference, and
5 October 29th, the Justicia event with Patricia Gillette
6 as the keynote speaker. And we will be honouring also
7 women leaders in the legal profession.

8 I would like to encourage Benchers to
9 attend these Equity events.

10 Today is the Opening of Courts. I'm
11 looking forward to speaking at the proceedings later
12 this afternoon. Usually a special luncheon is held on
13 the day of the Opening of Courts, and as it is being
14 held on the same day as Convocation, we have a full
15 house of Benchers and special guests who will be
16 attending. They include The Honourable Lieutenant
17 Governor Elizabeth Dowdeswell, Chief Justices Strathy,
18 Smith and Maissonneuve, as well as the Associate Chief
19 Justices and the Attorney General, The Honourable
20 Madeleine Meilleur, along with other guests.

21 I would like to mention that I have
22 appointed both Sidney Troister and Jerry Udell to the
23 Real Estate Liaison Group to join Bencher Ross
24 Earnshaw, who is chairing that group. The group is not
25 a standing committee, but a stakeholder group that has

1 been struck to look at issues related to real estate
2 practice in Ontario. The group includes appointees
3 from the OBA, LawPro and CDLPA.

4 I think we can turn to the agenda now.

5 CONSENT AGENDA:

6 TREASURER MINOR: The first item is the
7 Consent Agenda. Moved by Cathy Corsetti and seconded
8 by Raj Anand, that Convocation approve the agenda set
9 out at tab 1 of the Convocation materials.

10 Any objection to any of those items
11 proceeding on consent? If not, all in favour? Any
12 against? Any against on the phone? Carried -- oh, I'm
13 sorry, I was a little quick there. Thank you, Mr.
14 Lerner. Any against on the phone?

15 MR. LERNER: Just as I thought.

16 TREASURER MINOR: You're prescient.

17 Thank you, motion carried.

18 Next I'd like to invite Michael Lerner
19 to introduce Ian Hull, Chair the Law Society Foundation
20 Board of Trustees.

21 MR. LERNER: Thank you, Treasurer. If
22 we were to play a word association game, everybody
23 knows that bread goes with butter, milk goes with
24 honey, Starsky goes with Hutch and Gretzky goes with
25 hockey, and those of us in the profession would also

1 know that Hull & Hull goes with wills and estates.

2 Ian Hull and his father have been
3 leaders in the bar in that particular area of practice.
4 Both have written extensively, and I suspect, for those
5 of us who are old enough, we may, as well, have been
6 taught by Ian's late father.

7 I never -- I did have the privilege of
8 working with my father for a number of years and I
9 totally appreciate the challenges that that special
10 relationship brings.

11 Ian is a distinguished counsel,
12 mediator, lecturer and maybe, in today's day and age,
13 most importantly, he's a mentor.

14 Ian is chair of the Law Society
15 Foundation. When I joined the Foundation board I would
16 characterize the Lawyers Feed the Hungry Program as
17 healthy and vibrant. In the last few years, sadly to
18 say, there have been times when it is approaching, if
19 not on, life support.

20 I welcome Ian to Convocation and look
21 forward to his remarks this morning.

22 TREASURER MINOR: Thank you.

23 ADDRESS BY IAN M. HULL, CHAIR, LAW

24 SOCIETY FOUNDATION BOARD OF TRUSTEES ON

25 THE TORONTO LAWYERS FEED THE HUNGRY PROGRAM:

1 MR. HULL: Treasurer, Benchers, Michael,
2 thank you for your kind words.

3 I just want to speak briefly, as Michael
4 has indicated, as Chair, in my role as Chair on behalf
5 of the Law Society Foundation and Board of Trustees,
6 members of which are here today. Our former Chair,
7 Marion Boyd, is here and has tirelessly led the
8 Foundation for many years. And we have -- of course,
9 Michael is on the board, Cathy Strosberg, Sid Troister
10 and Derry Millar.

11 I just want to cover three things this
12 morning quickly. I want to give you a little bit of
13 background about Lawyers Feed The Hungry program
14 itself, talk, secondly, about the recent efforts that
15 have been taken on behalf of the program through the
16 board. And, finally, draw your attention to the
17 current situation, in particular, relating to the
18 Toronto program.

19 By way of background, the Lawyers Feed
20 the Hungry Program was established in 1998. There were
21 some phenomenal efforts undertaken, led by Marty
22 Teplitsky and Harvey Strosberg and, of course, Nancy
23 Backhouse at the time.

24 Since then the program had served over
25 3 million meals. Annually, the program is serving over

1 a hundred thousand meals.

2 The program operates out of Toronto,
3 Ottawa, London and Windsor. It's the Toronto
4 program -- all programs are year round, and the Toronto
5 program itself, just to given you some specifics, we're
6 delivering four meals a week, about 60,000 meals a year
7 out of the Toronto program.

8 The annual expenses are around \$360,000
9 currently. Historically, the funding of the program
10 has been -- relied upon phenomenal efforts on the part
11 of some of the founders, Harvey Strosberg, Marty
12 Teplitsky. We got cy pres orders, we got funding
13 through sort of what I would call one-offs, and the
14 program was vibrant for many years, as Michael referred
15 to. Special events as well were attempted too. Now
16 the program is funded essentially through ad hoc
17 donations and fundraising efforts.

18 To be clear, the Law Society, in and of
19 itself, isn't responsible for the fundraising, but it
20 provides in kind support, which some of you, many of
21 you know about. The staff volunteers are incredible
22 for the program itself, the food ordering, the
23 planning. The financial administration is provided by
24 the Law Society. Most importantly, the space at
25 Osgoode Hall, of course, downstairs is provided for the

1 guests.

2 So as Michael says, we are, in the
3 Toronto program, facing some tremendous change in both
4 the funding and the fundraising.

5 The recent efforts, and specifically in
6 the Toronto program, by the board to deal with the
7 expenses have been -- as I say, I sort of keep the
8 \$360,000 a year number in my head as the operating
9 number that we're at now currently with the program and
10 have been for a couple of years. 2014 we had to reduce
11 the number of meals.

12 We were projecting a significant problem
13 with fundraising and sourcing of the revenue, so the
14 board formed a subcommittee, and that subcommittee has
15 done what many typical subcommittees in charitable
16 organizations would do. The Toronto Lawyers'
17 Association have assisted us with some programs, golf
18 tournaments, e-mail campaigns, meal sponsorship
19 programs, the like. That subcommittee is trying to
20 push forward all of what I would call the conventional
21 fundraising efforts.

22 Just to give you an idea; for example,
23 the meal sponsorship program where a firm can come and
24 serve a meal or simply donate to do a meal. We're
25 raising about \$75,000 annually a year now. There's a

1 holiday campaign, e-mail campaign, it's about \$35,000.
2 The golf tournament is about 40,000 annually. The Law
3 Society staff itself raises about \$30,000 a year for
4 the program through casual days and other one-off
5 programs. So you can see -- and then we have some
6 one-off programs that we're trying to build into the
7 process.

8 You can see that there is about a
9 \$150,000 shortfall annually now. We have some capital
10 reserves as a consequence of the great work, quite
11 frankly, the early days of the cy pres orders and so
12 on. But that shortfall that we're projecting is a
13 serious problem.

14 The last point I want to make is the
15 current situation in Toronto, and all I wanted to do
16 today, and, Treasurer, thank you again for allowing me
17 to speak briefly on this.

18 This is an issue that, in my view
19 anyway, for the Benchers to be, at minimum, aware of,
20 that the program itself, where it's at and what we're
21 doing and where we're looking and where we're
22 projecting some real difficulties.

23 While the board is doing as much as it
24 can do, we need a collective effort, in my view, and
25 it's urgently needed, to maintain this program. So my

1 ask, and all it is is an ask, is the Benchers -- and,
2 of course, this is a Toronto issue in some respects,
3 but it's, in my view, a provincial issue as well, to
4 assist with the program tangibly to help us secure
5 financial support.

6 Your links to the legal community are
7 what is going to save the program and what's going to
8 maintain it on a long term basis. We are trying the
9 conventional steps. We are reaching out to the law
10 firms and dealing with all sorts of revenue streams, as
11 we would normally do, but we need some help and we know
12 that this room is full of people that can help us to
13 bring that together.

14 So from my standpoint anyway --
15 otherwise without some sort of significant effort on
16 the part of the collective group, we're going to be
17 looking at operationally real serious difficulties,
18 probably within the next two years for the Toronto
19 program itself.

20 So I really appreciate your attention
21 today, and of course I'm available to answer questions.
22 There's staff here and Derry who can answer questions
23 as well, but thank you for your attention.

24 TREASURER MINOR: Thank you, Mr. Hull.
25 I'd also like to thank -- there's a large number of

1 Benchers who volunteered to assist in service a week or
2 so ago on one of the Wednesday night dinners and I
3 think for all of those who participated it's brought
4 home the importance and need for this kind of program.
5 So we thank you very much and our board members very
6 much and urge people to try and assist this very worthy
7 cause.

8 Moving on to our agenda. Next is
9 professional regulation. Mr. Mercer.

10 PROFESSIONAL REGULATION COMMITTEE REPORT:

11 MR. MERCER: The first item in
12 BoardBooks for Professional Regulation is at tab 2.1,
13 page 24 of BoardBooks.

14 Convocation will recall that in June we
15 passed an amendment to the rules of professional
16 conduct dealing with language rights and issues were
17 raised with respect to the clarity of that amendment,
18 the purpose and intent of it not being controversial.

19 As a result of those concerns, the
20 Professional Regulation Committee is back before you
21 proposing an amendment, as was anticipated in June.

22 You'll see a black-line version at page
23 26 of BoardBooks. The essential thought of the rule is
24 that in certain circumstances people, clients have a
25 right -- have language rights, rights to use their

1 language in proceedings and before the government in
2 various contexts.

3 The rule originally -- the rule as it
4 stands currently, the rule itself refers only to
5 official language rights, but the commentary also noted
6 that lawyers should be aware that provincial and
7 territorial legislation may provide additional language
8 rights, including in relation to Aboriginal languages.

9 The point was made quite rightly that
10 the rule didn't refer to these provincial and
11 territorial rights, only to the official language
12 rights, and it would be better if the rule and the
13 commentary talked about the same things, if I may say
14 that plainly.

15 So the amendment to rule 3.2-2A now, if
16 you accept it, refers expressly both to the official
17 language of the client's choice and the language
18 recognized in provincial or territorial legislation.

19 There is also a small change which is
20 intended for clarity. The rule as it currently exists
21 speaks of the right to proceed and our legislative
22 drafting advisor has suggested to us it would be
23 clearer for the reader to refer to a right to use
24 rather than a right to proceed, which more accurately
25 tracks the range of language rights and does not narrow

1 the reader to imagine that it's only in court
2 proceedings.

3 The second aspect to the proposed
4 amendment is in paragraph 3.2-2B, and the rule as
5 passed in June simply said that if the lawyer is not
6 competent in the language that the client wishes to
7 use, the lawyer can't act. And the point was made and
8 accepted by the Professional Regulation Committee that
9 there may be circumstances where clients are content to
10 have competent service in the result other than by a
11 lawyer who speaks that particular language. And to say
12 it more plainly, a translator or interpreter might be
13 an appropriate thing in the circumstances.

14 One can imagine times where a client
15 would want a particular lawyer because either of
16 expertise, relationship or otherwise, but,
17 nevertheless, would want the ability to proceed or to
18 use the language of their choice, and so the
19 Professional Regulation Committee was of the view and
20 recommends to you that in this respect client should be
21 sovereign, as long as they're properly advised and as
22 long as competent service is provided.

23 So with those simple explanations I give
24 you these proposed amendments.

25 TREASURER MINOR: Thank you. Are you

1 moving that ,Mr. Mercer?

2 MR. MERCER: I am, seconded by Ms.
3 Richer.

4 TREASURER MINOR: Ms. Richer, okay.
5 Any questions or comments in the room? Mr. Wright.

6 MR. WRIGHT: To ask a question do I have
7 to go down there?

8 TREASURER MINOR: It would be
9 preferable.

10 MR. WRIGHT: In 3.2-2B, non-red-line
11 version on page 27, the comma is in the wrong place.
12 It should read, "If the client proposes to use the
13 language of his or her choice, and the lawyer is not
14 competent," et cetera. The comma has to be moved.

15 Commas matter. Think about this. "A
16 woman without her man is nothing."

17 TREASURER MINOR: I beg your pardon?

18 MR. WRIGHT: Woman, without her, man is
19 nothing.

20 -- Laughter.

21 MR. WRIGHT: Two commas change the
22 meaning 180 degrees. It's not as important in this
23 second clause, but, nevertheless, the comma has to be
24 moved to make it grammatically correct.

25 I have a question, and that is, if

1 somebody wants to use a provincially or territorially
2 approved language, do they also have to use an official
3 language or can they proceed in Inuktitut, for example?

4 MR. MERCER: That would require
5 knowledge of the provincial or territorial law, which I
6 don't have.

7 MR. WRIGHT: Because syntactically, the
8 way 3.2-2A reads, "A lawyer shall advise a client of
9 language rights, including the right to use English and
10 Inuktitut." And is a conjunctive, so it should say
11 "or".

12 But there's a better way to do it, and
13 that's to make it read, "A lawyer shall, when
14 appropriate, advise a client of a client's language
15 rights, including the right to use the language of the
16 client's choice where that language is an official
17 language or a language recognized in provincial or
18 territorial legislation as a language in which a matter
19 may be pursued, including, where applicable, Aboriginal
20 languages." Then the syntax is perfect.

21 TREASURER MINOR: Thank you.

22 MR. WRIGHT: Also, I'm hoping that the
23 Law Society will maintain a list of provincially and
24 territorially approved languages on its website because
25 otherwise lawyers are going to have a hard time finding

1 which ones are approved. Thanks.

2 TREASURER MINOR: Thank you for your
3 comments. With respect to the potential amendments,
4 Mr. Mercer, do you have any comments?

5 MR. MERCER: I'm a strong proponent of
6 commas in the right place, I think that's important, so
7 I would accept that as a friendly amendment. I'm not
8 persuaded that rule 2A doesn't read appropriately.

9 The obligation is to advise of the right
10 to use an official language which is across Canada and
11 then the language recognized the provincial and
12 territorial legislation where applicable. It seems to
13 me that it is right that both be subject to advice
14 where both are applicable.

15 TREASURER MINOR: Any other comments or
16 questions in the room? Mr. Galati.

17 MR. GALATI: Just briefly, I agree with
18 Mr. Mercer because I've done hearings in both official
19 languages at the same time. You can have hearings in
20 French and English, so I think the reading as it stands
21 is fine.

22 TREASURER MINOR: Any other comments or
23 questions in the room? Comments or questions on the
24 phone?

25 MR. WRIGHT: I'll just say that the

1 wording then says you have a choice. A choice. It's
2 poorly worded. That's all I'll say.

3 TREASURER MINOR: I don't hear any
4 questions or comments on the phone.

5 In that account I'm going to call the
6 vote and the motion would be with the amendments
7 dealing with the placement of commas as outlined by
8 Mr. Wright, and accepted as a friendly amendment.

9 All in favour? Any against? Any
10 against on the phone? Motion carried.

11 Next, Mr. Mercer.

12 MR. MERCER: The next item is at tab
13 2.2, which is page 28 of BoardBooks, and this proposal,
14 which is for decision, is not the final product, but,
15 rather, for decision in principle. If Convocation
16 approves this proposal in principle there is work to be
17 done with respect to by-law drafting and the like to
18 make it operational, which we'll come back to.

19 This is part of ongoing work of PRD and
20 PRC, intended to make our processes both fair and
21 expeditious. And essentially what is proposed is to
22 add another tool to the tool kit.

23 There are, of course, many licensees who
24 come into the discipline process for whom an exit from
25 that process, either because of the conclusion, the

1 complaint is not well-founded or through some other
2 mechanism, perhaps a caution, is the right way through.

3 For other licensees, they may not
4 perceive it this way, the right way through may be to
5 go to a discipline proceeding or to a hearing. There
6 is a subset we are told of licensees where
7 investigations are made and the licensee reasonably,
8 from their perspective, neither wishes to ultimately
9 defend a discipline proceeding, nor to continue in
10 practice.

11 As matters are currently set out in our
12 by-laws, it is not possible for a licensee to surrender
13 their licence in the face of an investigation. The
14 question is why should we, in effect, create a box
15 where if the investigation will not end because there
16 is some reason for it to continue, and yet the best
17 answer for all concerned is that the licensee leave
18 practice, why do we not permit that?

19 So what we have proposed is that, in
20 limited circumstances, there be a mechanism by which
21 licensees under investigation are permitted to
22 surrender their licences. Now, we wish to be clear
23 that this won't be a good idea or appropriate public
24 policy in all circumstances.

25 Two examples come to mind. There will

1 no doubt be other examples with experience. One
2 example would be that if an investigation has been
3 frustrated, if the Law Society is not able to determine
4 the facts of the matter, allowing the licensee to leave
5 regulation through surrender would not be appropriate.
6 Similarly there -- not similarly, but also there are
7 other circumstances where the scrutiny of a hearing and
8 the potential for a disciplinary penalty is the right
9 thing. And one can imagine in mortgage fraud cases,
10 for example, that one would not wish to have this be
11 the means by which the matter leaves the regulatory
12 system.

13 But there are circumstances, there may
14 not be many, and I highlight that this is merely a tool
15 in a tool kit, but there will be circumstances where
16 the right answer is not a discipline hearing and
17 further proceedings.

18 The point, then, is how will the public
19 know that the public interest has been properly
20 pursued? How will the public have confidence that
21 we're not merely hiding licensees who have done maybe
22 bad things and may wish to slip out the back door?

23 The proposal to address that very
24 important point is twofold. The first is that, in
25 effect, tripartite agreement will be required. The

1 licensee will of course have to agree, the Law Society
2 staff will have to agree, and a Bencher sitting as a
3 summary Bencher will have to agree as well.

4 So we have the protection of a
5 three-way, in effect, agreement, a disposition by a
6 Bencher, an approval by a Bencher.

7 Secondly, there will be an agreed
8 statement of fact which is necessary for the process.
9 It will be necessary that the public have the ability
10 to find, the ability to see what the truth was, what
11 was agreed to be the truth, and in the event the
12 licensee comes back, wishes to come back under
13 regulation, that will be available in that situation.

14 As well, there can be conditions placed
15 on return, should the licensee wish to return, and
16 perhaps it could be made possible.

17 The proposal is essentially that, that's
18 the outline of it. The plumbing remains to be shown to
19 you for installation.

20 I should make one further point. Mr.
21 Gottlieb helpfully told me that he had a concern about
22 this that I'll address.

23 He was concerned that the disclosure of
24 an agreed statement of facts would be on the -- in
25 effect, like the hearing panel decisions, on the

1 internet forever and that need not be so. It's not
2 anticipated to be so. What's anticipated is that there
3 would be a summary, not the full agreed statement of
4 facts, that that would be -- the agreed statement of
5 facts would be available if someone wishes to come to
6 the Law Society and look for it, we're not going to
7 hide it. But the directory shows revocation, for
8 example, only for three years and it would not be
9 anticipated that this would be treated differently.

10 So if one was to do searches on the
11 internet, one would not find the detailed agreed
12 statement of facts, or at least that's what's
13 anticipated, and after a period of time, like the fact
14 of revocation, that would go off the public website.
15 That doesn't mean that people couldn't find it. It
16 should be available to be found.

17 TREASURER MINOR: Okay. Mr. Gottlieb.

18 MR. GOTTLIEB: Through you, Treasurer,
19 to Mr. Mercer.

20 Thank you very much, Mr. Mercer, for
21 addressing my concern. So just to clarify,
22 automatically after three years all the particulars go
23 off the Law Society's public website?

24 MR. MERCER: I think you should wait to
25 see that in the by-law and in the plumbing stage. The

1 anticipation is that that's the way it would, just as
2 it would with revocation.

3 MR. GOTTLIEB: Yes. My concern,
4 Treasurer, was that it would be -- I understand the
5 public interest is paramount, but I think it would be
6 unfair to the lawyer involved to have the misconduct
7 detailed on the public website in perpetuity. That was
8 my concern.

9 And I thought that the solution to that
10 would be after a reasonable period of time for the
11 particulars to be taken off or -- and in the
12 alternative, that they should be -- there should be the
13 ability of the lawyer to apply for the particulars to
14 come off of the Law Society's public website. Thank
15 you.

16 TREASURER MINOR: Mr. Mercer, I think
17 you replied to that. Is there anything you want to
18 add?

19 MR. MERCER: No, it's a very legitimate
20 concern, I just don't want to over-promise, because we
21 recognize the policy point and we'll take it in hand.

22 TREASURER MINOR: Any other -- sorry,
23 Mr. Anand was ahead you and then Ms. Ross.

24 MR. ANAND: Treasurer, through you to
25 Mr. Mercer, I have three questions, and in asking them,

1 I recognize that the proposal is not just subject to
2 plumbing, but it's subject to the prosecutorial
3 discretion.

4 MR. MERCER: Yes.

5 MR. ANAND: As well as to the future
6 summary order Bencher. So my first question is what is
7 anticipated where the investigator or the Professional
8 Regulation Department believes that revocation can be
9 obtained? Is that a circumstance in which surrender
10 will be accepted under this?

11 Because my understanding is currently,
12 and I could be wrong, that, generally speaking, when
13 revocation can be obtained, discipline counsel will not
14 readily accept surrender as a settlement in the case.
15 That's my first question.

16 MR. MERCER: We're not making a proposal
17 which is, if I can phrase it this way, hard-wired as to
18 the public interest to be taken into account. I would
19 be personally astonished if it were concluded that a
20 case which appeared to merit revocation would be
21 treated this way. But what I wouldn't want to do is to
22 limit the discretion of the prosecution, the consent of
23 the licensee and the approval of the summary Bencher.
24 There might be a circumstance, one might imagine. You
25 could imagine a terminal illness might be appropriate.

1 So I think the policy point is well
2 taken. I think having an absolute answer would not be
3 wise.

4 MR. ANAND: Okay. My second question is
5 about the nature of this surrender as opposed to the
6 current situation, which essentially a settlement and
7 an agreement can be reached on surrender which then
8 goes to a panel and the panel writes a decision
9 accepting it or not and sets out the facts, and that is
10 clearly a disciplinary matter. Is this anticipated to
11 be different from that in the sense that -- I know it's
12 called a penalty, but is it intended not to be
13 disciplinary?

14 MR. MERCER: Yes, it's intended to be a
15 third category of surrender. It's not ordinary
16 surrender, it's surrender as a disciplinary penalty,
17 but, rather, it's administrative surrender in the face
18 of investigation.

19 MR. ANAND: Which leads to my third
20 question, which is, as I was saying, and I think it's
21 well recognized, currently through investigation,
22 discussion can be had and either at the investigation
23 stage or presumably when discipline counsel gets
24 involved agreement can be reached with either an ASF, a
25 agreed statement of facts, or otherwise, and a joint

1 submission on penalty for surrender of licence.

2 So what's different about this, in the
3 sense that that leads to a disciplinary penalty, this
4 doesn't, and the circumstances could be exactly the
5 same.

6 MR. MERCER: I think the point is that
7 it would be in -- this is attractive as a tool in the
8 tool kit where the likely penalty, if it were to go to
9 discipline, wouldn't be loss of license, it wouldn't be
10 surrender, it wouldn't be revocation. It might be a
11 reprimand, it might be a one month suspension. You can
12 imagine the range of penalties short of loss of
13 licence, and yet the licensee prefers to leave.

14 So to describe it as being equal in
15 nature to a surrender disciplinary penalty would be
16 wrong. It is something different, and so it's fairly
17 described as different. And the key is that the facts
18 that are set out in the agreed statement of facts and,
19 personally, I hope reasons given as well by staff for
20 the proposal, stands, in policy terms, in the same
21 stead.

22 MR. ANAND: Sorry, can I ask, is it
23 anticipated that the summary order would come with
24 reasons?

25 MR. MERCER: What's anticipated is that

1 the staff would give the reasons that the summary
2 order -- summary Bencher should accept or not. It's
3 not anticipated that there would be an accepted set of
4 reasons, it's anticipated that there would be a package
5 which would gain an yea or a nay.

6 MR. ANAND: Thank you.

7 TREASURER MINOR: Ms. Ross.

8 MS. ROSS: Just to add a point
9 quickly --

10 TREASURER MINOR: If you could go to the
11 podium.

12 MS. ROSS: Okay. Just to add a point
13 perhaps of comfort to Convocation, is that one of the
14 things we discussed at the committee was that this new
15 innovation in the tool kit, as our chair describes it,
16 will be something that will be brought back to
17 Convocation within -- we hope, I proposed at committee
18 and I think probably the committee agrees, within a
19 year of its being in operation so that Convocation can
20 see from the perspective of regulating the professions
21 in the public interest whether, in fact, it's working
22 in the way we want it to work.

23 MR. MERCER: I thank Ms. Ross for that.

24 TREASURER MINOR: Next, Mr. Schabas.

25 MR. SCHABAS: I don't have any comment

1 after all.

2 TREASURER MINOR: Okay. Mr. Cooper.

3 MR. COOPER: Treasurer, I have just some
4 points that I wanted to share with the fellow Benchers
5 on some concerns that I think should be highlighted. I
6 know that this is just for discussion at this point,
7 but it seems as if it's being done within its nature,
8 as some of the questions that Mr. Anand has requested
9 to be answered.

10 I know that we're talking about this as
11 a tool kit or an additional tool within the tool kit,
12 but I have concerns with respect to how that tool kit
13 could be used and a potential for it to be misused.

14 We know that presently, and what our
15 concerns are are some issues dealing with capacity and
16 mental health within the profession, and I'm not sure
17 if there are any safeguards that have been discussed at
18 this point, hopefully if this goes forward or it
19 doesn't go forward -- or if it goes forward, I should
20 say, could be dealt with. Those are my concerns.

21 TREASURER MINOR: Mr. Mercer.

22 MR. MERCER: In terms of the way it's
23 designed, there are really two safeguards. The first
24 is that the licensee, and the example given that
25 wouldn't necessarily be a persuasive safeguard, but

1 also the Law Society staff and a Bencher have
2 supervision of this process. And as Ms. Ross helpfully
3 said, it would come to PRC to see how it is being used.

4 It is -- those are the intended
5 safeguards to ensure that the use of the process is in
6 the public interest.

7 TREASURER MINOR: I have Ms. Lippa and
8 then Mr. Galati.

9 MS. LIPPA: Thank you, Treasurer. My
10 concern is for the application for reentry into the
11 profession with respect to the most egregious
12 misconduct that led to the surrender.

13 My question to you is what measures
14 would be put in place to stop reentry and would it be a
15 condition at the time of the surrender?

16 MR. MERCER: That's going to have to be
17 fact specific. I would say two things. Firstly, I
18 wouldn't anticipate that the most egregious examples
19 would be apt for this approach. As Mr. Anand's point
20 made, I think, helpfully clear, this is not the
21 equivalent of surrender as a disciplinary penalty and
22 if revocation or surrender is the right answer, I
23 expect that we will not see this used.

24 That being said, there are two things
25 that will be dealt with should there be an application

1 for a further licence. One is that the agreed
2 statement of facts is available to the hearing panel
3 and, secondly, there will be conditions permitted, and
4 one of -- on the surrender.

5 The by-law allows that conditions can be
6 set for reentry or for entry into the professions, and
7 what would be done would be that those would be -- that
8 by-law would be amended, the reentry by-law, if we can
9 describe it that way, would be amended to reflect that
10 conditions could be set that would bind on reentry.

11 As to what they should be and what
12 context, I don't think it's possible to be specific.

13 MS. LIPPA: Thank you.

14 TREASURER MINOR: Mr. Galati.

15 MR. GALATI: Thank you, Treasurer, I
16 have a comment and then a question for Mr. Mercer.

17 My comment is I have serious concerns
18 about this nebulous discretionary exercise by way of
19 application. I think that sends the wrong message, it
20 could send the wrong message to the public.

21 I would be much more comfortable with a
22 list of scenarios. I know you can't catch everything,
23 but an articulated written list of what types of
24 scenarios may lead to this process of surrender and
25 which ones wouldn't. I would like to ask Mr. Mercer if

1 the committee intends to try to provide such a list.
2 For instance, as you said, terminal illness and what
3 not.

4 MR. MERCER: The committee had not
5 proposed to develop such a list. I understand the
6 attractiveness of it. One can go down one of two roads
7 as one creates additional regulatory tools. One can
8 either design a process where the right players are
9 involved and are -- the process is capable of being
10 examined in the public interest, or one can create a
11 code, a detailed code.

12 Personally, I think it is, while
13 tempting to create a detailed code, it has the risk of
14 not understanding or not contemplating more accurately
15 those which should fit and those which shouldn't fit.
16 So it's not something that's contemplated, although I
17 understand the attractiveness of it.

18 MR. GALATI: If I may, you can always
19 have a basket clause. The reason I raise this is that
20 public security, the Police Services Act, for instance,
21 allows a member to resign any time before a
22 disciplinary hearing. That's the one regime,
23 regardless of reasons. And there's the other regime
24 where you can't resign at all.

25 But injecting this exception without

1 articulation, I think, sends the wrong message to the
2 public. It could be perceived as an escape hatch to do
3 favours for lawyers that we want to allow to resign
4 without question. That's my concern.

5 TREASURER MINOR: Mr. Falconer -- or did
6 you want to respond to that, Mr. Mercer?

7 MR. MERCER: No, I think I'll leave Mr.
8 Falconer...

9 MR. FALCONER: I'm not addressing that.

10 MR. MERCER: No.

11 MR. FALCONER: Through you, Treasurer.
12 I wasn't addressing what Mr. Galati raised, that's why
13 I gave Mr. Mercer an opportunity to address the
14 question. I'm not sure he wants to.

15 MR. MERCER: I guess I would simply say
16 that we are proposing a middle ground and we're
17 proposing a transparent middle ground. There are polar
18 positions one could take. The proposal is in between
19 with transparency and supervision.

20 TREASURER MINOR: Are you expecting
21 jurisprudence to develop the criteria or guidelines?

22 MR. MERCER: No.

23 TREASURER MINOR: Because there won't be
24 much in the reasons.

25 MR. MERCER: Exactly so. What we

1 anticipate is experience and scrutiny will provide the
2 proper constraint so that the very legitimate concern
3 which is expressed, which is that there aren't easy
4 back doors, isn't the public perception.

5 MR. FALCONER: Well, now, Treasurer,
6 that Mr. Mercer is answering that way, I do actually
7 have a comment.

8 I think there's nothing wrong with
9 guidelines. The guidelines don't need to be up today.
10 I don't see any downside to guidelines being carefully
11 and slowly thought through. I think that's an organic
12 process and I don't see that -- I would have thought
13 Mr. Galati's concerns, as reasonable as they are, could
14 be addressed through guidelines that were transparent
15 and accessible. To me, the committee should give that
16 some more thought, because obviously our difficulty is
17 precedent isn't going to help us in terms of emergence
18 of case law.

19 I just -- two issues to add. The first
20 one is this. The resignation system used in the
21 policing world, it doesn't work, it's a failure, and,
22 in fact, has bred much cynicism as it's used as an
23 escape hatch. So as much distance as we can create
24 from that scenario is absolutely important and
25 essential in the public interest. I just make that

1 comment in case there's any misunderstanding that our
2 system is equivalent to that.

3 One issue, though, that my colleague,
4 the very wise Bencher Gottlieb, raised. It goes to
5 this question of what sits on our website and what's
6 accessible to the public. What is and what is not, for
7 lack of a better word, expunged.

8 I am curious and I raise this for our
9 consideration, whether we actually have rigorous
10 guidelines on the issue of access to our records. And
11 whether, as we move into the 21st century finally,
12 whether it is not essential that we have those
13 guidelines and, in my mind, just big picture, high
14 level, what I'm envisaging is not a situation where
15 there's an automatic assurance to the lawyer that the
16 lawyer's record of misdeeds just disappears after two
17 years, et cetera, because I'm troubled by that kind of
18 a scenario, but a scenario in which the licensee, after
19 an appropriate amount of time, would be entitled to
20 apply to have records expunged, and there would be
21 guidelines, transparently accessible guidelines, for
22 example.

23 And if they weren't met, the lawyer's
24 misdeeds may well be there into infinity because it may
25 be such serious misconduct that we want them on the

1 record.

2 So I don't see a scenario simply bad --
3 a bad scenario that a lawyer's record may stay there,
4 it may be appropriate that it stay there. But I also
5 think that we need to be balanced about it and one
6 method would be creating guidelines where a licensee,
7 in the appropriate circumstances, could apply for an
8 expungement in a way that was appropriate in the public
9 interest. I just ask us to think about it. I think
10 we're at that stage now.

11 TREASURER MINOR: Mr. Mercer.

12 MR. MERCER: Mr. Falconer asks a good
13 broad question which I'm not competent to answer, but
14 merits discussion obviously.

15 Mr. Falconer helpfully frames Mr.
16 Galati's issue in a way that I'm completely comfortable
17 with, which is a matter of guidelines provided, as
18 opposed to rules which have to be followed. In that
19 framing, I think it's perfectly appropriate that PRC
20 work as part of its process to establish guidelines
21 which can change and develop.

22 TREASURER MINOR: Thank you. Any
23 questions or comments on the phone?

24 MR. EVANS: Treasurer, it's Bob Evans.

25 TREASURER MINOR: Okay, Mr. Evans.

1 MR. EVANS: If I can comment, I
2 appreciate all the input. (Inaudible)

3 TREASURER MINOR: Did others hear him,
4 because I didn't? Could you repeat that, Mr. Evans?
5 I'm sorry, the connection is not great.

6 MR. EVANS: Okay. I want to thank the
7 Benchers for their comments, which will be very helpful
8 to the committee.

9 TREASURER MINOR: Thank you. Any other
10 questions on the phone? All right. Call the vote on
11 that one. Moved by you.

12 MR. MERCER: And Ms. Richer seconds.

13 TREASURER MINOR: And Ms. Richer, okay.
14 All in favour? Any opposed? Any opposed on the phone?
15 Motion carried.

16 Next, Mr. Mercer.

17 MR. MERCER: The next item is for
18 information and I anticipate less difficulty. This
19 addresses the Lawyer Annual Report, and those lawyers
20 who have to report with respect to trust accounts, and
21 sole practitioners may not realize that that can be
22 delegated to lucky people in firms such as myself to
23 report for the lawyers generally.

24 Currently we have to, as lawyers, report
25 with respect to trust funds both to the Law Society and

1 to the Law Foundation of Ontario, which naturally has
2 an interest in trust funds, given its financing or
3 funding through interest on trust fund, mixed trust
4 fund balances.

5 This is a good news story and I hope
6 that's said not prematurely that lawyers will only need
7 now to fill out one form, not two forms, because
8 they're being combined.

9 TREASURER MINOR: Okay. Any questions
10 or comments in the room? Mr. Schabas.

11 MR. SCHABAS: Yes, if I might just very
12 briefly say that this is actually a huge task and it's
13 kind of -- if you want to talk about what the Law
14 Society really does, this gets to the -- I said to
15 Mr. Mercer it gets to the heart, he said it's really
16 the liver, of what the Law Society does.

17 At the Law Foundation we're very
18 grateful for what's been a large IT challenge and task
19 that many people have had to work on because there's a
20 lot of under-reporting of trust funds and trust
21 accounts. So the Law Foundation is hopeful -- we don't
22 know for sure, but we are hopeful that our revenues may
23 increase by several million dollars a year because we
24 will now be capturing much more interest on trust
25 accounts that are otherwise perhaps lost to the banks.

1 So thank you.

2 TREASURER MINOR: Any questions or
3 comments on the phone? On to the next then.

4 MR. MERCER: The next item is for
5 information, and it is a report of the Professional
6 Regulation Division. It's at tab 2.4, page 74 of
7 BoardBooks.

8 This quarterly report, oddly, comes
9 quarterly to you. It sets out in the first part of the
10 report the -- essentially the in and the out and the
11 inventory of the Professional Regulation Division as a
12 whole.

13 I'm not going to spend time talking
14 about that. What I will do is talk about the three
15 core operational departments of professional regulation
16 being intake, complaints resolution, and investigation,
17 and then the fourth, which is separate because it's the
18 next stage, discipline.

19 So intake is the place within
20 Professional Regulation where matters arrive, and
21 you'll see at page 84 of BoardBooks a relatively
22 constant quarterly intake of 1100, 1200, 1300 matters
23 per quarter.

24 The key page to look at exercising our
25 supervisory responsibility to monitor operations as a

1 board, and that is found at page 12 or page 86 of
2 BoardBooks, and you'll see with respect to intake two
3 slides, one showing department inventory has risen from
4 about 400 to a little over 500 complaints since the
5 second quarter of 2013, so over two years.

6 Commensurate with that, correlated with
7 that, the average age or median age, rather, of active
8 complaints having gone up from 25 days to 30 days.
9 Now, five days is not, in the ultimate scheme of
10 things, that large a number, but, nonetheless, it's a
11 trend which Ms. Cameron reported to Professional
12 Regulation Committee, indicated was of concern and does
13 represent a negative trend, not one that we should be
14 panicked about, but one that we should actually be
15 pleased has been properly reported to us by the leader
16 of that group.

17 Ms. Cameron with respect to the chart
18 on page 87, page 13, noted that the age of closed
19 complaints may superficially be an attractive indicia,
20 but doesn't actually tell you a ton, because you may
21 be, if you're doing a good job, looking at the old
22 historic or you may have just closed a new job if the
23 oldest stick around. So her point to us was that the
24 median age in inventory and the number of complaints
25 was the important metric.

1 Complaints resolution is shown at pages
2 88 of BoardBooks and following. And you'll see that in
3 complaints resolution, which comes from intake, we
4 receive in the range of 400 per quarter, so 1600 per
5 year.

6 These are the less serious complaints,
7 or anticipated to be the less serious, one can never be
8 sure, and of course there's some overlap, the more
9 serious going to investigations.

10 In terms of the volume, you'll see the
11 best indication of that at page 90 of BoardBooks, page
12 16 of the report, which shows over time a reasonably
13 stable number of complaints in inventory, but a
14 diminution in the first year and an increase in the
15 second year. And that's a matter to be paid attention
16 to.

17 It may be that we're just seeing ebbs
18 and flows, it may be that there is a need to work on
19 the increase which is most clearly showing the average
20 age of complaints in the last two quarters.

21 Ms. Cameron told us that that was a
22 matter which she would be addressing about which she
23 was aware and concerned.

24 With respect to investigations, you'll
25 see that discussion starting on page 93 of BoardBooks,

1 page 19 of the report. The input to investigations is,
2 again, about 400 a quarter, and so we have a very
3 similar number going into complaints resolution as we
4 do into investigations.

5 The best chart which deals with the
6 volumes is at page 95 of BoardBooks, page 21 of the
7 report and it shows an essentially stable departmental
8 inventory. It's gone from 1200 to 1400. There is some
9 recent increase, but the line is not erratically chart
10 line. Median age of all complaints is quite stable.

11 Coming out of either complaints
12 resolution or investigations we come to discipline.
13 Those are the cases, the complaints which it is
14 concluded, through the investigation process, merit
15 taking them further.

16 You'll see that at page 101 of
17 BoardBooks, page 27, and this is naturally a much
18 bumpier number, but you'll see that there are about 160
19 in a year that go through the discipline process and,
20 thus, the hearing process. And that's quite a stable
21 number, as you will see from page 102, the departmental
22 inventory chart at the top of the page.

23 So I'm not intending through this report
24 to give you cause for astonishment or concern, but
25 rather to permit you the scrutiny that Convocation

1 should have over this important operation of work.

2 TREASURER MINOR: Any comments or
3 questions in the room? Comments or questions on the
4 phone? Comments or questions on the phone? Okay,
5 hearing none, we'll move on, Mr. Mercer.

6 MR. MERCER: The last item for
7 information is at tab 2.5, and this is the report of
8 the alternative business structures working group.

9 The footnote at the bottom of page one
10 of the report, page 110 of BoardBooks, indicates the
11 members of the working group. And I just want to
12 correct that for the record because Ms. Backhouse and
13 Mr. Silverstein continued with the working group to the
14 completion of this report and so they should be
15 recognized.

16 This is a report which is a report from
17 the entire working group, it is not a report that has
18 any division. It is a consensus report.

19 The terms of reference of the
20 ABS working group set a number of years ago now said
21 that we would inform ourselves as to business structure
22 developments and we would identify models and
23 regulatory changes for consideration.

24 We have done substantial work examining
25 literature, examining developments in other countries,

1 speaking to others in other countries about their
2 experience.

3 We, as you'll know, put forward a
4 discussion paper in the fall, in September of 2014, and
5 we were greatly assisted by the responses to that
6 discussion paper.

7 What we have done since that discussion
8 paper is considered the information that we've had with
9 respect principally to what were described as the four
10 models in the discussion paper and the four models were
11 a way of focusing on two variables in consideration of
12 alternative business structures.

13 One, levels of -- or contemplation of
14 non-licensee ownership and, secondly, the range of
15 services in addition to legal services, if any, which
16 might be provided.

17 The criteria which we've set out for the
18 examination of work include access to justice, public
19 need, innovation in the delivery of legal services,
20 professionalism and protecting solicitor/client
21 privilege. And, as well, we have one of the criterion
22 of importance is that regulation be efficient and
23 proportionate and that changes proceed in an orderly
24 way.

25 The essential point of the report is

1 that with respect to the possibility of majority or
2 controlling non-licensee ownership of traditional
3 firms, we conclude that it is not necessary to further
4 examine those potential changes.

5 I can take you through the analysis, but
6 you have the report of that issue as against the number
7 of criterion I've just described, but perhaps the
8 easiest way to focus the point is that with respect to
9 that sort -- with respect to majority ownership or
10 control by non-licensees, we've seen the experience in
11 Australia, we've seen the experience in England where
12 it has been permitted and we've looked at it from two
13 core perspectives; one, do we see the public interest
14 gains from that change which would justify something
15 which is obviously a very significant change, and,
16 secondly, what are the collateral consequences that
17 have appeared that are not those that are intended, but
18 about which we should be concerned.

19 What we heard repeatedly in our
20 examinations and consultations with respect to England,
21 which started licensing ABSs in 2012 is that it's
22 simply too early to tell. So we took that into account
23 in it being too early to tell, what the result is in
24 the largest jurisdiction that has been implementing ABS
25 is perhaps worth waiting.

1 The second point is that both in
2 Australia and in England, the largest effect appears to
3 be consolidation in one sector of legal services
4 market, personal injury, and that is not an intended
5 consequence of ABS as you look at the intended public
6 policy advantages if one were to implement.

7 Whether that is ultimately going to be a
8 good thing or not, some argue that it is, some argue
9 passionately that it isn't, but the working group is of
10 the view that that was not the intended goal of
11 ABS change and it would be better again to wait and
12 see, rather than to take steps which might be very
13 difficult to reverse.

14 So we don't see the necessity of
15 examining further because we don't think in the
16 reasonable time frame before us that we're going to
17 have material new information. There may come a time
18 when material new information comes and we can wait for
19 that, but I don't anticipate that in the near term.

20 However, we continue to believe that
21 regulatory change and innovation is worthy of
22 consideration and, more importantly, we have not
23 completed the work that we have been assigned to do and
24 we propose to focus in really two areas for particular
25 thoughts to examine.

1 The first is with respect to traditional
2 practices. We will be considering examining,
3 consulting and perhaps ultimately proposing, although
4 that may not be the ultimate case, limited non-licensee
5 ownership in traditional practices with a view to
6 encouraging innovation, with a view to encouraging
7 provision of legal services more broadly.

8 The second area is with respect to --
9 also to traditional legal services, and that is to
10 facilitate or consider facilitation, investigate
11 facilitation and possibly make proposals with respect
12 to franchise models. Franchise models hold some
13 attraction as opposed to majority ownership and control
14 because they permit the -- may permit the advantages of
15 scale, the advantages of added resources without the
16 disadvantages apparent of control or majority
17 ownership.

18 Outside of the traditional areas of
19 practice we will be considering two things. The first
20 is the potential for what are called civil society
21 organizations to deliver legal services. We -- it is
22 clear from the literature that one of the areas where
23 legal services are not being supplied effectively are
24 people in disadvantaged groups across society, and one
25 of the current providers of services, a range of

1 services to people in those situations are charities,
2 public interest groups, not-for-profits, and we
3 consider that to be possibly worthy of investigation,
4 an area of legal service delivery, if permitted, that
5 could provide targeted access to legal services where
6 it is not now.

7 The second is, frankly, a bit more
8 amorphous and will require longer term and careful
9 thought.

10 We know that there are substantial areas
11 where legal services are not provided now to
12 individuals, and we're not talking about areas where
13 lawyers and paralegals now provide services. We're
14 talking about areas where services aren't provided or
15 are being under provided and it may not be that
16 alternative business structures are a way of delivering
17 further services in those areas, but it may be that
18 there are a range of tools which are required.

19 But we intend, as our fourth area of
20 examination, to look carefully at what can be done to
21 cause innovation in that part of the legal services
22 market, which is substantially not served.

23 So that's by way of summary. You have
24 the report in front of you. I don't propose to say
25 more. It's a status report. It explains why we do not

1 think it necessary to examine further in some areas and
2 why we consider it necessary or appropriate to continue
3 our examination in others.

4 TREASURER MINOR: Thank you, Mr. Mercer.
5 Questions or comments in the room? Mr. Galati, you're
6 first.

7 MR. GALATI: Thank you, Treasurer.
8 Through you to Mr. Mercer. Maybe it's in his report
9 and I've missed it, but my question is in looking to
10 the experience in other jurisdictions like England and
11 Australia, are you simply looking to the alternative
12 business model comparisons strictly on the business
13 model or are you also examining the differences with
14 respect to the background matrix of the role of lawyer
15 in those societies?

16 My question is a more pointed one, the
17 constitutional dimension of the independence of the
18 bar, which has been recognized by the Supreme Court of
19 Canada recently, and to what extent, what degree of
20 ownership by non-licensees may encroach on that
21 independence? Because the Supreme Court has stated
22 that that independence of the bar is tied to the
23 independence of the judiciary.

24 So it's a very weighty constitutional
25 dimension that our Supreme Court has recognized that I

1 don't believe the other jurisdictions have. Are you
2 going to be examining that aspect of it?

3 MR. MERCER: Very much. It's played an
4 important part of our consideration so far. The
5 criterion in professionalism is very much tied to the
6 independence of legal services.

7 MR. GALATI: No, but more particularly,
8 the Constitutional mention that lawyers in Canada have,
9 as opposed to the other jurisdictions where that may
10 not be present at all.

11 MR. MERCER: Yes.

12 MR. GALATI: Okay.

13 TREASURER MINOR: Mr. Wright.

14 MR. WRIGHT: Thank you, Treasurer.

15 Perhaps we could look into getting a second hand Google
16 360 camera or a drone.

17 MR. McDOWELL: There are enough drones
18 in this room.

19 -- Laughter.

20 MR. WRIGHT: I do not propose to talk
21 too long. Is that you're talking about?

22 MR. McDOWELL: No, no, no.

23 MR. WRIGHT: The retreat from majority
24 ownership is a step in the right direction. It doesn't
25 go anywhere near far enough.

1 Consolidation in the legal marketplace
2 may not have been an intended consequence, but it was
3 entirely predictable and dead obvious as an
4 inevitability. I don't see very much difference
5 between a 51 percent and a 49 percent ownership. You
6 could foresee the day when the equivalence -- you could
7 have a test co. owning 49 percent of McCarthys. Well,
8 they just overstated their profits by \$500 million,
9 according to the British authorities in an attempt to
10 attract investment. Do we want that tarnishing
11 McCarthys? I don't think so.

12 Maybe to diversify, Volkswagen might
13 have bought 49 percent of (inaudible). Do we want
14 that? There's Arthur Anderson, Bear Stearns, Lehman
15 Brothers, WorldCom, Enron, Royal Scotland Bank, Societé
16 Generale, the list is endless, and we have never been
17 infected by any of that.

18 TREASURER MINOR: Mr. Wright, just
19 before you continue. This is a status report.

20 MR. WRIGHT: I realize.

21 TREASURER MINOR: And when the next
22 report is received, whatever it recommends or not,
23 there will be an opportunity to discuss it. I'm not
24 sure that this is an appropriate time to make comment
25 on what the committee has yet to look at or yet to

1 develop.

2 MR. WRIGHT: These remarks are
3 preparatory to a suggestion that it should be obvious
4 that ABS is not the way to go, screamingly obvious, and
5 we should reconstitute this working group to look at
6 effective ways to deal with access to justice.

7 We need to refocus the considerable
8 resources that that committee has, the brain power and
9 the time on more effective amendments to how legal
10 services are delivered.

11 Now, all benchers, everyone in the room
12 will be familiar with the three and four storey office
13 building filled with doctors and there's a pharmacy on
14 the main floor. Well, that's fine. The pharmacy
15 doesn't own the building, they're a tenant, like the
16 doctors are, but there are now medical buildings being
17 owned by pharmacies, offering doctors low rent or free
18 rent.

19 Well, that changes my respect for the
20 doctor, my concerns about whether I'm being
21 overprescribed medications. There won't be any written
22 agreement between the doctors in that building and the
23 pharmacy that owns the building and is giving them free
24 rent, but in that part of the brain where tacit
25 understandings evolve, how do you keep your free rent?

1 Don't you make darn sure that the pharmacy that owns
2 your space is doing well. It's a subtle change and it
3 produces bad results.

4 We in the profession don't need to have
5 any of that touching the legal profession. So my
6 urging, Treasurer, is that this task force, working
7 group, whatever it is, be reconstituted, partially
8 repopulated, because we want to keep the expertise
9 that's there, and have it focus on better and more
10 effective ways to deal with the real access to justice
11 problems, not the imagined ones. Thanks.

12 TREASURER MINOR: Okay. Any other
13 comments or questions in the room? Comments or
14 questions on the phone? I'll just make a list. Who is
15 speaking first?

16 MR. SWAYE: Gerry Swaye.

17 TREASURER MINOR: Mr. Swaye and then who
18 else?

19 MS. GO: Avvy Go.

20 TREASURER MINOR: Ms. Go, do you want to
21 go first then?

22 MS. GO: Sure, thank you, Treasurer. I
23 guess my only comment is about the -- sorry, in
24 paragraph 58, which is a concern whether there may be
25 an opportunity to develop an access to justice focus

1 and framework to enable civil society organizations
2 such as charities, non-profits, to become owners of
3 entities in order to associate access to legal
4 services.

5 My comments are twofold. First of all,
6 I think it is important to engage civil society
7 organizations, including the not-for-profit
8 organizations, on how they feel about the whole access
9 to justice issue can be part of the ABS framework.

10 However, I don't think it's a question
11 of making them owners of entities. And, you know,
12 there are a lot of -- I work with many non-profit
13 organizations, including many community organizations
14 working with newcomers, refugees and so on. I mean
15 it's -- in the context -- I'll provide you with some
16 context.

17 There are more and more restrictions now
18 on these organizations as to what kind of services that
19 they can provide to newcomers.

20 So, for instance, as part of the changes
21 to the Citizenship Act, the current government of
22 Canada interprets certain sections of the Act to say
23 that organizations that receive funding from CIC, the
24 Citizenship and Immigration Canada, can no longer
25 assist individuals with anything that is related to

1 their immigration issues.

2 So, for instance, organizations are told
3 that they can no longer even help clients fill out
4 forms to sponsor their families to Canada. So it's --
5 it's becoming a huge access to justice issue for many
6 newcomers and that's -- eventually it's going to be
7 translated into -- I guess extra burdens and
8 responsibilities on groups such as legal clinics who
9 will now have to do more of this kind of work that once
10 was done by community agencies.

11 I don't think it's realistic for Law
12 Societies to expect these agencies, many of whom
13 receive their funding from government, you know, very
14 few are able to survive on fundraising initiatives
15 alone. So their primary funders will be the
16 government, either of Canada or Ontario or the City of
17 Toronto.

18 I don't think they have any interest in
19 owning any legal entities or becoming owners of any of
20 these entities. I think many of them would want to see
21 increase in government funding, many of them would want
22 to be able to help clients by removing some of these
23 legal restrictions, and the trend is now -- you know,
24 sort of removing all restrictions, and as the Law
25 Society moves towards removing more and more exemptions

1 from the licensing requirements, many of these
2 organizations will one day not be able to do anything
3 to assist their clients.

4 So I think -- and I totally agree with
5 the former speaker about we need to look at this issue
6 from a broader access to justice issue. It's not about
7 ownership of entity, I think, in a lot of these cases,
8 particularly so for organizations, for community-based
9 organizations.

10 So I would urge the committee to speak
11 to these groups, but be more open about the issues that
12 you want to discuss.

13 TREASURER MINOR: Thank you, Ms. Go.
14 Mr. Swaye.

15 MR. SWAYE: I'm wondering whether the
16 committee has considered under the heading of access to
17 justice the lawyer referral service on behalf of the
18 Law Society.

19 As most of you are aware, a lawyer pays
20 a certain fee to the Law Society, members of the public
21 call the Law Society for assistance and they're
22 referred to a lawyer or they get, at minimum now, a
23 half hour consultation gratis.

24 I'm wondering whether this whole area of
25 access to justice run through the Law Society should

1 not be looked at a little closer to see if we're doing
2 enough to give access to justice and whether we advise
3 the public that it's available and whether that should
4 be something the committee should be looking at,
5 together with everything else you're looking at.
6 Perhaps Mr. Mercer can assist us in that regard.

7 TREASURER MINOR: Mr. Swaye, if I can
8 interject, we have an Access to Justice Committee. The
9 Alternate Business Structure Working Group is charged
10 with looking at alternate business structures and a
11 criteria is access to justice. But I think the topic
12 you're raising is one more properly directed to the
13 Access to Justice Committee.

14 MR. SWAYE: All right, thank you.

15 TREASURER MINOR: Any other comments or
16 questions in the room? Ms. Lippa.

17 MS. LIPPA: Thank you, Madam Treasurer.
18 We talk about access to legal services for
19 under-serviced groups, access to justice issues for
20 people in Ontario, affordability of legal services, yet
21 we are discussing ABS as a possible solution for this.

22 Ontario is unique and a leader in Canada
23 in that it has a second tier licensee called a
24 paralegal. Paralegal is an alternative, economical
25 legal choice for lower courts. We service all

1 tribunals, boards and lower courts. Why are we not
2 expanding their scope of practice to service these
3 individuals or promoting them to the public?

4 TREASURER MINOR: Ms. Lippa, I have to
5 say the same thing as I said to the last speaker.
6 That's not an issue that the Alternate Business
7 Structure Group would be looking at. It's for other
8 committees to look at, as you know.

9 Mr. Mercer -- sorry, I should ask,
10 anything more on the phone? If not, I think -- do you
11 have any further comments then?

12 MR. MERCER: No, just I'm gratified by
13 the support in the room that we should be the committee
14 on everything. But I'll not take that....

15 -- Laughter.

16 TREASURER MINOR: Thank you. I
17 understand that Mr. Bredt has to leave and I think --
18 at a point later in the morning and I think we
19 therefore will go out of order and move to the Audit
20 and Finance agenda.

21 AUDIT AND FINANCE COMMITTEE REPORT:

22 MR. BREDT: Thank you, Treasurer. And I
23 recognize that I'm probably what's holding everybody
24 back from the morning break, so I'll endeavour to be
25 brief. If you could go to BoardBooks, at page 251.

1 I'm just going to take you quickly through our six
2 month financials.

3 You can see that if you look at the
4 bottom line, we have some good news here in the sense
5 that we're about five million dollars better than we
6 had budgeted to be at this particular time.

7 So let me just tell you quickly why that
8 is. If you look at the first line, our annual fees,
9 we're doing slightly better there. Line two you can
10 see there's a very significant increase in revenues
11 under PD&C, and this is largely related to the fact
12 that our attendances at our continuing education are up
13 and there's more people in our licensing program than
14 we had budgeted for, which results in that increased
15 revenue.

16 If you go to line three, I think all of
17 you who have been seeing your portfolios over the past
18 three or four months have seen that the markets are in
19 decline and that's reflected in our investment income
20 declining to some extent.

21 We also have a significant increase in
22 other revenue, and I want to just take a bit of credit
23 on behalf of the Audit and Finance Committee for this.

24 A lot of this relates to the late fees
25 that we've put in and the monitoring and enforcement.

1 Convocation will recall that there were considerable
2 expenses because people were paying fees late and the
3 late fees are now enabling us to recover some of the
4 monies that were being spent dealing with that.

5 There's also additional revenues for
6 monitoring enforcement, in effect. That relates to the
7 fact that we're doing a better job of collecting some
8 of the fees and costs that have been posed through the
9 discipline process.

10 Turning to the expense side of the
11 equation, if you look at line seven under Professional
12 Regulation, we're under budget there, and that's
13 primarily related to the fact that we haven't been
14 using as many outside counsel as we had been budgeting
15 for.

16 If you go to line eight under PD&C, you
17 can see that although the revenues are up there, the
18 expenses are down, so we're doing quite well on the
19 PD&C side.

20 Convocation policy and outreach. The
21 good news there is that apparently Benchers are not
22 incurring the types of expenses that we had budgeted
23 for, so you're all to be congratulated. I'm delighted
24 that when I came to speak to the new Benchers about the
25 importance of being parsimonious with the public funds

1 that you took it to heart.

2 Then we have the last point, being the
3 allocation of the compensation fund, and I think it's
4 important to recognize that as a result of some
5 significant events that the compensation fund is having
6 to be topped up.

7 One other point I think we should just
8 make, there are some large contingencies related to
9 potential cost awards in the discipline process that
10 are not here and that may have a significant effect as
11 to whether or not the surplus continues.

12 The last point I wanted to make before I
13 sit down is just to remind everybody of the budget
14 information session that my co-chair, Peter Wardle,
15 will be hosting tomorrow morning.

16 So subject to any questions, Treasurer,
17 that's my quick report.

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

20 MR. FALCONER: Through you, Treasurer, I
21 would first say that the work that Mr. Bredt and his
22 colleagues do is completely over my head. All reports
23 with small font terrify me, and so I'm always grateful
24 for the stewardship financially that our colleagues
25 give us.

1 TREASURER MINOR: I hope you have a
2 business manager at your firm.

3 MR. FALCONER: I do, thank God. Having
4 said that, and having heard the good news about our
5 financial situation and the excellent stewardship, I
6 couldn't help but reflect on the contrast between our
7 financial situation and the situation of the Lawyers
8 Feed the Hungry Program that we heard about earlier
9 today.

10 Now, I understand that there are many
11 interests demanding on our attention and that we have
12 to make careful allocation of resources decisions. On
13 the other hand, we have chosen to put both feet in in
14 supporting the Lawyers Feed the Hungry Program because
15 it's an excellent program, because we appreciate that
16 we are doing good on the ground and in a direct way.

17 We heard this morning that they
18 desperately need money and we're hearing this morning
19 that we have money. I encourage us to cut through the
20 red tape and give these folks the resources they need
21 so we can continue to work together to do great work.
22 I'm not in any way suggesting that Mr. Bredt thinks
23 otherwise, but there's a direct line here. We don't
24 having to go through all the machinations. We can just
25 get them some important resources.

1 So I encourage you to think about that
2 and to shortcut this so that we can continue to feed
3 the hungry and not have the folks who do such great
4 work have to spend time here with huge asks because
5 they're desperate. Thank you.

6 TREASURER MINOR: Mr. Lerner.

7 MR. LERNER: Mr. Falconer's comments
8 have certainly been considered by the Foundation. I
9 wish to point out that the money that is -- the excess
10 revenue comes from lawyers across the province.
11 Currently, through the excessive and the generous and
12 the concerted efforts of lawyers in Windsor, London,
13 Ottawa, and I believe there's one other location, the
14 lawyers in those jurisdictions are already doing a
15 yeoman, yeowoman job of supporting the programs in
16 their own communities.

17 I think Mr. Hull today made it somewhat
18 clear that the responsibility for the program in
19 Toronto ought to be the responsibility primarily of the
20 Toronto Lawyers Association and those practising in
21 this jurisdiction. It would be an easy fix just to try
22 and take money from excess revenue and put it into the
23 program, but in my view, that's the wrong way to go.

24 I think if this program is to survive it
25 needs to support the active, continuous support of the

1 lawyers in the community in which the programs exist,
2 like the programs in the municipalities that I
3 mentioned are already doing. So I, as a member of the
4 committee, would not support Mr. Falconer's proposal.

5 TREASURER MINOR: Thank you. Any other
6 questions or comments in the room? Questions or
7 comments on the phone? Is the phone open? Questions
8 or comments from the phone? Okay. Hearing none, then,
9 Mr. Bredt.

10 MR. BREDT: In honour of the late, great
11 Yogi Berra, "It ain't over till it's over," but my
12 report is over.

13 TREASURER MINOR: Thank you. We'll take
14 our morning break now. Can I say fifteen minutes,
15 please.

16 --- Recess taken at 10:47 a.m.

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

18 TREASURER MINOR: Convocation come to
19 order, please. Next on the agenda is the LawPro report
20 from Susan McGrath.

21 LAWPRO REPORT:

22 MS. McGRATH: Treasurer, thank you for
23 the opportunity to address Convocation to review
24 LawPro's 2015 report to Convocation.

25 The LawPro report is located at tab 4,

1 page 172 of BoardBooks. For the benefit of my Bencher
2 colleagues who are first time attendees at a September
3 Convocation, I should give some background.

4 This is the time of year when the board
5 of LawPro, which I have the honour to chair, always
6 brings forward the offer for the next year's insurance
7 program. It must be dealt with in September to give
8 LawPro time before January 1st to renew the coverage
9 for the 25,000 plus licensees who participate in the
10 program.

11 The planning process for the new year
12 goes on over a five month period starting in April each
13 year. The Benchers who serve on LawPro's board,
14 currently myself, Bob Evans, Barb Murchie and Carol
15 Hartman, participate in discussions and planning
16 sessions with the other eleven directors.

17 The other directors are professionals
18 who bring a wide variety of insurance industry,
19 accounting, and investment expertise to bear on the
20 program. Although the Law Society and LawPro are
21 related parties, being parent and subsidiary, the offer
22 is formulated on an arms' length basis.

23 To meet insurance regulatory
24 requirements, the offer must provide the insurer with
25 their value, having regard to all of the circumstances

1 of the transaction. That is why you will hear today,
2 and in the future, details about the ongoing capital
3 position of LawPro and how it continues to meet its
4 minimum capital test. That is what a commercial
5 insurer, acting in an arms' length setting, worries
6 about when it defines coverage and sets a premium
7 amount.

8 For 2016, LawPro has reflected on the
9 changing environment in which lawyers practice and made
10 slight adjustments to stay current with the needs of
11 the bar. In many ways, the stars aligned for LawPro in
12 2014 and to date in 2015, and our insureds are able to
13 benefit from that good fortune in the coming year.

14 You will hear about positive investment
15 results and modifications to the anticipated capital
16 test changes that resulted in a secure financial
17 position for the company. To start, I'm pleased to
18 inform you that the proposed base premium for 2016 is,
19 again, 3,350, the same base premium as the last six
20 years.

21 Also, the premium for the real estate
22 practice coverage option will be reduced to \$100 from
23 \$250.

24 Despite real estate being one of the
25 areas of law with the highest rate of claims, there has

1 only been one real estate claim based on the risk
2 targeted by the real estate practice coverage option.
3 For those of you who do not practice real estate, I
4 would remind you that the risk in question is the
5 registration of fraudulent instruments in the land
6 titles system by a lawyer who was acting dishonestly.

7 This savings will be available to
8 approximately 7,800 real estate practitioners. We have
9 now had the opportunity to study the data over seven
10 years of this program and are making this reduction as
11 part of our commitment to risk rating the program.

12 LawPro will, of course, continue to
13 assess the risk covered by the repco's endorsement and
14 the premium could increase in future years if results
15 require it or if the nature of the coverage changes.

16 But let me get back to explaining our
17 lucky stars. Over the past few years we have
18 anticipated negative fall-out from changes to how the
19 minimum capital test is calculated. As you may
20 remember, the minimum capital test is a solvency test
21 with which all Canadian insurance companies must
22 comply.

23 The changes came into effect
24 January 1st, 2015, but the introduction of a three year
25 phase-in period and other moderations to the new

1 requirement meant the effect on LawPro has been less
2 significant than originally estimated. As a result,
3 the LawPro MCT ratio as of June 30th is 249 percent,
4 well above LawPro's preferred range of 220 to 230
5 percent.

6 Contemporaneous with the MCT calculation
7 modifications was a period of strong financial
8 investment returns. With this good fortune, combined
9 with other factors, LawPro has been able to maintain a
10 strong balance sheet, an A financial rating from A.M.
11 Best, and, as of this summer, 225 million in
12 shareholders' equity.

13 Will we continue to see such healthy
14 results? The stock market is, of course, difficult to
15 predict and so LawPro will continue to invest prudently
16 and manage our investment risk as responsibly as
17 possible. It is rewarding to see the progress that has
18 been made in the ability to protect our licensee
19 insureds.

20 When the Law Society of Upper Canada
21 insurance task force was created over 20 years ago, I
22 don't know if anyone predicted we would be able to
23 produce the stable financial situation we now count on.
24 As you may have heard before, four out of every
25 practising lawyers (sic) will face a malpractice claim

1 in the course of their careers, and LawPro resolves
2 over 2,000 claims against Ontario lawyers each year.

3 Fortunately, for those of us paying
4 premiums, 45 percent of those claims are resolved with
5 no payment of any kind whatsoever. About 40 percent
6 involve defence costs and only 15 percent result in an
7 indemnity payment.

8 There are two other refinements that are
9 part of the 2016 offer. First, paralegals as
10 shareholders in professional corporations. Similar to
11 paralegal licensees practising in partnership with one
12 or more lawyers, LawPro proposes to ensure paralegal
13 shareholders in combined licensee law corporations.
14 This will help avoid the possibility of duplication of
15 claims, overlapping coverage, and potential stacking of
16 policy limits with paralegal insurer policies.
17 Premiums for paralegals holding shares will be the same
18 as they are for paralegal partners.

19 Secondly is removing a barrier to
20 mentorship. The 2016 LawPro offer extends the
21 protection of runoff coverage to claims against mentors
22 arising out of mentoring by lawyers who are currently
23 on exemption from paying program premiums. For
24 example, those on parental leave or medical leave, who
25 often choose to not pay for current coverage.

1 Mentoring promotes the dissemination of
2 knowledge from experienced lawyers to those with less
3 experience. This may be helpful where a lawyer on
4 leave, for example, wishes to be able to mentum the
5 locum lawyer who has stepped into the practice,
6 provided that the mentor and mentee meet the specific
7 requirements of LawPro's program. Those requirements
8 are available on LawPro.ca.

9 So what is happening with claims?
10 Projected claims costs for a year of the program
11 continue to hover around the one hundred million dollar
12 mark, especially when one factors in the internal cost
13 of handling claims, and there is an overall long term
14 upward trend in cost per claim.

15 Real estate and civil litigation
16 continue to represent the highest claims risk when
17 compared to other areas of practice. From a risk
18 rating perspective, these costs are addressed in part
19 with levy surcharges and other tools.

20 The exposure relating to the practice of
21 civil litigation continues its climb, largely due to
22 administrative dismissal claims. I have described this
23 challenge in my past reports to Convocation. Suffice
24 it to say, LawPro has received hundreds of claims and
25 incurred almost \$10-million in claims costs in three

1 and a half years.

2 You will recall an extra \$10,000 in the
3 deductible for these claims was introduced to the
4 program in 2014. Changes to rule 48 may temporarily
5 slow the number of claims from files eligible for
6 dismissal before January 1st, 2015, but these changes
7 also introduce new risks if practitioners don't pay
8 attention to them well before January 1st, 2017.
9 Unless a court orders otherwise, that is the date when
10 actions commenced on or after January 1st, 2012, will
11 be automatically dismissed without notice if they have
12 not been set down for trial.

13 LawPro is helping to prepare Ontario
14 lawyers through the rule 48 transition tool kit. I
15 have a copy of it here, and I must commend it to all
16 lawyers who practice civil litigation in Ontario. It
17 contains a firm transition checklist, an individual
18 file transition checklist, and an all purpose file
19 progress plan.

20 The tool kit has been sent
21 electronically to all lawyers who have reported civil
22 litigation transaction levies in recent years and is
23 being mailed in hard copy to all insureds with the
24 September 2015 LawPro Magazine.

25 These materials are being further

1 reinforced to presentations and CPD programs. Please
2 encourage your local law association to contact LawPro
3 and arrange for a presentation in your own community.

4 But even though these resources are
5 available and promoted, they can only help when
6 actually used by lawyers in the field.

7 In conclusion, as we end the 20th
8 anniversary of providing the insurance program for the
9 Law Society, the board members and management of LawPro
10 hope that this is only the beginning of a long and
11 rewarding relationship of providing high quality and
12 cost effective professional liability insurance that
13 enhances the viability and competitive position of our
14 insureds. Thank you, Treasurer, that is my report.

15 TREASURER MINOR: Thank you, Ms.
16 McGrath. Are there any questions or comments in the
17 room? Ms. Ross.

18 MS. ROSS: Thank you, Treasurer. I
19 refer my colleagues to appendix B at page 228 of
20 BoardBooks or 53 of the report.

21 One of our colleagues who is now on the
22 bench, Carole Curtis, each year performed this duty,
23 which is to draw to our attention the claims causes by
24 report claims count and area of law. Year in and year
25 out for the past 20 years the same area has ranked

1 highest. It's communication.

2 And in the report, LawPro says that
3 communications related errors, including poor
4 communication, not keeping clients informed or failing
5 to obtain client consent are the biggest causes of
6 claims in all areas of law, except litigation, where
7 it's the number two cause, and in firms of all sizes.

8 But the point I'm trying to make here
9 today is that while they are the most numerous claims,
10 they are, at the same time, the most easily prevented.
11 I simply put that out there and suggest that we need to
12 have some CPD focused on issues of, not only
13 communications, but the next ranked cause of claims,
14 time management and the new rule changes and inadequate
15 investigation, none of which really are about
16 substantive law, but are more about practice
17 management. Thank you.

18 TREASURER MINOR: Thank you, Ms. Ross.
19 Any questions or comments on the phone for Ms. McGrath?
20 Okay, hearing none, Ms. McGrath -- I'm sorry, Mr.
21 Galati.

22 MR. GALATI: Thank you, Treasurer.
23 Through you to Ms. McGrath. The same chart, I'd asked
24 about this at committee. With respect to the areas of
25 the law that are enumerated, the account for the

1 claims, I see real estate litigation, corporate family,
2 wills and estates, and then all other.

3 Two categories that I would ask the
4 committee or LawPro to consider adding specifically are
5 immigration and criminal. It seems to me to lump
6 immigration and criminal, which are huge areas of
7 practice, in the other category distorts the statistics
8 on which areas of practice lead to the claims.

9 So for my purposes, I would like to see
10 immigration and criminal as separated classes in that
11 chart. Thank you.

12 TREASURER MINOR: Thank you. Ms.
13 McGrath, anything further?

14 MS. McGRATH: No, I was just going to
15 say we would be pleased to take Mr. Galati's
16 recommendations back to LawPro. I'm sure we will be
17 able to accommodate that.

18 TREASURER MINOR: Thank you. Then this
19 is a motion. Is it brought by you or --

20 MS. McGRATH: Yes, it is brought by me.

21 TREASURER MINOR: Seconded by?

22 MS. McGRATH: Barb Murchie.

23 TREASURER MINOR: Seconded by Ms.
24 Murchie. Yes, the motion is to approve the program?

25 MS. McGRATH: Yes, that's correct.

1 TREASURER MINOR: All right. All those
2 in favour? Any opposed? Any opposed on the phone?
3 Carried.

4 And then, Ms. McGrath, I understand you
5 are also presenting the Paralegal Standing Committee
6 Report in the absence of Ms. Haigh.

7 PARALEGAL STANDING COMMITTEE REPORT:

8 MS. McGRATH: That's correct, Treasurer.
9 We are at tab 3.2, page 141 in your BoardBooks.

10 The Paralegal Standing Committee has one
11 item for decision. The motion is that Convocation
12 approve the amendments to the paralegal rules regarding
13 transferring paralegals shown at tab 3 --

14 TREASURER MINOR: Just one moment.
15 Thank you so much for coming, Ms. Waters and
16 Mr. Gosnell. Thank you. Sorry to interrupt, Ms.
17 McGrath.

18 MS. McGRATH: The rules are at tab
19 3.2.1, to be consistent with the rule changes for
20 lawyers approved by Convocation in June of 2015. The
21 changes that Convocation approved in June were
22 developed to accord with changes to the model code of
23 professional conduct adopted by the Federation of Law
24 Societies of Canada.

25 The revised wording provides a more

1 principled and straightforward approach to the
2 potential conflict of interest issues that arise when a
3 licensee transfers from one firm to another.

4 Convocation has adopted a policy that the paralegal
5 rules should be consistent with the lawyer's rules to
6 the extent possible. A clean copy of the rules with
7 the proposed amendments is shown at tab 3.2.2. The
8 committee will be developing complementary amendments
9 to the paralegal guidelines to be provided to
10 Convocation later in the fall.

11 This motion is moved by me and seconded
12 by Ms. Corsetti.

13 TREASURER MINOR: Any comments or
14 questions in the room? Questions or comments from
15 people on the phone?

16 Thank you. We'll call the vote. All in
17 favour? Any opposed? Any opposed on the phone?
18 Carried.

19 All right. Can I call upon Mr. Conway
20 to address us, please.

21 ADDRESS BY THOMAS G. CONWAY, FEDERATION
22 OF LAW SOCIETIES OF CANADA:

23 MR. CONWAY: Merci, Madam la Trésorière.
24 C'est un grand plaisir pour moi de vous adresser la
25 parole dans ma position de Président de l'Association

1 des Juristes du Canada.

2 The last time I stood here was in June
3 of 2014 on the occasion of the election of the new
4 Treasurer, and if you'll permit me, Treasurer, I would
5 like to congratulate you on a very successful first
6 term and wish you all the best in your second term.

7 To my friends and colleagues who are
8 re-elected, congratulations, and to those new Benchers,
9 congratulations as well. This is a Law Society in
10 which it is very difficult, as you know, to get
11 elected, so you all deserve congratulations for having
12 achieved the status of elected benchers.

13 I have spent this past year travelling
14 around the country engaging with representatives of the
15 law societies, legal regulators from other countries,
16 members of the profession and other stakeholders, and
17 one common theme has emerged.

18 The legal services landscape is in the
19 midst of profound change. Change and how we adjust to
20 change is really what I want to speak to you about in
21 the few minutes I have this morning.

22 Chers collègues, lorsque nous revisons
23 l'héritage de la présentation de la profession
24 juridique comme elle était il y a plus d'une douzaine
25 d'années, il est surprenant de constater que tant les

1 choses ont change.

2 La profession juridique a bécué des
3 grands bouleversements et de profonds changements.
4 Changé par leurs provinces et leurs territoires de
5 régler la profession dans l'intérêt public, les
6 Ordres Professionnels de Juristes du Canada ont
7 également vu, leur représentation professionnelle changé
8 considérablement.

9 When we reflect on the legal regulatory
10 landscape as it was a generation ago, it is really
11 startling to see how much has changed. The legal
12 profession has endured significant upheaval, has
13 undergone profound change, and today faces an uncertain
14 future.

15 The Law Societies of Canada, mandated by
16 the provincial and territorial governments to regulate
17 the profession in the public interest, have also
18 experienced profound change in the regulatory
19 environment in which they regulate.

20 In 1989 the Supreme Court of Canada
21 rendered its decision in Black and Co. in the Law
22 Society of Alberta. A passage from that decision
23 reminds us of the prevailing attitudes of the Law
24 Societies in Canada at that time, and I quote.

25 "The Law Society claims that legal

1 services delivered to the public of Alberta would be
2 endangered by interprovincial law firms, because these
3 services would ultimately be delivered in Alberta by
4 lawyers who are not members of the Law Society. This
5 concern is, in my view, unfounded. Many legal problems
6 transcend provincial boundaries and require cooperation
7 for their resolution. Lawyers often have to draw upon
8 the resources of people who do not belong to the same
9 Law Society and, indeed, often require the services of
10 non-lawyers, even for matters having a legal component,
11 for example, the use of paralegals."

12 So reading that passage in 2015, it's
13 hard to believe how such an attitude to legal
14 regulation could possibly survive in today's world, but
15 I think we need to be mindful of that even today.
16 There are elements within the profession that might
17 still continue to think that the old ways are the best
18 ways and it would be a mistake and far too easy for us
19 to conclude that in 1989 the attitudes of the Law
20 Society of Alberta on regulation of the legal
21 profession were out of touch or unenlightened and that
22 somehow we in 2015 are more progressive and openminded
23 than they were in their time.

24 If we are to learn anything from the
25 history of legal regulation in this country, we must

1 first recognize that the leaders of the Law Society of
2 Alberta in the 1980s were some of the best and
3 brightest of the legal profession anywhere in Canada.
4 They were the product of their time, but they were just
5 as knowledgeable about their regulatory environment in
6 their time as we are today in ours. We have more than
7 a few lessons to learn from the experience of the Law
8 Society of Alberta in the late 1980s, a theme to which
9 I will return at the conclusion of my remarks.

10 But let me say candidly that I am one of
11 the old geezers of the Federation of Law Societies, at
12 least as far as its elected leadership is concerned. I
13 was appointed to the Federation's Council as Ontario's
14 representative in 2008 by then Treasurer Derry Millar,
15 to whom I owe much in my career as a Bencher,
16 Treasurer, and now as the President of the Federation.

17 I have served on the Federation
18 executive since 2011 and was elected president in
19 November 2014. But I also have a deep background in
20 the inner workings of this Law Society. I have had the
21 privilege of serving as a Bencher of this Law Society
22 since 2007 and serving as its Treasurer for two terms.

23 When I was appointed as Ontario's
24 Council representative to the Federation in 2008, my
25 knowledge of the Federation consisted of understanding

1 the essence of why such an organization existed in the
2 first place, so that all of the law societies of Canada
3 could come together and share best practices about
4 regulation of the profession and to collaborate where
5 that was appropriate on national initiatives.

6 More than anything, the Federation was,
7 and continues to be, the vehicle through which Canada's
8 law societies relate to each other.

9 When I became the council member in
10 2008, the last cycle of governance reform had been
11 completed a few years before. The Federation was, I
12 would say, in its giddy adolescence. A new CEO had
13 been just hired, the Federation had recently moved its
14 headquarters from Montreal to Ottawa. There was a
15 sense that the Federation had much work to do and there
16 was a great deal of enthusiasm and even exuberance
17 about its future.

18 I'm not going to dwell overly on the
19 accomplishments of the Federation in the last dozen
20 years, but it would be a profound shame and a great
21 disservice in 2015 if we did not acknowledge the
22 successes that the Federation and its members have
23 achieved together in the last dozen years, and I might
24 add, the central role that this Law Society has had in
25 many of these achievements, all of which are directly

1 relevant to this Law Society today.

2 When I started at the Federation, the
3 National Mobility Agreement was still in its infancy,
4 its repercussions for the professions and for the law
5 societies of Canada were just being felt.

6 And yet in 2013, as a result of the
7 political will of the elected leadership of the Barreau
8 du Québec, the last spike of the National Mobility
9 Agreement was put into place. And I remember well, as
10 many of you in this room do, the day that Batonnier
11 Nicolas Plourde appeared in Convocation at the Law
12 Society of Upper Canada on the day we took that vote,
13 and he spoke passionately and eloquently about that
14 agreement and about the Barreau's desire to become a
15 full participant in it.

16 Our law society and the other law
17 societies in Canada voted unanimously in favour of
18 establishing the conditions for complete mobility for
19 all lawyers in Canada, including lawyers from Québec.
20 There was a standing ovation in Convocation that day as
21 we realized the success that we had achieved together
22 as law societies, and that is an achievement of which
23 we can all be very proud. I can tell you in my travels
24 abroad, the National Mobility Agreement is the envy of
25 federal jurisdictions around the world.

1 A dozen years ago CanLII was just
2 another interesting idea. Again, the commitment of the
3 Law Societies of Canada through the Federation has made
4 CanLII the go-to source for legal information in this
5 country for practitioners and for the public alike.

6 Without the cooperation and the support
7 of all of the Law Societies of Canada, this great idea
8 would have not amounted to anything. It was not
9 something that any one Law Society could take on by
10 itself, it required all of us, working together, to
11 move it from just another good idea to the wildly
12 successful reality it is today.

13 And when the federal government enacted
14 legislation that threatened to impinge on the sanctity
15 of the lawyer client relationship, it was the member
16 law societies of the Federation, acting through the
17 Federation that successfully challenged the legislation
18 in litigation over the last dozen years, resulting in a
19 landmark decision of the Supreme Court of Canada
20 earlier this year, a decision which is now established
21 as a fundamental principle of justice, the
22 constitutional protection of a lawyer's duty of loyalty
23 to her client.

24 The Law Societies of Canada through the
25 Federation developed their own anti-money laundering

1 and anti-terrorism rules and regulations. It was these
2 same rules and regulations that the Supreme Court of
3 Canada found to be adequate to the protection of the
4 public interest.

5 We could not have achieved this outcome
6 as individual law societies. Our success required a
7 harmonized scheme created by the Federation with the
8 authority of all the Law Societies of Canada, a scheme
9 that was ultimately found to be better than the scheme
10 proposed by the federal government.

11 Together we have harmonized our rules of
12 professional conduct as embodied in the model code of
13 professional conduct adopted by the Federation and
14 substantially implemented by each jurisdiction. This
15 undertaking has established the model code as the
16 bulwark of the regulation of professional conduct
17 throughout the country, so much so, that the Canadian
18 Bar Association has decided that it will no longer
19 continue to have its own code. And this is as it
20 should be. Indeed, establishing a model code for all
21 of the law societies was long overdue.

22 The Federation has developed a national
23 competency profile as part of our national admissions
24 standards. Similarly, we have developed national
25 standards relating to Law Society complaints and

1 discipline processes. All of these initiatives and
2 accomplishments have occurred in the last dozen years.
3 And why has that been? It is because we have slowly
4 come to understand that in the regulatory environment
5 of the 21st century we cannot continue to live in our
6 own watchtowers, guarding our borders from the
7 intrusions of others, especially from others within our
8 own country, as we did, or tried to do, in 1989.

9 We recognize that in the 21st century we
10 no longer have borders, let alone borders that we can
11 effectively monitor or protect on our own. We have
12 come to realize that collectively we are stronger than
13 the sum of our parts. We serve the public better in
14 our own jurisdictions when we accept the reality that
15 we are all connected.

16 We have all heard of the butterfly
17 effect of the chaos theory. When a butterfly flaps its
18 wings in New Mexico, it can cause a hurricane in China.
19 When a lawyer goes rogue in Ontario, it can create a
20 public furor in Alberta. A threat to one of us is a
21 threat to all of us collectively. What happens in one
22 jurisdiction in Canada has a real and substantive
23 impact on our role as provincial and territorial
24 regulators.

25 You know, in Canada 14 law societies

1 regulate approximately 100,000 lawyers, over 7,000
2 Ontario paralegals, and about 4,000 Québec notaries.
3 Our largest Law Society, this Law Society, has over
4 47,000 lawyer members, and our smallest Law Society has
5 fewer than 30 permanent members.

6 But there are well over a million
7 lawyers in the United States. The state of California
8 alone has over 250,000 licensed lawyers. That one
9 state is two and a half times the size of our entire
10 lawyer population in Canada. Jurisdictions in England
11 and Wales and the European Union have many more lawyers
12 than we do.

13 Lawyers are working in many different
14 jurisdictions. They have formed alliances and
15 partnerships that now surround the globe and traverse
16 multiple jurisdictions, regulatory jurisdictions, both
17 in Canada and abroad.

18 You know, every year the Federation
19 executive meets with the Department of Justice and the
20 Minister of Justice and we are briefed on Canada's
21 ongoing international trade negotiations aimed at
22 liberalizing the flow of goods and labour across
23 international borders and legal services are included
24 in those discussions.

25 In early May I attended the National

1 Summit on Innovation in Legal Services held at Stanford
2 University in Palo Alto, California. It was an
3 invitation only event sponsored by the American Bar
4 Association. Approximately 200 American bar leaders,
5 judges, legal academics, innovators and regulators were
6 invited to initiate a discussion about the future of
7 legal service in the United States.

8 The purpose of the summit was to
9 kickstart a national conversation about reforming the
10 justice system in the United States, and the president
11 of the American Bar Association, William Hubbard,
12 stated that the American Bar Association wanted to
13 bring together in one room those people that they
14 believed would have a real impact on influencing the
15 direction of that reform in the United States.

16 I was invited in my capacity as the
17 President of the Federation of Law Societies, and I'm
18 proud to say that I was one of the few non-Americans in
19 attendance. I'm also proud to say that the President
20 of the Federation was invited because the Americans
21 were interested to learn how we in Canada have been so
22 successful in achieving the objectives that I have just
23 outlined, national mobility, national standards,
24 regulation of non-lawyers and access to justice
25 initiatives. Objectives which, to date, have been

1 beyond the reach of regulators in the profession in the
2 United States.

3 So you can imagine the sense of pride I
4 had in finding myself at Stanford University in Palo
5 Alto, California, the epicentre of innovation and the
6 largest economy in the world, speaking to Americans
7 about the successes of the Law Societies of Canada in
8 achieving real and substantive regulatory reform in
9 less than a dozen years.

10 We can all of us take pride in the
11 reputation that Canada has earned abroad for being a
12 jurisdiction that has been ahead of the curve on
13 regulatory reform and interjurisdictional cooperation.

14 But my sense of pride was quickly
15 displaced by rising disquietude about the challenges
16 that lie ahead for the legal profession in Canada as I
17 listened to leading thinkers, innovators and
18 entrepreneurs who are on the verge of revolutionizing
19 the delivery of legal service in the United States and
20 elsewhere.

21 Let me give you a few quick examples.
22 Like in Canada, there is a great concern in the United
23 States about the inability of Americans to access their
24 justice system. How are the Americans responding to
25 the access issue? I was fortunate to participate in a

1 breakout group dealing with regulatory reform and,
2 interestingly, the CEO of LegalZoom and the general
3 counsel of Rocket Lawyer were in our group. No
4 mistake, that was not a coincidence, I'm sure.

5 What these internet-based global
6 enterprises are doing is truly game changing. Even
7 their language is different. They do not talk about
8 access to justice. They talk about democratizing the
9 law.

10 Now, stop and reflect on that mind set
11 just for a moment. We in the profession and in the
12 judiciary, myself included, approach the challenge of
13 unmet legal needs with a somewhat paternalistic mind
14 set by comparison. We keep asking how can we give the
15 public better ways of gaining entry to the institutions
16 that we have built as lawyers and judges, institutions
17 that still remain, and let's be honest, largely lawyer
18 and judge-centric. We are often heard to say, more
19 legal aid, more pro bono, more judges, more money, more
20 case management, and the list goes on.

21 The innovators, however, reject our
22 paradigm. They ask instead, how can we bring the law
23 to the people so that they can solve their own legal
24 problems without the intervention of lawyers and judges
25 and how can we make our living doing that?

1 And this different approach has enormous
2 potential impacts on the profession and on our roles as
3 regulators in the next twelve years. Some of these
4 ventures will, no doubt, fail, that is the nature of
5 innovation, but I can guarantee that some will not.
6 Some will succeed in revolutionizing how the public
7 accesses legal services and from whom they will
8 purchase those services in the future.

9 And these innovators are lawyers, but
10 they are also young entrepreneurs building
11 internet-based platforms on a large scale that will
12 provide millions of Americans and others around the
13 world with access to the kind of legal services that
14 were once provided only by the legal profession.

15 LegalZoom recently received a private
16 equity investment of \$400 million U.S. That's --
17 excuse me, I'm going to have to switch. That's -- that
18 kind of money is four times the annual operating budget
19 of this Law Society. So we have to think about what
20 that means. If we can just -- I've run out of
21 batteries here, so I have to innovate.

22 MR. LERNER: Would you like a pen and
23 paper?

24 MR. CONWAY: I should have brought a pen
25 a paper, but I wasn't expecting my thing would run out

1 of -- let me see if I can get this going again. I'm
2 sorry, Treasurer.

3 TREASURER MINOR: That's okay.

4 MR. CONWAY: Just give me a moment. I'm
5 afraid I'm not going to be able to find my speech here.

6 TREASURER MINOR: Do you want to take a
7 short break? We'll continue with the next agenda item.
8 So Ms. Leiper.

9 MS. LEIPER: Through you, Treasurer, to
10 Convocation. Thank you.

11 TREASURER MINOR: The Equity and
12 Aboriginal Issues Committee Report.

13 EQUITY AND ABORIGINAL ISSUES COMMITTEE

14 REPORT:

15 MS. LEIPER: Thank you. It's my
16 pleasure to bring you the report, the 25th report of
17 the activity of the Discrimination and Harassment
18 Counsel, also known as the DHC or, en français, CJDH.
19 The Discrimination and Harassment Counsel provides a
20 range of services to individuals with complaints or
21 concerns about alleged discrimination or harassment by
22 lawyers, articling students or paralegals.

23 This report is for the period of
24 January 1st, 2015, to June 30th, 2015, and it comes
25 through our committee to you.

1 So the services that are provided
2 include coaching, information, referrals to other
3 agencies such as the Human Rights Commission, and
4 resources, informal mentoring, general advice, it's not
5 legal advice, but general advice, mediation and
6 conciliation.

7 Services are provided in English and in
8 French. Les services sont offert en Anglais et en
9 français. La CJDH offre une vaste gamme de services
10 aux personnes qui formulent des plaintes pour
11 discrimination ou harcèlement contre des avocate, des
12 avocates, des étudiants et des étudiantes en droit ou
13 des parajuristes.

14 And services are typically delivered by
15 Ms. Cynthia Petersen or two alternate counsel who fill
16 in for Ms. Petersen either when she is away or when she
17 has a conflict of interest on the matter.

18 During this period there were no formal,
19 in-person mediation sessions, but there were several
20 cases where the DHC was able to intervene as a
21 conciliator, communicated with the parties involved and
22 was able to assist them in reaching a mutually
23 satisfactory resolution to the complainant's concerns.

24 Treasurer, do you wish me to let
25 Mr. Conway resume and finish or --

1 TREASURER MINOR: I think you had better
2 finish and then we can go back to Mr. Conway.

3 MS. LEIPER: Thank you. So I wanted to
4 talk briefly -- I've told you a little bit about the
5 program. I'll talk briefly about the volume during
6 this period and the nature of the complaints and a
7 little bit about the outreach, because the volume and
8 the outreach actually relate. That's one of the
9 interesting points.

10 So consistent with the average number of
11 contacts over the last ten years, we have seen the same
12 average number of contacts in this program continues to
13 be used and in a steady way, with an average of about
14 17 new contacts per month, with one exception.

15 In May there was a spike, and you will
16 see page 400 of BoardBooks, which is in the middle of
17 the report, there is a graph that tells the story
18 better than I could, and you'll see a spike of double
19 after a panel that Ms. Petersen participated in about
20 mental health in the profession that was sold out and
21 had hundreds of people by webcast paying attention.

22 TREASURER MINOR: That was our Equity
23 event.

24 MS. LEIPER: That was our Equity event.
25 But what it showed us all is that the need for ongoing

1 communication and perhaps some consideration of how we
2 reach out to people and what's available is critical
3 because it causes people to ask for help and the help
4 is there. So that is an interesting point I wanted to
5 draw to Convocation's attention.

6 Otherwise, you will see a similar trend,
7 whether or not it's a complaint by a member of the
8 profession or by a member of the public. The
9 complaints tend to divide unequally along gender lines,
10 with 80 percent being made by women and 20 percent by
11 men. Also on the grounds of discrimination that people
12 report, again, the largest amount is on the basis of
13 gender, versus disability, race, place of origin,
14 gender identity or sexual orientation. So you see that
15 in both. The graphs are in your report. I won't give
16 you the nitty gritty, but that is also the trend.

17 Just as a forecast, one of the things
18 that the Challenges faced by Racialized Licensees is
19 looking at is how to perhaps better orient this program
20 in a way that serves the needs of racialized licensees.

21 Finally, I'll just move briefly to
22 promotional activities. The Law Society maintains a
23 bilingual website for the program. It was revised and
24 updated during the reporting period. Ads are placed in
25 the Ontario Reports about these services. There are

1 brochures in both languages circulated to the clinics,
2 community centres, law firms and faculties of law.

3 As I mentioned, Ms. Petersen has
4 presented most recently on Fostering Wellness, a
5 discussions of mental health in the legal profession
6 and also on the OBA panel entitled "One Year Out," the
7 Law Society's model policy on LGBT inclusion in law
8 firms. Ms. Petersen also gave a lecture on "Lawyer
9 Self Care" to a class of upper year law students at
10 Osgoode Hall Law School and covered the issue of how to
11 cope with discrimination and harassment and her
12 services.

13 Finally, Ms. Petersen was interviewed by
14 journalists who published articles in the Lawyers'
15 Weekly and the Law Times about the program and she was
16 quoted by a reporter in an article in the National Post
17 about sexual harassment in law firms.

18 So on Convocation's behalf, we extend
19 our thanks to Ms. Petersen for her important work and I
20 would like to extend my personal thanks to Josée
21 Bouchard for helping me to prepare these remarks.

22 TREASURER MINOR: Thank you, Ms. Leiper.
23 Are we ready for part two, Mr. Conway?

24 CONTINUED ADDRESS BY THOMAS G. CONWAY,
25 PRESIDENT, FEDERATION OF LAW SOCIETIES OF

1 CANADA:

2 MR. CONWAY: Yes, I am sorry. Thank you
3 for that indulgence. I'm back on-line.

4 So where was I? I was talking about
5 LegalZoom. \$400-million in equity investment. That
6 was their second round. So someone with a lot of money
7 thinks that they are going to succeed. And that's over
8 four times the annual operating budget of the largest
9 Law Society in Canada. That's for one innovation in
10 the United States.

11 They're now registered as an alternative
12 business structure in the United Kingdom. They have
13 been able to aggregate data to predict with remarkable
14 accuracy the cost of various basic legal services and
15 are quickly replacing the work done in many states in
16 the United States by solo and small firm practitioners.
17 And they are everywhere.

18 For example, when I was in California
19 they were interested in discussing with me the results
20 of the Bencher election here in Ontario. Even though
21 Ontario is a relatively small market for them, they
22 were well aware of the issues that had emerged during
23 the Bencher campaign around the issue of alternative
24 business structures, appeared to have profiled the
25 newly elected Benchers, and had a view as to how

1 Convocation might deal with emerging issues touching on
2 their business, and I assured them that they were
3 wrong, but as it turns out this morning, they were
4 right.

5 Another example. Slater and Gordon, the
6 Australian publicly traded law firm ,have conducted
7 research and, I'll be frank about this, they've
8 concluded that the Ontario personal injury market is
9 one of the most lucrative in North America. They know
10 that the current regulatory environment in Ontario and
11 the current practices of the personal injury bar, in
12 their view, takes more money out of system than in many
13 other jurisdictions.

14 When they some day make their case to be
15 licensed as an alternative business structure in
16 Ontario, they will no doubt say that they can provide
17 the same quality representation to injured plaintiffs,
18 but can put more money in their pockets, the pockets of
19 their clients, because of the systems that they have
20 invested heavily in and they will make a compelling
21 public interest case, maybe not to the legal
22 profession, but to the public, they will certainly do
23 that.

24 When that day comes, as it surely will,
25 how will the Law Society of Upper Canada react? And

1 please understand, I am neither a proponent nor an
2 opponent, Mr. Wright, of alternative business
3 structures, but I simply say that because this or
4 another Law Society says they will not allow
5 alternative business structures does not end the issue
6 as far as the consuming public is concerned.

7 The implications for regulators of these
8 developments are profound. How should we respond to
9 the on-line provision of legal services? How do we
10 balance the protection of the public with the benefit
11 of inexpensive, readily available legal services? How
12 do we adapt our existing regulatory model with its
13 focus on individual lawyer regulation to this new
14 reality?

15 Whether legal services providers like
16 LegalZoom will be recognized by regulators in Canada is
17 obviously still very much an open question, but for the
18 public, however, it's not an open question at all. If
19 they want the service and they are prepared to pay for
20 the service, it will be largely irrelevant to the
21 consuming public whether the regulators have endorsed
22 the service provider or not. And by analogy, reflect
23 on the impact of Uber, another disruptive technology on
24 the regulated taxi industry in North America? Will
25 legal regulators in Canada face the same kind of

1 challenges to their regulatory authority?

2 At the National Summit, academics from
3 Harvard Law School, from Boston University and from
4 Stanford were talking about the new curriculum in
5 American law schools. As we know, American law schools
6 are under great pressure from declining enrolment, but
7 these academics have their sights focused on the
8 future, and they are integrating into their curricula
9 subjects like analytics and project management, to name
10 but two examples, subject matter that would be entirely
11 foreign to most of us that have been practising in
12 Canada even for a short time.

13 What is analytics and why should I care,
14 you might ask. Analytics is defined in Wikipedia,
15 another reliable web-based source of information, as
16 both "The discovery and communication of meaningful
17 patterns in data. Especially valuable in areas rich
18 with recorded information, analytics relies on
19 simultaneous application of statistics, computer
20 programming and operations research to quantify
21 performance".

22 Now, if you think that analytics sounds
23 a lot like what lawyers do with legal information, I
24 think you would probably be right.

25 To give you a good example, and a simple

1 one, of analytics in action in the legal profession and
2 its transformative potential, let me tell you about a
3 slide, a slide that Professor Adam Dodek of the
4 University of Ottawa Faculty of Law presented to the
5 British Columbia Benchers in Kamloops a few weeks ago.
6 At the beginning of his talk he put up a power point
7 slide showing all of the legislation in British
8 Columbia in which the term "public interest" is
9 mentioned.

10 Now, how did he obtain this interesting
11 piece of data? He went on to CanLII, did a few clicks
12 with his mouse, did a keyword search, and up popped
13 every reference to public interest in British
14 Columbia's legislation. I estimate it probably took
15 him less than three minutes to obtain the information
16 he needed to make this point. A dozen years ago to
17 obtain that information would have required hours of
18 law students' labour, leafing through statutes of
19 British Columbia to compile a probably incomplete
20 memorandum on the references to public interest in
21 British Columbia legislation.

22 The labour of students and lawyers has
23 been replaced by computer algorithms that can do the
24 same work in milliseconds.

25 Many of us use personal computing

1 devices that are become more intuitive and predictive
2 than we ever imagined possible. For example, I'm sure
3 I'm not the only one that uses Google on my smart
4 phone.

5 Every workday Google sends me a message
6 at about the same time I usually leave for the office.
7 It tells me how long it will take me to travel to work,
8 estimates any delays due to heavy traffic on my usual
9 routes to work, and suggests alternative routes I might
10 want to try to save some time. On weekends in the
11 summer months it gives me the same information for my
12 weekly trip to the ski hill.

13 Now, how does it do this? It aggregates
14 the data of hundreds of commuters using the same
15 routes, analyzes and interprets the data in a way that
16 is useful to me, and accurately predicts when the
17 information will be most useful to me based on my
18 personal commuter patterns.

19 This is the kind of technology that is
20 already available to us in 2015. It's arrived before
21 most of us thought it would. Start-ups like LegalZoom
22 and Rocket Lawyer are doing what Google is doing on my
23 smart phone with my daily commute, but they are doing
24 it in the on-line legal services case.

25 At the ABA summit, the term "disruptive

1 technology was a central theme of many of the
2 presentations. We once thought of the use of
3 artificial intelligence to solve human problems was a
4 long way off in the future, but it's not. It's here
5 now. The summit heard that the speed of computation
6 doubles every 18 months or so and that there is no end
7 in sight.

8 You will all recall IBM's super computer
9 named Watson. It became the champion on the game show
10 "Jeopardy" a while back, being the best human
11 competitors that the game show could find. At the
12 summit we heard that the physical space required for
13 Watson was about the size of a hotel suite. In five to
14 ten years, it's expected that the same computing power
15 will be available to each you of you on your cell phone
16 or mobile device.

17 Even if the prediction is off by a dozen
18 years, it will have a profound effect on the legal
19 profession. Software programs can analyze the data
20 from large litigation cases much more accurately, much
21 more efficiently and much more inexpensively than a
22 roomful of Harvard trained associates.

23 In development now are software programs
24 that will be able to compose standard e-mail responses
25 for you based on what you've written in the past.

1 Unless we litigators start to think that only solicitor
2 practices will be affected by technology and that there
3 will always be a place for us in the justice system,
4 consider the research that is now being carried out in
5 the United States.

6 One of the professors of law at this
7 conference who holds a joint appointment in the law
8 faculty and in computer science told me about a
9 fascinating research project now underway that has
10 taken the entire corpus of written opinions of one of
11 the United States appeals court and has created a
12 database for a software program that can more
13 accurately predict the outcome of appellate cases
14 pending before the court than the most experience
15 appellate counsel that appeared before the same court
16 are able to do.

17 It has the same capability of
18 eliminating most of the guess work out of the decision
19 making process for an appeal. That's the capability it
20 has.

21 Consider also that the same investors
22 and innovators that brought us Pay Pal and eBay are
23 investing in on-line automated dispute resolution
24 mechanisms designed to easily and inexpensively resolve
25 small claims that had hitherto been pursued -- had not

1 been pursued by disputants, but are now being fairly,
2 efficiently, and to the satisfaction of the consumer.

3 Many of the disputes get resolved in a
4 software-based algorithm-driven process that requires
5 no human intervention for most cases. The public is
6 using these new types of services and they like the
7 results. Think of the implications that kind of
8 technology will have in our practices in the years to
9 come.

10 These are examples of what the young
11 entrepreneurs mean when they say they want to
12 democratize the law. There doesn't appear to be a
13 place for traditional lawyering in the deployment of
14 these new and emerging technologies. It's no wonder
15 that these new technologies are called disruptive.
16 They have the potential to utterly change our
17 profession and, more significantly, the way the public
18 accesses legal services.

19 So what lies ahead for Canada's law
20 societies in the next 14 years? What might the
21 conversion of these trends bring to Canada? Do these
22 new and emerging enterprises and disruptive
23 technologies create the kind of environment that could
24 mean wholesale disappearance of the kind of work that
25 lawyers have traditionally performed for decades? Does

1 the democratization of the law spell the end of some of
2 the law practices we presently recognize as the
3 mainstay of our membership?

4 If so, will we see an emerging conflict
5 between the public interest and the interest of the
6 members of our law societies who may look to us to
7 protect those practices that are most vulnerable to
8 these forces. If so, what will we do about that
9 reality as regulators in the public interest,
10 especially when in our system of governance it is our
11 membership who elects us as benchers. How will we
12 collectively manage the transition from being
13 regulators of the legal profession to becoming
14 regulators of legal services involving non-lawyers and
15 how do we equip our law societies and the Federation to
16 manage the challenges that lie ahead?

17 Ladies and gentlemen, these are the
18 important big questions that we must answer together.
19 As Yogi Berra once said, "The future just ain't what it
20 used to be". The future has arrived. Unfortunately, I
21 don't have answers for any of these questions, but it
22 is clear that our regulatory environment is daily
23 becoming more complex and more inter-connected.

24 Our challenges to regulate in the public
25 interest in Canada will be greater in the next dozen

1 years than they have been in the last. None of us want
2 our law societies to become the modern version of King
3 Canute, sitting on the shore and commanding the tides
4 to recede. That's what the Alberta Law Society tried
5 to do in 1989 and it didn't work.

6 In Canada, we can be rightly proud of
7 the things that we have achieved together as regulators
8 in the last dozen years and we are well-positioned to
9 tackle the challenges together in the years ahead, but
10 we must guard against allowing the pride in our
11 accomplishments or our differences of views on single,
12 one-off issues to allow us to become complacent or to
13 become parochial or isolationist in our views of how we
14 should regulate in the public interest.

15 If we allow ourselves to become
16 complacent or decide we can go it alone on the
17 regulatory issues that we face, we do run the risk, in
18 my view, of becoming entirely irrelevant. Again, just
19 look at what Uber has done to the regulated taxi
20 industry in North America if you need a concrete
21 example of what might lie ahead for us.

22 We must all of us together adjust to the
23 new realities that are dawning on us, otherwise it will
24 be said, as the Pogo cartoon character once famously
25 quipped, "We have met the enemy and he is us". The

1 public and the governments from whom we derive the
2 privilege of self regulation will lose patience and
3 they will simply ask us to step aside.

4 In his new book, "Learning By Doing",
5 James Bessen, an economist and lecturer at Boston
6 University Law School postulates that the impact of
7 disruptive technologies on professional services and
8 other industries does not necessarily or ultimately
9 translate into the loss of jobs or rewarding careers,
10 but rather, changes the nature of those jobs and how
11 the work is performed in these -- in those industries.

12 To quote, the effective technology on
13 jobs, he writes, is simply more dynamic and more
14 complicated than many people recognize, and I believe
15 that is true.

16 So we must really come to understand how
17 technology and other forces are going to change the
18 legal profession and we must not become the enemy to
19 innovation. As Malcolm -- as Bencher Malcolm Mercer so
20 aptly stated in the title to his recent Slaw post,
21 "Innovate or be innovated".

22 We must embrace innovation and what it
23 can do for the public as part of our public interest
24 mandate. We must educate the membership of our law
25 societies who elect us that innovation in the delivery

1 of legal services, while disruptive, holds out the
2 promise of creating new, different, and more rewarding
3 ways of providing the public with the services that
4 they need.

5 That's going to be a very hard sell, but
6 I don't think we have a choice. I don't think we have
7 a choice in the matter, just as the Law Society of
8 Alberta didn't have a choice in 1989. As all of you
9 know, the Federation and its member law societies are
10 currently engaged in a discussion about governance
11 reform for the Federation. This is a healthy and
12 normal process given the evolution of the Federation
13 over the last dozen years and no doubt it has been
14 motivated by differing views about the role of the
15 Federation and how its member law societies relate to
16 it and to each other.

17 But I want to conclude by saying that
18 whatever comes out of the governance review, we should
19 remind ourselves that the Federation and its members --
20 and its members are the Federation. Now more than
21 ever, we must continue to work together as we face the
22 challenges of next dozen years.

23 At the ABA summit, Richard Susskind used
24 a Canadian to illustrate a point he was making about
25 innovation and how the legal profession should respond

1 to these inexorable forces that are reshaping our
2 lives. He spoke of Wayne Gretzky's genius as a hockey
3 player and that Wayne Gretzky, in describing his own
4 success, said that he always had a sense of where the
5 puck was going, not where it had been, and that this
6 was the secret to his success.

7 Law Societies of Canada must strive to
8 be like Wayne Gretzky. We must look forward, not
9 backward. If we look backward, we lose the puck and
10 ultimately lose the game. Believe me, there are some
11 individuals in our law societies and bar associations
12 who are currently looking back and not forward.

13 So as we move forward, let us consider
14 the decisions we have made well together in the last
15 dozen years. Consider also what I have said today and
16 think about how we, through the Federation, can best
17 position ourselves to be effective regulators in the
18 next dozen years. Let's ask ourselves how we can
19 improve those processes that have permitted us to make
20 the good decisions that have made Canada a model of
21 legal regulation in a federal state and to which the
22 world has turned for inspiration.

23 Let us focus on developing concrete
24 solutions to the many immediate challenges that lie
25 ahead, and, above all, let us listen to each other

1 respectfully, let us continue to learn from each other.
2 In the next dozen years in the life of the Federation
3 it will need to be an organization that knows where the
4 puck is going and not where it's been.

5 In my view, we have not begun to think
6 deeply or converse collaboratively on how we as legal
7 regulators will address these issues. As I complete my
8 term as president of the federation and my career as a
9 Bencher, I extend a call to action to all of the
10 leaders of the Law Societies of Canada, let us settle
11 on the terms on which our Federation of Law Societies
12 of Canada will become renewed and reinvigorated. The
13 time is now to focus our efforts on the substantive
14 issues we face collectively so that the Federation and
15 its member law societies will continue to enjoy the
16 internationally respected reputation it has rightfully
17 earned as a model of thoughtful, collaborative and
18 progressive legal regulation in the public interest.

19 And finally, one last point. I want to
20 pay homage to the contribution, in particular, that
21 this Law Society has made to the Federation. This Law
22 Society has molded and shaped the Federation and the
23 reputation it has built over the last decade or so,
24 starting with Abe Feinstein and Vern Krishna, who was
25 the pioneer of the National Mobility Agreement, Malcolm

1 Heins and Katherine Corrick, James Varro and Sophia
2 Sperdakos and many other people who have been involved
3 in the Federation and have worked hard to make it the
4 success it is today.

5 These people have been the backbone of
6 the Federation and have been at the centre, at the very
7 centre of every success it has achieved. The Law
8 Society of Upper Canada is not only one of the
9 Federation's members, it has been one of its most
10 consistent and strongest supporters. One of its
11 pillars. And I have every reason to believe that all
12 of Canada's law societies can continue to find ways to
13 collaborate through the Federation while accommodating
14 and, indeed, celebrating their differences.

15 For what I have described is not merely
16 The Federation of Law Societies of Canada, it is Canada
17 itself. I leave you with that thought, the time is now
18 to refocus our efforts on the substantive issues we
19 face together and let us do so in the public interest
20 for the years ahead.

21 Thank you, Treasurer, for extending me
22 the privilege of addressing Convocation, and to the
23 Benchers, I thank you for your attention to my rather
24 long-winded remarks this morning. Thank you very much.
25 Merci.

1 TREASURER MINOR: Thanks, Mr. Conway. I
2 just have one more announcement and then we'll move in
3 camera. I wanted to indicate to Benchers that the
4 Indigenous Bar Association Conference, which is
5 entitled "Reconciliation, the grounding of law," is
6 being held October 15th to 17th at the Chelsea Hotel
7 here in Toronto. There will be number of distinguished
8 speakers, including Justice Murray Sinclair, and there
9 are also a number of people, distinguished too, from
10 the Law Society who will be speaking. So if you could
11 attend that, it would it would be extremely interesting
12 for you.

13 On that note, then, we will move into
14 our in camera portion and goodbye to all those watching
15 us on webcast.

16 --- Upon adjourning the public proceedings at 12:21
17 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

SHARI CORKUM, C.S.R.

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