

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

CONVOCATION

PUBLIC SESSION

THURSDAY, APRIL 28th, 2016 - 9:00 a.m.

OSGOODE HALL, TORONTO

1 CONVOCAATION ATTENDANCE

2 Treasurer - Janet Minor

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

1	Brian Lawrie	Janet Leiper (ph.)
2	Jeffrey Lem (ph.)	Michael Lerner
3	Marian Lippa	Virginia MacLean
4	William McDowell	Susan T. McGrath
5	Isfahan Merali	Malcolm Mercer
6	Barbara Murchie	Sandra Nishikawa
7	Gina Papageorgiou (ph.)	Susan Richer
8	Jonathan Rosenthal	Paul Schabas
9	Raj Sharda	Andrew Spurgeon
10	Sidney Troister	Jerry Udell
11	M. Anne Vespry	Peter Wardle
12	Thomas G. Conway (ph.)	Laurie H. Pawlitza
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

INDEX

1		
2		
3	MATTER:	PAGE NO.
4	TREASURER'S REMARKS	5
5	CONSENT AGENDA	18
6	MENTAL HEALTH STRATEGY TASK FORCE REPORT	18
7	ADDRESS BY JEFF HIRSCH, PRESIDENT OF	
8	THE FEDERATION OF LAW SOCIETIES OF CANADA	33
9	AUDIT & FINANCE COMMITTEE REPORT	40
10	LAWPRO REPORT	46
11	PARALEGAL STANDING COMMITTEE REPORT	52
12	PROFESSIONAL REGULATION COMMITTEE REPORT	56
13	ADDRESS BY JANET FUHRER, PRESIDENT OF	
14	THE CANADIAN BAR ASSOCIATION	73
15	ADDRESS BY ED UPENIEKS, PRESIDENT OF THE	
16	ONTARIO BAR ASSOCIATION	79
17	TRIBUNALS COMMITTEE REPORT	85
18	EQUITY AND ABORIGINAL ISSUES COMMITTEE REPORT	102
19	PROFESSIONAL DEVELOPMENT AND COMPETENCE	
20	COMMITTEE REPORT	106
21		
22		
23		
24		
25		

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

2 -- TREASURER'S REMARKS:

3 TREASURER MINOR: Good morning,
4 everyone, welcome to Convocation. Welcome to those
5 joining us in the public webcast and welcome to a
6 number of special guests.

7 Convocation is webcast regularly as part
8 of our commitment to outreach and transparency in
9 governance.

10 I'll review the instructions for the
11 phone system for those participating by phone. Once we
12 determine who is on the phone, we will be placing those
13 calling in in what we call lecture mode, assisted by
14 Michael Lerner. And this means from our end we are
15 muting all callers. Once muted, they will be able to
16 hear, but not participate, and then we'll come out of
17 lecture mode to hear any of the callers who wish to
18 speak and vote, and we will do that following the
19 presentations of reports and motions.

20 And I remind Benchers in the room to go
21 down to the end of the table and speak from the podium
22 so that the webcast picks up clearly your comments.

23 Can I review the list of those on the
24 phone, please. Robert Burd?

25 MR. BURD: Present.

1 TREASURER MINOR: Tom Conway?
2 MR. CONWAY: Present.
3 TREASURER MINOR: Paul Copeland?
4 MR. COPELAND: Present.
5 TREASURER MINOR: Pat Furlong?
6 MR. FURLONG: Present.
7 TREASURER MINOR: Janet Leiper?
8 MS. LEIPER: Here.
9 TREASURER MINOR: Judith Potter? Jan
10 Richardson?
11 MS. RICHARDSON: Present.
12 TREASURER MINOR: Clay Ruby? Gerry
13 Swaye?
14 MR. SWAYE: Present.
15 TREASURER MINOR: Gina Papageorgiou?
16 MS. PAPAGEORGIU: Here.
17 TREASURER MINOR: Thank you. Okay. If
18 anyone else comes on we'll identify them later.
19 MR. LEM: Jeffrey Lem.
20 TREASURER MINOR: Is there anyone else
21 on?
22 MR. LEM: Jeffrey Lem.
23 TREASURER MINOR: Jeff Lem.
24 MR. ARMSTRONG: Bob Armstrong.
25 TREASURER MINOR: Okay. Bob Armstrong.

1 MR. MacKENZIE: Gavin MacKenzie.

2 TREASURER MINOR: Gavin MacKenzie.

3 MR. MANES: Ron Manes.

4 TREASURER MINOR: Ron Manes. Full

5 house. Okay. Thank you. Anyone else? Okay.

6 As I said, we have a number of guests
7 attending today. At the back, at the end we have Jeff
8 Hirsch, who is president of the Federation of Law
9 Societies of Canada. He has been a member of
10 Federation Council since 2009. He was 89th president
11 of the Law Society of Manitoba in 2009 and '10, and had
12 been a Bencher for about seven years.

13 He's a partner with Thompson Dorfman
14 Sweatman in Winnipeg, practising primarily in the areas
15 of admin law, commercial litigation, professional
16 regulation and policy development.

17 Janet Fuhrer, are you beside him? Thank
18 you. Janet Fuhrer is the president of the Canadian Bar
19 Association. She is a partner with the firm of Ridout
20 & Maybee in Ottawa, and is a certified specialist in
21 intellectual property.

22 She is past chair of the
23 CBA Professional Development Committee and also past
24 chair of the National Sections Council and the National
25 Intellectual Property Law Section.

1 We are expecting Ed Upenieks. I'm
2 not -- we told him he didn't have to arrive first
3 thing, I know he's going to come later -- who is
4 president of the Ontario Bar Association, and I will
5 introduce him when he arrives.

6 We also have with us Kathy Waters,
7 president of LawPro, Steve Jorgensen, vice president of
8 LawPro, and our auditor, Lauren Levine.

9 Can I stop with the phone. We're
10 apparently having a problem with the phone. Let's get
11 that fixed.

12 I think we're back on-line properly.
13 Can I begin with my remarks, please.

14 I'd like to advise Benchers about
15 developments related to our commitment and approach to
16 our heritage responsibilities.

17 As the previous bench will recall, we
18 have addressed our heritage responsibilities in
19 different ways, both operationally at some points and
20 at other points through a committee of Convocation.

21 During the last Bencher term and the
22 previous one, we had a committee and that was led by
23 Professor Constance Backhouse, then a Bencher.

24 The committee, I think, accomplished a
25 number of important projects, led by Constance

1 Backhouse admirably and, on the whole, carried out by
2 our staff.

3 When Professor Backhouse presented her
4 final report at Convocation before her departure, a
5 number of Benchers commented on the importance of her
6 leadership and expressed the view that it would be
7 helpful if she could somehow still be involved when she
8 was no longer a Bencher.

9 So we have proposed to Professor
10 Backhouse, and she has agreed, that she would operate
11 as a special liaison between Convocation and
12 operational staff, primarily Elise Brunet and Paul
13 Leatherdale, but others who may be involved at various
14 times. That would have the effect of operationalizing
15 the issue with a commitment of funding and a
16 reinforcement that it is an ongoing part of our
17 operations which would continue I think with the
18 benefit of Professor Backhouse's leadership.

19 Our CEO would be responsible ultimately
20 for the operation, of course, and could report and
21 would report to Convocation, but Professor Backhouse
22 could also and would be, I'm sure, invited to report to
23 Convocation at relevant times.

24 As I say, Professor Backhouse agreed
25 that this would be a valuable way of approaching our

1 heritage responsibilities and is sufficiently
2 enthusiastic, I think, to ask for a meeting to be set
3 up with staff before we had actually advised
4 Convocation and that meeting is set up.

5 So I am very grateful to Professor
6 Backhouse for her work in past and her forthcoming work
7 and I think that Convocation and the Law Society will
8 be well served by our approach to heritage in this way.
9 As I say, I believe it will be reinforced and it will
10 continue as an important aspect of our work.

11 LibraryCo. We had a recent meeting of
12 the shareholders of LibraryCo and, to remind you, that
13 is the Law Society of Upper Canada, the Federation of
14 Ontario Law Associations and the Toronto Lawyers'
15 Association, and we received reports from the board of
16 directors and discussed the next steps.

17 LibraryCo has retained a consulting
18 group to examine both present and future needs of users
19 of the county library system and that consultant has
20 been retained and further work is going to be done by
21 them, both focus groups and surveys. And it is the
22 view of LibraryCo and the shareholders that that will
23 provide very important information to be a foundation
24 of the work that LibraryCo is doing to address what our
25 future needs are in the library system in order to

1 ensure effectiveness, efficiency and quality material
2 and resources available to our members across Ontario.

3 There apparently have been some concerns
4 or some, I'm going to say, rumours that some libraries
5 are about to be closed any time or that some governance
6 changes are about to be made any time to LibraryCo. I
7 would like to say as firmly and as loudly as I can
8 there are no changes contemplated. There will be no
9 changes until and if they are recommended by LibraryCo
10 and that is when they get their report done and report
11 to Convocation and the other shareholders.

12 So it is status quo and will remain
13 status quo. We are going to confirm that message at
14 the Federation of Law Associations' conference coming
15 up in May. But if, in fact, Benchers are contacted by
16 any of their members with these rumours, please dispel
17 them. Thank you.

18 You have my activities report on-line
19 for your information and I'm just going to mention a
20 few highlights.

21 Rob Lapper and I were invited to attend
22 the Barreau's council meeting in March in Montreal and
23 we welcomed the opportunity to share many of our
24 initiatives with them, hear about theirs. There is, of
25 course, some significant overlap in the issues and

1 priorities that we deal with, including a -- our
2 engagement with indigenous members and communities as
3 just one example.

4 Next month in May, batonniere Claudia
5 Prémont will be attending Convocation and addressing
6 us. So I would like to thank them for their invitation
7 and we look forward to further discussions in May.

8 On March 22nd I, along with some
9 Benchers from PD&C and Equity, hosted a small luncheon
10 for Angelique Eaglemoman, the newly appointed dean to
11 the Bora Laskin School of Law at Lakehead University.
12 Other guests included Brian Stevenson, president and
13 vice-chancellor of Lakehead University and The
14 Honourable David Zimmer, Minister of Aboriginal
15 Affairs.

16 We had a short meeting with Dean
17 Eaglemoman afterwards and I can speak, I'm sure, on
18 behalf of those there that we were very impressed with
19 her commitment to the law school's mission and its
20 students and we look forward to working with her in the
21 future.

22 I attended the OBA council meeting and
23 other regional opportunity -- association
24 opportunities. In all of these kinds of activities
25 it's always informative and helpful to hear from

1 lawyers in those associations about the issues that
2 face them. I attended the OBA council meeting, had
3 that opportunity, and also we held a northeast regional
4 meeting in North Bay and there were members of law
5 associations and other stakeholders in the northeast
6 region, which includes Algoma, Cochrane, Manitoulin,
7 Nipissing, Parry Sound, Sudbury and Timiskaming, and
8 some lively discussions ensued.

9 In early April I had the opportunity to
10 meet with the Honourable Jody Wilson-Raybould, Minister
11 of Justice and Attorney General of Canada. We took the
12 opportunity to raise issues which we believe are of
13 common interest, including, in our view, the need for a
14 unified Family Court, our access to justice initiatives
15 and our priorities, our work with The Action Group,
16 TAG, our Aboriginal and Indigenous initiatives being
17 undertaken, and we also queried if there would be any
18 changes to the judicial appointments process.

19 The minister looked -- is looking at the
20 following priorities that she listed for us over the
21 course of her mandate. Of course trying to establish
22 the missing and murdered women and girls inquiry, the
23 legalization of marijuana, medical assistance in dying,
24 and a review of changes made to the criminal justice
25 system and sentencing reforms adopted in the past ten

1 years.

2 We are very pleased with the opportunity
3 to meet with Minister Wilson-Raybould and we look
4 forward to a positive working relationship with her.

5 Yesterday we had the welcome reception
6 for newly licensed paralegals. I would like to thank
7 Chief Justice Strathy for attending and giving
8 greetings at the event. Michelle Haigh also gave
9 greetings and gave, I think, some very practical and
10 personal advice to our new members.

11 So moving along there to our
12 congratulations, I would like to congratulate Michelle
13 Haigh, who has been elected by the Paralegal Standing
14 Committee as the chair for the forthcoming term. As
15 you know, election of the chair is required under the
16 Law Society Act.

17 Congratulations also to Jerry Udell, who
18 on April 20th was awarded the Ontario Bar Association's
19 Award for Distinguished Service. So congratulations to
20 both of those.

21 -- Applause.

22 TREASURER MINOR: Further
23 congratulations, first I think to all our members who
24 have reached their fiftieth year in practice. When
25 they reach that advanced status they become life

1 members and they no longer have to pay their fees.

2 We are giving particular recognition to
3 our Bencher Bob Evans, our Life Bencher Roger Yachetti,
4 and most recent former Bencher, Mary Louise Dickson,
5 and congratulations on this major milestone. They have
6 been invited, along with a guest, to join us at our
7 luncheon today.

8 I also want to add a special word of
9 congratulations to one of our members whom I met for
10 the first time in Brantford this week. Howard Staats
11 received our lifetime member certificate. He is -- he
12 practices on Six Nations along with his son. He
13 advised me that his granddaughter is going to be called
14 to the bar in June, and when Mr. Staats was called to
15 the bar he was the only aboriginal lawyer practising in
16 Ontario, and still going strong. So congratulations,
17 Mr. Staats.

18 -- Applause.

19 TREASURER MINOR: Today we have an
20 important event at the end of the day and that is our
21 Earth Day event called The Right to be Cold, with
22 special guest, Sheila Watt Cloutier. The program is
23 scheduled for -- from 5:30 to 7:30 in the Lamont
24 Learning Centre and will be available by webcast for
25 those who are not able to attend and wish to view it at

1 a later time.

2 Sheila Watt Cloutier is one of the
3 world's most recognized environmental and human rights
4 advocates. In 2007, she was nominated for the Nobel
5 Peace Prize for her advocacy work in showing the impact
6 global climate change has on human rights, especially
7 in the Arctic. She is a very powerful speaker and I'm
8 very much looking forward to the event this evening.

9 Our annual general meeting will be held
10 on May the 11th, and I remind all present and on the
11 phone to attend and invite all other members who are
12 watching to attend.

13 We have had no motions filed and that
14 time period is past, so it will not be as exciting as
15 it sometimes is.

16 On May 12th and 13th the Federation of
17 Law Associations will be holding their plenary session
18 in Toronto and Benchers are invited to attend any part
19 of the Federation of Law Associations meetings that
20 they can. There are two dinners, their own dinner on
21 Wednesday, May the 12th and the Treasurer's dinner,
22 that's ours, on Thursday, May the 13th, which will be
23 held here at Convocation Hall.

24 I'd encourage Benchers to attend these
25 dinners if at all possible. Following will be more

1 information on the plenary that we will circulate to
2 Benchers.

3 We have a number of meetings planned in
4 May, including the Treasurer's Liaison Group, the Early
5 Careers Roundtable, and, as well, I have asked Sheena
6 Weir to organize two new roundtables, one for in-house
7 counsel and the other for law students. We also have a
8 dinner with the law deans scheduled in May.

9 There are a number of other public and
10 professional events scheduled. On May the 3rd Mental
11 Health Awareness, May 5th, Holocaust Remembrance and
12 May 17th the Asian and South Asian event.

13 On May 25th we will be holding our own
14 awards ceremony and that will take place at five
15 o'clock. Again, the ceremony will be available by
16 webcast.

17 This year's recipients are of the Law
18 Society Medal, Jennifer Babe, Ronda Bessner, Ronald
19 Caza, Orlando Da Silva, David Estrin, Linda Gehrke,
20 Katherine Laird, Professor Errol Mendes, Peter
21 Rosenthal, and Professor Frederick Zemans.

22 The Lincoln Alexander Award will be
23 awarded to Mary Lou Dingle; the Laura Legge Award to
24 Lisa Borsook; The William J. Simpson Distinguished
25 Paralegal Award to John Tzanis; and our first Shirley

1 Denison Award to Jenny Vuay Quan.

2 I'm very much looking forward, as I'm
3 sure you are, to meeting all the award winners at the
4 ceremony.

5 So we'll move to the agenda, and after
6 the consent agenda we will go out of order to
7 accommodate Mr. McDowell's court commitments.

8 -- CONSENT AGENDA:

9 TREASURER MINOR: I first ask if there's
10 any item on the consent agenda that anybody is asking
11 to be taken off. If not, moved by Barb Murchie,
12 seconded by Jack Braithwaite that the Consent Agenda be
13 approved as it is set out in tab 2 of the Convocation
14 materials. All in favour? Okay. Any opposed on the
15 phone? Any opposed?

16 MS. POTTER: Treasurer, it's Judith
17 Potter. I'm not opposed, but I'm not sure if I missed
18 the roll call.

19 TREASURER MINOR: You did or I missed
20 you, so I will count you present. Otherwise, anyone
21 opposed on the phone? Okay, motion carried.

22 Could I call on Mr. McDowell to present
23 the Mental Health Strategy Task Force Report, please.

24 -- MENTAL HEALTH STRATEGY TASK FORCE

25 REPORT:

1 MR. McDOWELL: Thank you, Treasurer, and
2 I thank you and my colleagues for accommodating me. I
3 feel a bit like the character from the old case of
4 Jarvis and Swan Tours, where the complaint was that the
5 man showed up in his working clothes and yodeled and
6 then left, but in any event, we are where we are.

7 I'm pleased to be providing Convocation
8 with the final report of the Mental Health Strategy
9 Force which is at tab 4, page 335 of BoardBooks. And
10 we seek approval for the motion which is at page 343 of
11 BoardBooks.

12 If we look at the news on any medium, if
13 we look at social media, we will see an increasing
14 number of reports describing the prevalence of mental
15 illness and addictions in Canadian society. All of us
16 will be touched in some way by these issues, either
17 personally or through family, friends or colleagues.
18 But -- and this is something that came through with
19 great clarity in our consideration of these issues --
20 if we are legal professionals, the likelihood of our
21 being affected is greater by far than the population at
22 large and greater than it is for most other
23 professions.

24 The culture of and the stressors on the
25 legal professions raise barriers to openly addressing

1 these issues for many of those who may be affected by
2 them and those with whom they work and interact.

3 The stigma surrounding mental health and
4 addictions, and confusion, which is far too common, of
5 diagnosis with impairment and the concerns that careers
6 will be permanently and negatively affected by
7 disclosure have a particular impact on lawyer and
8 paralegal licensees' willingness to reveal such illness
9 or addictions.

10 As a regulator, we at the Law Society
11 must reflect on the relevance and importance of mental
12 health and the ability of individuals to meet their
13 professional responsibilities and to serve the public.

14 Now, we at the Law Society have been
15 addressing these issues for some time and that's
16 reflected in the inventory of all of the activities
17 which have been ongoing at page 357 of BoardBooks.

18 In June of 2015 Convocation determined
19 to go further and establish a task force to articulate
20 a Law Society mental health strategy, and after the
21 strategic retreat, Convocation confirmed its commitment
22 to these issues by including mental health initiatives
23 as a strategic priority for this Bencher term.

24 So the mental health strategy we
25 propose, which is at pages 338 and 342 of BoardBooks,

1 builds on existing mental health initiatives and it
2 lays the groundwork to explore other new supports and
3 programs that fall within the organization's mandate.

4 We have had the benefit of numerous
5 reports and articles and we had the insight and
6 experience of a number of professionals on issues
7 relating to mental illness and addictions, particularly
8 in the regulatory context. We had many of these people
9 come to our meetings. Their names are set out in
10 footnote 12 of BoardBooks, page 348, if you're
11 interested.

12 And we thank the experts for their
13 assistance and others for their willingness to share,
14 sometimes with great candour, their personal
15 experiences with mental health and addictions. We
16 benefited in particular from their advice that our
17 strategy should reflect those areas of focus in which
18 it is best equipped to act.

19 We heard over and over again, don't bite
20 off too much, don't set out to conquer all of the
21 issues in this area, both because we want to avoid
22 duplication, but also to avoid adopting an approach
23 that is not appropriate for our mandate.

24 So bearing all this in mind, our
25 strategy includes a vision and commitment to underpin

1 our work, two strategic directions with focus on
2 preventive management strategies and on regulatory
3 strategies and a number of key elements and
4 initiatives.

5 Among the key elements; developing a
6 comprehensive and proactive communication strategy to
7 increase awareness. Increase awareness and
8 understanding of the Members' Assistance Program and,
9 in particular, underlining its confidentiality.
10 Exploring whether the range of services might be
11 expanded.

12 We want to investigate the merits of
13 developing model policies to educate the legal
14 professions, law firms and others in mental health
15 issues, we want to consider enhancing CPD, we want to
16 encourage and explore the development of a mental
17 health conference with participation of a wide range of
18 stakeholders.

19 In the regulatory component we want to
20 consider a policy and operational continuum that
21 provides guidelines for addressing mental illness and
22 addiction issues from intake, including the role that
23 early diversion from regulatory processes in
24 appropriate circumstances might play. These would
25 include capacity proceedings which would be held in the

1 absence of the public in appropriate circumstances.

2 We want to ensure that our staff have
3 specialized mental illness and addictions training. We
4 want to continue to develop the role of the capacity
5 program manager in the Professional Regulation
6 Division. This is someone with terrific expertise
7 about whom, certainly, I knew very little before taking
8 on this role.

9 We want to consider whether it would be
10 possible to enhance the role of duty counsel at the
11 early stages of the regulatory process where mental
12 illness or addictions may be issues, because sometimes
13 it is apparent very early on what is really at play.

14 For Tribunal processes, we want to
15 ensure that the rules responsive to the needs of those
16 with mental illness and addictions. We want to ensure
17 there is clear authority for hearing panels to convert
18 a conduct application to a capacity application where
19 appropriate, and we want to ensure that the release and
20 publication of reasons and orders and of filed
21 materials respecting licensees do not reinforce stigma
22 or interfere with treatment. This is a very difficult
23 area, but we want to revisit as necessary the extent to
24 which all of the materials filed in our proceedings
25 should be available to the public and the media.

1 The strategy is a blueprint for moving
2 forward over the long term. We recommend the
3 appointment of a Mental Health Strategy Implementation
4 Task Force of no more than five Benchers to provide
5 guidance on implementation issues.

6 Finally, to ensure regular monitoring of
7 implementation, we recommend reporting on the
8 strategy's implementation as part of the CEO's regular
9 report to Convocation.

10 The resource implications are set out at
11 pages 354 to 356. At 358 we set out the anticipated
12 funding for the three types of elements and
13 initiatives.

14 First those that will be developed
15 within current funding, which is a great many of them;
16 second, those that will be incorporated with already
17 funded initiatives and those likely to require
18 additional resources when the in depth consideration is
19 done.

20 For the balance of 2016, implementation
21 will focus on those activities within ongoing annual
22 budgets and within the scope of initiatives already
23 approved. There will also be planning for those that
24 require more in depth work and policy analysis.

25 The task force has considered the

1 specific elements of the strategy that may require
2 additional resources, so that the 2017 budget
3 development process can include appropriate funding for
4 these elements, including, in particular, contracting
5 for dedicated and specialized assistance or resources
6 where needed. We set out page 355 a number of the
7 elements or initiatives that might require additional
8 resources.

9 With one exception, the task force
10 leaves it to the operational areas affected by the
11 recommendations to include budgetary considerations in
12 their 2017 budgets.

13 The one exception relates to the
14 consideration of a policy and operational continuum to
15 provide guidelines for addressing mental health and
16 illness and addictions from the point of intake. This
17 is set out at paragraph 31(d). This will, in all
18 likelihood, require contracting for dedicated or
19 specialized assistance or resources. So we will
20 require someone with expertise in mental health, as
21 well as knowledge and understanding of regulatory
22 requirements to devote dedicated time to this element.

23 So to ensure that this can be properly
24 considered and reported on, we recommend that
25 Convocation commit now to allocate \$100,000 to the 2017

1 budget. This number will be subject to refinement, but
2 in the view of the task force, Convocation's approval
3 of the allocation of this amount for 2017 is an
4 important recognition of the need for dedicated
5 resources to the strategy.

6 So this is a long term process that will
7 evolve. As attitudes toward mental illness and
8 addictions continue to shift, we recognize it's beyond
9 the scope of any single group or body to address all
10 the complexities of wellness, mental illness and
11 addictions; however, we think that success is more
12 likely when organizations such as we at the Law Society
13 focus on those areas in which we are able to make a
14 difference within our mandate.

15 We must, however, continue efforts
16 across groups to address gaps, assist in providing
17 information on appropriate sources of assistance, and
18 continue a broader conversation to address mental
19 health and addictions.

20 We at the task force urge the Law
21 Society, law schools and paralegal colleges, legal
22 organizations and associations, law and paralegal firms
23 and other entities, government, Legal Aid Ontario,
24 legal clinics, licensees, each focusing on their
25 individual goals to engage in an ongoing conversation.

1 So, Treasurer, with that, the motion is
2 set out at paragraphs 1 and 2 of BoardBooks, page 343,
3 moved by me, seconded by Ms. Strosberg.

4 TREASURER MINOR: Thank you very much,
5 Mr. McDowell. Any questions or comments in the room?
6 Any questions or comment in the room? Ms. Vespry.

7 MS. VESPRY: Just a very brief question,
8 I think. There's one mention in this of schools, I
9 assume law schools primarily. There seems to be a fair
10 amount of research out there that indicates that the
11 cohort entering law school tends to have significantly
12 less mental health issues than the cohort departing law
13 school.

14 MR. McDOWELL: That would be my
15 experience.

16 MS. VESPRY: I'm wondering if there's
17 any plan for specific outreach to those schools, to the
18 deans to try and find out what it is about law school.
19 It's certainly not rigorous education, because the same
20 thing doesn't happen to rocket scientists or engineers.
21 Maybe it's just that more of them go in -- no, the
22 differential is not there in other professional
23 schooling. I'm wondering whether that's something that
24 will be addressed.

25 MR. McDOWELL: Well, it's certainly

1 something that was raised by us at the task force by a
2 number of people from the academy.

3 I think that that's for consideration in
4 the operational phase. There is certainly something to
5 what you're saying and it's something that we know
6 anecdotally, but I think that's a good suggestion.
7 Something to pass on to the implementation group.

8 TREASURER MINOR: If I can just
9 interject on that, I know that some law schools have
10 addressed that issue specifically with dedicated
11 resource to assist students. I'm sure those are people
12 we could also liaise with and pass on your comments to
13 them and also to the deans to ensure that we have
14 appropriate coordination. Thank you, Ms. Vespry.

15 MS. VESPRY: Thank you.

16 TREASURER MINOR: Okay. Any other
17 questions or comments in the room? Mr. Falconer, I
18 understand.

19 MR. FALCONER: Thank you.

20 MR. McDOWELL: For those on the phone,
21 Mr. Falconer is not wearing a tie.

22 MR. SCHABAS: Didn't get the memo,
23 Julian.

24 MR. FALCONER: Treasurer, I rise
25 initially just to provide praise for the chair, but now

1 that he's pointed out my clothing deficiencies I'm
2 strongly considering different comments.

3 I want to, in all seriousness, say that
4 the issue of how our profession is managing mental
5 illness was probably best captured in the eloquence of
6 Orlando DaSilva when he appeared before us. I don't
7 think I'll ever forget that day. His candour, his
8 bravery in talking about his own mental health
9 challenges is an inspiration to all of us.

10 What this task force represents is
11 follow through by you, Treasurer, by Mr. McDowell, by
12 Ms. Strosberg, by Ms. Sperdakos, who worked so hard. I
13 have to confess to being caught in other commitments,
14 so I couldn't provide assistance.

15 I want to say this is -- again, it's not
16 an end, it's a beginning, it's a passing of the torch
17 to the next Treasurer, to the next Convocation to make
18 clear that this is an ongoing dialogue.

19 What is important is that there is a
20 message being sent, whether it's the mentoring report,
21 whether it's the mental health report. All of these
22 are pieces to a puzzle which is the public interest is
23 best served by a healthy profession that has real
24 supports in place, and I want to congratulate my fellow
25 members on this task force and, in particular, the

1 leadership, because what you've done is you've proved
2 that you can move the ball forward. It may not all go
3 fast. These are multiheaded monsters. There is no
4 single silver bullet that's going to solve this, but I
5 am of the view that this is an important day, so I
6 congratulate you.

7 -- Applause.

8 TREASURER MINOR: Are there any other
9 questions or comments on the phone?

10 MS. POTTER: Treasurer, it's Judith
11 Potter.

12 TREASURER MINOR: Thank you.

13 MS. POTTER: I had some difficulty
14 hearing all of what Mr. Falconer was saying, so I hope
15 I'm not repeating what he eloquently, I'm sure, said.

16 I just want to add that it was really a
17 pleasure to sit on this task force and to grapple with
18 the issues that are so broad and yet so important to
19 consider, that the Benchers have been trying to find a
20 solution to for many years now and finally we were able
21 to form a task force that came up with the motion
22 before you today.

23 We did hear from people who were very
24 transparent and open about the suffering they have
25 endured through mental health issues as well as

1 addiction issues. We shouldn't lose sight of the fact
2 that this covers both.

3 From my perspective, it is a first step
4 and I hope that we will continue in the spirit of
5 trying to remove the stigma from people feeling free to
6 come forward to accept help that's available to them so
7 that they can ultimately get on with their professional
8 duties and not fear that they will be tarred by
9 something or that they will no longer be able to work
10 if the Law Society is involved. We know the fear
11 that's out there and hopefully people will see this as
12 a positive first step toward the ultimate goal of
13 removing the difficulties that are faced by people that
14 come before us, not only in discipline, but fear that
15 they will.

16 So thank you to the task force for that
17 and to all the people that participated in providing us
18 with information that was helpful to coming to the --
19 before you today. Thank you.

20 TREASURER MINOR: Are there any other
21 questions or comments, either in the room or on the
22 phone?

23 MR. McDOWELL: Treasurer, just before
24 you call the vote, I omitted to thank Ms. Sperdakos.
25 That's because Ms. Sperdakos prepared these notes for

1 me. But Ms. Sperdakos has just been an absolutely
2 exceptional support for this committee and this work
3 would not have gotten done without her, so I wanted to
4 thank you very much.

5 -- Applause.

6 TREASURER MINOR: Thank you. Can we
7 call the vote, please? All in favour? Any opposed in
8 the room? Any opposed on the phone? Okay. Motion
9 carried. Thank you very much.

10 Thank you, Mr. McDowell and
11 Ms. Strosberg, and to the whole committee, excellent
12 work and we look forward to its application and
13 development in future.

14 I do want to remind everyone, both in
15 the room and on-line, that our MAP program is -- has
16 been and is available to all members and also students,
17 Ms. Vespry, if you could pass that on. It is available
18 24/7, it is free and it is totally confidential.

19 MS. ROSS: Thank you. I rise on a point
20 of personal privilege. I just would like it noted that
21 we should all be proud of the fact that that proposal
22 passed unanimously.

23 TREASURER MINOR: Thank you. Next we
24 are going to ask Mr. Hirsch to address us. I want to
25 advise people that he's not able to stay through

1 Convocation because he has a commitment to meet later
2 today in Winnipeg. Otherwise, we would have expected
3 him at lunch. That's how things work, so thank you Mr.
4 Hirsch.

5 -- ADDRESS BY JEFF HIRSCH, PRESIDENT OF
6 THE FEDERATION OF LAW SOCIETIES OF CANADA:

7 MR. HIRSCH: Thank you, Treasurer Minor.

8 I'm delighted to be here to address Convocation this
9 morning and I'm also so very pleased to have been able
10 to attend the welcoming reception yesterday evening for
11 your new paralegals. That was, I have to say, a warm
12 and lovely event. I was so glad to be there and see
13 all the happy new members coming in to be paralegals
14 here in Ontario.

15 Treasurer, you and I have spoken on
16 numerous occasions about the Federation and I greatly
17 value the input that you've provided throughout your
18 term as Treasurer, but occasions such as these where I
19 have the opportunity to speak to the full membership of
20 Convocation, as I have done and I continue to do at law
21 societies across Canada, are especially important.

22 I say that because if Convocation is
23 anything like the other Convocations and Bencher tables
24 of your sister law societies, knowledge about the
25 Federation of Law Societies of Canada varies quite

1 considerably from just a little bit of knowledge to
2 quite a bit of knowledge across the country.

3 This is often a function of the extent
4 to which Benchers obtain firsthand knowledge of and
5 experience with the Federation and its activities.
6 There is something that's common, though, to all of
7 Canada's Law Societies and that is that there's regular
8 turnover and change, change around the Bencher tables,
9 and that turnover, that change requires us to
10 constantly converse with our ultimate owners, you, in
11 other words, around this table, about why it is the
12 Federation exists, who we are, what we do and where you
13 fit in.

14 So those of you who consider yourselves
15 reasonably well versed in the work of the Federation
16 and the place of this Law Society within it, I hope
17 you'll indulge me for just these few minutes for a
18 refresher on a few basic things about the Federation.

19 First of all, the Federation is a
20 voluntary association of all 14 of Canada's Law
21 Societies, and implied in the concept of the Federation
22 being a voluntary association is that we are you,
23 right? You around this table, you're us. That's how
24 it works.

25 The Federation really, simply, is the

1 vehicle through which national conversations and
2 collaborative work takes place, and it exists because
3 law societies have agreed that it should serve them in
4 this way.

5 So what are some of the things that law
6 societies have done together through the Federation?
7 You can get lots of information and a detailed report
8 on the status of all our key work in a report to law
9 societies which I recently circulated, but let me point
10 out just a few highlights for you while I have the
11 podium.

12 Law societies have developed the
13 national mobility protocols for the legal profession.
14 They developed a model code of professional conduct
15 which is now adopted virtually everywhere in Canada.
16 They developed national discipline standards so law
17 societies can compare their complaints handling
18 performance and discipline processes. They developed a
19 national competency profile for admission to the poor.

20 Law societies, through the vehicle of
21 the Federation, developed and fund CanLii, on-line
22 legal research website. Law societies evaluate
23 existing and proposed law school programs against a
24 standard that law societies themselves have developed
25 and approved. Law societies sponsor the National

1 Criminal Law Program and the National Family Law
2 Program and they evaluate the credentials of
3 internationally trained lawyers.

4 Just on that point, I'll digress for a
5 moment to say that the Federation council has resolved
6 to undertake a program review of the National Committee
7 on Accreditation and to make that a priority this year.

8 So at our last council meeting of the
9 Federation it was also agreed that the Federation would
10 establish a national working group to address the calls
11 to action of the Truth and Reconciliation Commission.
12 I can tell you from my travels so far during my term
13 this year, there is, in fact, universal enthusiasm
14 amongst law societies to make this work a priority as
15 well.

16 We're just finalizing now the
17 composition of that working group and I'm certain, I'm
18 confident that this Law Society will be playing a
19 leading role in that work.

20 So I know you're all well aware that we
21 live in a country where mobility exists, mobility
22 through the agreement on internal trade, and the
23 national mobility agreement. It's a fact of life,
24 mobility. But it's not the whole story, and I just
25 want to spend a minute talking about this with you.

1 The reality here that we have in Canada
2 now is that trends affecting the regulation of the
3 profession, which we're here to talk about, those
4 trends are driving change at an amazing clip. So
5 technology advances, alternative and unregulated legal
6 providers, both nationally and internationally,
7 national law firms, global law firms, all of these
8 developments make the protection of the public
9 extremely difficult if we just continue to rely on our
10 traditional provincial regulatory infrastructure.

11 Ask yourselves this question. Are we
12 really able to adequately protect the public if we
13 don't work together? My answer to that is that we're
14 not.

15 Law societies have said that there are
16 some things where it just makes sense to work together.
17 They have also said that not only can we learn from one
18 another, but if we try, to the extent possible, to have
19 a common approach to legal regulation, the public will
20 be better served and the public will be better
21 protected, no matter where they live in Canada.

22 So that's the story from -- my
23 perspective, that's the story of the Federation today.
24 I don't mind telling you, by the way, that the Law
25 Society of Upper Canada, through the work and support

1 of a long line of leaders, Benchers and staff, has been
2 a leader in this thinking over the years and an
3 essential partner of the other law societies to advance
4 the national agenda. I know that this will continue to
5 be the case in years to come.

6 So a couple of things about the
7 Federation. The Federation has been around for 90
8 years, that's a long time, in one form or another, and
9 every so often it conducts a governance review, and
10 we're emerging from one now.

11 This is -- is this a time for the brutal
12 candour from the guest speaker? We were long overdue
13 for a governance review. Don't mind saying that to
14 you. So we really needed to examine how we do our work
15 and how we could do our work better, not just about the
16 internal workings of the Federation, but also that
17 large questions around how autonomous provincial and
18 territorial bodies, law societies, can come together in
19 the public interest to collaborate on national
20 projects. So governance review was necessary and
21 really, from my perspective, very useful.

22 I'm very happy to report that council
23 adopted a brand new set of governance policies a few
24 weeks ago at our last meeting.

25 So for those of you who have gone

1 through some form of governance review, you'll feel my
2 pain here. You know, painful, protracted, however
3 painful and protracted those things are, it did serve
4 another purpose and it reminded me personally of just
5 how critical it is for the Federation to listen.

6 Yes, I'm happy to come here to talk, but
7 the listening part, and I mean really listening to our
8 members, is absolutely important and delivering the
9 value that the members want from the Federation, member
10 Law Societies, absolutely critical important. The
11 value proposition for law societies is the key. It's
12 the driver of the relationship and it can't be taken
13 for granted.

14 So good communication essential to
15 nurturing good relationships. I'm telling you
16 something you all know. By being present here and
17 accountable to the Federation's owners, you, that's an
18 important -- let me say this differently, it's the most
19 important part of my job as president.

20 On future visits we can get into more
21 detail about the Federation and its work. In the
22 meantime, check out our website, phone me. I am
23 accessible. Believe it or not, I'm friendly, I'll talk
24 to you. Call me, drop me a line, and if you have not
25 done so already, I invite you to read the report from

1 the Federation that I spoke of earlier.

2 Let me close by saying this is your
3 Federation and I'm committed to making sure it responds
4 to your national vision and that of the other law
5 societies. Thank you very much and merci beaucoup.

6 -- Applause.

7 TREASURER MINOR: Thank you. I should
8 add that the report you referred to, your most recent
9 report, is on our Benchers resource material in
10 BoardBooks.

11 MR. HIRSCH: Thank you, Treasurer, thank
12 you, Benchers.

13 TREASURER MINOR: Thank you for coming,
14 Mr. Hirsch.

15 Could we move to the Audit and Finance
16 Committee report, please. I understand that's being
17 presented by Mr. Bredt.

18 -- AUDIT & FINANCE COMMITTEE REPORT:

19 MR. BREDT: Thank you, everybody. I
20 want to do a couple of shout-outs here before we get
21 started. First of all, I wanted to thank Diane and
22 Sandra. We made a pact before I came up here that they
23 promised they wouldn't trip me and I had to promise I'd
24 do this in ten minutes or less. Okay, Hirsch.

25 MR. HIRSCH: There you go, Chris.

1 MR. BREDT: Next thing, I wanted to
2 shout-out to my co-chair, Peter Wardle, who has worked
3 with me for the past year. Peter wants it to be noted
4 that we have not run any deficits since he became
5 co-chair. Coincidence, you say? Peter says not.

6 Finally, I just wanted to note that in
7 the corner of the room we have Lauren Levine from PWC.
8 Lauren, do you want to wave your hand. She is from our
9 auditors in case anybody has questions for the
10 auditors.

11 So the motion that is before you is in
12 your BoardBooks at page 114, and I'm just going to give
13 a quick review of the financials.

14 So these are the audited financial
15 statements for our year ended December 31st. Our
16 auditors, PWC, have provided an independent auditor's
17 report on the annual financial statements. The
18 auditor's report expresses an opinion that the
19 financial statements have been fairly presented in
20 accordance with generally accepted accounting
21 principles and have provided some explanations of the
22 work and the respective responsibilities.

23 Also, I want to note, as a matter of
24 good governance we meet with the auditors at the Audit
25 and Finance Committee, both in a session with staff

1 arising is that our compensation fund, as Convocation
2 will know, we have had some adverse claim experiences
3 over the past couple of years and in order to maintain
4 the fund within Convocation's policy, essentially the
5 policy is we have to have enough in the fund to cover
6 at least three one-in-a-hundred-year events and we're
7 below that and we've accommodated that through
8 increasing the compensation fund levies in two, three
9 years.

10 Then if we can go specifically to the
11 results, if you can look, essentially in our revenues
12 we did better than budget in almost all of the
13 categories. You can see that the annual fees have been
14 going up. PD&C income is doing better, revenue is
15 doing better than we expected, and the only area is
16 investment income, and those of you who are saving for
17 retirement, certainly you saw that last year your
18 RSP didn't do as well as you had expected and you can
19 see that we had the same results in our investment
20 funds.

21 When we come to the expense categories,
22 you can see that, again, we had some favourable
23 variances. The regulatory expenses are roughly the
24 same as last year, about 28.2, and the processing of
25 files from intake, complaints, investigation,

1 discipline is a significant part of these expenses.
2 Complaint trends tend to fluctuate and in recent years
3 within a narrow band, although typically a lot of our
4 mortgage fraud investigations take up more resources.

5 Contingent liabilities representing cost
6 awards against the Law Society arising from
7 disciplinary processes are addressed in note 18, and in
8 compliance with generally accepted accounting
9 principles which require a degree of certainty, we
10 reserved about \$500,000 for these liabilities.

11 You can see that PD&C expenses have
12 increased, and two items of note here, there's been an
13 increase in the number of licensing process candidates
14 requiring special support services offset by a
15 reduction in CPD expenses. In part what's happening is
16 increasingly people are prepared to take the PD&C
17 on-line and to look at on-line resources, which saves
18 training costs and distribution costs and so forth.

19 Corporate service expenses increased,
20 reflecting increase in outside counsel fees. This is
21 primarily relating to the Trinity Western appeal, and
22 Convocation policy and outreach have increased by
23 \$500,000 over the year.

24 Just in conclusion, and I see that I am
25 within my ten minute time frame, the Society remains

1 financially sound and is well placed in the future.
2 And the motion you have before you, as I said, which is
3 at BoardBooks 114, includes approval of certain
4 inter-fund transfers which we have noted in note 13.

5 So, Treasurer, the motion before
6 Convocation, moved by me, seconded by my co-chair,
7 Peter Wardle, is that the audited annual financial
8 statements for the Law Society for the financial year
9 ending December 31st, 2015, including the inter-fund
10 transfers, be approved by Convocation.

11 TREASURER MINOR: Thank you very much,
12 Mr. Bredt. Are there any questions or comments in the
13 room? Any questions or comments on the phone? Stony
14 silence.

15 MR. BREDT: As Justice Estey once said
16 to me, if you want to be successful, you've got to be
17 prepared, be brief and be gone. I got two out of the
18 three. Thank you, Treasurer.

19 TREASURER MINOR: I think all of the
20 three. We've got to have our vote. All in favour?
21 Thank you. Any opposed? Any opposed on the phone?
22 Okay, carried.

23 Thank you very much, Mr. Bredt and Mr.
24 Wardle and the committee. And, Ms. McGrath, I'd ask
25 you to report on the LawPro report.

1 -- LAWPRO REPORT:

2 MS. McGRATH: Thank you, Treasurer. I'm
3 very happy to be here and to have this opportunity to
4 provide an overview of LawPro's 2015 results. The
5 results are more fully explained in LawPro's materials
6 found within the Audit and Finance Committee Report
7 strategy at page 185 on BoardBooks.

8 In 2015, LawPro saw net earned premiums
9 of \$120 million and about 600 more insured in the
10 primary errors and omissions program than in 2014. In
11 terms of claimed expense, the steep trajectory of
12 claims costs predicted over the last few years has
13 begun to plateau. So in 2015 we were able to release
14 money that had been set aside with the expectation of a
15 near term growth in claims. This means that the claims
16 expense on the statement of profit or lost -- profit
17 and loss was \$26 million lower than budget. The
18 favourable claims development arose largely from fund
19 years 2007, 2008 and 2010 through 2014.

20 Due to discipline management, our
21 general expenses remained on budget at \$18 million and
22 shareholders equity, which represents the value of the
23 bar's investment in LawPro, increased by \$29.4 million,
24 to a total of \$238 million.

25 With a general expense ratio of

1 18 percent, noticeably less than similarly sized
2 insurance companies, and a stabilizing number of claims
3 over the last few years, the ground work has been laid
4 for continued security.

5 One way our regulators measure our
6 financial strength is with the minimum capital test or
7 MCT. At December 31st, 2015, LawPro's MCT score was
8 268 percent. That is above the 220 to 230 percent
9 score for which the company aims. But 2015 was the
10 first year of a three-year phase-in to a new, stricter
11 MCT requirement.

12 Without the benefit of the phase-in, the
13 MCT would have been 242 percent, closer to, but still
14 comfortably above the board's preferred range. I am
15 pleased to advise Convocation that the claims count per
16 thousand lawyers was down slightly for the third year
17 in a row. There were 99 claims for one thousand
18 lawyers in 2015, down from 1103 from 2014 and 104 the
19 year before that.

20 Furthermore, LawPro continues to be very
21 successful in defending its insureds, where
22 appropriate. In 2014 LawPro won 11 of the 12 matters
23 the company took to trial and on which decision of
24 rendered. It was successful on six of eight appeal
25 decisions and won 27 of 31 summary judgment

1 applications.

2 As we have said before, the rule of
3 thumb in the insurance industry is that if you aren't
4 losing some, you are being too conservative in choosing
5 cases to pursue in the courts. Nevertheless, one must
6 always keep an eye on where the claims of the future
7 may develop and what we can do to help protect our
8 insureds.

9 As in the recent past, real estate and
10 litigation continue to be the areas of law with the
11 highest number of claims, but at this time we must
12 focus on the upcoming civil litigation risk arising
13 from the changes in the administrative dismissal rules.
14 Litigators acting under the rules of civil procedure
15 are facing changes that they must address if we hope to
16 keep the good claims trend I have been describing.

17 Of course, I am talking about the
18 upcoming January 1st, 2017, deadline on which certain
19 statements of claim issued pre 2012 will be
20 automatically dismissed due to changes to rule 48. If
21 not managed carefully by each civil litigator, this
22 transition could result in an increase of
23 administrative dismissal claims.

24 LawPro strongly encourages lawyers to
25 stay on top of their civil litigation files and to

1 refer to the rule 48 transition tool kit for ways to
2 lessen the risk of claims under the new rules. The
3 tool kit is available for download at practicepro.ca.

4 Also, LawPro's staff are criss-crossing
5 the province, making live presentations on rule 48 in
6 as many counties as possible. To date, 37 have been
7 completed and another four are scheduled. If you have
8 not seen a program advertised in your part of Ontario,
9 please have the local county organization or any other
10 program organizing body contact LawPro and staff will
11 be pleased to arrange a speaker.

12 Beyond rule 48 issues, LawPro manages --
13 maintained its overall commitment in 2015 to proactive
14 risk management. Company staff delivered a total of 88
15 presentations on risk management-related topics to
16 lawyers, paralegals and law firm staff.

17 In addition to publishing LawPro
18 Magazine, LawPro distributed three digital newsletters
19 that target specific audiences. One contained the Rule
20 48 transition tool kit and the others had specialized
21 content affecting real estate and wills and estates
22 lawyers.

23 The ongoing need to provide affordable
24 and accessible justice for all Ontarians has not
25 escaped our notice at LawPro. Within the primary

1 professional liability program, LawPro has provided
2 special insurance program terms since 2002 that benefit
3 lawyers participating in LawPro approved Pro Bono Law
4 Ontario projects. Like all legal work, pro bono
5 services involve risk to the insurance program. In
6 2015, LawPro worked with PBLO to develop guiding
7 principles to help manage our relationship and smooth
8 the way for efficient and timely approvals of PBLO
9 programs proposed to LawPro for special status under
10 the insurance program.

11 PBLO programs approved by LawPro ensure
12 that our lawyer insureds have access to relevant
13 training and support, which helps to satisfy LawPro
14 that the programs should entitle the lawyer to special
15 insurance terms if claims arise from the subject's pro
16 bono work.

17 A full list of LawPro approved
18 PBLO programs is available on lawpro.ca.

19 The LawPro board will start its work on
20 the 2017 program offered next week, a task that
21 continues until the beginning of September. Our goal
22 is to provide as stable and predictable an environment
23 as we can. Predictability allows our lawyer insureds
24 to plan effectively and work strategically. This
25 predictability can be seen by the six years of

1 consistent base premium in the primary program. This
2 has been accomplished despite elevated real estate
3 prices in major cities, an unsteady commercial economy
4 and administrative dismissal rule changes that require,
5 and still require, a steep learning curve for our
6 insureds.

7 Although I can't say that the primary
8 program premium will always be so predictable, our
9 efforts to create an environment of stability will
10 continue to be at the forefront of our thinking.

11 I am proud to be LawPro's chair and I am
12 sure my fellow Benchers who sit as LawPro directors
13 would say that while it is a lot of work, it is also a
14 great opportunity to learn and to serve.

15 The full LawPro annual report is
16 available in your Convocation materials at page 185 in
17 the section dealing with the annual shareholders'
18 resolution. I also encourage you to watch for the
19 special year in review edition of LawPro Magazine,
20 which will give more detail on how the company met its
21 mandate in 2015. That issue should be in your in-box
22 in the next few weeks.

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

1 TREASURER MINOR: Okay, thank you, Ms.
2 McGrath. Questions, comments in the room of either Ms.
3 McGrath or staff, president and vice-president.

4 Any questions or comments about the
5 LawPro report from the phone? Okay, thank you very
6 much, Ms. McGrath. And thank you for coming, Ms.
7 Waters and Mr. Jorgensen.

8 I just want to correct an error I
9 believe I made in the dates of the Federation of Law
10 Associations plenary session. Their dinner is on
11 Wednesday the 11th. That follows our annual general
12 meeting and our dinner, the Treasurer's dinner, is on
13 Thursday May 12th at Convocation Room.

14 Can I call on Ms. Haigh, please, to deal
15 with the Paralegal Standing Committee report.

16 -- PARALEGAL STANDING COMMITTEE REPORT:

17 MS. HAIGH: Thank you, Treasurer. We
18 are at tab 5.1 in BoardBooks, page 375. The Paralegal
19 Standing Committee only has one item for decision
20 today.

21 The motion is that Convocation approve
22 the addition of a subrule, 5.2, regarding incriminating
23 physical evidence to rule 4 of the Paralegal Rules of
24 Conduct as set out at paragraph 8.

25 On February 25th, 2016, Convocation

1 approved the addition of a new provision on
2 incriminating physical evidence in the lawyers' Rules
3 of Professional Conduct. This arose from the work of
4 the Federation of Law Societies on the model code of
5 professional conduct, which has led to a review of a
6 number of provisions of the rules governing both
7 lawyers and paralegals.

8 Convocation has approved the principle
9 that rules for lawyers and paralegals be consistent
10 where possible. It is now proposed that a similar
11 condition be added to the paralegal rule. The proposed
12 amendment would be a new provision under rule 4 titled
13 The Paralegal as Advocate reading as follows. "A
14 paralegal shall not counsel or participate in the
15 concealment, destruction or alteration of incriminating
16 physical evidence or otherwise act so as to obstruct or
17 attempt to obstruct the course of justice."

18 The redline version of rule 4 is at tab
19 5.1.1, page 377 of BoardBooks, and the motion is moved
20 by myself and seconded by Ms. McGrath.

21 TREASURER MINOR: Thank you, Ms. Haigh.
22 Any questions or comments from the room? Mr. Cooper.

23 MR. COOPER: Good morning. I just have
24 a single question. I think that the concept of
25 ensuring that the rules are mirrored is very important.

1 The concern that I have, and hoping my
2 friend can assist me with this, is that the objective
3 is right, I just want to make sure that it does not try
4 and is misinterpreted as expanding the scope of
5 practice.

6 There are situations in which some
7 evidence is received from a client and you're not
8 supposed to take it, but there are situations where you
9 may be instructed to turn things over to the police.
10 In those situations, in those unique types of
11 situations, those would not include the area of scope
12 of practice that paralegals are permitted to move
13 within.

14 I just want to ensure that we have clear
15 understanding that a paralegal is not going to be
16 taking or the public is going to think you can drop a
17 smoking gun off at a paralegal's office. It will not
18 help the public.

19 So I just want to understand if either
20 with this there's some commentary that will ensure that
21 the purpose of it is to mirror the rules that it's
22 appropriate, but it's limited within the scope of
23 practice.

24 TREASURER MINOR: Ms. Haigh.

25 MS. HAIGH: Thank you, Mr. Cooper. The

1 scope of practice for paralegals is very clearly
2 defined, so I don't think by putting this rule into the
3 professional rules of conduct are going to suggest that
4 we can do something outside of our scope.

5 Maybe to ease your concerns a little
6 bit, we do have guidelines which do coincide with the
7 rules which we'll be working on at next committee
8 meeting. I'll certainly take your thoughts into
9 consideration.

10 MR. COOPER: Thank you very much for
11 that.

12 TREASURER MINOR: Mr. Falconer.

13 MR. FALCONER: I just want to add one
14 thing, though. When we do rule changes for lawyers I
15 never hear us saying every time we do a rule change is
16 our scope for lawyering changing.

17 I do think it's important to respect --
18 and I understand Mr. Cooper's point, but I also think
19 it's important to respect the fact that we have a
20 defined area of practice for paralegals and we're
21 trying to help support the clarity and the uniformity
22 between paralegals and lawyers.

23 By this issue coming up pretty
24 regularly, not by Mr. Cooper, but just generally as a
25 way of thinking that we have, it creates the impression

1 that there's almost a, I don't want to call it a
2 paranoia, but there's almost an overreaction as soon as
3 we discuss paralegal work and their mandate.

4 I think it's important that we start to
5 examine why we do that each time we discuss a rule
6 change amongst paralegals. Unless we do this with
7 lawyers, I think that there's reality. We want the
8 uniformity. I know Mr. Cooper supports that, but we
9 also don't want to appear to look at paralegals
10 differently than we look at lawyers within each of
11 their mandates, so I just caution us.

12 If we're not talking about the scope of
13 paralegals' work, I wonder why we raise it so
14 regularly. I'm not criticizing Mr. Cooper, I'm just
15 trying to caution us to try and work on a level playing
16 field, that's all.

17 TREASURER MINOR: Thank you,
18 Mr. Falconer. Any other questions or comments in the
19 room? On the phone? If not, I'm going to call the
20 motion. All in favour? Any opposed? Any opposed on
21 the phone? Motion carried. Thank you, Ms. Haigh.

22 And Mr. Mercer, please, the Professional
23 Regulation Committee report.

24 -- PROFESSIONAL REGULATION COMMITTEE

25 REPORT:

1 MR. MERCER: Good morning, I have one
2 item for decision and two items for information. The
3 item for decision is at tab 6.1. It deals with the
4 by-law amendment to put into effect a new process for
5 administrative surrender of licence.

6 Convocation will recall, and this is set
7 out at page 383 of BoardBooks, that in the
8 September 2015 Convocation we approved a process for
9 administrative surrender of licence for licensees who
10 are in the investigation or discipline process.

11 Currently, if a licensee wishes to
12 surrender their licence but they're in the process of
13 an investigation; for example, they don't have the
14 right to surrender or their right is constrained by the
15 fact that they're in process, Convocation agreed that
16 surrender without a penalty in some circumstances has
17 advantages, including certainty, finality, timeliness
18 and efficiency.

19 The policy considerations to be taken
20 into account are set out in paragraph 10 and, as I
21 said, we've approved this in principle so this is the
22 by-law implementation of our previous decision.

23 The proposed by-law changes in redline
24 form can be found at page 392 and following of
25 BoardBooks. They require two by-laws -- I think it's

1 two -- to be changed. The first is by-law 4, and
2 by-law 4 effectively says that where this means of
3 surrender of licence in the face of investigation is
4 utilized, there is a constraint on reapplying for a
5 licence. The concern, of course, is to surrender on
6 day one and to immediately reapply on day two, thereby
7 avoiding the -- what was intended to be a graceful,
8 graceful may not be perfect, but a practical way of
9 leaving the profession.

10 At the bottom of page 393 you'll see
11 that a constraint on readmission includes three
12 aspects. One, you can't reapply within five years.
13 Things may change after five years, but it's intended
14 to have that period of time. For licensees who are
15 contemplating retirement in the ordinary course that's
16 probably not so relevant, but for younger licensees it
17 may be; secondly, a payment of costs awarded; and
18 thirdly, a payment of amounts awarded out of the
19 Compensation Fund as a result of dishonesty. So those
20 are the constraints.

21 The change, then, to part 3 of the
22 by-law dealing with the surrender process can be seen
23 at page 395 of BoardBooks and you'll see at the bottom
24 of page 395 that where a licensee is the subject of an
25 investigation on a search and seizure, and I haven't

1 included the others up to now, but they are included in
2 the concept, the licensee who wishes to surrender in
3 the face of investigation, if I can use that short
4 form, is obliged to come to agreement with the Law
5 Society as to an agreed statement of facts before
6 they're permitted to apply, and that is effectively sub
7 3 at the bottom of 395.

8 Then the changes to the process, having
9 set out as we just have, what's required by way of
10 application, is effectively set out on page 398 of
11 BoardBooks, which is the Society shall only accept an
12 application that is submitted by a licensee, et cetera,
13 if it would not be contrary to the public interest to
14 do so.

15 So the effect, if I can say it in
16 summary terms, so far is that the licensee who wishes
17 to surrender in the face of investigation can only do
18 so with an agreed statement of facts. That, of course,
19 requires both the licensee and the Law Society to
20 agree. The Law Society has to conclude it's not
21 against the public interest to permit withdrawal,
22 surrender.

23 Surrender has a significant effect in
24 this context. Five years out before you can reapply,
25 and if you do reapply you have to pay costs into the

1 Comp Fund.

2 Finally, so that there is public
3 scrutiny, the last change to the by-law is at page 400.
4 The registry of the register that the Law Society is
5 obliged to maintain under the Act has added to it by
6 by-law amendment the agreed statement of facts that
7 I've referred to.

8 So that provides the process, it
9 provides the standard informed by the policy that was
10 accepted in principle last September, the process and
11 the public transparency.

12 So that is the proposed amendment and
13 Mr. Schabas seconds, I believe.

14 TREASURER MINOR: Thank you, Mr. Mercer.
15 Any questions or comments in the room? I think I see
16 some hands. Okay, thank you, Ms. MacLean.

17 MS. MacLEAN: Thank you, Madam
18 Treasurer. Mr. Mercer, my question relates to the
19 notice provision, notice of intention to surrender. We
20 have a regular process that will be undertaken by
21 someone who is retired, and it's going to be exactly
22 the same notice that's been given for people who have a
23 cloud over their licence.

24 Is there any way they can be
25 distinguished, because I think there can be confusion.

1 They're going to say it's a notice, therefore, we don't
2 want the person who is retiring retiring with that
3 cloud so that you want it transparent, but at the same
4 time you don't want it disclosed. I'm just wondering
5 how it can be distinguished.

6 MR. MERCER: So I understand your
7 question, in the ORs there are now published notices of
8 intention to surrender. Is it your proposition that a
9 licensee who wishes to surrender in the face of
10 investigation that that notice should so indicate?

11 MS. MacLEAN: Yes.

12 MR. MERCER: It's not something which
13 has been considered. It could be considered by PRC
14 separate from this. It's not something that has been
15 considered to date.

16 MS. MacLEAN: Thank you.

17 TREASURER MINOR: Any other questions or
18 comments? Mr. Wardle.

19 MR. WARDLE: Can I just ask Mr. Mercer,
20 given what you've described as the link to any
21 determination of the Comp Fund, is it expected that
22 this mechanism will be used in cases of dishonesty?

23 MR. MERCER: Yes. The by-law amendment
24 expressly refers to dishonesty.

25 MR. WARDLE: That would mean, for

1 example, that there might be a determination in the
2 Compensation Fund that paid compensation on the
3 lawyer's dishonesty.

4 TREASURER MINOR: Could I ask you to
5 speak up a bit? We had trouble hearing at this end,
6 sorry.

7 MR. WARDLE: Sorry. So that would mean
8 that there is a Compensation Fund determination that
9 the lawyer has committed an act of dishonesty, because
10 that's the predicate for us providing compensation
11 under the fund.

12 MR. MERCER: Yes, that's so.

13 TREASURER MINOR: Any other comments or
14 questions in the room? Comments or questions on the
15 phone?

16 I'm going to call the motion. All those
17 in favour? Any opposed? Any opposed on the phone?
18 Okay. Any opposed on the phone? Motion carried.
19 Thank you, Mr. Mercer.

20 MR. MERCER: The second item I want to
21 deal with is for information. You will find at tab
22 6.2, the report with respect to the National Discipline
23 Standards Project.

24 And the -- just to remind you of the
25 intent of the project, I think one of the pieces of

1 work that the Federation has done is create national
2 standards for discipline with a view both to
3 transparency and to achieving accountability for
4 appropriate standards.

5 The standards themselves, there are 21
6 of them, are set out at pages 402 and 403 of BoardBooks
7 and I won't repeat those because I'm sure you're
8 intimately familiar with them. However, what I will do
9 is take you through what is, in effect, our report card
10 as a matter of accountability and transparency.

11 TREASURER MINOR: Can you just stop for
12 a minute. Thank you. Sorry.

13 MR. MERCER: What I will do is take you
14 through, in effect, our report card against those
15 standards as a matter of accountability and
16 transparency.

17 At page 404 and following, you will see
18 that of the 21 standards, we have achieved 16. There
19 are five that we should note. What I would want to do,
20 though, is highlight one particularly important one
21 which we have met. It's all too easy not to focus on
22 the ones that we've achieved, and I wouldn't want you
23 to be left just hearing not perfect news.

24 The third standard is time to close or
25 to refer a complaint into the discipline process, and

1 the standard is that 80 percent are resolved in some
2 way within twelve months and 90 percent within eighteen
3 months. That's the agreed national standard, and we
4 meet that standard in terms of timeliness.

5 We have raised in previous meetings the
6 concern about processes being slower than we would like
7 them to be and we're working at addressing that, but I
8 think it's worth noting, nonetheless, that we have
9 achieved the national discipline standard in that
10 respect.

11 As to the five, standard number 4 is
12 that there be contact with each complainant at least
13 once within every 90 days 90 percent of the time. We
14 achieve that only 77 percent of the time instead of
15 90 percent of the time.

16 The standard five is the same thought
17 with respect to the person whose conduct is in issue
18 and the standard is 90 percent of time contact within
19 90 days. What we're actually achieving is 74 percent,
20 so we're not hitting the standards that we should. I
21 think there's something in this that we should be
22 concerned about not over emphasizing a mere report or a
23 mere contact, because we have seen some of the contacts
24 are less substantive and more just, hey, we're still
25 doing something, and I personally wonder about the

1 utility of that every 90 days.

2 That being said, we have two standards
3 that we have fallen slightly short of. Standard number
4 6 goes to the rate at which notices of application are
5 issued after authorization. The language is not just
6 Ontario language. For us it would be issuance of a
7 notice of application after approval by the Proceedings
8 Authorization Committee, and we get -- we achieve the
9 75 percent within 60 days. We don't achieve the
10 95 percent within 90 days. We are two percent off that
11 at 93 percent. So a statistician might argue we have
12 met the standard, but we haven't quite.

13 Number 7, standard 7 deals with the
14 commencement of hearings. 75 percent within nine
15 months of operation, 90 percent within 12 months.
16 We're at 71 percent instead of 75, we're at 88 percent
17 instead of 90.

18 The last standard which we have not met
19 is reasons for decision from panels rendered within 90
20 days 90 percent of the time, and we've achieved
21 77 percent rather than 90 percent.

22 So there are areas for improvement. My
23 own view, and others may have different views, is that
24 we are not doing badly as against these standards, but
25 we should do better.

1 TREASURER MINOR: Questions or comments
2 for Mr. Mercer on the report in the room? Any
3 questions or comments from the phone? Okay. Thank you
4 very much, Mr. Mercer.

5 MR. MERCER: My third item is an item
6 for information and you'll find that at tab 6.3. You
7 may be somewhat perplexed to see that we're reporting
8 in respect of the complaints in 2014 instead of 2015.
9 We should have done this earlier and we should soon be
10 able to report as to 2015, but nonetheless you have the
11 report, which I'll just highlight.

12 This is the third such analysis that has
13 been done. We have done analyses in respect of 2012,
14 2013 and 2014, so we're starting to build patterns as
15 well as just information for the years.

16 I'm going to highlight a few things in
17 the report. These are reports with respect to
18 complaints, and Convocation will know that complaints
19 are important because they're information about
20 concerns raised by clients or others. They don't
21 represent findings of misconduct and there are probably
22 things that licensees do that don't get reported, don't
23 become the subject of a complaint, so we should be
24 clear that this is not the universe of all problems.
25 Some of these aren't problems and some problems will

1 never be complaints, but nonetheless, it's an
2 indication of regulatory risk.

3 On page 410 of BoardBooks, you'll see
4 both -- 410 and 411, you will see both with respect to
5 lawyers and with respect to paralegals we have a
6 downward trend since 2009 with respect to the number of
7 complaints against licensees. And so that's true both
8 with respect to the universe of all licensed lawyers
9 and all licensed paralegals and it's true with respect
10 to those in private practice.

11 Whether or not that represents a true
12 change in actual conduct issues is less certain. It is
13 possible that fewer are being reported, although the
14 amount of problems is the same, we just don't know
15 that. What we know is that the number of complaints
16 are going down per capita.

17 For a lawyer in private practice, you'll
18 see that about eleven percent of us in 2014 had one or
19 more complaints outstanding against us, so it's not
20 entirely rare. A slightly higher number, around
21 14 percent for paralegals in private practice. And you
22 will see those of us in private practice are at greater
23 risk of complaints than those of you who are not. That
24 may mean we're more dangerous, it may mean we practice
25 in a different circumstance. I'd like to think it's

1 the latter.

2 At page 412, and this is not a piece of
3 information that will be a surprise I think to anyone
4 in Convocation, if we look at complaints in 2014 by the
5 size of the firm, we will see, again, that soles and
6 smalls tend to receive more complaints per capita per
7 licensee than in larger firms. The sole practitioners,
8 for example, are 33 percent of practising lawyers, but
9 receive 53 percent of complaints. That's not new, it's
10 not surprising.

11 The reason for that, one may speculate
12 that practising with others allows one to consult with
13 others, that practising with others provides
14 infrastructure which is protected against complaints.
15 One might think that larger clients can deal with their
16 own complaints by their own market power as opposed to
17 using the Law Society to deal with their complaints, or
18 it may be that there is greater risk in different
19 context. I simply say that because we have to be
20 careful about data such as this.

21 We know that the areas where the smaller
22 firms face greater issues are in financial issues, and
23 that makes some sense to me. A large organization can
24 deal more safely, I think, with finance and with issues
25 of governance. The areas of practice tend to be where

1 the risk is greater is criminal and quasi-criminal and
2 real estate for lawyers. Those are the areas of
3 greater risk.

4 For paralegals the same is true, and
5 you'll see that at page 413. Again, the smaller
6 paralegal practices have a greater risk for financial
7 issues and governance issues.

8 That being said, one should be clear
9 that paralegals in private practice tend -- very few of
10 them practice except in sole or small practice, it's a
11 distinction that's harder to make much sense of as
12 compared to lawyers.

13 With respect to years in practice,
14 you'll see at 414 and 415, the interesting observation,
15 counterintuitive perhaps, that lawyers in their first
16 few years of practice tend to have fewer complaints and
17 lawyers who have been in practice 30 years or more tend
18 to have more complaints. My own suspicion, although
19 it's only a suspicion, is that it takes a bit of time
20 to build up unhappy people. So a competing thought
21 would be that lawyers in their first years of practice
22 are more careful. Both may be true.

23 With respect to thirty years or more in
24 practice, it is the case that lawyers who have
25 practised that length of time are at greater risk.

1 They tend to be in areas of conflicts, they tend to be
2 in areas of real estate, and it's unclear from our data
3 whether or not we are simply seeing some people
4 retiring and those who are left are in a greater area
5 of risk, or whether we're seeing those who are older by
6 virtue of their age and nature of practice are more
7 risky. Again, one can hypothesize and think about the
8 rationale, but we know that there is a difference.

9 For paralegals it's almost impossible to
10 have a meaningful analysis around this issue because
11 paralegals have only been licensed such a short time.
12 If we were to look at the cohort of younger lawyers,
13 that would virtually cover the full cohort of licensed
14 paralegals, so it's simply, in my view, not a
15 meaningful data point.

16 The areas of complaint, and I'll stop
17 here, I think are useful with respect to lawyers and
18 paralegals. You'll see at page 418 the percentage of
19 conflicts -- complaints, rather, raised against lawyers
20 raising conflicts issues by firm size. You'll see, for
21 those of you who are not statisticians in the room, the
22 tiny little lettering at the bottom right shows a
23 probability of less than .01 showing statistical
24 significance, and you'll see that sole practitioners
25 are statistically significantly more likely to have

1 conflicts, complaints, than lawyers in other private
2 practice firm sizes, while the larger -- the lawyers in
3 larger firms are likely to have fewer statistically.

4 I think that's interesting because, from
5 my own experience in a big firm, conflicts is a very
6 big problem to manage, given our size and number of
7 clients. It's interesting that conflicts are a
8 particular problem for people who have a smaller number
9 of clients and fewer colleagues to have to face.

10 The same pattern is true at the next
11 page with respect to financial issues. That's less
12 surprising to me given the differential infrastructure.
13 Governance issues follows the same pattern, complaints
14 raising integrity issues follows the same pattern and
15 service issues follows the same pattern. This doesn't
16 tell us anything new, but it tells us that the point
17 spans across areas of complaint.

18 There is relatively less difference in
19 the paralegal statistics at 422 and 423, I think simply
20 reflecting the greater homogeneity of firm size for
21 paralegals.

22 I'm sure there's more that can be
23 gleaned from this and your risk is we'll be back to
24 glean more when the 2015 statistics become available.

25 TREASURER MINOR: You might be able to

1 do a bit of comparison.

2 MR. MERCER: Indeed.

3 TREASURER MINOR: Thank you, Mr. Mercer.

4 Any questions from the room? Any questions on the
5 phone? Any questions on the phone?

6 Okay, thank you very much. We'll have
7 the morning break now.

8 --- Recess taken at 10:40 a.m.

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

10 TREASURER MINOR: Come to order, please.

11 Thank you.

12 Just want to mention two items on the
13 agenda. There is a listed Federation report, that is
14 going to be brought in May by Ms. Pawlitza. And there
15 are some stats listed as snapshots of the profession
16 under the Equity and Aboriginal Issues report, and they
17 will be spoken to in May. So just so you know.

18 And I also, at this point, wanted to do
19 a shout-out to our bencher, Jacqueline Horvat,
20 congratulations on the opening of her own firm.

21 -- Applause.

22 TREASURER MINOR: Called Spark LLP. And
23 I was tempted to say the sort of slogan that came on
24 and then I thought, oh, maybe that's inappropriate
25 advertising, but I do urge you to have a look at her

1 website. So congratulation, Jacqueline.

2 MS. HORVAT: Thank you.

3 TREASURER MINOR: I'm going to ask next
4 that we hear from our two guests, Ms. Fuhrer, who I
5 already introduced, and Mr. Upenieks. Let me introduce
6 him, since he was not here earlier.

7 As I said, he's president of the Ontario
8 Bar Association. He practices at Lawrences Lawyers.
9 He chairs their litigation group and has practised as a
10 litigator since '83. He's ranked in the Canadian
11 Lexpert Directory for 2015 as a leading litigator.

12 He is a prolific writer. He is
13 currently working on the second edition of "Enforcing
14 Judgments and Orders, a Standard Legal Textbook."

15 I have invited them both to address
16 Convocation. I guess we'll ask Ms. Fuhrer first and
17 Mr. Upenieks second. I'm assuming we're not going to
18 hear any quotes from your book, Mr. Upenieks, as
19 fascinating as it may be. And then we -- we will have
20 them as lunch guests and you will have an opportunity
21 to talk to them at that time too. So thank you very
22 much, and Ms. Fuhrer.

23 -- ADDRESS BY JANET FUHRER, PRESIDENT OF
24 THE CANADIAN BAR ASSOCIATION:

25 MS. FUHRER: Thank you very much,

1 Treasurer Minor. Good morning, everyone. My name is
2 Janet Fuhrer and I'm the president of the Canadian Bar
3 Association. Je suis très heureuse de vous parler
4 aujourd'hui.

5 I'm pleased to be here on two counts.
6 First, as a licensed practising lawyer in Ontario and
7 also in my official capacity as president of the CBA.
8 As I look around the room I do see a few familiar
9 faces.

10 In the few minutes allotted to me today
11 I would like to focus on the subject of change. It's a
12 theme that's front and centre for us at the CBA. A few
13 weeks ago I attended the reception for Richard Susskind
14 and his son, Daniel Susskind, for their Canadian book
15 launch, and Treasurer Minor was there with us as well.

16 While it's their first collaboration,
17 it's certainly not the first book for Richard Susskind.
18 You may know or be familiar with "The End of Lawyers?"
19 And he's very emphatic about that question mark,
20 published in 2008 and "Tomorrow's Lawyers" in 2013.

21 Their current book, "The Future of the
22 Profession: How Technology Will Transform The Work of
23 Human Experts Based on In Depth Research," is a game
24 changing work. It assesses and questions the relevance
25 of the professions, including the legal profession, in

1 the 21st century.

2 They posit that in an internet society
3 our current professions are antiquated, opaque and no
4 longer affordable. They predict a legal landscape
5 where advanced computer systems and artificial
6 intelligence become a reality and there are Benchers
7 working on these very things as we sit here today.

8 They certainly don't mince their words.
9 I highly recommended, if you haven't read it yet, the
10 book.

11 So how are we prepared for change that's
12 happening right now and will continue for the
13 foreseeable future? In considering that question,
14 there are at least three perspectives. How change is
15 affecting our profession, our association and our
16 members.

17 At the CBA we are continuing to move
18 forward with our popular and successful Futures
19 Initiative. While the initiative touches on much of
20 what we do as an association, we have identified the
21 importance of putting a priority on future lawyers,
22 students and young or new lawyers.

23 In February we launched a new guide
24 called "Do Law Differently". In it we offer a new tool
25 for law students and young lawyers to imagine and

1 embrace new ways of practising law which are rooted in
2 changing client expectations identified in the report.
3 It's aimed at law students and lawyers within their
4 first five years of practice.

5 "Do Law Differently" looks at where we
6 are now and how we got here, but, more importantly, it
7 offers suggestions of what new lawyers should know and
8 skills they should develop. It offers interviews with
9 new law pioneers and resources for more information.

10 In a similar vein, your work on
11 mentorship for young lawyers is providing engagement
12 and support to our newest members. Like you, we place
13 an important value on investing in the future of the
14 profession. As our work on the future is focused on
15 innovation and change, so too are our efforts on access
16 to justice.

17 Like you, we are now making great
18 strides through The Action Group, TAG, on how we can
19 offer meaningful and sustainable access to justice. We
20 have a great relationship with TAG and I commend you --
21 as do you, and so I commend you on your efforts on that
22 front.

23 At the same time, we are concluding an
24 internal examination of how our association operates
25 and how it can better provides relevant services to our

1 members. We are most of the way to the finish line.
2 We passed our new strategic direction in February and
3 we are now focusing our attention, as you recently have
4 or the Federation recently has, on governance.

5 The final piece of the process is the
6 design of a new governance model and it's a process
7 that's in full force. We have had a number of
8 lock-ups, lots of feedback -- consultation and feedback
9 with our members.

10 As form follows function, we are working
11 on a model that will deliver strategic member services
12 in a coordinated, streamlined way that simplifies our
13 structure, and our structure is very complex, as our
14 consultants have shown us and, hence, allows for more
15 nimble decision making.

16 In this time of change and reinvention
17 we must not lose sight of our most important asset, our
18 members. When it comes to their wellbeing we share a
19 common concern for health and wellness. In September
20 we launched the wellness initiative, which not only has
21 met, but exceeded all expectation. As of mid-April,
22 course registrations topped 1350. These stats are very
23 gratifying and show that we're right on track.

24 The course contains four modules, mental
25 health and addiction, the impact of stigma, options for

1 recovery and treatment, and proactive wellness. I
2 commend the work of your mental health task force and
3 the mental health strategy that was approved today.

4 Which brings me back to the question I
5 asked at the outset: How are we preparing for the
6 future? Without sounding overly optimistic, I'd say
7 we're doing our best. We are listening to the experts,
8 asking lots and lots of questions, analyzing data and
9 then offering up best options based on the evidence.

10 While the variety of ways forward seem
11 daunting, they do present a vast range of opportunities
12 for the profession to reinvent itself and ensure it
13 remains dynamic and confident into the future.

14 The transformation of legal services in
15 Canada represents an opportunity to provide valuable
16 new services to an expanding population. That said,
17 some estimate that 25 percent of the market for legal
18 services in the United States already is being served
19 by new law ventures, and if you take a look at the Do
20 Law Differently publication, I do recommend it to you,
21 it's on the public side of the CBA website, the
22 resources listed at the back, different technological
23 ventures, et cetera, serving the legal marketplace,
24 most of those resources that are listed are U.S. based.
25 The U.S. is making leaps and bounds into the legal

1 market. So this really should be a wake-up call for us
2 all.

3 On that note, at the CBA we will
4 continue to adjust our courts to meet the challenges of
5 change and along the way reaffirm our commitment to the
6 sustainable success of our members, our association and
7 our profession. Thank you. Merci beaucoup.

8 -- ADDRESS BY ED UPENIEKS, PRESIDENT OF
9 THE ONTARIO BAR ASSOCIATION:

10 MR. UPENIEKS: Treasurer Minor,
11 Benchers, President Hirsch, President Fuhrer and fellow
12 guests. I very much appreciate the opportunity to
13 address Convocation this morning on behalf of the
14 Ontario Bar Association.

15 Treasurer Minor, thank you for that kind
16 introduction. The second edition has now been
17 published and I highly recommended it to those of you
18 who have difficulty falling asleep at night.

19 -- Laughter.

20 MR. GALATI: Do you have copies here?

21 MR. UPENIEKS: No, I don't. I think it
22 would be fair to say that change is not always a term
23 that comes to mind for most people when thinking about
24 the legal system, at least historically.

25 In spite of that history, or perhaps

1 because of it, change is something that we as a
2 profession are focused on right now on many fronts, and
3 so it should be, because the world is changing and
4 there are so many ways in which the legal profession
5 will need to respond and, in fact, to lead; such as
6 delivering the highest quality legal services in a
7 changing marketplace, simplifying law and its
8 processes, the wise use of technology, running ever
9 more effective businesses, globalization, mentoring,
10 increasing representation, access to justice,
11 diversity, inclusion and equality, the greying of the
12 bar, challenges facing new calls. These are only a
13 few, and all are in the context of support of a just
14 and fair legal system.

15 As President Fuhrer has suggested, if
16 the variety of ways forward seems daunting, they also
17 represent a range of opportunities for the profession
18 to remain dynamic and confident into the future.

19 As many of you know, the OBA's over
20 16,000 members come from every corner of the province,
21 from large firms and small firms, solo practitioners,
22 from the public sector and from private practice. We
23 are comprised of lawyers, judges, law professors and
24 law students who come together in the spirit of
25 collegiality for the common purpose of achieving even

1 higher standards of excellence in our legal profession.

2 As the Law Society works to regulate the
3 profession and safeguard the public interest, there are
4 many ways in which a lawyers' association like ours can
5 play a different and vital role.

6 At its core, we can be the voice of the
7 bar to make sure the profession is vibrant and healthy
8 and able to deliver the services that we know the
9 public desperately needs. There is much to be said
10 about the valuable services lawyers provide to meet the
11 needs of the public.

12 Over the past year I have been
13 encouraging our members to join in, to join in and
14 contribute to the core services we provide. Advocacy,
15 professional development and providing the resources
16 for lawyers to better connect with their colleagues and
17 with their communities.

18 As I look around the room today, I know
19 that many of you have contributed so greatly over the
20 past many, many years. In her term, Treasurer Minor
21 has expressed a strong interest in collaborative
22 engagement with the profession and I want to recognize
23 that commitment as critical in helping the Law Society
24 to regulate effectively.

25 The experience and wisdom of the

1 practising bar are vital to informing the significant
2 issues the Law Society considers, which recently
3 include alternative business structures, compliance of
4 entity regulation, advertising and fee sharing, and the
5 provision of family law services.

6 The participation of our members in
7 these consultations infuses Law Society initiatives
8 with the full diversity and practical experiences of
9 our profession to ensure that policies promote a fair
10 justice system.

11 As OBA president, I would like to share
12 just a few of the other important activities of our
13 association this past year. At OBA Institute this
14 February, we hosted the 41st installment of Canada's
15 largest legal gathering. Institute 2016 brought
16 together more than 2000 registrants made up of Ontario
17 lawyers, judges, law teachers and law students from
18 across the province.

19 All of our programming was available
20 on-line and accessible across the province. We also
21 had an Ottawa hub that provided local members with the
22 chance to meet in person, network and discuss timely
23 topics with local speakers. Our institute also
24 featured a series of receptions in Toronto; including
25 one organized by our Official Languages Committee where

1 the Honourable Madam Justice Karakatsanis graciously
2 and skillfully shared her experiences on the Supreme
3 Court in a captivating mixture of French and English.

4 I can say that as the legal industry is
5 becoming increasingly competitive and diverse, the OBA
6 is helping to equip its members with the new
7 competencies they need to thrive in this environment.

8 This year we have developed the
9 Enterprising Lawyer Series. Through the series we are
10 bringing in experts to help our members, not only with
11 running their firms in a business savvy manner, but
12 also with becoming proficient at building relationships
13 that are fundamental to best serving clients and
14 supporting a collegial bar.

15 I'm pleased to say that the OBA is
16 continuing its work to reduce the stigma associated
17 with mental health issues of lawyers and to ensure
18 lawyers have the knowledge and supports they need to
19 manage their own mental health.

20 The Mindful Lawyer CPD series has
21 continued this spring with programs on implementing a
22 restorative action plan, responding under pressure,
23 avoiding burnout, and training for resilience. More
24 than 2,300 people will have taken part in this series
25 by the end of the year.

1 Today we heard about the CBA wellness
2 initiative and I know that a highlight of Convocation
3 this morning was the Law Society Mental Health Strategy
4 Task Force report, which recognizes that regulators
5 must reflect on the relevance and importance of mental
6 health to the ability of individuals to meet their
7 professional responsibilities and to serve the public.

8 With the launch of a new speaker's
9 bureau, the OBA has begun providing a complimentary
10 service that helps connect OBA lawyers who are
11 interested in volunteering their time and expertise
12 with community groups who are interested in learning
13 more about the law. The initiative is in its early
14 stages, but I'm pleased to say it has been very well
15 received.

16 These are just some of the ways in which
17 the OBA is working to represent the bar and its best
18 traditions.

19 I would like to conclude with a sincere
20 thank you on behalf of myself and on behalf of the
21 Ontario Bar Association to all of the Benchers here for
22 putting yourselves forward to safeguard the public, the
23 reputation of the profession and the effectiveness of
24 our self government. Thank you again for the
25 invitation to speak today.

1 -- Applause.

2 TREASURER MINOR: Thank you both. And
3 thank you to your organizations, who have been very
4 positive and strong collaborators with us. We
5 appreciate your comments, whether formally through
6 consultations or informally through our various
7 members, it's always very helpful, so thank you again.

8 Okay, next, I believe, is Tribunals.
9 Ms. Murchie.

10 -- TRIBUNALS COMMITTEE REPORT:

11 MS. MURCHIE: Thank you, Treasurer. I
12 am here today to speak to two matters, but first of
13 all, the Tribunal Committee report's at tab 7, page 453
14 of BoardBooks. So I'm going to talk about two matters,
15 as I said. One is the amendment to the rules, that's
16 for decision, and the other is I want to talk about
17 some statistics for your information.

18 So at tab 7.1, page 456 of BoardBooks,
19 you'll see the motion that is before us. And let me
20 just go through briefly the amendments.

21 There are two types of amendments. The
22 first types are housekeeping and the second are minor
23 amendments to reflect Convocation policy decisions.

24 So there are three proposed changes in
25 total. The first is with respect to Remembrance Day

1 and Easter Monday. They are being removed as holidays,
2 at page 461 of BoardBooks. This reflects the current
3 practice, as the Tribunal does not close on either day,
4 so it's a simple housekeeping matter.

5 Secondly there's an amendment because
6 currently parties can agree to have the pre-hearing
7 adjudicators sit on the panel hearing the merits, but
8 there's no form for that purpose so these proposed
9 amendments establish form 22A, and that's page 483 of
10 BoardBooks.

11 The third proposal creates proceedings
12 for -- that reflect what has been authorized under the
13 rules of professional conduct. First, the proceeding
14 is a retired judge appearing as counsel proceeding, and
15 the second is a working with or employing unauthorized
16 persons proceeding. This is at rule 29 and the form
17 is at pages 478 to 482. There are also a number of
18 consequential amendments that are set out to reflect
19 rule 29.

20 So Rule 29 reflects the provisions of --
21 the rules of professional conduct 7.6-1.1 and 6.016 of
22 the Paralegal Rules of Conduct.

23 So these rules permit licensees to
24 request permission from the Tribunal to work with a
25 suspended or revoked lawyer or paralegal so that --

1 that's already allowed under our rules of professional
2 conduct. The rule changes that are being proposed here
3 to the rules of practice simply effect this.

4 The second provision is rule 7.7-1.1 of
5 the Rules of Professional Conduct. This allows a
6 retired judge to request permission from the Tribunal
7 to appear in certain levels of courts that are not
8 otherwise permitted.

9 You may recall that prior to
10 February 2016 the Rules of Professional Conduct
11 provided for permission to be granted by a committee of
12 the Convocation. The hearing panel was the designated
13 committee of Convocation, but in February 2016
14 Convocation amended the Rules of Professional Conduct
15 to formally designate the Law Society Tribunal as the
16 body that grants permission.

17 So these amendments provide a process
18 similar to a notice of referral for hearing for a
19 licensing application and they standardize the process
20 for the hearings under these two provisions of the
21 Rules of Professional Conduct.

22 So I wasn't proposing to go through each
23 of the changes that are consequential on these
24 amendments because I think they're pretty
25 straightforward, but subject to any questions anyone

1 has, the motion is set out at paragraph 2 on page 456.

2 It's moved by me and seconded by Mr. Wardle.

3 I would be happy to answer any questions
4 and Mr. Wright is here as well.

5 TREASURER MINOR: Thank you. Any
6 questions or comments in the room for Ms. Murchie? Any
7 questions or comments on the phone?

8 In that case, I'll call the motion. All
9 in favour? Any opposed? Thank you. Any opposed on
10 the phone? Motion carried.

11 MS. MURCHIE: Let me turn to the issue
12 of statistics. You'll see in your materials the
13 standard of third and fourth quarter statistics for
14 2015. These are the statistics, they're set out at tab
15 7.2 for your information.

16 If you look at page 511 of BoardBooks,
17 you will see the types of statistics that are currently
18 collected and have been collected for some time. The
19 approach to collecting statistics was developed in the
20 early years of the tribunal and it really hasn't been
21 revised much in many years.

22 You may recall that as part of the three
23 year review, tribunal review which Mr. Anand reported
24 on in January, the committee indicated that new
25 statistics or a new approach to data collection should

1 be developed. It indicated in the report some of the
2 types of statistics they thought were appropriate and
3 the intent in the normal course is for staff to develop
4 a system for reporting statistics that makes sense and
5 that allows us to track trends, measure cost savings,
6 measure Tribunal effectiveness and generally to
7 otherwise review the Tribunal's performance in
8 accordance with the goals set out for the Tribunal.

9 So the committee has made a preliminary
10 assessment of some additional data to collect and it
11 received income from a couple of Benchers that were not
12 on the committee.

13 At this point in time, the Tribunal is
14 undertaking refined and additional data collection in a
15 number of areas, including the number of hearing days
16 per year, the impact of pre-hearing conferences and
17 other components of active case management on the
18 number of hearings, the length of the hearing, the rate
19 of appeals from hearing decision and the success of
20 those appeals, cost effectiveness and Tribunal panel
21 composition.

22 As the Tribunal chair and the committee
23 move forward with this data project, we're seeking
24 further input from Benchers on any additional
25 information they think or suggest should be gathered,

1 and we welcome that input from you. So if any of you
2 have suggestions on particular types of data that you
3 think should be collected on an ongoing basis as part
4 of this new reform, if I can call it that, then please
5 send me an e-mail. Mr. Wardle's the Vice-Chair. Any
6 member of the Tribunal Committee, Mr. Anand, of course,
7 and Mr. Bredt are chairs of the Hearing and Appeal
8 Division, so they're part of it too. But just let us
9 know and we're going to be discussing this going
10 further and we'll try to take everything into account.

11 When making your suggestions, if you
12 don't mind, I'm just going to remind you of the goals
13 that were set out for the Tribunal as part of the
14 original June 2012 report to Convocation because
15 clearly the stats that we collect should be related to
16 the goals that the Tribunal is intended to meet. And
17 those goals include a commitment to regulatory
18 processes that are transparent, fair and cost effective
19 and independent from the disciplinary stream.

20 Also a goal -- one of the goals is to
21 recognize, continue and support Benchers' roles as
22 adjudicators. Another is to deliver high quality
23 adjudicative decisions, and yet another is to foster
24 effective use of technology and an enhanced
25 adjudicative structure.

1 So over time we think the collection of
2 appropriate data will better assist Convocation to
3 reflect on the accomplishments of the Tribunal model
4 and to better inform policy making going forward.

5 Just with respect to new data that's
6 starting to be collected, let me take a moment to
7 provide Convocation with a snapshot of the Tribunal
8 hearings as at March 31st, 2016, with some comparison
9 to earlier years. There are a couple of significant
10 points to make, and the first is that the total number
11 of adjudicator hours in the first quarter of 2016 were
12 much reduced from previous years.

13 Down 53 percent, half of what it was in
14 2015 in the same period, and almost 45 percent of what
15 it was in 2014. So if these trends continue, and they
16 appear to be, we're looking at a significant reduction
17 in the number of adjudicator hours this year.

18 There are a number of reasons, including
19 increased case management, fewer rehearings as a result
20 of successful appeals and settlements leading to joint
21 submissions, but the good news is these indications are
22 that the new Tribunal model is cost effective, as we
23 hoped it would be, and it's a real credit to Mr. Wright
24 and his team in introducing and supporting the enhanced
25 PHC, pre-hearing conferences processes.

1 The reduced adjudicator hours, I think,
2 provides insight into the reason adjudicators have
3 observed that they have had fewer hearings in the past
4 little while. On the issue of panel composition and
5 Bencher participation, it was discussed significantly
6 in the three-year review when Mr. Anand reviewed all
7 the data that we had, but the first quarter statistics
8 for 2016 show that there were 87 adjudicators on the
9 panel, 68 percent of the adjudicators are Benchers,
10 77 percent of the lawyer adjudicators are Benchers.
11 These percentages are up from the previous year.

12 Benchers sat for 59 percent of the total
13 hours in the first quarter of 2016 compared to
14 41 percent in 2015 and 56 percent in 2014.

15 Of the total paralegal and licensee
16 hours, 63 percent were done by Benchers, 32 three
17 member panels sat in the Hearing Division in the first
18 quarter of 2015, all but one had a Bencher member, all
19 but two had a licensee Bencher member. Over half had a
20 majority of Benchers. And the reason there was a
21 hearing where there was no Bencher was because the
22 Bencher had to cancel shortly before the hearing and it
23 was -- had to be replaced.

24 Speaking of that issue, let me address
25 the late calls for adjudicators that some of you have

1 commented about. One of the big reasons is that there
2 has been a significant increase in interlocutory
3 applications, they used to be few and far between, but
4 in the first quarter of 2016 there were eleven
5 interlocutory injunctions heard in that three month
6 period. These necessarily happen on short notice due
7 to the nature of the matters; nevertheless, each one
8 had a licensee Bencher and over half had two or three
9 Benchers on them. One appeal panel, all five were
10 Benchers, 18 single member hearings, 61 percent by a
11 Bencher adjudicator, plus 28 percent conducted by the
12 chair, Mr. Wright.

13 So this type of data we're intending to
14 continue to collect and we'll work on establishing a
15 format that will set it out for you so it will be part
16 of the material that you receive and can review when
17 you get your materials.

18 As I said, while it's early to draw
19 conclusions from the data because the caseload can
20 vary, these statistics appear to reinforce the
21 conclusion that the three year review came to that the
22 new model is meeting its goals. The data demonstrates
23 a significant cost saving. It suggests that the
24 reforms are making hearings more focused and
25 expeditious.

1 Benchers continue to maintain a
2 significant hands-on role in adjudication and there's
3 enhanced -- enhanced by the involvement of an
4 independent chair and appointed adjudicators with
5 experience and expertise in administrative tribunal
6 adjudication. In addition to the positive qualitative
7 feedback we received in the context of the three year
8 review, these numbers show the continuing success story
9 of Tribunal reform.

10 In conclusion, Treasurer, I'd like
11 everyone to consider the types of data that I've just
12 discussed and the types of data that you think that we
13 ought to be collecting on an ongoing basis, send them
14 to members of the Tribunal Committee and we'll discuss
15 them going forward and see if we can accommodate your
16 requests. Thank you, Treasurer. I'd be pleased to
17 answer any questions if there are any.

18 TREASURER MINOR: Thank you, Ms.
19 Murchie. Any questions or comments? Okay.

20 MR. TROISTER: I appreciate the hard
21 work that the Tribunal has been doing, but I notice
22 that there were -- if I read the statistics right, 14
23 files that were 24 months or older that are still in
24 the system.

25 While I have difficulty reading all of

1 the statistics, I wonder if there's any correlation or
2 data between when investigation files are opened and
3 when matters are finally disposed of by the Tribunal,
4 because it strikes me that there may be considerable
5 delay or lawyers are under tremendous pressure if there
6 is a lengthy investigation followed by a lengthy period
7 of time that the matter is before the Tribunal, and I
8 don't think I have seen any correlation of statistics
9 between the time the investigation begins, and I know
10 that some investigations go on for years, followed by a
11 lengthy period of time before the Tribunal. And we
12 have seen some decisions where there have been a number
13 of lawyers who have been under the gun for many years
14 before an ultimate decision is made.

15 So I would like to know if there are any
16 statistics that bring both of those sets of
17 information, what goes on at the Tribunal and what goes
18 on in investigations together in one place. Thank you.

19 MS. MURCHIE: Thank you, Mr. Troister.
20 There are four matters I think over 24 months Mr.
21 Anand --

22 TREASURER MINOR: Sorry, we just had --
23 we'll start again.

24 MS. MURCHIE: Thank you, Mr. Troister.

25 MR. TROISTER: You're welcome twice.

1 MS. MURCHIE: The statistics indicate
2 there are four matters over 24 months and Mr. Wright
3 advises me that that they tend to be old matters that
4 they have been adjourned for a number of reasons, often
5 on consent.

6 In terms of your question on the bigger
7 picture numbers, perhaps I'm wrong, but I understood
8 Mr. Mercer to have reviewed some numbers in accordance
9 with the Federation goals that he discussed this
10 morning and I just can't put my finger on it. I
11 thought that he dealt with those.

12 So there are Federation goals and there
13 is a report to Convocation that comes out saying how
14 long people have been in the system, if I can call it
15 that, and I'm sorry, Mr. Mercer, I thought that some of
16 your numbers actually dealt with that.

17 MR. MERCER: The number deals with time
18 in investigation and prosecution, but not the combined
19 time, both within PRD and within the hearing process.

20 MS. MURCHIE: Okay, so that's just
21 investigations. In other words, you're saying it's
22 done separately?

23 MR. MERCER: Yes.

24 MS. MURCHIE: Thank you. But I think
25 you bring up a very good question, Mr. Troister,

1 because it's an issue that's concerned many of us who
2 have been involved in this process.

3 So I can't undertake to do anything
4 about it because the Tribunals is limited, but maybe we
5 can have some discussions as to whether those numbers
6 can be put together in some meaningful way for
7 Convocation. And we can certainly talk about it at the
8 Tribunal Committee and maybe I can persuade Mr. Mercer
9 to talk about it at his committee as well or, god
10 forbid, to jointly talk about it. So we'll do our
11 best.

12 TREASURER MINOR: Okay, thank you.
13 Mr. Cooper.

14 MR. COOPER: Treasurer, I have no
15 questions of Ms. Murchie as she's actually been working
16 through some of the issues that I wanted to bring to
17 the table and I thank her for that.

18 I do have a query with respect to when
19 the three year review was brought forward by Mr. Anand
20 in the January session. My recollection was, and
21 potentially you can assist with this, that we ran out
22 of time. There was questions that were being asked and
23 we did not have a full -- although it was just for
24 presentation, we didn't have an opportunity to fully
25 discuss matters as members of the Convocation.

1 So personally, I absolutely will
2 continue to work with the committee if I have any
3 questions and I know that there are others that have
4 specific questions, but as a group, it was presented in
5 January, I would ask that if we can determine whether
6 it was completed. If it's not completed, I would like
7 to be able to have that opportunity in public
8 Convocation that we can have that discussion. I was
9 just looking for direction.

10 TREASURER MINOR: Thank you, Mr. Anand.

11 MR. ANAND: Can I just say that I would
12 be happy to continue that discussion at some point. I
13 know that Mr. Cooper and I and others have continued
14 some of that discussion off-line, but certainly if time
15 can be allocated at some later Convocation I would be
16 happy to continue.

17 TREASURER MINOR: Well, I'm sure
18 everyone can continue their discussions in the
19 meantime, but assuming that there's still a wish to
20 have it on the Convocation agenda it will happen.

21 MR. COOPER: My recollection was that
22 was -- that presentation went on and, as a result, we
23 ran out of time and I believe the Treasurer had
24 indicated it would come back.

25 TREASURER MINOR: That's fine.

1 MR. COOPER: That would be appreciated.
2 I'm not sure if Mr. Falconer has anything to say after
3 that.

4 MR. FALCONER: Thank you, Mr. Cooper.

5 TREASURER MINOR: I think we have Ms. Go
6 next.

7 MS. GO: Thank you, Treasurer and thank
8 you for the report. I guess my question is similar to
9 the first question that was raised around the bigger
10 picture question, and so the data collected is not
11 necessarily just about the Tribunal and its efficiency,
12 but the overall, I guess, picture around regulation and
13 discipline at the Law Society.

14 Earlier we heard from Mr. Mercer about,
15 for instance, a lot of the information about breakdown
16 in terms of sole practitioners, small firms, large
17 firms and so on and so forth. We know that those are
18 only at the complaint level. We also know anecdotally,
19 sort of through the task force, of the challenges
20 facing racialized licensees often anecdotally concerns
21 related about a disproportionate number of certain
22 racialized lawyers' groups, certain groups are being
23 subject to disciplinary matters at the Law Society.

24 I don't know if there's any plan to, for
25 instance, collect data at the Tribunal level in terms

1 of -- if not on the basis of race, but at least on the
2 basis of the type of practice or the firm size the
3 practitioners come from so that we have a clear bigger
4 picture as to whether there's a trend.

5 MS. MURCHIE: As -- to the best of my
6 knowledge, Treasurer, there isn't any specific data at
7 the Tribunal level that identifies -- well, I shouldn't
8 say that. There -- no, I just looked at Mr. Wright for
9 confirmation. There isn't anything that identifies the
10 size of the practice that the licensee has or whether
11 he or she is from a racialized community, so we don't
12 have that data and I don't know that there has been a
13 decision to collect that data, but if it's -- if it's
14 something that's of real concern then maybe we have to
15 discuss it at the Tribunal Committee level, although it
16 may be more promote at the disciplinary level in PRC's
17 bailiwick, I don't know.

18 TREASURER MINOR: You were asking for
19 suggestions, so I think you have them.

20 MS. MURCHIE: We will look at that
21 matter as well.

22 TREASURER MINOR: Thank you, Ms.
23 Murchie. Any further questions, comments in the room?
24 Mr. Anand.

25 MR. ANAND: I just wanted to briefly

1 follow up on the discussion that's been had about the
2 time, the delay issue, and the merging of statistics
3 perhaps between the time spent in the investigation and
4 the time spent at the Tribunal.

5 You have the figures with respect to the
6 Tribunal, it's four over two years and there's other
7 figures for periods less than two years. But I want to
8 say this. That as -- as governors, not as Tribunal
9 members, which most of us are, but as governors, we
10 should be looking very carefully at the time that's
11 spent in investigation because there, I would say, an
12 increasing number of decisions from the Tribunal in
13 which the result depends, to some extent, on the time
14 that has passed. And I don't just mean in terms of
15 changed circumstances, I mean in terms of the result,
16 the length of the penalty that's levied, whether an
17 interlocutory suspension is granted when it took a
18 certain amount of time to get to the point of bringing
19 the interlocutory and then the Law Society as
20 prosecutor is asking for a suspension on very short
21 notice. You can see where I'm going with this.

22 There are a number of cases of that
23 kind, which leads me as governor to say that we should
24 be looking carefully -- as we are, I know, to Mark
25 Sandler's review, among others, at the time and

1 efficiency at the earlier level.

2 TREASURER MINOR: Thank you, Mr. Anand.

3 Any further questions or comments in the room? Any
4 questions or comments for Ms. Murchie on the phone?

5 MR. FURLONG: No.

6 TREASURER MINOR: Glad to hear there's
7 someone still on the phone.

8 -- Laughter.

9 TREASURER MINOR: I notice, for
10 instance, that Mr. Lem is now here in person.

11 Thank you. If there's no more, thank
12 you very much, Ms. Murchie. I'm sure you'll hear from
13 Benchers during the period before next Convocation.

14 MS. MURCHIE: Thank you. We'll welcome
15 that input. Thanks, Treasurer.

16 TREASURER MINOR: Mr. Schabas, Equity
17 and Aboriginal Issues from the Human Rights Monitoring
18 Group.

19 -- EQUITY AND ABORIGINAL ISSUES

20 COMMITTEE REPORT:

21 MR. SCHABAS: The Human Rights
22 Monitoring Group report is found at tab 8 with the
23 report at tab 8.1, page 545 of BoardBooks.

24 There are six matters coming from six
25 different countries, many of the usual suspects.

1 The first one relates to a lawyer in
2 Thailand. A woman who is a human rights lawyer has
3 been subject to arrest and harassment for her attempts
4 to complain about police misconduct. This is
5 indicative of frequent problems that have been
6 occurring since the military government took over
7 Thailand in 2014.

8 The second one deals with a Chinese
9 lawyer, Zhang Kai, a prominent human rights lawyer who
10 was arrested while advising religious organizations on
11 religious freedom issues. He is currently detained and
12 the government has broadcast what many are claiming is
13 a coerced confession.

14 Turkey. Today we are asking for an
15 intervention involving nine lawyers who have been
16 defending another 46 lawyers who were charged and --
17 arrested and charged following their defence of various
18 Kurdish leaders.

19 These nine lawyers, it's a pyramiding
20 effect, right, have been subject to searches of their
21 homes, arrest and detention and travel bans. This is
22 indicative of what we're hearing about the broader
23 threat to democracy in Turkey and I know I have been
24 hearing about it from my colleagues who deal with media
25 expression in Turkey. In fact, I was at a conference

1 recently at Columbia University where the lawyer who
2 was to come from Turkey was not allowed to leave.

3 The fourth one is dealing with a lawyer
4 in Ukraine who disappeared and was later found dead in
5 a ditch south of Kiev. The concern is that his death
6 was caused because he was defending an alleged Russian
7 intelligence officer. And we're proposing to write to
8 the government of the Ukraine to express the concern
9 over the safety of lawyers in that country.

10 Five, Malaysia. We're writing about
11 three lawyers who have been arrested and charged with
12 sedition. Malaysia continues to have a Sedition Act
13 and to use it robustly for political purposes. These
14 arrests followed the lawyers' criticisms, supported by
15 the Malaysian Bar Association over the ending of an
16 investigation into corruption involving the prime
17 minister that had the -- the inquiry had been
18 terminated by the Attorney General.

19 And I can tell you I also met a media
20 lawyer from Malaysia who tells me that the Sedition Act
21 is used all the time against the media in that country.

22 Indonesia is the last one where we
23 propose to speak on behalf of two lawyers who were
24 arrested following attending a peaceful protest to
25 advocate for increases to the minimum wage, and the

1 evidence we have is that their specific arrests were
2 solely related to their actions as lawyers and human
3 rights defenders.

4 The proposed letters and statements are
5 at tab 8.1.1 to 8.1.6, beginning at page 557. The
6 motion is moved by me, seconded by Ms. Donnelly.

7 TREASURER MINOR: Any questions or
8 comments for Mr. Schabas in the room? Questions or
9 comments from those on the phone?

10 Okay. Hearing nothing, call the motion.
11 All in favour? Any opposed? Any opposed on the phone?
12 Okay, thank you. Mr. Schabas, you have --

13 MR. SCHABAS: I just might -- it's not
14 in the materials, but many of you may have seen that
15 the call for nominations for the Human Rights Award has
16 been made. There's been ads in the ORs and in other
17 places. Details of it can also be found on the Law
18 Society website. We are looking for nominations to
19 give out this award, which is given out every two
20 years. We had the inaugural event about a year ago
21 where we gave the award to Irwin Cotler. I would urge
22 everybody to think of people and to bring forward
23 nominations. The deadline for the nominations is
24 May 31st.

25 TREASURER MINOR: Thank you. Next

1 Professional Development and Competence.

2 Mr. Goldblatt.

3 -- PROFESSIONAL DEVELOPMENT AND

4 COMPETENCE COMMITTEE REPORT:

5 MR. GOLDBLATT: Thank you, Treasurer.

6 The report to Convocation is found at tab 9, page 629
7 of BoardBooks, and the specific proposal that we are
8 bringing to Convocation for information at this point
9 is found at tab 9.1, which is at page 637.

10 As I said, this is being brought forward
11 at this time for the information of Convocation, we are
12 welcoming input from Benchers, lawyers, students,
13 deans, interested legal organizations and others with
14 respect to this proposal and it is our plan to bring it
15 back to Convocation in May.

16 Before I review the elements of proposal
17 and answer any questions for clarification, I just want
18 to express my thanks as chair, and I'm sure I'm doing
19 so on behalf my vice chairs, Mr. Lem and Ms. Murchie,
20 with respect to the commitment of our committee to
21 addressing this issue over a number of meetings,
22 regularly scheduled, irregularly scheduled, and I don't
23 think there was one meeting that we started on time, we
24 always started early and we went quite late.

25 The committee devoted themselves to

1 considering these issues and we're coming forward now
2 for the information of Convocation and others, as I've
3 identified. Also, of course, we want to express our
4 appreciation to staff, Diana Miles and Sophia
5 Sperdakos, for their assistance.

6 Let me just give a brief background as
7 to this particular proposal.

8 In October of 2015, the Benchers
9 approved our 2015 to '19 strategic plan, which
10 established our priority areas for policy development
11 and governance in the current Bencher term.

12 Convocation will remember that strategic
13 priority number one by far included focusing on
14 enhancing licensing standards and requirements and
15 their assessment for both lawyers and paralegals.

16 Since that time, our committee has
17 addressed the issues from the lawyer perspective and
18 that has led to the proposal that's before you at tab
19 9.1.

20 In developing this proposal, the
21 committee considered the need to ensure that all
22 persons who move through the various components of
23 lawyer licensing have appropriate knowledge, skills and
24 abilities to serve the needs of their clients in the
25 public interest and that they meet standards of

1 learning, professional competence and professional
2 conduct.

3 Let me address, then, the various
4 elements of the proposal. It is part of our mandate to
5 examine, monitor and evaluate the components of the
6 licensing process on an ongoing basis and to ensure
7 that they continue to meet the evolving needs, demands
8 and complexities of lawyers' practice.

9 Accordingly, we are proposing that
10 beginning in the spring of 2017 we will replace the
11 current separate barrister and solicitor examinations,
12 and Convocation may be aware that each of those
13 examinations are seven hours in length. We intend to
14 replace those with a combined practice and procedure
15 examination which we call the PPE, and in doing so it
16 will -- obviously it won't be 14 hours, it will be
17 considerably reduced. We're anticipating roughly five
18 hours, but in doing so, the parameters of the current
19 examinations that are being provided are going to be
20 reviewed and reevaluated to establish and confirm that
21 they continue to provide appropriate benchmarks
22 necessary to be achieved for entry level competence.
23 If they don't, they will be modified accordingly.

24 The examination will focus, as the name
25 implies, on the competencies in the areas of practice

1 and procedure, and because this is a review and
2 revalidation of what is currently available, we
3 anticipate that because we're not developing an
4 entirely new examination, we will be able to have it in
5 place for the 2017, '18 licensing year, which actually
6 will commence in -- next September 2017 for purposes
7 I'm going to describe in a moment.

8 Currently, and the candidates can write
9 the barristers and solicitor examinations before,
10 during or after their period of experiential learning.
11 They, of course, have to pass them.

12 The committee is of the view that it is
13 important to establish that the candidate does have the
14 basic skills and competencies before commencing
15 experiential learning, and therefore, the committee is
16 proposing that commencing in 2017, candidates will not
17 be permitted to begin their experiential component of
18 their learning until they have successfully passed the
19 PPE, the practice and procedure examination.

20 Now, in order to address the needs of
21 the candidates, it's certainly anticipated that there
22 will be more than one opportunity to write this
23 examination in the event that they fail the first time,
24 and there will be, we anticipate, two opportunities, if
25 they fail the first time, before what we would consider

1 to be the normal commencement of experiential learning.

2 There will be, as well, according to our
3 proposal, an additional examination to be developed
4 which will focus on practice skills, practice
5 management, professional responsibility, ethics, and
6 essentially furthering the direction of Convocation to
7 increase the emphasis in these areas and prepare
8 candidates to enter the practice upon their licensing.

9 This examination, which will be
10 called -- or is currently called the practice skills
11 examination, the PSE, will take place after the
12 completion of the experiential learning and must be
13 passed before the candidate can continue in the
14 licensing process.

15 Now, this examination is entirely new.
16 And while both examinations, the first one and the
17 second one, will be the product of rigorous
18 development, review and validation, because we're
19 having a new examination it will take more time to
20 develop and to be validated and, therefore, it is not
21 anticipated that it would be in place before the end of
22 the '18, '19, period of time and roughly in the spring
23 of 2019.

24 So the first examination will be in May
25 of 2017, mid to end May of 2017. The next one will be

1 in the following cycle.

2 We are proposing that candidates have
3 three opportunities to pass each of these examinations,
4 which is consistent with the current practice, so that
5 if they fail they have two more opportunities to do so,
6 but, again, you will be reminded that they cannot
7 proceed to the experiential portion until they pass the
8 first examination.

9 Turning to the time to complete the
10 process, the committee is of the view that the process
11 should be completed within three years from the
12 commencement of the licensing process. The committee
13 considered that this is a fair opportunity for
14 candidates to complete all of the licensing
15 requirements, including the opportunity to rewrite
16 examinations if they are unsuccessful.

17 If the candidate does not complete the
18 process by the end of the three years, the candidate
19 will not be entitled to register a second time in the
20 licensing process.

21 Let me then turn to the experiential
22 component aspect. There are a number of opportunities
23 for candidates to obtain experiential training before
24 entering into the licensing process, and those
25 opportunities are expanded. This may be by way, for

1 example, of a full term clinic placement at a law
2 school, a summer job in a law firm, and so forth.

3 These skills training opportunities
4 provide students with important exposure to skills that
5 enhance their competence and readiness to enter into
6 the process. Where certain criteria relevant to the
7 licensing process are met, we are proposing that the
8 articling requirement could be, and I emphasize could
9 be for reasons I'll say in a moment, abridged by up to
10 three months, where both the candidate and the
11 principal agree. So the candidate can request and the
12 principal can deny, but if they both agree then it can
13 be reduced by a three month period.

14 We're going to begin, at least we're
15 proposing to begin the process of reviewing and
16 evaluating these various experiential programs as soon
17 as possible and meeting with stakeholders to refine our
18 approach, and we are recommending that this development
19 process begin immediately for the 2017, 2018 licensing
20 year.

21 Turning then to internationally trained
22 candidates. Convocation may be aware that
23 internationally trained candidates can seek to abridge
24 their experiential training by up to three months with
25 demonstrated prior practice experience. The committee

1 is recommending that this continue, however, the
2 committee is recommending that all candidates,
3 internationally trained candidates, must have
4 experiential training in the Canadian context and,
5 accordingly, the previous exemption for international
6 students with a minimum of ten years of common-law
7 practice -- sorry, ten months.

8 MR. FALCONER: We were just checking to
9 see if you were listening.

10 MR. GOLDBLATT: Ten months of common-law
11 practice would be discontinued under our proposal.

12 Let me just pause here for a moment,
13 because, as you'll see from the report, this was an
14 area of very vigorous discussion within the committee,
15 and a number of members of the committee are of the
16 view that there might be circumstances where an
17 exemption from the experiential training would be
18 appropriate and, therefore, that is part of the input
19 we are seeking. Whether there are certain
20 circumstances where we can say, for example, by the
21 length of time these individuals practice in the
22 common-law they could be exempted from the experiential
23 training program.

24 Now, the length of the articling period.
25 We are proposing that the length of the articling term

1 be reduced by one month. Currently it's ten months,
2 reduce it to nine months, and this would accomplish a
3 number of objectives, such as better integrating with
4 the proposed three month experiential abridgment.

5 For example, and this is just one of the
6 reasons, for example, if a student were to come forward
7 and the principal were to agree to the reduction to six
8 months, it might be possible -- might be possible for a
9 firm to take more than one student within a calendar
10 year, but it might also be possible for a firm to take
11 a student for a six month period when they couldn't
12 perhaps take a student for the full ten months.

13 Because we emphasize that this is an
14 abridgment for the three month period that would
15 require both the candidate and the principal's
16 approval, it's a proposal that we think would mesh well
17 perhaps with the reduction in the period of articling
18 based upon the experiential abridgment. So the
19 proposal is to reduce the length of the articling
20 period from ten months to nine months.

21 The current performance assessment
22 components of the articling program and the articling
23 professional responsibility test will be continued and
24 of course there will be no changes to the requirement
25 of good character as part of the licensing process.

1 The financial impact of this proposal is
2 set out at page 636 of BoardBooks. The development of
3 the first exam, the practice and procedure examination,
4 will be within the current approved PD&C budget, with
5 the majority of funds expended in 2016, and funding for
6 the second exam, the skills examination, will be
7 included in the 2017 and '18 budgets.

8 Let me address lastly the Pathways
9 Project. The committee will consider the Pathways
10 Pilot Project, which includes the law practice program,
11 commencing in September of 2016 and in accordance with
12 the previous direction of Convocation, with a review of
13 the evidence available at that time, following which
14 Convocation will be asked to determine next steps with
15 respect to Pathways. And that is, as I say, consistent
16 with the report to Convocation in February of 2014.
17 That was the timeline that Convocation approved at that
18 time.

19 So, generally speaking, Treasurer, that
20 is the outline of the proposal which I say is found at
21 tab 9.1. Now for input from the community, and I am
22 open to any questions, Treasurer, for clarification
23 that Convocation may have.

24 TREASURER MINOR: Thank you,
25 Mr. Goldblatt. Questions or comments in the room?

1 Okay. Mr. Sharda.

2 MR. SHARDA: I'm just wondering if you
3 can give us a timeline that, let's say, we have a
4 graduate that comes out end of April, what's the
5 timeline until fully licensed with these proposals in
6 mind?

7 MR. GOLDBLATT: The timeline overall,
8 Mr. Sharda, won't change, providing that they meet all
9 of the various steps. If they come out at the end of
10 April, the proposal would be that they would commence,
11 that they would write the first time, and one would
12 hope they would pass the first examination, roughly in
13 the middle, towards the end of May. They would be
14 provided with all the resources necessary to do that.

15 They would begin their experiential
16 training. They would go through the nine month or,
17 looking down the road, potentially a six month
18 articling and they would then write the second exam
19 when that's available and then they would obviously
20 pass all the other requirements and be called to the
21 bar.

22 So the overall time period is not
23 extended. It can be abridged, but the advantage of it
24 is, if I can put it this way, the opportunity may be
25 there for abridgment if everybody agrees, and the

1 testing of the skills and competencies, as Convocation
2 directed, of the candidates entering will be
3 heightened.

4 TREASURER MINOR: Thank you. Any other
5 questions in the room? Mr. Wright.

6 MR. WRIGHT: Thank you. You're asking
7 for feedback between now and May Convocation or
8 actually between now and committee day in May?

9 MR. GOLDBLATT: We are asking for input
10 as expeditiously as possible and we will consider the
11 input that we receive.

12 MR. WRIGHT: Well, I would venture to
13 say that that doesn't give enough time, especially if
14 you want input from groups outside of Convocation.

15 There are a number of concerns that
16 immediately spring to mind. One, the best sort of
17 education post law school is access to excellent
18 precedent materials, preferably annotated, and time
19 with private practitioners who can teach you how to
20 apply those precedents and interpret the annotations.

21 That was very much like the old six
22 month bar admission course that we used to have with
23 lectures in the morning, seminars in the afternoon with
24 local practising lawyers.

25 In most of the world, except North

1 America --

2 TREASURER MINOR: Is there going to be a
3 question here, Mr. Wright, and is it relevant to the
4 report that Mr. Goldblatt has just brought?

5 MR. WRIGHT: It's a question, but I need
6 a little bit of introduction to the question. And that
7 is, in most of the world solicitors and barristers are
8 completely separate professions, and there is a reason
9 for that.

10 I'm not sure that combining the exam
11 into one is a good idea. There are all kinds of issues
12 with this. I suppose whether it's a question or a
13 suggestion, more a suggestion, I think you're going to
14 need a heck of a lot more than just two more weeks to
15 think this through and get some input. So my question
16 is, can you agree to extend the time frame for people
17 to opine on the very detailed and quite impactful
18 changes you want to bring?

19 And the last thing is it will be a six
20 month articling, no principal is going to deny the
21 student -- it will turn out to be six months and that
22 will cause more difficulties, I think, as well. So --
23 but the question is can you give us more time.

24 MR. GOLDBLATT: Mr. Wright, we came
25 forward for information to provide the elements of the

1 proposal. We're seeking input. Obviously we're going
2 to assess it on an ongoing basis. We intend to come
3 back in May and we'll see where we are as we approach
4 Convocation in May as we approach the committee with
5 respect to how much input we get and what the nature of
6 that input is.

7 If the question directly is can we
8 undertake now not to come back in May, the answer is
9 no.

10 MR. WRIGHT: There just isn't time for
11 proper input from anybody, other than those of us who
12 are here, in two weeks.

13 TREASURER MINOR: First, I don't
14 understand the answer was that it would be two weeks.
15 It was leading up to Convocation and the answer is also
16 there will be a response depending on the response that
17 comes.

18 MR. WRIGHT: Well, the two weeks
19 is because I assume --

20 TREASURER MINOR: I don't think we need
21 to argue about this.

22 MR. WRIGHT: It will go to committee,
23 that's all. And then the report --

24 TREASURER MINOR: As Mr. Goldblatt has
25 said, committees meet at different times and more times

1 than Committee Day. This one has, in particular. I
2 think you've made your point.

3 MR. GOLDBLATT: If I could just respond
4 in terms of what the Treasurer has said. This
5 committee has been open to meeting very quickly. We
6 will just have to assess it, but I was responding to a
7 direct question.

8 TREASURER MINOR: Ms. Go.

9 MS. GO: I guess the question is similar
10 to -- in terms of the consultation, what the
11 committee has -- what kind of consultation the
12 committee has undertaken with, I guess, groups outside
13 of the Convocation. And I guess in terms of the
14 rationale, although I understand the rationale stated
15 in the report, I guess I'm just trying to get a sense
16 of whether there is any assessment of what will be the
17 change as a result of this.

18 For instance, are there going to be
19 fewer NCQs being licensed? Are there going to be --
20 would there be any particular impact on certain groups
21 of individuals? I'm just not sure what kind of
22 analysis is done in terms of the impact of the change,
23 although I understand the rationale for the change.

24 The third question is about the NCQ
25 process. I understand in a way you're making it more

1 fair for all NCQs and not singling out those with
2 Commonwealth experience; however, at the same time, the
3 process itself is still quite opaque. There's not much
4 information about how the experiences of the NCQs
5 overseas are going to be considered in --

6 TREASURER MINOR: I think you mean NCAs.

7 MS. GO: NCA, sorry.

8 TREASURER MINOR: I thought it was a
9 notice of constitution.

10 MR. GOLDBLATT: I was thinking about it.
11 Let me answer just a couple of ways. Number one is
12 that I can assure Convocation, and I'm sure that
13 members of the committee will confirm, that we have
14 given very careful consideration to all of the elements
15 of this proposal that we're bringing forward. We have
16 worked on it very diligently and looked at the various
17 ramifications in coming forward now for the input.

18 I can also advise Convocation that there
19 is currently an assessment when individuals apply for
20 an exemption, and the process we have even for the ten
21 months, which we're not proposing -- for the abridgment
22 we're not proposing to change.

23 There is a process in place. The
24 process with respect to the three month abridgment for
25 the experience is not proposed to change. It's just

1 the committee believed that in terms of providing an
2 overall exemption, they didn't think that was
3 appropriate, but, again, I've advised Convocation that
4 there were a number who had a different view.

5 TREASURER MINOR: Mr. Schabas.

6 MR. SCHABAS: No, I didn't have my hand
7 up.

8 TREASURER MINOR: I'm sorry. Mr. Lerner
9 and then Mr. Galati.

10 MR. LERNER: I'm slightly confused,
11 which is not unusual, but my question first,
12 Mr. Goldblatt, is Mr. Wright suggested that articling
13 was going to be six months. This exemption applies
14 only to -- there's a confusion in the terms, foreign
15 educated or foreign trained.

16 I make that distinction because a
17 student, Canadian student who goes overseas is foreign
18 educated. Somebody who has been qualified in -- as a
19 resident of a foreign country and then wishes to come
20 here, are they going to be treated the same or is there
21 going to be some requirement that the Canadian student
22 who is educated must comply, even though he's foreign
23 educated, with the nine month requirement?

24 MR. GOLDBLATT: Well, a couple of
25 things. First of all, I believe that what Mr. Wright

1 was suggesting was that -- and I'm sure he can correct
2 me, was that because there may be a three month
3 experiential abridgment based upon, for example, time
4 at a summer placement in a law firm, that automatically
5 it's going to be a six month articling position. And
6 that, I think, is certainly prejudging what might
7 happen. It's the opportunity when both the candidate
8 and the principal agree.

9 Secondly, with respect to your question,
10 Mr. Lerner, more specifically it would apply to both,
11 it would apply to both. They come back and they seek
12 the process, and whether they're internationally
13 schooled or internationally practising, we would
14 address both of them in the same way.

15 MS. MILES: If they have had
16 international practice period they could apply for
17 abridgment.

18 MR. GOLDBLATT: That's what I was
19 saying. It's in the report. If they had international
20 practice experience, they're now eligible for the three
21 month abridgment, but the total exemption is no longer
22 available. That's the way we're doing it. So they
23 could get a six month period.

24 MR. LERNER: So then is there some
25 minimum requirement as to the length of time they have

1 to be trained in the other country before they are
2 entitled to the abridgment? Or -- I think there's --
3 continues to be a problem because I see a distinction
4 being made where a Canadian trained student has to do
5 nine months, subject to an abridgment, and a foreign
6 trained student can come over, return, and be treated
7 exactly the same, even though there may not be any
8 requirement as to experiential learning along the way.

9 MS. MILES: I think -- if I may, Mr.
10 Lerner, I think the circumstance you're discussing is
11 one where an international candidate comes in and they
12 have had previous practice experience and they're
13 applying for an exemption or an abridgment. The
14 abridgment criteria set by a competency profile will
15 assess that person's activity and experience and will
16 determine whether or not they have actually fulfilled
17 the competencies that are required in Ontario for them
18 to be able to practice as an entry level practitioner.

19 So they will be able to make the
20 recommendation to us that they should be given an
21 abridgment. We will assess it and they will be
22 required, as is our current criteria, to provide us
23 with references so that we can confirm that.

24 MR. LERNER: Thank you.

25 TREASURER MINOR: Mr. Galati.

1 MR. GOLDBLATT: Just to follow up on
2 Ms. Miles' comment and to address Mr. Lerner, we are
3 looking at the experience, not the learning. That's
4 the way in which the proposal is written and that's
5 where the abridgment comes in. That's the reference.

6 I think there may be some confusion
7 between training and experience, and the proposal
8 addresses an abridgment for experience of a minimum
9 period of time.

10 TREASURER MINOR: Okay. Mr. Galati.

11 MR. GALATI: Two issues for me. As much
12 as it pains me, I agree wholeheartedly with Mr. Wright.
13 This is a ridiculous turnaround time for input on
14 something of this nature.

15 Secondly, I'm trying to understand the
16 rationale. First of all, why we're proposing abridging
17 the articling time, and, two, differential impact it's
18 going to have on different types of students who either
19 can't get that extra three months of experiential
20 experience during the summer and, secondly, how are you
21 going to assess the experiential experience to make
22 sure it's on a par with three months of articling that
23 you're cutting away? Lastly, why should our regulation
24 come down to the consent of the parties, the principal
25 and the student?

1 MR. GOLDBLATT: There are a number of
2 questions, Mr. Galati. I'm not going to make any
3 comment further with respect to the timeframe, I think
4 I've addressed that.

5 With respect to how the experiential
6 learning is going to be assessed, I mean the Law
7 Society will assess it with the skills matrices and
8 look at competencies in the way they look at all these
9 programs. I think it will be done in obviously a very
10 careful, measured way, so I don't think that's the
11 issue because we certainly have the tools now to do
12 those assessments.

13 With respect to the differential
14 between -- some will have nine and some will have six,
15 that may be the case, but that's an option that's out
16 there and we're proposing that as an option, again for
17 input, because these individuals do have an
18 experiential training that will put them in a slightly
19 different position as they commence the articling
20 process. And if their principal considers that that is
21 a valuable -- they may actually be coming from a summer
22 program with a particular principal and asking to
23 article or seeking to article and the principal says
24 six months looks good to me, you spent three months
25 there, the option will be available. The option will

1 be available.

2 With respect to our regulating, the fact
3 of the matter is what we're doing is saying this is the
4 process for the candidates and for the principals to
5 determine as it fits their particular needs, rather
6 than dictating this is the way it has to be.

7 TREASURER MINOR: Ms. Go again.

8 MS. GO: I'm just wondering if the
9 committee will agree to undertake to at least consult
10 with some of the advisory body at the Equity and
11 Aboriginal Issues Committee.

12 TREASURER MINOR: I can answer that. It
13 will be on the agenda for all of our groups that we are
14 meeting with next month. I've listed some of them.

15 MS. GO: Okay. And ensure that there is
16 an equity analysis before the final decision is made.

17 MR. GOLDBLATT: Thank you.

18 TREASURER MINOR: Any further questions
19 or comments from the room? Any further questions or
20 comments on the phone? Any questions or comments from
21 the phone? Okay. In that case, I think that complete
22 the report. Thank you.

23 MR. GOLDBLATT: Thank you very much,
24 Treasurer.

25 --- Whereupon the in public proceedings adjourned

1 at 12:37 p.m.

2

3

4 I HEREBY CERTIFY THE FOREGOING

5 to be a true and accurate

6 transcription of my shorthand notes

7 to the best of my skill and ability

8

9

10 SHARI CORKUM, C.S.R.

11 Computer-Aided Transcript

12

13

14

15

16

17

18

19

20

21

22

23

24

25