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CONVOCATION

IN PUBLIC SESSION

THURSDAY, FEBRUARY 23rd, 2017 - 8:30 a.m.

OSGOODE HALL, TORONTO

1 CONVOCAATION ATTENDANCE

2 Treasurer - Paul Schabas

3	Vern Krishna (ph.)	Gavin MacKenzie
4	Harvey Strosberg	Suzanne Clément
5	Seymour Epstein	Jan Richardson (ph.)
6	Gerald Sheff	Baljit Sikand
7	Catherine Strosberg	Larry Banack
8	Paul Copeland (ph.)	Patrick Furlong
9	Gary Lloyd Gottlieb	Ron Manes (ph.)
10	Ross Murray	Julian Porter
11	Judith M. Potter	Heather Ross
12	Clayton Ruby (ph.)	Gerald A. Swaye
13	Bradley H. Wright	Raj Anand
14	Peter Beach	Fred Bickford
15	Jack Braithwaite	Robert Burd
16	Paul Cooper	Dianne Corbiere
17	Cathy Corsetti	Teresa Donnelly
18	Ross F. Earnshaw	Robert Evans
19	Julian Falconer (ph.)	Rocco Galati
20	Avvy Go	Howard Goldblatt
21	Joseph Groia	Michelle Haigh
22	Carol Hartman (ph.)	Jacqueline Horvat
23	Brian Lawrie	Janet Leiper
24	Jeffrey Lem (ph.)	Michael Lerner
25	Marian Lippa	William McDowell

1	Susan T. McGrath	Isfahan Merali
2	Malcolm Mercer	Barbara Murchie
3	Sandra Nishikawa	Susan Richer
4	Jonathan Rosenthal	Sidney Troister
5	Jerry Udell	M. Anne Vespry
6	Tanya Walker	Peter Wardle
7	Thomas G. Conway	Laurie H. Pawlitza
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1 --- Upon commencing at 8:30 a.m.

2 TREASURER SCHABAS: Good morning,
3 everybody, and welcome to Convocation and welcome to
4 anyone who is joining us today via webcast.

5 Bonjour, bienvenue au Conseil en
6 personne et par la webémission publique.

7 I want to start by recognizing that we
8 are here together in Toronto, which is a Mohawk word
9 for "Where there are trees standing in the water," and
10 acknowledge that we are on the traditional territory of
11 the Mississaugas of the New Credit, and to also
12 acknowledge the Haudenosaunee people and to recognize
13 the long history of our First Nations in Ontario and
14 the Métis and Inuit peoples and to thank them for
15 sharing their land with us in peace.

16 I also want to welcome everyone to
17 Convocation in the Lamont Learning Centre. In addition
18 to Benchers and staff, we're able to accommodate
19 members of the public and the press in the room, as the
20 meeting is open to the public.

21 I will later be welcoming our special
22 guests when they arrive from the Chambre des Notaires
23 du Québec and from AJEFO, who will be joining us for
24 lunch.

25 This is our second meeting of Convocation

1 in this room. We are still experimenting with it as a
2 space. I want to thank Benchers for completing the
3 survey on their experience the first time around in
4 December and I think those results have been
5 distributed.

6 In April we will be back in our old
7 space, which will give us a reminder of that space as
8 well, and we'll see how things go after that.

9 First, for any members of the
10 professions, the public and the press who are in
11 attendance, we ask that you not take photographs or
12 videos during the meeting. You may unobtrusively make
13 an audio recording to confirm the accuracy of the
14 remarks made during the meeting, but I do note that
15 there is a transcript of the public portion of the
16 meeting that is available within a number of days
17 afterward and there will be an archived webcast of the
18 meeting that is available on our website.

19 Second, this is a business meeting and
20 we will be going through an agenda. The public are
21 here to observe, but not participate. Depending on how
22 the agenda progresses, I am hopeful that we will take a
23 break around ten-thirty, and there will be coffee
24 available in the lobby area for the public.

25 I want to now just review, as we always

1 do, the instructions for the phone system. Once we
2 determine who is on the phone I'll let everyone know
3 that we will be placing those calling into the meeting
4 into what we call lecture mode. This means that from
5 our end we are muting you and, once muted, you will be
6 able to hear us, but you will not speak. So it is star
7 6 from our end for everyone. And we will come out of
8 lecture mode to hear callers who wish to speak and vote
9 following the presentations of reports and motions.

10 At that time, unless callers wish to
11 speak, we would ask them to press star 6 on their
12 phones so that we don't hear unnecessary noise.

13 I want to take a couple of minutes to
14 update you on some of the highlights of our activities
15 recently. Oh, sorry, do you want take attendance now,
16 Jim? Let's find out who is on the phone.

17 My list tells me that we should have
18 Carol Hartman, is that right?

19 MS. HARTMAN: Yes, good morning,
20 Treasurer.

21 TREASURER SCHABAS: Good morning, Carol.
22 Vern Krishna. Jeffrey Lem? Jan Richardson?

23 MS. RICHARDSON: Present.

24 TREASURER SCHABAS: Thank you, Jan.
25 Clayton Ruby? Anybody else on the telephone?

1 MR. COPELAND: Paul Copeland.

2 TREASURER SCHABAS: Sorry, was that Paul
3 Copeland?

4 MR. COPELAND: Yes, it was. Thank you,
5 Treasurer.

6 TREASURER SCHABAS: Thank you. Who else
7 other than Mr. Copeland?

8 MR. MANES: Ron Manes, Treasurer.

9 -- TREASURER'S REMARKS:

10 TREASURER SCHABAS: Ron Manes, thank
11 you. Anybody else? Thank you.

12 I wanted to report to Convocation that
13 we are moving forward on one of my key priorities and a
14 key priority that we established as an organization
15 pursuant to our strategic plan for this Bencher term,
16 which is enhancing communications with the public and
17 with our members.

18 I have formed a steering group of
19 Benchers, chaired by Julian Falconer, and I've asked
20 them to assist us by working together with our staff,
21 led by Diana Miles, to provide input into this
22 important initiative.

23 Other members of this group are Robert
24 Burd, Teresa Donnelly, Joe Groia, Sandra Nishikawa,
25 Baljit Sikand and Tanya Walker.

1 We are working with an external
2 communications consultant on this project and we look
3 forward to hearing about potential next steps in our
4 efforts to move our communications activities to the
5 next level of support and service for the public and
6 our members.

7 I wanted to report briefly as well on a
8 very productive day that John Callaghan, Sheena Weir
9 and I had in Ottawa a couple of weeks ago educating
10 members of Parliament about the importance of the
11 Unified Family Court and its expansion in Ontario, as
12 well as other issues that affect the administration of
13 justice in our profession.

14 We met with more than 15 members of
15 Parliament, primarily from the justice and finance
16 committees, senior political staff and the Minister of
17 Justice herself.

18 I'm pleased to report that the benefits
19 of the Unified Family Court are clear to those we spoke
20 to, our challenge will be to ensure that this is a
21 priority, given all the other issues that are on the
22 federal government's agenda, but we will continue to
23 raise this issue around Unified Family Court in
24 particular as a key component of effective family law
25 reform.

1 I would like to thank Mr. Callaghan in
2 particular for his hard word and enthusiasm, trotting
3 the corridors of power in Ottawa.

4 We had a call to the bar on
5 January 27th, and on behalf of Convocation I want to
6 congratulate our former Bencher, Thomas Heintzman,
7 Q.C., who was granted the honorary of Doctorate of Laws
8 at the call ceremony.

9 I would also note that we approved the
10 list of licensing candidates and transfers from outside
11 the province who successfully completed the licensing
12 process and have met the requirements in accordance
13 with by-law 4. These candidates were called to the bar
14 and granted a certificate of fitness. The list of
15 candidates appears in tab 17.

16 Last night I had the pleasure of
17 presiding over the Human Rights Awards ceremony in
18 which we honoured two outstanding individuals, Waleed
19 Abu al-Khair is a prominent human rights lawyer and
20 activist from Saudi Arabia and the founder of the
21 Monitor of Human Rights in Saudi Arabia.

22 He has worked tirelessly to defend human
23 rights and the rule of law for all in the face of
24 extreme adversity and at the cost of his own freedom.
25 In 2014 he was sentenced to fifteen years in prison and

1 given a 15 year travel ban and fine of 200,000 Saudi
2 Arabian riyal as punishment for his human rights
3 activities.

4 We understand if he just simply
5 retracted and apologized he would be released. He
6 won't do that.

7 Gail Davidson, Executive Director of
8 Lawyers' Rights Watch, accepted the award on his
9 behalf. Lawyers Rights' Watch is an organization of
10 Canadian Lawyers that promotes human rights and the
11 rule of law by providing support internationally to
12 human rights defenders in danger, and they were
13 Waleed's nominators for this award.

14 Cindy Blackstock, our other recipient,
15 is a highly respected and outstanding advocate for
16 First Nations children and youth in Canada, working to
17 address systemic discrimination in the child welfare
18 system.

19 For more than 25 years she has engaged
20 in and promoted public education and research on the
21 issue. She is most well-known for her leadership in
22 bringing a human rights complaint against the federal
23 government resulting in a Canadian Human Rights
24 Tribunal's ruling in which they found that the
25 Government of Canada was guilty of systemic

1 discrimination by underfunding child welfare for First
2 Nations children on reserve.

3 Dr. Blackstock told us that there have
4 now been orders finding that the government continues
5 to be in non-compliance with the directions that came
6 from the Tribunal following the success of her case.

7 On behalf of Convocation, I was honoured
8 to recognize these two outstanding individuals for
9 their work and sacrifices. We are very privileged to
10 live in Canada, where human rights are fundamental to
11 our society and our way of life, so much so that most
12 of us take them for granted, but we must remain
13 diligent in upholding the rule of law and continue to
14 call to task those who undermine these values,
15 particularly in today's environment where in recent
16 weeks we have seen how events just next door, in the
17 United States, are threatening these fundamental
18 principles.

19 Legal organizations in Canada, the
20 United States and around the world have denounced
21 President Trump's recent actions and remarks, drawing
22 attention to the fragility of the rule of law, judicial
23 independence, even in the United States.

24 The Law Society stands firmly with these
25 organizations and, consistent with its statutory

1 mandate, will speak out to uphold the rule of law and
2 to uphold respect for the independence of the
3 profession and the judiciary.

4 It's Black History Month. The Law
5 Society and CABL, the Canadian Association of Black
6 Lawyers, will pay tribute to Viola Desmond and other
7 black civil rights activists, past and present. Their
8 program is scheduled for February 28th at five-thirty
9 p.m. in this room and will feature an interactive panel
10 focusing on the legislative history of the Ontario
11 Human Rights Code, highlighting individuals key to its
12 introduction progress and the amendments over time.
13 They will also look back on the history of black civil
14 rights activism in Canada.

15 International Women's Day is coming up,
16 and the Law Society, partnering with the Barbara
17 Schlifer Commemorative Clinic, LEAF, The Women's Legal
18 Education and Action Fund, The Women's Law Association
19 of Ontario and the Women's Lawyers Forum of the OBA
20 will mark the day with a panel discussion about the
21 challenges facing women running for, or serving in,
22 elected office in Canada. It will explore the barriers
23 women face when running for office or engaging in
24 grassroots activism and why more do not rise to the
25 highest political positions. That will be on

1 March 9th, again at 5 p.m.

2 With that, let's turn to the agenda.

3 Actually, sorry, before we do, I noticed
4 that some of our guests arrived, and so I'd like to
5 take the opportunity to welcome them and introduce
6 them.

7 Je voudrais également souhaiter la
8 bienvenue aux invités spéciaux qui sont ici
9 aujourd'hui. Gerard Guay, président, Chambres des
10 notaires du Québec.

11 Élu président en 2014 et notaire depuis
12 1987, Maitre Guay exerce sa profession en pratique
13 privée, principalement à Drummondville dan le centre du
14 Québec. Il est également chargé de cours au programme
15 de notariats de la Faculté de droit de l'Université de
16 Montréal depuis 1995.

17 Elected president in 2014 and a notary
18 since 1987, Maitre Guay practices in private practice,
19 mainly in Drummondville in Central Québec. He has also
20 been a lecturer in the notarial program at the Faculty
21 of Law at the Université du Montréal since 1995.

22 Also attending with Maitre Guay from the
23 Chambre des Notaires du Québec, également présents avec
24 Gérard Guay de la Chambre des notaires du Québec,
25 Jacques Deforges, directeur général, et Catherine

1 Boily, notaire et chef de cabinet au Cabinet de la
2 présidence. Bienvenue.

3 As I mentioned, we will have guests as
4 well at lunch from AJEFO, l'Association des juristes
5 d'expression français de l'Ontario.

6 Nous avons des invitès de L'Association
7 des juristes d'expression français de l'Ontario au
8 déjeuner du Conseil. And they will be Maitre Sonia
9 Ouellet, the Présidente and Maitre Andrée-Anne Martel,
10 Directrice générale. Welcome all.

11 Now we'll turn to the agenda.

12 -- CONSENT AGENDA:

13 TREASURER SCHABAS: There is a Consent
14 Agenda for you confirming minutes of Convocation, two
15 motions for the annual general meeting and appointments
16 and deemed call candidates.

17 I gather this is moved by Mr. Lerner,
18 seconded by Ms. Go. Any discussion? All in favour?
19 Thank you.

20 Any opposed on the -- in the room? Are
21 there any opposed on the telephone? I will take
22 silence as assent. The motion is carried.

23 I will now invite Maitre Guay, president
24 Chambre des Notaires du Québec to address us, please.
25 If you would like to go to the lectern there. Thank

1 you.

2 -- ADDRESS BY GÉRARD GUAY, PRESIDENT,
3 CHAMBRE DES NOTAIRES DU QUÉBEC:

4 MR. GUAY: Mr. Treasurer, dear
5 colleagues, bonjour. Merci pour l'invitation.

6 As the President of the Chambre des
7 notaires du Québec, I would like to thank the Law
8 Society of Upper Canada and its Treasurer, Paul B.
9 Schabas, for the invitation and this warming welcome.
10 As we all know, we share much more than a common
11 mission and a common border. We also share the same
12 vision of promoting access to justice for all,
13 especially by promoting preventive law.

14 In this regard, the Chambre des notaires
15 plays an active role in the matter of access to
16 justice. Let me give you some examples: I am honoured
17 to represent the province of Québec at the National
18 Action Committee on Access to Justice in Civil and
19 Family Matters, chaired by the Honourable Thomas A.
20 Cromwell, former justice of the Supreme Court.

21 Another example, at the end of March,
22 Pro Bono Québec, with the support of the Chambre des
23 notaires and the Barreau du Québec, will hold an
24 ephemeral legal clinic in Kuujjuag in the north of
25 Québec with the participation of few lawyers and a

1 notary.

2 Also, I want to mention the
3 implementation of the Month of Justice by Juripop, a
4 non-profit organization that improves access to the
5 justice system for all citizens. With the support and
6 involvement of the Chambre des notaires, every Monday
7 in February notaries and lawyers are available to
8 provide free legal advice to the public at a Montreal
9 metro station.

10 But one of the most successful
11 incentives of the Chambre des notaires is the 1-800
12 notary service line, who receives 50,000 requests every
13 year from the public and provide free legal
14 information.

15 It's in the context of access to justice
16 that the Chambre des notaires would like to
17 congratulate the Law Society of Upper Canada for its
18 pro bono and legal education initiatives.

19 I can give you many examples of access
20 to justice in Ontario, but I think of the particular
21 work done by the Action Group on Access to Justice or
22 the Law Society Referral Service that you offer. I
23 would like also to thank the Law Foundation of Ontario
24 for its support and activities in regard to access to
25 justice.

1 On a different note, I would like to
2 share with you the recent work done by the Chambre des
3 notaires on the federal government matters.

4 Last December, the Chambre des notaires
5 publicly denounces the federal Bill C-29. In fact,
6 this Bill would have modified the Bank Act in order to
7 give the federal government the exclusive jurisdiction
8 over Canada's banking sector and consequently reduce
9 the protection for Québec consumers.

10 Our initiative, added by the
11 denunciation of other groups, made results in the
12 government withdraw this part of the Bill.

13 Another important Bill for us is C-25.
14 Last Tuesday we sent our comments to the Standing
15 Committee on Industry, Science and Technology
16 concerning this Bill.

17 Therefore we asked for its improvement
18 in order to facilitate the restitution of real property
19 immovable to the dissolved and then reconstituted
20 companies in order to reduce delays and costs for
21 Canadian taxpayers. I have brought with me copies of
22 our comments if some of you would like to read it.

23 Finally, due to our mission and common
24 vision to support the legal practice, I would like you
25 to know that I am deeply willing to offer mutual

1 cooperation with the Law Society of Upper Canada in
2 order to share best practices and information to
3 improve the legal services offered by our respective
4 members.

5 Several situations, particularly in
6 matters of estate, wills and trust, real estate and
7 taxation, involve collaboration between notaries from
8 Québec and lawyers in Ontario, which are both legal
9 consultants graduated from university in law degree.
10 As you know, the civil law degree in Québec is a public
11 official who receives the parties and writes the
12 documents corresponding to their agreement. For
13 example, notarial will do not need a probate to be
14 executed after the death. That's why sharing
15 information about our respective civil rights is, for
16 us, very important to improve the quality of the
17 services offered by our members.

18 We would also like to inform you of our
19 major project, the digital transformation of the notary
20 practice. We are at the beginning of its
21 implementation, which will take five years. The
22 principal objective is the possibility for a notary to
23 receive an electronic notary deed that keeps the same
24 value an authentic act in that sense. If you are
25 interested, we will be very welcome to share more

1 information regarding this project.

2 To conclude, I would like to introduce
3 my colleagues, Mr. Jacques Deforges, CEO of the Chambre
4 des notaires, and Mrs. Catherine Boily, notary and
5 chief of staff for my cabinet. Thank you very much.

6 -- Applause.

7 TREASURER SCHABAS: Merci beaucoup,
8 Maitre Guay, and thank you again for those remarks.

9 We look forward to having you observe
10 for the morning. We have an exciting and busy agenda.
11 We hope you find the discussions stimulating and
12 educational as we confront some of our challenges in
13 Ontario. Thank you again.

14 Mr. Lapper, report of the CEO.

15 -- REPORT OF THE CEO:

16 MR. LAPPER: We're going to have to find
17 a way to reduce travel time for speakers.

18 TREASURER SCHABAS: Yes, it's a long
19 walk down there.

20 MR. LAPPER: Thank you very much,
21 Mr. Treasurer. J'aimerais souhaiter la bienvenue à
22 tous nos collègues du Québec et à mon collègue Jacques
23 Deforges et je pense que Jacques n'est ni parajuriste
24 ni avocat ni notaire mais il est directeur-général
25 extraordinaire, and somebody whose advice I value.

1 I also want to particularly say that we
2 are very, very interested in continuing our dialogue
3 with you on your advances in technology, particularly
4 digital authentication, which is something that we
5 obviously will be wanting to look at down the road. So
6 thank you for mentioning that and we will certainly
7 take you up on that.

8 I want to cover just a few things this
9 morning, recognizing that we don't have a lot of time.
10 I did send to all of you an organizational update with
11 particular respect to our policy work, and in that
12 update, just to reiterate, as we are evolving through a
13 change in our policy department and a restructuring of
14 that department, we are having senior management take a
15 very active role in the work of that.

16 So each committee now has a member of
17 senior management assigned to it to work with the
18 committee to plan its work and to sit down with chairs
19 and vice-chairs and make sure that for the next few
20 months the work is planned and that you understand what
21 the staff resources are and how they will be deployed
22 and that we can agree on that.

23 So if that hasn't happened already to
24 those of you who are chairs or vice-chairs, you can
25 expect a call very soon and we'd appreciate your time

1 in a very short time to get that done.

2 We are going through a period of rapid
3 change in what was formerly our PEPA division, and
4 there is, I want to say, more to come.

5 This makes us all, I think, a little
6 nervous from time to time, but I do want to assure you
7 that the intention here is to actually strengthen the
8 functions of that area, of those areas, and ultimately
9 this will be a change for the better.

10 Further along the change curve, and I'm
11 happy to report some serious success in the
12 transformation of our Professional Regulation Division.
13 As you know, 2016 was a very important turning point
14 for that division. I'm pleased to tell you that the
15 division initiated a record number of notices of
16 application, motions for interlocutory suspensions, or
17 restriction of a licensee's professional business and
18 undertaking from licensees.

19 Our new reporting structure came into
20 effect about three weeks ago, as was recommended to me
21 in a report that we had done looking at the entire
22 area. Discipline counsel are now embedded in a
23 multifunctional team and these teams are now working
24 together on matters so that you have Investigation and
25 Discipline kind of cooperating from day one as we

1 consider matters that are coming in.

2 Our intake department is developing a
3 much more robust triage and it's well on its way to
4 adapting to that structure. They closed approximately
5 eleven percent more complaints and transferred
6 24 percent fewer complaints than in 2015.

7 In the early fall of 2017 the entire
8 staff of the Professional Regulation Division will be
9 moving to 393 University Avenue. This will allow them
10 to move into modern space with updated technology to
11 facilitate and improve efficiencies and, most
12 important, this will allow them to physically adapt to
13 the new model that we have put in place whereby they
14 are working together in teams and, in fact, for the
15 first time the entire PRD division will be located
16 together.

17 This has been a year of very serious and
18 very rapid change for that division, with some very
19 successful outcomes. As with most change, it has been
20 very, very challenging to staff. I would like to
21 acknowledge particularly the work of the change agent,
22 Karen Manerin, and her staff in the accomplishments
23 that they have managed to achieve to date and certainly
24 that we expect them to continue achieve. Thank you,
25 Karen, and thank you to your staff.

1 I would like to give you a brief update
2 on a couple of matters that have been or are before the
3 courts.

4 As you may know, yesterday a lawyer
5 named Meerai Cho pleaded guilty in the Ontario Court of
6 Justice to breach of trust and was in sentenced to a
7 term of imprisonment for three and a half years.

8 These charges against the lawyer related
9 to her role in a failed condominium development.
10 Approximately 140 depositors lost substantial sums of
11 money that Ms. Cho was obliged to hold in trust, but
12 instead had had transferred knowingly and unlawfully to
13 her developer client, who then absconded.

14 The Law Society has been aware of the
15 Cho matter since 2014. In August of that year, it
16 ordered a suspension of Ms. Cho's license to practice
17 law until a hearing could be held into her conduct.
18 The hearing process was begun in September of 2016,
19 when the Law Society caused a notice of application to
20 be issued.

21 Now that Ms. Cho has been convicted in
22 the criminal matter, we expect that the Law Society's
23 hearing into her conduct will occur shortly.

24 We also anticipate that the Compensation
25 Fund will soon be asked to consider grant

1 recommendations on the basis of the loss attributed to
2 this lawyer's dishonesty.

3 It's worth noting that in their
4 submissions to the court, both the Crown and the
5 defence expressed deep appreciation for the cooperation
6 that they received from the Law Society in their
7 efforts to achieve an early resolution of this matter.

8 On another note, and a completely
9 different court, I know that nobody looks at their
10 Blackberries during this meeting and I would encourage
11 you not to do, but you may note that I might in about
12 an hour or less than an hour from now, be looking at
13 mine. We expect to have the results of our leave
14 application in Trinity Western University this morning
15 at about 9:45.

16 TREASURER SCHABAS: It's Trinity
17 Western's leave application, as I recall.

18 MR. LAPPER: Trinity Western's, quite
19 right. Thank you. I started to own this too much.

20 In any event, thank you and we will
21 report on that as soon as we know the result. Thanks.

22 TREASURER SCHABAS: Thank you very much,
23 Mr. Lapper. With that, we'll move to some of the
24 business of the day.

25 The Paralegal Standing Committee report,

1 Ms. Haigh.

2 -- PARALEGAL STANDING COMMITTEE REPORT:

3 MS. HAIGH: Thank you, Treasurer. So
4 the Paralegal Standing Committee report is at tab 3 of
5 the Convocation materials and on page 24 of BoardBooks.

6 Convocation's approval is sought for the
7 proposed amendments to the Paralegal Rules of Conduct
8 regarding threatening penal or regulatory proceedings.
9 The current rule is reproduced on page 27 of BoardBooks
10 and it provides that, under 3.02(9), "A paralegal shall
11 not, in an attempt to gain a benefit for a client,
12 threaten, or advise a client to threaten, (a) to
13 initiate or proceed with a criminal or quasi-criminal
14 charge, or (b), to make a complaint to a regulatory
15 authority.

16 Rule 3.02(10) further provides that
17 subrule 9(b) does not apply to an application made in
18 good faith to a regulatory authority for a benefit to
19 which a client may be legally entitled.

20 The purpose of the rule is described by
21 Gavin MacKenzie in his legal ethics text as follows:

22 "Resort to the use of the criminal justice process and
23 threats to do so are condemned as a matter of policy
24 because they are potentially oppressive uses of the
25 criminal law to defeat civil claims and offenses."

1 in their view, the rules could be interpreted to
2 suggest that a lawyer is prohibited from writing a
3 demand letter indicating that if a polluter does not
4 take steps to clean up the pollution or to remediate
5 the situation in some way, the lawyer will request an
6 order from the Ministry of the Environment and Climate
7 Change.

8 The committee is proposing the amendment
9 shown at tab 3.1.1, page 29 of BoardBooks of the
10 Convocation materials in response to these concerns.

11 The proposed amendments are intended to
12 clarify the scope of the rule. These amendments are as
13 follows: The phrase, "without reasonable and lawful
14 justification" is added to rule 3.02(9). The word
15 "penal" would replace "criminal". Criminal offenses
16 are uniquely federal. In order to clarify that the
17 scope of the rule includes regulatory proceedings under
18 provincial statutes, the word "penal", if adopted by
19 Convocation, would assist in interpreting the rule.

20 The phrase, "Criminal or quasi-criminal
21 charge" would be replaced by the following: "A charge
22 for an offence, including an offence under the Criminal
23 Code or any other statutes of Canada, a statute of a
24 province or territory of Canada or a municipal by-law".

25 The Professional Regulation Committee is

1 proposing similar amendments to the rules of
2 professional conduct in commentary later today.

3 The motion is brought by me and seconded
4 by Cathy Corsetti. Again, it's at tab 3. The motion
5 is that Convocation approve the amendments to the
6 Paralegal Rules of Conduct set out at tab 3.1.1.

7 TREASURER SCHABAS: Thank you very much,
8 Ms. Haigh. Any discussion? Mr. Wright.

9 MR. WRIGHT: Thank you, Treasurer. The
10 word "criminal" was clear, and it's been there for a
11 very long time. If it wasn't sufficiently broad, then
12 adding the word "penal" makes a lot of sense, but I
13 don't think the word criminal should be dropped. It
14 should just be "criminal, penal or regulatory".

15 Some people will interpret the dropping
16 the word "criminal" as a softening of the prohibition.

17 MS. HAIGH: In response, Treasurer, the
18 rules still specifically refer to the Criminal Code, so
19 I'm not sure if that really is going to be a concern or
20 not, but I'll leave that open for discussion.

21 TREASURER SCHABAS: Any other comments,
22 questions in the room? Any questions or comments on
23 the telephone?

24 With that, I'll put it to a vote. All
25 in favour? Anybody opposed? On the telephone, is

1 there anybody opposed? Then the motion is carried.

2 Thank you, Ms. Haigh.

3 MS. HAIGH: Thank you. Did you want me
4 to address the item for information?

5 TREASURER SCHABAS: Very briefly, if you
6 wish.

7 MS. HAIGH: I can do it very briefly.
8 As Convocation already knows, the PSC brings changes to
9 the guidelines before you just for information, they do
10 not need to be approved, and we worked considerably
11 hard over the last several meetings to discuss the
12 guidelines changes for proposed amendments regarding
13 incriminating physical evidence.

14 This report is being brought to
15 Convocation for information only. The committee has
16 approved the amendment of the paralegal guidelines to
17 address a paralegal's ethical obligations regarding
18 incriminating physical evidence. Guidelines are
19 intended to be read with rule 4.02(5.2), the paralegal
20 as advocate, which provides that, "A paralegal shall
21 not counsel or participate in the concealment,
22 destruction or alteration of incriminating physical
23 evidence or otherwise act so as to obstruct or attempt
24 to obstruct the cause of justice".

25 The amendment referred to above was

1 approved by Convocation in April of 2016, and was
2 developed following a similar amendment to the lawyer
3 rules incorporating a new rule and commentary in this
4 area.

5 The new rule was developed by the
6 Standing Committee on the model code of the Federation
7 of Law Societies of Canada. There was considerable
8 discussion at the Paralegal Standing Committee, mainly
9 about how to instruct paralegals to deal with the
10 situation if they were placed in a position where
11 evidence was brought to them, and we just needed to
12 make it clear to the paralegal profession that they
13 should -- a paralegal should immediately consult an
14 experienced criminal lawyer regarding their
15 professional obligation.

16 That was the main part I want to get
17 across today, that we want to make it clear to the
18 profession on that issue.

19 Providing that there's no questions,
20 that would be my report, Your Honour -- Treasurer.

21 TREASURER SCHABAS: Whatever. I see Mr.
22 Cooper has his hand up.

23 MR. COOPER: Good morning, Treasurer.
24 Ms. Haigh, I have reviewed the --

25 TREASURER SCHABAS: Push the button.

1 MR. COOPER: I had reviewed the red line
2 version. I have just concerns with (13) and (14), and
3 I'm worried that when you go back and have further
4 discussions, that you consider looking how it may cause
5 an issue, because some of the things, in my view, will
6 be -- it may be that the paralegals will be entering,
7 if they try to deal with what is discussed in (13) and
8 (14), they may be going outside of scope. There needs
9 to be clarity to ensure that at the end of the day a
10 client is not put in peril.

11 For example, in (13), if somebody were
12 to deliver a handgun to the police for some type of
13 crime, it's not something that a paralegal could do
14 presently. So I have a concern about that. Just so
15 that when you bring it back to the committee, and I'd
16 gladly to speak about some other concerns, just so that
17 we are all on the same page and it does not affect
18 the -- the client in the end.

19 MS. HAIGH: Right. So I just want to
20 let Mr. Cooper know, through you, Treasurer, that the
21 committee has thought very hard about this, and they
22 can't prevent a client from coming in and throwing a
23 handgun on their desk. So if put in that position, we
24 wanted to make it very clear that they go to a
25 experienced criminal lawyer, but I'm pleased to talk to

1 you, Mr. Cooper, afterwards and try to see if we can
2 improve the wording, if possible.

3 TREASURER SCHABAS: Great, thank you.
4 Anybody else? I see Mr. McDowell is cutting down on
5 travel time. He's already there. Mr. McDowell. Thank
6 you.

7 -- PROFESSIONAL REGULATION COMMITTEE
8 REPORT:

9 MR. McDOWELL: Thank you, Treasurer. So
10 Ms. Haigh has really stolen my thunder, because this is
11 simply the parallel change to the Rules of Professional
12 Conduct, and why don't we just go straight to the
13 red-line, which is at page 53 of BoardBooks.

14 So the rule has been amended in exactly
15 the same way for exactly the same reasons. This came
16 out of a complaint by the environmental section of the
17 OBA, which said that in some instances there were
18 regulatory provisions for clean-up orders, as Ms. Haigh
19 has said, where you might sensibly want to say to
20 someone, if you don't resolve the issue and clean up
21 the property, we intend to use the sanctions within the
22 applicable legislation. So we have taken that into
23 account.

24 We've discussed quite extensively,
25 actually, just how to amend the rule to capture the

1 concern described by Mr. Wright, but also to take into
2 account the OBA's expressed concerns.

3 So happy to take any questions, but I
4 think it covers the same waterfront as Ms. Haigh in her
5 discussion.

6 TREASURER SCHABAS: Thank you, Mr.
7 McDowell. Any questions or comments for the same rule
8 change? On the telephone?

9 Mr. McDowell, do you have a seconder?

10 MR. McDOWELL: Mr. Mercer.

11 TREASURER SCHABAS: Thank you. All in
12 favour? Anybody opposed? Anybody opposed on the
13 telephone? Thank you, the motion is carried.

14 MR. McDOWELL: There is an information
15 item which I won't address, but it's at tab 4.3 dealing
16 with the judicial complaints protocol.

17 TREASURER SCHABAS: Thank you very much.
18 We're now going to move to the second item on the
19 Professional Regulation Committee report agenda, which
20 is the report on advertising and fee arrangements
21 issues by Mr. Mercer.

22 I would just like to state before
23 Mr. Mercer addresses us, and I know there will be
24 considerable interest in this matter, it's the major
25 matter on the agenda, and I want to make a couple of

1 comments first.

2 There are, of course, a number of
3 ongoing investigations in this area by our Professional
4 Regulation Division and we should be careful, all of
5 us, in speaking to this matter that we do not refer to
6 specific individual lawyers or specific firms, and I
7 think we should also be very cautious about referring
8 to specific advertising because of the concerns that
9 there are ongoing investigations underway, and that's a
10 matter of public record. I, among others, have said,
11 and the public is well aware that there are many
12 investigations in this area and it has attracted a lot
13 of public attention.

14 So we want to be careful that we do not
15 compromise those investigations and those matters in
16 fairness to everybody, including the lawyers and law
17 firms that are involved.

18 Secondly, I have optimistically put 50
19 minutes down for the discussion of this matter. We do
20 have a long agenda. It's not like December where we
21 could just all talk about one thing at length. So I'm
22 going to urge people -- I know there will be a number
23 of people who want to speak, but I really do wish to
24 urge people to be brief, to be mindful that this is not
25 the most -- the best venue to start wordsmithing commas

1 and semicolons and so on. This is a detailed report
2 that's come from a working group that's been looking at
3 this matter in great detail.

4 Having said that, I'd be the last person
5 who would want to be accused of muzzling people, so
6 obviously everyone should feel free to speak, but I do
7 just want to point out we've got a lot of business to
8 do today. With that, Mr. Mercer.

9 MR. MERCER: Thank you, Treasurer. Let
10 me introduce this by noting that there are two separate
11 decisions that you are being asked to make today, and
12 I'm going to deal with them as two separate decisions.

13 Treasurer, with your leave, I propose
14 when we come to the end of the referral fee issues then
15 to have Convocation address that, and then separately
16 the advertising issues.

17 With respect to referral fees,
18 Convocation is asked to consider two options and to
19 choose. One is to prohibit referral fees, the
20 alternative is to cap and to regulate them to ensure
21 transparency as to their operation.

22 Depending which of the two options you
23 choose, assuming that you do, we will come back to you
24 on another day with detailed rule changes to effect
25 your policy conclusion.

1 Secondly, we bring before you proposed
2 amendments to the Lawyer and Paralegal Rules with
3 respect to advertising and, again, I'll deal with that
4 after referral.

5 I am to caution you as well, in case you
6 weren't listening before, the Professional Regulation
7 Division has matters underway. We have reported to you
8 before that a special investigative group was
9 established to bring focus in this area last summer.
10 Matters were proceeding before that, but there is a
11 particular focus now and it's important that those
12 investigations not be compromised.

13 It's also important, no less, that the
14 rights of the individual licensees not be compromised
15 and it's important that you recognize today that your
16 role is a policy role and you should not be focused on
17 particular cases, particular names.

18 You should also be aware that some of
19 you may be adjudicators down the road and you should
20 not put yourself in a position where you're not able to
21 properly adjudicate.

22 So one of the strengths of Convocation
23 is that it has a number of roles; one of the risks is
24 that we have to manage those properly, and today you
25 sit as a policy board.

1 This is the second report of the working
2 group to Convocation. The first report was in June.
3 At that time we issued a call for feedback and, as a
4 result, we had the benefit of input from nearly 60
5 individuals and 20 organizations, and we thank them for
6 their assistance.

7 Turning directly to referral fees, we
8 found, and it's set out in our report, that there are
9 significant issues in the current operation of referral
10 fee practices and apparent non-compliance with existing
11 rules by some licensees. In light of that, Convocation
12 is asked to address that as a matter of policy.

13 The working group does not bring before
14 you a recommendation as to one choice. That is because
15 the working group does not think there is just one good
16 choice to be made. There are some within the working
17 group that prefer the prohibition, there are others who
18 prefer the cap, but where the working group was
19 unanimous is that something needs to be changed, and
20 those appear to be the two best alternatives.

21 We have concern based on our work that
22 the amounts of referral fees that are being charged in
23 some cases are not acceptable, are problematic. Fees
24 that were once commonly in the range of ten to fifteen
25 percent of the ultimate contingent fee have now

1 reportedly become 25 or 30 percent in cases.

2 There are also significant concerns
3 about lack of transparency. We are concerned that
4 people who respond to advertisements may not realize
5 that one part of the intent of some advertisements is
6 to refer, and we think it important that when referral
7 for a fee is part of the business model we're concerned
8 about that lack of transparency.

9 We're also concerned about individual
10 clients, once involved with a lawyer or a licensee or a
11 paralegal, may not necessarily know that they have been
12 or their matter has been the subject of a referral fee
13 and they may not have consented.

14 We have grappled with the appropriate
15 change and, as I've said, there are two that we've put
16 before you. The two options are either to prohibit or
17 to cap. And I want to be clear that the cap proposal
18 isn't merely a cap, but it is a cap with transparency
19 measures, and they are three-fold, to summarize.

20 One is to require advertising which is
21 not deceptive, not confusing. Secondly, a tripartite
22 agreement between the licensee referring, the licensee
23 receiving the referral and the client, whereby the
24 client is advised of their choice. The client is given
25 a choice of referrals and the client is made -- is told

1 clearly that they don't have to accept the referral and
2 that their dealing with the lawyer to whom they're
3 referred is not constrained or affected by the referral
4 fee.

5 Finally, we would examine, if this cap
6 alternative proceeds, reporting so that referral fees
7 paid and referral fees received are a matter required
8 to be recorded by the licensees.

9 So the arguments for each of these two
10 options can be found -- for and against each of these
11 two options can be found at page 62 of BoardBooks from
12 paragraphs 48 to 55.

13 I'll just summarize them very briefly.
14 I'm sure others will want to focus on what they think
15 is important, but I think it's useful to take you
16 through them.

17 In 48(a), those in favour of a
18 prohibition argue that lawyers should not, paralegals
19 should not, receive payment for what they're obliged
20 professionally to do, which is not to do work that they
21 shouldn't do, to take the interests of the client
22 first.

23 48(b) makes the point that we shouldn't
24 be overcomplicated. As a regulatory principal, we
25 should do the simplest thing which has the effect that

1 we seek to achieve, and a prohibition is clear.

2 On the other hand, in 49 there are
3 countervailing concerns. (a) makes the point that
4 there are advantages to align ethical obligations and
5 economic interests; just because people should do
6 things, it's not terrible to encourage them
7 economically to do the right thing.

8 Paragraph B makes the point that we have
9 had an effective, and apparently useful, referral fee
10 system now for quite a long time without problem, and
11 what we're addressing are excesses, and the argument
12 against is, in effect, don't throw the baby out with
13 the bath water, don't overreact.

14 Paragraph C makes the point that while
15 there may be malignant examples of referral fee
16 systems, there are also examples of referral systems
17 which are good, where clients, potential clients, are
18 given proper assistance to find the right lawyer or
19 paralegal and it would be of concern that by
20 overregulating, we eliminate the good referral systems
21 while seeking to address concerns about excesses.

22 Finally in paragraph D, paragraph
23 D challenges the proposition that prohibition is simple
24 and, therefore, attractive by the responding
25 proposition nothing is simple. If you ban something

1 entirely, you may simply push it underground or cause
2 it to re-emerge in other and different ways.

3 Paragraph 50 makes the point that there
4 may be unintended consequences, depending what we do.
5 People who work in firms realize that partnership
6 profits, when they are shared, are really in part about
7 referrals. If we ban referral fees, we are effectively
8 banning relationships as between firms and thereby
9 tending to encourage firms to exist.

10 We know in some jurisdictions where
11 referral fees have been banned the result is
12 consolidation, the growth of larger firms, so they can
13 do internally what they can't do as between firms.

14 One can argue about consolidation,
15 whether that's a good thing or a bad thing. The
16 argument made in paragraph 50 is that we shouldn't
17 bias, we shouldn't be making the choice, we should be
18 addressing the evil and the mischief and allowing that
19 to play out as it will.

20 The arguments in favour of the cap
21 system are in paragraph 52, and in many respects
22 they're simply the flip of the arguments I've just
23 noted.

24 A is a facilitation of innovation; b is
25 focus on the mischief, don't overregulate; C is align

1 the interests and the ethics so that you better
2 achieve both, or better achieve ethics; and D is that
3 we have a principle that regulation should be
4 proportionate and it shouldn't be overregulation, and
5 so address the problem, as opposed to do more than
6 that.

7 Paragraph 53 is the response. There is
8 a concern expressed that by rewarding that which
9 lawyers or paralegals should do, that is corruptive,
10 corrosive of professionalism, and in a sense that if we
11 make all of this commercial, we diminish
12 professionalism.

13 (B) talks about complexity, and it's
14 obviously the flip of the proposition in favour of a
15 prohibition, that a prohibition is apparently clean.
16 And finally, (C), that a cap referral system may be
17 more complicated.

18 So I've tried to do that in summary form
19 and tried to do that so the principal arguments for and
20 against are fairly in favour. I have my own view and
21 I've tried to hide it, to a limited extent.

22 What we're now asking you to do is to
23 consider between these two policy options. As I've
24 said at the outset, whichever you do, we'll be back to
25 you with rule proposals to bring the policy that you

1 choose into effect.

2 TREASURER SCHABAS: So, Mr. Mercer, I
3 guess we're going to have two options, is that right?
4 There's a motion to choose one of two options, is
5 that what it is?

6 MR. MERCER: Yes, I've tried to figure
7 out exactly how you frame that. I think, as a
8 practical matter, at the end of the discussion you ask
9 those in favour of a ban and those in favour of a cap.

10 I would move that if I knew how to move
11 that in a one-word paragraph.

12 TREASURER SCHABAS: You'd move that we
13 vote on option A and then option B.

14 MR. MERCER: Just so. Mr. Rosenthal
15 seconds that.

16 TREASURER SCHABAS: Okay, thank you.
17 With that, I'll open the floor to comments. Mr.
18 MacKenzie first.

19 MR. MacKENZIE: Thank you, Treasurer. I
20 just said thank you, Treasurer, but the mic didn't pick
21 it up.

22 I want to speak to both the advertising
23 recommendation and the referral fee recommendation,
24 but I'll confine my comments for now to the referral
25 fee recommendation. I support the cap option rather

1 than the prohibition option.

2 I think it's worth remembering that
3 referral fees came into effect only in 2002. Prior to
4 that they were prohibited in Ontario.

5 The task force which I was involved with
6 on the what we then called the New Rules of
7 Professional Conduct recommended the change, and there
8 wasn't a lot of debate in Convocation about it, as I
9 recall, and that was because the rationale for the
10 change seemed sound to Convocation, and that was that
11 permitting referral fees would have the effect of
12 bringing clients to lawyers who were best qualified to
13 represent them. That was the mischief we were trying
14 to address.

15 What has happened since then is that
16 referral fees have risen to unacceptable levels, and
17 that's the new mischief we need to address. It's
18 likely that contingent fees have risen because of the
19 high referral fees that are being paid, in some cases
20 to the disadvantage of injured parties, but as
21 importantly, it's likely that referring lawyers or
22 referring clients, not on the basis of who is best
23 qualified to act in the matter, but on the basis of
24 who's paying the highest referral fee, and I think
25 that's what we have to address.

1 Those concerns, in my view, can be
2 addressed through a cap, and that would address both
3 the mischief that Convocation was originally addressing
4 and the mischief that we're trying to address today.

5 I also think that the point that
6 Mr. Mercer made concerning the differential treatment
7 by the governing body of lawyers in large- and
8 medium-sized firms on the one hand, and lawyers in
9 small firms or in sole practice on the other is worth
10 consideration. I think, to the extent possible, we
11 should be attempting to treat all of the lawyers in the
12 province equitably.

13 Lawyers in large firms are compensated
14 for business generation, for referring work to members
15 of their firm. If we were to prohibit referral fees
16 altogether, then that would treat lawyers in small
17 firms and in sole practice differently. And though
18 that's not the primary consideration, in my view, it's
19 one that's worth our consideration.

20 So I support the option of capping
21 rather than prohibiting referral fees. Thank you,
22 Treasurer.

23 TREASURER SCHABAS: Thank you, Mr.
24 MacKenzie. Mr. Wright.

25 MR. WRIGHT: Thank you, Treasurer.

1 Prior to 2002, people would go into sole
2 practice or small practice knowing darn well they were
3 never going to get any referral fees. It's just part
4 of the practice environment.

5 If they referred work out to firms they
6 would hope that the firm would remember them and maybe
7 send them a client who did real estate, because the
8 PI firm, of course, did not do real estate.

9 I favour the simplicity of banning
10 referral fees entirely. It's not hard to find lawyers,
11 they're everywhere. Even for new Canadians it's easy
12 to find lawyers and get referrals. There's also the
13 Lawyer Referral Service. Referral fees do increase
14 costs to the client because it's worked into the system
15 somewhere.

16 If we go to a cap, though, it should not
17 be just a percentage cap, but a hard dollar cap as
18 well. And it should be a percentage at the very low
19 end, so five percent, not 30 percent, and it would be
20 capped -- it could be the lesser of five percent or a
21 dollar amount, and it should be low, because the cost
22 of listening to a client on the phone and figuring out
23 which three or four or five firms to give them a
24 referral to doesn't take a lot of time and you
25 shouldn't be over-compensated for fifteen minutes on

1 the phone.

2 So a hard dollar cap wouldn't have to be
3 more than -- even \$5,000 for even an hour's worth of
4 work directing your client to the right firm is
5 tremendous compensation and a percentage can be, of
6 course, ridiculous compensation in the circumstances.

7 So I think the committee should examine
8 having the lesser of five percent or some dollar
9 amount, which I don't think should exceed \$4,000, which
10 is way more than enough.

11 Having a cap is not more complicated in
12 terms of administering and regulating than any other
13 system we have, and I also think that the risk of
14 unqualified lawyers keeping files is pretty low because
15 of the negligence risks they run. It can happen, but I
16 don't think it was ever a big problem, and I don't
17 think it would continue to be a big problem.

18 Those are my comments on the referral
19 aspect. I'd like to speak on the advertising later.

20 TREASURER SCHABAS: Thank you,
21 Mr. Wright. Mr. Galati.

22 MR. GALATI: Thank you, Treasurer. I've
23 spent most of my career as a sole practitioner, 27 of
24 the 28 years I have been called to the bar, and I
25 advocate for outright prohibition.

1 I mean, the elephant in the room really
2 is what's at stake here. We're balancing two
3 interests, the interests of the client versus the
4 economic interest of the lawyer, and I think that's
5 deplorable.

6 At the end of the day it's like saying,
7 it's okay, you're getting -- it's two levels of
8 government taxing you, but the taxpayer is the same
9 person paying the freight.

10 My concern, during the course of my
11 private practice over the years, having represented
12 tens of thousands of the most marginalized members of
13 society trying to get legal services, like immigrants,
14 and also in the -- I don't do personal injury, but
15 people who are at the most vulnerable points in their
16 life who don't really have much choice or don't have
17 the wherewithal to negotiate or stickhandle the justice
18 system, a cap is not going to do anything. You know,
19 they're going to just -- especially take the immigrant
20 group as an example, they're typically thrown things in
21 front of them by those who engage in the referral fees,
22 and they sign them without realizing the import.

23 I've always refused to give referral
24 fees and I have had many offers from people who are
25 channels to client bases, very lucrative, I find them

1 offensive because, really, at the end of the day it
2 comes out of client's pockets and the first lawyer who
3 sees the client should not have what I find is an
4 offensive, almost sublime, proprietary right over the
5 person.

6 Really, a referral fee is almost saying,
7 hey, I own a part of this person and their case as a
8 lawyer. That's offensive. I think that sends a wrong
9 message. It benefits big firms maybe, but that's not,
10 at the end of the day, the overriding consideration we
11 should be looking at. It should be the client. Why
12 should a client pay extra for lawyer 1 to put him in
13 the right hands to lawyer 2 or lawyer 3.

14 To me it's an offensive notion and the
15 only thing at play there is the lawyer's economic
16 interest. It doesn't bode well, in my view, for
17 lawyers as a profession at large. Thank you.

18 TREASURER SCHABAS: Thank you.

19 Ms. Murchie.

20 MS. MURCHIE: Thank you, Treasurer.
21 What I struggle with is our public interest mandate
22 and, as has been said, I can't get over the hurdle that
23 at the end of the day the client is paying for that
24 referral fee, either through increased contingency
25 fees, or through an additional, effectively a higher

1 charge on a fee-for-service arrangement.

2 And I guess my question to you,
3 Mr. Mercer, is do we have any real indication that a
4 properly informed client would ever agree to pay higher
5 fees for a lawyer -- to a lawyer who has really done no
6 work or provided any service to him, and can a cap
7 address that problem?

8 MR. MERCER: Do I take that as a leading
9 question in cross-examination?

10 MS. MURCHIE: Absolutely.

11 MR. MERCER: So we don't have empirical
12 evidence in this area, as so many other areas we don't.
13 What we have is our own experience, and there is a
14 tendency to be over reliant on that and our ability to
15 think through what we might do as reasonable people in
16 their position.

17 The response, of course, to your
18 question is would anybody pay for nothing at all, a
19 rational person would say no. Part of the cap proposal
20 is to require people to know that they have the ability
21 to say no, and if you're right, then this practice will
22 disappear rather quickly because they will be advised
23 of their right and be advised they can say no.

24 But, yes, there are examples, and I
25 can't prove how someone thinks using those examples, of

1 referral services that are not malignant, that are
2 value-added. We all think about this, imagining we're
3 a sole practitioner sitting with a random client and
4 coming into our office who we can't serve the best, but
5 the model that is prohibited by a ban and already
6 exists in some examples are practices which are
7 designed around providing proper referrals.

8 And so to answer your question, if I
9 were a client and I went to an organization that I knew
10 was in the business of helping me find the right lawyer
11 or paralegal, I might think it a good thing.

12 TREASURER SCHABAS: Thank you. Mr.
13 Lerner.

14 MR. LERNER: I'm in the camp that would
15 prefer to ban the referral fees. I have some
16 difficulty accepting that we have a professional
17 obligation to refer work that we are not competent to
18 do and the result would then be that we would be paid
19 for doing what we already are required to do as
20 professionals.

21 I think -- and I have said this on a
22 number of occasions, we're a profession. Some of us
23 operate as businesses, but we -- fundamentally we're a
24 profession, and I find something offensive in we as
25 lawyers charging a referral fee when, as I have said,

1 it's the right thing to do.

2 I saw my family doctor this week and he
3 referred me to a specialist. I don't think he's
4 getting a referral fee. My children were referred to
5 an orthodontist by -- I paid for it, but they were
6 referred to an orthodontist by the family dentist. I
7 don't think he got or expected a referral fee.

8 I just have a great deal of difficulty
9 paying somebody for, in the simplest of terms, doing
10 the right thing. So rather than get into a discussion
11 that allows us to, in some way, quantify how much a
12 person should get, I support an outright ban.

13 That's not to say that if the referrer
14 does some work and meets with the client and spends
15 some time with the client and after meeting with the
16 client for some period of time comes to the conclusion
17 that he is not capable of doing that work, then he's
18 entitled to be paid for that. And I think that's one
19 of the principles that we are paid for work done.

20 So I am in the camp that would support
21 an outright ban.

22 TREASURER SCHABAS: Thank you.

23 Ms. Vespry.

24 MS. VESPRY: Thank you, Treasurer. One
25 of the problems that I seem to be wrestling with on

1 this is that the malice or the mischief that we're
2 trying to remedy here is that allegedly licensees may
3 have been ignoring the current rules that we have
4 and/or perhaps even breaking or flaunting the current
5 rules that we have, and then it seems to me that is
6 this really a problem of licensees misbehaving or is it
7 a problem of the Law Society having for some time
8 period abdicating its responsibility to enforce the
9 rules it also has.

10 If we need a special investigation to
11 find out whether people have been breaking the specific
12 rule, then apparently we weren't addressing it properly
13 before. If we have not, or if there's a potential that
14 we have not historically been properly enforcing this
15 rule that we already have, should we not let the
16 investigations run their course? If they lead to
17 discipline proceedings, should we not let the
18 discipline proceedings run their course and see whether
19 the actual rules that we have are effective for the
20 problem that we have, as opposed to bringing in new
21 rules which, if we all sit back and relax and say, hey,
22 we've got new rules, we can ignore the problem again,
23 will just mean that people flaunt the new rules, which
24 doesn't seem to be a huge improvement.

25 I'm concerned that this is premature in

1 some ways. I know that it's a problem, that there's a
2 great deal of excitement about solving it as soon as
3 possible. At the same time, if the investigations and
4 discipline process can solve it, then we should not
5 even be doing this.

6 Mr. Mercer spoke about not
7 over-regulating, being proportional and simplest things
8 in terms of coming up with new regulation. Simplest
9 thing, to my mind, would be enforcing and continuing to
10 enforce the rules that we have.

11 And another concern that I have is that
12 there is presumably out there somewhere a committee
13 report from 2002 where the current system was
14 recommended. There are obviously people in the room
15 who remember this. There are also an awful lot of us
16 who weren't around, weren't paying attention, weren't
17 whatever, perhaps weren't licensed, and are unaware of
18 this. So I think -- and this goes as a more general
19 thing, it would be really helpful when a committee
20 decides to recommend something that is changing an
21 already existing policy that we get included in our
22 materials a link of some kind to the original
23 discussion so that we know where it came from and we
24 know what mischief the original process was supposed
25 solve. We can address that in thinking about is this a

1 logical next step or are we just playing ping pong with
2 an issue and making regulation in one direction, taking
3 it away again, and then waiting another twelve years
4 and bringing it back again, which in some ways would
5 not surprise me if we were.

6 Just finally, I think that the idea of a
7 cap, depending on what the purpose of the original
8 allowing of referral fees was, but bringing in a cap or
9 even leaving the situation as it is, I believe that
10 part of the idea behind referral fees is, A, to allow
11 things like EAPs that may charge -- employment
12 assistance plans that may charge lawyers to be listed
13 and then refer people who are employed by whatever
14 companies buy in on the assistance plan, refer them to
15 those lawyers, which provides benefit because lawyers
16 who participate then have to offer a discount to
17 members of the assistance plan, but also, reduced
18 advertising.

19 I remember sitting in on a CLE years ago
20 now where a licensee was saying that he had cut his
21 advertising budget to zero and the money that he used
22 to put out in advertising he now pays out in referral
23 fees, because he has set up three or four other
24 licensees who refer to him for matters that they cannot
25 handle or that are too complex, and that works for him

1 to get the business that he needs.

2 So there are situations -- again, this
3 is all anecdotal, but it is possible to do this in a
4 way that does not add to the costs for the individual
5 clients.

6 TREASURER SCHABAS: Thank you,
7 Ms. Vespry. Mr. Cooper.

8 MR. COOPER: Thank you, Treasurer.
9 First I would like to thank the other members on this
10 committee. I had the pleasure of being able to work
11 with a group since last February, a lot of hard work
12 has been put into it, and one of the things that I want
13 to add is that you obviously know that we're here to
14 regulate in the public interest. And part of the
15 public interest is to ensure that the end user, the
16 client, is properly represented.

17 I've heard today, and I've heard others
18 discussing the issues before coming into the room this
19 morning, and I wanted to correct or be able to give my
20 view on this is not about lining lawyers' pockets.
21 Contingency fees came in years ago because it was a
22 means of providing access to justice, it was a means to
23 provide the ability that cases could be heard for those
24 that were vulnerable, that didn't have that opportunity
25 in the past.

1 There is a difference between lining the
2 lawyers' pocket by them, for example, charging more
3 than they're entitled under our Act. That is not
4 permitted. So when we hear concerns about it's the
5 lawyers that are going to -- and we're here discussing
6 how we can enrich -- additionally enrich lawyers in
7 Ontario, that is not what we are here for and that's
8 not what we're discussing.

9 The fees will be paid to a lawyer on a
10 contingency arrangement, and it's from those fees that
11 we're talking about referral fees. It's not double
12 dipping, it's not increasing the fee to the lawyer.
13 It's not about compensation to the lawyer, it's about
14 regulating for the public interest in ensuring the
15 public gets the best service possible in our province.
16 Ontarians deserve that. I'm in favour of a cap and
17 limiting a cap.

18 Now, I want to amplify some of the
19 things that Mr. MacKenzie has said, which when we're
20 dealing with small firms, there are small firms
21 throughout our province who do refer and do refer for
22 the ability to obtain a referral fee.

23 Some of us may not accept referral fees
24 or pay referral fees, but it's a changing environment
25 in Ontario. The law is changing, the means of

1 practising law are changing, and there should not be a
2 disadvantage to those that are either sole
3 practitioners or small firms, compared to the large
4 firms who internally do have their own relationships.
5 Because who are those in the small firms? Those are
6 the new lawyers, some from diverse backgrounds, some
7 from areas outside of Toronto.

8 If a person were to provide a referral,
9 and if it were provided within the limited cap
10 arrangement that is potentially proposed for your
11 consideration and that I support, it will allow small
12 firms and others to refer out work that they do not
13 presently practice in that area or may require that it
14 be sent out for the client because it is beyond their
15 abilities at a certain point in their practice. What
16 we're suggesting is it's just not letting it go out at
17 any percentage. It's going to be a low percentage.

18 One of the things that I am in favour of
19 is that it's a cap, and it's a cap at a certain
20 percentage to a certain threshold, and then beyond that
21 threshold I am going to advocate that that percentage
22 reduces.

23 It's for your consideration. Obviously
24 if it's approved to come back, we'll come back with
25 varying different ideas.

1 The key here is transparency. Forcing
2 lawyers in Ontario to be able to disclose potentially
3 on their annual report what they pay, what they receive
4 in referral fees, forcing lawyers in Ontario that if
5 you're going to refer something out that, like in real
6 estate, standard charge terms that everybody has to
7 sign off on it. Not only that you're referring out to
8 a different lawyer or a number of different lawyers,
9 but the client has the choice and is educated at that
10 point, they don't have to participate in this, they can
11 find their own lawyer.

12 The education part will assist and
13 should be promoted as part of our list of priorities
14 that we've undertaken to address over the next couple
15 of years, in any event.

16 I also want to avoid an underground
17 economy. Transparency will assist us. If those that
18 are so inclined to jump into an underground economy,
19 they will face the wrath of an investigation and
20 potential discipline.

21 Those that are in small firms do hold
22 relationships with their clients and are looked to in
23 communities as leaders and as people to go to for
24 advice, and as part of the advice, it may be that they
25 will be referred out. Sometimes not for a fee, but

1 sometimes for a fee, but they will be referred out with
2 full education as to what they are doing so that at the
3 end of the day they will have a choice to have an
4 individual who is at the top of their game in an area
5 that they're being referred out for for the type of
6 litigation.

7 We should never affect the proper and
8 natural life of litigation, and what high referral fees
9 have done is put that at risk for clients in Ontario.
10 I want to again suggest that you consider that a small
11 cap will create transparency and at the end of the day
12 serve the public well.

13 Those are my comments. Thank you.

14 TREASURER SCHABAS: Thank you very much,
15 Mr. Cooper. I'm just going to interrupt this regularly
16 scheduled broadcast to let you know that the Trinity
17 Western applications for leave to appeal, both of them
18 from B.C. and Ontario, have been granted and will be
19 heard together.

20 So you don't all have to scramble for
21 the Supreme Court website. They don't give reasons,
22 they just say granted or dismissed, and it was granted.
23 Mr. McDowell.

24 MR. McDOWELL: Thank you, Treasurer. I
25 want to start by thanking Mr. Mercer and his group for

1 this work and for this report. I know as chair of the
2 Professional Regulation Committee that this has not
3 always been easy, but anything worth doing I think
4 usually avoids being easy.

5 But I have come to support a cap on
6 referral fees, rather than a ban, and I think it's
7 important to reflect that we all recognized going into
8 the examination of this issue that the current rules
9 permitted a state of affairs which appeared to be
10 troubling. There was the phenomenon of upfront cash
11 referral fees, where literally lawyers were permitted
12 to say I will introduce you to the injured person in
13 the next room if you give me \$10,000 now and more
14 later, and that is a sort of unsettling scenario.

15 Second, there was the scenario which is
16 a little bit different, which is that if you take a
17 million dollar personal injury case, which is not at
18 all unusual, and you have the paradigm of the
19 contingency fee being 25 percent and then the referral
20 fee being 25 percent of that, the lawyer who had the
21 file in his or her office for a week or two stood to
22 earn \$62,500. And so when we looked at that, and
23 certainly when I looked at that, I asked what can the
24 public interest be in that and what can the interest of
25 the client be in that. As well, the related phenomenon

1 that we had lawyers making a very handsome living
2 essentially for commissioning advertising and not doing
3 the work.

4 So I will tell you that my instinct
5 going into this was the same as that of Mr. Galati and
6 Mr. Lerner, but I've also taken account of the reason
7 that we have referral fees in the first place, and it's
8 been tremendously helpful to me and to the committee to
9 have Mr. MacKenzie around, Mr. Epstein and Ms. Ross,
10 who made the case, persuasively in my view, that the
11 reason we have referral fees is we want cases to find
12 their way into a safe pair of hands, and to some extent
13 we get the behaviour that we reward.

14 Like Mr. Galati, I've never paid or
15 accepted a referral fee, I say with a measure of
16 regret, but I think that there is a place for modest
17 referral fees.

18 The problem is that the current system
19 has allowed fees that were not transparent. I think
20 they have to be transparent to the client and I think
21 that in many instances there is transparency with the
22 client, but they have to be highlighted to the client.
23 This is one of those Lord Denning situations where
24 there should be the red hand pointing at the referral
25 fee.

1 But also our current system has allowed
2 the payment of wholly disproportionate fees in the
3 example that I gave at the front end. So I think that
4 there should be a cap, it should be remitted to the
5 committee for consultation and submissions as to what
6 that cap should be, whether it should be a fixed amount
7 or whether it should be a percentage amount.

8 Just in closing, I also worry, as does
9 Mr. Cooper, that if we have an outright ban, the
10 opportunity and the temptation for work-arounds to an
11 outright ban will have this coming back to us in five
12 years' time, trying to figure out how to deal with the
13 underground economy in referral fees.

14 So, Treasurer, those are my thoughts.

15 TREASURER SCHABAS: Thank you very much.
16 Mr. Braithwaite.

17 MR. BRAITHWAITE: I also at this time
18 would like to thank Mr. MacKenzie for giving us some
19 background with respect to the origin of the rule which
20 we are here to face.

21 I take the position that the integrity
22 of the profession demands a total ban of referral fees.
23 As a regulator operating in the public interest, I fail
24 to see how we can justify to the public that we should
25 take a cut for directing a potential client to another

1 lawyer or a paralegal. I believe that a referral is a
2 courtesy, it's not a responsibility, at least within
3 the spirit of our professional code of conduct.

4 Personally I would think it embarrassing
5 to take a cut in a fee for work I haven't done or work
6 I won't do and/or have no intention of ever doing.

7 I believe it's a practice which casts
8 really a bad light on the profession. I think the
9 optics smack of unwarranted opportunism, if not greed,
10 and simply cannot be justified or defensible to the
11 public to whom we profess to be acting in the public
12 interest, particularly now given the vast media
13 attention to this issue.

14 I also fail to see how we can justify
15 being compensated for work we don't do and have not
16 done. We have heard some justification of the practice
17 that any cut the referring practitioner gets cannot
18 affect the potential client, but as we've heard from
19 others, the client doesn't know that and there's really
20 no way that we can really determine whether or not the
21 client at some point is paying those kinds of monies.
22 They could easily be hidden at one point or another.

23 In hearing the origin of this particular
24 rule and the purpose of the rule, which makes some
25 sense, you want to make sure that the client gets the

1 proper service, is put before the proper person or
2 lawyer or paralegal that can do the job, but we've also
3 heard of complications that arose out of that simple
4 proposition.

5 I operate on a principle of simplicity,
6 and I do not think that a cap is going to do it.
7 Hence, I say we should go back and look at the nature
8 of this profession, our own integrity, and operate in
9 that fashion.

10 One argument for referrals which may
11 have some legs is the question of selling a practice.
12 I'm not of the view that selling a practice is
13 tantamount to a referral. The selling of a practice is
14 distinguishable to the extent that it is something that
15 the lawyer or paralegal already has and already does.
16 Arguably, the lawyers or paralegals, it's their
17 property, leastways the list of clients they have is
18 their property, and that may have some value to sell,
19 quite different from a referral, but I would say that
20 would be the best case for not banning the referral,
21 but that isn't it.

22 So I'm of the view that any consequences
23 of banning referral fees, unintended or not, will be
24 overshadowed and outweighed by the benefits to the
25 profession itself, the integrity of its members, and

1 our purpose as a regulator. Let's not settle for half
2 measures and compromise our integrity. That's it.

3 TREASURER SCHABAS: Thank you,
4 Mr. Braithwaite. Mr. Swaye.

5 MR. SWAYE: Thank you, Treasurer. One
6 thing Mr. Cooper said, which I agree with, so there's
7 no misunderstanding in the room, clients, in my
8 experience, do not pay one dime more for the referral
9 fee. The referral fee comes out of the pocket of the
10 lawyer who is doing the work.

11 There seems to be some mysterious issue
12 that the clients pay more funds because of the referral
13 fee. That is not correct.

14 I should also mention that what my
15 friend said about the ban on referral fees, keep in
16 mind that if a client comes to your office and it's an
17 employment issue, it's a criminal law issue, it's a
18 family law issue, generally you'll get a retainer in
19 advance.

20 In the practice area that I practice in,
21 my clients don't have money to give you up front after
22 they have been involved in a serious accident or after
23 there's been some medical malpractice. They don't have
24 funds and that's the reason you take your fee on a
25 contingency fee basis. That is why you fund, the

1 lawyer funds the total litigation.

2 When I look around this room, there are
3 very few lawyers or paralegals who do this kind of
4 work, and for those who believe that the lawyer is
5 compensated by way of retainer, that's an error in my
6 experience.

7 The referral fee grew out of the
8 philosophy that a lawyer cannot be all things to all
9 people. You live in a town outside of Toronto, your
10 family has been devastated by a drunk driver, your
11 loved ones are in the hospital, the breadwinner has
12 gone on life support, what do you do?

13 You purchased your home from lawyer Al
14 Smith, your real estate lawyer looked after the closing
15 for you. Al graduated in 2013, he did real estate for
16 the last four years or so. The Jones family goes down
17 because he would know what to do. However, what the
18 family does not know is that things have been slow for
19 Al. He's behind in his rent, he missed last month's
20 lease payment on his vehicle. Al has a dilemma; what
21 should he do? We know what the rules say, but what
22 should he do?

23 If he keeps the file and tries to look
24 after it himself, he'll have to start from the bottom.
25 He's aware that courses are given by leaders in the

1 bodily injury bar, he's heard of an Insurance Act.
2 Perhaps he should open a file and start the process,
3 after all, he took a course on torts at law school.

4 Oh, yes, he should find out something
5 about the accident. Who does he write to? He'll call
6 Joe, his law school buddy, who is doing commercial
7 litigation on Bay Street. His buddy is not familiar
8 with the SABs, statutory accident benefits, and on and
9 on and on.

10 Al knows he should not be handling this
11 file himself, that retainer -- his retainer should be
12 to find outside counsel. He knows that there are
13 signboard advertising, signs are from excellent lawyers
14 and great reputations, the others not so much.

15 What does he do? The file's an answer
16 to his dreams. He can get out of debt. He eventually
17 goes to counsel, someone who is experienced in this
18 type of work and who's prepared to give him a referral
19 fee for bringing in the file. For Al a big problem is
20 taken off his shoulders. He doesn't have to worry
21 about the next step one has to take on a bodily injury
22 file, he doesn't have to worry about meeting the
23 threshold of permanent serious impairment of physical,
24 mental or psychological function, subject to a
25 deductible of approximately \$37,000 or \$121,000 more or

1 less with no deductible.

2 Al will save himself from being sued by
3 the Jones family for solicitor's negligence. They will
4 be well looked after by experienced counsel.

5 I submit you do not do away with the
6 referral fee. As mentioned, Convocation is made up of
7 a very small amount of bodily injury specialists, the
8 specialty today that we have is civil litigation. I
9 would not be surprised if eventually there will be a
10 specialty of bodily.

11 This gold pin that I wear was given to
12 me by the Law Society for being a specialist in civil
13 litigation. Many of you in the room will consider
14 getting your specialty designation. By the way, our
15 Janet Leiper is chair of the specialists committee, and
16 that's a paid announcement for specialty in our
17 profession.

18 TREASURER SCHABAS: All right. We'll
19 talk about your referral fee on that after, Mr. Swaye.
20 Thank you very much.

21 So we have -- I have five more people on
22 the list. I think we've -- now I have six. It's not
23 an invitation to put up your hand, but we've heard a
24 lot on both sides of this issue. I would urge those
25 remaining people to be brief and not be repetitive of

1 what's already been said. Mr. Burd.

2 MR. BURD: Thank you, Treasurer. David
3 Wright told me to advise my reader of my decision and
4 then why I came to that decision. So my decision is to
5 support that of the cap, and I didn't come to that
6 conclusion right off the bat and I, at first, in
7 PSC thought that the prohibition was the way to go for
8 regulation purpose. It would be easier, it would be
9 black and white, you would know there was a referral or
10 not a referral.

11 But then I started to think about the
12 benefits of referrals, and we've heard a lot today of
13 people accepting referrals for work that they're not
14 competent or for financial benefit and not in favour of
15 the client and not in the public interest, which is our
16 mandate; however, in my own personal practice we do do
17 referrals that are, in fact, beneficial to the client,
18 both financially and in regard to the work that's being
19 done, and that's referrals that are jurisdictionally
20 based.

21 So we have, for example, a trucking firm
22 that comes to my office that travels all throughout
23 Ontario getting provincial offence matters, and they
24 just come directly to us and they leave that and trust
25 us with the ability to make sure that all of those

1 matters that they have throughout Ontario are dealt
2 with.

3 What our firm does is the administrative
4 part and then locates a competent paralegal or lawyer
5 in the jurisdiction in which these matters occur, and
6 then they are charged the local fee of that local
7 paralegal or lawyer, which is a cost saving measure for
8 our client, and also gets the client someone that is
9 local, that knows the local practices and is better
10 able to represent that trucking firm.

11 I'm competent to do all of that work,
12 but I choose not to because it would be cost
13 prohibitive to my compliant to send me to Thunder Bay.

14 So there are, in fact, examples of
15 referral fees that are beneficial to the defendant or
16 the client or the public that we are overlooking at
17 this present time because we're trying to get the bad
18 apples. But in every situation, if you curtail the bad
19 apples you can make sure that the good apples are
20 eaten, and in this situation I think we're trying to
21 solve a problem of a select few that are abusing the
22 current rules, rather than acknowledging the rule as it
23 is that benefits the public.

24 And I think if we hastily go towards a
25 ban, that would prohibit people like the trucking firm

1 that benefit from referrals. And that's just one
2 example, I'm sure there are several others that many of
3 you have in the room. So in my view, as far as
4 regulation is concerned, if we want to look at it from
5 that standpoint, a complete ban is the easiest way to
6 regulate, because there's no grey area, there's no ifs,
7 ands, buts about it, so I understand that premise, but
8 you also have to think about what would then happen.

9 And there's fee splitting. So fee
10 splitting is a permitted part of our rules. What is to
11 say that the firms that we're looking to curtail
12 through banning won't go towards fee splitting, and if
13 fee splitting is part of the retainer agreement then
14 what wrong has been done.

15 So here's where I suggest that the
16 capping, and if it's done properly with the
17 transparency that we've heard about, that, to me, would
18 satisfy all the needs that we are looking at, both as
19 our mandate as a Law Society and in the public interest
20 for people that do get referrals that are beneficial.

21 TREASURER SCHABAS: Thank you.

22 Mr. Rosenthal.

23 MR. ROSENTHAL: I'll be very brief. I
24 believe we have to cap referral fees, and the reason
25 being our mandate is the protection of the public,

1 which means our ultimate goal is to make sure the
2 public is best represented by the best lawyer. And we
3 all know that the rules say that a lawyer should pass
4 on a brief if they're not competent, but this is not a
5 black and white issue.

6 There's an issue where the lawyer is
7 capable and competent to do the work, but may not be
8 the best lawyer for the job. In that situation, you
9 want to have the client and the lawyer who is the best
10 for that job.

11 Contingency fees are fixed and they're
12 not going to go down. I'm not sure which way this
13 committee or this Convocation is going to vote,
14 Treasurer, but I assure you, whether we ban or cap
15 referral fees, contingency fees are not going to be
16 reduced. So the referral fee does not cause the client
17 to spend one more penny, but ensures in more cases than
18 not they're going to be represented by the best lawyer,
19 and that's our job as Benchers. Thank you, Treasurer.

20 TREASURER SCHABAS: Ms. Lippa.

21 MS. LIPPA: Thank you, Treasurer. I'm
22 going to be mirroring some of what Rob said, he got to
23 it first, but same thoughts.

24 TREASURER SCHABAS: Do you need to say
25 them all?

1 MS. LIPPA: I do. I'll be quick.

2 TREASURER SCHABAS: I'm being serious,
3 actually, because we don't need repetition.

4 MS. LIPPA: Just with the example that
5 Mr. Burd made of the -- we work on our client files and
6 they often either go into appeal from the Small Claims
7 Court or they go on to careless driving charge that
8 involves an accident, into personal injury.

9 We have done most of the groundwork, and
10 often when we refer to a competent lawyer, we are not
11 only reviewing, we're updating that lawyer as well. So
12 I have no issue -- and that's deserving of
13 compensation, but I have no issue with it being real
14 time compensation, whether it be called a cap or real
15 time fees, it doesn't matter to me; however, I believe
16 that we should be complying with our fee splitting
17 rules, where it says -- governs that client's fees that
18 are split between licensees be disclosed to the client.
19 This should be done whether there's a cap or a ban.

20 But what we haven't considered, and I've
21 noted in our contingency fee rules, prior to
22 litigation, because after litigation Solicitor Act
23 takes over, prior to litigation there's no cap. So if
24 there is a cap of five percent, what's to stop a
25 licensee from now increasing the back-end contingency

1 from 25 percent to 40 percent to maximize on the
2 referral fee?

3 I think we need to look at the
4 contingency fee rules in conjunction with this.

5 TREASURER SCHABAS: Thank you very much.
6 Mr. Strosberg.

7 MR. STROSBURG: Thank you, Treasurer.
8 I believe in referral fees. I believe in a hard cap.

9 In my firm, each lawyer is compensated
10 for being retained by a client and he or she is
11 credited with his or her percentage of the fee. Legal
12 fees will not go down because referral fees are banned.

13 In my business, the court sets the fees.
14 A representative plaintiff always swears an affidavit
15 disclosing the relationship and the fee arrangement
16 with the lawyers. That is the key here. The key is to
17 make a client aware of the relationship between the
18 referral, the lawyer or member that refers the client
19 to another lawyer.

20 If there is a personal injury case and
21 there is a minor involved or a person under a
22 disability, the lawyers should disclose the referral
23 fee arrangement to the court and therefore -- and
24 that -- things that we have to do.

25 I'm opposed to the -- I'm opposed to the

1 payment, the advance payment for referrals. It's just
2 wrong, but we should have referrals, we should have a
3 cap. Thank you.

4 TREASURER SCHABAS: Thank you.
5 Mr. Goldblatt.

6 MR. GOLDBLATT: Thank you, Treasurer. I
7 commend Mr. Mercer for continuing to stand while this
8 discussion has taken place.

9 MR. MERCER: It's a great contribution.

10 MR. GOLDBLATT: There you go. Just a
11 couple of very brief points. I came to this discussion
12 undecided and, as is often the case, the discussion
13 amongst my colleagues has been very helpful in terms of
14 turning me ultimately to my conclusion that I'm going
15 to support a cap.

16 Let me say a couple of things. Number
17 one is that I'm not sure that the fact that there is a
18 referral fee will always mean that you get the best
19 lawyer. I don't think that is axiomatic. It means
20 that you will be referred perhaps to an individual with
21 whom there has been some sort of an arrangement.

22 My second point is that to some extent
23 it would have been helpful, and I'm not suggesting that
24 this is any criticism of you, Mr. Mercer, I wouldn't
25 suggest any criticism of you, how could I, but there

1 is -- to some extent it might have been helpful to deal
2 with the advertising issue first because the
3 advertising issue may drive the referral issue and that
4 is of a bit of concern to me, but the debate here or
5 discussion here seems to indicate that if there is
6 going to be a referral fee, it is going to be low and
7 it is going to be transparent, and if it is low and if
8 it is transparent and if ultimately we agree with the
9 recommendation with respect to advertising, I think we
10 are actually acting in the public interest.

11 We are eliminating the referral industry
12 to a large extent. We are establishing a transparent
13 assistance to the client. We are in some ways
14 promoting access to justice and getting the individual
15 placed, one hopes, in the best hands possible, which
16 is, of course, our duty in the public interest.

17 I would only say one other thing in
18 conclusion. Mr. Lerner's example of the doctor or the
19 dentist who makes a referral, they are compensated,
20 they're compensated for the services they've provided
21 and an individual who, Al Smith or whoever may be, that
22 is approached by a client that needs advice and
23 assistance, Al will provide time, will provide
24 consideration, if it's not a referral industry will
25 make an appropriate referral and we may well get the

1 client into the best hands.

2 So I think that in all the
3 circumstances, a low cap, which is what I'm assuming
4 will happen, with transparency will be of assistance.
5 Thank you.

6 TREASURER SCHABAS: Thank you, Mr.
7 Goldblatt, and thank you for reminding everybody that
8 we still have to talk about advertising.

9 There are two more people in the room.
10 I'd urge you to be very brief, and then we'll go to the
11 telephone. Mr. Anand.

12 MR. ANAND: Yes, I support a ban, and
13 it's not because of a fear of abuse or an incidence of
14 abuse by our professional colleagues. It's because I
15 don't accept the contention that referral fees promote
16 access to justice, especially for vulnerable clients.

17 I think the premise behind that
18 contention is that referral fees incentivize referrals
19 to the best lawyer for the file, and that assumes two
20 things. Firstly, that the referral wouldn't take place
21 otherwise and/or that the first lawyer will do work
22 beyond her competence and, secondly, that a referral
23 fee will increase proper referrals, and I think, as
24 Mr. Goldblatt has just said, what will happen, what
25 does happen is that the file is passed on through

1 established networks, which is exactly what happens in
2 our firm and elsewhere, without referral fees. I have
3 a list of referrals to specific areas and that's what I
4 use.

5 I have little confidence that
6 transparency will protect the public interest. Putting
7 vulnerable or unsophisticated clients to the choice of
8 paying a referral fee or not may not be a real choice
9 in the circumstances and the urgency of the situation
10 and I think we need to protect those clients.

11 TREASURER SCHABAS: Thank you. Ms. Go.
12 You promise to be very brief.

13 MS. GO: Actually, mine is a question.
14 So the -- and I'm not familiar, I can't remember, so
15 the issue now is just prohibit referral fees between
16 licensees?

17 MR. MERCER: Yes.

18 MS. GO: So it doesn't deal with
19 issues -- I think Anne mentioned earlier about referrals
20 paid by companies to lawyers, and I guess my question
21 is really around sort of -- we've seen clients who go to
22 immigration consultants who then work with a lawyer,
23 and I often wonder whether the consultant is paying a
24 referral fee to the lawyer. I guess this situation
25 doesn't address referral by non-licensees?

1 TREASURER SCHABAS: There is an existing
2 prohibition and it's not proposed that that be changed.

3 Okay. Thank you. We'll go to the
4 telephone. Are there any questions or comments on the
5 telephone? Hearing nothing, Mr. Mercer, did you want
6 to say anything in response to the remarks by way of
7 clarification?

8 MR. MERCER: I'd like to make two --

9 TREASURER SCHABAS: You're going to
10 reserve your neutrality.

11 MR. MERCER: No, I'm not going to do
12 that. That wouldn't be helpful, it wouldn't be
13 believable, in any event. I want to make two very
14 short points. The two things which motivate me to
15 support the cap option.

16 The first is that we have a long history
17 of so tightly tying down what lawyers and now
18 paralegals can do that we have been rightly, in my
19 view, criticized for inhibiting innovation in practice,
20 making sure that the way we practice continues to be
21 the way we've always practised, and my view is that by
22 banning entirely referral fees, by effectively banning
23 new types of ways of relating to each other or
24 referring to each other, that this is another example
25 in which we will look back ten years later and wonder

1 why we prohibited innovative things to happen.

2 In my view, we should regulate bad
3 things, but we should allow innovation and I think
4 that's quite important.

5 The second is the lesson of King Canute,
6 and that is, the tide will come in. You may direct it
7 where you wish, you may direct it where you don't want
8 it to be, but the tide is the tide, and I believe a ban
9 fails on a King Canute test in that it doesn't
10 recognize reality. The reality is that brand
11 advertising exists, that in a world of mass advertising
12 which won't go away, there will be returns to that.

13 The lawyers and paralegals with great
14 reputations will continue to get work. The lawyers and
15 paralegals who are at the margin, who are newcomers,
16 will not be able to access work and that -- to reassure
17 Mr. Galati, I don't care for them, but I do care for
18 the people they might serve. So I think we should be
19 directing the tide and not pretending there isn't a
20 tide.

21 TREASURER SCHABAS: Okay. Thank you
22 very much. So the options are set out on BoardBooks at
23 page 57 in paragraph 1, or A1 and 2. So I guess we
24 will ask for a show of hands.

25 MR. LERNER: Can we have a roll call

1 vote?

2 TREASURER SCHABAS: Call for a roll
3 call. I wondered whether that might happen. Mr.
4 Lerner has called for a roll call vote.

5 So we will go around the room. First,
6 with respect to who favours or is against the
7 prohibition on referral fees.

8 MR. GOLDBLATT: Treasurer, can we go
9 around and just go A or B and then not go around twice?

10 TREASURER SCHABAS: That makes sense.
11 Thank you. It's one or two. I would ask you to make
12 clear whether you are in favour of prohibition or a
13 cap, why don't we do it that way.

14 Mr. Varro -- unfortunately, this is the
15 one thing we haven't figured out how to overcome yet in
16 this room for people on the phone, so when your name is
17 called you will say which way you are voting and I will
18 repeat it so that those on the telephone know which way
19 each person is going. Mr. Cooper?

20 MR. COOPER: Instead of A or B can we
21 actually say prohibition or cap?

22 TREASURER SCHABAS: I would ask you to
23 do that. Prohibit or cap. So please say one of those
24 two words.

25 MR. WRIGHT: That doesn't decide what

1 kind of cap. That will have to come back.

2 TREASURER SCHABAS: No, if there's cap,
3 Mr. Wright, it's clear the working group will have more
4 work to do and they'll bring it back to us at another
5 time. So, Mr. Varro.

6 SECRETARY: Mr. Anand?

7 MR. ANAND: Prohibit.

8 TREASURER SCHABAS: Prohibit.

9 SECRETARY: Mr. Beach?

10 MR. BEACH: Prohibit.

11 TREASURER SCHABAS: Prohibit.

12 SECRETARY: Mr. Bickford?

13 MR. BICKFORD: Cap.

14 TREASURER SCHABAS: Cap.

15 SECRETARY: Mr. Braithwaite?

16 MR. BRAITHWAITE: Prohibit.

17 TREASURER SCHABAS: Prohibit.

18 SECRETARY: Mr. Burd?

19 MR. BURD: Cap.

20 TREASURER SCHABAS: Cap.

21 SECRETARY: Ms. Chrétien? Ms. Clément?

22 MS. CLÉMENT: Cap.

23 TREASURER SCHABAS: Cap.

24 SECRETARY: Mr. Cooper?

25 MR. COOPER: Cap.

1 TREASURER SCHABAS: Cap.
2 SECRETARY: Ms. Corbiere?
3 MS. CORBIERE: Cap.
4 TREASURER SCHABAS: Cap.
5 SECRETARY: Ms. Corsetti?
6 MS. CORSETTI: Cap.
7 TREASURER SCHABAS: Cap.
8 SECRETARY: Ms. Donnelly?
9 MS. DONNELLY: Prohibit.
10 TREASURER SCHABAS: Prohibit.
11 SECRETARY: Mr. Earnshaw?
12 MR. EARNSHAW: Cap.
13 TREASURER SCHABAS: Cap.
14 SECRETARY: Mr. Epstein?
15 MR. EPSTEIN: Cap.
16 TREASURER SCHABAS: Cap.
17 SECRETARY: Mr. Evans?
18 MR. EVANS: Cap.
19 TREASURER SCHABAS: Cap.
20 SECRETARY: Mr. Galati?
21 MR. GALATI: Prohibit.
22 TREASURER SCHABAS: Prohibit.
23 SECRETARY: Ms. Go?
24 MS. GO: Cap.
25 TREASURER SCHABAS: Cap.

1 SECRETARY: Mr. Goldblatt?
2 MR. GOLDBLATT: Cap.
3 TREASURER SCHABAS: Cap.
4 SECRETARY: Mr. Groia?
5 MR. GROIA: Cap.
6 TREASURER SCHABAS: Cap.
7 SECRETARY: Ms. Haigh?
8 MS. HAIGH: Cap.
9 TREASURER SCHABAS: Cap.
10 SECRETARY: Ms. Hartman?
11 MS. HARTMAN: Cap.
12 TREASURER SCHABAS: Cap.
13 SECRETARY: Ms. Horvat?
14 MS. HORVAT: I've been convinced to
15 switch to cap.
16 TREASURER SCHABAS: She will cap.
17 SECRETARY: Mr. Krishna?
18 TREASURER SCHABAS: I don't think he's
19 joined us. Mr. Krishna? No word from Mr. Krishna.
20 SECRETARY: Mr. Lawrie?
21 MR. LAWRIE: Cap.
22 TREASURER SCHABAS: Cap.
23 SECRETARY: Ms. Leiper?
24 MS. LEIPER: Prohibit.
25 TREASURER SCHABAS: Prohibit.

1 SECRETARY: Mr. Lem?
2 MR. LEM: Cap.
3 TREASURER SCHABAS: Mr. Lem is capping.
4 SECRETARY: Mr. Lerner?
5 MR. LERNER: Prohibit.
6 TREASURER SCHABAS: Prohibit.
7 SECRETARY: Ms. Lippa?
8 MS. LIPPA: Cap.
9 TREASURER SCHABAS: Cap.
10 SECRETARY: Mr. MacKenzie?
11 MR. MacKENZIE: Cap.
12 TREASURER SCHABAS: Cap.
13 SECRETARY: Mr. McDowell?
14 MR. McDOWELL: Cap.
15 TREASURER SCHABAS: Cap.
16 SECRETARY: Ms. McGrath?
17 MS. McGRATH: Cap.
18 TREASURER SCHABAS: Cap.
19 SECRETARY: Ms. Merali?
20 MS. MERALI: Prohibit.
21 TREASURER SCHABAS: Prohibit.
22 SECRETARY: Mr. Mercer?
23 MR. MERCER: Cap.
24 TREASURER SCHABAS: Cap.
25 SECRETARY: Ms. Murchie?

1 MS. MURCHIE: Cap.
2 TREASURER SCHABAS: Cap.
3 SECRETARY: Ms. Nishikawa?
4 MS. NISHIKAWA: Cap.
5 TREASURER SCHABAS: Cap.
6 SECRETARY: Ms. Richardson?
7 MS. RICHARDSON: Cap.
8 TREASURER SCHABAS: Cap.
9 SECRETARY: Ms. Richer?
10 MS. RICHER: Cap.
11 TREASURER SCHABAS: Cap.
12 SECRETARY: Mr. Rosenthal?
13 MR. ROSENTHAL: Cap.
14 TREASURER SCHABAS: Cap.
15 SECRETARY: Mr. Sikand?
16 MR. SIKAND: Prohibit.
17 TREASURER SCHABAS: Prohibit.
18 SECRETARY: Ms. Strosberg?
19 MS. STROSBERG: Cap.
20 TREASURER SCHABAS: Cap.
21 SECRETARY: Mr. Strosberg?
22 MR. STROSBERG: Cap.
23 TREASURER SCHABAS: Cap.
24 SECRETARY: Mr. Troister?
25 MR. TROISTER: Cap.

1 TREASURER SCHABAS: Cap.

2 SECRETARY: Mr. Udell?

3 MR. UDELL: Cap.

4 TREASURER SCHABAS: Cap.

5 SECRETARY: Ms. Vespry?

6 MS. VESPRY: Cap.

7 TREASURER SCHABAS: Cap.

8 SECRETARY: Ms. Walker?

9 MS. WALKER: Cap.

10 TREASURER SCHABAS: Cap.

11 SECRETARY: Mr. Wardle?

12 MR. WARDLE: Cap.

13 TREASURER SCHABAS: Cap. Have we missed

14 anybody on the phone?

15 MR. FALCONER: Julian Falconer is on the

16 phone.

17 TREASURER SCHABAS: Okay, Mr. Falconer,

18 do you vote to cap or prohibit?

19 MR. FALCONER: Cap.

20 TREASURER SCHABAS: Cap. Anybody else?

21 Have we missed any other voting Benchers? The caps

22 clearly have favour here, so this will mean,

23 Mr. Mercer, that -- as I said, the work of the group is

24 not done.

25 I want to thank you and the working

1 group on behalf of Convocation for your work so far on
2 this matter, and I know you have already been
3 discussing it, you have had the benefit of the debate
4 today, I would urge you to come back promptly to
5 Convocation with recommendations on capping. Thank you
6 very much. And the vote was nine for prohibition and
7 35 in favour of capping.

8 MR. MERCER: We have the advertising
9 matter. You don't get rid of me so easily.

10 TREASURER SCHABAS: Well, we're going to
11 get rid of you for a few minutes because we'll take a
12 20 minute break.

13 I'm optimistic, Mr. Varro and I have
14 been whispering, we expect advertising will be briefer.
15 See everybody in 20 minutes.

16 --- Recess taken at 10:30 a.m.

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

18 TREASURER SCHABAS: I'd like to
19 reconvene, and I'm going to ask Mr. Mercer to cede the
20 lectern for a few minutes because we have with us Linda
21 Rothstein, the Chair of the Law Foundation of Ontario,
22 and Tanya Lee, the CEO, here.

23 When I look at Linda and Tanya, I think
24 how much different the board I chair now is from the
25 board of five people at the Law Foundation of Ontario.

1 It's a wonderful organization and my big regret when I
2 got elected Treasurer was that I felt I had to step
3 down from the board of Law Foundation, but I knew I was
4 leaving it in wonderful hands with Tanya and Linda, of
5 course, taking it over as chair.

6 So, Linda, will you give us your take on
7 the state of Law Foundation, please.

8 -- ADDRESS BY LINDA ROTHSTEIN, CHAIR,
9 LAW FOUNDATION OF ONTARIO

10 MS. ROTHSTEIN: Well, thanks very much,
11 Treasurer. It's wonderful to be back amongst all of
12 you friends and colleagues. A number of you have
13 pestered me about how it was that I came to become the
14 Chair of the Law Foundation of Ontario and I kind of
15 hemmed and hawed a lot about whether I should be candid
16 in answering the question, and I do feel when I stand
17 here that I can't be anything other than candid, so the
18 simple answer is I sucked up to the Treasurer a lot for
19 a very long time.

20 And I did that because the Law
21 Foundation is a spectacular organization, as the
22 Treasurer has just told you, and I'm very pleased to
23 present to you formally, and Tanya Lee is going to make
24 available to all of you who want to see the print
25 version, and not just the on-line version, our 2015

1 annual report and to formally tell you about what it
2 chronicles, and also to walk you through, informally,
3 our achievements in 2016.

4 So at the Law Foundation of Ontario,
5 after much strategic planning that our Treasurer was
6 involved in when he was there, we decided that we
7 needed to really focus our energy on having a clear
8 vision that we could articulate in less than ten words,
9 and we decided that the best way to describe what we do
10 is this: We put people at the heart of justice. And
11 we try and do that every day in everything that we do,
12 in our grant making role, in our collaboration role
13 with various access to justice organizations, and in
14 all of the ways that we manage the funds on behalf of
15 the Province of Ontario.

16 We are governed by three, a board of
17 trustees of five; three members are appointed by the
18 Law Society of Upper Canada, two are appointed by the
19 AG, and the two benchers that currently serve on the
20 board that I want to acknowledge are Isfahan Merali and
21 Ross Earnshaw, both of whom are an absolute pleasure to
22 work with and I believe, like me, are huge champions of
23 the work of the Foundation.

24 Our primary source of revenue, for those
25 of you who don't remember, is the interest on lawyers'

1 mixed trust accounts. By statute, 75 percent of that
2 total interest revenue goes to the Law Foundation of
3 Ontario, but the rest we distribute, and we distribute
4 through grants to a wide range of spectacular
5 organizations, some of which you've heard of and some
6 of which you haven't, but all of whom are engaged every
7 single day in access to justice on the ground in real
8 ways, providing real services to the people of Ontario.

9 One other thing that you need to know is
10 that we have some additional revenue coming our way
11 since 2010. We were able to get the courts to
12 acknowledge us as the appropriate recipient of *cy prè*s
13 awards in class action lawsuits. Since 2010 we have
14 created a national access to justice fund, which we
15 coordinate with all the Law Foundations across the
16 country and, together with them, we make national
17 access to justice grants.

18 We have made 18 million such grants
19 since 2010. These grants have absolutely transformed
20 our ability to work as a national organization and to
21 work with our sister organizations across the country
22 to really dig down on where access to justice matters
23 and make sure that it is happening from coast to coast.

24 Apart from the *cy prè*s awards, the
25 number and value of grants that we make each year

1 depends, of course, on our revenue, and let's say since
2 2008 it hasn't been as good as it used to be in the old
3 days. In 2015 we made 9.6-million dollars in grants to
4 over 70 organizations.

5 Let me give you a taste. So what does
6 access to justice mean and how do you solve that
7 crisis? Well, at the Foundation we have been what I
8 think is on the cutting edge of supporting grantees who
9 are involved in innovative work. For example, we have
10 given grants to an organization that reaches youth so
11 they understand and value the underpinnings of the
12 democratic justice systems and take action to protect
13 them.

14 We provide legal information so people
15 know what their legal rights are and how to assert
16 them, and those of you who were at the Steps to Justice
17 launch very recently will have a real taste of just how
18 impactful that initiative is going to be. We provide
19 grants so people can tap the rich resource of law
20 students across the country in pro bono law students'
21 organizations to help the community and to encourage
22 them to commit to access to justice in their future
23 careers.

24 We obviously galvanize the work of pro
25 bono lawyers at Pro Bono Ontario who are making a

1 difference in hospitals, in courtrooms all across
2 Ontario. We provide the justice sector with all kinds
3 of grounded research that actually establishes the ways
4 that we need to open the gates to justice even wider,
5 and we knit together the social justice and the justice
6 sectors to address clients' needs.

7 It's really a delight to watch the staff
8 of the LFO go out there in the world, not just to
9 assess our grantees and to provide us with meaningful
10 feedback about whether those dollars that we give them
11 are going to be well spent, but to encourage them to
12 collaborate together, to encourage them to have joint
13 initiatives, to encourage them to tailor their programs
14 so they can actually address where we think the real
15 needs are on the access to justice front.

16 So among the organizations that we've
17 supported since 2015, as I said, are many known to you,
18 Innocence Canada, Pro Bono Ontario, Pro Bono Students
19 Canada, the Ontario Justice Education Network, Law and
20 Action within Schools, the Law Commission of Ontario,
21 the Ontario Federation of Indigenous Friendship
22 Centres, the South Asian Legal Clinic of Ontario, the
23 FCJ Refugee Centre, the Schizophrenia Society of
24 Ontario, and so many more.

25 On the aboriginal front alone, the A2J

1 grant making that we have done has focused on the needs
2 of First Nations and Indigenous peoples, and we have
3 made 14 grants, including a grant to support the
4 creation of the Indigenous Peoples Court in Thunder
5 Bay. I'm flying there next week for that inauguration.
6 It's going to be launched. I don't know if you're
7 going to be there, Treasurer, but it's going to be
8 awesome.

9 We support the work of Aboriginal Legal
10 Services for families of murdered and missing
11 Indigenous peoples. We've supported work about
12 education in -- about the justice system in 28
13 Anishnaabe communities and Indigenous peer support in
14 Ottawa for Indigenous women released from custody. So
15 making a real impact in that area and, as I say,
16 across the country.

17 When it comes to the legal professions
18 and law and paralegal students, our Foundation grants
19 are also very important. In 2015 we provided a grant
20 of \$400,000 to TAG, as you know, which has been
21 instrumental in, again, working on the collaborative
22 front to try and develop some real system-wide
23 solutions to access to justice challenges.

24 In 2015 we funded 13 articling positions
25 at community legal clinics and at public interest

1 organizations that wouldn't otherwise be in a position
2 to hire legal help at all, let alone articling students
3 in a range of areas. They work in international human
4 rights, violence against women, environmental law and
5 consumer rights. As best we can tell, and we're
6 starting to look at this more deeply, we think that not
7 only provides a solution to that organization and
8 additional ability to provide service for a year, but
9 it's encouraging young lawyers to pursue careers in the
10 access to justice and poverty law sector, something we
11 think is a great win.

12 We are responsible administratively for
13 providing assistance to the Class Proceedings
14 Committee, which most of you will know provides
15 financial assistance and support to class actions
16 through the Class Proceedings Fund. In 2015 the Class
17 Proceedings Committee approved twelve applications
18 which helped plaintiffs bring their cases forward, and
19 there's lots more detail on those activities also in
20 the annual report.

21 Finances. It's a dreary subject, but we
22 do it well. We wrestle with the banks to get them to
23 sort through their records and identify what they're
24 really holding which we say is properly the -- should
25 be properly sent to the Law Foundation of Ontario.

1 So interest from all lawyers' mixed
2 trust accounts is absolutely critical and thanks to the
3 Law Society for working with us to establish a much
4 better information base now for the requisite
5 information in determining exactly where those mixed
6 trust accounts are, which banks and who. We're really
7 hoping that this additional information that we are
8 receiving with the assistance of the Law Society will
9 help us make sure that we receive all the interest on
10 all of the accounts and will help reduce the burden on
11 licensee reporting.

12 So a busy year in 2015 that is
13 absolutely beautifully chronicled in this report. I
14 commend it to all of you, and frankly an incredibly
15 busy year in 2016 working to support legal education,
16 public legal information, pro bono services, justice
17 education and just damn building the A2J sector so it
18 starts to be real. Thank you. Any questions, folks?
19 Happy to take them.

20 TREASURER SCHABAS: Thank you very much,
21 Ms. Rothstein. Mr. Burd?

22 MR. BURD: Just a point of
23 clarification. I know it was an oversight, but also
24 the funds from mixed trust accounts for paralegals.

25 MS. ROTHSTEIN: Absolutely. If I spoke

1 like it was just lawyers, I should have been saying
2 licensees. Thank you very much, Mr. Burd.

3 TREASURER SCHABAS: Mr. Bickford.

4 MR. BICKFORD: Thank you. You mentioned
5 an event in Thunder Bay next week. What was that event
6 again?

7 MS. ROTHSTEIN: It's going to be the
8 opening of the Aboriginal Court.

9 MR. BICKFORD: Okay. And you mentioned,
10 I think, other initiatives in terms of the Indigenous
11 people. What were some of those initiatives again?

12 MS. ROTHSTEIN: So there's a number of
13 initiatives across Canada, and I don't have the names
14 of all the specific organizations because they are
15 many, but in addition to the Indigenous Peoples' Court
16 in Thunder Bay, it's Aboriginal Legal Services which
17 provides support specifically in this particular grant
18 for families of murdered and missing Indigenous people.

19 There is education funding about the
20 criminal justice system that is being provided in 28
21 Anishnaabe communities and the Nishnawbe Aski Legal
22 Services is training frontline workers in Thunder Bay
23 about working with their clients when intersecting with
24 the police, and there is Indigenous peer support for
25 Indigenous women in Ottawa who are released from

1 custody. Those are the ones I mentioned.

2 MR. BICKFORD: You're referring to a
3 report in a green cover. Is that available?

4 MS. ROTHSTEIN: Yes, it is. We have
5 copies of it for anyone who wants one. We'll pass one
6 around.

7 TREASURER SCHABAS: Yes, and there's a
8 copy of it on BoardBooks. We have lovely hard copies
9 there. It's actually an annual report that's signed by
10 me actually, Ms. Rothstein.

11 MS. ROTHSTEIN: It's signed by you, and
12 a beautiful photograph of you too, Treasurer. Actually
13 more than one.

14 They had to explain that to me when I
15 took the job. He's in it, his name, his photos. Maybe
16 next year if you're still around.

17 TREASURER SCHABAS: Are there any other
18 questions or comments for Ms. Rothstein? Seeing none,
19 let me just say to Ms. Rothstein it's great to have you
20 here and to hear about all of the wonderful and
21 inspiring work that you do. I'm very pleased to hear
22 about the nitty gritty of the form 1 amendments,
23 because I know there was a lot of work both for Tanya
24 and her staff and people at the Law Society.

25 These things are not simple in trying to

1 gather data and amend forms to get more money, and I'm
2 sure it's bringing more money into the coffers of the
3 Law Foundation to benefit access to justice.

4 I also should take this opportunity,
5 because you mentioned TAG, that we thank you for
6 supporting TAG on behalf of all of us here and the work
7 that it does. I did see a hand go up from Ms. Ross.

8 MS. ROSS: Better late than never.
9 Thank you very, very much. There was one other, I
10 think, significant very quick response when Canada was
11 endeavouring to bring in 25,000 Syrian refugees.

12 I wonder if you could just briefly
13 highlight that for the benefit of Convocation, because
14 I think it is an example of how quickly that the Law
15 Foundation can respond.

16 MS. ROTHSTEIN: It was within I think a
17 couple of weeks. Tanya would be able to tell you the
18 timeline more specifically, but a number of refugee
19 lawyers in Ontario particularly working with Lifeline
20 Syria put together a roster of pro bono refugee lawyers
21 across the province who were going to provide service
22 to Syrian refugees.

23 I think from the moment that they
24 launched and needed a grant from us to the time we
25 approved it was two weeks. Amazing.

1 MS. ROSS: It was amazing.

2 MS. ROTHSTEIN: Now, the lawyers who
3 were behind it should really be congratulated for them
4 to pull that together and provide such a rich depth of
5 service across the province, all free to these
6 refugees, is a really stunning commitment from members
7 of the bar.

8 MS. ROSS: Thank you, Ms. Rothstein,
9 and, Treasurer, I was reminded of that, the lawyers'
10 response to the needs for free legal services to the
11 Syrian refugees here in Canada when I saw lawyers
12 showing up at all the airports in the United States on
13 the weekend of the ban, the immigration ban, holding up
14 signs offering both translation services and free legal
15 advice.

16 I must say that the Law Foundation grant
17 and the lawyers behind it and the -- watching the
18 activity of U.S. lawyers at all the airports a few
19 weeks ago, I must say made me more proud to be a lawyer
20 than anything else, I think, in many, many years. So I
21 commend the Law Foundation, I commend the lawyers who
22 are behind it, I commend the then president of the Law
23 Foundation who is now at the head of the table at this
24 end, who was there at the time, and just a feather in
25 the cap of all of the lawyers who are so generously

1 donating their time to ensure the rule of law and
2 access to justice for the most vulnerable. Thank you.

3 TREASURER SCHABAS: Did I see another
4 hand?

5 MS. ROTHSTEIN: Treasurer, I just think
6 if we're doing a bit of kudos, we can't let that stop
7 without a real kudo and shout-out to the staff of the
8 LFO, who are absolutely spectacular, and we're so lucky
9 to have them.

10 Tanya is here today, Tanya Lee, our CEO,
11 and she and her team are the ones who are so nimble
12 that they can put our grant assessment process together
13 in a two week time period and make it work. The kudos
14 should go to them.

15 TREASURER SCHABAS: Absolutely. I
16 second that. Thank you.

17 MS. ROTHSTEIN: Thank you very much,
18 everyone. I think the new room is awesome.

19 TREASURER SCHABAS: Mr. Mercer, you are
20 back up. We do have quite a few things still to do on
21 the agenda, so just remind you that we've got a report
22 and we've got to get through that and a number of other
23 things and then there's a number of in camera items as
24 well. So, Mr. Mercer, go ahead.

25 -- CONTINUATION OF PROFESSIONAL

1 REGULATION COMMITTEE REPORT:

2 MR. MERCER: The recommendations with
3 respect to advertising are really four-fold, and I just
4 want to quickly describe them and then draw your
5 attention to the easiest place to see them in black and
6 white.

7 The recommendations arise from the
8 concern that the working group has, and I think is
9 shared in this room, that we have seen a proliferation
10 of advertising by lawyers and paralegals that may be
11 false, misleading or non-transparent, and this -- we
12 have great concern about the impact of this on the way
13 legal services are provided. So we essentially propose
14 four things.

15 The first thing is that we recommend by
16 rule change and commentary and guidance change that
17 lawyers and paralegals be required in their marketing
18 to identify whether they are lawyers or paralegals.
19 And the biggest point is that we think that people,
20 ordinary people in Ontario, probably don't understand
21 that there are two different categories of licensees
22 and it is advantageous to develop an understanding that
23 there are two choices to be made in many circumstances.
24 That marketing make clear which one you are. If none
25 of us disclose which of the two we are, then people

1 won't know there's a difference and they won't be
2 educated over time. As well, if we want transparency,
3 people should be able to choose which of the two they
4 want, which is best for them. So that's the first
5 recommendation. The rule and the guidance is set out.

6 The second is with respect to the use of
7 awards and honours. This is a more difficult one to
8 think through, although we have thought through how to
9 deal with this. You could take the view that we should
10 just ban entirely marketing based on awards, rankings
11 or honours.

12 There would be several problems with
13 that. One, constitutional protection of freedom of
14 expression; another that communications that provide
15 useful information shouldn't be prohibited. Again,
16 we're concerned about the mischief side and we need to
17 protect the proper side.

18 One could have a list that is approved
19 or you could have a list that is banned, or you could
20 stay with the existing rule which simply says that you
21 can't be dishonest, deceptive, misleading or confusing,
22 but we know we have a problem and we know we have a
23 rule that seems not always to be followed, so while we
24 think the rule is right as to the principles it sets
25 out, we think that further guidance is required to make

1 clear and to provide emphasis. And so that is set out
2 in the proposed commentary in the lawyer rule and the
3 guidance in the paralegal rules.

4 The third area is that we are concerned
5 that there is marketing by those who don't actually
6 intend or are not allowed to provide the service that
7 they're advertising, and so we propose an express
8 requirement that lawyers and paralegals not be
9 permitted to advertise for work they're not licensed to
10 do, not competent to do, or don't actually intend to
11 do. We think that people who read marketing saying
12 "Come to us" are fairly entitled to assume that "us"
13 actually wants to provide the service to them.

14 The last is with respect to second
15 opinion services and, again, this is a slightly thorny
16 one. It appears clear from our consultations that in
17 the contingent world, contingent fee world, if you're
18 looking for good work you can try to market generally
19 or you can alternatively market to the population
20 that's already been vetted, that another licensee has
21 already determined is worthwhile moving forward, has
22 entered into an arrangement, a contingent fee
23 arrangement.

24 So while on the face of it you would
25 think that second opinions were a good thing and

1 providing second opinions were a good thing and
2 advertising or marketing for second opinions is a good
3 thing, we think the truth is ordinarily it's an attempt
4 to scoop files, it's an attempt to market to those who
5 have already been shown to be good matters.

6 We have no concern about peoples'
7 ability to find someone who will give them a second
8 opinion, we are concerned that the marketing of second
9 opinion services appears to be, too often, a bait and
10 switch, that what is really in issue is not a second
11 opinion, not an assurance as to the quality of advice
12 being given, the service being given, but rather an
13 attempt to take the file.

14 So recognizing that we must do that
15 cautiously and advisedly, that is nonetheless our
16 recommendation.

17 I want to make one change if I can, not
18 on the fly entirely, but Mr. Bickford pointed out
19 yesterday an inconsistency that we should eliminate.
20 On paragraph -- page 77 of BoardBooks, we start with
21 the commentary to the lawyer rule, and you'll see that
22 paragraph 3 gives examples of marketing that do
23 contravene the rule. If you go down to F, taking
24 advantage of a vulnerable person or group is, in
25 effect, a deemed breach. On the other hand, in

1 paragraph 7 that same phrase is included with examples
2 of practices that might be a breach, and Mr. Bickford
3 quite rightly said something can't both be may and is.

4 And so while we may come back to it, I'm
5 proposing that we delete commentary 3(F) so that we
6 don't create an inconsistency, and with that important
7 change, I move, and I believe Mr. Rosenthal will second
8 this part of the report.

9 TREASURER SCHABAS: Thank you very much,
10 Mr. Mercer. Mr. Burd, you asked to speak to this.

11 MR. BURD: I just want to draw attention
12 to page 86 in regard to restrictions under 4.1.2,
13 particularly (D), where it says, "Are intended to
14 influence a person who has retained another lawyer".
15 I'm asking for a friendly amendment that read licensee,
16 because the omission of the word licensee means that a
17 lawyer can advertise to influence a person who has
18 retained a paralegal, which obviously we wouldn't
19 permit, and so that's why it's required that, in my
20 view, that that word be changed from "another lawyer"
21 to "any licensee".

22 MR. MERCER: I have no difficulty with
23 the substance of what's being said, but as a matter of
24 governance I take the view and would wish to be
25 consistent on it that amendments ought to go through

1 the committee before they come to Convocation, and so I
2 would be happy to support that in PRC, but I would ask
3 that Mr. Burd agree that it goes back to committee to
4 come back here, if appropriate.

5 TREASURER SCHABAS: All right. So it's
6 not a friendly amendment. The next person on the list
7 is Mr. Wright. You asked to speak?

8 MR. WRIGHT: Thank you, Treasurer. It's
9 too bad we allow advertising in the first place, but
10 anyway, it's sold as a means of enhancing access to
11 justice and levelling the playing field, but it does
12 the opposite.

13 Our profession is unlike soft drink
14 companies, tobacco companies, which try to create and
15 expand markets. In the legal market people do not slap
16 themselves on the forehead and say, gee, I need to
17 create a reason to see a lawyer today. Instead, when
18 they need a lawyer, they seek one out.

19 Thus in our profession, advertisers
20 advertise not to create a market, not to enhance access
21 to justice, but to garner more of the market for
22 themselves. The result is an advertising arms race as
23 other firms try to keep their own share of the market,
24 and that puts upward pressure on overhead, making it
25 ever more difficult to offer reasonable fees or take

1 home reasonable incomes.

2 To the extent that some firms have the
3 deep pockets to pay for it, they make it even harder
4 for other, usually smaller, firms and sole
5 practitioners, to compete, with the result that
6 advertising increases the likelihood of
7 anti-competitive consolidations and decreases the
8 likelihood of sole practitioners operating in more
9 accessible locations.

10 The best way to find a lawyer has always
11 been, still is, word of mouth, and that's easy to
12 access for practically everybody and there's the Lawyer
13 Referral Service and similar initiatives for others.

14 The ability to advertise does literally
15 nothing to guarantee that the public will find better
16 lawyers, except by accident. There is a better way to
17 do this, and that would be advertising in the public
18 interest done by the Law Society. The accountants do
19 it at a cost of about 3-million dollars a year. That
20 would cost our members less than \$90 a year to do, a
21 pittance given the benefits to everyone, the public and
22 the profession.

23 Such advertising -- we should do it
24 anyway, but such advertising would educate the public
25 as to various rights, including lesser known ones, how

1 to access legal services, how to find legal service
2 providers competent in the area they need, and how to
3 ask questions as to process, referral transparency and
4 costs.

5 It would also help to explain to the
6 public why lawyers are so critical to the operation of
7 our society and as to why the uncompromised, unshared,
8 unbesmirched total independence of the legal profession
9 is so utterly critical to a free and democratic society
10 and how lawyers who do prevention law are so
11 fantastically cost effective. How lawyers who do --

12 TREASURER SCHABAS: Mr. Wright --

13 MR. WRIGHT: I'm almost finished.

14 TREASURER SCHABAS: Sorry to interrupt,
15 but we should be focusing on the motion that's before us.

16 MR. WRIGHT: I'm coming to that. How
17 lawyers who do dispute resolution do so much to keep
18 society from unraveling and how criminal lawyers serve
19 as the last line of defense of democracy and keep the
20 power of the state from overreaching and how paralegals
21 render great assistance in certain areas.

22 The cost of public interest advertising
23 by the Law Society would be a pittance compared --

24 TREASURER SCHABAS: Mr. Wright, this is
25 not before us. Please address the motion. If you have

1 anything to say about the motion, say something about
2 the motion. It's not a time to raise a completely
3 different matter that's not before us.

4 MR. WRIGHT: Well, we are very concerned
5 about the proliferation of false advertising, there's
6 tons of it going on and it's worsening every year.

7 The committee has identified four things
8 to try and do something about it. Identify the type of
9 licensee, that's good, makes sense; limit the use of
10 awards, they've dealt with that; don't advertise for
11 work you're not licensed to do, don't do, can't do or
12 don't intend to do, well, yes, but then we get into the
13 referral firm issue; and ban second opinion ads, that
14 makes sense too.

15 But we need to look at this in a more
16 35,000 feet up perspective and do something better and
17 more effective at educating the public and limiting
18 very strictly the kind of advertising law firms can do.

19 TREASURER SCHABAS: Thank you. Mr.
20 MacKenzie.

21 MR. MacKENZIE: Thank you, Treasurer.
22 I'll be as brief as I possibly can on this.

23 I support the committee's
24 recommendations. I think we've identified types of
25 advertising that have proven to be particularly

1 harmful. They're harmful to the reputation of our
2 profession as a whole and they're particularly harmful
3 and particularly unfairly harmful to the reputation of
4 the plaintiffs' personal injury bar.

5 The only observation I want to make in
6 addition to that is I think the key to it is effective
7 and visible enforcement, because while misleading
8 advertising does the profession as a whole a great deal
9 of harm, what does us a lot more harm is that if
10 there's a perception out there that the governing body
11 of the profession tolerates it.

12 One complaint that has been made to me
13 is that the -- and I don't know whether it's
14 meritorious or not, but the complaint is that our
15 system of enforcement is too complaint driven and that
16 the Law Society should more frequently take the
17 initiative itself of policing, investigating and
18 disciplining false and misleading advertising so that
19 people aren't put in the position of attending a
20 meeting and being stigmatized because they've
21 complained about a colleague.

22 So that's my observation, that we need
23 effective and visible enforcement above all.

24 TREASURER SCHABAS: Thank you. Mr.
25 Lerner.

1 MR. LERNER: I initially supported an
2 outright ban. I've changed my position. I now support
3 the recommendation, but I don't think it goes far
4 enough.

5 I think that to leave it as it presently
6 is, when you see a sign that says "award winning" or
7 some other distinction, it puts additional work upon
8 our staff to determine what award is legitimate; who is
9 going to make that decision?

10 So I think that, rather than do that, I
11 think what we need to do is have a list of awards that
12 can be advertised, and anyone who wishes to be added to
13 that list can apply. I don't think it's our staff who
14 should be put in the position of having to determine
15 the legitimacy of an ad. I think that we should assume
16 control of a situation that has now got out of hand,
17 take definitive steps to regulate and, in my view, that
18 requires us to do something more than presently exists
19 in the commentary by identifying awards.

20 Many licensees in this province, some of
21 whom are in this room today, have been -- their service
22 to the community, the profession has been recognized at
23 various levels by the Government of Ontario, by the
24 Government of Canada, by law societies, et cetera, et
25 cetera, and I think that we cannot just have a few

1 rotten apples spoil the whole barrel.

2 I think those people who have earned the
3 distinction that they now have ought to be able to
4 advertise it, but in order to avoid and prevent those
5 who are misleading the public with the type of
6 advertising they're doing, the best way to do it is not
7 to prevent what they're doing, but to permit, on the
8 other hand, that type of advertising, those types of
9 awards that can be justifiably included in marketing
10 and advertising.

11 TREASURER SCHABAS: Thank you. Ms.
12 Haigh.

13 MS. HAIGH: So I'm actually going to go
14 back to Rob's comment because I'm not as easily willing
15 to let it go as he did.

16 I will not approve the changes to the
17 rules if they're not equal to both lawyers and
18 paralegals. If you go to page 86, which is what
19 Mr. Burd referred you to earlier, 4.2-2(d), it
20 basically just says that, "Are intended to influence a
21 person who has retained another lawyer for a particular
22 matter to change their lawyer for that matter, unless
23 the change is initiated by the person or the other
24 lawyer".

25 You go to the exact same version of it

1 for paralegals at page 99 and it states that we're --
2 you're, "Not intended to influence a person who has
3 retained another paralegal or a lawyer for a particular
4 matter to change his or her representative for that
5 matter, unless the change is initiated by the person or
6 the other representative".

7 These are not the same. These are
8 substantially different. So you're permitting
9 basically, by approving this the way it is, you're
10 effectively permitting lawyers to influence the public
11 to switch from a paralegal to the lawyer, but you're
12 not permitting a paralegal to influence the public to
13 switch from the lawyer to a paralegal.

14 This is unfair, I won't support it. I
15 don't know what the process is to bring a motion now to
16 have that changed or send the whole thing back to
17 committee if you really need to discuss that, which I
18 don't think you should.

19 TREASURER SCHABAS: Well, it's open to
20 you to make a motion.

21 MS. HAIGH: I'd like to make the motion
22 then to amend -- sorry, go back to page 86.

23 MR. MERCER: It's to amend rule 4.1-2(d)
24 to replace "lawyer" by "licensee".

25 MS. HAIGH: Well, then if you do that,

1 then also the exact same change in the paralegal rule
2 so that they mimic each other.

3 MS. CORSETTI: I second it.

4 MR. BICKFORD: I second that motion.

5 TREASURER SCHABAS: Mr. Mercer, is that
6 a friendly amendment?

7 MR. MERCER: It's beginning to sound
8 more and more friendly all the time.

9 TREASURER SCHABAS: All right. There's
10 another amendment. So the next person on the list is
11 Mr. Evans.

12 MR. EVANS: Thank you, Treasurer. My
13 comment is my concern in section 4.1-2(e) refers to
14 bringing the profession into disrepute, and I would
15 like to see something more specific to control
16 advertising that is not in good taste. So it's
17 clearly -- it does bring our profession into disrepute
18 and I don't know that it's really specifically stated
19 as such. I just wanted to bring that to your
20 attention.

21 MR. MERCER: So 4.1-2, despite the
22 fairly friendly amendment, is the existing rule, it's
23 not a proposed change, and the language in (d) as well
24 as the earlier language, Mr. MacKenzie can correct me
25 if I'm wrong, I surmise was written carefully to

1 reflect the Supreme Court of Canada guidance in Rocket,
2 and the difficulty also of being able ever to have
3 reasonable predictability as to what good taste is.

4 TREASURER SCHABAS: Okay. Mr. Bickford.

5 MR. BICKFORD: Besides Ms. Haigh's
6 reference to an inconsistency and besides the
7 inconsistency that Mr. Mercer mentioned that I made and
8 that is being amended, or the draft is being amended,
9 I, in the same communication to Mr. Mercer yesterday,
10 raised other serious inconsistencies I think with the
11 formatting of the document which I think will be very
12 problematic in terms of prosecution before the
13 tribunal.

14 There's a number of them, I won't take
15 the time to list them, but I'm very concerned with the
16 formatting, that it's going to be, to repeat myself,
17 problematic in using them as a template in prosecution.

18 TREASURER SCHABAS: Ms. Leiper.

19 MS. LEIPER: This is a clarification
20 question, Mr. Mercer. Looking at the definition of
21 marketing at page 76 of BoardBooks, I notice it doesn't
22 talk about social media and websites, and in looking at
23 the excellent recommendations, and I support them, I'm
24 wondering, for clarification, if lawyers who use social
25 media will be captured by the definition of marketing

1 and will they be at risk if they don't, for example, on
2 postings or on Facebook pages or other kinds of social
3 media. If they fail to say they're licensed, what
4 happens if there are third party endorsements added to
5 someone's Facebook page that that person hasn't
6 controlled for.

7 It may be that you intended to be that
8 broad. I'm wondering if it should be clearly stated in
9 the definition to make sure that we're clear to the
10 profession what our expectations are.

11 MR. MERCER: There's a deep rabbit hole
12 in your question that we hadn't fully examined. The
13 definition of marketing in 4.2-0 is intended to be a
14 broad definition and we didn't propose to change it.

15 We have not, as I understand it, seen
16 problems in the application of the definition, although
17 that may change. My own view, having not thought
18 deeply about it, is that when one refers to in various
19 media, as well as firm names, letterhead, business
20 cards and logos, the intent is to have a broad,
21 inclusive definition, and so I can't imagine that there
22 would be a successful argument that modern digital
23 media wasn't included.

24 Now, the tougher question is what do you
25 do about add-on comments that you don't control, and I

1 would have thought that you're not responsible for that
2 which you can't control. You can't do better than
3 that.

4 TREASURER SCHABAS: Thank you.

5 MR. LERNER: Point of order,
6 Mr. Treasurer. I want to move, but I don't know when
7 the appropriate time is, that the proposed commentary
8 as it relates to awards go back to the committee so
9 that we can create a list of approved awards.

10 I don't know whether that means we need
11 to approve the -- the material as presently drafted and
12 then make the motion or whether I should be making that
13 motion now before it is so that it forms part of the
14 motion that it go back.

15 I'm prepared to support the motion,
16 provided that it goes back to the working group and the
17 committee to prepare that approved list.

18 TREASURER SCHABAS: Thank you. I
19 suspect that Mr. Mercer may have something to say about
20 whether the working group talked about that.

21 MR. MERCER: We did, and Mr. Lerner is
22 on the working group and the report that you have in
23 front of you is the recommendation of the working
24 group.

25 It's clear that there are a range of

1 choices, and one of them is the wait list choice, which
2 is what Mr. Lerner describes. I started the process
3 believing the wait list choice was a good way to come
4 at this, to create a list of approved honours, awards
5 and rankings.

6 Mr. Lerner took a harder view initially,
7 and it looks like we've both softened. He was against
8 them entirely. I now believe that we have to, in a
9 principled way, give guidance and that it's a rabbit
10 hole that we should not go down to try to create
11 ongoing wait lists. So I only say, and this is what
12 you were asking me to say, I think, this is the
13 recommendation of the committee as a whole.

14 TREASURER SCHABAS: Right. So I take it
15 this has been discussed and it's not -- it's not a
16 friendly amendment to try to wordsmith all of that at
17 this point and that the committee, the working group
18 has addressed this already. Thank you.

19 MR. LERNER: If I have to make the
20 motion, I will. I'd look for a seconder to the motion
21 that that be included.

22 TREASURER SCHABAS: A motion that the
23 matter be referred back to consider that?

24 MR. LERNER: That the issue of award
25 advertising be directed back to the committee for a

1 recommendation as to an approved list of awards that
2 licensees are permitted to include in their advertising
3 and marketing.

4 TREASURER SCHABAS: Just give me a
5 moment to consult with Mr. Varro. Mr. Mercer, I'm
6 trying to understand whether this is a friendly
7 amendment or a stand alone motion. I don't think it's
8 a friendly amendment.

9 MR. MERCER: I don't think it would be
10 proper for me to accept it as a friendly amendment,
11 given the process.

12 TREASURER SCHABAS: Yes.

13 MR. MERCER: I think it's an amendment
14 which, Mr. Varro will be the expert, which requires
15 separately a vote yes or no.

16 TREASURER SCHABAS: All right. Do you
17 have a seconder? Mr. Galati. Okay. So we'll figure
18 out how to vote on both of those in a minute. Mr.
19 McDowell, you wanted to speak to this as well?

20 MR. McDOWELL: I wonder about the
21 constitutional scrutiny that would follow if what we're
22 saying is to lawyers thou shalt not accept an accolade
23 from a body other than one that we, as a statutory
24 body, have approved.

25 MR. MERCER: You just can't tell anybody

1 appears to be the point.

2 MR. McDOWELL: Yes. I think to ban that
3 outright strikes me as highly problematic. To say that
4 you can't be misleading about it is quite a different
5 thing, so apart from the procedural issue, I think that
6 this isn't something that we should go about lightly.

7 TREASURER SCHABAS: All right. I
8 suspect some of this has been fully canvassed through
9 the course of the meetings of the working group. So
10 let's just -- briefly, Mr. Galati.

11 MR. GALATI: Very briefly, Mr. Lerner's
12 concern is my concern --

13 TREASURER SCHABAS: Turn on your mic,
14 please.

15 MR. GALATI: The public is not savvy
16 enough, most of the public, for clients to parse one
17 award from the other. So if you get an award from the
18 CBA or the Law Society or the Tattle Creek Association,
19 most people are not going to parse the weight of either
20 one. I'm concerned, I see a lot of ads with awards
21 I've never even heard of.

22 TREASURER SCHABAS: Okay. Is there
23 anybody on the telephone who wishes to make any comment
24 or ask any questions of Mr. Mercer? Anybody on the
25 phone? No. All right.

1 So, Mr. Varro, and this is really
2 addressed to Mr. Mercer, the amendment proposed by Ms.
3 Haigh will involve some wordsmithing because there are
4 more differences than just the word "lawyer" or
5 "licensee" I gather in the two comparable sections to
6 this. This is not a place where we should be doing
7 drafting on the fly.

8 Perhaps, Mr. Mercer, those two sections
9 could be parked and you could come back with proposals
10 on how those two should correspond. Would that be
11 appropriate?

12 MR. MERCER: I would be delighted, if
13 that's acceptable to Ms. Haigh.

14 MS. HAIGH: It is.

15 TREASURER SCHABAS: Thank you. So we
16 have two motions. We've got the motion by Mr. Mercer
17 with the friendly amendment from Mr. Bickford, based on
18 his eagle eye, and further, I suppose amended to the
19 extent that the motion involved -- what's the number,
20 subsection D, that Ms. Haigh has raised where there's
21 an inconsistency between the paralegal and the lawyer
22 awards, which we will not amend today. So that's the
23 first motion. Have I framed it correctly?

24 MR. BICKFORD: Treasurer, can I
25 interrupt to say that there are other serious

1 inconsistencies that I raised.

2 TREASURER SCHABAS: I appreciate that.

3 MR. BICKFORD: Will we deal with those?

4 TREASURER SCHABAS: No, there are no
5 other inconsistencies or formatting differences that
6 are before us.

7 MR. BICKFORD: I didn't want to take the
8 time in outlining them, but there was almost a page or
9 two of serious concerns I had that the document, if it
10 is used as a template and goes to the tribunal, would
11 cause serious difficulties in establishing professional
12 misconduct.

13 TREASURER SCHABAS: You've made that
14 point, but we're not --

15 MR. BICKFORD: It's not a point, though.
16 It's a specific --

17 TREASURER SCHABAS: If you want to take
18 us through all of these concerns as a reason why this
19 motion should be defeated, this is your opportunity to
20 do it.

21 MR. MERCER: Can I suggest to
22 Mr. Bickford that the other way of doing that -- the
23 point with which I thought was clearly right is the
24 reason that I proposed at the outset the change that I
25 did. On the balance he and I have different views,

1 but, more importantly, we haven't had the opportunity
2 to take those through the working group or the
3 committees, and what I said to Mr. Bickford before and
4 I would hope that he would agree now, is that we take
5 those concerns back that he has and we see whether or
6 not others share his concern.

7 But it seems to me the better course is
8 to move on today with what we have today.

9 TREASURER SCHABAS: That strikes me as
10 reasonable, given that we know you're going to keep up
11 your work based on the vote earlier today. So is that
12 all right?

13 MR. BICKFORD: As long as those other
14 concerns will be taken up by the working committee, I'm
15 okay with that.

16 TREASURER SCHABAS: That's fine. The
17 other motion which we'll do second would be Mr.
18 Lerner's. Is that right? Hold on. So Mr. Varro, the
19 master of ceremonies, advises me that we must vote on
20 Mr. Lerner's amendment first. So that's -- have you
21 got a phrasing for that amendment, Mr. Varro?

22 SECRETARY: Yes, I do, Treasurer. I
23 just want to make sure I've captured the motion
24 correctly. So, Mr. Lerner, please let me know, and
25 Mr. Galati.

1 The motion is that the issue of awards
2 advertising be directed back to the Professional
3 Regulation Committee as to an approved list of awards
4 that licensees may use. Is that correct?

5 MR. LERNER: Yes, that's right. I don't
6 know that "included in that application" can be made to
7 be added to the list by people who feel that they were
8 not originally included.

9 TREASURER SCHABAS: Okay. Thank you.
10 And it's seconded by Mr. Galati and, as Mr. Mercer
11 said, it's not a friendly amendment to his motion.

12 So I'm going to ask all in favour of Mr.
13 Lerner's motion? Opposed?

14 MS. HARTMAN: Against.

15 TREASURER SCHABAS: On the phone, I
16 think the -- it's pretty clear in the room that the
17 motion is defeated, so I know I heard someone say
18 against on the telephone as well. So the motion is
19 defeated.

20 So we'll turn to the main motion. All
21 in favour? Opposed, if any, in the room? No hands
22 opposed. Anybody opposed on the telephone? Then the
23 motion carries. Thank you very much, Mr. Mercer.

24 We'll then turn -- Ms. Donnelly, you're
25 already there. Audit and Finance Committee.

1 -- AUDIT AND FINANCE COMMITTEE REPORT:

2 MS. DONNELLY: Thank you, Treasurer. We
3 have three matters for decision and one matter for
4 information.

5 We'll start with the business conduct
6 policy. The materials are found at page 164 of
7 BoardBooks or at tab 5.1. The motion is that
8 Convocation approve a revised business conduct policy
9 for employees of the Law Society, incorporating a third
10 party whistleblowing reporting mechanism.

11 The current policy sets out the Law
12 Society's appropriate business conduct and related
13 administrative requirements and is an important risk
14 management tool within the Law Society's internal
15 control environment. The policy is intended to ensure
16 consistently ethical and honest business conduct and is
17 regularly updated to ensure relevance.

18 The primary change to the policy is in
19 section 2, which it's proposed to incorporate
20 whistleblowing provisions using an external, secure and
21 anonymous reporting system.

22 The Law Society previously followed an
23 internal reporting mechanism using the management
24 hierarchy. The reason for the change to an external,
25 secure and anonymous reporting system is that this is a

1 less intimidating approach to whistleblowing. It
2 allows for anonymity and is considered to be a best
3 practice in effective risk management, mitigating
4 financial and reputational risk through early reporting
5 of inappropriate behaviour, including bullying,
6 harassment, fraud, corruption, and health and safety.

7 If law societies see, hear or suspect
8 misconduct, they can report the misconduct in
9 circumstances they feel comfortable and are supported
10 in doing so.

11 There will be at least an annual report
12 to the Audit and Finance Committee of the reports made
13 using this whistleblowing process, in addition to any
14 serious matters requiring the committee's attention.

15 Other changes to the policy are of a
16 housekeeping nature. Insertion of the words "general
17 counsel" after CEO, changes to section 6 to add the
18 phrase "HR managers".

19 I moved, seconded by Ms. Clément, that
20 Convocation approve a revised business conduct policy
21 for employees of the Law Society incorporating a third
22 party whistleblowing reporting mechanism.

23 TREASURER SCHABAS: Thank you very much.
24 Are there any questions or comments? Mr. Wright.

25 MR. WRIGHT: Thank you. This is long

1 overdue and a very good thing to do. You'll come back
2 to us, I presume, with the -- how the external party
3 will be selected?

4 TREASURER SCHABAS: I'm not sure that
5 needs to come back to Convocation, Mr. Wright. If
6 we've approved it, it can be dealt with operationally,
7 I would have thought, and subject to the approval of
8 the Finance Committee.

9 MR. WRIGHT: Well, not to be flip, but
10 that's a little bit like putting the fox in charge of
11 the henhouse. We should have some input or some
12 knowledge about how this external protected
13 whistleblowing mechanism will be set up and operate.

14 TREASURER SCHABAS: We can certainly
15 consider how that can be reported back to Convocation,
16 and if there are concerns they can be raised.

17 MR. WRIGHT: Thank you.

18 TREASURER SCHABAS: Any other comments
19 or questions?

20 MR. PORTER: Yes.

21 TREASURER SCHABAS: Yes, Mr. Porter.

22 MR. PORTER: Mr. Treasurer, I agree with
23 your position that shouldn't have to come back, that
24 what Mr. Wright proposed, that's too much interference
25 by Convocation as a whole on particular staffing.

1 Shouldn't occur.

2 TREASURER SCHABAS: Thank you. Is there
3 anybody with a question or comment on the telephone?
4 Anybody on the phone wish to comment or ask a question?
5 Hearing nothing, then I'll put it to a vote.

6 All in favour? Anybody opposed?
7 Anybody opposed on the telephone? The motion is
8 carried. Thank you.

9 MS. DONNELLY: Thank you, Treasurer.
10 The second is the change in investment policy. The
11 motion is found at page 173, tab 5.2 of BoardBooks, and
12 the motion is that Convocation approve a revised
13 investment policy for the Law Society which increases
14 the benchmark Canadian equity component from 15 percent
15 to 30 percent.

16 The proposed change to the investment
17 policy increases the target equity component from
18 15 percent to 30 percent, thereby decreasing the fixed
19 income component from 85 percent to 60 percent.

20 Investments total approximately
21 67 million on our balance sheet, so the dollar value
22 impact of these changes in the asset mix approximates
23 ten million.

24 Factors in the committee's decision were
25 the Law Society's reserve levels; there are sufficient

1 reserves to warrant a longer term investment strategy.
2 Secondly, the composition of the Law Society's primary
3 revenue sources, the core annual fee component is
4 relatively dependable. Thirdly, the Law Society's tax
5 status as a not-for-profit organization. Fourthly, we
6 appear to be in a rising interest rate environment,
7 which will reduce fixed income returns. Fifthly,
8 prudent investor principles; the proposed asset mix
9 achieves a good balance of risk versus reward, based on
10 data and advice provided by our investment consultants.
11 And, finally, the impact of investment fees, currency
12 risk and withholding taxes reduce the potential
13 diversification benefits of international exposure.

14 You will note the ongoing requirement
15 for at least an annual review of the investment policy.
16 So this will be used to monitor the impact of this
17 change in the asset mix.

18 The purpose, philosophy and objectives
19 of our current investment policy have not changed, nor
20 has our risk tolerance. As noted in the investment
21 policy, our philosophy, which is at paragraph 7 at page
22 177, states, "High risk securities, which could lead to
23 excessive volatility and the possibility of a reduction
24 in the capital value of the portfolio in a depressed
25 market are to be avoided".

1 And our primary objective in our
2 investment policy, page 178 of BoardBooks, is to
3 preserve and enhance the real capital base of the
4 portfolio.

5 I move, seconded by Mr. Cooper, that
6 Convocation approve a revised investment policy for the
7 Law Society which increases the benchmark Canadian
8 equity component from 15 percent to 30 percent.

9 TREASURER SCHABAS: Ms. McGrath?

10 MS. McGRATH: Thanks, Treasurer. The
11 motion is technically correct, because you refer to the
12 benchmark, but I think we all have to be aware that if
13 you look at the range, you're actually allowing your
14 investment advisors to invest up to 40 percent in
15 Canadian equities because the range goes from five to
16 25 to 20 to 40. So at the maximum level there can be a
17 higher portion of the investment in Canadian equities.

18 TREASURER SCHABAS: So are you
19 suggesting the motion be amended that the equity
20 component be increased to range from --

21 MS. McGRATH: Yes.

22 TREASURER SCHABAS: -- 20 to 40 percent?
23 Would that be a friendly amendment, Ms. Donnelly, since
24 there is that discretion, I suppose, within the course
25 of a review that the component could go up and down,

1 depending on how the market does.

2 MS. DONNELLY: Perhaps my seconder wants
3 to assist in whether he thinks it's a friendly
4 amendment.

5 TREASURER SCHABAS: The CEO tells me it
6 makes sense. Is the CFO all right with that?

7 MS. TYSALL: You need to take the word
8 "benchmark" out.

9 TREASURER SCHABAS: Yes, we take the
10 word benchmark out as well. I wondered about that too.
11 So it will read, "which increases the Canadian equity
12 component to be between 20 and 40 percent," is that
13 fair?

14 MS. DONNELLY: Yes, Treasurer.

15 TREASURER SCHABAS: Thank you.

16 Mr. Swaye.

17 MR. SWAYE: My only comment is remember
18 2008, because we've talked about this for the last 20
19 years in regard to these benchmarks, and don't put your
20 toe too much into the water because you could run into
21 difficulty. We've always taken the position for our
22 fiscal responsibility more conservatively than not.

23 TREASURER SCHABAS: Anybody else?

24 Mr. Wright.

25 MR. WRIGHT: 2008 and 2009 was exactly

1 the time to buy stock.

2 TREASURER SCHABAS: Mr. Porter.

3 MR. PORTER: Is this compulsory, the 15
4 to 30 percent?

5 TREASURER SCHABAS: Well, it's the
6 approved investment policy, so the expectation is
7 currently that an average of about fifteen percent is
8 in equities, and this would go up to, meaning those
9 that handle our money will put approximately 30 percent
10 of it into equities. It's a direction to our
11 investment advisor.

12 MR. PORTER: But it's 30 percent in
13 Canadian equities, as opposed to others.

14 TREASURER SCHABAS: That's what it says.

15 MR. PORTER: And what is the rationale
16 for that?

17 TREASURER SCHABAS: Well, I think
18 Ms. Donnelly gave you about six or seven reasons in her
19 points.

20 MR. PORTER: Well, I know she is a most
21 able Crown Attorney in her prosecution, but I --

22 TREASURER SCHABAS: Mr. Porter, she gave
23 us, I think, at least half a dozen...

24 MR. PORTER: Is there -- what does the
25 investment advisor say as to this proposal?

1 MS. DONNELLY: Supports it.

2 MR. PORTER: Thank you.

3 TREASURER SCHABAS: Anybody else in the
4 room? On the telephone? Anybody on the phone? All
5 right. Then all in favour? Those opposed? A couple
6 of people opposed. On the phone, anybody opposed on
7 the telephone? The motion carries. Thank you.

8 MS. DONNELLY: Thank you, Treasurer.
9 The third motion is found at page 186, tab 5.3, and
10 that's that Convocation approve an updated Treasurer
11 expense reimbursement policy.

12 At the instigation of the Treasurer, the
13 committee reviewed the current Treasurer expense
14 reimbursement policy with the objective of providing
15 more guidance to assist Treasurers in assessing what
16 courses, conferences and other events were appropriate
17 to attend as a representative of the Law Society, as
18 well as providing guidance on when it is appropriate
19 for the Law Society to pay for a spouse, guest, and
20 whether different criteria were required for travel
21 within Ontario, compared to travel in the rest of
22 Canada and internationally.

23 The red-line version of the policy is
24 found at page 187. The policy was compared to the
25 current policy standards of other law societies,

1 federal and provincial governments, and the for profit
2 sector.

3 The proposed new policy emphasizes that
4 reimbursable expenses must be clearly related to the
5 mandate of the Law Society and be reasonable,
6 appropriate, and properly explained and documented.
7 Whereas previously the chair of Audit and Finance or
8 the CEO was responsible for approving expenses related
9 to travel outside of Ontario and exceptions to the
10 policy, the new policy requires that both the chair and
11 the CEO provide their approval.

12 The new policy provides a guide for
13 reasonable meal and beverage expenses per day. The new
14 policy notes that the Treasurer may be invited to
15 attend events where a Treasurer is expected to be
16 accompanied by a guest. The additional expenses
17 incurred for a guest to attend such an event would be
18 reimbursed in accordance with the policy. The new
19 policy contains improved guidance for Treasurers on
20 assessing the appropriateness of expenses.

21 I move, seconded by Ms. Clément, that
22 Convocation approve the revised Treasurer expense
23 reimbursement policy.

24 TREASURER SCHABAS: Any questions or
25 comments in the room? On the telephone? Anybody on

1 the telephone? Mr. McDowell, you put up your hand
2 late.

3 MR. McDOWELL: Well, I can phone it in,
4 if you like. Just a question and a comment. Some of
5 this, it seems to me, a little hectoring of the present
6 and future Treasurers, the use of taxis and public
7 transport.

8 I mean, speaking for myself, I don't
9 expect Treasurer Schabas to take the airport bus --
10 UPX, fine, but that's kind of a business class train.

11 Just a comment about business class
12 travel. When I was in the federal government, the
13 guideline was that business class was authorized over
14 three hours, where the flight was three hours long or
15 more, and the rationale for that was you didn't want
16 senior public servants sitting doing nothing, cramped
17 into little economy class things when they could be
18 reading materials and spreading out and actually
19 getting something done.

20 I suspect we're going to approve this as
21 it is, but there is a reason for some of this. The use
22 of limousines may look as though it's a frivolous
23 expense, but it isn't to the extent that they can be
24 used to make business calls and so on behalf of the Law
25 Society.

1 So I just say to the committee that I
2 applaud the amendments, I think that the increased
3 accountability is important, but at the same time there
4 are things that the Treasurer has enjoyed in the past
5 and should enjoy in the future that aren't simply
6 perks. There's a functional reason for them.

7 TREASURER SCHABAS: And I can echo that,
8 Mr. McDowell. I certainly appreciate that and your
9 comments. I'm not shy about using limousines. If I
10 have to go and give a speech an hour outside of Toronto
11 and it's better for me to make use of my time in the
12 back seat, rather than driving myself. I appreciate
13 that we do have the policy for I think it's a four hour
14 plus flight for business class, and that's what we're
15 doing, and that's consistent with a number of other
16 policies that I've seen.

17 I want to just thank the Audit and
18 Finance Committee for dealing with this. It was at my
19 initiative. I think some of the clarity that this
20 brings, frankly, is long overdue. Ms. McGrath.

21 MS. McGRATH: Yes, I'd just like to
22 point out in talking about economy and business class
23 travel that I think there is a word missing in the last
24 line. Because right now it says "between class ticket
25 and available economy," I think it should say "business

1 class".

2 TREASURER SCHABAS: Thank you. Good
3 catch. All right. Any other comments? Then I'll put
4 it to a vote. All in favour? Anyone opposed? I guess
5 it's not necessary to go to the phone, it's unanimous
6 in the room. So the motion carries. Thank you. Thank
7 you, Ms. Donnelly.

8 MS. DONNELLY: Finally, Treasurer, I'd
9 just like to draw Convocation's attention at page 215
10 of BoardBooks that the Audit and Finance Committee
11 reviewed the draft budget of the Federation of Law
12 Societies of Canada and, as requested by the
13 Federation, our feedback will be provided to the
14 Federation for its budget planning.

15 TREASURER SCHABAS: Thank you very much.
16 I'm sure the Federation will thank you too.

17 Mr. Earnshaw, did you want to say
18 something?

19 MR. EARNSHAW: Yes, it's already been
20 done.

21 TREASURER SCHABAS: And they've thanked
22 us too, I'm sure. Mr. Wardle, the Professional
23 Development and Competence Report.

24 -- PROFESSIONAL DEVELOPMENT AND
25 COMPETENCE COMMITTEE REPORT:

1 MR. WARDLE: Thank you, Treasurer. I
2 have two matters for today, one for decision, one for
3 information.

4 The first matter for decision is found
5 at page 219 of BoardBooks, and the motion is that
6 Convocation approve amendments to by-law 4 and by-law
7 7.1 in accordance with the bilingual motion set out at
8 tab 6.1.1 and 6.1.2, and this motion is made by me and
9 seconded by Ms. Horvat.

10 So the rationale for this motion, as
11 you'll recall the background of this, in May 2015,
12 Convocation approved the amendment of Law Society
13 by-laws to ensure that they enabled law student
14 experiential learning, provided that law students were
15 adequately supervised.

16 And there were amendments made and
17 passed at that time in June of 2015 to by-laws 4 and
18 by-law 7.1, which were focused primarily on student
19 Legal Aid Societies or SLASs.

20 Immediately after the May Convocation, a
21 number of law schools raised concerns that the
22 amendments would not cover experiential programs
23 operating under the auspices of the law schools
24 themselves and there was additional discussion that
25 went on for a lengthy period of time with our

1 stakeholders, and we have now come up with a new
2 revised version of what is now going to be contained in
3 by-law 7.1.

4 In addition, we've also determined that
5 there should be amendments to by-law 7.1 to permit
6 Ontario educational institutions that offer a legal
7 services program, and none of them do at the moment,
8 but we anticipate that they may in future, to provide
9 paralegal students with experiential learning
10 opportunities.

11 And I just want to have a shout-out here
12 for Ms. Vespry, who brought this to our attention, and
13 as a result it's been included in the new by-law.

14 I won't get into the substance in any
15 great detail. Some of you may be concerned that we
16 have appropriate language in the by-laws that deals
17 with supervision of law students, and you will see that
18 that particular provision is set out at page 228 of
19 BoardBooks.

20 I don't think any of the amendments are
21 controversial. We're now moving the whole subject out
22 of by-law 4 and into by-law 7.1, where we believe it
23 more appropriately belongs. And I'm happy to take --
24 answer any questions.

25 TREASURER SCHABAS: Are there any

1 questions for Mr. Wardle? Mr. Bickford. Mr. Bickford
2 could you speak directly into the microphone.

3 MR. BICKFORD: I haven't -- I must
4 confess I haven't read the presentation to your
5 amendment in detail, but you mentioned experiential
6 learning. I'm just wondering, do your amendments
7 affect the special provision applying to Lakehead
8 University Law School which permits experiential
9 learning as part of the curriculum?

10 MR. WARDLE: I'm being advised by
11 Ms. Miles that it does not.

12 TREASURER SCHABAS: It does not affect
13 them. They will be able to keep doing the things
14 they're doing.

15 MR. WARDLE: Correct.

16 TREASURER SCHABAS: Right. Any other
17 questions?

18 MR. BICKFORD: Sorry, what was that
19 answer?

20 MR. WARDLE: The answer was it does not.

21 MR. BICKFORD: It does not. Thank you.

22 TREASURER SCHABAS: Any other questions
23 or comments in the room? On the telephone? Anybody on
24 the phone wish to comment? Then it's moved by you, Mr.
25 Wardle, seconded by --

1 MR. WARDLE: Ms. Horvat.

2 TREASURER SCHABAS: Ms. Horvat. All in
3 favour? Anybody opposed? I suppose I should ask if
4 there's anybody opposed on the phone. It seems to be
5 unanimous in the room. Anyone opposed? Then the
6 motion carries. Thank you.

7 MR. WARDLE: Thank you very much,
8 Treasurer. The next matter is really for information.
9 You'll see at 6.2 of BoardBooks, starting at page 266,
10 you'll see a summary of the licensing process analysis
11 which we're calling the dialogue on licensing
12 engagement protocol.

13 This arises out of the discussions we
14 had last fall about the Law Practice Program. You'll
15 recall at that point I promised that the PD&C committee
16 would come back to Convocation in the spring, and we're
17 actually back to you earlier than the spring, with a
18 plan to move forward, and I promised that that plan
19 would involve a new way of engaging with our
20 stakeholders.

21 So this dialogue is actually a new
22 departure for the Law Society. It is a process where
23 we will be engaged in facilitated meetings with our
24 stakeholders to talk to them and dialogue with them
25 about various aspects of the licensing process. It's

1 going to be an effort to both disseminate information
2 about our licensing process and some of our current
3 stresses and difficulties, but also to engage our
4 stakeholders in hopefully building a new licensing
5 structure. And it's going to roll out over the next
6 six month period. We're hoping to start it in April
7 and have it wrapped up by September.

8 It's going to be at various locations
9 across the province. We have a facilitator, a
10 professional facilitator who is going to be involved,
11 and at some stage during the process we're hopeful that
12 we will have an information session for Benchers.

13 I just want to bring to everyone's
14 attention that time is not going to allow us to stand
15 still on this issue. Just to give you one new
16 statistic, last year the number of applicants coming
17 into our licensing system through the NCA process rose
18 by 18 percent, and that number over a decade is about
19 70 percent.

20 So the stresses on our system, and
21 particularly on articling, are not abating. And you
22 don't have to go very far, you can just pick up your
23 Globe & Mail to see an advertisement from a university
24 like Leicester in England which promises young people
25 that they don't have to go through an examination

1 process, they can just come to Leicester and take their
2 degree and come back and practice law.

3 So those are the stresses that we're
4 facing and, hence, the process we're going to be going
5 through.

6 We will be coming back to the committee
7 in the fall to wrestle this issue to the ground once
8 more, hopefully well informed by the discussions we
9 will have had with our stakeholders, and then the plan
10 is to come back to Convocation with a more
11 comprehensive set of recommendations, hopefully in
12 early 2018.

13 You'll recall that in some of our
14 efforts in the past we were criticized by stakeholder
15 groups for not giving them enough time and not allowing
16 for meaningful dialogue and we're hopeful that this
17 will be a more constructive way of moving forward.

18 So, again, this is for information, it's
19 not for decision today, but I'm happy to take any
20 questions.

21 TREASURER SCHABAS: Thank you. Are
22 there any questions at this time for Mr. Wardle? Yes,
23 Ms. Go.

24 MS. GO: It's not a question, but I
25 guess to the extent possible to invite the community to

1 kind of consider starting to collect data, particularly
2 demographic data, from the different people who may or
3 may not be affected by whatever decisions that come.
4 Because I think part of the criticisms that I've heard
5 is about the impact of the changes on certain
6 underrepresented groups, for instance.

7 So I think having those kind of data or
8 the collection of that data from day one will be very
9 helpful.

10 TREASURER SCHABAS: Thank you, Ms. Go.
11 Anybody else? Ms. Pawlitzka.

12 MS. PAWLITZA: Yes, the Federation's
13 conducting a review through external reviewers of the
14 National Committee on Accreditation, so I'm just
15 wondering how that information is going to get fed back
16 into the process and what the timing is of both.

17 MR. WARDLE: I think Ms. Miles and I are
18 both on a steering committee and Ms. Miles either has
19 been or is shortly going to a meeting with the
20 consultants in Ottawa to discuss that process that's
21 ongoing.

22 As some people in the room may know, the
23 Federation has retained an outside consultant to look
24 at the NCA process. We have been pushing for changes
25 to the NCA process that will allow it to more closely

1 adhere to the requirements of our licensing system,
2 but, again, the process is still underway, as I
3 understand it, and we're nowhere near, I don't think, a
4 draft report from consultants.

5 TREASURER SCHABAS: Anybody on the
6 telephone with any questions or comments?

7 MR. FALCONER: Yes, Julian Falconer
8 here, Treasurer. I'm hoping to make a comment.

9 TREASURER SCHABAS: Go ahead, Mr.
10 Falconer. The floor is yours.

11 MR. FALCONER: I understand that it
12 would be a far more complex task regulating or
13 attempting to regulate folks outside Ontario, in fact,
14 Canada jurisdiction in terms of their advertising, but
15 I bring up for consideration the example Mr. Wardle
16 just gave about advertising in the Globe & Mail, which
17 amounts to, in essence, or could amount to advertising
18 concerning the ability to practice law in the Province
19 of Ontario, and I ask our advertising committee and
20 PD&C to consider whether there's limits on how
21 institutions can market our licensing process.

22 It may well be that we can require, to
23 the extent they are advertising in the Province of
24 Ontario, concerning practising law in the Province of
25 Ontario, that we can put riders on that, including

1 requiring some kind of fine print or statement that
2 subject to the requirements of Law Society of Upper
3 Canada concerning X, Y and Z.

4 We shouldn't be presented as an open
5 door. I don't say this is an easy exercise. We're
6 encountering the challenges right now with the
7 advertising discussions we're having, but at the same
8 time, we shouldn't, in my view, be simply lambs to the
9 slaughter in terms of the kind of advertising they
10 engage in.

11 TREASURER SCHABAS: Thank you, Mr.
12 Falconer. Anybody else? Then thank you very much, Mr.
13 Wardle.

14 Ms. Corbiere, the Equity and Indigenous
15 Issues Committee Report.

16 -- EQUITY AND ABORIGINAL ISSUES

17 COMMITTEE REPORT:

18 MS. CORBIERE: I can sit down, it's
19 already done? Treasurer's prerogative.

20 Thank you, Treasurer. The Equity and
21 Aboriginal Issues Committee would like to change its
22 name, and we're bringing a motion to Convocation to
23 approve the amendments of by-law 3 and by-law 11 in
24 accordance with the motion set out tab 7.1.1, and the
25 motion to amend by-laws 3 and 11.

1 This motion is moved by me and seconded
2 by Sandra Nishikawa. And just some background is, as
3 you know, language is fluid and constantly evolving.
4 The term Indigenous has gained prominence as a
5 collective term to describe First Nations, Métis and
6 Inuit peoples. In 2007 the General Assembly of the
7 United Nations adopted the United Nations declaration
8 on the rights of Indigenous Peoples, and that was
9 officially adopted by Canada in 2016.

10 We note that a number of organizations,
11 not as old as the Law Society, have changed their
12 names, and they have -- including Indigenous rather
13 than Aboriginal. For example, in 2015 the Federal
14 Ministry of Aboriginal Affairs and Northern Development
15 has changed its name to Indigenous and Northern Affairs
16 Canada. In June 2016, the Ministry of Aboriginal
17 Affairs was renamed the Ministry of Indigenous
18 Relations and Reconciliation.

19 Most importantly, Indigenous people have
20 chosen to self-identify as such, and the professional
21 organization that's national in Canada is the
22 Indigenous Bar Association, and they have been
23 Indigenous since their inception.

24 So the committee unanimously supports
25 changing the name of the committee to include the term

1 "Indigenous" instead of "Aboriginal", and also
2 determined that instead of "issues," the term "affairs"
3 should be used in the committee name. The word
4 "issues" alludes to problems, whereas the word
5 "affairs" speaks to building relationships and
6 reconciliation.

7 So the proposed amendments to by-law 3
8 and by-law 11 reflect the use of Indigenous and affairs
9 and are outlined again at 7.1.2 and tab 7.1.3.

10 TREASURER SCHABAS: Thank you very much.

11 MS. CORBIERE: And in the interests of
12 time I wouldn't propose to go through them.

13 TREASURER SCHABAS: Are there any
14 questions or comments? Mr. Galati.

15 MR. GALATI: Very briefly, I welcome
16 this motion because when I was at McGill University
17 studying and majoring in clinical linguistics, I
18 actually wrote a paper on the word "aboriginal," and I
19 just talked to the Windsor law students two weeks ago
20 and this issue came up again.

21 The Latin prefix "ab" is a negative,
22 connotes negativity; abnormal, abhorrent and so on, and
23 this has an impact on people here. So language is
24 important and I'm glad to see this on the table.

25 TREASURER SCHABAS: Anybody else in the

1 room or on the telephone? On the telephone?

2 MR. FALCONER: Treasurer, Julian
3 Falconer here again.

4 TREASURER SCHABAS: Yes, Mr. Falconer.

5 MR. FALCONER: As co-chair with my
6 colleague, Ms. Corbiere, and our vice-chairs, I just
7 wanted to indicate that one of the real values to
8 having equity partners on our committee is, in this
9 case, the Indigenous Advisory Group was very much a
10 part of this name change and part of their wisdom and
11 advice in getting us there. So I just want to
12 acknowledge their contribution and how important it is,
13 especially in moments like this.

14 TREASURER SCHABAS: Thank you very much.
15 I will put it to a vote. All in favour? Is there
16 anybody opposed in the room? Anybody opposed on the
17 telephone? The motion is carried unanimously. Thank
18 you, Ms. Corbiere.

19 MS. CORBIERE: Thank you.

20 TREASURER SCHABAS: Now, Ms. Donnelly,
21 you're back to tell us about the Human Rights
22 Monitoring Group.

23 MS. DONNELLY: That's right, Treasurer.
24 The motion is found at tab 7.2, page 300, and that is
25 that Convocation approve the letters and public

1 statements in 13 cases involving 19 lawyers in 11
2 different countries.

3 And I'll just tell you that it really
4 was -- when we started at the beginning of the month it
5 was 20 lawyers in twelve different countries. There
6 was an urgent case that was brought to our attention by
7 Ms. Matas of Lerner about Felix Agbor-Balla in
8 Cameroon, and the Treasurer approved that intervention
9 immediately because Mr. Balla was being tried on the
10 Monday and the Treasurer approved it over the weekend.

11 So we have for you 13 cases, 19 lawyers,
12 eleven different countries. All of the requests for
13 intervention fall within the mandate of the Human
14 Rights Monitoring Group. There are no concerns with
15 the quality of the sources used for these reports and
16 in each case the lawyer's human rights have been
17 violated as a result of the discharge of their
18 legitimate professional duties.

19 The violations or persecutions involve
20 the following: Harassment in Kenya, Russia and the
21 Dominican Republic; disbarment in Burundi; licence
22 suspensions in Burundi and China; arrests and
23 detentions in Turkey, Bangladesh and China; a travel
24 ban in Egypt; the disappearance of Eric Iga Iga in
25 Gabon and the murders in the Philippines and Myanmar.

1 Arlan Castañeda, a Filipino lawyer was murdered on
2 December 20th, 2016, and U Ko Ni, a lawyer in Myanmar
3 was shot in the head and killed on January 29th, 2017.

4 The motion is moved by me and seconded
5 by Mr. Evans.

6 TREASURER SCHABAS: All right. Any
7 comments or questions? Mr. Wright.

8 MR. WRIGHT: It seems that the problem
9 is worsening over time. It's a longer list than we've
10 ever had. The work that your monitoring group is doing
11 is, therefore, more useful today than it has ever been.

12 Most of the interventions have to do
13 with the persecution or abuse of lawyers, typically by
14 governments, but sometimes there's abuse by lawyers.

15 I don't know how many people saw it on
16 TVO a week or two ago. The show was called "The Love
17 Commandos," and they're group in India that try to help
18 downtrodden people, particularly women and people from
19 lower castes, who are discriminated against.

20 A chilling, chilling part of that show
21 was a lawyer who was identified by name and looked into
22 the camera and said words to this effect. I haven't
23 transcribed it. "If my sister were to have a
24 relationship that we don't approve of, I will take her
25 back to my house myself, douse her in kerosene and set

1 her alight." Unbelievable.

2 Is there any utility in the Human Rights
3 Monitoring Group looking into that and maybe sending a
4 request to the government of India to look into abuse
5 by lawyers of that type?

6 MS. DONNELLY: I would say in response
7 to that that the mandate of the Human Rights Monitoring
8 Group is set, and that is human rights violations
9 involving lawyers and judges.

10 We are now looking at our mandate and we
11 certainly can discuss this at our next committee
12 meeting.

13 TREASURER SCHABAS: Thank you very much.
14 Anybody else? Ms. Donnelly, Mr. Varro and I just
15 missed the name of your seconder.

16 MS. DONNELLY: Sorry, Mr. Evans.

17 TREASURER SCHABAS: Thank you. Anybody
18 on the telephone with comments? All in favour? Anyone
19 opposed? Is there anybody opposed on the phone? The
20 motion is carried. Thank you, Ms. Donnelly.

21 You had requested, Ms. Donnelly, that we
22 look at the videos.

23 MS. DONNELLY: I think that we may not
24 have time; is that right, Treasurer?

25 TREASURER SCHABAS: I think we are

1 inevitably in a position -- I hate to break the news to
2 everybody that we are going to have to reconvene after
3 lunch for the in camera session, which I suspect will
4 take a little time. There are a number of issues in
5 camera.

6 So we have two brief matters; Mr. Anand
7 on the Appointment Advisory Group, and Ms. Leiper. If
8 people would like -- I know some of you were here last
9 night. Ms. Donnelly had hoped to play for all of us
10 these two short videos about Waleed Abu al-Khair and
11 Cindy Blackstock. I'm just wondering whether people
12 would like to watch them now.

13 MR. WRIGHT: After lunch.

14 TREASURER SCHABAS: Maybe we'll do it
15 then. We'll leave it. They're also available on the
16 website. So in the interests of time, I'll follow you,
17 Ms. Donnelly, and we'll move forward. So thank you.
18 Mr. Anand.

19 -- TREASURER'S APPOINTMENTS ADVISORY

20 GROUP REPORT:

21 MR. ANAND: I have to tell you, this is
22 the first I was told that I was presenting something at
23 Convocation today.

24 TREASURER SCHABAS: I'm sorry.

25 MR. ANAND: So I will try to find what

1 it is that I'm presenting.

2 TREASURER SCHABAS: You can't remember
3 from December?

4 MR. EVANS: Page 430.

5 TREASURER SCHABAS: It's at tab 8. I
6 can help you out here, Mr. Anand. This is the external
7 appointment process that we've talked about a few
8 times.

9 MR. ANAND: That's fine. I remember
10 preparing this in December. This is actually an
11 amendment or a revision of a policy that was under
12 consideration in the spring of last year under
13 Treasurer Minor, and at the appointment -- Treasurer's
14 Appointments Advisory Committee in the fall we looked
15 at this policy and I think it's fair to say, tweaked it
16 more than anything else, in line with the policy
17 statement that's at paragraph 9 at page 431 about the
18 Law Society's commitment to respecting principles of
19 equality as well as transparency.

20 And so, in accordance with that,
21 although there have been some appointments proposed
22 that have gone forward, I think as the Treasurer noted
23 last fall, under this policy we're formally asking for
24 consideration by Convocation of passage of the policy
25 itself, and the particulars of the process, again,

1 which Benchers will be conscious of from, for example,
2 the special Convocation that was held in November to
3 deal with one of the committees to which we --
4 governmental committees to which we make appointments
5 or proposals for more than one choice for the
6 government to appoint.

7 So at paragraph 10 there's a number of
8 the sources that we are going to be -- we are
9 suggesting be put -- the appointments be put in,
10 records are kept in terms of timelines and there is --
11 I believe there is in these materials, and there has
12 been for the Treasurer's Appointments Advisory Group, a
13 sort of ongoing running list of the appointments that
14 are forthcoming so that we can anticipate them, rather
15 than deal with them after the fact once there have been
16 vacancies.

17 The advisory group has met several times
18 and has looked at appointments on this running list,
19 some of which will be considered in camera, and is
20 bringing forward proposals under that. So in terms of
21 the passage of the policy, I will move it.

22 TREASURER SCHABAS: I guess we need a
23 seconder.

24 MR. ANAND: Seconded by one of the
25 members of the committee, Ms. Corsetti.

1 TREASURER SCHABAS: Great, thank you. I
2 should also just add that we have been following this
3 policy since the fall. The group, as Mr. Anand says,
4 has been meeting regularly with me and we have -- there
5 is a rolling list, you can see, of various things that
6 have come up so that we're considering all of the
7 criteria and considerations that we think should be
8 met.

9 I can tell you that -- you may all
10 recall the brief telephone Convocation we had to
11 approve the appointments to the Judicial Appointments
12 Advisory Committee and, of course, we followed that
13 policy then. We had to do it in a more hurried way
14 than we wanted to, but it certainly got the attention
15 of the Minister of Justice and her staff, who applauded
16 us for being the only Law Society that had such a
17 policy and had the principles contained in it that
18 we're to be commended for.

19 So with that, any questions before we
20 put it to a vote? Mr. Burd.

21 MR. BURD: This may not be directly on
22 point and may not go to this committee or governance,
23 but I note that the external appointments for the
24 Justice of the Peace Advisory Committee and the Justice
25 of the Peace Review Council requires it only be a

1 lawyer. I know that's probably a requisite by the
2 Attorney General, but is there any sort of thought
3 about having that include a paralegal?

4 And the only reason why I say that is
5 paralegals appear in front of Justices of the Peace
6 daily, more so than lawyers do, no offence to a lawyer
7 in being able to accurately indicate whether or not a
8 person is suitable for a Justice of the Peace or, in
9 fact, if a Justice of the Peace has erred in their
10 conduct. I just think it would be something to show
11 that the Law Society is treating its members equally
12 that we consider that it be a licensee rather than just
13 a lawyer for those reasons.

14 TREASURER SCHABAS: Sure. I see
15 Ms. Weir whispering to Mr. Anand. Go ahead, Mr. Anand.

16 MR. ANAND: I was just going to say
17 and -- in addition to what Ms. Weir just told me, that
18 this is an issue, this very issue is something that
19 we've considered at the committee, it's come up in the
20 context of some of the appointments to which we've made
21 recommendations, and as Ms. Weir has just passed on to
22 me, it was a recommendation of the five-year review of
23 paralegals and it's something which is on the radar of
24 the Attorney General.

25 As of now it's subject to legislation so

1 we have to obviously abide by the legislation as it
2 stands right now.

3 TREASURER SCHABAS: Thank you for
4 bringing that back to our attention. Mr. Cooper.

5 MR. COOPER: Very quickly, as a new
6 Bencher, as I used to be called --

7 TREASURER SCHABAS: You're not a new
8 Bencher.

9 MR. COOPER: As I used to be called a
10 couple of years ago, I want to thank the change that
11 has occurred. I look to also thank those that helped
12 inspire part of the move, at least in my view,
13 Mr. Galati, Ms. Nishikawa, Mr. Falconer. Thank you.

14 TREASURER SCHABAS: Thank you,
15 Mr. Cooper. Anybody on the telephone wish to say
16 anything? Hearing nothing other than some rustling of
17 papers, I'll ask that we vote.

18 All in favour? Anybody opposed?
19 Anybody opposed on the telephone? The motion is
20 carried. Thank you, Mr. Anand. I appreciate you doing
21 that on the fly, as it were. Ms. Leiper.

22 -- GOVERNANCE TASK FORCE 2016 REPORT:

23 MS. LEIPER: Thank you, Treasurer.
24 Treasurer, Members of Convocation, President Guay,
25 Maitre Deforges et Martel, bienvenue. Ajourd'hui nous

1 introduisons une position de modification des élections
2 de conseiller et conseillère.

3 The report is at page 437 of BoardBooks.
4 It was authored by Mr. Varro and Mr. Strawczynski. I'm
5 not going to go through it in detail because today this
6 is not up for decision, it's up to make this public, to
7 go out for comment, and we will return to you in the
8 spring to ask you to adopt it.

9 We are proposing that we change the
10 election cycle so that the paralegal Benchers elections
11 synchronize with the lawyer elections.

12 The practical upshot of this is that the
13 current paralegal Benchers will have an additional year
14 in their term in order for us to synchronize.

15 The original reasons are set out as to
16 why we had two different elections. Those are set out
17 well in the report. Essentially it was part of a
18 transition to having elected paralegal Benchers, and
19 now that that period of transition is through, our
20 colleagues should be elected at the same time as the
21 lawyer Benchers. It makes sense, it's more efficient,
22 and there is really no governance reason to continue
23 having staggered elections.

24 So because this does effect the length
25 of the current paralegal Benchers term, we felt it was

1 important that we publish this in the Ontario Reports,
2 allow particularly the paralegal profession to comment
3 and have any input into this decision that we would
4 then bring back to you in the spring.

5 So that's the first piece of that
6 report. The second piece, we were also asked to look
7 at whether or not the election period for -- well,
8 currently the lawyer Benchers election was too long, and
9 there was the thought that maybe this was contributing
10 to election fatigue and perhaps why people would put it
11 to the edge of their desk and we weren't seeing the
12 same voter turnout.

13 Now that we are proposing there be
14 essentially two elections run at the same time, given
15 the potential complications and the added work that
16 that will put on our elections officer, and also given
17 the fact that the way the election dates are now set
18 out it will be about two week window for the 2019
19 election, we do not propose at this time to try to
20 shorten it further. So that's in your report as well.

21 Happy to take any questions on behalf of
22 the task force, but that's what we have for you today.

23 TREASURER SCHABAS: Thank you very much.
24 Any questions or comments? Anybody on the telephone
25 with questions or comments, bearing in mind that you

1 stand between us and lunch. Thank you very much,
2 Ms. Leiper.

3 So there are, as I said, a number of
4 matters in camera. That concludes the public portion
5 of the agenda. There are a number of matters,
6 important matters that we have to address in camera
7 where we can't possibly do them in the 20 minutes
8 remaining before the last time we would take lunch. So
9 I'm going to adjourn now and ask everyone to return at
10 2:15. Thank you.

11 --- Whereupon the in public proceedings adjourned at
12 12:40 p.m.

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15

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

20
21

22 SHARI CORKUM, C.S.R.

23 Computer-Aided Transcript

24
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