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**Report to Convocation
June 28, 2018**

**Review Panel on Regulatory and Hearing Processes
Affecting Indigenous Peoples**

Supplementary Report

Review Panel

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Robert Burd
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Independent Reviewer

Ovide Mercredi

Purpose of Report: Information

Prepared by Jim Varro, CEO's Office

FOR INFORMATION

SUPPLEMENTARY REPORT OF THE REVIEW PANEL ON REGULATORY AND HEARING PROCESSES AFFECTING INDIGENOUS PEOPLES

1. On May 24, 2018, Convocation approved the recommendations set out in the Review Panel's report to incorporate Indigenous perspectives in the Law Society's regulatory and hearing processes. As referenced in the report, the work of the Review Panel was carried out alongside the mandate of the Independent Reviewer, former Assembly of First Nations National Chief Ovide Mercredi.
2. At Convocation on May 24, Mr. Mercredi presented his report, which was incorporated in the Review Panel's report. In his presentation, Mr. Mercredi included two additional recommendations. These recommendations are set out in this report for the information of Convocation.
3. The Review Panel was encouraged to see that the additional recommendations (Recommendations 7 and 8) align with the subjects of the Review Panel's Recommendations 5 through 9 in its report¹, and should be read as incorporated in the report with the existing recommendations of Mr. Mercredi.

¹ **Recommendation 5**

The Law Society should:

1. take the necessary steps to ensure that anyone who investigates complaints at the Law Society involving Indigenous licensees or complainants, in addition to required investigatory experience and skills, is culturally competent to perform these investigations and has the necessary resources available to engage appropriately with members of the Indigenous communities in this process; and
2. explore ways to incorporate principles of Indigenous Legal Systems into
 - a. dispute resolution resources available to Law Society investigators, which may be applied in appropriate cases, and
 - b. prosecutorial and dispute resolution resources available to Law Society prosecutors, which may be applied in appropriate cases.

Recommendation 6

The Professional Regulation Division should create the required permanent internal structures and supports to appropriately manage investigations and prosecutions of licensees who are the subject of complaints from Indigenous people and of Indigenous licensees. These structures and supports should extend to other divisions at the Law Society to the extent that processes related to investigations and/or prosecutions intersect with them.

4. As indicated in the May 2018 report, the Review Panel is deeply indebted to Mr. Mercredi for his contribution to its work.

Report of the Independent Reviewer - Ovide William Mercredi – Additional Recommendations

RECOMMENDATIONS

7. The inherent rights of Indigenous Nations, commonly referred as aboriginal people and First Nations, exist independently and outside of any legal traditions of the Settler people and their countries. This indisputable reality derives from the occupation, title, and protection of traditional lands and territories, the historical and cultural heritage of Indigenous Peoples, their unbroken links and bonds with their Ancestors, their traditional customs, ceremonies, spirituality and legal traditions, their natural human rights to self-determination and their rights to their unfettered destiny. This understanding enshrined in Indigenous Nations word-views and legal traditions is the reason their rights are INHERENT.

Indigenous Nations have in the past and continue to the present to assert their rights and freedoms from this perspective that their rights are inherent, not delegated nor granted from the Settler, nor, as in more recent times

Recommendation 7

The Law Society Tribunal and the Tribunal Committee should explore how to incorporate Indigenous Law principles within its adjudicative and dispute resolution processes and apply them in the appropriate case.

Recommendation 8

Law Society Tribunal adjudicators should receive ongoing training in the history of Indigenous Law in Canada, Indigenous methods of dispute resolution, Indigenous ceremony and protocols, the Independent Assessment Process and other relevant related topics.

Recommendation 9

The Law Society should ensure that guidance and education is available for lawyers and paralegals who serve Indigenous clients who have experienced trauma arising from the Indian Residential School experience, the Sixties Scoop or the Day Schools settlement to assist in their competent representation of these individuals.

since Confederation do they believe that their rights and freedoms flow from Canada.

Enter the British legal traditions, the Canadian rule of Law, the Constitution of Canada, Federalism, Canadian legal institutions and the result is a legal relationship that is imperfect, lacking, colonial in nature; and in dire need of reforms, reconciliation and the ideals of equity, justice, and co-existence between distinct peoples and Nations.

Under the present Colonial Relationship, that has changed very little since Confederation, we are far apart, and the gap in common understanding and mutual respect is not closing.

Although more recent and progressive decisions of the Supreme Court of Canada, and progressive efforts by certain successive federal and provincial governments to change the barriers inherent in the rule of law are generally regarded as positive developments, such as the constitutional recognitions and affirmation of aboriginal and treaty rights, the fact remains that these developments do not use the EXISTENCE OF INHERENT RIGHTS as a foundation for Canada nor for Indigenous Nations, but, instead continue to define “aboriginal and treaty” under the notion of PRECEDENTS that for, obvious State reasons are there to protect and enhance the sovereignty and territorial integrity of the country, Canada.

The Law Society of Ontario can help to advance the causes of Indigenous Peoples and Nations, and thereby, help to discard the colonialism that underlays the body politic and legal regime of the dominant society. More particularly the Law Society of Ontario needs to set up an internal mechanism with a mandate to review their investigative, disciplinary and hearing processes with the objective of reforming or modifying such processes concerning disciplinary matters involving lawyers and Indigenous clients and Nations.

8. Indigenous Nations have their laws for matters related to the land and the environment, children and families, human and individual rights, political and social rights and duties to mention but a few matters of any orderly and successful society. However, like the errors of the notion of terra nullius, there is a wrong presumption that Indigenous Peoples and Nations are empty of laws. The fact is their traditional and customary laws exist. The other fact is they have the capacity to make contemporary laws to reflect and accommodate the changes brought about by settlement, Treaties, and Canadian laws. The Law Society of Ontario, as an aspect of continuing education, must make available to all members of the legal profession, opportunities for educational opportunities in conjunction with Indigenous

legal experts and scholars of Indigenous Knowledge and ways of settling conflicts and disputes, including as appropriate Indigenous Leaders and Elders.