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3 CONVOCATION

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7 IN PUBLIC SESSION

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15 WEDNESDAY, NOVEMBER 9, 2016 - 9:00 a.m.

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19 OSGOODE HALL, TORONTO

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2 CONVOCATION ATTENDANCE

3 Treasurer - Paul Schabas

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

1	Janet Leiper	Jeffrey Lem
2	Michael Lerner	Marian Lippa
3	Virginia MacLean	William McDowell
4	Susan T. McGrath	Isfahan Merali
5	Malcolm Mercer	Barbara Murchie
6	Sandra Nishikawa	Gina Papageorgiou
7	Susan Richer	Jonathan Rosenthal
8	Raj Sharda	Andrew Spurgeon
9	Joanne St. Lewis	Sidney Troister
10	Jerry Udell (ph.)	M. Anne Vespry
11	Peter Wardle	Laurie H. Pawlitzka
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1 --- Upon commencing at 9:00 a.m.

2 -- TREASURER'S REMARKS:

3 TREASURER SCHABAS: Good morning,
4 everybody. I'm keenly aware that many of us did either
5 not sleep much or sleep well last night, but perhaps
6 the distraction of the busy couple of days of
7 Convocation and committee will be welcome to us today.

8 Welcome to Convocation. Welcome to
9 those of you on the phone and those of you watching and
10 joining us by public webcast.

11 I want to start by recognizing that
12 we're here together in Toronto, which is Mohawk for
13 "Where there are trees standing in the water," and
14 thank the First Nations people -- Mr. Rosenthal,
15 perhaps you could put your phone down --

16 MR. ROSENTHAL: It's not me.

17 TREASURER SCHABAS: Somebody on the
18 telephone needs to put their phone on mute. Can we put
19 them on lecture mode?

20 Thank you. So as I said, I want to
21 thank the First Nations people who lived and live on
22 these lands for sharing them with us and to acknowledge
23 that we're meeting on their traditional territories of
24 Mississaugas of New Credit First Nation. I also
25 acknowledge the Haudenosaunee peoples and recognize the

1 long history of the First Nations in Ontario and the
2 Métis and Inuit peoples.

3 So let me review the instructions for
4 the phone system. Once we determine who is on the
5 phone, we will be placing those calling into the
6 meeting in what we call lecture mode. So we will be
7 muting you. It is star 6 from our end. And I would
8 ask you all to star 6 your phones as well. And when
9 you do -- when we do come out of lecture mode and if
10 you wish to speak then you can press star 6 to take
11 your phone out of lecture mode as well.

12 So let's just take attendance then,
13 Mr. Varro, of who is on the telephone. I understand
14 that Mr. Banack may be on the phone, is that correct?
15 Apparently not. Ms. Boyd?

16 MS. BOYD: Here.

17 TREASURER SCHABAS: Mr. Copeland?

18 MR. COPELAND: Present. The sound
19 quality is really bad.

20 TREASURER SCHABAS: Okay. Well, I hope
21 that's not a reflection of me. We'll do our best.
22 Mr. Finkelstein?

23 MR. FINKELSTEIN: Yes, I'm here.

24 TREASURER SCHABAS: Mr. MacKenzie?

25 MR. MACKENZIE: Yes.

1 TREASURER SCHABAS: Ms. Richardson?

2 MS. RICHARDSON: Present.

3 TREASURER SCHABAS: Okay. Is there

4 anybody else on the phone?

5 MR. SWAYE: Gerry Swaye.

6 TREASURER SCHABAS: Mr. Swayne. Anybody

7 else? Okay. Then we will go back into lecture mode.

8 Thank you. You can tell I was up late.

As some of you know, the next meeting of Convocation on

10 December 2nd is going to be held in the Lamont Learning

11 Centre. This will give us an opportunity to meet in a

larger space, fully equipped with audio visual

13 infrastructure for webcast of our meetings. We will do

it as an experiment and we are considering perhaps

15 having some meetings in the new year there as well,

depending on how that goes.

You will be getting details about them.

arrangements for the De-

advance of the meeting.

we were saddened to learn of the dece-

passing of two former appointed benches, Rose

MESSAGE OF APPRECIATION, WHO SERVED FROM 1973 TO 1987, AND

Final 3

1 and his stature in the community on a recent trip to
2 Thunder Bay. On behalf of Convocation I want to extend
3 our deepest condolences to their families.

4 As you will recall from my report in
5 September, I've created a Treasurer's Appointments
6 Advisory Group to establish a process for making
7 external appointments and to manage the process of
8 selecting appropriate candidates for consideration for
9 Convocation's approval.

10 The group, which includes Raj Anand,
11 Suzanne Clément, Cathy Corsetti, Will McDowell and Gina
12 Papageorgiou has begun its work.

13 In a related development, we have
14 received an urgent request from the Minister of Justice
15 to provide the names of individuals for the Law
16 Society-nominated positions on the federal Judicial
17 Advisory Committees for Ontario, which need to be
18 repopulated following the reforms to the appointments
19 process.

20 We have begun our outreach on this and I
21 would encourage all benchers to consider appropriate
22 individuals and to contact me or Sheena Weir with your
23 recommendations. We have also posted this on our
24 website. You will recall that earlier in the summer
25 messages also went to stakeholders and others around

1 the appointments process, so this is also my way of
2 making a public call for any applications, which we
3 need to receive no later than November 14th.

4 I'll be speaking more about this process
5 and some issues around that when we go in camera later
6 in the meeting.

7 TAG hosted Access to Justice Week from
8 October 17 to October 21st. By all accounts, the week
9 was an extraordinary success. There were five events,
10 nine partners, 40 session, 151 speakers, 633 attendees,
11 957 tweets, and coverage from 25 media outlets,
12 including the Law Times, Radio Canada International and
13 the front page of the Toronto Star. There were
14 5 million impressions, that's print radio and on-line
15 media, the number of times content about the week was
16 displayed or broadcast.

17 So this media attention was terrific, it
18 help legitimize the work of those on the front lines,
19 and helped make access to justice a relevant issue to
20 the public.

21 The Attorney General made a Ministerial
22 statement in the house commending it, as well as the
23 opposition and the third party critic, underscoring the
24 importance of the event. Letters of support from the
25 Chief Justice of Canada, the Federal Justice Minister

1 and others were also received commending the Law
2 Society and the Law Foundation of Ontario for their
3 support of TAG.

4 The events through the week resulted in
5 engagement with the public, as well as tech, business
6 and social sectors, in addition to our justice system
7 partners.

8 There was a great deal of interest in
9 our Public Perceptions of Access to Justice in Ontario
10 study, a poll that was conducted on-line by Abacus
11 Data. TAG commissioned that study in order to identify
12 where and how to direct public legal education
13 resources, how to better engage the public in
14 meaningful access to justice improvements.

15 The report concluded that Ontario's
16 justice system faces two major challenges.

17 Perceptually, it is seen as unfair, inaccessible and
18 intimidating to most of the province's residents.

19 Beyond the perceptual challenges,
20 affordability is, of course, the primary obstacle
21 preventing access to justice. The largest barrier
22 cited by Ontarians who have sought legal advice is the
23 prohibitive expense of a lawyer or paralegal, and the
24 majority of all Canadians say they have little or no
25 confidence that they could currently afford either.

1 This study and the data sadly confirms
2 what we have been hearing anecdotally and identifies
3 areas where we should direct our energies in terms of
4 increasing awareness of existing resources and
5 developing new responses that will boost public
6 confidence.

7 We all have work to do. TAG and its
8 partners are going to use this study to continue to
9 facilitate and develop effective initiatives that will
10 hopefully result in meaningful change.

11 Their report is included at tab ten,
12 along with the Minister's statement.

13 I want to congratulate Sabrina Delhon,
14 Law Society staff who supported the event, and all of
15 the partners for a very successful week. I also want
16 to again note and recognize the ongoing support of TAG
17 by the Law Foundation.

18 As part of our commitment to access to
19 justice in Ontario I have decided to form a Legal Aid
20 Working Group. The working group will be chaired by
21 John Callaghan and will include benchers from both the
22 Government Relations Committee as well as the Access to
23 Justice Committee.

24 The membership of the group is as
25 follows: John Callaghan, Chair, Suzanne Clément, Paul

1 Cooper, Julian Falconer, Avvy Go, Howard Goldblatt,
2 Janet Leiper, Marian Lippa, Susan McGrath and Susan
3 Richer.

4 The group will explore opportunities for
5 robust and sustainable legal services for Ontarians.
6 It is intended to be a constructive and supportive
7 voice for Legal Aid in the province.

8 The working group will create a work
9 plan and will report to Convocation as appropriate
10 beginning in 2017. You will find the terms of
11 reference at tab 12 of BoardBooks.

12 Once again, I seem to have quite a bit
13 to say at the beginning of the meeting. Let me tell
14 you a little bit about some outreach which I think will
15 interest you.

16 A number of us attended the Federation
17 of Law Societies Annual Conference, which was held in
18 New Brunswick on October 20th to 22nd. The conference
19 focused on challenges presented when considering the
20 continuum of legal education, and we had many of the
21 law deans from across the country in attendance, where
22 we all agreed that it was an important forum and
23 opportunity for the academics and the legal
24 professionals to exchange ideas and come together, and
25 we agreed that this was an important step forward and

1 that we needed to keep communicating with one another.

2 I also attended a Presidents' Forum, a
3 strategic planning session for the Federation, and the
4 Federation's Council meeting.

5 It was a first meeting for me at the
6 Federation and it was an interesting introduction to
7 the Federation. I think we built a number of bridges
8 with a number of organizations and other law societies.
9 We will have a more detailed report in December through
10 our representative on council, Ross Earnshaw.

11 I should say that the benchers who
12 attended with me included Mr. Earnshaw, Mr. Wardle, Ms.
13 Haigh and a number of staff.

14 At the end of September I had my first
15 meeting with the Treasurer's Liaison Group and the
16 Early Careers Round Table. The major topic of the
17 discussion was the recommendations of the PD&C
18 Committee and the future of the LPP. I found them to
19 be excellent vehicles for engagement with the
20 profession and got a lot of feedback from them.

21 Since we last met I have attended a
22 number of annual meetings and conferences. I'm not
23 going to give you chapter and verse on them, but they
24 included the OBA, the Canadian Association of Black
25 Lawyers, The Criminal Lawyers Association, The

1 Federation of Asian Canadian Lawyers and the Federation
2 of Ontario Law Associations, or as it's now known,
3 FOLA.

4 I want to congratulate Sandra Nishikawa,
5 who was presented with the Lawyer of Distinction Award
6 at the Federation of Asian-Canadians 10th annual
7 conference in Toronto.

8 -- Applause.

9 TREASURER SCHABAS: The award recognizes
10 an Asian-Canadian legal professional who has practised
11 law for ten years for significant accomplishments in
12 the law and for service to the legal profession, areas
13 of social justice and/or the Asian community. So
14 congratulations, Sandra.

15 Also on October 28th I attended the
16 Thunder Bay Law Association Conference and later that
17 day visited Lakehead University and the Dean and did a
18 question and answer period with the law students. I
19 did the same thing yesterday at the University of
20 Ottawa with Professor Adam Dodek.

21 There are upcoming events: Tomorrow,
22 Remembrance Day. I hope many of you can join us for
23 the Remembrance Day ceremony in the rotunda, which
24 begins at 12:30, and to be gowned.

25 November 17th is Louis Riel Day;

1 November 24th will be an information session for the
2 new Coach and Advisor Program, beginning at 5:30 p.m.
3 It's really an information session and reception, and
4 there will be the welcome reception for the newly
5 licensed paralegals on December 1st.

6 A reminder that nominations for the Law
7 Society Awards are open. The deadline is January 27th.
8 Those include the Law Society Medal, the Lincoln
9 Alexander Award and the Laura Legge Award.

10 Paralegals are eligible for the William
11 J. Simpson Distinguished Paralegal Award. And both
12 lawyers and paralegals are eligible for the Shirley
13 Denison Award.

14 Information on the process is on the
15 website and I want to encourage everyone from all
16 communities, practice areas, firms and regions across
17 the province to submit nominations.

18 The deadline for that, as I mentioned,
19 is January 27.

20 --- CONSENT AGENDA:

21 TREASURER SCHABAS: So with that we will
22 turn to the agenda. And first item of business is the
23 Consent Agenda found at tab 1.

24 The Consent Agenda is moved by Ms.
25 Clément, seconded by Mr. Burd. Are there any comments

1 or questions on the Consent Agenda? Hearing none, all
2 in favour? Any opposed?

3 On the phone? Is there anyone opposed
4 to the Consent Agenda on the telephone? Hearing
5 nothing, we can put them back on lecture mode.

6 So we're going to go a little out of
7 order to accommodate Ms. Donnelly, who has to leave
8 later this morning, and deal with the Equity and
9 Aboriginal Issues Committee and the Human Rights
10 Monitoring Group.

11 -- EQUITY AND ABORIGINAL ISSUES

12 COMMITTEE:

13 MS. DONNELLY: Good morning, Treasurer.
14 I have the Human Rights Monitoring Group request for
15 intervention.

16 The motion, found at tab 4.1 of
17 BoardBooks, is at page 229 and it is that Convocation
18 approve the letters and public statements in the
19 following cases: Ramón Cadena Rámila from Guatemala.
20 Letters of intervention and a public statement are
21 presented at tab 4.11; and Jamshed Yorov from
22 Tajikistan, letters of intervention and public
23 statement are presented at tab 4.1.2.

24 The request for interventions fall
25 within the mandate of the Human Rights Monitoring Group

1 and there are no concerns about the sources of
2 information used for the reports.

3 The first request for intervention
4 relates to the harassment of Ramón Cadena Rámila of
5 Guatemala. He is a well-known human rights lawyer in
6 Guatemala. Reports indicate that in August of 2016
7 armed men ransacked his house in Guatemala City and
8 that his family and security guard were forced to wait
9 on their knees outside the home while it was ransacked.
10 Ramón Cadena Rámila was away from the home at the time.

11 The Law Society of England and Wales
12 notes that attacks on human rights lawyers in Guatemala
13 have intensified in the last few months. They are
14 concerned, as is the Human Rights Monitoring Group,
15 that the attack on Mr. Cadena's property reflects a
16 pattern of systemic intimidation and harassment carried
17 out against human rights lawyers for their work in
18 Guatemala.

19 The Law Society of Upper Canada has
20 intervened previously in cases of lawyers and judges in
21 Guatemala, and most recently in June of 2014.

22 The second request for intervention is
23 in relation of the arrest of Jamshed Yorov of
24 Tajikistan. Jamshed Yorov is a lawyer in Tajikistan
25 who represented the deputy chairman of a banned

1 opposition party, the Islamic Renaissance Party of
2 Tajikistan.

3 In June of 2016 the deputy chairman was
4 sentenced to life in prison. In August of 2016 Jamshed
5 Yorov, his lawyer, was arrested and detained on
6 suspicion of dissemination of a state secret.

7 Jamshed Yorov is the third Tajik lawyer
8 representing members of the Islamic Renaissance Party
9 of Tajikistan who has been arrested. One of those
10 other lawyers who was arrested was Jamshed Yorov's
11 brother, and the Law Society of Upper Canada intervened
12 in his brother's case in January of 2016.

13 The motion is moved by me and seconded
14 by Ms. St. Lewis.

15 TREASURER SCHABAS: Thank you. Any
16 discussion? Any discussion on the phone? Hearing
17 none, all in favour? Anyone opposed? Anyone opposed
18 on the telephone? Motion is carried, thank you. Thank
19 you, Ms. Donnelly.

20 The report of the Professional
21 Development and Competence Committee. Mr. Wardle.

22 -- PROFESSIONAL DEVELOPMENT AND
23 COMPETENCE COMMITTEE REPORT:

24 MR. WARDLE: Thank you, Treasurer. The
25 report of the committee is found at tab 2 of

1 BoardBooks, starting at page 17. And the motion before
2 Convocation this morning is found at page 19 of
3 BoardBooks.

4 So by way of background, as you know,
5 the Professional Development and Competence Committee
6 submitted a report to Convocation in September
7 recommending that the Law Practice Program established
8 as part of the Pathways Project be ended after the
9 third year. And that report also recommended a number
10 of enhancements to the licensing process arising out of
11 one of the primary initiatives coming out of our
12 strategic plan.

13 Those enhancements had been developed
14 last year between 2015 and 2016 and originally came
15 before Convocation last spring.

16 I just want to pause for a moment to
17 remind benchers that there are currently 14 members of
18 the PD&C Committee and that last year's committee was
19 close to 27 benchers.

20 As a result, I think it's fair to say
21 that many of us in this room have played some role in
22 the decision making that led to the September report
23 and I think it's also fair to say that over the last
24 few years just about everyone in the room has had some
25 involvement in one way or another with our licensing

1 process.

2 As you know, the current committee
3 worked to a very short deadline in August and September
4 of this year to develop the September recommendations.

5 As part of our meetings in the summer,
6 the committee considered a wide range of issues
7 relating to the LPP and the enhancements. I think it's
8 fair to say that there was a great deal of dialogue and
9 debate and a productive discussion by all concerned,
10 but at the end of the day, as you know, the September
11 recommendations were not unanimous.

12 In the September report there was a
13 consultation period for written comments by
14 stakeholders, and you'll recall that period was very
15 short because of our time constraints, and we did
16 expect to receive a number of comments and indeed we
17 did.

18 We received approximately 125 written
19 submissions and a further petition from over 100
20 individuals. We heard from a wide variety of
21 organizations; from the usual suspects such the
22 Advocates' Society, the OBA, FOLA, Criminal Lawyers
23 Association, AJEFO, various equity-seeking
24 organizations, Law Students Association, I could go on,
25 but we also got a much wider group of submissions than

1 we normally do when we go out for any form of
2 consultation.

3 And we heard from practitioners, LPP
4 mentors, LPP candidates, academics, university law
5 schools, the Office of the Fairness Commissioner and
6 more. Even the Ministry of the Attorney General. And
7 by and large, those submissions were thoughtful,
8 respectful of the committee's work, and offered
9 interesting insights and intelligent commentary on the
10 issues we face and that this organization continues to
11 face in connection with the licensing process.

12 None of the submissions raised any
13 significant issues which we had not considered at the
14 committee in our deliberation; however, on balance, we
15 received a perspective on the debate which was new and
16 which we felt we had to consider in going forward.

17 So I want to outline for Convocation
18 very quickly just a few of the themes which emerged
19 during the consultation process. The first theme was
20 that it's simply premature to draw conclusions about
21 the LPP at this point in time. Many submissions made
22 the point that the program was new, was innovative, and
23 that because the LPP itself, at least the course
24 component of the LPP, was considered by the committee
25 to be a good program and we acknowledged that in our

1 September report, it's simply too early in the program
2 now really as we're just entering the third year.

3 And as part of this theme we heard from
4 numerous LPP mentors, that is, members of the
5 profession who have participated in the LPP, either in
6 Ottawa or at Ryerson, and candidates who have been
7 impressed with both the training program and the
8 candidates themselves.

9 The second theme was that it's defeatist
10 for the Law Society to end a new program because of
11 perceived second tier status, so the submission was put
12 to us that the Law Society should put more resources
13 into promoting the program and let it run longer than
14 simply giving up at this stage.

15 Some of the comments were that the root
16 of the issue was the traditional articling program,
17 which itself has created the second tier status for any
18 alternative. Others suggested that it should be left
19 to the candidates themselves to select the route to
20 become licensed. Still others suggested that while
21 it's preferable to have a single pathway, it's
22 premature to end the LPP before developing a plan for
23 next steps.

24 And that brings me to the third, and
25 probably the most important of the themes that emerged

1 from the consultation, and that was we heard from a
2 large number of organizations that before we make a
3 decision to end the LPP, we need to have a concrete
4 plan in place to deal with candidates who will no
5 longer have that path to licensing.

6 As you know, we have about 200 plus
7 candidates who are presently being served by the LPP in
8 Ottawa and at Ryerson. We currently accept as an
9 organization that these 200 plus candidates meet our
10 licensing requirements and are practice ready.

11 So what will happen to this group of
12 candidates in the future? You'll recall in September
13 we gave some suggestions about the way forward, but the
14 committee simply did not have the time to develop a
15 comprehensive plan.

16 In the submissions there appeared to be
17 a broad consensus that the Law Society needed to
18 develop a broader-based plan to move forward, looking
19 at the licensing process as a whole.

20 The fourth theme was that we should
21 consider making the LPP, or some version of it, the
22 only pathway to licensing. A number of mentors who
23 have worked as both articling principals and
24 LPP mentors expressed the view that the LPP is actually
25 a far superior form of transitional training, and,

1 again, many of the submissions, particularly from
2 equity-seeking organizations stressed that, long term,
3 there should only be one pathway to licensing.

4 Some of the submissions suggested
5 abolishing articling, although we had not asked that
6 question and it was not raised in our September report.

7 The final theme I will mention is that
8 we did hear from a number of individuals and
9 organizations, including the Law Students Association
10 and the Advocates' Society, who supported the September
11 recommendations either in whole or in part, but I
12 should be clear that this was the minority view.

13 The committee reviewed all of the these
14 recommendations carefully and I read every single one
15 of the submissions. Again, although none of these
16 themes were new, the perspective we gained was
17 invaluable and it reminded us of what we already know,
18 and that is that our stakeholders care very deeply
19 about the future of the licensing process. There is a
20 great deal of anxiety in the profession about the
21 future and this is a subject which engenders passionate
22 debate.

23 Ultimately, the committee concluded that
24 those submissions that stress the need for us to
25 develop a long term plan for the entire licensing

1 process before making any decision on the LPP were
2 persuasive. Again, as in our September
3 recommendations, this was not a unanimous view, but it
4 was the view of the majority of the committee.

5 And so you will see at BoardBooks on
6 page 19 a revised, much simpler recommendation, set of
7 recommendations for approval by Convocation.

8 Essentially those recommendations have
9 three components. First, that the LPP be continued and
10 extended for two more years, and this is consistent
11 with the original motion of Convocation which set up
12 the LPP in 2012, that that is that we were to review it
13 during the third year, but it could be extended for
14 another two years if Convocation so approve.

15 Second, that Convocation withdraw from
16 consideration, at least for now, the licensing
17 enhancements that were part of the September report.

18 It's not that we're going to put them away and forget
19 about them, and I'll come back to this in a moment, but
20 for the time being they will be shelved.

21 Third, that Convocation direct an
22 analysis of the licensing process be undertaken for the
23 purpose of making long term recommendations for an
24 appropriate sustainable licensing process.

25 Now, these recommendations are based on

1 the outcome of the consultation. It reflects the fact
2 that the committee has listened to the views of
3 stakeholders, and I don't apologize for that. The
4 licensing system, while it is our responsibility and
5 we're tasked with making the ultimate decisions, it
6 affects every participant in the justice system, so
7 it's important that we listen and that we reflect on
8 what we're hearing.

9 So before I finish, I want to give you a
10 couple of thoughts about the way ahead. First, what
11 this review of the licensing process is going to look
12 like is left in the motion completely undefined. Our
13 committee is going to consider it and come back to
14 Convocation with a concrete plan in the first quarter
15 of 2017.

22 And that's really the basis for our
23 recommendation that we not proceed with the
24 enhancements at this point. We really need to look at
25 the big picture and not tinker, and we don't want to

1 make small decisions now that will affect the longer
2 term review.

3 Third, many on the committee continue to
4 have concerns about the sustainability and fairness of
5 the LPP, so those issues are not going to go away. We
6 may, however, now have an opportunity to look at the
7 LPP not in isolation or compared very narrowly to
8 articling, but as part of the bigger picture. And the
9 same is true of articling itself.

10 Third, we have to find a better way of
11 engaging our stakeholders early. One of the
12 difficulties with the current process, and both Howard
13 as the previous chair, and me as the current chair of
14 PD&C, is that we have been forced to artificial
15 deadlines where the committee works away essentially in
16 isolation for a period of time, produces a report, that
17 report goes out to the various stakeholders, they
18 express concern and apprehension, and then it comes
19 back to the committee that decides to go in a different
20 direction.

21 That simply -- that approach simply
22 doesn't work with a problem as complex and has as many
23 pieces as this one and involves so many stakeholders,
24 so we have to do this differently in future.

25 We also have to give ourselves the time

1 to do the job properly without rushing. The committee,
2 as I said, had a limited mandate in the spring and even
3 over the summer and a very narrow, limited deadline to
4 adhere to. We will take our time next time around, and
5 if that means that the LPP has to be extended again,
6 that's what we will do.

7 So I just want to end by saying that I
8 was initially apprehensive about what may seem to some
9 in this room to be a U-turn on the part of my
10 committee. On reflection, I'm convinced that this is
11 the best way forward. I continue to have reservations
12 about the Law Practice Program, as did many on the
13 committee, but it simply did not make sense to end it
14 at this time without a longer term plan, and all of us
15 have been informed by the debate and the discussion and
16 the views of those we've heard from.

17 So I actually think we have arrived,
18 although perhaps in a circuitous fashion, in a very
19 good place.

20 So that's my introduction to the motion.
21 I'm not sure that I found a seconder, but I'm sure --
22 I'm sure Mr. Goldblatt will second the motion. So I
23 move the motion, seconded by Mr. Goldblatt.

24 TREASURER SCHABAS: Thank you.
25 Discussion? Ms. Papageorgiou.

1 MS. PAPAGEORGIOU: This is my first time
2 speaking at Convocation. I'm a little bit nervous.

3 First thing is I would like to say I'm
4 wearing a pantsuit in honour of Hillary Clinton.

5 -- Applause.

6 MS. PAPAGEORGIOU: I want to thank the
7 committee for all of the work that they've done on
8 their research and also their tremendous flexibility in
9 responding to the concerns. I definitely support the
10 motion, but I feel that I need to speak up and explain
11 why.

12 There are a few things. First of all,
13 when you look at the -- the four things I want to talk
14 about are the superiority of the program, the public
15 interest, the financial implications and access to
16 justice and how all of this is implicated by what we do
17 here.

18 The superiority of the program. The
19 first report that was done, it was pretty clear when
20 you look at it that you have a program that's -- began
21 and only been in operation in two years. They have
22 only had two years to put something together, and yet
23 the report clearly shows when you compare articling to
24 the current LPP, which only had two years, it was
25 superior in satisfaction ratings, in the mastery or

1 skills competencies, and also in the student themselves
2 saying whether one gave them great -- was of good value
3 to them. In all the ways that we measured at this
4 early stage, the LPP appeared to be superior.

5 Now, our obligation is to govern in the
6 public interest and I cannot understand how we could
7 think about moving away from a program that actually
8 trains people, it looks at this early stage, in a
9 better and more consistent way than articling.

10 I've thought about the financial
11 implications because everyone says, well, it's so
12 expensive, and then I went and I looked at the -- I
13 looked at our annual report -- not our annual report,
14 our budget. Just let me find it. Just give me a
15 moment.

16 Every year the Law Society earns more
17 money through licensing fees and that money comes from
18 new licensees. I checked, and the projected increase
19 in the budget just from licensing fees is about four or
20 five million dollars. There will be more and more
21 lawyers entering the legal profession and I can be
22 pretty well certain that we're going to have that
23 additional money every year as there are more and more
24 lawyers entering the profession.

25 Why can we not, as a Law Society, say to

1 ourselves we expect this additional income. We're
2 going to now commit that we're going to take this
3 additional money and we're going to put it into the
4 licensing process and we're not going to overburden
5 these law students who are graduating with a tremendous
6 amount of debt already, we are going to -- because what
7 we're doing is we're getting more money from these new
8 graduates and then we're charging them for their
9 training, and I just think it's not acceptable and I
10 don't think it's in accordance with the objective of
11 access to justice.

12 As these new graduates end up graduating
13 with more and more debt, they are far less able to
14 enter into any kind of a practice that would serve
15 people who cannot afford lawyers. So I feel that what,
16 and I hope that what the committee will do is that they
17 will take a good hard look at articling and the LPP,
18 and try to find a fair and sustainable way to train and
19 licence new lawyers that is not punitive of the new
20 lawyers and that encourages access to justice.

21 TREASURER SCHABAS: Thank you, Ms.
22 Papageorgiou. Mr. Cooper.

23 MR. COOPER: Good morning, Treasurer,
24 Mr. Wardle, and members of the PD&C committee, I
25 appreciate everything that you've done and all the hard

1 work that you've done.

2 I stood up at Convocation, it wasn't
3 that long ago, at our last Convocation, and I briefly
4 spoke. I had concerns and I felt that they were
5 important. They were important to our members on the
6 front line.

7 I tried and I attempted to articulate
8 that the LPP program is an excellent program. It's
9 qualitative. I was dismayed at the recommendation, and
10 I have not sat on PD&C since coming to Convocation, I
11 was dismayed that the report contemplated that soon at
12 hand would be the demise of this qualitative program.

13 Seeing I come from outside of Toronto, I
14 come from the Central East region, I come from a
15 practice at the front lines. On the front lines and on
16 the ground are members of our profession who are trying
17 to get this regulatory body's attention. They did so
18 in the last election. We must listen to them.

19 In the simplest terms, we understand our
20 mandate is the protection of the public, but also, we
21 fail to understand that the best way to serve the
22 public, ensuring that they are protected, is to ensure
23 as a priority that we support our members on the front
24 line in all matters. Our membership needs to help and
25 we have been doing this during this Convocation.

1 There's been wonderful new initiatives that have been
2 brought to Convocation and are now in -- on their way
3 to assist the members of our profession.

4 We need to help our membership, we need
5 to help because we have the highest quality of
6 education and knowledge of the law of those on the
7 front lines; they're showing it every day to the
8 public. And we have the highest standard of
9 professionalism in the practice of law in this
10 province. Those are the ones that are practising, and
11 they got there in a certain way.

12 Maybe we forgot that we had gone through
13 a different type of process, a process that included
14 Bar Ads, a process that we did not end up bearing the
15 brunt of the full costs during our time when we wanted
16 to become members of this profession and licensed by
17 this body.

18 We must believe, and we must hear our
19 membership, that we are to act, when we protect our
20 members we protect the public.

21 Before I decided to run for Bencher I
22 spoke to a lot of people outside of Toronto, that's
23 where I practice. I spoke to those on the front lines
24 and again I went back between last Convocation and this
25 Convocation, reaching out to those for what their views

1 were. And you've heard the views of those that have
2 made submissions and they are not different than those
3 on the front lines.

4 Our colleagues want the LPP, they
5 recognize it is a qualitative program and they are
6 supportive of it. They're also supportive of
7 articling. I'll let you know that I've heard that as
8 well.

9 I support this motion and I thank Mr.
10 Wardle and his committee for having an open mind so
11 that we can review what is at hand through a holistic
12 approach.

13 And in that review I just want to say
14 the following: I hope that it includes a look at
15 costs, and what I spoke about last time is what do we
16 define as fairness. We can no longer load the
17 students, the future members of our profession, future
18 members of this Law Society, with the brunt of the
19 cost. We owe the public the duty to ensure that these
20 candidates come through, are licensed, and their
21 practices are sustainable to help the public.

22 We know that from this year's budget,
23 between the costs to our members for fees and
24 insurance, that there is a reduction, a substantial
25 reduction from last year's budget, substantial

1 reduction that's approximately two times the cost of
2 this program, but for some reason we keep on talking
3 about scarce resources and we should be downloading the
4 costs on students. Again, remember what we went
5 through and the benefit that we had. How soon do we
6 forget that.

7 We also have to look at promoting the
8 LPP as a true and respected option, equal to articling
9 and maybe being part of articling. I hope you consider
10 that. I hope you consider that it is a great pathway
11 to licensing and that it is a proactive way to ensure
12 the public is protected, as opposed to spending money
13 after people are licensed without the quality of this
14 type of education and learning, where we'll spend money
15 to try to discipline them, that costs a lot, and look
16 at the entire process, including articling, and again
17 hear from those on the front line. This is an issue
18 that does include the concept of access to justice, an
19 obligation that we must undertake.

20 I end by saying there's a difference
21 between regulating in the public interest and
22 regulating in the barriers to entry. That is what we
23 do, in my view, if we try to stop the LPP program.
24 Thank you.

25 TREASURER SCHABAS: Thank you, Mr.

1 Cooper. Mr. Bredt.

2 MR. BREDT: Notice I'm treading
3 carefully. I for one, Treasurer, like the idea of
4 having a room where I can actually make it intact to
5 the podium.

6 So, Treasurer and members of the
7 committee, I want to thank you for the report, most of
8 which I support.

9 Let me start by saying that ensuring
10 competency is at the core of our regulatory mandate,
11 but in my view, the bottom line is that we're not doing
12 a particularly good job at this core competency,
13 particularly on entry to the profession, and I'm
14 pleased and I support the fact that PD&C is committed
15 to a comprehensive review of this area.

16 In these remarks I want to speak to two
17 key points. First, what is the principle that should
18 guide us as we embark on this process and, secondly,
19 what are the specific steps that the Law Society should
20 be taking to ensure competency on entrance to the
21 profession?

22 Let me deal with the first point. What
23 is the principle that should guide us as we reform our
24 approach to competency? The answer to that question
25 should be obvious, we regulate in the public interest,

1 and the public interest in this area is clear.

2 We should only licence to practice
3 individuals who are competent to provide services in
4 the areas in which we licence them to the public. And
5 I state the obvious at the outset, because the public
6 interest is often different than the interest of the
7 stakeholders.

8 Some of the stakeholders here, two
9 groups I'm going to mention, first of all, law
10 students. Let's be frank about it, the overriding
11 interest of law students is to get called to the bar.
12 If you spoke to every law student, they'd say let's
13 have no barriers to entry here. We should all practice
14 law. As soon as we get admitted to law school, we
15 should pass through law school and we should get called
16 to the bar.

17 Let me be clear: It is not in the
18 public interest to allow any student admitted to law
19 school to practice law, unless they're competent to do
20 so. I note the "term admitted to law school" rather
21 than "graduated from law school," because I say, to be
22 frank, law schools don't fail anybody these days.
23 Essentially, once you're admitted to law school, most
24 people pass out --

25 -- Laughter.

1 MR. BREDT: The current assumption at
2 the law school as part of -- as here at the Law
3 Society, appears that we should be working hard to
4 ensure that each and every one of the law students that
5 are admitted to law school should be licensed.

6 I say what should guide us here, and I
7 am strongly of the view that we should be working hard
8 to ensure that no one is licensed unless they are
9 competent to serve the public in the areas which we
10 licence them to practice.

11 The second group of stakeholders is
12 primarily the practising bar. As I hear frequently,
13 that we licence too many lawyers, that the Law Society
14 should take steps to limit numbers. Again, I don't
15 agree. Our role is to ensure that the individuals we
16 license to practice are competent. If there are a
17 large number of competent lawyers, that's in the public
18 interest. It's in the public interest because it
19 assists with access to justice, and I urge the
20 committee, as they move forward with this, to ensure
21 that they're guided by the public interest and not
22 necessarily by the interests of our stakeholders.

23 So I turn to my second point, which is
24 what are the specific steps that the Law Society should
25 be taking to ensure competence on entry to the

1 profession. And I say there's four phases of entry to
2 the profession. You've got academic training, you've
3 got practical training, you've got admission and
4 licensing and you have the early years of practice.

5 Let's start first with academic
6 training. I agree with the committee's original
7 proposal to institute a competent exam that tests
8 standard knowledge that must be passed prior to
9 entering into our licensing process. And I say that
10 because it's obvious to me that our current approach is
11 not effective.

12 Our current approach is the Federation
13 specifies substantive areas that must be covered at law
14 school. The reality is we take no steps to ensure the
15 substantive areas are actually covered.

16 I could give you a myriad of examples.
17 You could take criminal law from one professor and you
18 get a course on Marxism and the law; you can take a
19 criminal law course from somewhere and you learn some
20 criminal law. Our licensing process does nothing to
21 ensure that you actually learn something about criminal
22 law.

23 I say we should stop telling the law
24 schools what to teach and we should, instead, tell them
25 what we are going to test, and that's a much more

1 effective approach to regulation. Our current process
2 assumes that everyone graduating from law school has
3 the necessary substantive knowledge. We know that's
4 not the case, and in order to properly protect the
5 public, we need a comprehensive test of substantive
6 knowledge and we need it now.

7 Secondly, practical training. Once
8 we've ensured adequate substantive knowledge, we need
9 to ensure proper practical training. Now, I know
10 there's a number of Benchers here who would like to
11 abolish articling. I don't support that. I don't
12 support any move to abolish articling. Why not?
13 Firstly, it's obvious that no one is ready to practice
14 after three years of law school. A period of practical
15 training is necessary to protect the public interest.
16 And by practical training, I mean training in practice,
17 not training at law school.

18 Second, I say look at the other
19 professions. You can look at engineering, accounting,
20 medicine; all require a period of practical training
21 before the student is licensed. I recognize that the
22 articling experience can be uneven, and I'm a good
23 example. I mean, I clerked, I had no practical
24 training during my articles at all, but fortunately I
25 was hired by a law firm and I wasn't a regulatory issue

1 because in my early years of practice I was provided
2 with adequate supervision and given some mentoring.

3 This leads to my broader point. For a
4 majority of students who article with a firm and get
5 hired back or start practice in a supervised
6 environment, we do not have a significant regulatory
7 risk. Our real area of regulatory risk is for those
8 students who article and then decide to practice as
9 sole practitioners in an unsupervised environment.

10 That's our real regulatory risk. And we need to ensure
11 that those practising in an unsupervised environment
12 have the practical skills necessary to run a sole
13 practice and receive some supervision in the early
14 years.

15 In fact, I supported the institution of
16 the LPP for that very reason, and I think when you look
17 at what the committee's report has said, many of these
18 people go on to practice in unsupervised areas and they
19 probably get better training at the LPP than they would
20 in regular articles or sole practice.

21 Let's not throw the baby out with the
22 bath water by abolishing articling, which works well in
23 most cases to address the problems in a minority of
24 cases.

25 Third part, admission and licensing. A

1 key problem with our licensing is that we provide an
2 unlimited licence to practice in all areas of law. So
3 my friend, Paul Cooper, and I are both licensed to
4 practice real estate. Now, I know Paul may be
5 competent to practice in real estate, but I surely am
6 not.

7 Our regulatory model is to give everyone
8 an unlimited license to practice and essentially rely
9 on lawyers not to take on matters that they are not
10 competent to handle. I say frankly to Convocation this
11 model does not adequately protect the public interest.
12 We need to start to look at limited licensing. Once
13 the scope of practice is limited, we will be able to
14 move in a more focused manner on practical training.

15 If you're only licensing someone to
16 practice real estate, you don't have to worry about
17 whether they're competent to do family law or criminal
18 law.

19 Final area of practice is what I call
20 the early years of practice. Here again we need to do
21 a better job of protecting the public interest. We
22 need to recognize the regulatory risk is largely those
23 practising in unsupervised environments.

24 If I at BLG attempted to do a real
25 estate deal one of my partners would shut me down

1 pretty quickly. Part of the problem that we have is
2 that with the debt loads of these students who
3 graduate, when they start off as sole practitioners
4 there's incentive to take on all sorts of work,
5 including work that they don't have any practical
6 training or experience in.

7 So in the early years of practice we
8 need to look at some form of mandatory supervision or
9 mentoring for those in an unsupervised environment and
10 this needs to be combined with a limited licence.

11 So, in summary, I say I support the
12 committee's decision, first of all, to move forward
13 with a comprehensive review of the licensing process.
14 I think that's -- that is the appropriate thing to do
15 and we should have done it long ago.

16 I agree that we should retain the
17 LPP while this process is ongoing. I do disagree with
18 the decision to postpone a comprehensive substantive
19 exam that should be passed prior to entry to the
20 licensing process, because to me it's obvious that this
21 is a step that we need to take and we should take it
22 sooner rather than later. Thank you, Treasurer.

23 TREASURER SCHABAS: Thank you, Mr.
24 Bredt. Mr. Groia.

25 MR. GROIA: Thank you, Treasurer. I

1 find myself in the somewhat unusual position of having
2 been part of the strong majority in September who
3 supported the end of the LPP program and now being in a
4 somewhat small and lonely minority who continue to have
5 that view.

6 What I want to do this morning is to
7 try, as quickly as I can, to give you the reasons that
8 led the committee in September to recommend that
9 LPP needs to come to an end, and it needs to come to an
10 end, in my respectful view, today.

11 I provided for your consideration some
12 materials because I believe we are at a crossroads. In
13 my view, this is not an articling crisis, but rather
14 it's a crisis of the profession itself. And I've also
15 given you, because it was just released yesterday, a
16 report prepared by Prism showing the trends in the
17 employment expectations for lawyers in the province of
18 Ontario.

19 And, put simply, what we are facing over
20 the next ten years is the reality that we are going to
21 have 1.6 new lawyers called to the bar for every job
22 that will be available for them to take.

23 So in my view, the evidence that is in
24 the material before you is clear and overwhelming that
25 there is ample reason for us today to discontinue

1 supporting this program, and I'm going to give you in
2 my short remarks three categories of reasons for doing
3 so.

4 I believe that the program harms the
5 candidates who are coming up for licensing. I believe
6 it harms the public interest because of the effects of
7 the program on the public, and I believe it hurts the
8 profession.

9 I want to start, though, by taking you
10 back to 1954 and Brown v Board of Education, which
11 many, many years ago was the result of the Supreme
12 Court of the United States recognizing that separate
13 but equal pathways in education never works.

14 The second thing I want to do is take
15 you back to 2012, and I've provided for you in the
16 materials at tab 2 the report of the minority of the
17 Articling Task Force, and I say with some reluctance or
18 perhaps hesitation that the fears of the minority have
19 come to pass with the results of the LPP program.

20 Those fears were that it would create two tier
21 licensing, and there's ample evidence to support that
22 conclusion, that it would do so at great expense, and
23 I'm going to take you briefly to the costs of this, and
24 it would cause harm to the public interest.

25 Perhaps the best evidence of why

1 LPP does not work comes from Dr. Ali's report at tab 3
2 and Diana Miles' report at tab 4.

3 What we are told is that two-thirds of
4 the LPP candidates do not want to be there. That they
5 have searched for an articling job, 99 percent of them
6 have searched for an articling job unsuccessfully, so
7 they have gone to the LPP as the second choice.

8 Even more compelling is that 318
9 candidates who couldn't find an articling job think so
10 little of the LPP program that they won't join it, and
11 they would prefer to sit on the sidelines for another
12 year in the hope that one day they will be successful
13 in articling.

14 There are three ways, in my view, that
15 the LPP harms the candidates themselves. The evidence
16 of second tier perception is overwhelming, and
17 notwithstanding our best hopes and wishes, that's not
18 going to change. So we are creating, if we continue
19 this program, another 500 candidates who will go
20 through the rest of their professional life with a
21 stigma that comes from the fact that they went through
22 the LPP program, and that evidence can be found at tab
23 4, page 29, and tab 5, page 329.

24 Secondly, the LPP imposes a crushing
25 financial burden. This program costs around 3-million

1 dollars, which results in a payment of \$1900 per
2 candidate to support the program, and the cost of the
3 per candidate ranges as high as \$70,000 per candidate
4 in the Ottawa program in one year.

5 The third way that it really hurts the
6 candidates is that they find themselves with unpaid
7 placements. We know that somewhere in the
8 neighbourhood of three percent of all articling
9 students are not paid and we know somewhere in the
10 neighbourhood of 30 percent of all LPP candidates work
11 for free at a time when they're already burdened by
12 this enormous financial debt.

13 And there's also terrible hire back
14 numbers coming out of the LPP program. What we are
15 told as we did our work as the committee is that
16 roughly 34 percent of LPP candidates in the first year
17 and 32 percent of LPP candidates in the second year
18 expected to be working upon being called to the bar,
19 and that compares to almost 50 percent of articling
20 candidates who were expecting to be employed.

21 Secondly, in my view, the LPP program
22 harms the public interest in these ways. There are
23 competency concerns that we have to address that are
24 before you in the material on the table today because
25 we know that 52 percent of all LPP candidates failed

1 the Bar Ads on their first writing. That was in the
2 first year, and the second year results were not that
3 much different.

4 Articling candidates had a 15 percent
5 failure rate, so three and a half times as many LPP
6 students could not successfully pass the bar on the
7 first writing.

8 We also know that most of the LPP
9 candidates who do find employment do so as a sole
10 practitioner. The evidence before you at tab 5 shows
11 that roughly 41 percent of all LPP candidates will hang
12 up their own shingle, as opposed to six percent of
13 articling students who will go out immediately into
14 sole practice.

15 Similarly, in terms of them finding jobs
16 as associates, almost half of the articling students
17 end up working as associates, 16 percent of the LPP
18 candidates end up as associates.

19 We know from the work we've done at the
20 committee that the majority of complaints that we
21 receive come from soles and smalls, and here we are
22 putting another 41 percent of these candidates from the
23 very first day they are lawyers practising on their
24 own. And we know from the Prism work that that problem
25 is going to continue and exacerbate over the next ten

1 years.

2 Lastly, in my view the LPP program harms
3 the profession. There's a million dollars a year
4 burden that the profession is asked to pay to subsidize
5 the program and from a practical standpoint, the
6 suggestion that we would ask all lawyers to pay to have
7 additional candidates be called to the bar through a
8 program that, in my view, creates artificial job
9 placements simply cannot, I believe, be supported.

10 I listened to Mr. Wardle's comments
11 about the responses we received and I wanted you to
12 have a selection of them, so I've given you at tab 7
13 the response of the CLA, which supports the ending of
14 the LPP program. At tab 8 you have the Advocates'
15 Society, who has a similar view, but they want to
16 continue the LPP program while we study these issues.

17 The Equity Initiatives at tab 9 sets out
18 the divergent views of that group, some of whom want to
19 terminate LPP and some of whom want to continue it.

20 Lastly, the Attorney General at tab 10 raises concerns
21 about the continuation of the program and also the
22 extent to which the LPP will provide a reasonable or
23 meaningful alternative to articling.

24 So, in conclusion, I support the
25 committee's willingness to take a good hard look at all

1 of these issues, I don't believe, however, we need any
2 further evidence to conclude that the LPP program is
3 not the solution, it adds to the problem, it does so at
4 great expense, and for me the most troubling aspect is
5 it does so on the backs of young candidates who will
6 forever when they're asked where you did you article,
7 they will have to say I went through the LPP program,
8 and that will cause the stigma to continue.

9 So I will vote against the motion to
10 continue LPP, but I will support the balance of the
11 recommendations. Thank you for your consideration.

12 TREASURER SCHABAS: Thank you very much,
13 Mr. Groia. Mr. Galati.

14 MR. GALATI: Thank you, Treasurer, and
15 I'll be two minutes. I don't want to repeat anything
16 that's said. I support much of what Mr. Groia put
17 forward and these will be my two minutes, and out of
18 respect for Mr. Bredt, make my pitch for abolition.

19 John Sopinka once said that the greatest
20 threat to our civil liberties in Canada is political
21 correctness. I want to talk about the couple of
22 elephants in the room as we grapple with this
23 multifaceted problem that really don't bluntly get
24 addressed.

25 That is, historically for the last 50

1 years, the legal profession is known to have a healthy
2 racist exclusionary practice against whatever
3 racialized group that is coming to the profession at
4 the time. So you talk to any Jewish lawyer in the city
5 who came through in the 50s and 60s, they will tell you
6 you can't get articling jobs. You talk to any of us
7 who are Italian, up until 30 years ago we'll tell you
8 the same thing.

9 When I was in the Department of Justice
10 I was ranked 48th on the matching program. 47 people
11 had to say no thank you before I was hired as an
12 articling student. 1987 at the Department of Justice,
13 while 26 percent of the city were Italian-Canadian and
14 16 percent of the profession were Italian-Canadian,
15 there were two of us who were Italian-Canadian in the
16 regional office. So this is nothing new.

17 We are trying to address two problems
18 that really are irreconcilable. One is the notion that
19 every graduate of a profession is entitled to a job.
20 That's just nonsensical. Why are we obsessed that
21 every law graduate get an articling position? That's
22 just not tenable.

23 But, for me, the bigger problem, the
24 real elephant in the room and the real barrier that
25 causes all the problems, is articling itself.

1 So I say that if you abolish articling
2 and put in a rigorous bar exam, and I take Mr. Bredt's
3 comments to heart and I agree with him, with the
4 follow-up competency and mentoring in the early years
5 of practice, then you do something that a lot of us
6 unfortunately don't want to see. You level the playing
7 field.

8 I'm not a politically correct person
9 that buys the notion that all privileged law graduates
10 would necessarily float to the top in a level playing
11 field and that all unprivileged law graduates or
12 racialized law graduates are going to sink to the
13 bottom. I say give them all the same rigorous exam, do
14 what a lot of jurisdictions do and have a healthy
15 failure rate of 40 percent, and if we believe in the
16 market, then they proceed forward into the market and
17 then we regulate them from there.

18 But it's the articling really that is
19 the barrier. That's the disguised racialized barrier
20 that causes the inequities, in my respectful view.

21 And there is a myth. There is no total
22 enveloping symmetry between being racialized and
23 underprivileged. My small, modest office has a policy.
24 We only hire, whether it be articling students or
25 juniors and staff, racialized persons who are obviously

1 bright and who have obviously not landed a job because
2 of race. But I don't hire people who I don't think are
3 going to be competent or who are not competent, and we
4 should not be shy to address those. Those are the
5 blunt issues, whether you're white or a visible
6 minority, the issue is competence.

7 So what you want to do is -- what I
8 would like to see is an elimination of that preliminary
9 gate of exclusion, which is the articling program in
10 itself.

11 And so I know nobody is going to second
12 it, I can't support this motion for one reason, because
13 I know we'll just languish and fester on this. If the
14 LPP is extended, we just won't deal with these blunt,
15 compelling issues, and they have to be dealt with, not
16 in this politically namby pamby correct way that they
17 have been historically handled, and we've gone around
18 competence, but we haven't really dealt with the racial
19 exclusion issue and the levelling of the playing field
20 for graduates of law school.

21 So I would -- I would suggest an
22 amendment to the motion that when it goes back to the
23 committee the abolition of articling outright also be
24 on the table because it's not clear to me that it was.

25 TREASURER SCHABAS: I think it is,

1 Mr. Galati. Mr. Wardle made it very clear everything
2 is on the table. So I don't think you need to --

3 MR. GALATI: Well, I heard a comment
4 from Mr. Wardle that while some people, you know,
5 advocate for abolition, it was not a study.

6 MR. WARDLE: I think --

7 MR. GALATI: Maybe I misquoted.

8 TREASURER SCHABAS: Mr. Wardle, do you
9 want to clarify that, please?

10 MR. WARDLE: I think I made it very
11 clear that the motion was for a long term review of our
12 licensing process from beginning to end, all pieces of
13 the puddle -- puzzle, including articling --

14 -- Laughter.

15 MR. BREDT: I say we pass out the
16 puddle.

17 MR. WARDLE: All I can say is it's that
18 Marxism in the law course I took in law school.

19 So I want to make -- I want to say to
20 Mr. Galati, you know, we could spend all day here on
21 pro and con about articling and whether it should be
22 abolished. It's a discussion that we have had before
23 and some of us still have bullet holes in our shirts
24 from the last discussion, but I want to make it clear
25 to everyone that the new review will include everything

1 and we're not going to leave -- we're not going to have
2 any preconditions and we are certainly going to look at
3 articling.

4 TREASURER SCHABAS: Thank you, Mr.

5 Wardle. I would observe that it seems the longer this
6 discussion goes on, the longer the speakers' list seems
7 to get. I optimistically put down 60 minutes for this
8 topic. I would observe that while I know it's often
9 difficult in comments for people to delink a number of
10 issues, but I would appreciate if the comments could
11 specifically focus on the motion that's before us.

12 This is not a day to have a debate about articling,
13 articling is not part of this motion, and without
14 wanting to inhibit people's comments, I'd ask them to
15 focus on the motion that's before us so we can get
16 through this topic. We do have the budget to deal with
17 as well today and some other issues.

18 With that, the next speaker is
19 Mr. Wright.

20 MR. WRIGHT: Thank you, Treasurer. The
21 committee in September recommended terminating the
22 program for the reasons that were given four years
23 earlier about putting it in place in the first place.
24 I opposed it in the first place because to me it seemed
25 like giving in to the law schools that had hugely

1 increased enrollment and stopped failing anybody, as
2 Chris pointed out earlier. So we ended up with close
3 to a thousand new people coming at us and the
4 profession could not absorb them, and to let them off
5 the hook we created the LPP.

6 It is a second tier arrangement, and
7 that's not fair. But we have a problem internally
8 whereas the excess of graduates is being imposed on us
9 externally. And the interior problem was the abolition
10 of the Bar Admission Course in the first place.

11 Most of you weren't here when that
12 debate occurred, but at the time of that debate, and
13 it's important for people to understand this, at the
14 time of that debate, we heard from external credible
15 commentators that the bar admission course and
16 articling in Ontario was the best pre-call preparation
17 in the world. Naturally we abolished it.

18 One of the reasons given is that it was
19 too expensive. Well, law schools knew that the
20 students were prepared to pay the \$4,000 in costs, so
21 they just added it to their tuition fees. It's more
22 expensive to become a lawyer now than ever in history.

23 The law schools for the most part,
24 Lakehead may be an exception, and there's the odd
25 course, but for the most part they're frankly not

1 interested, and they're quite proud to say they're not
2 interested, in training lawyers for private practice.
3 They say that's our job, and we did it when we had the
4 bar admission course. The bar admission course gave
5 you access to local practitioners, materials that high
6 in the various courses that you took, which you clung
7 to like gold because they were so full of practical
8 stuff that law school didn't give us. As Robert
9 Kennedy said, law school prepares you to be an appeal
10 court judge, not a practising lawyer.

11 Another reason given privately at the
12 time of the vote to abolish the bar admission course is
13 that the large firms were tired of losing top students
14 to Boston and New York. That they could go straight
15 there, skip the bar admission course, skip articling,
16 and go right into a high paying job, but I'm not sure
17 what that has to do with public interest in Ontario.

18 The bar admission course gave all of us
19 something we didn't get at law school. It also
20 introduced us to local practitioners that, even if you
21 went into sole practice, you could then call for
22 advice. We're trying to do something about that with
23 the mentoring initiative, but it's inadequate by
24 comparison.

25 My take on the LPP is that it shouldn't

1 carry on in the way it currently is. Instead, it
2 should be expanded to everybody. Everybody should take
3 the LPP, it should be restructured as a proper bar
4 admission course and people can get practical training
5 that they don't get at the law schools and access to
6 tremendous materials.

7 Now, most of the people who want to
8 abolish articling, I could be wrong, but in my
9 observation, they tend to come from larger firms.

10 Well, no wonder, you've got hundreds literally of
11 mentors up and down the hall that you can access, but
12 for the vast majority of lawyers who don't get hired
13 into the larger firms, they don't have that access.

14 The bar admission course helped. It
15 forged relationships that helped. So going forward on
16 this, I understand the concept that we can't just
17 abolish the LPP without something in place, but what we
18 need to put in place is an expansion of the LPP, a
19 resurrection of the bar admission course, whether it's
20 four or six months can be determined. If everybody
21 goes through, the cost per student will come down and
22 it will lose its stigmatizing feature.

23 After that, articling should continue
24 because even that classroom and workplace experience
25 will not equal articling. Again, we've heard over and

1 over that while there are some students who decry their
2 articling experience, the vast majority have always
3 reported that they learned a lot and it was very
4 beneficial. Same thing with the bar admission course,
5 at the time we heard that the vast majority of students
6 found it very beneficial.

7 If you'll permit me, Treasurer, two very
8 brief additional comments. One is I'm wearing a blazer
9 and grey flannels, but it's not in honour of Donald
10 Trump.

11 -- Laughter.

12 MR. WRIGHT: Secondly, the work of TAG
13 and others that you alluded to in your opening remarks,
14 Treasurer, is to be commended, but the problem with how
15 we talked about it is the unspecific nature of our
16 terminology, when we say that there is an access to
17 justice problem, we all get lumped in under that.

18 The public, the profession, the Benchers
19 need to know that there is no access to justice problem
20 on the side of the bar filled by the nearly 50 percent
21 of the practising bar who are small firm solicitors.
22 90 percent of the accounts we send out in the year are
23 in the tens or hundreds of dollars, and when we do real
24 estate the fee we charge is a microscopic percentage of
25 the asset that we are ferrying through the process.

1 The problem is on the courtroom side,
2 and that needs to be made clear so we can focus our
3 energies on identifying proper solutions to real
4 problems and not attacking things that are not
5 problems. Thank you.

6 TREASURER SCHABAS: Thank you, Mr.
7 Wright. Mr. Lerner, bearing in mind my urging all of
8 us to not engage in a broad debate about the history of
9 licensing.

10 MR. LERNER: First of all, I've listened
11 to Mr. Wardle and I've listened to Mr. Groia and, quite
12 frankly, they both may be right. The problem is I
13 don't want to see us revert to 2012 and undo all the
14 work that has been done for the past four years or five
15 years to get us to this stage.

16 There is a group of people that nobody
17 has spoken about today, and that's those people
18 contemplating going into the profession. How are they
19 going to be impacted if they become part of the problem
20 that existed in 2012, that there were insufficient
21 articling positions.

22 So I support this motion, but I am
23 hopeful that what we will do is we will come up with
24 some solution that will address the problem as it
25 existed in 2012, and that is insufficient articling

1 positions. Somehow we have to come up with a solution.

2 As Mr. Bredt has said and others have
3 said, all we can give to a graduate of a university law
4 school is the opportunity to be a lawyer. If they all
5 have that opportunity and they all have to meet the
6 same standard of competence, then who can quarrel with
7 what we do?

8 TREASURER SCHABAS: Thank you, Mr.
9 Lerner. Mr. Goldblatt.

10 MR. GOLDBLATT: Treasurer and
11 colleagues, I will be brief, but I felt that I had an
12 obligation to Convocation to speak on this matter
13 because, as Mr. Wardle has indicated and as you're
14 aware, I was the previous chair of Professional
15 Development and Competence, and the initiative that
16 came forward, first of all, in April and ultimately
17 part of what Mr. Wardle brought forward in September
18 began under my watch, so I consider that I have some
19 skin in the game, to put it in the vernacular.

20 I would like to direct Convocation, as
21 the Treasurer has indicated, to what the motion is for
22 consideration. And to focus on paragraph 3 of that
23 motion, which everybody has spoken to and which
24 everybody appears to agree with, and that is that there
25 be analysis of the licensing process to make long term

1 recommendations for an appropriate sustainable Law
2 Society licensing process.

3 And everybody who has spoken to it has
4 agreed with that, but they've had various views as to
5 what that might be, and what the committee's
6 recommendation is and one that I'm quite pleased to
7 second and support is that we stop tinkering at the
8 edges, that we take a look at what everybody wants to
9 do and the public interest and the interests of the
10 profession and the interests of the students that are
11 coming in and for one time, one would hope, but maybe
12 perhaps I'm being a little bit too optimistic as I was
13 before 7 p.m. last night, for one time try and come to
14 grips with what the issues are and address them in a
15 long term, sustainable and viable way.

16 So to deal more specifically with some
17 of the recommendations that I propose, Mr. Bredt has
18 addressed them, I think they are still good
19 recommendations. I think they have a lot of validity
20 to them, but to put them in place at this point, the
21 earliest would be the spring of 2017 for the first
22 exam, and then the May or June of 2018 for the second
23 exam, is unnecessary, expensive and tinkering with the
24 process that requires a focused committed review, and
25 that's what the proposal is, that's what the motion

1 suggests, and it's a motion that I am proud to support.

2 One other comment, Mr. Groia is an
3 extremely effective advocate, however I think that,
4 with all due respect, some of the statistics are not
5 accurate.

6 And just as a last comment, if you look
7 at the submissions of the Attorney General and look at
8 page 3 of those submissions and look at the last three
9 paragraphs on that page, you will see that the Attorney
10 General, in fact, supports exactly what this motion
11 recommends. Thank you, Treasurer.

12 TREASURER SCHABAS: Thank you,
13 Mr. Goldblatt. Mr. Sharda.

14 MR. SHARDA: Two concerns that I'd like
15 to raise. When I was viewing the webcast in the
16 lounge, because I was a bit late, Mr. Wardle, I thought
17 I heard him say that we didn't want to be bound by
18 unofficial timelines and that this could go on for a
19 while. That's what I understood. Mind you, I only
20 heard voices and the face froze and he was staring at
21 me --

22 TREASURER SCHABAS: I think what he
23 said, Mr. Sharda, was that --

24 MR. SHARDA: There is a two year
25 extension.

1 TREASURER SCHABAS: Well, there is going
2 to be a two year extension, that's what he said, but I
3 think his comment on timelines was the concern that
4 last spring, and again this fall, the committee seemed
5 to be working under what was described as artificial
6 deadlines.

7 MR. SHARDA: Right. So my concern is
8 that if we're extending for two years and we don't have
9 a proper timeline on when assessment or conclusions
10 need to be made, then we're going to be in perpetual
11 expansion.

12 I don't see that here, I see the first
13 timeline, which is by the first quarter of 2017, to
14 have some objective, but I think if we're going to
15 extend to 2019, then at least by the end of 2018 we
16 need to have some concrete decisions made so that we
17 don't fall into the same problem that if we do decide
18 to cancel, then all of a sudden we get the pushback,
19 well, geez, you only gave us one year, we don't know
20 what to do.

21 So I think that's not clear from this.
22 Maybe that's why paragraph 4 was developed, but that's
23 my concern. Because what will happen is next year we
24 will have another two year extension because we haven't
25 got there yet, and that's my concern on that point, as

1 opposed to --

2 TREASURER SCHABAS: Mr. Sharda, maybe I
3 can just tell you that from my standpoint this is very
4 much a matter of priority, it's in our strategic plan,
5 and I would hope that we would have recommendations
6 for -- broad recommendations well before the date
7 you're even expecting, which is the end of 2018.

8 MR. SHARDA: We all had hope last night
9 too. My concern is that we need to have some concrete
10 timelines. I'm not saying make them artificial.

11 As part of that assessment, I think at
12 least by the end of 2017, mid 2018 or somewhere before
13 so that we can safely say to the people coming through
14 the pipeline, look, this program is not going to be
15 available to you, make your decisions accordingly.

16 That's my concern on that point.

17 On the other point about sole
18 practitioners, I remember when I looked at the first
19 picture of the LPP graduating class and visually it was
20 quite stunning to see the racialization of that
21 picture, and that's something that we have raised. I
22 attended the focus groups when we did those articling
23 pictures, that was one of the primary concerns we had.

24 I see it on the practice end. I'm in
25 Brampton, there's a huge South Asian lawyer population,

1 and a large majority of them go into sole practice, and
2 the skills that you're thinking are filtering out
3 aren't filtering out. It's just not there. So you may
4 have hopes that it's happening, but it's not.

5 So that's my comments, but I do want
6 some timelines so that we don't have the same debate
7 two years or a year from now. Thank you.

8 TREASURER SCHABAS: Thank you,
9 Mr. Sharda. Ms. Horvat. You're the last one on the
10 list before I go to the telephone.

11 MS. HORVAT: I'm going to be very, very
12 brief. I simply want to say that I support this motion
13 for all of the reasons articulated by Mr. Wardle and
14 Mr. Goldblatt, and I also want to point out that we
15 have been talking about this since 1972, that's before
16 I was born, so it's time that we get this right and
17 this motion gives us the mandate to do that.

18 TREASURER SCHABAS: Thank you.

19 Mr. Lerner, would you please mind taking us out of
20 lecture mode? Is there anyone on the telephone who
21 wishes to make any statements about this? Hearing no
22 one, I know Mr. Wardle has asked to just have a brief
23 reply.

24 MR. WARDLE: So assuming the motion is
25 successful, I think I deserve costs against Mr. Groia.

1 BENCHER: I'll help you out, Joe.

2 MR. WARDLE: Perhaps a peppercorn.

3 Two quick points. First, just to

4 address Mr. Sharda's point, we are coming back to

5 Convocation with the plan in the spring. I hope it

6 will have some timelines. What my comments were

7 intended to say is we shouldn't put ourselves under

8 artificial deadlines, that's all I was intending to

9 say. This is a priority for this group, it's part of

10 our strategic plan and we're already talking about what

11 the next steps will look like. So that's the first

12 point.

13 The second point really arises out of

14 some of very early comments, starting with Ms.

15 Papageorgiou, about the financial consequences of the

16 current Pathways Project. The committee is very

17 cognizant of the fact that the current financial

18 arrangements can be seen as unfair. You will recall

19 that that was one of the issues that was raised in our

20 September report.

21 We will continue to look at that issue

22 and that may be something that we come back to you on

23 sooner rather than later.

24 TREASURER SCHABAS: Thank you, Mr.

25 Wardle. So we have the motion by Mr. Wardle, seconded

1 by Mr. Goldblatt. All in favour? Opposed in the room?
2 On the telephone, any opposed on the telephone? The
3 motion is carried. Thank you.

4 Before we move to the morning break, I
5 just also want to say a few words. I want to start by
6 thanking Mr. Wardle and the committee, I want to thank
7 Mr. Goldblatt and his committee before it, so that way
8 I'm thanking most of the people in the room for their
9 hard work on this issue today.

10 I know Mr. Wardle's committee spent many
11 days on this in the past few months, reviewing a
12 challenging issue and reviewing what we know is a huge
13 number of responses to the proposals that were made in
14 September.

15 What is also clear from the responses,
16 from their work and from the comments we have heard
17 today from all sides is that there are concerns about
18 our licensing process and we have to fix them. We have
19 to come up with a defensible, long term solution that
20 addresses our main objective, which is to ensure that
21 we are licensing lawyers competent to practice law.

22 That's our objective. We're going to have to think
23 innovatively, we're going to have to consult broadly,
24 we're going to have to get outside of Osgoode Hall and
25 outside of the legal profession and learn what other

1 groups do within this country, maybe internationally as
2 well.

3 I'm looking forward to a work plan
4 coming forward soon. We have timelines that will
5 address this and will reflect the importance of
6 resolving this quickly and also doing it right.

7 So with that I think everybody should
8 feel free to be commentating and speaking to Mr.
9 Wardle, to myself and anybody else about this, because
10 this is clearly an issue of priority for us over the
11 next little while.

12 With that we'll take the morning break
13 and we'll come back and deal with the budget.

14 --- Recess taken at 10:35 a.m.

15 --- On resuming at 11:00 a.m.

16 TREASURER SCHABAS: All right. Could
17 everybody come back to order, please. Susan McGrath
18 has raised a concern about the water glasses on the
19 table. Keep them off the wood, save our beautiful
20 table. There are some napkins around, there's also
21 blotters, so thank you for that, Ms. McGrath.

22 We're back in session and the next item
23 is the Audit and Finance Committee report, Mr. Bredt.

24 -- AUDIT AND FINANCE COMMITTEE REPORT:

25 MR. BREDT: Good morning, Treasurer and

1 Convocation. What we have before you is the budget for
2 this year, and if you go to BoardBooks at tab 3, and
3 the motion itself begins at page 43, I believe, let me
4 just check. 42.

5 So let me just provide a bit of
6 background. There's a lengthier budget document which
7 incorporates tables, graphs and other narratives, and
8 you may recall that in previous years budget material
9 became heavy and so forth, and what we've tried to do
10 this year and a shout-out to my former co-chair, Mr.
11 Wardle, who, when he was co-chair, worked with staff to
12 try to have much more readable, understandable budget
13 materials, you see in the bar graphs and so forth that
14 are there.

15 We also have a three year financial plan
16 and the 2017 budget. This is a culmination of a budget
17 process that was approved by Convocation in May. I
18 want to acknowledge the input of the Audit and Finance
19 Committee since then. The previous members of the
20 committee, including my co-chair, Mr. Wardle, worked on
21 this prior to the new committee, and we also had a
22 budget information session in September.

23 We approached the budget with the
24 following goals. First, to ensure that the Law
25 Society's core functions are appropriately resourced in

1 order to achieve the mandate established by the Law
2 Society Act. Second, to provide resources for the
3 strategic plan, and there's a number of new initiatives
4 that are incorporated into this budget.

5 We're also incorporating responsible use
6 of the fund balances to mitigate the annual fee
7 increases and we have fund balance policies that guide
8 us in that regard, and we are continuing with the idea
9 that there's a three year budget forecast going out.

10 So bottom line is the approach that
11 we're taking in the budget this year is going to result
12 in a 50-dollar increase in annual fees for paralegals
13 and lawyers. The fee that we had in place last year of
14 \$1866 has been in place for three years, and the
15 paralegal fee of \$996 has been in place since 2013.

16 And though we prided ourselves on keeping the fees flat
17 for the past number of years, in light of some of the
18 strategic initiative we thought it was now an
19 appropriate time to raise the fee.

20 Looking at the bigger picture in terms
21 of fees for the profession this year, Treasurer, you
22 will see that while the fees are increasing by \$50,
23 there is also an opportunity for a 50-dollar credit if
24 you enroll in an authorized payment plan, so the fee
25 would remain flat. And we also note that last year --

1 sorry, last Convocation we approved an insurance levy
2 which will result in a reduction of \$400. So, overall,
3 the amount that the profession is going to pay this
4 year will be less than it was last year.

5 Now, let me look at the major budgetary
6 assumptions and factors. So the first point is the
7 profession continues to grow and the 2017 budget
8 incorporates an annual increase of 700 in the number of
9 lawyers and an increase of 550 in the number of
10 paralegals, and what that means is that the revenue
11 will be increasing, and we based the revenue based on a
12 full-time equivalent of about 40,200 lawyers and 5600
13 paralegals.

14 To some extent, while we try to achieve
15 economies of scale, obviously with the growth of the
16 profession it does result in increased expenditures.

17 The 2017 budget also includes a salary
18 and benefit provision of three percent to provide for
19 merit adjustments, funding increase, employee benefit
20 cost and compensation for lag in the market over the
21 past three years, and we adhere to expected market
22 rates for 2017 and it gives us some flexibility to
23 accommodate operational changes.

24 I note that when some people raise
25 questions about this, a three percent increase does not

1 mean that every staff member is going to get a three
2 percent increase. What this is is an overall envelope
3 that allows our staff to manage within that envelope.
4 In some cases people will not get increases, in some
5 cases there might be new hires, in some cases people
6 might move up and get a more significant than three
7 percent increase.

8 Lawyer Compensation Fund grant limit has
9 increased to 500,000, again, a step that we took at our
10 past Convocation, and that has resulted in part because
11 of greater claims and we've -- as a result of that
12 we've had to increase the amount of the Compensation
13 Fund levy.

14 For the 2017 budget, the CPD projection
15 reflects status quo in the range of about 50,000
16 attendees. The lawyer and the paralegal licensing
17 process fees have been kept unchanged for 2016. Budget
18 for capital expenditures includes a provision of
19 2.1 million, representing the initial investment in the
20 modernization of the Society's licensee database. And
21 part of that is we have had the same database for many
22 year. That database cannot enable the Society to move
23 forward to the next level in terms of providing service
24 to the members and providing information to us, and we
25 felt it was time to invest in a new database to achieve

1 some of those operational efficiencies.

2 I note just in terms of the overall fees
3 that we're recommending to Convocation that fees for --
4 in other law societies range from 2,057 in B.C. to
5 \$2520 in Alberta, so our annual fees here are, in fact,
6 at the low end of the fee spectrum. So that's it with
7 respect to the fees.

8 With respect to the LibraryCo budget,
9 you'll see the budget is also before you. This will be
10 incorporated into the materials. There's an ongoing
11 review, and what we've done in this year is we've
12 agreed to increase the funding as requested, but we've
13 made clear that on a go forward basis that until the
14 transition process is in place that we will not be
15 increasing the overall funding in accordance with
16 inflation.

17 We've also determined as part of our
18 budgeting process, as we did with the Federation where
19 every year as the number of lawyers increased, the
20 amount of payments to the Federation increased. As
21 part of our budget process on a go forward basis, we're
22 looking to say, well, look, how much is necessary and
23 we'll fund what is necessary, as opposed to these per
24 capita fundings.

25 So I'm not going to go on at any other

1 length, Treasurer. I expect there may be some
2 questions. In closing, I want to thank the staff, Rob
3 Lapper, Wendy Tysall, Fred Grady and the other members,
4 for their support through the budget process. I want
5 to thank the other members of the Audit and Finance
6 Committee, including the members of the Audit and
7 Finance Committee who were there when the work got
8 started earlier this year. And I also want to thank
9 the Benchers who came to the budget information session
10 for the input they had into it.

11 The motions are set out, they're there
12 in the materials at page 42, and so I would move those
13 motions, seconded by Suzanne Clément.

14 TREASURER SCHABAS: Thank you. So the
15 one motion is at page 42 and the LibraryCo motion is a
16 separate motion at page 37.

17 MR. BREDT: Okay.

18 TREASURER SCHABAS: Any discussion,
19 comment? Yes, Mr. Evans.

20 MR. EVANS: Thanks, Treasurer. My
21 question to you and the committee is whether we are
22 doing anything to try to make sure that all lawyers are
23 paying equivalent support for our libraries by way of
24 law associations.

25 Many lawyers choose not to belong to law

1 associations and thereby avoid paying towards the
2 library in their local association, and more is left to
3 all the other lawyers to make sure that the county law
4 libraries are adequately funded.

5 And I think the first step along this
6 way is to ask in the annual members' return what is
7 the -- what county law association are you a member of
8 or represents your area, and that way we can get some
9 information as to how many lawyers are not in the law
10 association and how much money we are short because of
11 that. So I would like to urge the Benchers and
12 administration to follow through.

13 TREASURER SCHABAS: Thank you very much
14 for that. Mr. Bredt.

15 MR. BREDT: So I think that's something
16 that would be helpful to raise with LibraryCo board as
17 part of the issues that they're going to be considering
18 on the transition. There is a number of issues like
19 that, who has access to the libraries, who's paying for
20 them and so forth.

21 TREASURER SCHABAS: Mr. Lerner.

22 MR. LERNER: I would just like an
23 explanation as to what paragraph A at the top of page
24 38 means.

25 MR. WARDLE: That there will be no

1 further increase to the Law Society --

2 MR. BREDT: Just for the benefit of
3 those who are not as adept as Mr. Lerner in navigating.
4 Paragraph A says, "There will be no further increases
5 to the Law Society contribution to LibraryCo beyond the
6 2017 amount unless there is an agreement between the
7 LibraryCo shareholders, the Law Society Federation on a
8 transition plan and the resources necessary to effect
9 that plan."

10 So this is part of the overall
11 discussion. When the transition process began, there
12 was an understanding that the funding of Libraryco
13 would be held flat pending the transition, and the
14 transition process should come forward whereby the
15 actual demands and needs of the profession would be
16 addressed and we would fund that.

17 So the old process essentially was there
18 was a flat fee. The flat fee kept increasing every
19 year because as we called new people the funding went
20 up, and what the committee said and what was set out at
21 the time was, look, we should fund the libraries in
22 accordance with what their needs are and I think
23 everybody understands that the libraries play an
24 important role.

25 But the idea is a bit like we did with

1 the Federation. The way we used to fund the Federation
2 was there is a flat per capita fee. So every year
3 their funding went up, but we didn't get an explanation
4 from the Federation as to what the money was going to
5 be used for and what money was actually required.

6 I think the point that is being made
7 here, and to be clear to Convocation, is that the
8 result of the Libraryco review may well result in an
9 increase in funding to libraries, if the needs of the
10 profession are such that they require increased funding
11 and they put together a plan as to what's necessary and
12 so forth, we will fund that.

13 But the old process whereby there was a
14 flat amount that could be used, however without any
15 sort of accountability we didn't think was part of a
16 good budget process.

17 TREASURER SCHABAS: Ms. Horvat.

18 MS. HORVAT: Just on Mr. Evans'
19 question, the libraries are funded by the levy of \$194
20 for every lawyer licensee, not by the association.

21 MR. EVANS: Treasurer? I understand
22 that, I understand we all pay the same amount to the
23 Law Society, but many lawyers do not belong to the law
24 associations and those of us who belong pay \$50, \$75 or
25 \$100 to our associations to support the library, and

1 many lawyers are not paying anything through the county
2 associations to the support of the libraries. So
3 therefore --

4 MR. BREDT: What I would say, I
5 understand that the way it works in the local is that
6 some people belong to local associations and they pay
7 additional fees. And in addition to the libraries --
8 but they also get educational programs, they get to
9 participate, there's all sorts of programs that are
10 made available.

11 So I think if -- you know, to be
12 diplomatic, I think both of you are correct in the
13 sense that there is a flat funding that we provide to
14 the libraries to support all of that. The local law
15 associations, in addition, can have other programs that
16 are funded through the local law associations and I
17 think it's a fair statement that some local law
18 associations are much more active and presumably charge
19 greater fees or accumulate greater fees because they
20 have more people who participate. Some are less
21 active.

22 And so certainly from the Law Society's
23 perspective and our committee's perspective, our view
24 is the law library should be funded to provide the
25 services that are necessary for the profession to

1 practice law and we will work with LibraryCo through
2 the transition process to identify what those needs are
3 and ensure that they're adequately funded.

4 MR. EVANS: And make sure all lawyers
5 pay equivalent.

6 TREASURER SCHABAS: Are there any other
7 comments or questions on the budget? Mr. Gottlieb.

8 MR. GOTTLIEB: Through you, Mr. Schabas,
9 to Mr. Bredt. Mr. Bredt, as a sole practitioner that
10 basically uses generic software programs, including a
11 generic database program, which I then make appropriate
12 adjustments to --

13 TREASURER SCHABAS: Mr. Gottlieb, I
14 think you should move close to the microphone. I doubt
15 anyone on the phone will be hearing you.

16 MR. GOTTLIEB: I guess I'm mired in the
17 old days, Treasurer, where we didn't have to do it this
18 way.

19 As a sole practitioner, as I said, I
20 rely on a generic program and for years I've used a
21 generic database program. Now I'm learning a new
22 generic database program and I will make appropriate
23 adjustments to it to suit my purposes. The programs
24 cost next to nothing compared to the 7 million that
25 we're going to be spending for a new database program

1 for the Law Society, so I'm astounded when I see a
2 figure like this, it might be justified, but a question
3 I have is, number one, is this program getting
4 developed from scratch? Is it impossible to find a
5 program that would suit our purposes that appropriate
6 adjustments be made to it that would cost us a lot less
7 than this?

8 MR. BREDT: I thought you were going to
9 ask me an easy questions like, you know, how to do
10 Anton Piller orders, so what I would say about this is
11 that the Audit and Finance Committee, the questions you
12 asked there were good questions and we raised was is it
13 not possible simply to update the existing software?
14 And the answer that we got, and there was an IT expert
15 who staff had consulted, was that the database simply
16 was based on an old platform that after twenty years is
17 simply not -- it's not feasible, it no longer has the
18 capabilities to do the types of things that we need to
19 do.

20 So it was clear that at some point we
21 needed to move onto a new platform. I guess it's a
22 little bit like moving from Microsoft 7 to Microsoft 8
23 or whatever.

24 As part of that, the decision was
25 made -- the database program will obviously use

1 existing software, but it's like any sophisticated
2 organization like this, you have to customize it. So
3 the committee also raised questions about, well, look,
4 you know, these software development processes are a
5 fraud and, you know, they can be difficult and so
6 forth, and the idea being here is that it's going to
7 take some time, it's not something that we're just
8 going to buy off the shelf, we're going to have
9 existing software, it has to be customized to deal with
10 the needs of the Law Society, and certainly we at the
11 committee thought that this was a good investment
12 because, long run, we think that it will facilitate the
13 communications between the Law Society and its members,
14 but it will also give us as Convocation the ability to
15 generate information that the old program simply
16 doesn't have the capability to deal with.

17 We felt it was time to invest and, you
18 know, obviously whenever you're investing in new
19 software you can't guarantee that there's not going to
20 be a few bumps along the road, but I can assure you
21 that our committee is going to be asking those kind of
22 questions as the project goes forward.

23 TREASURER SCHABAS: Ms. Vespry.

24 MS. VESPRY: Thank you, Treasurer. I
25 have a couple of questions. The first about page 38B,

1 as opposed to A.

2 The paragraph reads, "In future, the Law
3 Society will fund and report legal information and
4 library support expenses in the same way it treats
5 program expenses and contributions to external
6 organizations, not through a separate levy." So we
7 will not be seeing that show up as a per member levy,
8 it will be part of the general budget?

9 MR. BREDT: Correct.

10 MS. VESPRY: Will it remain its own line
11 item in the general budget?

12 MR. BREDT: Yes.

13 MS. VESPRY: So we'll still be able to
14 find it.

15 MR. BREDT: Absolutely.

16 MS. VESPRY: A little bit further on, I
17 believe it's page 52, yes. Major Budgetary
18 Assumptions. The middle of that list, the contribution
19 to the Parental Leave Assistance Plan has been reduced
20 to zero. I understand that this is because of
21 declining utilization, but declining utilization
22 doesn't say to me zero utilization.

23 MR. BREDT: So what I would say is in
24 past -- the first question that Ms. Vespry asked is
25 LibraryCo will be a line item, so everybody will see

1 how much money is going, and we would be coming and
2 saying, well, we budgeted \$7 million last year, we're
3 going to budget seven and a half million this year, and
4 here's why. There's increased demand for access to
5 this database or whatever. So it will continue there,
6 it just won't be a separate item on the actual account.

7 The second question that you raised is
8 what's happened is as part of the funding of the
9 Parental Leave Assistance Program, funds are put aside,
10 and so funds have been put aside to fund this program
11 in previous years which haven't been utilized. The
12 funds are there to meet what the expected demand is and
13 we just didn't need to top it up this year, which is
14 why that item was raised there.

15 MS. VESPRY: But those funds are not
16 being set off --

17 MR. BREDT: They're not being set off.
18 The funds are there and to the extent that people apply
19 and are accepted, there's adequate funds in the budget
20 to fund them.

21 MS. VESPRY: Thank you. My last
22 question, and this may be just that I couldn't find it
23 in the budget. We've got an income labelled licensing
24 program and I could not find an expense with exactly
25 the same label.

1 There was an expense for the department,
2 but there isn't an expense that says licensing process,
3 or if it is I couldn't find it.

4 MR. BREDT: So it would be -- on the
5 expense side of the equation there's expenses that are
6 related to PD&C, Professional Development and
7 Competence. Those expenses would include the licensing
8 process.

9 MS. VESPRY: But is it broken down to
10 show just the licensing process? That's the part that
11 I couldn't find.

12 MR. BREDT: I think somewhere. I
13 haven't committed all the material, but I think that
14 there is somewhere in the materials a part that looks
15 specifically at PD&C and breaks down what the expenses
16 are within that department.

17 MS. MILES: There is and I will provide
18 it to Ms. Vespry.

19 MR. BREDT: Thank you.

20 TREASURER SCHABAS: Are there any other
21 questions in the room? Any questions or comments on
22 the telephone? Hearing none, then we will put -- we'll
23 do two separate motions.

24 The first motion to approve the budget
25 at page 42, moved by Mr. --

1 MR. BREDT: Probably we should do the
2 LibraryCo budget first, Treasurer, because that's
3 incorporated in the second motion.

4 TREASURER SCHABAS: As you wish. We'll
5 do the LibraryCo motion first. Moved by Mr. Bredt,
6 seconded by Ms. Clément. All in favour? Any opposed?
7 Any opposed on the telephone? Motion is carried.

8 And we'll go to page 42 to approve the
9 budget. Same mover and seconders. All in favour in
10 the room? Any opposed? Any opposed on the telephone?
11 Thank you. The motions are carried. Thank you, Mr.
12 Bredt.

13 Ms. Leiper has to leave shortly and
14 she's going to give us a brief update on the work of
15 the Governance Task Force.

16 -- UPDATE ON WORK OF THE GOVERNANCE TASK
17 FORCE:

18 MS. LEIPER: Thank you, Treasurer. On
19 September 22nd, 2016, Convocation approved a Governance
20 Task Force in line with the strategic funding goal to
21 review the Law Society's governance structure,
22 including achieving the goals of transparency,
23 inclusiveness, effectiveness, efficiency and costs, and
24 where appropriate, obtain the opinions of experts.

25 Le 22 septembre 2016, le Conseil a

1 approuvé la création d'un groupe de travail sur la
2 gouvernance, conformément au but suivant du plan
3 stratégique.

4 Examiner la structure de gouvernance du
5 Barreau à l'égard de la transparence, de l'inclusion,
6 de l'efficacité, de l'efficience et des couts, et au
7 besoin, obtenir l'opinion d'experts.

8 You set us a mandate which includes a
9 wide-ranging discussion of governance issues, from
10 practical process issues to researching best practices
11 and looking at how we are structured. We have been
12 asked to report back as we gather research and as our
13 work progresses.

14 So here we are. The Governance Task
15 Force has had its first meeting and today we want to
16 give you some idea of how we oriented the issues, what
17 you might expect over the first few months of our work,
18 and how you might play a role.

19 I'm going to speak very briefly about
20 context, principles and work plan. Context. We are in
21 a period of rapid change in the profession in Ontario.
22 Licensing processes, of course, are on our agenda
23 again; access to justice is a growing concern, digital
24 disruption, which affects many other sectors, is also
25 now a factor in the regulated legal professional

1 services space. Questions of how we will effectively
2 regulate entities are all significant policy concerns
3 for our term and beyond.

4 The independence of the lawyer and
5 paralegal professions that are foundational principles
6 will not change, but how we protect and deliver on
7 these foundations is really what you've asked us to
8 consider, and signs of change have already been
9 signalled by the Law Society.

10 So we have increased our consultative
11 processes on any number of policy decisions. We use
12 both traditional and social media to do so. We have
13 reached out into the province as part of our work and
14 this has been appreciated and noticed. We have opened
15 up Convocation through webcasting and we reflect a more
16 diverse bar than ever before, one that will continue to
17 change and demand more from us.

18 We know likewise that the public will
19 have greater expectations of us and we need to be
20 responsive. We need to be future-oriented, be aware of
21 the realities of those entering our professions and
22 respond to the complex issues facing legal service
23 providers and the public. That's our context.

24 Les principes. So with an awareness of
25 this context, the group began our first meeting

1 discussing principles, and some of those are embedded
2 in the mandate that I just read: Transparency,
3 inclusiveness, effectiveness, efficiency and costs.
4 These are reinforced by section 4.2 of the Law Society
5 Act, which requires we act in a timely, open and
6 efficient manner. We also talked about principles of
7 equity, evidence-based policy making and ongoing
8 engagement.

9 So this morning one of the things that
10 we wanted to say to Convocation is that these are the
11 principles that will guide our work and our reporting
12 to you.

13 Preliminary work plan, plan d'action.
14 So we have started to consider a list of issues. Our
15 next meeting in November will be to continue with
16 deciding on an appropriate work plan.

17 Nous entendons travailler en même temps
18 sur deux grades catégories de questions: d'abord, des
19 questions pratiques de procédure qui peuvent entraîner
20 des changements aux politiques ou aux règlements
21 administratifs, mais vrais vraisemblablement pas de
22 vastes études ou recherches et dont l'échéancier sera
23 plus court, ou qui devraient être abordées le plus tôt
24 possible.

25 Il s'agira par exemple de voir si

1 l'évaluation des membres du conseil d'administration
2 est justifiée ou utile dans notre structure, et
3 d'envisager un outil d'autoévaluation à cette fin, qui
4 porte sur les besoins de formation des conseillers et
5 leur rôle dans le Barreau, tel que noté dans le plan
6 stratégique 2015-2019; nous avons la chance d'avoir
7 amorcé le travail avec le personnel sur ce sujet.

8 So we plan to work concurrently on two
9 broad categories of issues. The first are practical
10 process issues that may require policy or by-law
11 change, will not likely need extensive study or
12 research, and should or can be accomplished in a
13 shorter time.

14 One such example is exploring whether
15 evaluation of benchers as board members is useful in
16 our structure and considering a self assessment tool
17 for this purpose. This would relate to benchers'
18 education needs and our role in the Law Society as
19 noted in the strategic plan, and staff have begun
20 preliminary work on this idea already.

21 The other category, longer term, will
22 look at how Convocation, the Treasurer's office and
23 committees are constituted and do their work. The
24 potential for election reform and even whether our
25 historic name continues to be the best description of

1 what we do and how we should be naming ourselves to the
2 communities that we serve.

3 Throughout all of these conversations we
4 plan to seek out research, consult as appropriate, and
5 find the best methods for the particular issues. We
6 will ask the questions, look for best practices, and
7 bring our recommendations to you. So we will also try
8 to report to you on an ongoing basis, briefly, but as
9 we go along so that Convocation is aware of the work,
10 because it involves all of us. Merci beaucoup.

11 TREASURER SCHABAS: Thank you,
12 Ms. Leiper. Any -- I'm willing to have any brief
13 questions relating to the process that she's set out,
14 if any, at this time. Seeing none, thank you very
15 much.

16 Mr. McDowell, Professional Regulation.

17 -- PROFESSIONAL REGULATION COMMITTEE

18 REPORT:

19 MR. McDOWELL: I'm here to propose a
20 rule amendment. I'm tempted to say it is the best rule
21 amendment, people tell me, but if you turn up page 251
22 of BoardBooks.

23 So this deals with the circumstances in
24 which a regulatory meeting can be held, as opposed to
25 an invitation to attend or an ITA.

1 So in 2006 the regulatory meeting was
2 authorized by Convocation and the criteria are there at
3 paragraph 6. But you'll see that at 6(C), one of the
4 requirements was it is not in the public interest to
5 deal with a matter by way of an invitation to attend
6 given its confidential nature because the conduct of
7 the licensee has been the subject of comment in a
8 public forum, and there's some elaboration of that.

9 So I guess at the instance of PAC, the
10 committee has considered and agreed that a regulatory
11 meeting should be capable of being held, even when
12 there is no public notice about it, when there's no
13 public component to it, because in the perfect
14 circumstances, having a meeting which is held in public
15 to counsel or admonish a licensee is a very effective
16 tool and is thought to be more effective than a private
17 ITA.

18 So that is the proposed motion at the
19 top there, paragraph 3. Do I have a seconder?

20 MS. STROSBERG: I will second.

21 MR. McDOWELL: Thank you.

22 TREASURER SCHABAS: It was
23 Ms. Strosberg?

24 MR. McDOWELL: It was Ms. Strosberg.

25 Happy to take any questions, but it's a pretty narrow

1 measure.

2 TREASURER SCHABAS: Any comments or
3 questions in the room? Yes, Ms. Papageorgiou?

4 MS. PAPAGEORGIOU: I have a question in
5 general about the process. Should I come up there,
6 should I go up there?

7 TREASURER SCHABAS: Yes, please.

8 MR. BREDT: I was kind of looking
9 forward to Gina unplugged.

10 MS. PAPAGEORGIOU: So this is my
11 question. Just the process that we have at PAC, I hope
12 you don't mind that I'm going to mention you, Janis.
13 Janis Criger sent around an e-mail some three, four
14 months ago about PAC's process and asking that the
15 process at PAC where you're deciding what to do with a
16 licensee, whether they're referred forward, should be
17 changed so that it becomes devoid of information that
18 would allow people to know the personal characteristics
19 of the people being evaluated and deciding which stream
20 they're going to go down.

21 The reason for this, as we know in the
22 Racialized Task Force as well as all the Harvard
23 studies, there is a very strong unconscious bias. I
24 guess my question is, as we look at -- you're making
25 changes now, have you considered that particular issue,

1 because that issue I believe was also e-mailed to the
2 committee.

3 MR. McDOWELL: So, Ms. Horvat, with your
4 permission, has generously agreed to let me duck this
5 question.

6 TREASURER SCHABAS: Sure. I would note
7 that it's not really part of the motion. I'm aware
8 that this issue was raised at Professional Regulation
9 Committee and presumably is something that the
10 Professional Regulation Committee, among many other
11 things, may be looking at.

12 MR. McDOWELL: I think that's right. If
13 it's a question about present practice I would defer to
14 my colleague.

15 TREASURER SCHABAS: I'm not sure we need
16 to. Briefly, Ms. Horvat. I don't think we need to go
17 very far on that. I don't mean to suggest there's no
18 merit to Ms. Papageorgiou's comment, but it's a little
19 bit of a diversion.

20 MS. HORVAT: I'm happy not to speak.

21 TREASURER SCHABAS: Okay. Ms. Ross was
22 next.

23 MS. ROSS: Thank you. Treasurer, to
24 Mr. McDowell then. These are just process questions
25 and, just for the sake of the record, the regulatory

1 meeting you've noted obviously is going to be a matter
2 of public record. Who will be conducting the
3 regulatory meetings, could you advise us that on the
4 record?

5 And, secondly, will the fact of
6 regulatory meetings that are being scheduled and will
7 be held going to be posted, for example, on the Law
8 Society's website where the public and the media would
9 normally think to look?

10 MR. McDOWELL: I believe, subject to
11 some tinkering, that the regulatory meetings will be
12 held before a discipline panel.

13 TREASURER SCHABAS: Actually, they're
14 held -- the members of PAC conduct them, Mr. McDowell,
15 and they're not posted in advance. There can be
16 scheduling difficulties about them, but after they have
17 taken place there is a public summary of the regulatory
18 meeting, including the name of the licensee, and it's
19 published in the ORs. Ms. Ross?

20 MS. ROSS: Sorry, so if they're only
21 published after the fact, how does that address our
22 principle position to be transparent and open to the
23 public, if the public and journalists, for example,
24 only learn about them after the fact?

25 TREASURER SCHABAS: I'll ask the present

1 chair of PAC to answer that question.

2 MS. HORVAT: Regulatory meetings are
3 only held if the licensee agrees to them and there's an
4 agreed statement of fact that they agree to and the Law
5 Society agrees to, and it's that statement of fact that
6 gets published in the ORs. The actual regulatory
7 hearing is held before a panel of any three Benchers,
8 it's generally three members of PAC. They're generally
9 held in this room and they come in and we discuss the
10 issues with them.

11 There's no finding of any sort of guilt
12 or liability and there's no admission of any guilt or
13 liability, apart from what is in the agreed statement
14 of facts, and that's what a regulatory hearing is.

15 TREASURER SCHABAS: Regulatory meeting,
16 actually.

17 MS. HORVAT: Sorry, regulatory meeting.
18 It's the same as an ITA, apart from the public
19 published component.

20 TREASURER SCHABAS: Any other -- sorry,
21 Mr. Galati, I think you had your hand up.

22 MR. GALATI: I watched the whole
23 election last night so I didn't get much sleep. I'm
24 not sure I'm understanding this amendment. So what is
25 not being -- what's different here than from the

1 previous --

2 MR. McDOWELL: Well, the ITA was held
3 privately. So it used to be unless a judge or a court
4 or a newspaper had said the conduct of this lawyer, for
5 example, was inappropriate that the meeting would be
6 used.

7 MR. GALATI: Thank you.

8 TREASURER SCHABAS: Mr. Evans.

9 MR. EVANS: Thanks, Treasurer. I think
10 Ms. Horvat answered part of my question, that the
11 invitation to attend -- to the licensee could be
12 declined by the licensee, but I'm wondering if it would
13 be appropriate to have a notice to attend rather than
14 just an invitation to attend so the attendance by the
15 licensee could be mandated by PAC and perhaps
16 streamline our adjudication process by having some of
17 these matters dealt with more expeditiously.

18 MR. McDOWELL: I guess the concern would
19 be the idea that if this is a voluntary process in
20 which there is no admission or finding of liability,
21 that's a little bit different.

22 TREASURER SCHABAS: It's a different
23 issue than what's before us now, which is an invitation
24 to attend. So it's, again, not really related to this
25 motion.

1 Is there anybody else in the room who
2 has any comments or questions? On the telephone, any
3 questions? Hearing none, again, this is moved by Mr.
4 McDowell, seconded by Ms. Strosberg. All in favour?
5 Anyone in the room opposed? Anyone on the phone
6 opposed? The motion is carried. Thank you.

7 Now, Mr. Mercer, you were going to
8 address another Professional Regulation Matter.

9 MR. MERCER: This is a report for
10 information for Convocation.

11 As Convocation is aware, in June the
12 Advertising Fee Arrangements Working Group provided an
13 interim report containing both issues raised and
14 attemptive directions suggested. Input was sought by
15 the end of September. I want to tell you that we've
16 now received nearly 80 submissions from 20
17 organizations and 59 individuals, including from
18 lawyers, paralegals, firms, the academy, insurers and
19 associations representing lawyers, insurers and injured
20 people; not the same organizations, to be clear.

21 It's clear from the review of the
22 submissions thus far received that there are a number
23 of different perspectives on the advertising fee
24 arrangements issues. It's clear within the professions
25 how people do business, how people attract clients,

1 effect their views on how -- what arrangement should be
2 allowed. It's clear that insurers have issues and
3 perspectives; the same is true for organizations of
4 injured people.

5 That makes these issues always difficult
6 because where we have alignment within the professions
7 and with the public life is easier. Where we have a
8 number of different perspectives, issues are more
9 challenging.

10 From a preliminary review, it appears
11 that there are some questions that are more
12 straightforward than other questions. I suppose that's
13 no great surprise. There are some areas where there is
14 relative alignment and relative consensus. There are
15 other areas where that's not true and, of course, the
16 spectrum goes further than that.

17 What I want to tell you with respect to
18 the work of our group is that we're meeting -- we've
19 already met once to review the submissions received.
20 We will be meeting again this week. My expectation is
21 that we will attempt to delineate those issues which
22 can be dealt with more easily than others and that we
23 will bring forward recommendations through the
24 Professional Regulation Committee to Convocation, not
25 all at once, but as we're able to move them forward so

1 that we don't end up many months from now with a big
2 report. What we want to do is to move deliberately,
3 thoughtfully and promptly as we can.

4 The other thing that I want to note is
5 that one of the points raised in our June interim
6 report is that by-laws, professional conduct rules and
7 commentary and changes to them are only part of the
8 puzzle. We currently have the Professional Regulation
9 Division charged with investigating, where appropriate,
10 compliance with our existing rules. Much of the work
11 of PRD is unseen, with thousands of matters dealt with,
12 sometimes with guidance, direction and diversion, but
13 over hundreds of matters going forward into the
14 disciplinary process each year.

15 As a result, there is much activity, but
16 much which is unseen. That's why I want to tell you
17 what is happening at a high level within PRD in respect
18 to these issues.

19 The Law Society Act, as you know,
20 requires investigative confidentiality. That makes it
21 difficult for us to observe what's happening and for
22 the profession and the public to observe what's
23 happening, but I can report that one of the early steps
24 taken by our new executive director of Professional
25 Regulation has been to form a strategic priority team

1 within PRD to undertake investigations in this area
2 with a view to ensuring coordinated and policy focused
3 attention is brought to bear. This proactive approach
4 reflects the significant importance placed by the Law
5 Society on this area.

6 I hope to report further in the new
7 year.

8 TREASURER SCHABAS: Thank you very much,
9 Mr. Mercer. Anybody wish to ask any questions of
10 Mr. Mercer on this update? Any questions on the
11 telephone? Hearing none, we'll move forward. Thank
12 you, Mr. Mercer.

13 The Tribunal Committee, Ms. Murchie.

14 -- TRIBUNAL COMMITTEE REPORT:

15 MS. MURCHIE: Thank you, Treasurer. I
16 too have rule amendments for Convocation's approval,
17 and Mr. Wright is here as well in the event there are
18 questions of a significant nature.

19 But let me take you through them first
20 so that everyone has a chance to review and understand
21 what is going on here.

22 The Tribunal Report is at page 254 of
23 BoardBooks and the motion that I am moving is at page
24 257. These amendments, we're seeking approval for
25 amendments to the Hearing Division and Appeal Division

1 rules of practice and procedure, and the amendments
2 come out of the ongoing implementation of the
3 Tribunal's new electronic case management system and
4 they're also a result of the ongoing efforts to
5 streamline the rules and make them more accessible to
6 the public as we go forward.

7 In terms of the particular rules, you'll
8 see they're set out on page 257, the key issues and
9 considerations.

10 First of all, there's changes to the
11 rule and forms for the notices of application. That's
12 rule 9, and the forms have been simplified and there's
13 a provision for information sheets that is -- that
14 allows for personal information that's not relevant or
15 necessary for publication to be filed separately with
16 the Tribunal office.

17 There are separate notices of
18 application for each type of proceeding that references
19 the statutory test, and you'll see the change notices
20 at pages 265 to 270 of BoardBooks, if you just want to
21 get an idea of what they look like.

22 The rule also provides that the Law
23 Society will electronically file the notice of
24 application and the information sheet and it provides
25 that the notices of application will be served first

1 and then filed with the Tribunal, which is a change
2 from the current practice.

3 The information sheet is a separate
4 information sheet with personal information, as I said,
5 and it's not -- there's no intention to post it or make
6 it public.

7 The next rule is rule 10, it's a rule
8 respecting service and there's simply simplified
9 language there. It also provides for e-mail service
10 without consent.

11 There are some amendments to rule 21 on
12 interlocutory suspensions. It provides that
13 interlocutory suspensions are to be set up as a
14 separate type of proceeding, so this ensures personal
15 service of the interlocutory suspension motion or
16 application and it also allows the Tribunals office to
17 collect consistent statistics, because right now
18 there's two methods, really, of seeking an
19 interlocutory suspension, so it's difficult to track.

20 The next set of amendments relates to
21 rule 2603 and the form of orders, and the type of --
22 the order format is set out at rule 2603 and it's
23 simplified. It enables the orders to be published and
24 it makes summaries unnecessary.

25 I can -- I thought I had written down

1 the page of it, but you'll see that the form for the
2 order is -- sets out what exactly is required and so
3 that there will be consistency throughout. And I've
4 lost it here. My apologies, Treasurer.

5 TREASURER SCHABAS: 293.

6 MS. MURCHIE: 293. Thank you very much.
7 Okay, you'll see the order, the form of the order that
8 all of the adjudicators will be asked to complete
9 there.

10 There's also amendments to the appeal
11 rules and there's a correction on the time to perfect,
12 it's rule 1.2, and you'll see those changes on page 336
13 of BoardBooks.

14 The motion that I'm moving, seconded by
15 Ms. Merali, is at page 257, and as I've said, happy to
16 entertain questions or Mr. Wright is here if there's
17 more comprehensive questions.

18 TREASURER SCHABAS: Any questions in the
19 room? On the telephone? Hearing nothing from the
20 telephone, I'll put it to a vote. All in favour?
21 Anyone opposed? Anyone opposed on the telephone?

22 Motion is carried. Thank you, Ms. Murchie.

23 Ms. McGrath, the Secretary's report.
24 You're speaking on behalf of Mr. Varro.

25 -- SECRETARY'S REPORT:

1 MS. McGRATH: Thank you, Treasurer. The
2 amendments -- the motion is found at pages 365 and 366
3 of BoardBooks, and these changes come about as a result
4 of the changes to the LawPro policy dealing with
5 seconded lawyers. These are -- and it's primarily to
6 exclude claims brought by corporations against seconded
7 lawyers where they are --

8 TREASURER SCHABAS: Sorry, Mr. McDowell
9 is still feeling the effects of last night.

10 MS. McGRATH: I can see that.

11 MR. BREDT: As are we all, Treasurer.

12 MR. McDOWELL: I was just shoving it
13 under the table.

14 TREASURER SCHABAS: Don't stamp on your
15 iPad just yet. Sorry, Ms. McGrath, go ahead.

16 MS. McGRATH: Thank you. The change to
17 the LawPro policy dealing with seconded lawyers
18 excludes claims brought by corporations against
19 seconded lawyers where the claimant meets a definition
20 of corporate employer under the policy, and to extend
21 the \$250 for claim defence only coverage for claims
22 against seconded lawyers brought by corporate
23 employers.

24 The changes, and if you want to look at
25 the tracked changes page to see exactly where they are,

1 if you turn to page 370, the change to section 9.1.4 i,
2 indicates that the change will be to employers --
3 employed by employers who are not a licensee or
4 licensee law firm, so that's an addition.

5 And then the changes to 5.1 and 5.2 you
6 will find on page 373 of BoardBooks, and that
7 essentially indicates that licensees who are seconded
8 to corporate firms shall continue to be employed by
9 their original partnership or association and their
10 coverage will continue.

11 And then 5.2, change indicates what the
12 definition of licensee firm would be, and that's just a
13 basic housekeeping change. So if anyone has any
14 questions.

15 TREASURER SCHABAS: Do you have a
16 seconder?

17 MS. McGRATH: Ms. Criger.

18 TREASURER SCHABAS: Ms. Criger, all
19 right. Any comments or questions on this by-law
20 amendment? Any questions or comments on the telephone?
21 Hearing none, all in favour? Any opposed? Any opposed
22 on the telephone? Motion is carried. Thank you, Ms.
23 McGrath.

24 Can we just -- there seems to be some
25 sound. Oh, it's the radiator.

1 So that concludes the public portion.
2 We have a few matters in camera, so we will now go in
3 camera.

4 --- In public proceedings adjourned at 11:54 p.m.

5

6

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

11

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13 SHARI CORKUM, C.S.R.

14 Computer-Aided Transcript

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