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CONVOCATION

PUBLIC SESSION

THURSDAY, MAY 26th, 2016 - 9:00 a.m.

OSGOODE HALL, TORONTO

1 CONVOCAATION ATTENDANCE

2 Treasurer - Janet Minor

3

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

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

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1 --- Upon commencing at 10:00 a.m.

2 TREASURER MINOR: Good morning,
3 everyone. Welcome to Convocation. A special welcome
4 to those joining us via the public webcast today.

5 I'd like to review the instructions for
6 those participating by phone. Once we determine who is
7 on the phone, we will be placing those calling into
8 what we call lecture mode, so from our end, that means
9 we are muting all callers. Once muted, they will be
10 able to hear the meeting, but can't speak. Then we
11 will come out of lecture mode to hear speakers who wish
12 to speak and vote, and we will do that following
13 reports and motions.

14 So unless there are callers who wish to
15 speak, please star 6 your telephones, as we have done
16 in the past, and we'll repeat this throughout
17 Convocation as necessary.

18 Can I go to the list of those people who
19 are on the phone, please. John Callaghan?

20 MR. CALLAGHAN: Present.

21 TREASURER MINOR: Thank you. Teresa
22 Donnelly?

23 MS. DONNELLY: Present.

24 TREASURER MINOR: Jeffrey Lem?

25 MR. LEM: Present.

1 TREASURER MINOR: Jan Richardson?

2 MS. RICHARDSON: Present.

3 TREASURER MINOR: Clayton Ruby? Ron

4 Manes?

5 MR. MANES: Present.

6 TREASURER MINOR: Judith Potter?

7 MS. POTTER: Present.

8 TREASURER MINOR: Is there anyone else

9 on the phone?

10 MR. LAWRIE: Brian Lawrie.

11 -- TREASURER'S REMARKS:

12 TREASURER MINOR: Thank you. Anyone

13 else? Okay, thank you.

14 We have a number of guests who will be

15 attending Convocation later this morning after the

16 break. We will be having Claudia Prémont, who is the

17 bâtonnière du Québec, and she will be addressing

18 Convocation later on. She will be accompanied by Lise

19 Tremblay, who is directrice général of the Barreau du

20 Québec.

21 We will also be having Paul Le Vay, who

22 is representing the Association des juristes

23 d'expression française de l'Ontario. François Baril,

24 who is the president of AJEFO, was unable to attend,

25 Paul Le Vay is attending in his place.

1 We've also invited Kathleen Waters,
2 president and CEO of LawPro, to join us for lunch
3 today. And I'll talking about them later on at lunch.

4 First I'd like to give a status update
5 with respect to the Professional Development and
6 Competence Committee's proposed enhancements to the
7 lawyer licensing process. They were reported for
8 information to April Convocation with the intent of
9 soliciting input from the profession.

10 The committee, having benefited from the
11 input received to date, has decided to address and
12 respond to concerns raised as appropriate as well as
13 continue to receive and assess any additional input
14 over the coming months. Accordingly, the committee
15 plans to consider these enhancements in conjunction
16 with its assessment of a Pathways Pilot Project, which
17 is scheduled to commence in September 2016. As a
18 result, the licensing processing changes that were
19 discussed in the April report to Convocation will not
20 be implemented for the 2017, '18 licensing year.

21 My engagement report is available for
22 information. I would like to mention a few highlights.

23 I have met with many of our stakeholder
24 groups, including the Treasurer's Liaison Group on
25 May 2nd and the Early Careers Roundtable on the 9th.

1 I also initiated two new roundtables;
2 one with in-house corporate counsel and the other with
3 law students on May 10th and 17th respectively. These
4 new roundtables were very well received and provided an
5 excellent vehicle for discussing some of our current
6 initiatives.

7 At all the meetings I highlighted three
8 topics for discussion, the mental health strategy, the
9 proposed changes to the licensing process and
10 compliance-based entity regulation. Of course, we also
11 discussed any other issues that the roundtable would
12 seek to have either information on or make comment on.

13 I would like to thank all those Benchers
14 who participated, particularly Isfahan Merali, Teresa
15 Donnelly, Barb Murchie, Malcolm Mercer and Howard
16 Goldblatt, who were instrumental to the success of
17 these meetings.

18 On May 13th I hosted the Treasurer's
19 Dinner for the Federation of Law Associations' spring
20 plenary. Many Benchers attended, there was quite a
21 good representation, and participated on some of the
22 panels and discussion. I also spoke at the Wellington
23 Law Association Annual General Meeting on May 5th, and
24 the County of Carleton Solicitors Conference on
25 May 14th.

1 Tomorrow I'll be -- I'm looking forward
2 to attending the Lakehead University's inaugural
3 graduation from the Bora Laskin Law School, and last
4 night we hosted our annual awards ceremony. I would
5 like to congratulate the award winners.

6 This year's recipients are, Law Society
7 Medalists, Jennifer Babe, Ronda Bessner, Ronald Caza,
8 Orlando DaSilva, David Estrin, Linda Gehrke, Katherine
9 Laird, Professor Errol Mendes, Peter Rosenthal and
10 Professor Frederick Zemans.

11 The Lincoln Alexander Award was received
12 by Mary Lou Dingle; the Laura Legge Award by Lisa
13 Borsook, and the William J. Simpson Distinguished
14 Paralegal Award by John Tzanis; and last but not least,
15 the recipient of the inaugural J. Shirley Denison
16 Award, Jenny Vuay Quan.

17 I know that I speak for all members of
18 Convocation when I say that we are honoured to call
19 these recipients our professional colleagues. We thank
20 them for their contributions to the profession, to the
21 lives of Ontarians and for, again, demonstrating to the
22 public the excellence in our professions.

23 I'd also like to thank our former
24 Bencher, Constance Backhouse and Bill Simpson, who
25 assisted with the presentation of the Denison Award and

1 the William J. Simpson Distinguished Paralegal Award.
2 Congratulations to all of the award winners.

3 I'm also pleased to announce at
4 Convocation today the individuals who will be receiving
5 the degree of Doctor of Laws, honoris causa from the
6 Law Society of Upper Canada at the upcoming call to the
7 bar ceremony this coming June and one in September.

8 The 2016 recipients are Mark Persaud,
9 who will receive his honorary doctorate in London at
10 the London call; Her Excellency Mary Robinson, former
11 president of Ireland, the morning of June 20th in
12 Toronto; Richard W. Pound, June 21st, morning of,
13 Toronto call; David Lepofsky, June 21st in the
14 afternoon; and The Honourable Susan Lang,
15 September 23rd call. I'm very pleased to have this
16 outstanding group of individuals receive Honorary
17 LL.D.s.

18 I'm also very pleased to announce that
19 the honourable Jody Wilson-Raybould, Minister of
20 Justice and Attorney General of Canada, has accepted
21 our invitation to be called to the bar pursuant to
22 Section 1 of the Barristers Act. The minister will be
23 called at the Ottawa ceremony on June 15th, 2016, and
24 she will address those present.

25 As well, the Honourable Madeleine

1 Meilleur, Attorney General of Ontario, has accepted our
2 invitation to be a special guest and a keynote speaker
3 at a call ceremony scheduled for June 20th in the
4 afternoon.

5 I'm pleased to advise Convocation that
6 Dianne Corbiere has been chosen as a member of the
7 Federation of Law Societies' working group on the Truth
8 and Reconciliation Commission's calls to action, which
9 were addressed to the Federation of Law Societies.
10 Diane will join six other individuals from various law
11 Societies across Canada to discuss recommendations,
12 facilitate work amongst the societies overall looking
13 at a process for developing a response to the calls to
14 action.

15 In addition to support from the
16 Federation, senior advisory support will be provided by
17 Grant Wedge, our Executive Director of Policy, Equity
18 and Public Affairs, and Fanie Pelletier, Equity Officer
19 with the Barreau du Québec.

20 Our appeal -- or the appeal in the TWU
21 matter will be heard by the Court of Appeal June 6th to
22 the 8th.

23 This weekend Doors Open will include
24 part of the Bencher premises in Osgoode Hall, so will
25 be open to the public. There are volunteers from staff

1 and Benchers to assist in the guiding around the
2 premises. I think, as I say, I will be exhibit 1 in
3 this room on Sunday afternoon.

4 So if you know family, friends,
5 colleagues who are interested in seeing these premises,
6 which otherwise aren't open to the public, please let
7 them know it's this weekend. Last year I believe there
8 were something like 9,000 people who went through
9 Osgoode Hall. So a very positive event, I think, in
10 terms of letting people know what's here.

11 We have a rule of law event on climate
12 justice on June the 20th. As I noted, Mary Robinson
13 will be accepting an honorary doctorate from us in the
14 morning, and she agreed to participate in a public
15 event at six o'clock on June the 20th, and that will be
16 webcast, in addition to, of course, being available for
17 those people who can to attend in person.

18 June 23rd will be the annual Aboriginal
19 History Month Celebration and June 28th the Pride
20 Celebration.

21 As of the close of nominations on May
22 the 12th, there are four candidates for the office of
23 the Treasurer for the forthcoming term. Raj Anand,
24 Howard Goldblatt, Susan McGrath and Paul Schabas. The
25 new Treasurer will be elected at the June 23rd

1 Convocation and Benchers are reminded that the advance
2 poll for the election opens June the 8th.

3 The secretary, that is, Jim Varro, will
4 be providing more information about the advance poll as
5 the date approaches, so please watch for those
6 communications.

7 Finally, I would like to offer our
8 congratulations to Julia Bass. As many of you know,
9 she has decided to leave the Law Society at the end of
10 this month after fifteen years in her role as policy
11 counsel in our policy secretariate. We want to express
12 our very best wishes to her for next steps in what has
13 been a very fine career and thank her for all the
14 support she has provided to Convocation. She's invited
15 to lunch and I'm going to be saying more there, but I
16 wanted to say it publicly in Convocation.

17 -- Applause.

18 -- CONSENT AGENDA:

19 TREASURER MINOR: We're now ready to
20 turn to the agenda. First the Consent Agenda. Anyone
21 have any issues with the Consent Agenda? Any
22 questions? Any questions on the phone? Any questions
23 or concerns about the Consent Agenda?

24 In that case, moved by Sidney Troister,
25 seconded by Catherine Strosberg, that Convocation

1 approve the Consent Agenda set out at tab 2 of our
2 materials. All in favour? Any opposed? Carried.

3 Next we'll have the report of the Task
4 Force on Compliance-based and Entity Regulation.
5 Mr. Earnshaw.

6 -- REPORT OF THE TASK FORCE ON
7 COMPLIANCE-BASED ENTITY REGULATION:

8 MR. EARNSHAW: Thank you, Treasurer.
9 The report of the task force can be found at tab 3,
10 page 21 of BoardBooks.

11 I'd like to begin by extending some
12 thanks, first of all, to the task force members who are
13 listed at page 21, and also to the staff who supported
14 the work of the task force diligently and with hard
15 work throughout.

16 I'd like to specifically single out two
17 persons; first of all, my co-chair, Mr. MacKenzie, who
18 stepped in when I was unavailable earlier this month to
19 present the penultimate draft of this report to
20 committee; and, secondly, to Margaret Drent, who has
21 been tireless in her efforts to support me and the task
22 force since it was struck last June.

23 I'd also like to thank LawPro for the
24 participation of Kathleen Waters and Daniel Pinnington,
25 who attended all of our meetings and contributed

1 greatly.

2 As you know, the task force was struck
3 last June and assigned the catchy title,
4 Compliance-Based Entity Regulation Task Force, which
5 we've struggled with. You'll see on the website that
6 the page is called Better Practices.

7 Our mandate was to study and make
8 recommendations on options for proactive regulation of
9 entities or organizations through which lawyers and
10 paralegals provide legal services. The task force
11 understood this to cause us to build upon work that had
12 already been commenced at the Law Society, particularly
13 under the direction of the Professional Regulation
14 Committee, to study literature and experiences across
15 Canada and worldwide with others who are looking at
16 compliance-based entity regulation or, indeed, have
17 adopted it.

18 We also understand that we were to
19 collaborate with other law societies across Canada who
20 were looking at this at the same time as ourselves and,
21 of course, we prepared a discussion paper.

22 I don't want to spend too much time on
23 process, but I do want to bring you up-to-date since my
24 last report, which was made December 4th of last year,
25 at which time I announced that the discussion paper

1 would be released in January. It was, in fact,
2 released January 13th and we embarked upon the
3 consultation phase of our study.

4 Now, that consultation was not limited
5 to just the dissemination of the discussion paper, but
6 included a webcast presentation on February 8th and
7 outreach initiatives by the Treasurer and members of
8 the task force. More detail about these outreach
9 initiatives can be seen at tab 3.1, commencing at page
10 42, of BoardBooks.

11 Responses to the call for input were
12 requested by March 31st. There was considerable
13 response, which is summarized at tab 3.4. The Law
14 Society received 97 responses to the call for input
15 paper from individuals and legal organizations. 77
16 respondents were individuals and the remainder were
17 legal organizations. And by my rudimentary math, that
18 makes 20 legal organizations, but I noticed when I
19 looked at this last evening that, in fact, there were
20 21, so I don't know where the mathematical problem is,
21 but we did have a good response.

22 Individual respondents were asked
23 whether their responses could be made public, and those
24 who agreed have had their responses posted on the
25 Better Practices page for anyone who wants to read them

1 completely, as opposed to merely relying on the summary
2 of the call for input responses which appears at tab
3 3.4.

4 Similarly, the 21 legal organizations
5 who provided submissions in response to the call for
6 input have had their papers posted at that same
7 location, the Better Practices page. The reference to
8 it is in the materials and if you're interested, you
9 can read it entirely for yourself. The summaries,
10 however, I think you will find to be quite helpful.

11 On behalf of the task force, I would
12 like to acknowledge the many helpful submissions and
13 comments we received during these outreach initiatives
14 and from respondents to the call for input. The
15 comments we received have greatly assisted the task
16 force in formulating its recommendations as they appear
17 in our report.

18 The task force's work has been
19 undertaken in the context of tremendous change for the
20 Ontario legal professions. The Law Society was one of
21 the first regulators in the world to introduce
22 paralegal regulation approximately ten years ago.
23 Since that time, globalization, downward pressure on
24 the cost of providing legal work, an increasingly
25 complex environment and the proliferation of new ways

1 of providing legal services are creating not only new
2 opportunities for the public to access legal services,
3 but also new challenges for regulators. Existing
4 regulatory approaches do not fully reflect significant
5 changes in practice over the decades.

6 That brings me to the motion itself,
7 which we'll find at page 25 on BoardBooks. The motion
8 is that Convocation approve, A, that the Law Society
9 seek an amendment to the Law Society Act to permit the
10 Law Society regulation of entities through which legal
11 services are provided and, B, the development of a
12 regulatory framework for consideration by Convocation,
13 based on the principles of compliance-based regulation
14 set out in the report.

15 I'd like to begin, then, with the entity
16 regulation portion of the motion, part A. For those
17 who are interested in reading in greater depth, you
18 will find that our recommendations and studies with
19 respect to entity regulation appear at paragraphs 18
20 through 36 of the report, but I would suggest that you
21 look at the executive summary, which you'll find at
22 page 23, I believe, where you'll see the following.

23 With the advent of paralegal regulation
24 and legislative change in 2007, the Law Society began
25 regulating the provision of legal service and the

1 individuals who provide them, as well as those who
2 practice law. The regulation of entities is consistent
3 with this approach.

4 Entity regulation has three main
5 benefits. It enhances the efficiency and effectiveness
6 of professional regulation, and I direct your attention
7 to paragraph 22 for what we see there. I'd just like
8 to highlight a couple of the regulatory efficiency
9 concepts that were considered by the task force.
10 First, appointing a designated person in a firm to
11 respond to the Law Society or to ensure that a response
12 is obtained would result in more efficient and
13 effective responses.

14 And also, in cases where a lawyer or
15 paralegal have subsequently left a firm, their former
16 employer currently has no obligation to provide client
17 files or information to the Law Society and the
18 departed lawyer or paralegal may not have any documents
19 relevant to the allegations under investigation.

20 Obtaining cooperation from the previous
21 firm has been resource intensive for the Law Society.
22 Entity regulation would enable a more effective method
23 to obtain necessary information.

24 The second of the three main benefits
25 we've identified is that it harmonizes Ontario's

1 legislation with that of other Canadian law societies,
2 and you'll see a review of the legislative status of
3 other Canadian law societies at paragraphs 23 through
4 29 of the report.

5 I thought in light of our guest speaker
6 today, that I direct your attention to the Barreau du
7 Québec, which requires firms to provide a detailed
8 undertaking to facilitate the ethical behaviour of
9 advocates working in the firm. A signed undertaking
10 lists the members of the firm and provides that: The
11 entity ensures that all members who engage in
12 professional activities in the firm have a working
13 environment that allows them to comply with any law
14 applicable to the carrying on of their professional
15 activities, and the partnership or company, as well as
16 all persons within it, shall comply with applicable
17 legislation and regulations. The Barreau requires
18 firms to designate a representative to deal with the
19 regulator.

20 The third of the three main benefits
21 identified by the task force for entity regulation is
22 that it positions the Law Society of Upper Canada to
23 respond more effectively to innovations in legal
24 service delivery that may be required in the public
25 interest.

1 I direct your attention in respect of
2 that third benefit to paragraphs 31 through 34 of the
3 report. And particularly at paragraph 33, as I
4 mentioned, we had helpful input from LawPro throughout
5 our deliberations. At paragraph 33 you'll read, "As
6 observed by LawPro in their submission to the task
7 force, the entirety of which you can see, as I said, on
8 the Better Practices page.

9 "It cannot be ignored that in most cases
10 it is the law firm standing behind the lawyer or
11 paralegal that is providing the infrastructure that
12 supports and assists the work the practitioner is
13 doing. This infrastructure includes everything from
14 the physical office, to staff, policies and procedures,
15 technology support, and so on. Firm infrastructure and
16 culture can have an impact on client service and
17 practice management, and, in turn, malpractice claims."

18 I would say that the response we've had
19 to the call for input provided strong general support
20 for the concept of entity regulation, but I would not
21 wish to suggest that it was unanimous. In fact,
22 although it's anonymized, in paragraph 39 at tab 3.4,
23 just to show you what I mean by that, a few respondents
24 were not convinced that it was necessary to regulate
25 the entity in order to achieve these benefits. For

1 example, one legal organization indicated that, in its
2 view, the Law Society already has sufficient regulatory
3 tools with respect to entities or firms and amendment
4 of the legislation is unnecessary.

5 To that organization and others who may
6 share that view, the task force would observe that we
7 will continue in our dialogue with them as we move
8 forward. We want to emphasize that the future work
9 that we will do on entity regulation will continue to
10 be collaborative and consultative with the professions,
11 with other Law Societies across Canada, and with the
12 government of this province.

13 Regulating entities will require new
14 approaches to regulation, which will require further
15 work and consideration, including the development of
16 by-laws and rules of professional conduct that would be
17 specific to entities. The task force believes that
18 obtaining authorization to regulate entities need not
19 await the completion of this further work.

20 I am recalling the statement that was
21 made by one of our colleagues, I think from Nova
22 Scotia, at one of the meetings that I attended, who
23 said in matters like this where there is a lack of
24 unanimity, but there is a general consensus that we
25 should proceed, it is important to take the lead, but

1 not get so far out in front that you're mistaken as the
2 enemy, and we hope to achieve that standard.

3 So turning to the second part of the
4 motion, Mr. Wardle has asked that I report to
5 Convocation that part B of the motion should be
6 referred to as the Wardle Wording.

7 You might appreciate that the task force
8 deliberated at some length over the exact format of the
9 motion that's before you today and it was Mr. Wardle
10 who arrived at the wording that was acceptable to all
11 that you see in the motion today.

12 For compliance-based regulation as a
13 starting point, the task force considers as a general
14 principle that all lawyers and paralegals should be
15 obliged to adopt and abide by appropriate policies and
16 procedures in their practices, to fulfill their
17 professional obligations as reflected in the seven
18 practice management principles that were the subject of
19 the call for input.

20 You'll see these more elaborately
21 explained at tab 3.4, paragraph 5, but as a quick
22 reminder, the seven principles are practice management,
23 client management, file management, financial
24 management and sustainability, professional management,
25 equity, diversity and inclusion, and access to justice.

1 I need scarcely remind Benchers of the
2 strategic planning exercise in which we engaged last
3 fall, but I would like to remind them of a couple of
4 the strategic plan initiatives that arose from that
5 exercise. Two of them were to improve and increase
6 practice supports for practitioners and to adjust and
7 improve the regulatory process, and, of course, those
8 strategic objectives are reached in accordance with our
9 overarching core mandate of achieving and maintaining
10 competence of the professions in the public interest, a
11 point which Ms. Murchie's questions earlier today
12 before we began the official meeting pointed to.

13 Reading from the report, "A majority of
14 complaints about lawyers and paralegals relate to
15 practice management issues. 4,781 complaints were
16 referred to the Law Society's Profession Regulation
17 Division in 2014. More than half of those complaints
18 involved client services, that is 52 percent, and other
19 issues relating to practice management infrastructure,
20 including financial matters.

21 LawPro data also suggests that there is
22 room for improvement in practice and file management
23 standards. Only one in eight claims involve a failure
24 to know and apply the law. Year after year one-third
25 of claims involved lawyer client communication issues

1 with miscommunication, poor communication, or lack of
2 communication; 18 percent of claims involved missed
3 deadlines and procrastination of issues. We derive
4 from that there is room for improvement in the area of
5 practice management."

6 Our current regulatory system has been
7 described as primarily reactive. That is, addressing
8 matters of professional conduct only after they have
9 occurred.

10 Compliance-based regulation or proactive
11 regulation strives to address potential conduct matters
12 before they occur and to prevent or at least reduce
13 them.

14 I'd like at this point to make special
15 recognition of task force member, Mr. Groia, and staff
16 member, Diana Miles. Mr. Groia's persistent inquiries
17 about existing systems at the Law Society and
18 Ms. Miles' institutional memory respectively,
19 demonstrated to the task force that the Law Society
20 actually is a vanguard of proactive measures and that
21 we can trace our adoption of proactive measures from at
22 least a competency mandate that was accepted by
23 Convocation in 2001.

24 And so you will see at paragraphs 47
25 through 53 of our report a reference to those robust

1 proactive practice management mechanisms that are
2 already well established and in place at the Law
3 Society. These include the spot audit, practice
4 management review and focused practice review for
5 lawyers and the practice audit for paralegals.

6 They also include our well established
7 CPD program and a host of website resources, some which
8 are listed in those paragraphs.

9 These initiatives have been highly
10 successful. Lawyers and paralegals selected for
11 participation in these programs conditionally report
12 that they found the process constructive and helpful in
13 the management of their practice. The approval rating
14 was as high as 96 percent.

15 Therefore, and to quote my co-chair, Mr.
16 MacKenzie, what we're talking about here is an
17 evolution, and not a revolution.

18 The task force recognizes that a
19 regulatory system will always contain both proactive
20 and reactive elements and we wish to emphasize that
21 nothing in our report suggests in any way that the
22 existing system should be cast aside, eliminated or
23 compromised.

24 Despite general support for proactive
25 regulation, and a general agreement upon the seven

1 principles, we did hear again and again in the response
2 to our call for input and in our outreach to legal
3 organizations and law associations across the province
4 of concerns about what was described sometimes as
5 another layer of regulation or a regulatory burden. I
6 wish to assure the persons and organizations that
7 provided that kind of feedback that the task force
8 listened. We understood what you had to say and we've
9 dealt with it in our report under the heading of
10 proportionality.

11 The task force believes that any new
12 regulatory requirements should be designed to ensure
13 that no undue burden is placed on sole practitioners or
14 small firms. A key consideration is proportionality.

15 The Law Society Act requires the Society
16 to consider that "standards of learning, professional
17 competence and professional conduct for licensees, and
18 restrictions on who may provide particular legal
19 services should be proportionate to the significances
20 of the regulatory objectives sought to be realized."
21 In order to ensure this, the task force is recommending
22 a series of additional consultations, which I will
23 describe in a moment.

24 A proposed approach may, and I emphasize
25 the word may, include the following components. The

1 development and provision of model policies and
2 procedures that could be adopted or modified as
3 considered useful by practitioners. Periodic self
4 assessment of compliance with management principles
5 through a standard checklist or form. Periodic
6 reporting requirements, whether annually or less
7 frequently, which could simply confirm self assessment
8 or compliance or, alternatively, could provide more
9 detail. A review or auditing process to discuss and
10 review compliance.

11 This type of meeting could be held on a
12 regular basis or perhaps arranged on a targeted basis
13 following a risk assessment. A representative of each
14 entity who would not be personally responsible for an
15 entity's failure to comply, but would be required to
16 monitor compliance and liaise with the Law Society on
17 behalf of the entity. Assistance from Law Society
18 staff to lawyers and paralegals who have questions
19 about the requirements.

20 These issues, which have been discussed
21 at the task force, require further consideration, and
22 what we are proposing is to develop a framework for
23 proactive regulation over the course of the next year.

24 In the coming year, the task force
25 proposes to develop one or more options for

1 compliance-based entity regulation and to conduct
2 focused consultations with the professions regarding
3 these options.

4 The report addresses this at paragraphs
5 67, 68, page 40 of BoardBooks. The elements likely to
6 be included in the options to be developed are as
7 follows. Providing sample policies and procedures that
8 lawyers and paralegals may consider useful in the
9 management of their practices. Periodic self
10 assessment of clients with the practice management
11 principles described in this report, based on a tool to
12 be developed by the Law Society. Lawyers and
13 paralegals to report to the Law Society that they have
14 either considered a self assessment tool and the extent
15 to which they are in compliance with it or the results
16 of their self assessment. An appropriate regulatory
17 response from the Law Society in the event of lack of
18 compliance with one or more regulatory requirements.

19 One possible response might be to
20 contact the entity to discuss the reason for
21 non-compliance. Another might be a compliance audit to
22 assist the entity to ensure that it has implemented the
23 practice management principles.

24 The task force contemplates a series of
25 consultations to be held with the professions to

1 explain the options once they have been fully
2 developed, to obtain practical feedback on the impact
3 of proposed compliance-based amendments arising from
4 those options, and to determine how the input obtained
5 from the consultations can be best utilized in
6 performing prospective recommendations moving forward.
7 A report resulting from these consultations with
8 recommendations for next steps would be provided to
9 Convocation in 2017.

10 So, Treasurer, I am pleased to move the
11 motion which appears at page 23 and is seconded by Mr.
12 MacKenzie.

13 TREASURER MINOR: Thank you,
14 Mr. Earnshaw. I'm going to take a speakers' list, but
15 before that, would you please make sure that your
16 devices are silenced and are on mute, please. Okay,
17 Mr. MacKenzie.

18 MR. MacKENZIE: Treasurer, members of
19 the bench, I'm pleased to speak in favour of this
20 motion as the seconder of it, and as the vice-chair,
21 not co-chair, of the task force, more ably led by
22 Mr. Earnshaw.

23 I want to make four points, I hope quite
24 succinctly. Let me start with compliance-based
25 regulation, and I will have a point to make on entity

1 regulation as well.

2 Mr. Earnshaw commented on the rather
3 awkward title. We've referred to it variously as
4 proactive regulation, object-based regulation, et
5 cetera. I prefer the term preventive regulation,
6 because I think that really captures the essence of
7 what the task force is recommending.

8 The principle underlying preventive
9 regulation is that the Law Society should be preventing
10 problematic behaviour by lawyers and paralegals in
11 preference to punishing problematic behaviour after it
12 occurs. A regulatory system will always be a
13 combination of preventive regulation and reactive
14 regulation. We're not going to be doing away with our
15 complaints department or discipline hearing system, but
16 to the extent we have a choice, we should prefer the
17 preventive approach to the adversarial or punitive
18 approach. The goal of that approach is to alleviate,
19 not to aggravate, the regulatory burden.

20 Second point, the approach the task
21 force is asking Convocation to authorize it to flesh
22 out is an evolutionary change, as my friend
23 Mr. Earnshaw put it, not a revolutionary change. Our
24 regulatory system now includes both preventive and
25 reactive elements.

1 We have practice audits, we have
2 management -- practice management reviews, and those
3 programs have been very successful. The overwhelming
4 majority of lawyers and paralegals have reported that
5 they found the reviews constructive and helpful in
6 managing their practices. The adoption of
7 compliance-based regulation would amount to a change in
8 emphasis, not a fundamental substitution of one working
9 system for another.

10 Third point on entity regulation. It's
11 been my view, which I have expressed repeatedly, that
12 the regulation of law firms is long overdue. Our
13 current regulatory system was devised at a time when
14 virtually all lawyers were sole practitioners or
15 members of very small firms. Today we have national
16 and international firms, as well as substantial urban
17 and regional firms.

18 The ethical practices of many lawyers,
19 good or bad, are very heavily influenced by the culture
20 of the firm in which they practice, and law firms are
21 positioned to affect and control behaviour more
22 effectively than regulators. It's not hard to cite
23 examples of cases that have found their way into our
24 disciplinary system where it would have made more sense
25 to hold the law firm accountable rather than individual

1 members of the firm.

2 To cite one example, if a lawyer acts
3 where she has a conflict of interest because her firm
4 has an inadequate conflict and identification and
5 management system, I say it's the firm that should be
6 accountable for that, not the individual lawyer. If
7 the firm has an adequate system and the lawyer ignores
8 it and acts knowingly in a conflict of interest, the
9 individual lawyer should be the one who is held
10 accountable for that, but we should have the
11 flexibility to follow both routes.

12 The fourth and final point is that this
13 is not a big ask. The task force considered asking
14 Convocation to approve entity regulation in principle
15 and compliance-based regulation in principle and
16 rejected that idea, adopted the Wardle amendment in
17 lieu of that.

18 The point was made, and very -- it's a
19 very valid point, that we've seen occasions in the past
20 where Convocation has approved proposals in principle
21 and then when the proposals are fleshed out in a more
22 concrete way, people are faced with the argument that
23 it's too late, that this has already been approved in
24 principle, and we wanted to avoid that. So the task
25 force isn't asking for approval in principle, it's

1 simply asking for authority to approach the government
2 of Ontario to seek legislative authority to regulate
3 entities, if we decide at a later date to exercise that
4 authority.

5 It's asking for authority to develop a
6 more specific regulatory framework based on the
7 principles underlying preventive regulation which
8 Convocation may accept in whole or in part, or which
9 they can reject -- which Convocation can reject in the
10 proposal's entirety, if they wish.

11 Benchers are right to say wait and see,
12 or as we've heard repeatedly, the devil is in the
13 details, but that isn't, in my submission, a reason to
14 reject these recommendations. Any suggestion that we
15 should reject the recommendations for fear that we may
16 be on a trajectory that we can't correct is without
17 merit. So I respectfully urge Convocation to accept
18 the report and I'm pleased to accept Mr. Earnshaw's
19 motion. Thank you.

20 TREASURER MINOR: Next, Mr. Troister.

21 MR. TROISTER: Thank you, Treasurer. I
22 have reviewed this report now twice and I stand to
23 raise concerns about this proposal.

24 I had some e-mail conversations with
25 Mr. Earnshaw, whom I greatly respect, about this report

1 and raised some concerns, making it clear to him that I
2 did not want to appear that I was negative or a
3 troublemaker. I didn't use those words specifically, I
4 used another euphemism for troublemaker, but the
5 message was the same.

6 He encouraged me to speak my mind at
7 Convocation. He told me that the questions I was
8 asking were good ones and he would feel better about
9 the whole thing if there was actually a lively debate.
10 As he said, again in my words, not his, why did you run
11 for Bencher if you're going to sit on your hands for
12 the next four years?

13 So as to where I'm going with these
14 comments, and I'll flesh them out, this is what I
15 think. I think there are two elements to the motion,
16 and I believe that we should approve the first and that
17 the second part is premature. And I would ask the
18 committee to give us more details and direction before
19 we approve, even in principle, that we want
20 compliance-based regulation.

21 Here's why. I have no idea what I'm
22 voting for in concrete terms. I agree that law firms
23 as organizations or entities should be the subject of
24 regulation since firms are more than a bunch of sole
25 practitioners. Firms make decisions that go beyond the

1 decision of a single person and should be regulated in
2 relation to those types of decisions.

3 But the report couldn't even decide what
4 an entity is, what is the problem we are trying to
5 address and what kind of regulations of entities is
6 contemplated? There wasn't a single example of a
7 regulation that might be introduced or considered for
8 entities. How can I vote for something that I cannot
9 touch or feel, but is just an idea.

10 So with a little more meat on the bone,
11 some better definition of focus, I would happily
12 support the regulation of entities in matters that
13 extend beyond the decision or conduct of an individual,
14 and I would vote in favour of seeking an amendment to
15 our legislation to permit regulation of entities, but
16 if an entity is a sole practice with a number of
17 clerks, aren't we just adding another layer of
18 regulation to everyone?

19 At some point I would like a better
20 focus on the issue of entity regulation so that I can
21 understand what it is we intend and what it's going to
22 look like.

23 As for compliance-based regulation, that
24 I don't get at all. Again, I don't know what I'm
25 voting for. What's broken and needs fixing that

1 compliance-based regulation will fix. Is it to enhance
2 competence in the provision of legal services? That's
3 a good goal. But the report says, and Mr. Earnshaw
4 indicated it, we already have all kinds of tools.
5 We're at the vanguard in terms of enhancing competence.
6 Or is it supposed to be a handy basis for investigation
7 and discipline? I really did not find the report
8 clearly identified what is missing from our current
9 regulations that needs to be addressed and what more
10 needs to be done.

11 The report, in my view, contains nice
12 words, nice intentions, too much jargon, too much Law
13 Society speak, but not enough detail.

14 Paragraph 38 of the report at BoardBooks
15 24 says, "All lawyers and paralegals should be obliged
16 to adopt and abide by appropriate policies and
17 procedures in their practices to fulfill their
18 professional obligations as reflected in the seven
19 practice management principles, and then it lists these
20 principles.

21 When I looked, I didn't get a sense,
22 except in the most general of ways, what the policies
23 and procedures are that the lawyers and paralegals are
24 going to have to adopt. So the first part is that
25 there are going to be policies and procedures that we

1 all have to adopt, and then these policies and
2 procedures that someone is going to enact, presumably
3 us, will be determined to have to be complied with in
4 order to fulfill our professional obligations.

5 I would think that our professional
6 obligations are already in our current rules of
7 professional conduct, but, no, these obligations will
8 be found in seven practice management principles, the
9 substance of which is, again, missing from the report
10 that the lawyers and paralegals of Ontario have to
11 adopt and comply with to fulfill our professional
12 obligations. So I find the report so general that I
13 get no sense of what exactly the goal is.

14 Then we come to the matter of
15 proportionality so that these new regulatory
16 requirements not place an undue burden on solos and
17 small firms. Proportionality, in my view, means rules
18 for some and not for others. Discretion by the
19 regulator when to enforce and when the rule does not
20 apply. That is not a rule or a regulation, that is
21 discretion. And lawyers and paralegals will have no
22 idea if and when a rule applies to them because there
23 is proportionality.

24 I'm uncomfortable with rules for some
25 and not for others and discretion by the Law Society

1 determining who or what of the seven sacred management
2 principles is up for consideration and enforcement.

3 I would have been happy with some
4 specific examples of what some compliance-based
5 regulations will look like. Show me an example in the
6 report of a file management regulation. What is
7 professional management anyways and please tell me how
8 we intend to regulate equity, diversity and inclusion.
9 Does that mean quotas or a parallel Human Rights
10 Commission for lawyers and paralegals, or just soft
11 statements and nice ideas and nothing more.

12 As for access to justice, so far as I
13 know, solicitors in this province are doing house deals
14 for 500 bucks and wills for 150, so there is no access
15 to legal services problem there. We want regulations
16 about access to justice, show me what you have in mind.
17 Give me an example, or are we, again, just making some
18 nice, feel good statements.

19 Real estate lawyers in this province
20 already have compliance-based regulation and it is
21 noted in the report. The report even says that this
22 compliance-based regulation for real estate lawyers may
23 be a model for compliance-based regulation. So for the
24 50 or more of you who have never done a real estate
25 deal and don't know anything about what we real estate

1 lawyers do, here is our compliance-based regulation.

2 On the annual report I have to declare
3 that I did not give anyone my password to use my
4 TerraNet disk. I declare that I supervise my
5 assistants and clerks properly, that I did not act for
6 transfer or transferee except according to the rules,
7 that I did not assist anyone committing fraud, and I
8 have read a whole bunch of documents about mortgage
9 fraud.

10 It is a checklist, tick off the box, six
11 boxes. We all tick off, yes, yes, yes, yes. Imagine
12 the checklist when it applies to you and to every other
13 practice in Ontario, because that's just for real
14 estate lawyers, and that may be the model.

15 If the goal is improved competence, I do
16 not believe there is any statistics or evidence that
17 such declarations have enhanced lawyer competence, but
18 I have every confidence that it allows the Law Society
19 to say gotcha and declare misconduct if they want to
20 allege that any one of these declarations is false.
21 And these declarations aren't even based on best of
22 knowledge and belief. They are absolute.

23 So I ask this question, is this the
24 shape of compliance-based regulation? We want you to
25 manage your files this way, practice the profession

1 that way, abide by these principles this way and think
2 about your role in society that way. And we will
3 decide proportionately if we want to enforce our
4 regulations arising from these principles against you.

5 I think this report speaks to
6 revolutionary change in our rules of professional
7 conduct. I get no sense whether this will be a whole
8 new set of rules that runs in tandem with the rules of
9 professional conduct or is intended to replace them.
10 The devil is, indeed, in the details.

11 I appreciate that we are being asked to
12 approve the development of a regulatory framework for
13 consideration based on principles of compliance-based
14 regulation. That's what the motion says. Why I say
15 the motion is premature is because we are approving in
16 principle that compliance-based regulation is where we
17 want to go. I'm not satisfied, based on this report,
18 that this is where we should be going or why. The
19 report says let's develop a framework. I don't know
20 what a framework is and I don't have a sense of the
21 substance of compliance-based regulation, other than in
22 the vaguest of terms.

23 I appreciate that it is contemplated
24 that Convocation will have an opportunity to consider
25 this regulatory framework in the future and that this

1 motion is just seeking a go ahead to further consider
2 the matter, but I sense that things have a tendency to
3 have a life of their own around this place and that
4 approval today is approval in principle for
5 compliance-based regulation, and I don't know that this
6 is even the direction we want to go.

7 So I don't have sufficient sense of what
8 this is going to look like and I will not be supporting
9 the motion if it includes motion B. I would rather
10 defer the second part of the motion, ask the committee
11 to keep doing its work and report back when it can give
12 us something more substantive to consider.

13 I would move an amendment to the motion,
14 but I don't know if anybody else is on the same page as
15 me, so I will leave it to somebody else to do that. I
16 may be a majority of one on this one, but I would lie
17 awake at night aggravating with myself if I had not
18 said something today.

19 I commend the committee and the staff
20 for their hard work. It's a very even-handed report
21 and has given me lots of things to think about, I just
22 don't think we should be jumping in without more
23 detail. I thank Mr. Earnshaw for encouraging debate
24 and discussion in what I consider a very important
25 initiative. Thank you.

1 TREASURER MINOR: Mr. Cooper.

2 MR. COOPER: Well, I thought I was going
3 to only stand alone here, Sid, but first I would like
4 to say I also appreciate all the efforts and hard work
5 that everybody has put in to prepare the report,
6 notwithstanding some reservations that I have that I'd
7 like to share and try to convince people that this is
8 not the way to go, at least not without more
9 information.

10 It's hard to stand here and argue
11 against the seven principles. Everyone who is in
12 practice has their own means or ways in which they
13 follow the seven principles for a proper and
14 appropriate manner in order to be successful in their
15 practice.

16 It's hard to say that we don't want to
17 enhance competency; of course we want to enhance
18 competency. Part of our strategic plan was to improve
19 practice supports. Nowhere in there did I read that we
20 should create a burden. I stand here from my own point
21 of view and, as well, as the point of view of the
22 obligation responsible that I have as a Bencher,
23 knowing of the vast majority of people in our practice
24 that are in sole or small practices, and it's telling
25 from the input that the task force has received -- I

1 just want to review some of the report. And at page 55
2 of BoardBooks, paragraph 31, "Respondents urge the
3 Society to make it easy for practitioners to comply
4 with this requirement".

5 It goes on in the next sentence, "The
6 majority of sole practitioners thought that entity
7 regulation requirements should be different for them".

8 Notwithstanding this, we also see that
9 at page 53, paragraph 18, the view of one legal
10 organization, and I stress one legal organization, it
11 says, "The membership did not express a view that the
12 sole and small firms should be excluded from the
13 system, and were, in fact, supportive of the importance
14 of including sole and small firms, given the proportion
15 of complaints to the Law Society in those categories.
16 Many members felt it is critical for all lawyers to
17 ultimately have the same professional reporting
18 responsibilities, but they should be appropriately
19 tailored to the specific firm size and practice".

20 We do not know anything about what an
21 entity is. Is it more than five? Is it more than ten?
22 Is it five, but you can opt out if you're less than
23 five? Does it include soles?

24 I know that at page 32 at paragraph 34,
25 the task force indicates that it, "Has not yet

1 determined whether and when an entity should include a
2 sole practitioner. On the one hand, it is clear that
3 some aspects of entity regulation, such as requirement
4 to appoint a Designated Practitioner, or
5 representative, would ordinarily not be practical in
6 sole practice. However, as pointed out during the Call
7 for input, sole practice may not mean a one person
8 firm," and they go into this minute example that is
9 remote. There are firms that have a number of support
10 staff, but the majority of sole practitioners are a one
11 person operation with no support staff.

12 Although they say here that the task
13 force has not yet determined whether and when an entity
14 should include sole practitioners, we do see that at
15 page 34 when they talk about proportionality, that sole
16 practitioners, at paragraph 43, are now included. The
17 task force believes that any new regulatory requirement
18 should be designed to ensure that no undue burden is
19 placed on sole practitioners or small firms.

20 Again, nobody wants to go backward,
21 everybody wants to be proactive and ensure that there's
22 competency in the practice of law and paralegal
23 practice. Everybody is in support of that, but the
24 question is at what cost and what is defined at this
25 point in time.

1 Interestingly enough, I point to page
2 41, paragraph 70, which I think is a great idea. "The
3 task force also suggests that," and it goes on to four
4 different steps that they want to take. Why not take
5 the steps now? Why do we have to approve it without
6 knowing what we're really getting into it? And this is
7 essentially what Sid has said, Mr. Troister has said,
8 and I agree with him, but I go one step further. And
9 with no disrespect to the task force because what
10 they've done is great. The information they have
11 provided and put forward has taken a lot of time. But
12 I ask that we wait until they're able to go through the
13 steps at 70, to come back and then provide us with
14 something more concrete for us to work with.

15 So I do support what Sid has suggested
16 and I would consider -- I would ask everybody consider
17 holding off on passing this until we have greater
18 details. Thank you.

19 TREASURER MINOR: Anyone else on the
20 speaker list? Mr. Mercer.

21 MR. MERCER: I want to speak mainly
22 about the first part of the motion, which is described
23 so poetically as entity regulation.

24 I come at this topic from a perspective
25 of involvement and experience. While I recognize that

1 my firm is unusual as being very large, I've been the
2 general counsel at McCarthy's for a decade. Because of
3 that role, which is a role focused on professional
4 responsibility within a law firm, I know a lot about
5 how firms organize themselves, and not just very large
6 firms such as my own.

7 I have participated over the years in
8 many fora, many projects, many collaborative groups to
9 talk about professional responsibility in firms. I
10 have also been involved in the subject area as chair of
11 the Canadian Bar Association Ethics and Professional
12 Responsibility Committee, which is a national role, and
13 I say all of this not to aggrandize at all, but just to
14 describe a perspective, which is a perspective very
15 interested in how the public interest can be protected,
16 clients can be protected by the way we organize
17 ourselves.

18 I think it's important to take what Mr.
19 MacKenzie said and reflect on it carefully. There was
20 a time when law was practised, we didn't think about
21 legal services then, really just through individuals.
22 Clients were clients of individual lawyers, firms
23 didn't really exist, but the reality now, not for the
24 entire professions, but for large parts of it, are that
25 client are clients of firms and firms are the way that

1 services are delivered.

2 This matters in practical terms to
3 client service and to professional conduct. I'll just
4 give you four examples on how this plays out in just
5 practical terms, because the comment has been made that
6 we are talking at too high a level. I would like to be
7 a bit more particular about why these things matter.

8 The first is the practice audits of
9 young lawyers. One of the really good things we do is
10 that in the first five or six years, I forget the exact
11 number, young lawyers are subjected to -- sounds
12 unkind, but it probably feels that way when it
13 starts -- audits to see how they're doing.

14 And let me describe how it works in a
15 firm. A young lawyer is asked to describe how
16 conflicts are dealt with in a firm, and the lawyer
17 hasn't a clue. So what the younger lawyer does is come
18 to me and I explain how conflicts are dealt with in the
19 firm in terms of systems and procedures, could be in
20 terms of lots of other ways that we organize ourselves.

21 So I explain to the young lawyer, the
22 young lawyer explains to the auditor, the auditor makes
23 some suggestions, more questions. The young lawyer
24 comes back to me. I explain. That goes back to the
25 auditor. The young lawyer then brings back the

1 ultimate suggestions.

2 Some of that is worthwhile. The young
3 lawyer getting tested as to whether or not they
4 understand their personal professional responsibility
5 makes a ton of sense, but sometimes I think it might
6 actually be useful to do what happens in Québec, which
7 is the representative of the Barreau comes to the
8 people that are responsible for organizing these things
9 and says could you explain what you're doing. I think
10 that would be somewhat efficient, but we don't have the
11 authority because firms don't exist.

12 Investigation. A few years ago I was
13 asked to provide information to the investigations
14 department before I was a Bencher, and I asked whether
15 or not I was allowed to do that because, happily, I
16 wasn't being investigated and my firm doesn't exist,
17 according to the Law Society, and I was told that I
18 should read the legislation and figure it out for
19 myself. I couldn't provide the information despite the
20 Complainant being a client of the firm because there is
21 no way for a firm to be directly involved in the
22 investigation, only the target, if I can use that,
23 again, cheerful term of the investigation is entitled
24 and required to respond.

25 The third area of practical issue for

1 me, and for others, is that there are times when we
2 learn that a lawyer in our firm is subject to
3 investigation or complaint and we care vitally about
4 that for several reasons. One is we're concerned about
5 the lawyer and the other is we're concerned about the
6 client. And if we don't know about it and we have got
7 a client who has concerns about a lawyer, we can't
8 address that.

9 The fourth reason practically for us why
10 you should look at us and think of us as entities worth
11 regulating is around reporting. And one of -- in our
12 practically reactive world we learn about potential
13 misconduct through reports, and I'm here to tell you
14 that where a law firm learns about issues that may be
15 professional misconduct, it's the law firm that decides
16 whether or not to report. It's illusory to think of
17 whether the individual, the lawyer who's involved, will
18 make that decision. And I have been involved and I
19 have reported lawyers of our firm, because that's what
20 we're obliged to do and because we're the ones
21 possessed of the information.

22 All I want to make clear is this is
23 practical. To pretend that law firms don't exist, to
24 say that law firms shouldn't be regulated and subject
25 to regulation because we can't figure out the finer

1 details is to miss the forest for the trees.

2 I accept entirely that most of what I've
3 just said, perhaps all of what I've just said, doesn't
4 apply particularly to soles and smalls, but we ask for
5 regulatory authority not for today, but so that over
6 time this group can decide what an entity should be and
7 what the obligation of the entity should be.

8 If it were my choice today, I would
9 cheerfully say smalls and soles in the by-laws I hope
10 we ultimately get to, and advance the legislation under
11 which we're entitled to advance it, shouldn't include
12 soles and smalls except for a few. Those who are
13 running their businesses with a single licensee and a
14 large group running a large business, and there are
15 some look to me like entities, they don't look like
16 small firms. I think that's a worthy discussion to
17 have and one which we should have down the road, but I
18 think it desperately matters that we have the tools
19 under legislation now and for the future to be able to
20 address the way law and legal services are actually
21 being delivered in Ontario in the 21st century.

22 Laurel Terry, who speaks about these
23 matters, says that some of the fundamental questions we
24 address are how to regulate and who to regulate.
25 Around the first question, we're asking ourselves the

1 who, and if we think that regulating just individuals
2 is truly regulating law and legal services, we are
3 wrong.

4 As for the second part of the motion,
5 I'm sympathetic to the points that are raised, to an
6 extent. The point of the very careful drafting of the
7 motion was to recognize that the details will come, and
8 we ask for authorization to continue on the road, not
9 with an agreement in principal or an approval in
10 principle that commits Convocation, commits each of you
11 to approve, ultimately, something.

12 What we are saying is that this is
13 partly down the road. We wish to check in, we wish to
14 have approval to continue down the road, and you're
15 free at the end of the road to say, no, this doesn't
16 look like it should be done. I worry very much that
17 saying no to that is actually saying no to an important
18 project.

19 And the last point I'll make in this
20 respect is I think perhaps it's a failure of writing,
21 perhaps it's that it's an unusual thought for us, the
22 essential thought for me in this road that we're on is
23 that we currently tell lawyers and paralegals what
24 outcomes are prohibited, what outcomes are required.
25 We say you can't be in a conflict or can't act in a

1 conflict without consent, but we don't talk at all
2 about how avoiding problems should be done, we don't
3 say you should have a conflict system, instead we just
4 say you shouldn't act in a conflict.

5 What sounds high falutin' isn't at all.
6 The idea that lawyers and paralegals should be required
7 to organize their practices in a way which makes sense
8 for their practice, in a way which makes sense for
9 them, not in a prescribed set of policies and
10 procedures, as Mr. Troister would say, is a good thing.

11 I know that lawyers and paralegals can
12 be frightened by the proposition that they are being
13 asked to think and make judgments and held accountable
14 for thinking and making judgments, but that's all in
15 the end of this really I think we will be, which is you
16 shouldn't just ultimately be judged on whether or not
17 you achieve results, you should be accountable for
18 arranging your affairs in a way which is professional,
19 not just achieving a professional result. And that is
20 intended to design, as Mr. MacKenzie said, the
21 prevention of that ultimate question.

22 So I encourage you to vote yes for both.
23 The first because, like Columbus discovering America,
24 quote, unquote, I recognize the frailty of that
25 analogy, law firms exist, they've existed for a long

1 time. They really matter. If you pretend they don't,
2 you are wrong and you're missing a regulatory tool that
3 matters. And if you say no to the next stage of the
4 project, you're saying something much more significant,
5 I think, than you intend.

6 TREASURER MINOR: Thank you. Mr. Gottlieb.

7 MR. GOTTLIEB: Thank you, Treasurer. I
8 too respect very much the hard work that has been done
9 by Mr. Earnshaw and his task force, but I also, even
10 more importantly, share the concerns that have been
11 articulated through Mr. Troister and Mr. Cooper. And
12 if I had a vote, I would not be in support of what is
13 being proposed today.

14 I would like to point out that the Law
15 Society has excellent resources to help all lawyers.
16 We have excellent continuing professional development
17 programs. We have excellent resources on our website.
18 Our professional insurance company, LawPro, also has
19 excellent resources that are provided to the
20 profession. We do everything within our power to
21 create good, competent, honest lawyers.

22 On the negative side, on the reactive
23 side, we also have an excellent discipline department
24 and we have excellent resources. So both positively
25 and negatively, in my opinion, the Law Society does an

1 excellent job of regulating the lawyers in this
2 province.

3 No matter what we do, we are never going
4 to get perfection, so I respect what is being proposed,
5 but I would not support it. We have not been given
6 concrete details how more regulation is going to help
7 us or help the public.

8 TREASURER MINOR: I have Ms. Ross. Was
9 there someone before? I'm sorry, Mr. Rosenthal, were
10 you --

11 MR. ROSENTHAL: No.

12 MS. ROSS: Thank you for the musical
13 introduction.

14 MR. BREDET: Very dramatic.

15 MS. ROSS: I'm just responding a bit to
16 Malcolm. My background is senior partner and general
17 counsel in a firm of seven lawyers, two articling
18 students, both of whom will be joining our firm as
19 lawyers in September.

20 So we are somewhere in the smalls group,
21 I think, who have assiduously worked on developing a
22 compliance-based system in our firm at a level I think
23 some of the larger firms would envy. I'm very proud of
24 it. So that colours my view of entity and
25 compliance-based regulation.

1 point and something that I hope the task force will
2 take back to use as one of the templates in its
3 development of this work.

4 The Advocates' Society noted, and other
5 speakers have noted that the Law Society of Upper
6 Canada already sees positive benefits through the
7 regulation of individual lawyers. The net benefit of
8 the proposed additional layer of regulation through a
9 compliance-based entity regulation system must be
10 assessed in order to determine the value of such a
11 regulatory system.

12 Just by way of an aside, and an
13 experience in our firm going back to the audit of the
14 young lawyer experience that Malcolm referred to,
15 Mr. Mercer referred to, when that happens in our firm,
16 and we have experienced two or three of them with
17 younger lawyers, it ends up, in fact, being an audit of
18 the entire firm, of all of us, and to that extent
19 that's an unintended benefit of the young lawyer audit
20 in a smaller firm.

21 Just bear with me while I move through
22 this submission. The second part, and I'm not saying
23 that the rest of the report isn't very worth reading
24 and all of the other submissions as well, but the
25 second aspect of the Advocates' Society's submission I

1 think raises in a fairly high level of detail some of
2 the concerns that have been raised around the table by
3 others and they've headed it disciplinary measures.

4 There appears to be confusion around the
5 implementation and oversight of compliance-based entity
6 regulation. Society members have a number of
7 questions, including how will it actually work, will
8 discipline be shifted to firms from individuals? Will
9 all individual lawyers have additional responsibilities
10 in the entity-based context? In instances of
11 non-compliance with instituted controls, will the
12 designated practitioner be subject to discipline as
13 well as the individual lawyer, or will the designated
14 practitioner only be subject to discipline where there
15 has been a failure to implement designated practice
16 management principles. How will a legal entity
17 experience the shift between the regulator's focus on
18 proactive compliance-based initiatives to the
19 regulator's disciplinary process for failure to meet
20 compliance-based standards?

21 The Advocates' Society submits they're
22 seriously concerned about how this proposed model,
23 designed to work with lawyers and firms on a
24 cooperative basis, fits with the Law Society's
25 disciplinary regime. They are concerned about how the

1 Law Society may engage disciplinary measures or powers
2 based on information gleaned from the cooperative
3 process.

4 The question that the Advocates' Society
5 raised and concludes with, what is the relationship
6 between the compliance and disciplinary functions
7 within the Law Society? They suggest that its members
8 would benefit from a further understanding of how the
9 new proposed regulatory model would work to enhance
10 cooperation without members facing the possibility of
11 disciplinary action.

12 Those were, I thought, some very well
13 considered submissions worthy of all of our care and
14 attention and I thank you for the time here today,
15 Treasurer.

16 TREASURER MINOR: Thank you, Ms. Ross.
17 Mr. Wardle.

18 MR. WARDLE: So I rise just to speak to
19 the second part of the motion and, in particular, 1B,
20 which has been described as the Wardle wording.

21 And I want to make two points to my
22 friends, Messieurs Troister and Cooper. The first
23 point is that this is a debate we need to have and I
24 think the points you have made this morning were very
25 eloquently put and they're good points and they're

1 points that sooner or later need to be debated in this
2 forum.

3 But my second point is this is not the
4 time, guys. We don't have a cake for you to look at.
5 We haven't baked the cake yet. We're still at the
6 beginning stages.

7 And so the committee is still working on
8 the second part of its mandate. It needed to get some
9 approval from Convocation so it could go forward, hence
10 the wording that you see. There were people on the
11 committee who thought we should be coming to
12 Convocation at this point to say let's get approval in
13 principle. I was one of the people who said I don't
14 like having Convocation approve things in principle
15 and, hence, the wording that you see, which commits
16 Convocation basically to nothing except letting the
17 committee continue its work and come back with a fully
18 fleshed out proposal.

19 And I just want to add this. There are
20 a number of practitioners from small firms and various
21 practice areas on the committee. Maybe we need more.
22 Maybe we need more real estate practitioners, maybe we
23 need more practitioners from small firms, sole
24 practitioners. That's something the new treasurer can
25 look at. And we need more voices to represent, I

1 think, the position that the two of you have taken.
2 But it's premature to have the full-fledged debate at
3 this point, in my respectful submission.

4 TREASURER MINOR: Mr. Anand.

5 MR. ANAND: I just wanted to follow up
6 on Mr. Wardle's comment and to fundamentally agree with
7 it and to expand on it just for a moment.

8 The reality is, as the report shows,
9 that we have proactive and reactive regulation right
10 now, and what is being requested, as Mr. Wardle says,
11 is essentially authorization to continue the process of
12 balancing the two and to determine to what extent there
13 is, indeed, as was said earlier by Ms. Ross, a net
14 benefit to increasing on one side of that equation as
15 opposed to the other. Because we need to have that
16 debate and we need to take the steps in some direction
17 that balances appropriately, taking into account what
18 we have right now.

19 Mr. Gottlieb says that we have excellent
20 resources right now in PD&C, for example, in terms of
21 spot audits and practice management reviews. And that
22 is true and, indeed, that is set out in the report at
23 paragraph 47 because this -- the idea of proactive
24 regulation is not new at all.

25 What is said at paragraph 47 is that in

1 2001 the Law Society supported a proactive approach to
2 practice management, development and compliance when
3 Convocation developed a competence mandate for the Law
4 Society. So the steps that have been taken are
5 pursuant to what I would have thought is sort of
6 obvious in business, in employment, in regulation, that
7 avoiding problems is much preferable to cleaning up the
8 mess after the problems have arisen.

9 And I would say that we should not be
10 complacent in the resources that we have right now and
11 the costs that those resources are exacting on us.

12 I speak to this from the standpoint in
13 terms of experience at the Tribunal and from the
14 standpoint of LawPro, and obviously from experience we
15 all have as Benchers.

16 My point with respect to the Tribunal is
17 that the majority of cases that result in professional
18 misconduct findings are not dishonesty and egregious
19 conduct of the kind that get all the headlines, they
20 are fundamentally failures or absences of policies in
21 professional environments, and that's what this is
22 designed to get at so that we avoid that long expensive
23 investigation process and the Tribunal hearing that
24 follows them.

25 From the standpoint of LawPro, which as

1 you heard from Mr. Earnshaw, was present throughout in
2 our working group, it has produced any number of
3 publications which make clear that providing guides,
4 providing draft policies so as to avoid lawsuits, which
5 again result fundamentally out of the failure to follow
6 up with clients, the failure to have conflict of
7 interest guidelines that are effective in place.

8 So in addition to what we see at the
9 Tribunal and what we see at LawPro, we have to consider
10 the cost to professional regulation. In terms of a net
11 benefit, what we're looking for, I think, in this task
12 force is a net benefit that would, in fact, decrease
13 costs, not just for the Law Society, but for those who
14 are subjected to the Law Society's regulatory
15 authority.

16 So the question isn't whether we will
17 have proactive or reactive regulation, the answer is
18 both, and the question is how to reach an appropriate
19 balance.

20 Mr. Troister raises the issue of
21 proportionality as discretion or rules for some and not
22 for others; that, with respect, is not what the task
23 force intended, and maybe it wasn't expressed as
24 clearly as it should have been. Proportionality means
25 you don't kill a mountain -- make a mountain out of a

1 molehill. You don't impose undue burdens on legal
2 workplaces and firms which -- for whom it will not be a
3 net benefit.

4 Mr. Cooper speaks of the creation of a
5 burden, and I can say that these are all issues which
6 were voiced strongly in the working -- in the task
7 force, have been considered, will be considered, which
8 is why the task force, I think, needs to continue its
9 work with the admonitions that have been heard here in
10 Convocation by taking these kinds of comments into
11 account and continuing its work so as to come up with
12 something that has more shape and that Convocation can
13 ultimately approve or not.

14 TREASURER MINOR: Thank you.

15 Ms. MacLean.

16 MS. MacLEAN: Thank you, Madam
17 Treasurer, members of Convocation. I have listened
18 very carefully to the debate and I probably am the only
19 sole sole practitioner in this room. I have no support
20 staff, I have no clerks, I have no one. I am it and I
21 do everything.

22 Now, initially I think Mr. Troister had
23 raised some very good points and I saw where he was
24 coming from, but as a lawyer, I look at terms slightly
25 differently in terms of the wording of this particular

1 motion.

2 We are not -- there's lots of time to
3 input as a result of this motion. First of all, you
4 have to amend the Law Society Act. Whether the Law
5 Society Act is amended in such a way as it includes
6 every lawyer that's practising or it doesn't remains to
7 be seen. That we may not input specifically in that,
8 but we would input in the implementation of the changes
9 that are made to that Law Society Act. We have an
10 opportunity to speak at that point in time if we think
11 that what is then proposed is so overreaching that it's
12 covering everybody it shouldn't cover.

13 Speaking personally, I don't want to be
14 included, because I've got enough work to do already
15 without trying to go through this, and some of those
16 proposals such as equity would just be preposterous.
17 So I have difficulty in trying to see how I would be
18 able to live with those, so they would be a burden, but
19 I have an opportunity to input.

20 The second thing is the B proposal
21 again: To develop a regulatory framework for the
22 consideration by this Convocation. So that's all we're
23 talking about right now is just development.

24 For those reasons, although I initially
25 thought I was supportive of Mr. Troister's position, I

1 am not, I'm supportive of this motion as a sole
2 practitioner.

3 TREASURER MINOR: Thank you,
4 Ms. MacLean. Mr. Wright.

5 MR. WRIGHT: As a sole practitioner, I
6 am not in support of this motion. It puts the cart
7 before the horse. This report should have come to
8 Convocation for information only. We don't need a
9 motion which is set out at B to ask the task force to
10 continue to do its work. They can just do the work and
11 come back with a framework that we can actually --

12 MS. ROSS: Treasurer, I apologize for
13 interrupting my friend. Mr. Wright is speaking. Each
14 of us who have spoken to this point in time have been
15 given the respect of silence in the room. I think it
16 only fair he be accorded the same respect.

17 MR. WRIGHT: I thought I was, but
18 anyway, thank you.

19 The debate brings to mind a number of
20 things. One is Orwell's warning about the imprecision
21 of language, and the word "entity" falls into that
22 category. We don't know what it means, and the
23 diseased elephant in the room on that is, of course,
24 alternative business structures. Why not call it firm
25 regulation or -- whether legal firm or paralegal firm,

1 be more precise. It should be law firm and paralegal
2 firm regulation, not entity regulation.

3 So I would say A should not go forward
4 today, there's no need to. We don't know what we're
5 voting for. B could go forward, although
6 unnecessarily, because all it does is ask the task
7 force to keep doing its work and come back with
8 something we can get our teeth into and review and
9 debate.

10 Columbus landed at Hispaniola, it is
11 believed, he thought he was in India. We don't need to
12 take a step where we don't know if we're in North
13 America or South Asia. Let's wait.

14 Lord Falconer in the British House of
15 Lords said, "When it is not necessary to make a
16 decision, it is necessary not to make a decision,"
17 especially when we do not have the details about which
18 we are being asked to vote on.

19 Where the legislature is concerned, we
20 don't want to seem like the gang who can't shoot
21 straight. We don't want to ask them to give us this,
22 and then after we get the details we change our minds
23 and then we have to go back and say, well, that's not
24 exactly what we want you to do anymore. Let's wait
25 until we know what we want to ask them.

1 We should not go forward with A today.

2 We could go forward with B because it doesn't mean
3 anything today.

4 Now, this is a huge area and it is bound
5 up with ABS to some degree and we haven't even debated
6 ABS yet. It is such a big topic that it should be the
7 subject of a retreat, preferably a two-day retreat,
8 preferably between now and September.

9 We need a kind of Committee of the Whole
10 forum where we can pop up and down as people say things
11 that other people want to react to. These issues are
12 so vast and so important that it would be reckless to
13 vote for A today and, frankly, B is unnecessary today.

14 Yes, I think there should be more soles
15 on the task force. I notice in the materials that
16 although the Carleton County Law Association did
17 submit a submission, there was no meeting in Ottawa.
18 It's only the second largest metropolitan area in
19 Ontario and there was no meeting there. I think a bar
20 like that, which is a fantastic bar, very active, no
21 reflection on Toronto, it's just too big, and no
22 reflection on all the others, they're just too small.
23 Ottawa is a fantastic bar and it should be consulted, not
24 just at the CCLA level, but in a forum where local sole
25 practitioners could be heard and the task force would

1 benefit from a more diverse membership.

2 The materials show that sole
3 practitioners are, in our regulatory soup, somewhat
4 more than lawyers in other categories of membership.
5 That's to be expected. You can start off in a large
6 firm, but if you're not that good a lawyer or you're
7 not that good a person, you're going to end up out of
8 the firm and you're going to be a sole practitioner, so
9 that skews the statistics somewhat.

10 The reality is the vast majority of sole
11 practitioners work very hard and do a very good job.
12 One of the most difficult aspects of being a sole
13 practitioner is the lack of ready access to research
14 materials and annotated precedents, which lawyers in
15 big firms have. We go to the CPD programs, we get our
16 little USB stick or binder, fine, the information is in
17 there, but it might have been at a program eight years
18 ago and we need the information now. Hard to find it
19 from eight years ago. Or maybe it's going to be in a
20 program four years from now. That doesn't help a sole
21 practitioner today.

22 If we had access to the kind of
23 research, word searchable facilities that lawyers in
24 large firms do, that would cut way down on the time you
25 spend on that and provide soles with more time to deal

1 with things like practice management and time
2 management.

3 I think just to finish I would simply
4 urge Convocation to table A and pass B, if you have to,
5 and you don't have to, purely on the understanding that
6 it's just a mandate to the task force to go away,
7 continue to do its work and come back with a report
8 that can be properly debated.

9 TREASURER MINOR: I have Ms. Vespry, Ms.
10 McGrath, and I don't know if there's anyone on the
11 phone.

12 I was hoping to get this completed
13 before the morning break. Is there anyone else in the
14 room who wants to speak? There anyone on the phone who
15 wish to speak?

16 MS. POTTER: No, thank you.

17 TREASURER MINOR: In that case, we'll
18 have Ms. McGrath and then Ms. Vespry.

19 MS. McGRATH: Thank you, Treasurer. I
20 stand as a sole practitioner in support of this motion,
21 both part A and part B.

22 If I can just address entity regulation
23 for the moment. Mr. Wright's suggestion that we just
24 amend it to regulate law firms frankly doesn't cover
25 the organizations that we have and that are allowable

1 now.

2 We have law firms, we have partnerships,
3 we have limited liability partnerships, we have
4 professional corporations and we have MVPs.

5 Professional corporations, we already
6 have the ability to regulate professional corporations.
7 So if we have the ability to regulate professional
8 corporations, it seems to me that just for
9 consistency's sake we should be able to regulate
10 partnerships, law firms, limited liability partnerships
11 and entities.

12 But the other reason why entity is not
13 narrowly defined is because there are also other
14 organizations out there who are providing legal
15 services.

16 There are internet providers. There's
17 LegalZoom. There are some lawyers who are actually
18 providing -- lawyers in Ontario who are providing
19 services to the public over the internet. So we have
20 to be able to capture those kinds of organizations as
21 well, and we have to be able to capture organizations
22 that don't exist now, but may exist in the future,
23 because we can't be running back to the Law Society to
24 have them amend the type of organizations that we can
25 actually regulate on a continuous basis when a new one

1 appears.

2 It's better to describe it as entities,
3 deal with what we mean by entities by way of by-law,
4 which come back to Convocation for decision, and move
5 on from there because we can then amend our own by-laws
6 as long as the legislation is broad enough to give us
7 the authority to regulate the entity.

8 The specific questions on real estate
9 that are actually in the annual report have quite an
10 interesting history. They were initiated because it
11 was clear in both mortgage fraud cases and in
12 negligence claims to LawPro that, in fact, lawyers were
13 giving their passwords, which as Mr. Wright has
14 indicated on many occasions, is an electronic
15 signature, to their staff. And that, in fact,
16 facilitated fraud and gave rise to many negligence
17 claims.

18 It was specifically designed to be
19 reporting just for the reporting period, so the lawyer
20 is only indicating that for the reporting period they
21 did not give their password to their staff, and it was
22 designed that way frankly to allow lawyers to clean up
23 their act, comply with their professional obligations
24 to keep that password to themselves, and be able to
25 truthfully tick off the boxes, as Mr. Troister has

1 indicated.

2 The net benefit to compliance-based
3 regulation, if I move on to that, in New South Wales,
4 which is one of the first jurisdictions to go to
5 compliance-based regulation, and, in fact, in New South
6 Wales most of the firms are soles and smalls, was that
7 complaints by clients decreased by 30 percent. That is
8 a significant number and I would suggest that that in
9 and of itself is a significant net benefit that should
10 make us look hard and long at compliance-based
11 regulation.

12 We do have proactive regulation now.
13 What we're asking is that the focus be more heavily on
14 proactive, as opposed to reactive, so that there will
15 be more of the proactive. The net benefit in New South
16 Wales was attributed, at least in part, on the fact
17 that lawyers actually had to consider and reflect on
18 the principles each time they were required to complete
19 the form.

20 What happens in many cases is many
21 lawyers rarely look at the rules of professional
22 conduct unless they absolutely have to and, you know --
23 so in order to require lawyers to actually think about
24 what they're doing and whether they're in compliance
25 with professional obligations on a yearly basis or

1 maybe every two years or whatever the reporting period
2 will be, I think is a good thing and should have
3 positive benefits both to the profession and to the
4 public that we serve.

5 TREASURER MINOR: Ms. Vespry.

6 MS. VESPRY: More a question, Treasurer,
7 than a comment. I'm sole sole as well. I have no
8 support staff and I run my own business, however, I am
9 asking more procedurally, my understanding is that when
10 a motion is before Convocation it's a one vote thing,
11 either yea or nay. Is it possible to request, either
12 as a friendly amendment or otherwise, that this motion
13 be split so that we actually do have the option of
14 voting for A and not B or B and not A? Both for and
15 both against, or whatever people individually wish to
16 do.

17 MS. ST. LEWIS: I would second that
18 motion.

19 TREASURER MINOR: We can split it.

20 MS. VESPRY: So moved then?

21 TREASURER MINOR: Is there a seconder?
22 I'm -- just before you do that. Mr. Earnshaw, is that
23 a friendly amendment or not?

24 MR. EARNSHAW: I would consider it so in
25 light of the debate I've heard this morning, yes,

1 Treasurer.

2 TREASURER MINOR: In that case...

3 MS. ST. LEWIS: I'm seconding.

4 TREASURER MINOR: We know that. It's a
5 friendly amendment. Is there anyone left who wants to
6 speak to the matter on the phone? Okay.

7 Mr. Earnshaw, you can certainly reply to
8 any of these.

9 MR. EARNSHAW: I have very little to say
10 in the way of reply, Treasurer, thank you. A couple of
11 things that might be of assistance to some of the
12 speakers, and a grateful acknowledgment to know that
13 the County of Carleton Law Association, Mr. Wright,
14 it's the Goldilocks Law Association, not too large, not
15 too small, but just the right size.

16 I think, Mr. Anand, the expression that
17 you were seeking when you said mountain out of a
18 molehill was not to swat a gnat with a sledgehammer.

19 Seriously, just a couple of points. One
20 is that I would like to emphasize, as I have in
21 previous reports, but didn't really mention it in my
22 initial remarks today, that we are not proceeding in
23 isolation in this study, but, in fact, are
24 collaborating and cooperating with other law societies
25 across the country; notably Nova Scotia, the Prairie

1 Provinces and B.C., all of the latter four of which are
2 now engaged in a consultation process that's more or
3 less at the same stage as our own.

4 So we do have to bear in mind a tacit
5 agreement that we have with those Law Societies that we
6 would proceed slowly, deliberately, but we would
7 proceed, and I would ask the Benchers to bear that in
8 mind when it comes time to cast their votes.

9 The other point that was discussed
10 during the task force, and may not be immediately
11 apparent, there is a passing reference to it in the
12 report, is a distinction between two concepts, one is
13 quality improvement and the other is quality assurance.

14 Now, quality improvement, loosely
15 defined, is the sort of checklist that a couple of the
16 speakers have mentioned, where one is presented with a
17 question and answers affirmatively or negatively. It
18 is designed, as Ms. McGrath said, to cause the person
19 who is completing the form to think about whether or
20 not the principle in question has been met or complied
21 with, but it doesn't really do anything to assure that
22 the answer to the form is correct or even that the
23 proper understanding of the principle is held by the
24 person who is completing the form. That's quality
25 improvement. We have a lot of quality improvement

1 already in place, as you can see in our report.

2 Quality assurance is quite a different
3 thing. Quality assurance is, for example, put into
4 play with the practice management review. In the
5 practice management review process, as those of you who
6 spoke on the subject will know, a self assessment
7 questionnaire is sent out to the young lawyer at the
8 firm and that young lawyer is requested, as you heard
9 Mr. Mercer say, to complete it and submit it before the
10 professional management review takes place.

11 What we heard at the task force is that
12 the form, which might have been considered a quality
13 improvement kind of document, is often completed in
14 good faith and submitted, but when the practice
15 management review occurs it is determined that the
16 young lawyer, in fact, has misunderstand what some of
17 the requirements are or, in fact, is not compliant,
18 not because of any deliberate defalcation, but simply
19 because of a lack of understanding or knowledge.

20 That's where things like the spot audit,
21 the practice management review, the focused review, the
22 practice audit for paralegals, can assist to not only
23 establish what the principles are, but to ensure that
24 they are being met.

25 Aside from that I don't think there's

1 anything I can usefully add to the debate, Treasurer.

2 I thank you for the opportunity to speak.

3 TREASURER MINOR: Thank you. I'm going
4 to call the vote and we'll do it in parts.

5 So the first is 1A, that the Law Society
6 seek an amendment to permit Society regulation of
7 entities through which legal services are provided.
8 Again, emphasis that is permissive, not requiring, it's
9 up to the Law Society if the legislation is amended, to
10 act on it or not. It is permissive only.

11 I also would point out, just by way of
12 information, these things do not happen overnight. So
13 a request is not going to result in instant legislative
14 change and there will be time for evolution before
15 that. Just as a point of information.

16 MR. WRIGHT: Who are we then permitting?
17 It's permissive. Who are we permitting, the senior
18 staff, the Treasurer?

19 TREASURER MINOR: Convocation. It's
20 only legislative before you. It isn't a legislative
21 requirement to do it and clearly it's up to
22 Convocation, Mr. Wright, you do know that, I believe.

23 All right. So could we call the vote on
24 1A. All those in favour in the room? Against? Any
25 against on the phone? Okay. Motion 1A carried.

1 Motion 1B, and, again, to be clear, it
2 is not an acceptance in principle, which means everyone
3 would vote in favour, whatever is presented. It is
4 direction to the committee to come back, based on
5 certain principles which they have, and to develop
6 along the principles that they have enunciated.

7 So could we have the vote on 1B, please?
8 All those in favour in the room? Those against? Any
9 against on the phone? Thank you. Motion carried.

10 It's 12 o'clock. We're a bit overdue
11 for our morning break. I do want to give the
12 bâtonnière an opportunity to speak to us and we have a
13 couple more matters. So could I ask you to just take a
14 fifteen minute break, please, and come back promptly at
15 12:15.

16 --- Recess taken at 12:00 p.m.

17 --- On resuming at 12:15 p.m.

18 TREASURER MINOR: Be seated, please.

19 Thank you. I'd like to welcome our guests. I
20 mentioned earlier in the proceedings that you would be
21 attending. We have with us Claudia Prémont, bâtonnière
22 du Québec; Lise Tremblay, Directrice générale, and Paul
23 Le Vay, representing AJEFO.

24 I'm going to start with the introduction
25 for Paul first. He is a partner at Stockwoods in

1 Toronto, pratique le droit depuis plus de 25 ans.

2 Lauréat du prix Lincoln Alexander en 2015, Maître Le

3 Vay est ici comme membre du conseil et président

4 sortant de l'AJEFO.

5 Bâtonnière Prémont is going to address

6 us, and it is a pleasure to have her here today. She

7 has been very active in family law in her practice.

8 Admise au Barreau en 1990, maître Prémont a concentré

9 sa pratique sur le droit de la famille, des personnes

10 et des successions.

11 Elle est beaucoup engagée dans

12 l'administration au Barreau et dans ses comités. Elle a

13 été bâtonnière pour la région de Québec en 2007-2008.

14 I had the opportunity to meet with Madam

15 Prémont and her colleagues in Montreal a few months

16 ago. I thank them very much for their hospitality and

17 interest. It appeared to me that we have much in

18 common, notwithstanding that we have different legal

19 systems, and I'm delighted that she's able to join us

20 here today to provide some highlights of the Québec

21 bar's recent activities.

22 And welcome again also, Ms. Tremblay.

23 Je vous souhaite la bienvenue.

24 -- ADDRESS BY CLAUDIA PRÉMONT,

25 BÂTONNIÈRE DU QUÉBEC:

1 MS. PRÉMONT: Merci. Dear Madam
2 Treasurer, dear board members, dear colleagues, first I
3 want to say that is a great pleasure for me to be here
4 today and wish to thank you for giving me the privilege
5 to address you a few words. I know that the lunchtime
6 is past, but I will try to do it as fast as possible.

7 Nearly a year ago the Québec bar was
8 renewed. The new governance setup not only
9 demonstrated the leadership of our bar, but also
10 brought new force and increased efficiency,
11 effectiveness and flexibility.

12 The major changes are the mandate of the
13 president, me, is now a two year mandate, renewable for
14 another period of two years. The board has been
15 reduced to 16 members, instead of 37 members. Four
16 members are representing the public and have been
17 nominated by the Office des Professions. The conseil
18 of the sections has been created and it's the new
19 advisory body of the Québec bar and allows the board to
20 get the pulse of the different regions of Québec, since
21 members of the conseil are the bâtonnières of each
22 region of Québec.

23 We should be proud of this success
24 achieved through teamwork from the conseil of the
25 sections and the Québec bar. With this new governance

1 I hope for a more respected profession, as well as a
2 lively, vibrant and healthy one.

3 However, to be respected we must be
4 relevant. The question we must ask ourselves is are we
5 still relevant in the eyes of the public. The
6 transformation of the legal culture takes greater shape
7 with the new code that offers us an incredible
8 opportunity to demonstrate our relevance.

9 As you probably know, the new
10 code encourages both parties to consider alternative
11 ways of settlement or resolution of conflict before
12 going to court. The Québec bar works to support this
13 culture change with its Masters in Solutions Campaign,
14 Maîtres en Solutions, in French, and the addition of
15 article 42 of the new code of professional conduct of
16 lawyers concerning the obligation of the lawyer to
17 inform and advise his client about all available means
18 for settling his dispute, including dispute prevention
19 and resolution methods.

20 Also, for over ten years the Québec bar
21 offered training in participatory justice to allow
22 lawyers interested in this field of practice to be able
23 to provide citizens with what many of them want to
24 resolve their dispute other than through the courts.

25 With the arrival of the new code of

1 practice, a kit was put on-line containing all the
2 forms, guidelines and advice on the implementation of
3 the new code. We put in place an enforcement team code
4 consisting of lawyers of the research and legislation
5 service that will be the drop point of the various
6 issues raised by the lawyers and will make the
7 connection with the various courts and the Minister of
8 Justice.

9 Another aspect to a respected profession
10 is a review of the billing methods for legal services.
11 The boundaries of the business model based solely on
12 hourly billing for legal services, a change of
13 mentality, and the adoption hereto of alternative
14 pricing methods. The adoption of new business models
15 could help us deal with the issues raised in our
16 report, the hourly rate at the time of reflection.

17 This report is the result of extensive
18 consultation in 2015 with focus groups from different
19 backgrounds. The main observation made is that over
20 70 percent of the members in the Québec bar still use
21 hourly billing. Simple and easy to understand,
22 billable time is used to plan the budget of a firm or a
23 legal department in order to assess performance,
24 remuneration, and determine the granting promotion to
25 staff lawyers or profit sharing between partners;

1 however, the model of hourly billing has reached its
2 limits.

3 Let's be clear, there is no question for
4 the Québec bar to regulate the hourly billing.
5 Moreover, it is also clear that the hourly rate will
6 survive because it can be the best billing method for
7 some issues or situations. What we promote is that new
8 models emerge so citizens come back in our offices.

9 The Québec bar adopted an action plan to
10 initially deploy the report to educate members of the
11 profession and to develop new fee agreements that
12 propose alternative methods of pricing. We will also
13 offer training based on the establishment of business
14 models, including evaluation of the cost of producing a
15 legal service and the cost of a file, and to stimulate
16 the necessary changes.

17 Another important file for a respected
18 profession is our active participation in the Québec
19 forum on access to civil and family justice. The
20 Québec bar is a member of the director community of the
21 Québec forum. Within this forum, the Québec bar and
22 other legal organizations undertake to work together to
23 pool their resources and work to identify new
24 initiatives that can help citizens to better access
25 civil and family justice.

1 Members of the forum are actually
2 working on a project for all citizens, the no wrong
3 door policy, which should permit a citizen to obtain
4 all information needed in a faster and more effective
5 manner.

6 Another great project is the Justice in
7 Northern Québec. On January 23rd, 2015, the Québec bar
8 released Justice in the North, and I think that you had
9 a copy of the report in your file for the reunion of
10 today. The report on foreign missions and meetings
11 held with Aboriginal communities in Northern Québec
12 since spring of 2013. An electronic copy -- I said
13 that.

14 The report submits 12 findings on access
15 and issues related to justice and concrete
16 recommendations to improve the situations that have
17 been seen. These recommendations range from educating
18 elected officials to various problems in the drafting
19 of indictments in three languages, through the revision
20 of certain aspects to be arranged in order to adapt to
21 the culture of Aboriginal people.

22 The Québec bar are so intense to step up
23 efforts to promote a better representation of
24 Aboriginal people in the profession and take steps to
25 make its public protection services in Northern Québec.

1 The report, Justice in the North,
2 highlights the shortage of interpreters, which are
3 nevertheless essential to ensure effective justice in
4 the north. Detention facilities and where justice is
5 administered is are also denounced by the Québec bar.

6 In conclusion, the report underlines
7 that the Québec bar renews its commitment to the strong
8 need for dialogue on justice in Northern Québec.

9 Now, to be alive and vibrant, our
10 profession must also renew itself. Youth and members
11 from diverse ethnic and cultural strains are new and
12 bring a positive spirit to the Québec bar. In this
13 regard we intend to support several initiatives.

14 First, the board adopted a resolution
15 that allows young people with ten years experience and
16 less to be part of most advisory and statutory
17 committees of the bar. The report on the employment
18 situation among young lawyers prepared by the Young Bar
19 Association of Montreal received a favourable reception
20 from the Québec bar. Our recommendations have been
21 endorsed by the bar, therefore the bar is taking
22 concrete steps and is planning further in regard of
23 some recommendations directed to it -- to our bar.

24 For example, we continue to listen to
25 questions from young people, especially that are

1 related to articling. We will initiate a serious
2 discussion with all stakeholders regarding quota and
3 we'll encourage young lawyers to establish their
4 practice in regions where needs are more important than
5 the needs in Montreal or Québec.

6 Moreover, we will launch the Panama
7 Project on June 9th, a project that promotes the
8 integration of ethno-cultural lawyers. This project
9 included many law firms, the legal departments of
10 several companies, as well as the Québec bar as an
11 employer.

12 Finally, to keep our profession healthy,
13 the Member Assistance Program of the Québec bar, PAMBA,
14 is an assistance and advisory service available to all
15 members suffering from alcoholism, drug addiction,
16 burnout syndrome, stress and other mental health
17 problems. PAMBA was officially launched on April 1st,
18 1990. During its first ten years of activity, PAMBA
19 processed over 2,800 requests for assistance and
20 consultations. To help support our colleagues in
21 difficulty, this year the Québec bar proposed that the
22 fee dedicated to PAMBA be increased to \$25 per member.
23 It represents a contribution of over \$600,000.

24 The Québec bar also established a line
25 available to its members, the impôt déonto (ph.) line.

1 The demands are welcomed verbally and dealt with
2 promptly. On the phone, senior lawyers from the
3 trustee's office make our members benefit from a
4 support to the resolution of a question relating to
5 ethics when facing delicate situations. Impôt déonto
6 answers 8,000 phone calls for the last year.

7 A lot of other files -- we're working on
8 a lot of things, but I know that I don't have one hour
9 to talk about that and I'm sure that you are very happy
10 and pleased that I am closing now.

11 So in closing I'm proud to say that in
12 the past years the Québec bar has been involved in many
13 great projects and changes. We are confident that we
14 can continue to put our skills and talents to work in
15 order to contribute to our mission while ensuring a
16 future for our profession.

17 Thank you, and I hope to -- hoping to
18 work together in the near future. Thank you very much.

19 -- Applause.

20 TREASURER MINOR: As indicated earlier,
21 we are pleased that both the Bâtonnière and CEO can
22 join us for lunch, and I would urge you to follow up on
23 any of those very interesting initiatives that were
24 mentioned. I'm sure Bâtonnière would be happy to
25 provide further details. Some close to what we're

1 doing, some sound very interesting, but not what we
2 were thinking of. So we look forward to further
3 discussion and working with you.

4 Back to our agenda. We are going to
5 defer our Tribunal Committee report until next
6 Convocation. I'd like to deal with the matters
7 requiring decision, however, so can we proceed next to
8 the Professional Regulation Committee Report,
9 Mr. Mercer.

10 -- PROFESSIONAL REGULATION COMMITTEE

11 REPORT:

12 MR. MERCER: There are three proposed
13 rule changes. The first is at tab 4.1, at page 61 of
14 BoardBooks, I believe. This deals with rules of
15 professional conduct regarding transactions with
16 clients, and perhaps it's worth starting by observing
17 why this rule matters.

18 Ordinarily lawyers and paralegals don't
19 do transactions with clients, ordinarily they provide
20 them with services, but there are circumstances where
21 as well, transactions take place and it is important,
22 given the risk of conflicts of interest, given the
23 risks in more serious matters of abuse, that we be
24 clear about how professional conduct applies in this
25 context.

1 So if I can take to you page 67 of
2 BoardBooks, you have a black line against the current
3 rule and it's probably useful to start looking at
4 3.4-28, which is the guts of the current rule.

5 The current rule provides that a lawyer
6 must not enter into a transaction with a client, unless
7 the transaction is fair and reasonable to the client,
8 the client consents to the transaction and the client
9 has independent legal representation with respect to
10 the transaction.

11 You will be aware that there are a range
12 of possible transactions and the existing rule
13 effectively requires that there be another lawyer
14 involved in every single transaction involving a
15 client.

16 The substance of 3.4-28 as opposed to
17 the process is not proposed to be changed. The
18 requirement of a fair and reasonable transaction, given
19 it's a transaction with a fiduciary, is maintained.

20 The second is in 28.1. Lawyers are
21 prohibited from borrowing from clients unless the
22 client is a regulated lender or related person.
23 Borrowing from banks is not particularly problematic
24 from a legal ethics perspective. Borrowing from
25 related persons may be appropriate, as long as the list

1 of related persons is not large.

2 One of the things we've done in the
3 committee is work to narrow the list to a reasonable
4 narrow group, as you'll see in the definitions of who a
5 regulated person is for the purpose of this borrowing
6 provision.

7 28.2 is a general prohibition adopted
8 from the Federation commentary saying that lawyers
9 can't do indirectly what lawyers are prohibited from
10 doing directly, and sometimes lawyers are clever,
11 sometimes they're inadvertently clever, if that's a
12 thought, and what 28.2 is intended to do is allow a
13 look at whether or not the substance has been complied
14 with, irrespective of the form, and commentary is given
15 with respect to that.

16 We also recognize that we can't be
17 regulating lawyers in respect of things that lawyers
18 aren't doing, in respect of that which they're not
19 involved. So the commentary makes clear that if the
20 lawyer is genuinely uninvolved, even though it is
21 through a related person or similar mechanism, then
22 that is not a breach of the can't do indirectly what
23 you can't do directly rule.

24 Dash 29 is a rule which we've spent a
25 lot of time trying to get right, and these are

1 difficult rules to get right. They may not be all that
2 interesting, but they have taken many meetings to work
3 through. What dash 29 does is deal with the process
4 that has to be followed for permitted transactions, and
5 the rule provides first for disclosure of any
6 conflicting interests or how conflicting interests may
7 develop later. That's important where a fiduciary is
8 dealing in a transaction with a beneficiary.

9 (B) then distinguishes different
10 circumstances where independent legal representation is
11 required and legal advice is required or is required to
12 be recommended. And I said at the outset that we have
13 a very strict regime now where independent legal
14 representation is required for each and every
15 transaction. What we've done instead now is to set out
16 on a risk based analysis when ILR is required, when ILA
17 is required, and when ILA is to be recommended.

18 (C) then says after that process consent
19 has to be to obtained. It is trite fiduciary law to
20 say that transactions with clients require consent.
21 The point of the order of this is that consent should
22 follow mandatory ILA, mandatory ILR, or optional ILA.

23 So that's the guts. The only other
24 thing I bring to your attention, and I'm hopeful no one
25 cares, is that the title of 3.4-37 is changed from

1 Testamentary Instruments and Gifts to Gifts and
2 Testamentary Instruments. I expect debate will follow
3 and I fear it. The intent obviously is to recognize
4 gifts that don't happen in wills.

5 TREASURER MINOR: Thank you very much,
6 Mr. Mercer. Are there any questions or comments in the
7 room? Any questions or comments from the phone? If
8 not I'm calling the vote. All in favour? Sorry, I'm
9 just reminded, is there not a seconder for this?

10 MR. MERCER: Yes, there is and it's Ms.
11 Richer.

12 TREASURER MINOR: Sorry. I've got to
13 ask to do the vote again. All in favour? Any opposed?
14 Any opposed on the phone? Motion carried.

15 MR. MERCER: Tab 4.2 is an amendment to
16 the duty to report. Why does the duty to report
17 matter? It matters because mostly we learn about
18 issues of alleged misconduct through complaints through
19 reporting.

20 The duty to report rule is fundamentally
21 important because it places on all lawyers the
22 obligation to report in certain circumstances, as
23 opposed to the option.

24 The opening paragraph, and you can find
25 the black line on page 86, the opening paragraph of

1 7.1-3 simply flips the order of the introductory
2 language and is not of consequence.

3 At the top of page 87 you see the guts
4 of the change, and there are two changes. The current
5 rule requires reporting where, and I quote, "The mental
6 instability of a licensee is of such a serious nature
7 that the licensee's clients are likely to be materially
8 prejudiced".

9 The concept of mental instability and
10 the use of that language is objectionable and so what
11 the Federation has proposed and the committee considers
12 appropriate is that we refer instead to conduct that
13 raises a substantial question as to another licensee's
14 honesty, trustworthiness or competency. And then in
15 (E), conduct that raises a substantial question about
16 the licensee's capacity to provide professional
17 services.

18 So rather than speaking of mental
19 instability in pejorative terms, we should talk about
20 it in its proposed capacity, which is the issue
21 addressed under the Law Society Act.

22 So (D) has been in the Federation rules
23 for some time. We didn't include it when we did the
24 first go round under the model code. In retrospect,
25 none of the committee could remember why we didn't and

1 none of us thought it was the right conclusion, and so
2 we propose to include conduct that raises a substantial
3 question as to honesty, trustworthiness or competency.
4 If those are substantial questions as to those matters,
5 given our largely currently reactive system, it's
6 important that that be learned of by the Law Society.
7 So Ms. Richer seconds the motion which I have made.

8 TREASURER MINOR: Thank you. Question,
9 Mr. Anand.

10 MR. ANAND: I just have a quick question
11 about F. I'm looking at page 87, 7.1-3(F). I'm sorry,
12 I meant to speak to Mr. Mercer before Convocation about
13 this.

14 On its own, if you leave out A to D, it
15 says, "Unless to do so would be unlawful or would
16 involve a breach of solicitor/client privilege, a
17 lawyer shall report to the Law Society any situation
18 where a licensee's clients are likely to be severely
19 prejudiced." Doesn't even relate to the conduct of a
20 licensee. And I suspect given that the other
21 paragraphs speak to a licensee's conduct, it should say
22 something like conduct that is likely to severely
23 prejudice a licensee's clients.

24 MR. MERCER: I'm always content when
25 objection is taken to something we haven't proposed to

1 change. That's the existing rule and it may be
2 worthwhile to take that back and consider it, but it's
3 not something we've considered.

4 MR. ANAND: I want to say severe --
5 clients could be severely prejudiced by losing a case.

6 MR. MERCER: The point is well taken.
7 It may be not straightforward. In any event, I'm
8 certainly content to note the point and to add it to
9 the agenda of issues to be considered.

10 TREASURER MINOR: Thank you very much.
11 Any other questions or comments in the room?
12 Mr. Wright. Would you be brief, please.

13 MR. WRIGHT: Yes. This isn't strictly
14 speaking before us, but on page 92 under informing
15 client of error or omission, it says that the lawyer
16 shall promptly inform the client -- it then goes on to
17 say, "The lawyer has a contractual obligation to report
18 to the lawyer's insurer". So LawPro maintains
19 solicitor/client privilege in all circumstances,
20 therefore why is it not consistent under the rules,
21 unless to do so would be unlawful or would invoke a
22 breach of solicitor/client a lawyer shall report to the
23 Law Society A, B, C, D, E and F.

24 Shouldn't our members be required to
25 report to the Law Society and the Law Society, like

1 LawPro, will maintain the solicitor/client privilege?
2 If a lawyer has knowledge that there is
3 misappropriation, abandonment, et cetera, shouldn't the
4 Law Society be notified?

5 TREASURER MINOR: Mr. Mercer?

6 MR. MERCER: It's an interesting
7 question. If one is reporting one's self, there is no
8 difficulty with privilege. If one is reporting the
9 conduct of another licensee who has another client,
10 there may be issues about breach of your obligation and
11 confidentiality and your client's privilege in that
12 context. And it's not clear that a complaint to the
13 Law Society in respect of another licensee's conduct
14 maintains the privilege as between you and your client.

15 So you may be right, you may not be
16 right, depending on the circumstances. It's an example
17 of how privilege is tricky around reporting.

18 MR. WRIGHT: It's something the
19 committee should look at, I think.

20 MR. MERCER: I can say that one of the
21 things we are looking at as a working group and hope to
22 report soon is with respect to disclosure and the very
23 issue of protecting privilege in the complaints
24 process. It's an important issue that you raise, and
25 how privilege get protected in complaints processes is

1 complicated and should be considered.

2 TREASURER MINOR: Thank you. Any other
3 questions or comments in the room? Questions or
4 comments from the phone? I'm sure everyone who was
5 there originally is still on.

6 MR. BREDT: Oh, you are ever optimistic.

7 TREASURER MINOR: Hearing no questions
8 or comments on the phone, I'm going to call the vote.
9 All those in favour? Any against? Motion carried.
10 Thank you very much.

11 MR. MERCER: I take that as no slight on
12 my presentation. Tab 4.3 is the last and deals with
13 the rule dealing with errors and omission.

14 Why is this rule important? This rule
15 is important because lawyers, as Justice Binnie said,
16 are not mere auto mechanics. We have an obligation to
17 tell our clients when they may have claims against us
18 when we may have done things which are of concern
19 legitimately to them.

20 So our ethical rules, which you'll see
21 the black line at page 92, first of all under 7.8-1,
22 which is not proposed to be changed in the body,
23 require us to notify our clients where there has been
24 an error or omission, being careful, of course, not to
25 compromise insurance coverage.

1 The commentary makes it clear or clearer
2 that this is not the only obligation. There are
3 actually three obligations that a lawyer needs to
4 consider in these circumstances. The first is dash
5 one, duty to tell the client. The second is dash 2,
6 the obligation to report to the insurer or other
7 indemnitor. And you might ask why is that reporting
8 obligation to one's own insurer in the rules, and the
9 answer is because it's important that coverage be
10 maintained for the benefit of the client, not just for
11 the benefit of the lawyer. We have mandatory insurance
12 because we think it matters in the public interest.

13 What's changed or proposed to be changed
14 in 7.8-2 is to take out, "The lawyer may reasonably
15 expect," to any circumstance that may give rise to a
16 claim. The logic of this is that there shouldn't be a
17 lot of wiggle room around reporting. There's no
18 practical downside to reporting a potential claim to
19 one's insurer, and some lawyers are diffident about
20 reporting and they shouldn't be diffident and it's a
21 bad thing for them to have much wiggle room.

22 The commentary is proposed to be changed
23 as well to make clear that there is a third relevant
24 obligation, and that is the contractual obligation
25 between the lawyer and the lawyer's insurer or excess

1 insurer, which also requires a report in circumstances
2 that could give rise to a claim. The lawyer is
3 reminded that it's in the lawyer's own interest to
4 maintain coverage by reporting as a salutary caution,
5 but the ethical rules, the conduct rules, are to tell
6 the client and to tell the insurer so that the client
7 has the benefit of insurance. Ms. Richer seconds.

8 TREASURER MINOR: Questions or comments
9 in the room?

10 MR. MERCER: I want to report a
11 discussion with Mr. Troister, which is in the unusual
12 context for me but not for him, of a situation where
13 there is title insurance and there's an interesting
14 question whether or not where a client has title
15 insurance and a lawyer has made an error or omission,
16 is there an obligation under the rule and contractually
17 to report to LawPro. Mr. Troister assures me that
18 LawPro doesn't care. LawPro indicates that they want
19 to know. Somewhere between those two thoughts I'm sure
20 is the truth.

21 TREASURER MINOR: Perhaps you could
22 report on that next time.

23 MR. MERCER: I'm simply reassuring Mr.
24 Troister that we will do just that. We will take the
25 issue away and address it.

1 TREASURER MINOR: Thank you. Any
2 questions or comments from those on the phone?

3 MS. POTTER: No.

4 TREASURER MINOR: There is someone.
5 Going to call the vote. All those in favour? Any
6 opposed? Any opposed on the phone? Motion carried.

7 MR. MERCER: Thank you.

8 TREASURER MINOR: I was just going to
9 point out that we have included with the Professional
10 Regulation Committee report its division quarterly
11 report. I'm not going to ask Mr. Mercer to deal with
12 that today. If there's any questions on that they
13 could be addressed next day, I'm sure.

14 MR. MERCER: Yes, thank you.

15 TREASURER MINOR: Paralegal Standing
16 Committee Report, Ms. Haigh.

17 -- PARALEGAL STANDING COMMITTEE REPORT:

18 MS. HAIGH: Thank you, Treasurer. We
19 are at tab 5.1, page 136 in your BoardBooks. The
20 Paralegal Standing Committee has one item for decision,
21 and the motion is that Convocation approve the
22 amendments to the paralegal rules of conduct set out at
23 5.11, 5.13 and 5.15.

24 These amendments correspond to the
25 amendments in the lawyers' rule that Convocation has

1 just approved. The changes arise from the work of the
2 Federation of Law Societies on the model code of
3 professional conduct, which has led to a review of
4 number of provisions of the rules governing both
5 lawyers and paralegals.

6 Convocation has approved the principle
7 that both rules for lawyers and paralegals should be
8 consistent where possible. The proposed wording for
9 the rule on transactions with clients are at page 138
10 of BoardBooks, and this is a re-draft designed to be
11 clearer and more consistent. The new title is regarded
12 as more descriptive than doing business with clients.

13 The proposed wording for the rule on
14 duty to report to the Law Society is at page 143 of
15 BoardBooks, and this includes wording regarded as more
16 sensitive to persons with mental health issues. We
17 also have taken note, Mr. Anand, of your comment and
18 we'll also consider the wording in that rule.

19 The proposed wording for the rule of
20 errors and omissions insurance is shown on page 134 of
21 BoardBooks, and this amendment will strengthen the
22 obligation to report a possible claim.

23 The motion is moved by myself and
24 seconded by Ms. McGrath.

25 TREASURER MINOR: Thank you. Questions

1 or comments? Mr. Wright.

2 MR. WRIGHT: Will your committee also
3 look at this issue about breaching confidentiality? It
4 seems to be a lacuna in our regulatory process that we
5 should close.

6 MS. HAIGH: What happens between the
7 Professional Regulation Committee and the Paralegal
8 Standing Committee is we try to tackle the items at the
9 same time. So if it is being addressed with the
10 lawyers, we will address it at the same time.

11 MR. WRIGHT: Excellent. Thank you.

12 TREASURER MINOR: Any questions or
13 comments from the phone?

14 MS. POTTER: No.

15 TREASURER MINOR: Thank you. In that
16 case I'm calling the vote. All in favour? Any
17 opposed? Any opposed on the phone? The motion is
18 carried.

19 MS. HAIGH: Treasurer, just wanted to
20 make sure, you had originally asked that I report on
21 enhancements. So I assume you want me to hold that
22 over to next Convocation?

23 TREASURER MINOR: I propose that you do.
24 If people have questions they can be posed then. Thank
25 you very much, Ms. Haigh.

1 -- AUDIT AND FINANCE COMMITTEE REPORT:

2 MR. WARDLE: Thank you, Treasurer.

3 Audit and Finance has three items for decision, all of
4 them relatively routine, and I'll go through them very
5 quickly.

6 At tab 6.1 we have a motion made by me
7 and seconded by Mr. Bredt, if he's still awake, that
8 Convocation --

9 -- Laughter.

10 TREASURER MINOR: That's because he's in
11 jetlag, not because of this meeting.

12 MR. BREDT: Ever the optimistic.

13 -- Laughter.

14 MR. WARDLE: So the motion is that
15 Convocation approve the updated investment policy. If
16 you look at the text, you'll see in paragraph 13 of the
17 materials at page 151 that it's a mere housekeeping
18 amendment and the investment policy follows.

19 So unless there are any questions, I'd
20 simply propose that we deal with this quickly.

21 TREASURER MINOR: Seconded by?

22 MR. WARDLE: Mr. Bredt.

23 TREASURER MINOR: Okay. All in favour?

24 Any opposed? Anyone opposed on the phone? Motion
25 carried.

1 MR. WARDLE: Thank you. The second
2 motion is at tab 6.2, page 162 of BoardBooks, and it's
3 that Convocation approve the continued retention of the
4 portfolio manager, Foyston, Gordon & Payne, and again
5 the motion is made by me and seconded by Mr. Bredt.

6 You'll see that the background is that
7 Foyston has been our portfolio manager since 2003. We
8 get a monitoring report on a regular basis from Aon
9 Hewitt, and you'll see that that follows this material
10 starting at page 163.

11 If I just take you quickly to page 166
12 of BoardBooks, you'll see that that gives a snapshot of
13 the overall performance of the three funds where we
14 invest our money; the E & O Insurance Fund, the
15 Compensation Fund and the General Fund, all of which
16 three funds we have monies invested with our manager,
17 being Foyston. You'll see there is a brief description
18 there of the current performance of the fund and
19 basically the story is that over the last six months
20 they have somewhat underperformed the market because of
21 our Canadian equity weighting and because of
22 developments in the market, but over a longer time
23 period we're ahead of our benchmarks.

24 So there's nothing to be concerned about
25 and, in fact, we're basically on track. So -- and this

1 obviously was all reviewed by Audit and Finance at its
2 last meeting. We have to decide on a regular basis
3 where we continue with Foyston as our manager and
4 there's no reason at present to continue with another
5 manager. Hence the motion, which, again, is found at
6 page 162 of BoardBooks. Unless there are any
7 questions...

8 TREASURER MINOR: Any questions or
9 comments in the room? Any questions or comments from
10 the phone?

11 MS. POTTER: No.

12 TREASURER MINOR: Thank you. Calling
13 the motion, then, calling the vote. All in favour?
14 Any opposed? Any opposed on the phone? Thank you.
15 Motion carried.

16 MR. WARDLE: Thank you, Treasurer. Then
17 the final motion is at tab 6.3, page 232 of BoardBooks.
18 I think it's probably the most straightforward of the
19 three motions.

20 We have a custodian, CIBC Mellon.
21 You'll see the services they provide are set out in
22 paragraph 21, and the motion is simply that Convocation
23 approve the continued retention of the custodian, CIBC
24 Mellon Global Securities Services Company, and, again,
25 the motion is made by me, seconded by Mr. Bredt.

1 TREASURER MINOR: Questions or comments?
2 Any questions or comments from the phone? Calling the
3 vote. All in favour? Any opposed? Any opposed on the
4 phone? Motion carried. Thank you very much, Mr.
5 Wardle.

6 MR. WARDLE: Thank you. I should just
7 indicate, Treasurer, that there are some reports for
8 information which are found at tab 6.4, including the
9 Law Society's financial statements for the first
10 quarter of 2016, and given the time restrictions I
11 won't take Convocation through them. Thank you.

12 TREASURER MINOR: Thank you very much.
13 I was going to only make one further point. One
14 committee that we have not heard from for a while is
15 the Compensation Fund Committee, and I'm told that they
16 are expecting to be able to report in June. I wanted
17 to mention that in case -- the subject came up earlier
18 today. So that's where we are. I know they have been
19 waiting for some work to be done in order for them to
20 report.

21 Okay. Equity and Aboriginal Issues
22 Committee. And this is the Human Rights Monitoring
23 Group, Mr. Schabas.

24 -- EQUITY AND ABORIGINAL ISSUES

25 COMMITTEE REPORT:

1 7.2.2. Moved by me, seconded by Mr. Cooper.

2 TREASURER MINOR: Thank you. Any
3 questions or comments from the room? Questions or
4 comments from the phone? Okay. Going to call the
5 vote. All in favour? Any opposed? Any opposed on the
6 phone? Motion carried. Thank you, Mr. Schabas.

7 The next item. As I noted, the Tribunal
8 Report will be deferred till June, and I'm going to ask
9 for the Federation of Law Societies update to be
10 deferred to that time too.

11 I would point out that the Federation
12 will be holding a council meeting in June before the
13 next Convocation. It does not include a conference,
14 but when it does we have frequently invited Benchers to
15 attend that, as is relevant for their various
16 committees, but that is not included this time around.
17 It is a council meeting. So Ms. Pawlitza will report
18 further on that in June.

19 In camera we have one item from the
20 Equity and Aboriginal Issues Committee, so I'd ask all
21 those who are not voting members and or otherwise Life
22 Benchers to leave briefly and we'll be through fairly
23 quickly, I'm sure. Thank you very much.

24 --- Whereupon the public proceedings adjourned at 1:09
25 p.m.

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

SHARI CORKUM, C.S.R.

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