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CONVOCATION

PUBLIC SESSION

THURSDAY, FEBRUARY 22nd, 2018 - 9:00 a.m.

OSGOODE HALL, TORONTO

## 1 CONVOCAATION ATTENDANCE

2 Treasurer - Paul Schabas

3	Vern Krishna	Harvey Strosberg (ph.)
4	Suzanne Clément	Seymour Epstein
5	Jan Richardson	Gerald Sheff
6	Baljit Sikand	Catherine Strosberg
7	Larry Banack	Paul Copeland (ph.)
8	Patrick Furlong	Gary Lloyd Gottlieb
9	Ross Murray	Judith M. Potter
10	Heather Ross	Gerald A. Swaye
11	Bradley H. Wright	Peter Beach
12	Fred Bickford	Jack Braithwaite
13	Christopher D. Bredt	Robert Burd
14	John Callaghan	Paul Cooper
15	Cathy Corsetti	Janis Criger
16	Teresa Donnelly	Ross F. Earnshaw
17	Robert Evans	Julian Falconer
18	Rocco Galati	Avvy Go
19	Howard Goldblatt	Joseph Groia
20	Michelle Haigh	Carol Hartman
21	Jacqueline Horvat	David Howell
22	Brian Lawrie	Jeffrey Lem (ph.)
23	Janet Leiper	Michael Lerner
24	Marian Lippa	Virginia MacLean
25	Susan T. McGrath	Isfahan Merali

1	Malcolm Mercer	Barbara Murchie
2	Gina Papageorgiou	Susan Richer
3	Jonathan Rosenthal (ph.)	Raj Sharda
4	Andrew Spurgeon	Sidney Troister
5	Jerry Udell	M. Anne Vespry
6	Tanya Walker (ph.)	Peter Wardle
7	Heather Zordel	Thomas G. Conway
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INDEX

MATTER :	PAGE NO.
TREASURER'S REMARKS . . . . .	5
CONSENT AGENDA . . . . .	11
PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT . . . . .	12
EQUITY AND INDIGENOUS AFFAIRS COMMITTEE REPORT. .	26
STRATEGIC COMMUNICATIONS STEERING GROUP REPORT. .	30
GOVERNANCE TASK FORCE REPORT . . . . .	37
PROFESSIONAL REGULATION COMMITTEE REPORT . . . .	75

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

2 -- TREASURER'S REMARKS:

3 TREASURER SCHABAS: Good morning,  
4 everybody, and welcome to Convocation and welcome to  
5 anyone who is joining via the public webcast today.  
6 Bonjour, bienvenue au Conseil en personne et par la  
7 webémission publique.

8 I want to start by recognizing that  
9 we're here together in Toronto, which is a Mohawk word  
10 for "where there are trees standing in the water" and  
11 many of us have our trees standing in the water this  
12 week in the rain.

13 I want to acknowledge that we are on the  
14 traditional territory of the Mississaugas of the New  
15 Credit First Nation and to acknowledge the  
16 Haudenosaunee peoples and to the long history of all of  
17 the First Nations in Ontario, the Métis and the Inuit.  
18 I want to thank the First Nations people who have lived  
19 and live in these lands with us in peace.

20 I would like to welcome everyone to  
21 Convocation in the Lamont Centre at the Law Society.  
22 First, for any members of the profession, the public  
23 and the press who attend, we ask that you not take  
24 photographs or videos during the meeting; you may  
25 unobtrusively make an audio recording, but only for the

1 purpose of confirming the accuracy of remarks made  
2 during the meeting. We do produce a full transcript of  
3 the public portion of Convocation, and there will be an  
4 archived webcast of the meeting available shortly on  
5 our website.

6 Secondly, this is a business meeting and  
7 we will be going through an agenda. The public are  
8 here to observe, but not to participate.

9 For those who are on the phone, and once  
10 we determine who is on the telephone we will, of  
11 course, place you in lecture mode, which means you will  
12 be muted, but you will be able to hear everything, and  
13 we will come out of lecture mode to hear callers who  
14 wish to speak and to vote. During that time while  
15 we're not in lecture mode I would ask callers to star 6  
16 on their telephones so that we don't hear any  
17 unnecessary noise.

18 With that, I want to confirm who is on  
19 the phone. Mr. Lem?

20 MR. LEM: Here.

21 TREASURER SCHABAS: Mr. Rosenthal?

22 MR. ROSENTHAL: Good morning.

23 TREASURER SCHABAS: Ms. Walker?

24 MS. WALKER: Good morning.

25 TREASURER SCHABAS: Is there anybody

1 else on the telephone?

2 MR. COPELAND: Paul Copeland.

3 TREASURER SCHABAS: Mr. Copeland, thank  
4 you. Anybody else?

5 MR. STROSBURG: Harvey Strosberg,  
6 Treasurer. Good morning to you and good morning,  
7 Cathy.

8 TREASURER SCHABAS: Good morning,  
9 Mr. Strosberg, from all of us. Is there anybody else  
10 on the phone? Don't all speak at once. Okay.

11 I'd like to acknowledge the passing away  
12 recently of Mary Patricia Weaver of Weaver Simmons LLP  
13 in Sudbury. She died on January the 27th, 2018, at the  
14 age of 90. Ms. Weaver was a Bencher from 1983 to 1995,  
15 and she was quite a trailblazer, graduating from  
16 Osgoode Hall in 1950.

17 She is recognized as one of the first  
18 female lawyers in Northern Ontario, and the Law Society  
19 awarded her the Laura Legge Award in 2012.

20 On behalf of Convocation I would like to  
21 pass on my condolences to the Weaver family and to  
22 Mr. Braithwaite and his colleagues at Weaver Simmons  
23 LLP.

24 On February 15th I was pleased to attend  
25 and give greetings on behalf of the Law Society at the

1 swearing in ceremony for the Honourable Sandra  
2 Nishikawa. Many of us were in attendance to celebrate  
3 a wonderful addition to the Superior Court. I did  
4 note, however, that in my view it was a bad day for the  
5 Law Society. She will be missed.

6 As I mentioned in November, over the  
7 course of the fall and winter I set out to visit the  
8 law schools across the province, and on February 12th I  
9 did my final visit to Queen's University. The feedback  
10 I got was that my visits were well received by the  
11 students and by the faculty who attended the sessions.  
12 I understand it's been some time since a Treasurer did  
13 the rounds to all of the law schools and I think that I  
14 probably learned as much, if not more, from the  
15 students as they did from me about the challenges we  
16 are facing as a regulator.

17 I heard about their concerns and  
18 uncertainty regarding our licensing process, regarding  
19 access to the profession, numbers, equity and  
20 diversity issues and the challenges, the future  
21 challenges that lie ahead as they enter a changing  
22 legal profession and a period of rapid change for  
23 society.

24 I have passed on a lot of what I've  
25 learned to the relevant chairs and co-chairs of



1 committees, such as the Professional Development and  
2 Competence Committee, in particular, and, as well, our  
3 Policy group has begun doing research on how the  
4 profession may change and the challenges we will face  
5 as a regulator going forward. This is a topic I expect  
6 will, indeed must, engage this board in the coming  
7 months and years.

8           In late January, as you know, we  
9 released a research report on the articling experience,  
10 originally commissioned as part of the Law Society's  
11 review of the licensing process, the findings from one  
12 section of the survey relating to articling candidates  
13 experiencing differential treatment in relation to  
14 sexual harassment, racial and gender discrimination.  
15 This resulted in a decision to establish a small team  
16 of Benchers to work with staff to develop a series of  
17 actions to be taken to address these issues.

18           The Benchers that will form that team  
19 are Jacqueline Horvat, Barbara Murchie, Tanya Walker,  
20 Jonathan Rosenthal and Cathy Corsetti.

21           In addition to encouraging the  
22 conversation and discussion in the legal professions on  
23 harassment and discrimination, these Benchers, along  
24 with Law Society staff, will be taking several steps to  
25 more directly address the issue. The Law Society will

1 engage with law firms and legal departments in a  
2 variety of settings to share best practices in  
3 addressing issues around harassment and discrimination,  
4 including examining how best to establish safe spaces  
5 where candidates, lawyers and paralegals and the public  
6 can confidently report instances of harassment and  
7 discrimination.

8           Greater efforts will be made around the  
9 promotion of Law Society services and support to assist  
10 people experiencing discrimination and harassment,  
11 including raising awareness of the Discrimination and  
12 Harassment Counsel and the Member Assistance Program.  
13 And the group will conduct a review of section 6.3  
14 dealing with sexual harassment and section 6.3(1) of  
15 the Rules of Professional Conduct related to  
16 discrimination and harassment to ensure they are  
17 up-to-date and reflective of the latest statutory  
18 changes in case law.

19           These actions are consistent with our  
20 commitment to promoting diversity and inclusion in the  
21 legal professions and we encourage anyone requiring  
22 support to use the services available and to contact  
23 the Law Society directly.

24           There are a few upcoming events to let  
25 you know about. On March 13th the Law Society will be

1 having its annual International Women's Day event, and  
2 on April 25th there will be a reception for newly  
3 licensed paralegals.

4 Just so you can plan ahead in May, on  
5 May the 1st there will also be an event to celebrate  
6 the tenth anniversary of paralegal regulation, which  
7 will be similar in format to other educational events,  
8 with a panel of speakers and a reception to follow.  
9 And on May the 9th the Law Society will hold its annual  
10 general meeting.

11 -- CONSENT AGENDA:

12 TREASURER SCHABAS: So with that I will  
13 turn to the agenda and, first, to the Consent Agenda,  
14 which is found at tab 1, moved by Ms. Criger, seconded  
15 by Ms. Strosberg.

16 Is there any discussion on the Consent  
17 Agenda? Deals with the -- what I just announced, which  
18 is the appointment of a date for the annual general  
19 meeting and some committee appointments.

20 Anybody wish to speak to this on the  
21 telephone? I'd ask all in favour? Anybody opposed in  
22 the room? Is there anybody opposed on the telephone?  
23 Then the motion is carried, thank you.

24 All right. So we will then move to the  
25 Professional Development and Competence Committee

1 report. Mr. Wardle.

2 -- PROFESSIONAL DEVELOPMENT AND  
3 COMPETENCE COMMITTEE REPORT:

4 MR. WARDLE: Thank you, Treasurer. We  
5 have one item for decision this morning, which is found  
6 at tab 2 of the Convocation materials and it deals with  
7 Ryerson University's application for approval of the  
8 proposed law school program, and the decision item  
9 requests that Convocation endorses the recommendation  
10 of The Federation of Law Societies of Canada regarding  
11 Ryerson University's proposed law school program.

12 I want to start by just indicating that  
13 we have a number of guests this morning from Ryerson  
14 and I'm just going to read out their names and welcome  
15 them to our proceeding.

16 We have Mitch Frazer, who is vice-chair,  
17 board of governors and a partner at Tories; Julia Shin  
18 Doi, general counsel and secretary; Gina Alexandris,  
19 senior director of the law practice program; and Grant  
20 Buchanan, distinguished visiting professor and a  
21 partner at McCarthys. So welcome to all of our guests.

22 This is a rather important and unique  
23 moment because it's a long time since we have had a new  
24 law school in this area, at least in Metropolitan  
25 Toronto, so let me outline a little bit of the

1 background dealing with the Federation's approval  
2 committee.

3                   So, first of all, in December of 2017  
4 the Federation's Common-law Program Approval Committee,  
5 or what we call at the Federation the approval  
6 committee for short, granted preliminary approval of  
7 Ryerson's proposed common-law degree program. The  
8 approval committee's report is at page 31 of BoardBooks  
9 and I'm just going to remind you a little bit about the  
10 process and the National Requirement.

11                   First of all, the approval committee's  
12 mandate is to determine whether a proposed new law  
13 school program will produce graduates that may be  
14 considered for lawyer licensing by Canadian law  
15 societies according to criteria set out in the National  
16 Requirement.

17                   Canadian law societies, including ours,  
18 have delegated responsibility to the Federation to  
19 consider new law program applications and to make  
20 recommendations as to whether they may be approved  
21 according to the criteria set out in the National  
22 Requirement and this approach ensures a consistent  
23 national standard and supports interjurisdictional  
24 mobility. The Law Society of Ontario is represented on  
25 the approval committee by Ross Earnshaw.

1                   In 2010 Convocation approved the  
2           Federation's common-law approval report that  
3           established the National Requirement. The National  
4           Requirement, which, again, is in BoardBooks at page 26,  
5           specifies the required competencies that law graduates  
6           must have attained and law school academic requirements  
7           that must be in place in order for graduates of those  
8           programs to be considered for licensing as lawyers.  
9           And the National Requirement applies to both new and  
10          existing Canadian law school common-law programs. It  
11          also applies to internationally educated candidates,  
12          whose qualifications are assessed by the National  
13          Committee on Accreditation.

14                   In 2011 Convocation approved the  
15          mechanism of the approval committee, which is the  
16          committee which has responsibility for determining  
17          whether current and proposed law school programs meet  
18          the National Requirement. Law societies have delegated  
19          responsibility to that committee to consider new law  
20          program applications at the first instance and to make  
21          recommendations as to whether they should be approved.

22                   I should just note that our Law Society  
23          retains its own jurisdiction under our by-laws with  
24          respect to the approval of any new law school. So  
25          although we have delegated responsibility at first

1 instance to the Federation, we retain a residual  
2 authority, and you will recall we invoked that residual  
3 authority in the case of Trinity Western University.

4           So the Federation's report on the  
5 Ryerson proposal is set out at page 31 of BoardBooks.  
6 The report to Convocation of our committee summarizes  
7 the approval committee's findings regarding the  
8 proposed Ryerson program. The committee found that the  
9 proposed program satisfied the following criteria and  
10 expectations of the National Requirement. First of  
11 all, skills competencies, problem solving, legal  
12 research and oral and written communication. Secondly,  
13 ethics and professionalism. Third, substantial legal  
14 knowledge, and applicants must demonstrate an  
15 understanding of core legal concepts in various areas  
16 and, finally, learning resources.

17           The approval committee identified  
18 several concerns with the proposal and I just want to  
19 make clear to members of Convocation that this is  
20 actually routine and not something for us to be alarmed  
21 about.

22           Here are the three items of concern, and  
23 I think as you go through them you'll realize why  
24 they're not cause for alarm. First of all, the  
25 proposed student to faculty ratio, the approval

1 committee noted that the Ryerson proposal just did not  
2 include a target student to faculty ratio.

3 The approval committee was concerned  
4 that an unforeseen event could detrimentally affect  
5 Ryerson's ability to deliver the academic program. In  
6 response, Ryerson indicated that it would modify the  
7 faculty complement if necessary and would update the  
8 approval committee regarding the number of faculty  
9 members once the program began operating.

10 I should pause here to note that it's  
11 not uncommon for law schools to engage in a discussion  
12 back and forth and communication with the approval  
13 committee on an ongoing basis.

14 Second, obviously, the ability to secure  
15 provincial funding. The Ryerson proposal is based on a  
16 projected \$20,000 per year tuition fee per candidate  
17 and escalating provincial funding. The approval  
18 committee noted that if the province declined to fund  
19 the program, the program might become unsustainable.  
20 Ryerson responded that if provincial funding were not  
21 made available, the university could cover the  
22 shortfall by increasing tuition fees.

23 Lastly, under physical resources, the  
24 proposal assumes that modifications would ultimately be  
25 made to Ryerson's campus to accommodate the law school;



1 initially, however, the program would operate in the  
2 existing space. The approval committee expressed  
3 concern that if something unforeseen were to occur with  
4 respect to the existing space, the physical resources  
5 would be inadequate and could escalate to a deficiency.  
6 Ryerson indicated that it would find temporary  
7 accommodation for the proposed law school if this were  
8 to occur.

9                   So the approval committee concluded that  
10 subject to these concerns, the proposal met the  
11 National Requirement and granted Ryerson preliminary  
12 approval of the program.

13                   I should just note for the information  
14 of Benchers that approval of our organization and of  
15 the Federation is just one of a series of approvals  
16 that must be obtained by Ryerson. In particular,  
17 Ryerson will require the support of the Ontario  
18 Ministry of Advanced Education and Skills Development.

19                   So with that preamble, the motion which  
20 you'll see in BoardBooks is that Convocation endorse  
21 the recommendation of the Federation of Law Societies  
22 of Canada that Ryerson's proposed common-law degree  
23 program fulfils the National Requirement. Individuals  
24 who hold a Ryerson common-law degree program -- sorry,  
25 common-law degree should be permitted to apply for

1 admission to the Law Society of Ontario on three  
2 conditions; first, issuance by the appropriate  
3 governmental authority of such approvals as are  
4 necessary for the Ryerson University law degree program  
5 to come into existence, and I've talked about that a  
6 little bit; secondly, full implementation to the  
7 satisfaction of Federation, approval committee of the  
8 undertakings and representations made by Ryerson in its  
9 submissions to the committee; and, third, ongoing  
10 compliance with such measures as may be established by  
11 the Federation for the purpose of ensuring that  
12 Ryerson's law degree program continues to meet the  
13 National Requirement.

14 So that's the motion. It's moved by me,  
15 seconded by Ms. Horvat. I would be happy to take any  
16 questions.

17 TREASURER SCHABAS: Yes, Mr. Sharda.  
18 Turn on your microphone, please.

19 MR. SHARDA: Would you know what the  
20 range of tuition increase would be if there was a  
21 deficiency in government funding? Right now it's a  
22 four year program at \$20,000 per year?

23 MR. WARDLE: I think that's right. The  
24 information I have is that the total cost of a legal  
25 education at Ryerson would be \$84,000, including living

1 expenses, which presumably would be over three years.

2 MR. SHARDA: And the deficiency if they  
3 didn't get government funding?

4 MR. WARDLE: I'm not sure I have that  
5 information, Mr. Sharda, in the materials I have.

6 TREASURER SCHABAS: Mr. Galati.

7 MR. GALATI: My only question, I was  
8 looking for it, maybe I missed it, do we know if the  
9 entrance requirements in terms of undergraduate work is  
10 comparable to other law schools, for instance, they  
11 need a BA to get qualified for the law degree?

12 MR. WARDLE: My understanding is it's  
13 similar or identical.

14 MR. GALATI: Thank you.

15 TREASURER SCHABAS: Any other questions,  
16 comments in the room? Mr. Wright.

17 MR. WRIGHT: Thank you. Comments.

18 Haven't heard the public interest mentioned yet. The  
19 reality is that if you have too few lawyers per capita  
20 that's bad for a society; if you have too many lawyers  
21 per capita, that's also bad for society.

22 We have added two new law schools in the  
23 last few years. One was Lakehead University and the  
24 other was the more than doubling in size of the  
25 University of Ottawa Law School due to a computer

1 glitch.

2                   The number of students has increased at  
3 a rate that is far greater than population growth, and  
4 now we propose to add another 100, 200 a year to that.  
5 A lot of young lawyers are having a very tough time  
6 making their way in the practice of law and we propose  
7 to make it even worse on them.

8                   Back in the mid 90s when the NDP were  
9 the government, they cut medical school enrollment,  
10 which was an unbelievably lunatic act, but I'm told by  
11 a law school dean who was dean at the time, that when  
12 the medical school enrollment was reduced, the central  
13 administration offices told the law schools, okay, stop  
14 failing the law students and we'll make up the lost  
15 tuition revenue that way. Because the tuition revenues  
16 don't go to the law school, they go to the central  
17 administration and they dole the money out amongst the  
18 departments, and law schools are well known as cash  
19 cows to universities, they're cheap to run by  
20 comparison.

21                   So this is about generating money,  
22 producing more graduates who are not needed. It puts  
23 pressure, perhaps, on the government to increase  
24 funding for students who are not needed, and this is a  
25 government that is extremely debt-ridden.

1                   The reason professions are regulated is  
2 because, as a matter of degree, we can drive demand for  
3 our services in the way that, for example, appliance  
4 sellers cannot. We can drive demand for our services.  
5 We don't follow the typical situation of more supply,  
6 lower cost. In the professions, if you have too much  
7 supply, paradoxically, but it has been proven many,  
8 many times over, especially in the U.S., too much  
9 supply drives up the cost of those services, it doesn't  
10 bring them down.

11                   I don't think there is one single  
12 solitary good reason to add another law school when  
13 we've increased the number of lawyers per capita --  
14 well, we've doubled in size, the profession in Ontario  
15 has doubled in size while the population of Ontario has  
16 gone up about ten percent in that span. If we keep  
17 doing this, eventually we will hit a point where every  
18 citizen has their own personal lawyer to feed and water  
19 for a lifetime. It's not sustainable, it's nonsense.  
20 Why would we do this? There are absolutely no good  
21 reasons to do this.

22                   I close by saying I am one hundred  
23 percent unaffected by this, because by the time they  
24 come on stream, most of them will stay in Toronto  
25 anyway, but by the time they come on stream, I'll

1 probably be on a beach somewhere.

2 I'm not personally affected, but our  
3 society in Ontario will be by copying the American  
4 blunder of too many lawyers per capita.

5 TREASURER SCHABAS: Mr. Falconer, you're  
6 next.

7 MR. FALCONER: Yes, through you,  
8 Treasurer, I would, first of all, say that I think  
9 there are many aspects to what Mr. Wright just said  
10 that we need to reflect on, and it speaks to what I  
11 think is a larger issue.

12 I don't think there -- I do not see a  
13 meritorious reason for in any way getting in the way of  
14 the Ryerson Law School proceeding, but I think there is  
15 a bigger issue that we have to come to terms with.

16 We actually don't exercise any  
17 meaningful regulation as it relates to law schools.  
18 The emperor simply has absolutely no clothes and the  
19 proof is in the pudding. Many of the systemic issues  
20 that Mr. Wright has just raised are true.

21 I think of it this way. It's not the  
22 question of the volume of lawyers. The access to  
23 justice issues in this province and in this country are  
24 so profound I do not believe it's about too many  
25 lawyers.

1                   What I am really struck by, and maybe  
2                   it's how much white hair is on my head, but I remember  
3                   the day that U of T introduced this fee structure, this  
4                   notion of tuitions being at the level that they are  
5                   today, and I remember rueing that day and, you know,  
6                   other law schools have followed suit.

7                   One of the issues that I do believe we  
8                   have to start taking an active issue is do we want to  
9                   follow this American model of our students being  
10                  saddled with debt, so that they have no choice but to  
11                  take jobs in the private sector that will potentially  
12                  pay this debt and, therefore, the access to justice  
13                  issue simply gets more and more profoundly reinforced  
14                  and problematic.

15                  We don't encourage law graduates anymore  
16                  to take up less paying, but more socially important  
17                  work. We're actually doing the opposite. We're  
18                  creating incentives where they can't do that work. So  
19                  I think as we agree, and it's a no brainer in my mind  
20                  to the merits of this law school, we should start  
21                  thinking about what can we do. If the answer is  
22                  nothing, I think as a regulator we should start  
23                  admitting that, instead of purporting to regulate that  
24                  which we're not regulating.

25                  TREASURER SCHABAS: Thank you. Mr.

1 Bredt.

2 MR. BREDT: I couldn't disagree more  
3 strongly with the idea that this is not in the public  
4 interest. If you look at what's happening now, a large  
5 number of Canadians are going abroad to get their legal  
6 education at considerable expense and with not good  
7 results. The people who have been going abroad, if you  
8 look at it, a large number of them wind up in the  
9 Ryerson program and the failure rates are quite  
10 high. So putting in place a Canadian law school that  
11 will give Canadians an opportunity to get their legal  
12 education, and a high quality legal education, here in  
13 Canada to me makes eminent sense.

14 We have an access to justice problem.  
15 We're not here to regulate the number of people in the  
16 profession. We're here to ensure that the people we  
17 licence to practice are competent to practice in the  
18 areas in which we licence them, and if there are a lot  
19 of lawyers who are competent to practice in the area  
20 that we licence them, then we should and they should  
21 have the right to practice and the public should have  
22 the right to access the services.

23 I've looked at the proposal. It seems  
24 to me there is a tremendous demand by Canadians, and  
25 particularly for Canadians who want to go to school



1 here in Toronto. The Ryerson proposal is a sound one  
2 and, in my view, we should approve it. Thank you.

3 TREASURER SCHABAS: All right. We'll go  
4 to the telephone. Is there anybody on the telephone  
5 that wishes to address this matter? Hearing silence,  
6 then we'll put it to a vote.

7 So the motion is before you. It's moved  
8 by Mr. Wardle, seconded by Ms. Horvat. All in favour  
9 in the room? Is there anybody opposed in the room? I  
10 see one hand. Anybody opposed on the telephone?

11 MR. LEM: Jeff Lem opposed.

12 TREASURER SCHABAS: Thank you, Mr. Lem.  
13 All right, the motion is carried. Thank you very much,  
14 Mr. Wardle, and thank you very much to the  
15 representatives from Ryerson for attending this  
16 morning. We're glad to have you. Thank you.

17 MR. WARDLE: Just before I sit down,  
18 Treasurer, I'd indicate there is one item for  
19 information from our committee, which is at tab 2.2,  
20 page 39, and it's just an overview of the department's  
21 activities and initiatives last year, including some  
22 statistics, and I won't take you through it. Thank  
23 you.

24 TREASURER SCHABAS: Thank you very much.  
25 Ms. Donnelly, the Equity and Indigenous Affairs

1 Committee Human Rights Monitoring Group Report.

2 -- EQUITY AND INDIGENOUS AFFAIRS

3 COMMITTEE REPORT:

4 MS. DONNELLY: Thank you, Treasurer.

5 The motion is found at tab 3.1 and page 55 of Diligent  
6 Boards, and the motion is that Convocation approve the  
7 letters and public statements in six cases involving  
8 six individual lawyers. The interventions relate to  
9 three different countries.

10 All requests for intervention fall  
11 within the mandate of the Human Rights Monitoring  
12 Group. There are no concerns about the quality or  
13 sources used in the reports, and in each case the human  
14 rights of the lawyers have been violated as a result of  
15 the discharge of their legitimate professional duties.

16 You will see that four of the  
17 interventions relate to lawyers in China. The first  
18 relates to the sentencing of Jiang Tianyong. You will  
19 recall that we have intervened in his case in February  
20 of 2017 and again in October of 2017.

21 Since October, Mr. Tianyong has been  
22 sentenced to two years in prison for inciting  
23 subversion of state power.

24 The second intervention involves the  
25 continued persecution of lawyer Ni Yulan. Ms. Yulan

1 defends people evicted from their homes and for nearly  
2 20 years she has faced harassment, evictions and  
3 surveillance by the authorities. The Law Society has  
4 intervened in her case in September of 2013 and again  
5 in June of 2016. Since then, Ms. Yulan, her husband  
6 and her daughter have forcibly been evicted from the  
7 house they were renting.

8           The third intervention relates to the  
9 disbarment and detention of lawyer Yu Wensheng. The  
10 Law Society intervened in his case in October of 2017.  
11 Since then, after writing an open letter criticizing  
12 the government and calling for political and  
13 constitutional reform, Yu Wensheng's legal licence has  
14 been revoked and he is being detained.

15           The fourth Chinese lawyer that we are  
16 asking for intervention in relation to is the  
17 disbarment of Sui Muqing. His legal licence was  
18 revoked after he ignored warnings not to take on so  
19 many politically sensitive cases.

20           The fifth intervention relates to the  
21 detention and disappearance of lawyer and human rights  
22 activist Dong Samuel Luak of Sudan, who was a  
23 registered refugee with the United Nation Human Rights  
24 Commissioner for Refugees. Dong Samuel Luak was  
25 forcibly removed from Kenya and detained in South Sudan

1 in January of 2017. His whereabouts and his fate  
2 remain unknown.

3 Finally, the fifth intervention  
4 tragically relates to the murder of Iryna Nozdrowska in  
5 the Ukraine. At the time of her murder, she was  
6 working as a lawyer on the case of her murdered sister.  
7 The man who murdered her sister was sentenced to seven  
8 years in May of 2017. In December of 2017, he sought  
9 early release from prison. He is the nephew of an  
10 influential judge. Ms. Nozdrowska was successful in  
11 blocking his release from prison in November of 2017.  
12 Two days later she went missing and she was found  
13 murdered.

14 The motion is moved by me and is  
15 seconded by Ms. Go.

16 TREASURER SCHABAS: Any discussion in  
17 the room or on the telephone? Any discussion on the  
18 phone? Hearing none, I'll put it to a vote. All in  
19 favour? Anyone opposed in the room? Anybody opposed  
20 on the phone? Thank you, Ms. Donnelly, the motion is  
21 carried.

22 MS. DONNELLY: Thank you, Treasurer.

23 TREASURER SCHABAS: The next item is the  
24 Tribunal Committee Report. Ms. Murchie.

25 -- TRIBUNAL COMMITTEE REPORT:

1 MS. MURCHIE: Thank you, Treasurer. The  
2 motion that I am moving is at page 161 of BoardBooks.  
3 It's moved by me, seconded by Isfahan Merali.

4 It's a motion that Convocation approve  
5 amendments to the Law Society Tribunal Hearing Division  
6 and Appeal Division rules of practice and procedure and  
7 their forms to change the Law Society of Upper Canada  
8 to Law Society of Ontario when that change is actually  
9 implemented by the legislature of the province.

10 So this is a motion to put us in a  
11 position where the changes can be made fairly quickly  
12 after the name change is authorized by the province.

13 I'm prepared to take any questions, if  
14 there are any, but it does seem pretty straightforward.

15 TREASURER SCHABAS: Don't count on the  
16 name change ever being straightforward. Is there any  
17 discussion in the room or on telephone? Anybody on the  
18 telephone wish to speak to this? Well, that's a  
19 relief.

20 So it's moved by you, Ms. Murchie, and  
21 seconded by Ms. Merali. All in favour? Anybody  
22 opposed? Anybody opposed on the telephone? Thank you  
23 very much, the motion is carried.

24 MS. MURCHIE: Thank you, Treasurer.

25 TREASURER SCHABAS: Okay. Mr. Falconer,

1 the Strategic Communications Steering Group Report.

2 -- STRATEGIC COMMUNICATIONS STEERING

3 GROUP REPORT:

4 MR. FALCONER: Good morning, Treasurer,  
5 colleagues. The report of the Strategic Communications  
6 Steering Group can be found at page 180 of BoardBooks.

7 This matter is before you for an update  
8 and basically for an approval of the implementation of  
9 the public awareness and engagement campaign. You'll  
10 find that at page 2 of the materials, page 181 of  
11 BoardBooks, that Convocation approve the implementation  
12 of the public awareness and licensing campaign.

13 I'll get into, in a minute, briefly what  
14 that's about and direct the steering group to continue  
15 to work with staff to provide guidance and input on the  
16 implementation of the awareness campaign and to direct  
17 the CEO to provide updates to Convocation as  
18 appropriate.

19 You will recall that in November a  
20 rather -- November of 2017 a lively discussion took  
21 place, both in the profession and here at Convocation,  
22 relating to the name of the Law Society and the  
23 decision that that involved, really, as we pointed out  
24 at the time, was simply the beginning to a process, and  
25 what you're seeing today is a confirmation of the

1 continuation of that process.

2 We're now positioned to proceed with the  
3 operational implementation of a public awareness and  
4 licensee engagement campaign, together with an  
5 engagement plan that will involve connecting with major  
6 stakeholders, connecting with the public. We propose  
7 to basically ensure that, for the first time, we do a  
8 lot better than seven and ten percent about the public  
9 knowing about the work that we do.

10 We intend to address what we've  
11 identified through the consultations and work of our  
12 experts as priorities for the public, which is  
13 assisting them to access and understand legal services  
14 available.

15 Now, we point out that the bottom line  
16 to this exercise, and you'll see it at paragraph 18 of  
17 the report, is that the public awareness program will,  
18 in essence, increase the Law Society's profile and  
19 build a better understanding among Ontarians of our  
20 role and our services.

21 Now, one of the objectives of the  
22 awareness campaign in addition to that will be to  
23 actually talk with the public and engage with the  
24 public about how to find a lawyer or paralegal.  
25 Ensuring this notion of access to justice and accessing

1 legal services will mean that the Law Society truly  
2 becomes a hub. The campaign will be aimed at the  
3 general public, with the intention of establishing the  
4 Law Society as the go-to place for obtaining  
5 information about legal resources and referrals for  
6 lawyers and paralegals.

7           At paragraph 26, the details of the  
8 campaign are set out through a four plank strategy  
9 involving advertising, public relations, sharing of  
10 information with equity partners and community groups  
11 and a social media campaign.

12           The particulars of the tactics used in  
13 the campaign, advertising and public relations, are  
14 dependent on advice and guidance received from external  
15 advertising agencies that we will be appointing  
16 following the Law Society's procurement process. That  
17 procurement process has gotten under way and the  
18 anticipation is very shortly we will have a result of  
19 the RFP.

20           What I want to emphasize is that the  
21 steering group's work is unique in the sense of the  
22 partnership with staff, not just the support of the  
23 steering group, but as a partner in driving this. We  
24 will be hearing on a regular basis from our CEO as to  
25 how operationally the public awareness campaign is



1 playing out.

2 So the role of the steering group will,  
3 in essence, be to continue to provide guidance as we  
4 get results from the public awareness campaign. Issues  
5 around budgeting are addressed at paragraph 44 of this  
6 report, page 187 of BoardBooks. The budgeting for this  
7 had already been incorporated and, as you'll see, it's  
8 well within what is contemplated for the 2018 budget as  
9 a result of the 2017 planning stage.

10 I just want to conclude by saying that  
11 we are on track. We wanted to make sure that you were  
12 kept apprised. It's expected that the external  
13 relations and communications division will lead the  
14 implementation of the awareness and engagement campaign  
15 under the direction of the executive director and  
16 acting CEO right now.

17 Again, as I said, the steering group  
18 will continue to play a role, through guidance and  
19 support.

20 Subject to any questions, Treasurer,  
21 that constitutes my report.

22 TREASURER SCHABAS: Thank you, Mr.  
23 Falconer. Are there any questions or comments? Mr.  
24 Epstein.

25 MR. EPSTEIN: Thank you, Treasurer. I

1 think this is long overdue and I strongly support it.  
2 I think it will benefit both the public and our  
3 members; the public by giving them a much better  
4 understanding of the whole process of dealing with  
5 legal issues, which I fear keeps them from engaging the  
6 system and that very much is an access to justice  
7 issue, and the lawyers and paralegals who are members  
8 will have a better opportunity to grow their businesses  
9 with people who understand why they're visiting the law  
10 firm or the paralegal firm in the first place. I ask  
11 for your support.

12 TREASURER SCHABAS: Anybody else in the  
13 room? Yes, Ms. Vespry.

14 MS. VESPRY: I have, I believe, one  
15 question and one question/comment. In terms of the  
16 materials that you've provided on page 184 of  
17 BoardBooks it talks about getting the general public to  
18 see the Law Society as the go-to place for legal  
19 information or information about legal resources.

20 Is the committee going to be talking  
21 with TAG or other stakeholder groups that have been  
22 creating go-to places for finding legal resources?  
23 Because I think that there's a possibility  
24 of reduplicating effort or even competing effort, and  
25 that should not be.

1                   MR. FALCONER: Yes, Treasurer, I can  
2 advise that that process is already somewhat under way.  
3 I think my colleague raises a very good point. The  
4 term "go-to" is -- I'm going to say it's somewhat  
5 self-serving.

6                   The bottom line is that that's how we  
7 propose, respectfully, to position ourselves in answer  
8 to what people are asking for. I think Ms. Vespry  
9 makes an excellent point that without that  
10 communication between the different organizations that  
11 are trying to do similar or exercise similar functions  
12 there's going to be redundancies and actually  
13 counter-productive experiences, but that communication  
14 is happening and will continue.

15                   MS. VESPRY: That's good to know, thank  
16 you. And then on page 185 it talks about it being  
17 anticipated that the campaign to bring publicity to the  
18 Law Society will include Benchers as spokespeople for  
19 the Law Society. That is repeated in a couple of other  
20 places and I am presuming that you mean only Life  
21 Benchers and appointed Benchers, but I'd like clarity  
22 on that as well.

23                   If I need to say it, because otherwise  
24 those Benchers who are chosen to do this public  
25 outreach will be essentially also being given free

1 advertising for their next reelection campaign.

2 MR. FALCONER: So not as clear as the  
3 last answer. Let me put it in helpful terms. Ms.  
4 Vespry, I think, raises an interesting issue. I would  
5 be pleased to take that issue back to the steering  
6 group. It will profoundly disappoint Mr. Burd, who had  
7 planned on being our poster child for all matters legal  
8 with the public, but I think Ms. Vespry raises an  
9 interesting issue that I think we need to canvass, and  
10 I would be happy to get back and report back on that  
11 issue.

12 TREASURER SCHABAS: Thank you. Anybody  
13 else in the room? You can all get in line behind  
14 Mr. Burd to be the Trivago person for the Law Society.

15 I assume, Mr. Falconer, you've already  
16 booked that slot in the Superbowl next year.

17 MR. FALCONER: I just can't dance like  
18 that guy. He can really dance.

19 TREASURER SCHABAS: We should go to the  
20 telephone. Anybody on the telephone wish to speak to  
21 this issue? Hearing silence, so, Mr. Falconer, there  
22 is a motion, it's moved by you. Did you have a  
23 seconder from the group. Ms. Donnelly I see put up her  
24 hand.

25 MR. FALCONER: Yes, thank you.

1                   TREASURER SCHABAS: All in favour? Is  
2 there anybody opposed in the room? No one. Anybody  
3 opposed on the telephone? Thank you, the motion is  
4 carried.

5                   MR. FALCONER: Treasurer, just before  
6 sitting down, there is one item as the co-chair of the  
7 Equity and Indigenous Affairs Committee I wanted to  
8 draw to the attention of Convocation, really for  
9 information and consistent with, actually, your  
10 introductory remarks in this area, Treasurer.

11                   The report of the activities of the  
12 Discrimination and Harassment Counsel are actually  
13 attached for the information of Convocation at page 139  
14 of BoardBooks and it covers the period of July 1st to  
15 December 31st, 2017. I simply commend the report to  
16 members of Convocation as our way of keeping you  
17 updated on the activities of the DHC and the nature of  
18 the cases that are presenting themselves currently.  
19 Thank you, Treasurer.

20                   TREASURER SCHABAS: Thank you very much.  
21 We'll then move to the report of the Governance Task  
22 Force. Ms. Leiper.

23                   -- GOVERNANCE TASK FORCE REPORT:

24                   MS. LEIPER: Thank you, Treasurer. Good  
25 morning members of Convocation. This is an information

1 item. You'll recall that our task force was  
2 established in September of 2016 to review the Law  
3 Society's corporate governance.

4 We were to look at practical process  
5 issues, governance structure, engage in research and  
6 consultation, make recommendations to improve our  
7 corporate governance through greater transparency,  
8 inclusiveness, effectiveness, efficiency and cost  
9 effectiveness. So it's quite a list of things to  
10 consider and the work is ongoing, and you've heard from  
11 us a couple of times.

12 This morning I want to start by  
13 acknowledging the work of Juda Strawczynski and Jim  
14 Varro in supporting the mandate of the working group.  
15 It's an ongoing project and a long term project, as you  
16 can see from some of the dates here.

17 From the beginning we agreed our  
18 approach should be evidence based, consultative, and to  
19 have Convocation walk with us as we developed and  
20 brought to you various items to try to improve our  
21 oversight, which is at the foundation of governance.

22 As we learned from our Bencher session  
23 in the fall, people often talk about governance, which  
24 is, in fact, a means, but what we've tried to focus on  
25 and had help with focusing on is what are the ends, the

1 ends being effective oversight so that we carry out our  
2 mandate. You will see that kind of language as a  
3 reminder to us when we're doing our work, but also as a  
4 reminder to all of us as we work in the broader group,  
5 that's what our goal is, and we did hear that from you  
6 as well when we got together in the fall, which is very  
7 positive.

8           You'll remember that so far some of the  
9 things that Convocation has done towards fulfilling the  
10 mandate are approving a single election date for  
11 electing lawyers and paralegal Benchers, that was last  
12 May, defining the governance and term for paralegal  
13 Benchers to bring them in line with the lawyer Bencher  
14 term limits, and the participation in the Bencher  
15 session in the fall, which was well attended, and we  
16 spent a day sort of wrestling with some of the  
17 foundations to where we might go next.

18           We also consulted and obtained some  
19 research to look at other regulatory organizations and,  
20 as you know, what we have learned so far is that our  
21 board is significantly larger than those in the  
22 comparative group and you have had that information and  
23 that report before you for some time since we released  
24 it last fall.

25           Based on this research and then based on

1 what we've heard from members of Convocation, we  
2 believed it was time to come to you and say, look, this  
3 is what we're going to be doing next, this is why we're  
4 doing it, and we are going to look towards improving  
5 our oversight, including looking at the size of  
6 Convocation and I mean shrinking it, looking at the  
7 size of our committees, looking at how the conduct of  
8 meetings and our decision-making processes can be  
9 improved by getting the right architecture, if I can  
10 call it that, looking at the composition of the board,  
11 how are we composed and how are we selected and how did  
12 we get here.

13           These things, as you will see, are very  
14 long term projects. Some of the discussions, as people  
15 say quite practically, can be affected by the views of  
16 the current sitting Bench, thinking, well, how will  
17 this affect me, how might this affect my colleague  
18 sitting next to me, and the reality is that any change  
19 of this sort, which will require legislation and would  
20 require transition, would not happen until five years  
21 out.

22           We sat down, we said we need to tell you  
23 what the, sort of, target date would be so that we can  
24 think of it from sort of a more objective perspective,  
25 if we could try to do that, and it is a challenge, it



1 is for all of us, we're people and we think about --  
2 that's the first thing we're all going to say to  
3 ourselves, how is this going to affect me, how will  
4 this affect my practice, my firm, and the desire to  
5 serve the public in these positions, which are hard  
6 fought and interesting and make a difference. So we  
7 know that and we wanted to say that to you.

8           So that's the architectural piece. The  
9 thing that really came into focus for us from our  
10 session last fall is also there are process questions  
11 and issues that we can also help with in the shorter  
12 term, and that's going to form part of our work in  
13 parallel to the longer term work.

14           The Bencher survey results, some of  
15 which are referred to here just summarized, and you  
16 have the larger report that was circulated earlier, but  
17 you'll see at paragraph 18 of our report before you  
18 today our overall governance effectiveness as we rate  
19 ourselves is 55 percent. We can do better, and members  
20 of Convocation believe we can do better.

21           One of the areas we plan to look at is  
22 creating a set of policies for ourselves that are more  
23 robust, including conflict of interest, but talking the  
24 role of a Bencher, a code of conduct for Benchers. The  
25 notion of an ethics lead has been discussed for

1 Benchers in doing our work, the expectations for  
2 Benchers, and these are things that are a point of  
3 discussion among elected bodies all across Canada, and  
4 we see much change, even in the provincial milieux, you  
5 know, changes to the Municipal Act requiring  
6 municipalities to have integrity commissioners and  
7 codes of conduct.

8           There are greater levels of  
9 accountability in society now than ever before and it's  
10 kind of an exciting time, actually, to be working in  
11 public policy. So we plan to bring to you those kinds  
12 policies for all of us to discuss together and, again,  
13 do that in a consultative way. We don't plan to go  
14 away, bring you something and say here it is, please  
15 vote, we're going to have discussions. And that will  
16 go on over the course of this year.

17           You will see on the architecture side,  
18 coming back to the longer term plan, we're going to  
19 look at models for an appropriate smaller size of  
20 Convocation in the future, the appropriate structure of  
21 the board, changes to the composition of the board.  
22 We're going to look at the term for Treasurer because  
23 at the moment, as you know, we have this potential for  
24 the Treasurer's terms, when Treasurers sit for their  
25 second of the one year term, straddling a Bencher

1 election. There may be better ways to accomplish what  
2 has become, as a matter of custom, essentially a  
3 two-year term for Treasurer. We're going to look at  
4 all of that and bring that back to you.

5 All of this again coming back to you,  
6 how can we be most effective and how can we be  
7 efficient and how can we serve the public interest.

8 So our plan is to come back, we're  
9 shooting for May Convocation, with some specifics on  
10 the longer term architectural proposals that we hope to  
11 then have a greater discussion with all of you about.  
12 Because until you sort of see something practical,  
13 you're going to say, well, that all sounds very nice,  
14 but what's it going to look like. We're going to try  
15 to come back to you with what's it going to look like,  
16 and by the fall come back to you with some draft  
17 policies around Bencher conduct, Bencher expectations,  
18 and we would then, depending on what Convocation  
19 decides over the next year, be into the transition  
20 period as to how we would go forward with what  
21 governance is going to look like in the next 20 years  
22 at the Law Society. So if there are any questions, I'm  
23 happy to take them.

24 TREASURER SCHABAS: Mr. Lerner is first.

25 MR. LERNER: Treasurer, I believe this

1 is one of the most important issues that has come or  
2 will come before Convocation.

3 I note that the report at next steps  
4 says call for comment after February 22nd, but the  
5 report is a draft report, it's not even a final report  
6 for consideration.

7 I am suggesting that it will be  
8 important for internal consultation amongst members of  
9 the bench, followed by a lengthy period to allow the  
10 profession and the public, if it wishes to, engage --  
11 or in a consultation process for their comments.

12 The timetable that's been suggested  
13 seems to be short, as far as I'm concerned, and I would  
14 strongly urge the committee to make sure that the  
15 public, as well as the profession, has a significant  
16 period for comment. There is no scheduled Convocation  
17 in March, but it is also a month in which many people,  
18 especially those who have school-aged children, are not  
19 available and I would hate anybody to suggest that the  
20 comment and consultation period was deliberately during  
21 a time when there would be people not available.

22 So my concern is that this entire  
23 governance issue be fully vetted, both within  
24 Convocation, possibly at a meeting such as the one we  
25 had yesterday, with regard to Bencher compensation, to

1 be followed then by the consultation process with the  
2 profession and the public. I just don't want to see us  
3 make such -- any dramatic change, whatever it might be,  
4 without the process being full and complete.

5 MS. LEIPER: I think, just to clarify,  
6 we weren't anticipating a consultation on this report  
7 happening, especially not over the March break, and we  
8 are interested in making sure we go at the correct  
9 pace.

10 Mr. Lerner, through you, Treasurer, the  
11 plan would be to come back with something more specific  
12 to then start the discussion with, and not expect  
13 Convocation to vote on anything in May. Thank you for  
14 your comments.

15 TREASURER SCHABAS: Ms. Ross.

16 MS. ROSS: Thank you, Treasurer.  
17 Through you to Ms. Leiper. Paragraph 4 of the report,  
18 which describes the focus that the task force is going  
19 to be taking over the next ensuing months, I just  
20 wanted to refer you to paragraph 4F.

21 I've looked throughout the report, but I  
22 don't see any mention of the mentorship and education  
23 of Benchers, which I think probably, in this day and  
24 age, is considered a critical component of the services  
25 provided to good boards and to ensure board member

1 competence, particularly given the complex and dynamic  
2 and difficult issues that we have been called to decide  
3 and understand.

4 And I'm thinking of more than Bencher  
5 information sessions, I'm thinking of more than a  
6 one-off CPD. I'm thinking of, really, programmed, I  
7 hate to use the word, but we do mandatory education as  
8 an entitlement to Benchers as members of a board,  
9 whatever size, and would ask whether the task force  
10 would consider including it at 4F, that that should  
11 also include mentorship and ongoing education of  
12 Benchers.

13 MS. LEIPER: I'm just looking for the  
14 outline of the governance policies. If it isn't  
15 adverted to specifically there, absolutely, I agree  
16 with you, Ms. Ross, that that is something that would  
17 be part of an ongoing board excellence program that  
18 would be covered in board policies and, yes, the short  
19 answer is yes.

20 TREASURER SCHABAS: If you go to page  
21 202 of BoardBooks under item 5, the issue of Bencher  
22 orientation and education and Bencher and professional  
23 development.

24 MS. LEIPER: I thought it was there.

25 TREASURER SCHABAS: It's listed there.

1                   MS. LEIPER: Very good, yes. Thank you,  
2           Treasurer. I meant to refer Convocation to the  
3           outline, only an outline, and this will represent a  
4           quite significant policy document and, actually, one  
5           that we're quite excited to work on and to tell you  
6           that there has been a lot of research done already in  
7           this space and some consultation around areas of  
8           beefing up our conflict expectations for ourselves.

9                   TREASURER SCHABAS: All right, Mr. Burd.

10                  MR. BURD: Ms. Leiper, first of all,  
11           thank you for using the word "robust". That's an  
12           important word.

13                  Yesterday at the Bencher information  
14           session we discussed about increasing the diversity of  
15           Convocation and I'm wondering if your policies and the  
16           draft report that you are contemplating, how that may  
17           affect the discussion we had yesterday about increasing  
18           the diversity, and by diversity I mean not only race,  
19           but also areas of practice and so forth that we wanted  
20           to be well represented both by soles and smalls and so  
21           forth.

22                  By the proposal of reducing the board,  
23           how would you still be able to maintain the initiative  
24           that we heard about yesterday about increasing the  
25           diversity and yet also, at the same time, decreasing

1 the size of the board?

2 MS. LEIPER: This had been a  
3 preoccupation that we talked about since our first  
4 meeting and it came up again last fall and I'm glad you  
5 raise it now, because one of the responses to ensuring  
6 you have a board that is diverse in every sense of the  
7 word that will best serve the profession, which itself  
8 is diverse in serving Ontario, is to look at different  
9 ways of how people get to the table.

10 That can include our own appointment  
11 process, which is one of the pieces that we're going to  
12 look at, and you may see that in the models that we  
13 come back to you with in a way that sets goals for  
14 making sure that we have expertise, to making sure  
15 we're not homogeneous going forward.

16 So can it be done with a group smaller  
17 than 90? Probably, but if you only have one way of  
18 getting to the table, sometimes you get a skewed sector  
19 of people who are privileged to get those seats. So it  
20 is absolutely on our list of making sure we address it.

21 TREASURER SCHABAS: Mr. Murray.

22 MR. MURRAY: So I'm -- I guess every  
23 time I hear the word board, it annoys me that we're  
24 using the word board. Of course we're not a board,  
25 we're Convocation, we're a hybrid group. We do not fit



1 the definition of a corporate board, we do not have a  
2 president. We represent -- I know we're a regulator,  
3 but we also represent the profession of some 50,000, or  
4 maybe it's 60,000 now, lawyers. I don't think we  
5 should be using the word board.

6           If we're going to say that we are a  
7 board now after some 200 years, I think we should have  
8 some kind of information session amongst ourselves to  
9 sort of talk about this. I'm not all that happy with  
10 the consultants that came up with the decision that  
11 Convocation is too big when they don't seem to  
12 differentiate between ex officio members who are  
13 actually former Attorneys General and Life Benchers and  
14 a new category of Treasurers. I mean there's a big  
15 difference.

16           I don't recall attorneys general showing  
17 up in Convocation during my 26 years, except for Allan  
18 Lawrence, who was a special person and well regarded in  
19 Convocation. So to say, and I see this in the Law  
20 Times, that we're a hundred people or whatever the  
21 number is, is terribly misleading, and I think that our  
22 consultants have added to that confusion.

23           I also just point out that before I  
24 became a Bencher the group was 30 and that was changed  
25 and that was before we had any appointed lay Benchers

1 and that was before we had thought of the concept  
2 of regional Benchers.

3 So I think that we need to have an  
4 information session or several to talk about this whole  
5 idea before we get too far down this road. So I thank  
6 you for that.

7 MS. LEIPER: Treasurer, I thank  
8 Mr. Murray for pointing that out. I meant to note that  
9 some members had floated the idea of what if we were to  
10 think of ourselves as a smaller corporate style board,  
11 and you'll see in our report that we didn't feel that  
12 that was something appropriate for us, and you can look  
13 at some other examples of boards that are more than  
14 boards. And I quite agree with you, we're more than a  
15 board.

16 If you look, for example, at the Ontario  
17 Securities Commission, the Commissioners are also  
18 members of a board that oversee the operation. So they  
19 have that public interest mandate, they're setting  
20 policy for public markets and they are tribunal  
21 members. So in a way they are a bit analogous to us.

22 Now, that's a group of 15 people with  
23 terms that generally end after six years. There is a  
24 lot of turnover, and that is done through a more robust  
25 process for asking what people's backgrounds are and

1 then through appointment through the government, so  
2 that's different from us. We're also not looking at  
3 that kind of model.

4 But you raise a good point about  
5 nomenclature. At some point we may ask ourselves, do  
6 we still want to be called, or I should say do we want  
7 the next generation to be called Benchers, do we want  
8 their leader to be called Treasurer? Maybe we're  
9 something else. Maybe we're governors, maybe we're  
10 commissioners. There may be other ways of conveying  
11 what the work is. Those are symbolic things, of  
12 course, but even as we learned this year, we're  
13 interested in both the substance and the symbols.

14 TREASURER SCHABAS: I should point out  
15 to Mr. Murray that the Act points out that the  
16 Treasurer is the president, it's in the Act. But the  
17 point about nomenclature is an important one. Mr.  
18 Falconer is next.

19 MR. FALCONER: Through you, Treasurer,  
20 to Ms. Leiper. I also note, for the record, the  
21 article in the Law Times from July that refers to  
22 Professor Semple's paper about his -- the professor  
23 from Windsor about his perception about the absence of  
24 a youth voice at Convocation and I know and I've seen  
25 it already that this is an issue that is being

1 canvassed on one level or another by your committee,  
2 but I do want to lend my voice of support to the view  
3 that, just as I think institutional memory through very  
4 senior Bencher colleagues is important, I also think  
5 that we are missing the youth voice and I think the way  
6 society has swung and the way governance has swung,  
7 we're probably becoming a dinosaur on this issue and I  
8 think we should be a little bit embarrassed about it.

9 I say that it's high time that that be  
10 part of any realistic discussion of governance change  
11 and that we refer to the absence of a youth voice every  
12 time this topic comes up, because it is missing,  
13 although Mr. Cooper is a young looking guy.

14 TREASURER SCHABAS: Unlike you, Mr.  
15 Falconer.

16 MR. FALCONER: There we go.

17 TREASURER SCHABAS: Mr. Wright.

18 MR. WRIGHT: Thank you. I agree with  
19 the person who raised a concern about the report by the  
20 outside consultants. I'm not sure what the Royal  
21 Society of Engineers in Scotland has to do with us and  
22 I'm not even sure what other law societies in Canada  
23 have to do with us. We have 40 percent of the lawyers  
24 in Canada and we do not have 40 percent of the Benchers  
25 in Canada. I'm not saying that that means we should

1 increase the size of Convocation, but you want to be  
2 very careful before you start shrinking it.

3           Yesterday we heard twice that the  
4 workload on Benchers is increasing, not decreasing, so  
5 there's work that needs to be shared by enough people  
6 to share it.

7           Committee size is a red herring. When  
8 setting a committee, you should look at the available  
9 resources and put the people on the committee that have  
10 the background and the interest to be of use to that  
11 committee, and if that produces a committee of eight or  
12 twelve or fifteen, it shouldn't matter.

13           We are really, at a minimum, two  
14 separate professions where lawyers are concerned, where  
15 lawyers are concerned, barristers and solicitors. In  
16 most of the world they are separate professions and  
17 they are separately regulated. In Québec you have the  
18 chambre des notaires and then you have le Barreau. If  
19 you add the number of governors, to use that word, for  
20 the chambre and the Barreau it's a larger number,  
21 obviously, than the board of just one of them.

22           Solicitors are 50 percent of the  
23 practising bar, but, except for 1995, we are woefully  
24 under-represented among the 40 lawyer Benchers and  
25 that's not healthy for the profession and, therefore,

1 not healthy for the public.

2                   Your task force would need to look at  
3 increasing diversity in the form of making sure that  
4 solicitors are here in much greater numbers to reflect  
5 their presence in the profession. Right now,  
6 demographically speaking, we have too many white male  
7 downtown Toronto big firm civil litigators, the acronym  
8 for that WAMDETEBEFICKLES. We have too many  
9 WAMDETEBEFICKLES.

10                   If you want the -- if you want  
11 Convocation to reflect the demographics of the  
12 profession, some groups will have to be shrunk, other  
13 groups will have to be expanded, and that would  
14 actually be a good thing. That's something you should  
15 look at.

16                   Shortening the terms means having fewer  
17 experienced people as a component of Convocation.  
18 That's not healthy. History has shown that it's not  
19 healthy. We need new blood, we always have new blood.  
20 In the worst elections we have a 30 percent turnover,  
21 in the best we have a 50 percent turnover, but in the  
22 worst elections twice in a row that means we have a  
23 60 percent turnover in the span of four years and one  
24 day, and any management consultant will tell you that's  
25 a terrific rate of renewal. We do not have a renewal

1 problem. What we could end up with is an experience  
2 problem.

3 As far as the Treasurer's role is  
4 concerned, one thing that could be looked at is that a  
5 Treasurer ought not be allowed to change salutary,  
6 useful, beneficial and longstanding policies unless  
7 there are very compellingly changed circumstances,  
8 unless the plan to make those changes was revealed  
9 during the campaign to become Treasurer. That's it for  
10 today.

11 MS. LEIPER: I'm just curious. With  
12 your leave, Treasurer, how would you accomplish that  
13 latter thing? That's an interesting idea.

14 MR. WRIGHT: I'll flesh it out with you  
15 on another occasion. I don't want to take up time  
16 today.

17 MS. LEIPER: Okay, thank you.

18 TREASURER SCHABAS: Ms. Vespry.

19 MS. VESPRY: I second Ms. Ross, I  
20 believe, who was saying that Benchers need better  
21 education. One of the areas in which I think that we  
22 desperately need that education is in statistical  
23 literacy in that we are often provided information in  
24 the form of statistics and I think for many of us,  
25 including on bad days, me, we just see a whole bunch of

1 numbers and sort of glaze over and go on to whatever  
2 we're being told these numbers represent.

3 I take, for instance, the overall  
4 governance effectiveness rating of 55 percent. You  
5 hear that and you think of something like a school  
6 grade and you think, well, gee, that's just barely  
7 above failing. In actual fact, going back to the  
8 numbers that that number was found through or developed  
9 from, that's ten percent of us saying that the Law  
10 Society is doing an excellent job, 22 percent saying  
11 that it's doing a very good job, 22 percent saying it's  
12 doing a good job and 32 percent saying that it's an  
13 adequate job. Altogether 86 percent of us think it's  
14 well above failing.

15 So even the impetus for this change  
16 seems to be going forward on the basis of a perhaps  
17 mistaken view of the need for the change, for the  
18 specific changes.

19 I understand that there is a huge desire  
20 or a huge belief that we need to make Convocation  
21 smaller. I think that that is not visible on an  
22 evidence-based basis in any of the materials we have  
23 been given so far. We have the Hansell report which  
24 was a comparative report on size. They looked at  
25 numbers. They said these things are bigger than those



1 things and among all of these things that we have  
2 chosen you are one of the biggest.

3           They did not say those things are more  
4 effective than these things. They did not say those  
5 things make faster decisions, those things are, more  
6 agile, those things are in any way that they could  
7 enumerate, because that wasn't their job, they weren't  
8 even trying, better. So there is a presumption that as  
9 an outlier we are somehow dysfunctional, but I don't  
10 see any logic, any necessary logic behind that.

11           It could be that the board of Enron was  
12 three people, very small, but really dysfunctional.  
13 You can't just say some things are bigger and that's a  
14 problem. You need to look at actual functionality and  
15 we haven't done that, as far as I can tell.

16           MS. LEIPER: Through you, Treasurer, and  
17 I thank -- oh, sorry, you're not finished?

18           MS. VESPRY: Go ahead.

19           MS. LEIPER: Please go on.

20           MS. VESPRY: I think that the one thing  
21 that has to be on the agenda going forward for what  
22 you're researching is research on how to make decision  
23 making better. Harvard Business School, among others,  
24 have done lots of research on make better meetings,  
25 more effective decision making, more effective

1 brainstorming, ways to get out of the traps that we  
2 seem to get into where when there is a big decision to  
3 be made, many, many people want to speak and not all of  
4 those comments actually do anything except say I agree  
5 with this side of the motion because I think it's a  
6 wonderful motion and I'm a wonderful person.

7           People who want to say I believe you  
8 should vote for this motion clearly need to talk.  
9 Getting that to be the priority in speaking, my  
10 suggestion would be that if you're going to argue the  
11 motion you clearly have come in without an open mind  
12 and, therefore, you shouldn't vote. All of a sudden we  
13 would cut discussion of motions down to the three or  
14 four people who want to represent their point of view  
15 and want to be persuasive about that, and all of the me  
16 too voices would do their me too the way they need to  
17 do their me too by putting their hands up when it's  
18 time to vote. Very much shorter meetings, I suspect.

19           There are lots of things that could be  
20 done, lots of things that could be done without  
21 legislation, without having to change our rules  
22 dramatically, without having to make any of these slow,  
23 it's going to take five years, issues, so why don't we  
24 look at those now and maybe if we make Convocation and  
25 committees better functioning, we will realize that

1 they are perfectly adequately sized.

2 You had a question, sorry?

3 MS. LEIPER: I wanted to thank you.

4 I'll start by saying that we actually don't think  
5 Convocation is dysfunctional and we don't think you  
6 think so either. I don't think you would be here, many  
7 of you, if you know thought that was the case.

8 What we did hear, and I know that those  
9 percentages are explained in the report that you have  
10 but that's not a public document, so I'm not going to  
11 go into the minutia of that, but your point is well  
12 taken.

13 Really, we started from the Hansell  
14 research, but, of course, that was not the end of it.  
15 That didn't look at effectiveness, and as you say, Ms.  
16 Vespry, it was not their job. That was to start the  
17 stage and give us a bit of an idea of what the  
18 landscape was among other regulators, some of them  
19 legal, some of them not. At least it gave us a sense  
20 of where we were.

21 But the second and most important thing  
22 was coming back to you, and the point about couldn't we  
23 do other things in the meantime or maybe even instead  
24 of, but couldn't we do other things that would increase  
25 our effectiveness was very much on the menu last fall,

1 about what's effective oversight, how could we manage,  
2 how could we have more efficient meetings and how could  
3 we work well together.

4 We do feel there is a lot of work to be  
5 done and, to be honest, that is the shorter term goal  
6 to bring something back to you in the form of policies  
7 and perhaps in the form of all kinds of things,  
8 including education, which is on our list.

9 So these -- these are great comments  
10 that you made and I thank you for them.

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

13 MS. LIPPA: Thank you, Treasurer. With  
14 respect to the diversity on the board, I brought this  
15 up several years ago in Convocation regarding the  
16 under-representation of paralegal Benchers on the  
17 board. If you look at the ratios with respect to the  
18 lawyer Benchers per thousand of lawyer licensees, and  
19 you look at five paralegal Benchers to represent every  
20 region in Ontario, it's unbalanced and it's not diverse  
21 and I'm hoping that your group is looking at making the  
22 board more diverse, more representative of our  
23 licensees out there.

24 MS. LEIPER: Through you, Treasurer,  
25 every sector of Bencher is obviously part of the

1 equation, is part of the consideration, and not to get  
2 ahead of what the working group is working on, I'm not  
3 going to say we're going to have this proportion, that  
4 proportion, that, but certainly what you've raised is  
5 on the table.

6 TREASURER SCHABAS: Mr. Galati.

7 MR. GALATI: Thank you, Treasurer. Just  
8 a quick comment and a question for Ms. Leiper. I echo  
9 what Mr. Murray says. I have an allergy to this idea  
10 of a board, corporate or otherwise.

11 As I see it currently, the core essence  
12 of this body, when you look at the right to vote, the  
13 Benchers who have a right to vote, is essentially a  
14 democratic, the result of a democratic process of  
15 voting by the profession, emanating from the historical  
16 and now constitutional dimension of the independence of  
17 the bar.

18 My concern is, and all this talk about  
19 boards, if we're going to have a seismic shift more to  
20 a non-democratic process for deciding who and how we  
21 get here, that is of great concern to me.

22 Is your group -- does your group have an  
23 eye to what effect this may have constitutionally to  
24 our status as an independent board and what that means  
25 to the rule of law?

1 MS. LEIPER: Always. It's at the base  
2 of what we are. It's in our statute, it's in our  
3 mandate that we have to, of course, not upset that  
4 foundation.

5 MR. GALATI: Right, and so, in my view,  
6 if we get to the point where we've tipped to a  
7 non-democratic process in deciding who the voting  
8 Benchers are that are going to set the policies of the  
9 profession, I think we have a serious, serious problem.  
10 I just put it out there.

11 MS. LEIPER: No, it's important.  
12 Treasurer, that was one of the reasons why although the  
13 idea of perhaps a more corporate style board was  
14 appealing to some as one potential way, and, quite  
15 frankly, one of the ideas at an early meeting that was  
16 put forward by an external consultant was, well, you  
17 could have a management board and then you could deal  
18 with all of policy materials through policy groups  
19 separate from an elected Bencher type of model.

20 And after talking it through and having  
21 the session with all of you, we concluded that wasn't  
22 the right direction and we're not going to bring that  
23 back to you. Thank you.

24 TREASURER SCHABAS: Mr. Evans.

25 MR. EVANS: Thank you, Treasurer.

1 Through you to Ms. Leiper, I am wondering if I could  
2 invite you to consider how we can make our resources  
3 more effectively available, and I'm thinking  
4 particularly of our emeritus Benchers who have been  
5 honoured by the Law Society by being named emeritus  
6 Benchers. I believe some of them would be very happy  
7 to be consulted on areas of their expertise and I think  
8 it could do this without -- at a minimum cost to the  
9 Law Society and I would just invite you to consider  
10 that possibility.

11 MS. LEIPER: Thank you.

12 TREASURER SCHABAS: Ms. Merali.

13 MS. MERALI: Thank you. Through you to  
14 Ms. Leiper. Thank you, first of all, for all the work  
15 that's being done by the governance group, I know it's  
16 a challenging piece of work and I know we all  
17 appreciate the time that you have put into it.

18 I want to echo, I think, a comment that  
19 was made earlier, but I think it's an important one.  
20 We have all heard and seen in the media the call to us  
21 for a voice at our table from the early years, or a  
22 student voice, and I want to make sure that -- and I'm  
23 sure you are considering the need to ensure that we  
24 have these diverse voices at the table, and I'm calling  
25 it early years as opposed to the youth voice because,

1 as we know, law students are not necessarily young, but  
2 they come with a different perspective.

3 We are always dealing with issues that  
4 directly affect young or early years lawyers. We're  
5 talking about CPD and the needs in the profession for  
6 education and mentoring, access to justice issues, the  
7 LPP and articling program and now, even more recently,  
8 although not an old -- new story by any means, but  
9 harassment, discrimination and bullying amongst our  
10 profession.

11 One of the first things I worked on as a  
12 student after my first year of law school was looking  
13 at sexual harassment in the bar admission courses here  
14 and the numbers were shocking, and they haven't changed  
15 unfortunately. Also retaining women in the profession  
16 in the early years of their practice.

17 I'm reminded as I see the media push to  
18 us to think about these voices that are missing around  
19 this table of Renata Austin's words during the Bencher  
20 election, and I think it went viral, or as viral as  
21 anything can get during a Bencher election, "If you're  
22 not at the table, you're on the menu," and she's  
23 absolutely right and we need to make sure that our  
24 governance model ensures that we have greater diversity  
25 of voices, but also to ensure that we have the voices



1 that we need to hear to make sure that we have  
2 accountable, fair and effective decisions on all these  
3 issues. So thank you.

4 MS. LEIPER: Thank you, Ms. Merali. And  
5 I will say the task force has received a copy of the  
6 excellent paper of the law students on this very issue  
7 and we've read it and it's also a part of our  
8 consideration. I know the members will be listening to  
9 the members here, who are telling us please make sure  
10 you consider them.

11 TREASURER SCHABAS: Thank you. Mr.  
12 Wardle.

13 MR. WARDLE: I think most of what I was  
14 going to say has already been said, but just as chair  
15 of PD&C, I want to echo Mr. Falconer's comments and  
16 Ms. Merali's comments about the need to reflect the  
17 voices of those who are entering the profession.

18 It's of particular concern when we deal  
19 with changes to the licensing process because we don't  
20 have those folks directly at the table here. They're  
21 not involved. The Treasurer has done a great job of  
22 reaching out to them over the last couple of years and  
23 we do have regular meetings with student groups, but  
24 they're not directly involved in our process and that's  
25 a deficiency that I think affects our decision making.

1 So I just want to echo the comments that have already  
2 been made.

3 TREASURER SCHABAS: Thank you. Mr.  
4 Callaghan.

5 MR. CALLAGHAN: I think one of the  
6 things that we have to do is be careful about  
7 discussing how diverse or not diverse we are. For  
8 example, Mr. Wright referred to the over-representation  
9 of white male civil litigators from big firms in  
10 downtown Toronto, of which in this room of 60 there are  
11 four. So I think we have to be very careful because we  
12 have a very diverse Convocation. It may not hit all  
13 elements of the profession, but it's based on, as Mr.  
14 Galati pointed out, a democratic process.

15 If people think that you can move away  
16 from the democratic process and maintain legitimacy for  
17 the independence of bar, I don't think so. I think  
18 that if you start looking to a point, and leave aside  
19 Mr. Wardle's point about the youth of our profession  
20 who may not have the means to get involved, that may be  
21 a slightly different issue, but on the bulk of it, woe  
22 betide you if you think you're going to move away from  
23 the democratic principles and, A, get a legitimate  
24 organization that's going to maintain the independence  
25 of the bar.

1                   We are a creation of the legislature, we  
2                   are intended to be representative of our profession by  
3                   way of vote, and I just caution us to be a little  
4                   careful. I also would caution us to say whether we  
5                   have or have not become diverse, I think we have become  
6                   more diverse over the years as it represents a  
7                   profession that's become more diverse. And if there  
8                   are areas of the profession who are not representative,  
9                   by which I mean likely areas of small or soles,  
10                  although I think if we look around here there's  
11                  probably way more smalls and soles than there are big  
12                  firm people around this table today, that there's an  
13                  outreach process. You don't abandon the democratic  
14                  process for that.

15                  So I think that we have to begin to  
16                  honestly assess what's going on around the table.

17                  Thanks.

18                  TREASURER SCHABAS: Thank you,  
19                  Mr. Callaghan. Ms. Go.

20                  MS. GO: I think that there are a lot of  
21                  very interesting and valid points that have been  
22                  raised, and certainly I don't want to see that we  
23                  totally undo the democratic process. There is  
24                  certainly a lot of valid reasons why we choose to have  
25                  elections in this manner, but living in a democratic

1 society, we also know that democracy often works to, I  
2 guess in general, protect the interests of the majority  
3 at the expense of the minority in a real sort of  
4 democracy, outside of this room anyways.

5           Certainly, as someone who works in the  
6 clinic representing people who don't even have a vote  
7 in our democracy, you know, I think that we can be  
8 assured that there are a lot of flaws within the  
9 democratic process that needs to be addressed and --  
10 outside we do that by having Charter of Rights and  
11 Freedoms and all that kind of stuff to ensure that the  
12 government is accountable, and I think we're doing,  
13 within our world here at the Law Society, we do that by  
14 having Equity and Indigenous Issues Committee and  
15 different committee to address the concerns of those  
16 who are not at the table.

17           But democracy works to reinforce. If  
18 you're not here at the table, you're less likely to  
19 vote in the election as well, which is why I think we  
20 don't see that many young -- early year lawyers. If  
21 they don't think that their issues are addressed and  
22 they don't get interested in the Benchers election.

23           I recall the last voters' turnout was  
24 one of the lowest in decades, and I think that we need  
25 to appreciate and understand why. I think also we know

1 from earlier years, if I remember correctly, while  
2 money can't buy you votes, but name recognition can,  
3 and so a lot of things are -- it's not entirely  
4 merit-based, but I think there are reasons why you tend  
5 to see some sectors more represented for reasons not  
6 because they are necessarily democratically more  
7 representative, but because of other reasons, and make  
8 them more likely to get elected, which is why I think  
9 we need to think beyond just the democratic process to  
10 ensure that other voices are being represented.

11           You know, this is my last term, I'm  
12 always thinking about who is going to be the next --  
13 only person from the clinic system who's going to be at  
14 this table, which is something that -- well, it doesn't  
15 keep me up at night, but it's something that I have  
16 been thinking about a lot in recent months, and  
17 hopefully there is a new process in place that would  
18 perhaps make it easier for the different sectors to be  
19 represented, other than just leave it up to the 30 or  
20 20 percent of the voters or the legal professions who  
21 are going to vote in the next election.

22           TREASURER SCHABAS: Thank you, Ms. Go.  
23 Mr. Varro points out, I think just for purposes of  
24 clarity, the last election was not one of the lowest in  
25 decades. It was, I think, one percent lower than the

1 previous one, but there have been some that are other.

2           Your point is well taken. The structure  
3 of the democratic process is interesting. Even in the  
4 United States they seem to have a process that twice in  
5 the last five presidential elections has succeeded in  
6 electing a loser, from a popular vote standpoint. It's  
7 just how you structure the election.

8           And this is just for information, I have  
9 two more people in the room on the list and then I  
10 would like to go to the phone. We have one more matter  
11 after that which is a public matter and then I propose  
12 to take the break and we'll come back. We do have a  
13 number of things in camera today. So, Ms. Potter,  
14 you're next.

15           MS. POTTER: Thank you, Treasurer. I  
16 certainly agree with the comments that have been made  
17 about having the youthful voice or the early years  
18 voice, as Ms. Merali described it, and I think that's  
19 an appropriate term because, of course, there are  
20 people like me that went back to law school later,  
21 and although we were not young at the time, we were  
22 new, and so had the same concerns in many respects as  
23 the lawyers who were much younger and coming out of law  
24 school and looking for work and that sort of thing.

25           I would also like to point out that we

1 know that there is some issue around the time and  
2 expense of being a Bencher, what you're forfeiting in  
3 terms of income and what you're forfeiting in terms of  
4 work, and so if you're in your very early years trying  
5 to build a practice, it may not be feasible to run for  
6 Bencher and hope to be elected.

7           So I would urge the committee to look at  
8 other ways of including the early years voices, and it  
9 may be some sort of appointment process that each term  
10 we bring on one or two or whatever is determined to be  
11 the appropriate amount of youthful voices or of early  
12 years voices to address the issues that are facing  
13 those that are starting off in the early years of  
14 practice and even those who are maybe law students. I  
15 don't think they have to be included necessarily in an  
16 election process to have them on board. Just as we, at  
17 one time, had voices from others on committees that  
18 were here at the Law Society, they weren't all Benchers  
19 that sat on committees.

20           And so I would urge you to take -- to  
21 look at other creative ways of bringing on people that  
22 we need to hear from that may not have the time, energy  
23 or resources or it may just not be the right time for  
24 them in terms of their careers and family issues, et  
25 cetera, to be running as an elected Bencher.

1                   TREASURER SCHABAS: Mr. Gottlieb.

2                   MR. GOTTLIEB: Thank you, Treasurer. I  
3 simply would like to echo the comments of Mr. Galati  
4 and Mr. Callaghan. I know that democracy is sometimes  
5 cumbersome and inefficient, but for all its blemishes,  
6 it's important that we retain as much of a democratic  
7 process here and democratic governance as we're able  
8 to.

9                   And, quite frankly, I don't think  
10 Convocation and the process we have now is inefficient.  
11 I think our Treasurer does a remarkable job, as all our  
12 past Treasurers have done, in making sure that debates  
13 are kept to a reasonable length and that we don't have  
14 to spend undue time here.

15                   And I also realize that it might be said  
16 that the next remarks I'm going to make are somewhat  
17 biased because I have the pleasure and the honour of  
18 being a Life Bencher, but I think that it's important  
19 that ex officio Benchers have the right to appear at  
20 Convocation and to participate, when they feel  
21 appropriate, in our debates. I feel that they have a  
22 perspective that is sometimes not advanced by elected  
23 Benchers and as long as ex officio Benchers keep their  
24 remarks to reasonable length, I don't think they should  
25 be excluded from our process.



1                   TREASURER SCHABAS: All right. I know  
2 Mr. Krishna put up his hand now, but I'm going to go to  
3 the phone first to hear if anybody -- does anybody on  
4 the phone wish to address this issue? All right, then,  
5 Mr. Krishna, you're the last speaker.

6                   MR. KRISHNA: Thank you, Treasurer. I  
7 do not intend to comment on the constitutional  
8 tradition of the United States and the electoral  
9 process as devised by the founding fathers in its  
10 revolution against the British crown, but coming to the  
11 topic at hand where everyone has spoken about this  
12 constituency, that constituency and diversity, I want  
13 to say very, very briefly, there is one group --

14                   TREASURER SCHABAS: Could you turn on  
15 your mic.

16                   MR. KRISHNA: I think I have the mic on.

17                   TREASURER SCHABAS: Maybe you just need  
18 to speak into it a little bit more.

19                   MR. KRISHNA: I have never been told to  
20 speak louder.

21                   TREASURER SCHABAS: Just speak into it.

22                   MR. KRISHNA: Thank you. There is one  
23 little group that we should also consider as we propose  
24 to contract Convocation by adding the voice of the  
25 academy. We are -- at least one half of our task is

1     qualifying people to become lawyers following their  
2     education, and that view may be useful to Convocation,  
3     especially as one looks around and sees that there are  
4     many faces that are of a pre-computer era, and the  
5     voice of the academy might be helpful in setting some  
6     of our educational and competency programs.

7                     I say this only as a suggestion, but  
8     since we are in the habit of comparing ourselves with  
9     other law societies and what they do, I can tell you  
10    that in the province of Alberta the two law deans from  
11    Edmonton and Calgary are automatically included in  
12    every Convocation that they have, they're automatically  
13    included, and I might note as a footnote that they  
14    automatically get the Queen's Counsel designation also.  
15    Thank you.

16                    TREASURER SCHABAS: Well, we can't fix  
17    that. All right.

18                    Well, Ms. Leiper, thank you very much  
19    for that. I think this has been a really helpful and  
20    productive discussion for the Governance Task Force. I  
21    did anticipate it would take more than the 15 minutes  
22    I'd allotted it on the agenda.

23                    MS. LEIPER: And I think the good thing  
24    is, Treasurer, if I can just say, one of many  
25    conversations, which is great that everybody is willing

1 to engage, because it's one that we will just have to  
2 continue to have together until we move toward being as  
3 good as we can be.

4 TREASURER SCHABAS: Thank you again.  
5 Mr. Mercer, Professional Regulation.

6 -- PROFESSIONAL REGULATION COMMITTEE  
7 REPORT:

8 MR. MERCER: There are two items in  
9 BoardBooks, both are for information. The second is  
10 the annual report of the Complaints Resolution  
11 Commissioner. I don't propose to speak to that; it is  
12 before you.

13 The first is at tab 7.1 and it is a  
14 report for information of the Advertising and Fee  
15 Arrangements Issues Working Group, and the information  
16 is simply that a call for comment has been launched  
17 today. At paragraph 10 you'll see the description of  
18 the documents, there is a call for comment document.  
19 There are then two draft mandatory standard contingency  
20 fee agreements.

21 You will recall that one of the matters  
22 approved by Convocation in December was that there  
23 ought to be mandatory contingency fee agreements or  
24 contingent fee agreements as a matter of simplification  
25 and transparency. We have worked with a -- what might

1 be described as an experts' panel to create two forms  
2 of agreement, one assuming that nothing changes in the  
3 provincial legislation, the second assuming that the  
4 recommended changes are made, because obviously this is  
5 complex because there is a risk of thinking you  
6 understand things in committee that you don't and that  
7 you don't necessarily see everything that should be  
8 seen. These are released for comment so that people  
9 can poke holes in them, we can discover what we've done  
10 wrong and what we can do better.

11           There are also two draft know your  
12 rights guides. Another part of the transparency  
13 provisions was to create a guide for people who are  
14 interested in retaining a lawyer or a paralegal on a  
15 contingent basis and to ensure that they have good,  
16 reliable information that assuredly has been provided  
17 to them. And so those draft documents, both assuming  
18 legislative change and not, are put out for comment.

19           And, finally, draft rule amendments,  
20 both lawyer and paralegal rule amendments. I don't  
21 propose to get into the substance of any of these  
22 proposals because that's the purpose of the call.

23           TREASURER SCHABAS: All right. Any  
24 comment or questions for Mr. Mercer?

25           MR. MERCER: I should simply indicate

1 that in terms of our work going forward, we hope and  
2 expect to be back to you in April with the result of  
3 this process. The further item on our work plan to  
4 deal with is issues relating to title insurance and  
5 arrangements between insurers and lawyers.

6 TREASURER SCHABAS: Okay. Thank you  
7 very much. So that concludes -- anybody on the  
8 telephone, I should have asked for comments or  
9 questions for Mr. Mercer. Standing by. Thank you  
10 Mr. Mercer, I don't hear anybody. Thank you.

11 That concludes the public portion of the  
12 meeting. I want to thank people who joined us here in  
13 the room and on the webcast. We'll take a 20 minute  
14 break and, as I mentioned, we do have a number of in  
15 camera items, so we'll see you back in 20 minutes.  
16 Thank you.

17 --- Whereupon the proceedings adjourned at 10:46 a.m.

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

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