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CONVOCATION

IN PUBLIC SESSION

THURSDAY, FEBRUARY 25th, 2016 - 9:00 a.m.

OSGOODE HALL, TORONTO

1 CONVOCAATION ATTENDANCE

2 Treasurer - Janet Minor

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

1	Virginia MacLean (ph.)	William McDowell
2	Susan T. McGrath	Isfahan Merali
3	Malcolm Mercer	Barbara Murchie
4	Sandra Nishikawa	Gina Papageorgiou
5	Susan Richer	Jonathan Rosenthal
6	Paul Schabas	Raj Sharda
7	Andrew Spurgeon	Joanne St. Lewis
8	Sidney Troister (ph.)	M. Anne Vespry
9	Peter Wardle	Laurie H. Pawlitza
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1 --- Upon commencing in public at 10:00 a.m.

2 TREASURER'S REMARKS:

3 TREASURER MINOR: Good morning, welcome
4 to all those joining us via the public webcast today.
5 We now webcast regularly as part of our commitment to
6 transparency in governance.

7 I'd like to review the instructions for
8 the phone system for those participating by phone.
9 I'll confirm who is on the telephone and then let
10 everyone know that we will be placing those calling
11 into the meeting in what we call lecture mode.

12 This means from our end we are muting
13 all callers. Once muted, they will be able to hear the
14 meeting, but can't speak. So it's star 6 from our end
15 for everyone. Then we will come out of lecture mode to
16 hear callers who wish to speak and vote. We will do
17 that following the presentation of reports and motions.
18 At that time, unless callers wish to speak, please star
19 6 your telephones. And we will be repeating this
20 throughout Convocation as necessary.

21 I have a list of people on the phone.
22 I'll just review it again in case anyone else has
23 joined us. Peter Beach?

24 MR. BEACH: Present.

25 TREASURER MINOR: I think I'll call out

1 the list -- I'll call out the list. Okay. Peter
2 Beach. Vern Krishna? Janet Leiper?

3 MS. LEIPER: Present.

4 TREASURER MINOR: Jeffrey Lem?

5 MR. LEM: Present.

6 TREASURER MINOR: Virginia MacLean?

7 MS. MacLEAN: Present.

8 TREASURER MINOR: Ronald Manes?

9 MR. MANES: Present.

10 TREASURER MINOR: Harvey Strosberg?

11 MR. STROSBERG: Present.

12 TREASURER MINOR: Sidney Troister?

13 MR. TROISTER: Present.

14 TREASURER MINOR: Cathy Strosberg?

15 MS. STROSBERG: Present.

16 TREASURER MINOR: Clay Ruby? I think

17 that's present. Gerry Swaye?

18 MR. SWAYE: Present.

19 TREASURER MINOR: Bob Armstrong. I have

20 to ask if anyone else is on the phone I didn't call.

21 Is there anyone else on the phone whose name I did not

22 call?

23 MR. KRISHNA: Vern Krishna. I'm not

24 sure if you called me.

25 TREASURER MINOR: Okay. I did earlier,

1 but I didn't hear a response. Thank you, Mr. Krishna.
2 Okay. We'll move on.

3 I just have a very short Treasurer's
4 report. I want to first mention our webcast on
5 compliance-based entity regulation. A free webcast
6 occurred on Monday, February the 8th. It was designed
7 to provide lawyers and paralegals with an opportunity
8 to learn more about compliance-based entity regulation
9 and to ask questions of task force members.

10 We had more than 843 registrants and it
11 resulted in a very dynamic discussion with more than
12 120 questions asked by those who tuned into the
13 webcast. So we are very pleased about that attendance
14 and level of interest.

15 The consultation paper is available on
16 the Law Society website and, again, I remind people who
17 are interested in commenting to provide submissions by
18 March 31st. For convenience and to help facilitate
19 feedback on the consultation paper there is an on-line
20 submission form. It's the first time we've used that
21 mechanism and we are again hoping that will enable us
22 to receive more feedback from interested parties.

23 It doesn't have to be only through that
24 mechanism. Any kind of submission will be gratefully
25 received. We hope the approach overall has been user

1 friendly and convenient and we look forward to the
2 comments on the paper.

3 Further to the announcement made on
4 February 9th regarding the review of family legal
5 services, the Ministry of The Attorney General and the
6 Law Society of Upper Canada will be receiving a report
7 from The Honourable Justice Annemarie Bonkalo on the
8 delivery of family legal services and whether it should
9 be expanded to include service provision by people who
10 are not lawyers. That would include paralegals, law
11 clerks and law students, for example.

12 Justice Bonkalo will consider whether a
13 broader range of legal service providers should be
14 allowed to handle those matters and, if so, under what
15 circumstances or what guidelines. Justice Bonkalo will
16 be asking for input on what type of legal services, if
17 any, could be handled by a broader range of providers
18 and how, again, they might be regulated and held
19 accountable.

20 The public is invited to provide
21 comments on the consultation document, which is on the
22 Ministry of The Attorney General website. The
23 consultation document asks for response by April 30th,
24 2016. There is also material on the review on our
25 website.

1 This month was Black History Month and
2 in honour of that, the Law Society and the Canadian
3 Association of Black Lawyers had their annual public
4 event. Lawrence Hill, well-known author of "The Book
5 of Negroes" discussed his latest book, "The Illegal".
6 The event was a great success. We, again, had a full
7 house in person and more than a hundred tuning in via
8 the webcast.

9 I had an opportunity this month to meet
10 with a number of law students and it was quite an
11 energizing experience for me and, again, very
12 reassuring. I believe our profession will be in good
13 hands in the future.

14 This week I attended an alumni
15 leadership luncheon at the University of Toronto
16 faculty of law and met with a number of students who
17 were very interested in regulation and what we do.

18 I also attended the Black Law Students
19 Association conference gala and brought greetings on
20 behalf of the Law Society. That is a very dynamic
21 cross-Canada organization and I was very happy to
22 have -- or to know that at least two of our Benchers
23 were quite involved in the moot competition that was
24 held; Ms. St. Lewis I think helped develop the problem,
25 and Ms. Papageorgiou was one of the judges, and they

1 were both very enthusiastic about the level of interest
2 and ability shown by these students. They're a very
3 good networking organization also.

4 Today at four-thirty will be the launch
5 of Flip Your Wig, and that is, of course, a fundraiser
6 for a number of non-profit organizations working in the
7 justice sector. Regrettably, I'm not going to be able
8 to be here for it because I had a previous commitment
9 to attend the Lincoln Law Association's annual general
10 meeting and speak at that. I'm looking forward to it.
11 I know our CEO, Robert Lapper, will be going to give
12 greetings on my behalf and Convocation's behalf, but I
13 encourage Benchers to attend to show our support to the
14 justice partners.

15 And the photograph we had this morning
16 with all our wigs on and flipping them may or may not
17 be available. I'm not sure, but I'll look forward to
18 seeing that photograph eventually.

19 Convocation will not be meeting again
20 until April the 28th, so I want to highlight just a few
21 of the upcoming events and activities.

22 March 8th is International Women's Day.
23 This year's discussion will focus on violence against
24 women, whether a cultural shift is underway, and how we
25 can create further possible change -- positive change,

1 I should say. The discussion will bring together
2 speakers representing historical, indigenous, criminal
3 justice, on campus and activist perspectives. Our
4 Bencher, Teresa Donnelly, will be moderating and a
5 reception will follow the discussion.

6 From March 9th to 12th, the semi-annual
7 Federation of Law Societies meeting will be held in
8 Banff. I will be attending that, along with the CEO,
9 and it is likely some Benchers will also be attending.
10 It is not a conference this year. It is going to be
11 restricted to business.

12 On March 17th, Rob Lapper and I will be
13 attending the Barreau du Québec meeting of council. On
14 March 18th I'm going to the Peterborough Law
15 Association annual general meeting. March 22nd is our
16 International Francophone event, and there are other
17 events planned in March and April and you will be, of
18 course, getting updates.

19 In April there will be the portrait
20 unveiling of Treasurer Tom Conway, and on April 27th a
21 reception for newly licensed paralegals.

22 I would like to turn to the agenda next.
23 Before doing so, you were, I think, advised that it
24 could be a fairly long agenda. Of course, this always
25 depends on numbers of questions and comments, but

1 assuming that may be the case, we have asked lunch to
2 be restricted to an hour in the event that we need to
3 return. So that's where we are and let's start with
4 the consent agenda.

5 CONSENT AGENDA:

6 TREASURER MINOR: Does anyone have any
7 comment or can we pass the consent agenda? Moved by
8 Barb Murchie and seconded by Raj Anand. Any comments
9 on the phone?

10 In that case, Convocation approves the
11 consent agenda at tab 2. All in favour? Carried.

12 Next, Mr. Mercer with the Professional
13 Regulation Committee Report.

14 PROFESSIONAL REGULATION COMMITTEE

15 REPORT:

16 MR. MERCER: I have a number of matters
17 to address. The first are proposed amendments to the
18 rules of professional conduct, and they are found at
19 tabs 3.1 and 3.2.

20 The first is with respect to conflicts
21 of interest, and the most effective way of you
22 addressing that is to turn your attention to tab 3.1.2,
23 which is the clean version. It is preceded by the
24 black line version, if you prefer to look at that.

25 It's worth understanding briefly the

1 context for the amendment. First, it is useful to be
2 clear that with respect to conflicts of interest, in a
3 practical sense we are a co-regulator with the courts.
4 The courts, as has been made clear in Cunningham and
5 McKercher deal with matters before the courts in
6 ensuring proper administration of justice and the
7 courts have responsibility obviously for fiduciary law,
8 we have responsibility for the conduct of lawyers, and
9 those overlap greatly with respect to conflicts of
10 interest.

11 In 2013 the Supreme Court of Canada
12 decided the McKercher case, which clarified to some
13 extent debates that had followed after the Neil case in
14 2002, and I'm reminded of Mr. MacKenzie's article, How
15 Fuzzy Can a Bright Line Be?

16 After the McKercher decision, it became
17 necessary to amend the commentary under the rule to
18 deal with the change of law in McKercher, and the
19 reason I started by saying that co-regulation is
20 significant here is the approach that has been taken is
21 not to try to set different standards for conflicts of
22 interest, not to try to differently regulate the
23 profession than the courts would do before the courts.

24 And so what we have done is set out a
25 commentary which is quite different than the previous

1 commentary, but intends to follow the structure of the
2 concept of a conflict of interest first by describing
3 the nature of a conflict, the test to be applied, the
4 issues in play, and then in a series of commentary
5 changes, and I should say the only changes are to
6 commentary, are to deal, just as the definition of a
7 conflict of interest does, with the meaning of a
8 personal interest conflict, with the meaning or
9 substance of a current client conflict, with the
10 substance of a former client conflict, the substance of
11 duties to other -- others than former clients and
12 current clients giving rise to a conflict, and then to
13 help the reader and adjudicators deal with other duties
14 which are at play when dealing with conflicts,
15 commitment to client cause, candour, confidentiality,
16 and the issue of consent.

17 The intent and whether it is fulfilled
18 sufficiently, I'm confident it won't be, but the intent
19 to try to bring a degree of order and a degree of
20 clarity, so that a lawyer facing an issue is able
21 actually to discover within the commentary what part of
22 the analysis they should be considering, either a
23 former client situation or a current client situation,
24 whatever.

25 The last point that I would want to

1 make, because I know it's of particular interest to
2 some, is the current client issue. McKercher and Neil
3 dealt with current client conflicts, when can you be
4 adverse to a current client, and the court was clear
5 there were two tests, either of which could disqualify
6 a lawyer, substantial risk and material impairment of
7 representation, or what was called the Bright Line
8 Rule. And what we tried to do with respect to the
9 Bright Line Rule is describe in a way which, with as
10 much fidelity to what the court has said as we can,
11 recognizing that some of it will develop over time, and
12 we haven't taken that in the commentary in an attempt
13 to predict what the evolution of the case law will be
14 before the courts, before the tribunal.

15 So Mr. Schabas seconds and I move the
16 amendment to this rule.

17 TREASURER MINOR: Any questions or
18 comments in the room? None. Any questions or comments
19 from the phone? Okay. In that case I'll call the
20 vote.

21 All in favour? Thank you. Any opposed
22 on the phone? Motion carried.

23 MR. MERCER: That was anticlimactic.

24 MR. SCHABAS: A measure of our great
25 trust.

1 MR. COOPER: Those dry meetings are
2 worth it.

3 MR. MERCER: The second amendment also
4 comes from the amendments to the model code passed by
5 the Federation of Law Societies in 2014, the first was
6 as well and you will hear more in coming months of
7 fascinating rule changes.

8 This one is with respect to
9 incriminating evidence, and you'll find that most
10 conveniently at tab 3.2.1, and the rule itself is rule
11 5.1-2A, and the rule provides that a lawyer shall not
12 counsel or participate in the concealment, destruction
13 or alteration of incriminating physical evidence or
14 otherwise act so as to obstruct or attempt to obstruct
15 the course of justice.

16 I'm told by those who practice in this
17 area that this is a reflection of the law to guide
18 lawyers. The commentary defines physical evidence
19 broadly, but makes clear that it doesn't include
20 solicitor/client privileged information or information
21 the lawyer reasonably believes is available to the
22 authorities.

23 Paragraph 2 makes it clear that we're
24 dealing with inculpatory or possibly inculpatory
25 evidence. Commentary 3 makes clear that lawyers are

1 not required to take possession of physical evidence, a
2 statement that, again, not practising in the area,
3 becomes clear to me as a very useful piece of guidance.

4 Then the guts, it seems to me, are in
5 paragraph 3 after the statement that a lawyer is not
6 required to take possession, and that is how should the
7 lawyer think about this, what are the options. The
8 commentary doesn't tell the lawyer what to do because
9 these are complicated matters, but, most importantly,
10 the lawyer is cautioned, guided, that one of the things
11 a lawyer might do in this difficult situation is take
12 counsel, take independent counsel of their own
13 obligations and then some detail is set out.

14 Then assuming that the lawyer has
15 decided to take independent advice, paragraphs B, C and
16 D set out the ways that are options for dealing with
17 the physical evidence.

18 Paragraph 4 makes clear that
19 solicitor/client privilege, which may include the
20 client's identity, are to be protected, and I won't go
21 further than that.

22 This, as a rule, you'll understand going
23 back over a decade has previously been a controversial
24 area. With the Federation's model code change and
25 consultation and work within the committee, it seems

1 that we're at a point where all concerned are
2 comfortable that this is a rule that reflects the law
3 and properly guides lawyers to options, particularly
4 advice from those who are expert. So I move, seconded
5 by Ms. Richer.

6 TREASURER MINOR: Thank you. Any
7 questions or comments in the room? I have Mr.
8 MacKenzie on the list. Any others? Any questions or
9 comments on the phone to put on my list? Okay.
10 Hearing none. Okay, Mr. MacKenzie.

11 MR. MacKENZIE: Thank you, Treasurer. I
12 wanted, if I could, to commend the committee and the
13 Federation for the work they've done, both on this
14 conflict of interest issue and physical evidence issue.
15 These are vast improvements to the rules as they were
16 previously. They're modernized, they're more specific,
17 they provide lawyers with more guidance, and I will
18 support this amendment as I supported the amendment on
19 conflicts of interest.

20 I did want to, if I may, identify some
21 further work for the committee to do over the years on
22 both issues. I think the Supreme Court of Canada's
23 standard in the McKercher case continues to be more
24 vague than it should be. What is called a Bright Line
25 that a lawyer must not act directly adverse to the

1 immediate legal interests of a current client is not
2 really a bright line at all because it contains the
3 exception recognized in paragraph 7 of the commentary,
4 which is exceptionally the Bright Line Rule does not
5 apply in circumstances in which it is unreasonable for
6 a client to expect that the client's law firm will not
7 act against the client in unrelated matters. And
8 there's very little guidance, indeed there's no
9 guidance in the rule and very little guidance in the
10 Supreme Court of Canada's decision as to in what
11 circumstances that exception, that unreasonableness
12 exception will apply.

13 The case law is going to evolve, of
14 course, and the rule should evolve with it, perhaps in
15 advance of it, but I do think it would be useful to
16 members of the profession generally to spell that out
17 in due course.

18 As for the physical evidence rule, this
19 is something we addressed or attempted to address about
20 a dozen years ago, unsuccessfully, in the wake of the
21 Bernardo and Ken Murray case. We had a special
22 committee that was struck that included criminal
23 defence lawyers and crown attorneys. It turned out to
24 be just too divisive and the Canadian Bar Association
25 and we at the Law Society decided at that stage that

1 the problem doesn't arise very often and that it was
2 best to leave the status quo as it was.

3 This is commendable work that the
4 Federation and our committee have done and, again, a
5 vast improvement. It deals with criminal cases only.
6 I was interested in reading the definition of physical
7 evidence in paragraph 1 of the commentary, which makes
8 it very clear that the rule is confined to criminal
9 investigations, crimes, criminal prosecutions. I think
10 in the future it would again be helpful to the
11 profession to have similar guidance provided in the
12 case of quasi-criminal offenses and civil litigation,
13 because similar issues can arise; for example, where a
14 company that isn't threatened with litigation and isn't
15 actually in litigation may reasonably anticipate that
16 litigation will follow and may be tempted to destroy
17 documents, and physical evidence includes documents.

18 Similarly, there will be issues arising
19 in the quasi-criminal context under the Securities Act,
20 the Environmental Protection Act, the Competition Act,
21 and I, for one, would find it useful if in due course
22 you were able to spell out and provide more guidance.

23 Having said all that, I commend the
24 committee and the Federation for the very valuable work
25 that's been done in this area and I will support the

1 proposed amendments.

2 TREASURER MINOR: Thank you, Mr.
3 MacKenzie. I had asked if there were any further
4 questions or comments on the phone. I'll ask again
5 just in case.

6 Hearing none, then I'll call the vote.
7 All in favour? Any opposed on the phone? Any opposed
8 on the phone? Okay. Thank you. Motion carried.
9 Next.

10 MR. MERCER: Third issue to address is
11 at tab 3.3 of your materials. We have -- this matter
12 came before you previously and since then has been
13 considered again by Paralegal Standing, as well by the
14 Tribunal Committee and by the Professional Regulation
15 Committee, and all three committees have considered, as
16 I've said, the proposal and are in agreement with it.

17 You'll recall that the issue is that
18 licensees can be suspended for non-cooperation with
19 investigations, with failure to comply, for example,
20 with the by-laws in respect of records, and it is
21 common for an order to be made that the licence be
22 indefinitely suspended until there is compliance.

23 In some cases, and the report says that
24 five or seven a year would be typical, we find after a
25 couple of years that the indefinite suspension is

1 beginning to look like an inevitable indefinite
2 suspension in that the licensee does not intend to or
3 be able to come into compliance. So the question
4 becomes what to do about that.

5 What is moved is that a process be
6 approved in principle to permit summary revocation of a
7 licensee's licence where the licence has been
8 indefinitely suspended for at least two years and a
9 request for legislative change to permit this as would
10 be required.

11 The details in terms of notice, the
12 recommendation is made out of PRC, Professional
13 Regulation Committee, that this be part of the order in
14 an indefinite suspension order. For those who are now
15 suspended and may have been for some years, perhaps
16 longer, a very different mechanism would have to be put
17 forward. As well, it's clear from the report that
18 PRD would take into account circumstances at the time
19 that are brought to their attention.

20 If, for example, as a matter of mental
21 illness the licensee was not able still to comply,
22 there would be legitimate reasons to be considered.
23 What is put before you now is not all of that. The
24 report deals with that to give you a comfort that those
25 matters are contemplated and have been discussed. What

1 is before you is the motion to approve, in principle,
2 such a process and to seek the legislative authority to
3 implement it. And I so move and Mr. Schabas seconds.

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

6 MR. GALATI: Would this also apply to a
7 scenario where the licensee is in no position to view
8 the suspension and it's still in the courts after two
9 years?

10 MR. MERCER: No. It doesn't say that,
11 and I'm confident that the suspension is being
12 challenged as a matter of law. It's actually not
13 intended to deal with that situation.

14 TREASURER MINOR: Mr. Wright.
15 Mr. Wright, can you go down to the podium, please.

16 MR. WRIGHT: Paragraph 54 does
17 contemplate a notice provision. In order to save the
18 legislature having to amend the Act twice, though, why
19 don't we put a notice provision right into paragraph
20 39A?

21 MR. MERCER: The notice provision, it
22 would seem to me, would, in our system, be part of the
23 rules of practice and procedure and be part of our
24 policies, as opposed to part of the legislation.

25 MR. WRIGHT: Okay, thanks.

1 TREASURER MINOR: Thank you. Any other
2 questions or comments in the room? On the phone? Any
3 questions or comments for Mr. Mercer on the phone?

4 Hearing none, call the vote. All in
5 favour? Thank you. Any opposed on the phone? Motion
6 carried.

7 MR. MERCER: With your leave, Treasurer,
8 I will leave the in camera matter to last.

9 TREASURER MINOR: Yes. We'll do all the
10 in camera matters together.

11 MR. MERCER: All right.

12 TREASURER MINOR: I believe you were
13 going to speak to some other matters, though.

14 MR. MERCER: I am indeed. We have four
15 matters for information. The first you'll find at tab
16 3.5, and you've already heard of the Federation model
17 code. One of the processes by which the model code is
18 changed from time to time by amendment by Federation
19 counsel includes a consultation process, and in January
20 the Federation issued a call for comment dealing with
21 four areas, as noted in paragraph 67 at tab 3.5.

22 One with respect to the guidance to
23 lawyer as advisor, lawyer giving legal advice. The
24 second with respect to lawyers engaging in or assisting
25 in dishonesty, fraud, crime or illegal conduct. The

1 third, a new rule, is proposed to guide lawyers who are
2 leaving law firms and the law firms that they are
3 leaving to ensure proper client conduct or conduct in
4 respect of clients when lawyers move around. The last,
5 a proposal with respect to a further change to
6 incriminating physical evidence.

7 I don't intend to parse any of these for
8 you. What I want Convocation and the profession to
9 know is that the Federation welcomes comment, input,
10 and that we will be apprised of the comment and input,
11 and so all stakeholders and licensees are encouraged to
12 participate in this process.

13 One of the observations which may be
14 made is this is a slow process from beginning to end,
15 given we have just passed some of the 2014 amendments.
16 We would encourage consultation and response by
17 everyone now so it doesn't have to be repeated later
18 unnecessarily.

19 TREASURER MINOR: It's clear that the
20 matter will come back to the Law Society of Upper
21 Canada for a vote from Convocation.

22 MR. MERCER: Just as just happened, we
23 amend our rules, we take or do not take the model code
24 as we consider appropriate, but the issues can be
25 usefully consulted in parallel, with any luck.

1 The next item is at tab 3.6. You heard
2 before about the issues arising from the call with
3 respect to the advertising and marketing rule, and a
4 working group has been established with the very
5 exciting name Advertising and Fee Arrangements Issues
6 Working Group. We expect the streets to be stormed
7 soon.

8 This is focused, as you know, on a
9 number of issues that are triggered mostly by personal
10 injury advertising, brokerage referral contingent fees,
11 but we know that other areas, particularly on the
12 advertising side, real estate being an example, have
13 some of these same issues.

14 So I'm simply reporting that a working
15 group has been struck to examine these issues and to
16 report to Convocation we hope in June.

17 The penultimate topic is the report of
18 the Complaints Resolution Commissioner, which is at tab
19 3.7. Mr. Morrow is our Complaints Resolution
20 Commissioner. He has a function which is in the nature
21 of a review function for the decisions of complaints
22 investigation, PID, and so his role is set out in that
23 respect under the by-law, and if you wish to see it,
24 it's at page 4 of his report.

25 Where a complainant is not satisfied

1 with how the Law Society has dealt with their
2 complaint, the Commissioner is entitled and required to
3 review that concern, look at the merits and look at the
4 process and determine what, if anything, should be done
5 with respect to the concern of the complainant.

6 And what I want to do briefly is just
7 give you an indication of the nature of the work that
8 is done. And at page 7 of the report itself -- there
9 are three different pages, mine says 66 of BoardBooks.
10 I printed yesterday, I don't know if that's still true.

11 I think it's of interest that, first of
12 all, you will see that there are, round numbers, 250
13 matters that are brought to the Commissioner in 2015.
14 If you think that we have nearly 5,000 complaints,
15 matters which are initiated within PRD, if you think
16 that we have 150, 175 matters that go to hearing, there
17 are 250 who are not satisfied with the PRD process
18 gives you some indication as to the -- our success, I
19 think, in handling matters.

20 What I think is significant from this
21 page is that very many of them are from Complaints
22 Resolution, so those which are seen by the Law Society
23 as the less -- the lesser regulatory risk are more
24 often seen by clients or complainants as being a
25 greater concern and they are more likely to be unhappy.

1 I don't think that tells us that anything has
2 necessarily been done wrong, but it tells us the
3 different perspectives, which I think is a useful thing
4 to note.

5 The second page that I would draw your
6 attention to is page 68, and this helps us understand
7 the nature of the work of the Commissioner. You'll see
8 that 64 matters were dealt with him in person, 38 were
9 done by teleconference and 58 were dealt with by
10 written materials, and this is the option of the
11 complainant.

12 Mr. Morrow spent an hour with us in
13 PRC at our last meeting and I think all members of the
14 committee will agree that his report is valuable and
15 showed his commitment to the work that he does. He
16 considers it particularly important that in our
17 regulatory system there be this mechanism for people
18 who are dissatisfied with the process to be heard and
19 to have the concerns addressed and to ensure that the
20 process can be challenged, can be held accountable.

21 Page 72 of BoardBooks, I think, is
22 useful as well because it shows how often service
23 issues, concerns about whether or not a client has been
24 served in the way they think they should have been, are
25 part of the manner of the work done. Integrity issues

1 are also significant and they are a bit of a grab bag.
2 The word integrity may be more stark than I think some
3 of the issues are and, of course, that is in the eye
4 the beholder, but I think the point which is raised by
5 this draft is this is one of the ways in which clients
6 in our system are able to bring to the attention of a
7 responsible person concerns they have about the service
8 they have received.

9 Finally, I simply give you the result of
10 this, which can be found at tab 73 for 2015, and of the
11 matters dealt with in 2015, you'll see that eight
12 percent are referred back to the Law Society for
13 reconsideration. It's not a matter necessarily where
14 the Law Society is told what to do, but rather, these
15 are raised.

16 I don't have immediately at my finger
17 what happened to each of those eight, but we know from
18 this year and prior years that, for the most part, the
19 executive director takes the recommendation of the
20 Commissioner to deal again with the matter in a
21 different way. Sometimes it's a process matter,
22 sometimes it's a matter of substance.

23 So that is my summary of the report of
24 the Commissioner and I think we should understand this
25 as Convocation as one of our regulatory mechanisms to

1 ensure that we have a system which is accountable,
2 which is transparent, and which allows an independent
3 party to look at the work of Investigations and
4 Complaints.

5 The -- unless there are any questions,
6 I'll go to the -- Mr. Falconer.

7 TREASURER MINOR: Mr. Falconer.

8 MR. FALCONER: Yes, having been party to
9 that excellent presentation by Mr. Morrow, I just want
10 to echo my support for his ongoing work, but I did want
11 to flag -- I did want to flag for Convocation what I
12 thought was very interesting in terms of the
13 Commissioner's enabling legislation.

14 It contemplates a review function, but
15 it also contemplates a mediator function, and perhaps
16 in the years in which that office was created, which I
17 understand had some controversy attached to it at the
18 time. I think it dates back to the June Callwood days
19 as a lay bencher. But the upshot is that that mediator
20 function has never developed and it was Mr. Morrow that
21 drew this to our attention. He has expressed a very
22 active interest in assisting us with that process.

23 I don't want to go into too much detail,
24 other than to say I think it's very important in
25 serving the public and trying to address what may well

1 be misunderstandings, miscommunications and simply an
2 unfamiliarity with our process that we have a mediation
3 option available to the Commissioner.

4 So I raise this for Convocation's
5 attention and I think that this is something that we
6 need to explore and, since it's in the statutory
7 mandate, develop.

8 TREASURER MINOR: Thank you, Mr.
9 Falconer. Are there any questions or comments from
10 those on the phone? Hearing none...

11 MR. MERCER: The last item for
12 information is the report of the Professional
13 Regulation Division, which is at tab 3.8. I can be
14 brief here because you very recently had the third
15 quarter report. This is the fourth quarter report,
16 it's a lot like the third quarter report.

17 But so you have some memory of exactly
18 what that means, I'll give you just a few page
19 references. The first is page 108, page 8 from the
20 report, and the point to take from this is the rate at
21 which complaints are coming into the Professional
22 Regulation Division is reasonably constant. You might
23 see it as a decline. It's just less than 5,000. It's
24 in the range of 4600 to 4900, depending which year
25 you're in.

1 So first point, stuff coming in is
2 pretty flat. The second point is inventory in the
3 division, and that's at page 110, and you will see that
4 despite what is coming in being flat, the number of
5 cases which are still within the division are
6 increasi0ng from a low of about 3,000 now to about
7 3500. So there is, despite the work not increasing,
8 the number of cases are increasing, indicating that
9 those cases are coming in faster than they're going out
10 and getting dealt with.

11 The two departments within PRD are
12 Complaints Resolution and Investigations, reflecting
13 the perceived severity of the matters.

14 You'll recall that Complaints Resolution
15 was called on to provide some assistance because
16 Investigations was falling behind with the result that
17 Complaints Resolution was now falling behind. You'll
18 see that at page 119. From a low of an inventory of
19 875, we're now up to an inventory of 1100. So again
20 falling somewhat behind.

21 Page 125 you will see the same picture
22 for Investigations. Investigations had a low again in
23 2014 of about 1100 inventory and now is approaching
24 1400.

25 So the message that I gave you with

1 respect to these matters last time was that we had an
2 issue to be addressed in terms of work coming in not
3 increasing, but the fact that the volume coming in is
4 not being processed, dealt with, at the rate it needs
5 to be.

6 I think that's the only point of
7 significance to take from the report in this quarter,
8 and so I'll end it, subject to any questions.

9 TREASURER MINOR: Thank you, Mr. Mercer.
10 Any questions or comments from the room? Any questions
11 or comments from the phone, from those on the phone?
12 Hearing none, thank you very much, Mr. Mercer.

13 I think we'll move slightly out of order
14 because your remarks are, I think, a good introduction
15 to the Audit and Finance Committee report. Mr. Wardle.

16 AUDIT AND FINANCE COMMITTEE REPORT:

17 MR. WARDLE: Thank you, Madam Treasurer.
18 So the committee report is found at tab 6 of BoardBooks
19 and you'll see there is a matter before Convocation for
20 decision which is found at page 192 of BoardBooks.

21 And the motion provides that Convocation
22 approve an amendment to the 2016 budget for
23 Professional Regulation to fund additional resources
24 for investigations and disclosure, and it really
25 follows directly from Mr. Mercer's report.

1 The rationale is set out in the
2 materials. We have a rising volume of complaints. The
3 funds are required for additional resources in the
4 Investigations Department, the disclosure unit and the
5 risk strategy department in 2016.

6 The financial impact of this is
7 estimated to be approximately \$500,000 for the current
8 year, 2016, and I think, if I read my writing, \$670,000
9 for the following year, which would essentially be the
10 first full year those resources would be deployed.

11 I want to indicate, first of all, that
12 this is effectively a hiring decision made by the Chief
13 Executive Officer to hire additional staff in these
14 areas, as I've just indicated. It's an operational
15 decision which does not require the approval of
16 Convocation, however, the funding for that decision
17 will come out of our reserves and will affect our
18 general fund balance and, as a result, under the by-law
19 that requires -- under our by-laws, that requires the
20 approval of Convocation.

21 So I'm not going to take much additional
22 time with this. It shouldn't be a matter of great
23 concern to Convocation. You'll see from the materials
24 that the general fund balance as at the end of 2015 is
25 estimated to be in the neighbourhood of \$26 million, so

1 it's well above the two month operational expenditure
2 minimum that we've set by our own policy, and these
3 funds are required to -- in connection with the
4 deployment of these resources.

5 So the motion is made by me, seconded by
6 Mr. Bredt. I would be happy to take any questions.

7 TREASURER MINOR: Okay. Any questions
8 or comments from those in the room? Any questions or
9 comments from those on the phone?

10 In that case I'll call the vote. All in
11 favour? Any opposed from the phone? Motion carried.
12 Thank you, Mr. Wardle.

13 TREASURER MINOR: Next we'll go back to
14 the order of the agenda. Paralegal Standing Committee
15 Report, Ms. Haigh.

16 PARALEGAL STANDING COMMITTEE REPORT:

17 MS. HAIGH: I'll take you to tab 4.1,
18 page 157 of your BoardBooks. The Paralegal Standing
19 Committee has one item for decision, and the motion is
20 that Convocation approve the amendment to rule 6.01(6)
21 of the Paralegal Rules of Conduct regarding Working
22 with Unauthorized Persons, which is set out in
23 paragraph 8.

24 This is a minor wording change mirroring
25 the recommendations from the Professional Regulation

1 Committee approved in January. The motion is moved by
2 myself and seconded by Susan McGrath.

3 TREASURER MINOR: Any questions or
4 comments about this motion from the room? Okay.
5 Mr. Evans.

6 MR. EVANS: Just to clarify, it refers
7 to paragraph 6 in the motion. You mentioned paragraph
8 8.

9 MS. HAIGH: You're right, it's 6.
10 Sorry, my mistake.

11 TREASURER MINOR: Thank you. Any other
12 questions in the room or from the phone? Okay. If
13 not, we'll call the vote.

14 All in favour? Any opposed on the
15 phone? Motion carried. Thank you very much, Ms.
16 Haigh.

17 We'll take our morning break right now.
18 Can we try to do that in about fifteen minutes or so.

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

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

21 TREASURER MINOR: If we could come to
22 order, please. Convocation has reconvened. We move
23 next to the Tribunal Committee Report, Ms. Murchie.

24 TRIBUNAL COMMITTEE REPORT:

25 MS. MURCHIE: Thank you, Treasurer. The

1 Tribunal Committee Report is found at tab 5, page 177
2 of BoardBooks. You'll see that there is a
3 recommendation that we discontinue the consent
4 resolution conference pilot project, and that was
5 approved as a pilot in January 2011 by Convocation.

6 Discontinuing the pilot project will
7 also require that we revoke rule 29 and amend rules
8 1-02 and 25-01 of the Rules of Practice and Procedure.

9 This issue has been to Paralegal
10 Standing, Professional Regulation and the Tribunals
11 Committee, and this is a joint recommendation of all
12 three committees to discontinue this pilot project.
13 It's really for two reasons.

14 The first is there's not been much
15 take-up, it's only been used twice since 2011. And,
16 second, because there's really a better or at least an
17 equivalent alternative.

18 So first of all, let me address what is
19 the consent resolution conference process. It's an
20 alternative to the regular investigation and hearing
21 stream. It allows for early resolution of a conduct
22 matter, not anything other than conduct. Not a
23 capacity matter, for instance, it's only conduct
24 matters, and it's a resolution by way of a settlement
25 conference held prior to the commencement of conduct

1 proceedings.

2 It's only available if the Law Society
3 is satisfied it has completed sufficient investigation
4 to fulfill its public interest mandate and if the
5 licensee has admitted the conduct allegations, and if
6 both sides are prepared to agree to either a joint
7 penalty or a range of penalties.

8 So the intent of this process was to
9 provide an early result for licensees and to
10 potentially result in a savings in investigative
11 discipline and tribunal resources.

12 So how did the process work? If the Law
13 Society and the licensee agreed that they wanted to use
14 this process, then the Proceedings Authorization
15 Committee was required to authorize the commencement of
16 conduct proceedings and request that it proceed by way
17 of a consent resolution conference, and that consent
18 resolution conference was conducted before a panel in
19 the absence of the public. The conduct application,
20 however, I should say, is public and the result is
21 public.

22 So the committees are recommending that
23 the pilot be discontinued. The first reason, as I
24 said, is there's not been much take-up. It's only been
25 used twice since 2011.

1 In terms of PRD, their experience with
2 it is that it's not turned out to be a process that
3 really saves investigation or discipline resources.
4 PRD isn't really in a position to consent to use this
5 process until it's done a reasonably thorough
6 investigation and the investigation would have to be
7 sufficient for PRD to understand the misconduct with
8 reasonable certainty.

9 So in its experiences, in its
10 experience, licensees have not been interested because
11 it's not really a diversion from the discipline process
12 and, also, they may not want a finding of misconduct
13 expedited.

14 The Tribunal has concerns about it
15 continuing. It's a process that is not well known and
16 not well used, although all licensees who are under
17 investigation are directed to the website that tells
18 how a complaint is resolved and the process that's used
19 and the process, the consent resolution process is set
20 out very clearly in that website.

21 The panels have generally been
22 unfamiliar with the process because it's not used, so
23 it requires ongoing education if it's to continue. The
24 rule is somewhat cumbersome and can be confusing, not
25 only to panels who haven't encountered the rule before,

1 but to licensees, particularly self recommended
2 licensees.

3 We did canvass the experience of a few
4 panel members that actually had an opportunity to deal
5 with this pilot project. There were a couple of
6 concerns, I'll just address them quickly. First of
7 all, there was concern about having some kind of an
8 early resolution alternative, and I'll turn to that in
9 a minute, and the second is there was concern that
10 there needed to be a diversion for mental health or
11 capacity matters, but this pilot project was not
12 designed to deal with mental health or capacity matters
13 and, indeed, the mental health strategy task force is
14 looking at the issue right now as to whether some
15 diversion may be appropriate.

16 The third, there was a concern that
17 there wasn't sufficient notice of it, that staff and/or
18 the adjudicators were just not sufficiently familiar
19 with it and that was the reason for the lack of
20 take-up, but staff of the Law Society advised that they
21 did consider the process on a number of occasions and
22 discussed it with the licensees and there just wasn't
23 the take-up.

24 We did have input from a defence counsel
25 who was involved in one of the two processes, and he

1 felt that the alternative that I will discuss right now
2 was preferable and more effective.

3 So the second reason to discontinue it
4 is that the committees believe there is a better
5 alternative, and that's the current prehearings
6 conference process. All parties are in a position to
7 ask for an early PHC, if it's appropriate. It's not
8 unusual in the current regime for there to be several
9 PHCs.

10 They can ask for and receive an
11 expedited hearing on the basis of an agreed statement
12 of fact and/or a joint submission on misconduct or on
13 penalty. The parties can request that the PHC
14 adjudicator also be the hearings adjudicator.

15 So the PHC process allows for early
16 resolution of conduct matters in a manner that works,
17 in a manner that's not cumbersome, and in a manner that
18 has been used a multitude of times under our rules.

19 So, Treasurer, the motion that I am
20 making, and seconded by Mr. Wardle, is on page 187 of
21 BoardBooks and it's a motion, you can see it there,
22 that Convocation amend the Rules of Practice and
23 Procedure - Hearing Division, made by Convocation on
24 March 12th, 2014, and amended by Convocation on
25 May 22nd, 2014, September 24 -- just a minute, before I

1 continue I better check something here.

2 I'm told that I should do the broader
3 motion that's at the -- it's page 177. Apologies,
4 Treasurer.

5 So I'm moving that Convocation
6 discontinue the Consent Resolution Conference pilot
7 project and revoke Rule 29 and amend Rules 1.02 and
8 25.01 of the Law Society Tribunal Hearing Division
9 Rules of Practice and Procedure, in accordance with the
10 motion that I just referred to at page 187 of
11 BoardBooks.

12 TREASURER MINOR: Thank you. And that's
13 seconded by Mr. Wardle.

14 MS. MURCHIE: Correct.

15 TREASURER MINOR: Okay, questions or
16 comments for Ms. Murchie in the room? Okay,
17 Mr. Falconer.

18 MR. FALCONER: I need to go to the
19 lectern.

20 TREASURER MINOR: It would be
21 preferable.

22 MR. FALCONER: I was just asking Ms.
23 Murchie -- through you, Treasurer, Ms. Murchie, some
24 clarification as to what the response was to the
25 concern that there was an absence of policy that would

1 have educated Tribunal members or, indeed, licensees as
2 to the nature of the pilot.

3 In other words, you said that that was
4 one of the concerns expressed, but I wasn't clear on
5 what the explanation was for the absence of a
6 delineated policy on the usage of the process and the
7 potential connection between the absence of delineated
8 policy and the lack of uptake. Could you comment on
9 that?

10 MS. MURCHIE: If I said there was a
11 policy about educating people on it, then I misspoke
12 myself because, in fact, what was done was we checked
13 with the PRD department and we were told that staff
14 advised that they did consider and did discuss the use
15 of the process on a number of occasions, that they were
16 well aware of the process and that they considered it
17 and discussed it with licensees, but that there just
18 wasn't the interest or the take-up in it, particularly
19 because there was an alternative that was just as good,
20 if not better.

21 And, in fact, when you think about it,
22 it makes sense to some extent because licensees who are
23 represented, it was often found that counsel wanted
24 better disclosure and a fuller understanding of the
25 investigation that had been conducted and this was

1 available more readily under the PRC alternative that
2 was -- that I described.

3 In terms of the licensees, they were all
4 directed to the website, and I checked it this morning
5 and the -- this pilot project, the consent resolution
6 conference, is described very clearly in the section
7 that's set out under, you know, what to do when there's
8 a complaint about you. So it's there.

9 I mean, I can't promise you that every
10 licensee read it, but that's the information we have as
11 to attempts to use it and what the experience was.

12 TREASURER MINOR: Any further questions
13 or comments from those in the room? Questions or
14 comments for Ms. Murchie from those on the phone? In
15 that case I'm going to call the vote.

16 All in favour? Any opposed on the
17 phone? Okay, carried. Thank you very much, Ms.
18 Murchie.

19 And then we'll move to the Human Rights
20 Monitoring Group request under the Equity Committee
21 Report section, Mr. Schabas.

22 EQUITY AND ABORIGINAL ISSUES COMMITTEE

23 REPORT:

24 MR. SCHABAS: Thank you, Treasurer. The
25 Human Rights Monitoring Group Report and motions are

1 found at tab 7.

2 There are four interventions proposed
3 this month, two relating to China involving, in one
4 case, the detention of a human rights lawyer and the
5 disappearance of another. One involving Honduras,
6 which arises out of the Day of the Endangered Lawyer,
7 the international event in which Honduras was singled
8 out for particular concern. It was the country where
9 86 legal professionals have been murdered in the last
10 five years and we're proposing a public statement come
11 from the Law Society supporting the outcry about that.

12 And the final one relates to Lesotho, in
13 which five lawyers have been subject to harassment,
14 threats and intimidation by government forces for
15 defending soldiers accused of plotting a mutiny. Just
16 by way of an update to that, one of the lawyers has
17 since been arrested on perjury charges relating to his
18 defence of the soldiers, and has had his house and car
19 fired upon, and we are proposing statements and letters
20 of concern be issued with respect to that matter as
21 well.

22 So the interventions, the letters are
23 found at tab 7.1 to 7.4. Moved by me. I'd ask
24 Mr. Falconer if he could second it.

25 MR. FALCONER: I second.

1 TREASURER MINOR: Thank you. Did you
2 want to present more, Mr. Schabas?

3 MR. SCHABAS: No, I don't propose to go
4 into detail. It's all in the material.

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

8 In that case I'll call the vote. All in
9 favour? Any opposed on the phone? Thank you very
10 much.

11 MR. SCHABAS: Thank you. Treasurer, if
12 I might, just as a point of information, there are a
13 number of responses that we have been receiving to our
14 interventions, which are at 7.2.

15 TREASURER MINOR: Thank you very much.
16 That completes the public portion of our meeting today.
17 So we will be concluding there and moving into in
18 camera.

19 --- Whereupon the proceedings adjourned at 11:26 a.m.

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