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CONVOCATION

IN PUBLIC SESSION

THURSDAY, JUNE 27, 2019 - 10:00 A.M.

OSGOODE HALL, TORONTO

## 1                                    CONVOCATION ATTENDANCE

2                                    Treasurer - Malcolm Mercer

3	Robert P. Armstrong	Lee Ferrier
4	Vern Krishna	Harvey Strosberg
5	Thomas G. Conway	Janet E. Minor
6	Laurie H. Pawlitzka	Robert Bateman
7	Seymour Epstein	Benson Lau
8	Nancy Lockhart	Geneviève Painchaud (ph.)
9	Clare Sellers	Gerald Sheff
10	Doug Wellman	Bradley H. Wright
11	Robert Adourian	Ryan Alford
12	Jack Braithwaite	D. Jared Brown
13	Robert Burd	Gerard Paul Charette
14	Joseph Chiumminto	Paul Cooper
15	Dianne Corbiere	Cathy Corsetti
16	Orlando Da Silva	Jean-Jacques Desgranges
17	Teresa Donnelly	Etienne Esquega
18	John Fagan	Julian Falconer
19	Sam Goldstein	Gary Graham
20	Joseph Groia	Philip Horgan
21	Jacqueline Horvat	Murray Klippenstein
22	Shelina Lalji	Cheryl Lean
23	Atrisha Lewis	Marian Lippa
24	Michelle Lomazzo	Cecil Lyon
25	C. Scott Marshall	Isfahan Merali

## 1 CONVOCATION ATTENDANCE

2 (Continued)

3

4 Gina Papageorgiou Trevor Robert Parry

5 Jorge Pineda Lubomir Poliacik

6 Geoff Pollock Brian Prill

7 Chi-Kun Shi Julia Shin Doi

8 Megan Shortreed Andrew Spurgeon

9 Sidney Troister Tanya Walker (ph.)

10 Alexander David Wilkes Claire Wilkinson

11 Nicholas dePencier Wright

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

2 ELECTION OF TREASURER:

3 TREASURER MERCER: Good morning,

4 everyone. Welcome to Convocation. Welcome to anyone  
5 who is joining us today via the public webcast.

6 Bonjour, bienvenue au Conseil en personne et par la  
7 web-émission publique.

8 I wish to start by recognizing we are  
9 here in Toronto, which comes from a Mohawk word  
10 "Tkaronto", which means, "where there are trees standing  
11 in the water." I acknowledge we are meeting on the  
12 traditional territory of the Mississaugas of the New  
13 Credit First Nation and acknowledge the Haudenosaunee  
14 and the long history of all of the First Nations in  
15 Ontario and the Métis and Inuit peoples. I say this in  
16 the spirit of reconciliation and the importance of  
17 reminding all of us we share this land with one another  
18 and Indigenous peoples. I would like to welcome  
19 everyone to Convocation in the Lamont Learning Centre  
20 here at the Law Society.

21 First, for any members of the  
22 professions, the public and press who attend, we ask  
23 that you not take photographs or videos during the  
24 meeting. You may unobtrusively make an audio  
25 recording, but only for the purposes of confirming the

1 accuracy of remarks made. I do note, however, that we  
2 produce a full transcript of the public portion of  
3 Convocation and an archived webcast of the meeting, both  
4 of which are available on our website in the days  
5 following the meeting.

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

9 I'd like to review the instructions for  
10 the phone system for those participating by phone. Once  
11 we determine who is on the telephone, I will let  
12 everyone know that we are placing those calling into the  
13 meeting in what we call lecture mode. This means from  
14 our end we are muting all callers. Once muted, they  
15 will be able to hear the meeting, but cannot speak, at  
16 least cannot be heard. It's Star 6 from our end for  
17 everyone. We will, of course, need to come out of  
18 lecture mode to hear callers who wish to speak and vote.  
19 We will do that following presentations of reports and  
20 motions. At that time, unless callers wish to speak, we  
21 ask them to Star 6 their phones so that they won't be  
22 heard, unless they're speaking, as we have done in the  
23 past. We will repeat this throughout Convocation as  
24 necessary.

25 I understand that there are at least a

1 couple of people on the phone.

2                   Geneviève Painchaud, are you on the  
3 phone?

4                   MS. PAINCHAUD: Yes, I am.

5                   TREASURER MERCER: Tanya Walker? Thank  
6 you, Geneviève. Tanya Walker, are you on the phone?

7                   MS. WALKER: Yes, I am.

8                   TREASURER MERCER: Thank you.

9                   Is there anyone else on the phone? Thank  
10 you.

11                   First item of business is election of the  
12 Treasurer. I now call on Dianne Corbiere, who has been  
13 appointed under by-law 3 to act in my place in the  
14 election of Treasurer.

15                   MS. CORBIERE: Can I get a treasurer tag  
16 for me? This is my big debut.

17                   --- Applause.

18                   MS. CORBIERE: To start, I wanted to also  
19 recognize that it's National Multiculturalism Day, and  
20 I'm really pleased that we get to deal with a lot of  
21 equity issues today. And my big moment, I now turn it  
22 over to James Varro to open the voting for Treasurer's  
23 election.

24                   SECRETARY: Thank you, Ms. Corbiere.

25 Good morning, benchers. We'll open the voting now for

1 the Treasurer's election. All those who have not voted  
2 in the advance poll, please line up to my left in front  
3 of the poll stations which you can see over in the  
4 corner. Sharon Fischer-Mitchell will provide you with a  
5 ballot. Mark the ballot at the poll and come to me and  
6 I will check your name off once you've voted in the  
7 ballot box to my right.

8 --- Off-the-record discussion.

9 SECRETARY: Thank you, benchers. Ms.  
10 Corbiere and I will now depart the room, count the votes  
11 and return with the result in the Treasurer's election.  
12 So give us a few moments. Thank you.

13 --- Recess taken at 9:11 a.m.

14 --- On resuming at 9:23 a.m.

15 SECRETARY: Benchers, I'll announce the  
16 results of the Treasurer's election. Fifty-three  
17 ballots were cast: Malcolm Mercer, 31; Chi-Kun Shi, 22.  
18 I declare Malcolm Mercer elected Treasurer.

19 --- Applause.

20 TREASURER MERCER: Thank you. As the  
21 next order of business I'm going to invite Chi-Kun Shi  
22 to make remarks and to thank her for her contribution  
23 by running as a candidate.

24 --- Applause.

25 ADDRESS BY MS. SHI:

1 MS. SHI: Thank you, Malcolm.

2 I want to thank everybody for having been  
3 so open to let me come and visit you, speak with you and  
4 learn from you. This campaign has been a great  
5 experience for me, and I'm very grateful. I know that  
6 there are a lot of us who are concerned about the  
7 differences in this Convocation, but having met with  
8 most of you, I say that I think we are going to be just  
9 fine because of all the dedication, talent, energy and  
10 the will to serve in this Convocation. And, finally,  
11 I'd like to make a motion to make the election of  
12 Malcolm Mercer as our Treasurer unanimous.

13 --- Applause.

14 TREASURER'S REMARKS:

15 TREASURER MERCER: I'm not going to tempt  
16 fate by taking a roll call.

17 --- Laughter.

18 TREASURER MERCER: So I'm going to make a  
19 few personal remarks, if you don't mind, before turning  
20 to the formal agenda. I want to start by thanking those  
21 who supported my candidacy and worked for my  
22 re-election; I'm grateful. I'm particularly grateful  
23 for the fact that those who I have worked with over last  
24 years have been supportive, and that means people on all  
25 sides of all issues, and I'm grateful for that.

1                   As to those who supported Chi-Kun, let me  
2 say I believe that the role of the Treasurer is to lead  
3 the Law Society without regard to personal politics.  
4 Going forward, I will simply do what I think is best in  
5 accordance with the role assigned to me and our rules  
6 and policies, because that's what I think a Treasurer is  
7 supposed to do. Going forward I ask the same of each of  
8 you, that you come to Convocation simply as yourself, to  
9 listen, consider, exercise your own judgment as a  
10 bencher, as you were elected to do.

11                   We have been divided by this Treasurer  
12 election, we are divided by the issues we're about to  
13 debate, but going forward, proper governance of the  
14 legal professions does not permit the division to  
15 continue. That's not to say we won't disagree,  
16 sometimes passionately, but our disagreements must be as  
17 benchers individually at Convocation in order to have  
18 Convocation do its work and for each of us to do the job  
19 we have undertaken to do.

20                   Ordinarily, the Treasurer talks more  
21 generally, talks about broader issues, the issues of the  
22 day, the future as the Treasurer sees it. I'm not going  
23 to do any of that; that would be a distraction. I think  
24 we have work to do, and I think we best get on with  
25 doing our jobs. Thank you.

1                   --- Applause.

2                   TREASURER MERCER: We have six newly  
3 appointed public benchers, and we have two public  
4 benchers who are continuing. Let me say that Seymour  
5 Epstein and Jerry Sheff have been reappointed, and we're  
6 grateful that they have been.

7                   --- Applause.

8                   TREASURER MERCER: We have six appointed,  
9 newly appointed public benchers, two of them finally  
10 confirmed yesterday as they sat waiting nervously to see  
11 what would happen today. I have CVs for each of the  
12 six, and I may summarize along the way, but I'm going to  
13 tell you a little bit about each.

14                   Robert Bateman is from Sudbury. He's a  
15 consultant at Patricia Holdings since 1983. He  
16 specializes in forestry and mining industries. He's  
17 been an advocate for the film industry, bringing  
18 projects to Northern Ontario. He is actively engaged  
19 in the City of Sudbury's job creation task force,  
20 seeking investment for the city. He served as president  
21 and director of the Sudbury Chamber of Commerce, an  
22 active volunteer for Sudbury Cancer Society. If you  
23 want to know more, ask Jack Braithwaite, who says great  
24 things about Bob.

25                   Benson Lau is a family physician. He's

1       cared for Markham and GTA residents for more than 25  
2       years. He's a former citizenship judge. He's served as  
3       a member of the Toronto Police Services Board and the  
4       Ontario Civilian Commission on Police Services. He has  
5       volunteered with a number of charitable organizations,  
6       including the Mon Sheong Foundation, Carefirst Seniors  
7       and Community Services Association, the Chinese Cultural  
8       Centre of Greater Toronto and St. John's Ambulance. He  
9       received his bachelor of science in 1975 and his medical  
10      degree from University of Toronto in 1985.

11                       Nancy Lockhart is our third new  
12      appointee. She is corporate director and for 18 years  
13      was the chief administrative officer of Frum Development  
14      Corporation. She is a former vice-president of Shoppers  
15      Drug Mart, she was the chair of the board of Gluskin,  
16      Sheff & Associates until its recent acquisition by Onex.  
17      She was a director of Loblaws companies for fourteen  
18      years. She was also a director and chair of the  
19      governance committee at Atrium Mortgage Investment  
20      Corporation. She sits on a number of charitable boards  
21      in the healthcare and arts sectors. She is a former  
22      trustee of Retirement Resident REIT, former director of  
23      Canada Deposit Insurance Corporation and of Barrick  
24      Gold. She holds the ICD.D designation from the  
25      Institute of Corporate Directors. She was awarded the

1 Order of Ontario in 2006 and a Queen's Golden Jubilee  
2 Medal in 2012. She makes me nervous.

3                   Geneviève Painchaud, who is on the phone,  
4 is a realtor in the Ottawa area. She has extensive  
5 community involvement through her volunteer work as a  
6 board member of social services agency, a director of  
7 Ontario 211. Madam Painchaud is a marketing  
8 professional, having developed her expertise in her  
9 roles with Trimark Mutual Funds (Invesco), and Bell TV,  
10 and is a professor at Collège La Cité in its business  
11 faculty. She received her bachelor of commerce degree  
12 from the University of Windsor in 1994.

13                   Clare Sellers of Toronto -- and I should  
14 have said, Geneviève is from Ottawa.

15                   Clare Sellers from Toronto joined the  
16 board of directors of SickKids Foundation in 2016. She  
17 has most recently also served as trustee of the Over the  
18 Wall, an organization that runs residential camps for  
19 children in the United Kingdom affected by serious and  
20 life-threatening illnesses. Professionally, she has  
21 served as director and chief operating officer at ABN  
22 AMRO Rothschild and as vice-president corporate finance  
23 at Midland Walwyn Capital. She served for eight years  
24 as a trustee at University of Western Ontario United  
25 Kingdom Foundation. She is a graduate of the Richard

1 Ivey School of Business and a chartered financial  
2 analyst.

3 Doug Wellman of Pickering has owned and  
4 operated Wellman Financial since 1972, where he provides  
5 personalized financial advice, solutions and service to  
6 help his clients achieve their financial goals. Since  
7 2014 he has served as chair of the Kawartha Highlands  
8 Provincial Park stewardship committee. He served as  
9 ward councillor in the city of Pickering from 1991 to  
10 1994, as treasurer of the Ajax-Pickering Hospital from  
11 1992 to 1998, and chair of Bancroft area stewardship  
12 council from 2000 to 2016.

13 As I think as everyone will acknowledge,  
14 we have a number of new and valuable contributions  
15 brought to Convocation table by our new public  
16 appointees, and we welcome you.

17 --- Applause.

18 TREASURER MERCER: On behalf of  
19 Convocation, I'd like to congratulate The Honourable  
20 Doug Downey on his appointment as Ontario's 41st  
21 Attorney General. Minister Downey is no stranger to the  
22 Bar in Ontario. His knowledge and experience as a  
23 solicitor in small town Ontario will be a great  
24 advantage to him in his new role. As well, the Attorney  
25 General has served on the executive of the Ontario Bar

1 Association for five years. He was a member of the Law  
2 Society of Ontario's Certified Specialist Board. He was  
3 active as a mentor. He sat on several committees. He  
4 participated in a special Convocation working group, the  
5 library and information and support services committee.  
6 Minister Downey was elected in the 2018 provincial  
7 election, having previously served as a municipal  
8 councillor. We've reached out to Minister Downey. We  
9 hope to meet with him soon at Convocation.

10           Benchers will know that we have had a  
11 busy couple of weeks. As always, June is busy with  
12 Calls to the Bar. I want to particularly acknowledge  
13 the efforts of the Professional Development and  
14 Competence staff, and particularly Priya Bhatia,  
15 Executive Director, Professional Development and  
16 Competence, for their efforts in organizing Calls to the  
17 Bar to admit more than 1,700 new lawyers to the Bar.  
18 Good work.

19           --- Applause.

20           TREASURER MERCER: I congratulate our  
21 LL.D. recipients, they are an impressive group. Ovide  
22 Mercredi in Ottawa received an LL.D., Former National  
23 Chief of the Assembly of First Nations; the Honourable  
24 James Bartleman received his LL.D. honoris causa, as  
25 they all are, in London. He is Ontario's 27th

1 Lieutenant Governor. In Toronto, LL.D.s honoris causa  
2 were given to the Honourable Gloria Epstein of the Court  
3 of Appeal for Ontario, hooded by one Seymour Epstein.  
4 Professor Thulisile Madonsela, former Public Protector  
5 of South Africa, current chair of social justice,  
6 Stellenbosch University; Earl Cherniak, QC, preeminent  
7 litigator and mediator; Professor Stephen Toope,  
8 vice-chancellor, University of Cambridge.

9 All of these individuals have made  
10 significant contributions to the legal profession, the  
11 rule of law, human rights and the administration of  
12 justice. They are deserving recipients.

13 I wish to congratulate Orlando Da Silva  
14 for having been recognized as one of the 2019 recipients  
15 of the Lexpert Zenith Award. The Zenith Award  
16 recognizes change agents in law, and Mr. Da Silva is  
17 recognized for his efforts as a mental health advocate.  
18 Congratulations.

19 --- Applause.

20 TREASURER MERCER: Before I turn to  
21 Convocation's agenda, I would like to let benchers know  
22 that in the coming weeks I will be considering committee  
23 appointments. I'll reach out to you to learn more about  
24 your interests, your expertise. I expect to call a  
25 Special Convocation, likely in August, to seek

1 Convocation's appointment of recommended committees and  
2 committee chairs and vice-chairs. That's just to let  
3 you know where we're going.

4 CONSENT AGENDA:

5 TREASURER MERCER: Turning to the agenda,  
6 the Consent Agenda has three items on it. As benchers  
7 know, the Consent Agenda, items can be taken out of the  
8 Consent Agenda if that's the will of benchers. Does  
9 anybody wish a matter to be taken off the Consent  
10 Agenda? Seeing none, the Consent Agenda is moved --  
11 anyone on the phone? Thank you. The Consent Agenda is  
12 moved by Andrew Spurgeon, seconded by Robert Burd.

13 All those in favour of the Consent  
14 Agenda? All those opposed? Opposed, if any, on the  
15 phone? Consent Agenda is carried.

16 NOTICE OF MOTIONS:

17 TREASURER MERCER: The next item on the  
18 agenda is motions respecting the Law Society's statement  
19 of principles requirement. I have, through Mr. Varro,  
20 the Secretary, a motion from Mr. Klippenstein and Ms.  
21 Lean. I have a motion to amend, or notice of a motion  
22 to amend from Mr. Groia and Ms. Donnelly, and we have a  
23 certain amount of correspondence and other  
24 communications which is available on the website and  
25 benchers have in BoardBooks.

1                   I have, after I went to sleep last night,  
2                   an indication that there would be a point of order  
3                   raised with respect to --

4                   MR. CHARETTE: Excuse me, Mr. Treasurer.  
5                   I have a motion that I served notice concerning an  
6                   amendment to Mr. Groia's motion. Can that be dealt  
7                   with later?

8                   TREASURER MERCER: Yes. I hadn't  
9                   appreciated that you had given notice because you didn't  
10                  have a seconder. Of course, if you have a seconder  
11                  now --

12                  MS. SHI: I'll second.

13                  TREASURER MERCER: So we have a motion to  
14                  amend the proposed amendment. So we have that as well  
15                  to deal with, and thank you, Mr. Charette.

16                  MR. CHARETTE: Thank you.

17                  TREASURER MERCER: So we have a couple of  
18                  things procedurally in respect of which issues have been  
19                  raised.

20                  As I said late at the end of yesterday,  
21                  there was an indication that there would be a point of  
22                  order raised and as well there is an issue which may be  
23                  raised with respect to the amendment itself. It seems  
24                  to me probably right that we start with the point of  
25                  order as that would precede the tabling of the motion

1 which is anticipated. So unless there's objection to  
2 that, I propose to proceed in that way. I should  
3 indicate with respect to that, I spent a certain amount  
4 of time reading by-laws in the last little while. Just  
5 so there's context for it, by-law 3 deals with procedure  
6 at Convocation. Section 75(1) says subject to  
7 subsection 2 Convocation shall be conducted in  
8 accordance with this part. Subsection 2 says the  
9 Treasurer may waive compliance with any requirement,  
10 alter any requirement and extend or abridge any time  
11 period mentioned in this part with respect to  
12 Convocation. And subsection 3 says any matter of  
13 procedure not provided for in this part shall be  
14 determined by the Treasurer.

15                 With respect to decisions that I have to  
16 make in that regard, I'll simply say to you that it  
17 seems to me that the guiding principle ought to be that  
18 Convocation be facilitated in expressing its will after  
19 proper deliberation, and that it seems to me in making  
20 rulings or decisions I shouldn't be guided by the  
21 desired outcome, but, rather, by the need for  
22 Convocation to be able to debate, deliberate and express  
23 its will.

24                 With respect to a motion, a point of  
25 order as raised, the question arises whether, if and

1 when I make a decision in that respect, there is the  
2 potential for an appeal.

3           There are appeal provisions in by-law 3  
4 and two or more benchers who are entitled to vote may  
5 appeal from a ruling or decision of the Treasurer, and  
6 there are certain matters which are not capable of  
7 appeal, including questions of privilege or procedure.  
8 It's my view that the point of order is not a question  
9 of privilege or procedure. It's, therefore, my view  
10 that it's capable of appeal. If there's a disagreement  
11 with whatever conclusion I reach, the implication of  
12 that is that the point of order is capable of debate as  
13 well in the first instance. So I simply say that to  
14 guide.

15           Now, is it Mr. Falconer who will be  
16 presenting the point of order?

17           MR. FALCONER: So I understand that  
18 Mister -- thank you, Treasurer. So I understand that  
19 Mr. Esquega, my colleague, had some remarks to make, and  
20 then I will present the formal motion that was served  
21 last night.

22           TREASURER MERCER: Mr. Esquega.

23           MR. ESQUEGA: Thank you, Treasurer.  
24 Thank you, colleagues.

25           The point of order that I would like to

1 speak to today concerns a conflict of interest, or  
2 perceived conflict of interest, concerning a matter that  
3 we're speaking to today immediately after we deal with  
4 this issue, and that's the issue of the statement of  
5 principles.

6           As we know, Mr. Klippenstein and Dr.  
7 Alford both have a pending judicial review application,  
8 or have a pending judicial review application against  
9 the Law Society, concerning the statement of principles,  
10 and they're seeking to abolish it within the court  
11 proceeding.

12           When I began preparing for Convocation  
13 today, it occurred to me last week that I was having  
14 some difficulties appreciating how Mr. Klippenstein and  
15 Dr. Alford can participate in a discussion and a vote  
16 today on this very specific issue that is pending before  
17 the courts.

18           As a matter of courtesy, I reached out  
19 to my colleagues and I noted my concerns, and Mr.  
20 Klippenstein responded to me right away, and I responded  
21 quickly to further elaborate on the reasons why I had  
22 these concerns. This exchange occurred over the  
23 weekend, and since Monday we have not corresponded any  
24 further on this.

25           But in thinking about this issue, it was

1 particularly troubling to me that we are here to serve  
2 the public interests, and when I was reviewing our  
3 by-laws in the Law Society Act, we always have to keep  
4 in mind that we are accountable not only to ourselves,  
5 not only to the people who vote for us to get here, but  
6 the broader public.

7           And, as directors, as a basic principle  
8 of law, we are in a fiduciary relationship with this  
9 organization. This fiduciary duty requires us to have a  
10 duty of loyalty to the Law Society, and from that duty  
11 of loyalty there is an obligation on us to avoid all  
12 potential conflicts of interest.

13           Our code of conduct talks about our  
14 conduct as benchers and it holds us to a high ethical  
15 standard. That's consistent with the case law on this  
16 issue of benchers; directors being in a fiduciary  
17 relationship and being held to a high ethical standard.

18           Our code of conduct goes into detail  
19 about our duty to ensure that we don't put our personal  
20 interests ahead of the Law Society business. We must  
21 adhere, for example, in paragraph 5 it says, "Benchers  
22 must adhere to the spirit and letter of laws of Canada,  
23 Ontario, and the policies and procedures of the Law  
24 Society, including the Code." Subsection D says,  
25 "Benchers must arrange their professional and personal

1     affairs in a manner that will bear close public scrutiny  
2     to prevent conflicts of interest from arising." Part 3  
3     of the code deals with conflicts of interest  
4     specifically, and this is where we have had probably  
5     some disagreement and why we're having to  
6     address this here today.

7             Section 32 [sic] of our code of conduct  
8     specifically talks about what we as benchers need to  
9     consider when a conflict of interest is before us or  
10    likely before us, and that provision provides that as  
11    follows:

12            "In considering whether there is a  
13    conflict, benchers should ask themselves whether or not  
14    a well informed, reasonable member of the public would  
15    conclude that their decision making could be influenced  
16    by duties owed to others or to personal interests. In  
17    doing so, the focus should be on actions, not on  
18    motives; conflicts of interest should be considered, not  
19    just from the benchers' own perspective, but also from  
20    the perspective of licensees, stakeholders and the  
21    public whose confidence in the Law Society must be  
22    maintained."

23            The code of conduct goes on to provide  
24    that we're supposed to declare these conflicts and we're  
25    supposed to recuse ourselves from participating in

1 business when these conflicts arise. So when I was  
2 thinking about this a lot, consulting with some of my  
3 colleagues about this, I had a very difficult time  
4 proceeding to sit here with my colleagues in this room  
5 without raising this issue.

6 From my perspective, when considering the  
7 interests of the public as a whole, it is my view that  
8 whether or not there is an actual conflict, there's  
9 enough there with the JR to attribute the personal  
10 interests element of the test that we have to consider.

11 The fact of the matter here is that you  
12 have two motions before you, possibly three. If all  
13 three motions succeed, the JR becomes moot. There isn't  
14 a mandatory element. If the amendment succeeds, that  
15 Mr. Groia and Ms. Donnelly have advance, the mandatory  
16 element will be removed. If Mr. Klippenstein's motion  
17 succeeds, well, then there's no more statement of  
18 principles whatsoever.

19 So when I thought about these issues I  
20 also thought about the fact that what's going to happen  
21 after this happens, and from my perspective, I think the  
22 Law Society is going to be exposed, most likely, more  
23 likely than not, to a costs claim, because that's also  
24 pled for within the proceeding, in the judicial review  
25 proceedings.

1                   So I have to raise these concerns with  
2                   Convocation today. I'm doing so now. I understand that  
3                   there's a corresponding motion that's now been brought,  
4                   and I conclude I'm not raising this issue as a political  
5                   move. This is an issue that requires us to uphold good  
6                   governance. We're accountable to the public of Ontario,  
7                   and from my perspective, I think we need to address this  
8                   and I think the disagreement that we have is with  
9                   respect to the issue of whether or not this is a  
10                  personal interest that triggers the requirement to --  
11                  the requirement for Mr. Klippenstein and Dr. Alford to  
12                  recuse themselves. Thank you.

13                   TREASURER MERCER: Mr. Falconer.

14                   MR. FALCONER: Thank you, Treasurer.

15                   Just by way of formality, a point of  
16                  order. Notice of motion was served very late last  
17                  night, and so you would define them as the early morning  
18                  hours, and I blame the bencher dinner for that. I must  
19                  say that it was my hope that it wouldn't be necessary to  
20                  serve this motion, and I think what you heard from my  
21                  colleague, Bencher Esquega, speaks to this very point,  
22                  that often the discussions back and forth amongst  
23                  colleagues get people to identify a way out of the  
24                  problem and move forward, and that didn't happen and so  
25                  the motion was served.

1                   Now, the motion which we have ensured Mr.  
2 Varro, thank you, circulated amongst all of my  
3 colleagues this morning, was sent directly to Benchers  
4 Klippenstein and Alford literally the minute it came off  
5 the printer late last night.

6                   What I want to start by saying is -- and  
7 I really want to pick up where Mr. Esquega left off  
8 without being repetitive. I acknowledge, not happily,  
9 I was vice-chair of the Challenges Faced by Racialized  
10 Licensees and chair of Equity and Indigenous Affairs  
11 Committee for many years, so I am not -- my position on  
12 the statement of principles is a matter of record, and  
13 I'm not ashamed it. I very passionately believe in  
14 these issues. So I'm not happy that Mr. Klippenstein  
15 and his slate were successful on the level they were  
16 successful. And I say that with a smile on my face.  
17 Why? Not because these issues are to be minimized, but  
18 I respect Murray, I respect Ryan. I respect that they  
19 ran in an election and received significant support from  
20 the licensees that voted, and their motion should not,  
21 if at all possible, be thwarted. They should properly  
22 have this matter determined by Convocation. I emphasize  
23 the word "properly".

24                   So I begin what is going to be no more  
25 than ten minutes, I promise, Treasurer. I begin by

1 saying that what I encourage my colleagues, Benchers  
2 Klippenstein and Alford, to do is to table their motion,  
3 unplug the litigation for which they have a private  
4 interest in, and come back in 30 days and let's  
5 do this properly.

6 I understand how my motives may be viewed  
7 cynically. That's fine, I get it. We're all taking  
8 different positions in this thing. But it has to be  
9 done right, and a conflict is not always a conflict that  
10 is readily apparent.

11 I say that to make my second point, which  
12 is this. I do not bring this motion because I think  
13 there's anything ethically wrong with the character or  
14 integrity of my colleagues, Benchers Klippenstein or  
15 Alford. Conflicts of interest are often difficult  
16 issues to manage because they raise professional and  
17 personal ethics. But I wish, for the record, to tell  
18 you that is not, by any stretch, what is intended here  
19 or what I am saying. I have been found to be in  
20 conflicts that I didn't know existed, and it's what you  
21 do when they're drawn to your attention.

22 So I need, for the public record, it to  
23 be understood, this is not about the personal characters  
24 of these two individuals, this is about a technical  
25 question as to whether they have the capacity to

1 participate in a process.

2                   So now let me move on to that issue.

3 Myself and my colleague, Bencher Lewis, have brought  
4 this motion because of the existence of an application  
5 in the Divisional Court, styled -- and that's what  
6 lawyers say when they're trying to tell you what the  
7 title of the proceeding is. God forbid we should just  
8 say the title of the proceedings. The title of the  
9 proceedings is Ryan Alford and Murray Klippenstein,  
10 applicants, Law Society of Upper Canada, respondent. It  
11 is court file number 510/18. It used to be in the  
12 Superior Court and -- my apologies, Divisional Court is  
13 also Superior Court. It was in the wrong end of  
14 Superior Court, and as a result of that, and my motion  
15 reflects it, it had to be moved to Divisional Court,  
16 which prompted - people need to know how personal stakes  
17 work - which prompted a costs order against Mr.  
18 Klippenstein and Mr. Alford personally. That is not  
19 because they're horrible people. Because when you're a  
20 private litigant and you lose, it costs you money. And  
21 in this case, as set out in our motion, it cost them  
22 over \$9,000 personally. We call that, in the business,  
23 a private stake, and what you must not do when you show  
24 up here at the hallway of Convocation, for which people  
25 will tell you, over ten years I'm inordinately and

1 regularly late for, what you must not do is cross the  
2 threshold burdened with a private stake so that you are  
3 incapable of turning to these good people, all who  
4 attended today, you're incapable of turning to them and  
5 saying I am going to make a decision in the public  
6 interest.

7 I am going to listen to the arguments of  
8 both sides. Despite Mr. Graham's view of how open I am,  
9 I'm going to listen to him. I'm going to listen to my  
10 colleagues who I completely disagree with because I  
11 recognize, and after 60 years it happens now and then,  
12 very rare, that I might be wrong.

13 But what if, what if by admitting I'm  
14 wrong it would cost me money? What if I leave this room  
15 after admitting I'm wrong and I then have to write  
16 another cheque because of a costs order because I was  
17 wrong? We call that a stake in the outcome. The  
18 corollary of that is what better way, what better way to  
19 buoy a piece of litigation than have the Law Society  
20 vote against itself. And so on June 27th, 2019, the Law  
21 Society, by vote, determined that Ryan Alford and Murray  
22 Klippenstein were right in their litigation and now Mr.  
23 Klippenstein can go collect another cheque.

24 Do you see my point? My point is -- and  
25 when I say 'collect a cheque', I do not mean that he did

1 this, and I shouldn't have used the word 'another'. I  
2 do not mean that he did this for financial reasons. I  
3 mean that he would be entitled to his costs financially  
4 if, in fact, we unplugged this statement of principles  
5 and his Divisional Court proceeding were discontinued  
6 because of his success.

7 My point is simply this. We call that a  
8 private stake. You don't have to go to law school to  
9 get this. Frankly, going to law school makes you less  
10 able to get it because you're so mired in cobwebs, but  
11 the truth of the matter is we don't come to these  
12 proceedings with these private interests. We make sure  
13 we shed them before we get here.

14 Now, what could have happened in this  
15 case and what should have happened is when it was  
16 brought to the attention of my colleagues, they should  
17 have, at that stage, fished or cut bait. We have this  
18 private interest, we like this litigation, it's great  
19 stuff, but you know what, how do I do the public  
20 interest thing here? I can't do both, so I discontinue.  
21 They had since easily last week, because it was brought  
22 to their attention, if not longer. I am encouraging  
23 them today, let's not go on to get a decision of this  
24 motion, we don't need it. They could agree to table the  
25 motion today on the statement of principles, thirty days

1 from now we come back and they are unencumbered. Just  
2 get rid of the private stake and let's argue the issues  
3 properly.

4 I close with this. It is not true that  
5 Robert's Rules of Order apply here in a way that if you  
6 have a pecuniary interest you do not have to somehow be  
7 recused. Let me explain, because I have seen this  
8 argument and, frankly, it simply couldn't stand the  
9 public interest test. If today it turns out because  
10 Conway is a pretty wealthy guy over there -- now, I  
11 don't know, he's a former treasurer and he owns a  
12 building. I have to use a hypothetical. You're the  
13 best-dressed guy here, you got a bow tie, so I went with  
14 you. My colleague Conway, the wealthy practitioner,  
15 former treasurer that he is, owns a building. He comes  
16 to Convocation today and we're voting on LibraryCo and  
17 we've decided to buy a new building in Ottawa and, sure  
18 enough, Conway looks at the address and goes, damn, I  
19 own that building, right?

20 Now what does Conway do? Well, he does  
21 the right thing, he gives me a piece of the building so  
22 I stay quiet -- I'm kidding. He declares that he has a  
23 private stake in this and he leaves the room, he leaves  
24 the room, because that's what we do when we have a  
25 private stake in the outcome we decide.

1                   Now, does Conway raise Robert's Rules of  
2 Order and say the following? You can tell me about the  
3 conflict, but you can't compel me to leave the room, so  
4 Conway votes on buying his own building.

5                   Doesn't work that way in the public  
6 interest. So I encourage my friends not to raise  
7 arguments out of Robert's Rules of Order that clearly  
8 are not consonant or consistent with the public  
9 interest. When you take that mantle, that  
10 responsibility in the public interest, it's real, it's  
11 real. We all have to satisfy, and this is showing my  
12 age, we call them the reasonable man on the Clapham  
13 omnibus. Now it should be the reasonable person in the  
14 Clapham omnibus, the reasonable woman in the Clapham  
15 omnibus. We call that reasonable person someone who  
16 looks at what we do, and they draw conclusions from what  
17 we do. Could the reasonable person in any way ever  
18 doubt that my colleagues, Benchers Klippenstein and  
19 Alford, have a private stake in the outcome of this  
20 thing? Could the reasonable person sit back and say to  
21 themselves they are free to make a decision in the  
22 public interest, whatever argument here is made that  
23 compels them to do so? The answer has to be no.  
24 They're mired in a private stake, which can be  
25 discontinued.

1                   So I close -- and I thank you for your  
2           patience, Treasurer and my colleagues. I close with  
3           this. This litigation is simply a bar, it's a bar to us  
4           doing our job in a proper way, an ethical way. You won  
5           an election in an impressive fashion, as a slate, and  
6           you deserve to participate fully in the debate, but like  
7           the rest of us, you do have a personal responsibility to  
8           come here not mired, not clothed in a private stake.  
9           And there's an answer to that. Simply discontinue the  
10          litigation and let's get on with this thing.

11                   And I thank you for your patience,  
12          colleagues.

13                   TREASURER MERCER: So I understand your  
14          position clearly, I take it it is your position that  
15          there is a fiduciary obligation on the members of this  
16          Convocation and that, therefore, fiduciary law in  
17          respect of conflicts of interest applies?

18                   MR. FALCONER: If I could answer your  
19          question this way, Treasurer, and I'm not trying to do  
20          the lawyer weasely thing; I'm trying to actually answer  
21          your question.

22                   TREASURER MERCER: That would be helpful.

23                   MR. FALCONER: Yes. I'm trying to  
24          answer your question in a way that doesn't tick off  
25          Ms. Lewis so I get it right. If you go to our motion in

1 terms of the law... Do you have it in front of you,  
2 Treasurer?

3 TREASURER MERCER: Yes.

4 MR. FALCONER: It was served by Mr. Varro  
5 first thing this morning.

6 TREASURER MERCER: Please just go to the  
7 point, if you would.

8 MR. FALCONER: Well, I was just asked a  
9 question by my colleague bencher beside me.

10 TREASURER MERCER: Didn't hear that.

11 MR. FALCONER: No problem. I just want  
12 to make sure, because I was now asked by one member  
13 about the -- I want to make sure all of my colleagues  
14 are able to access the motion. It was distributed by  
15 Mr. Varro this morning, and I'm not sure if it's on  
16 BoardBooks. I was asked that.

17 TREASURER MERCER: We have paper copies  
18 apparently, and it was sent, I understand, by e-mail.

19 MR. FALCONER: Is it on BoardBooks?

20 TREASURER MERCER: It is not.

21 MR. FALCONER: Thank you. I'm only  
22 asking, not to be critical. I'm the one who served it  
23 very late in the process. Staff are doing their best.

24 TREASURER MERCER: Please proceed.

25 MR. FALCONER: Thank you. So at page 2

1 of the motion, Treasurer, we set out of a number of  
2 legal principles that govern what we say the issue here  
3 is as governors.

4 So the term -- we are governors, we are  
5 statutorily required to govern in the public interest.  
6 That is not your standard director of a corporation.  
7 That is actually our statutory responsibility. We get  
8 the right to self-regulate as long as we don't get that  
9 wrong.

10 The minute we do something other than  
11 that, and here's where the answer to your question lies,  
12 from the passages from the Chan judgment, Treasurer, the  
13 objective is to preclude the fiduciary for being swayed  
14 by considerations of personal interest.

15 Secondly, a person in a fiduciary  
16 position is not allowed to put himself in a position  
17 where his interest and duty conflict.

18 And it's the last one that I really want  
19 to emphasize, and it's on page 3:

20 "The general rule of equity is that no  
21 one who has duties of a fiduciary nature to perform is  
22 allowed to enter into engagements in which he has or can  
23 have a personal interest conflicting with the interests  
24 of those whom he is bound to protect."

25 I only say this. I get that everybody

1 says, well, his interest is aligned. He's going to  
2 actually vote on this statement of principles precisely  
3 the way he's pursuing it in the litigation, so they're  
4 identical interests so there's no issue, but that is  
5 actually not the law of conflict.

6 The law of conflict is that the fiduciary  
7 must be free to make a decision in the public interest,  
8 and if a reasonable person apprehends them, forget  
9 actual, and I say there's an actual conflict, that they  
10 actually can't because it will cost them money, if a  
11 reasonable person apprehends that they're not free to do  
12 that, that is precisely, literally the unwaivable  
13 disqualifying conflict of interest that needs to be  
14 addressed and cured.

15 So the answer to your question is yes as  
16 fiduciaries, yes as governors, but, frankly, the public  
17 interest demands that the people in this room are  
18 satisfied that Benchers Klippenstein and Alford have put  
19 themselves in a position where they can ignore their  
20 mandate, where they can ignore whatever promises they  
21 made during an election, that they can sit and listen in  
22 an appropriate way to all of the arguments and then, at  
23 the end of the day, make a decision with an open mind.  
24 The problem is a private stake doesn't  
25 allow you to do that.

1                   TREASURER MERCER: So let me ask you one  
2 further question, and it's a simple question and I would  
3 appreciate a simple answer, if I could have one.

4                   MR. FALCONER: I have heard a number of  
5 engineers and solicitors --

6                   TREASURER MERCER: Perhaps I could ask  
7 the question.

8                   MR. FALCONER: -- ask questions. I have  
9 never heard a simple one. Please go ahead.

10                  TREASURER MERCER: Well, I may be simple.  
11 The Supreme Court of Canada in Sun Indalex and in  
12 Sharbern Holdings in 2011 and 2013 addressed the test  
13 for conflict of interest in the fiduciary duty context.  
14 Are you saying that the test is any different than  
15 enunciated in those cases?

16                  MR. FALCONER: Yes, I am, and I'll tell  
17 you why. The statutory obligation to govern in the  
18 public interest creates an additional layer that places  
19 great gravity on the apprehensions of the public; that  
20 is, the actual, the perceived and the possible. I stole  
21 those --

22                  TREASURER MERCER: And is there any case  
23 relevant on the facts of that proposition --

24                  MR. FALCONER: I'm sorry, you said it  
25 was a simple question, and you actually --

1                   TREASURER MERCER: I have a second one.

2                   MR. FALCONER: I know, but I need to  
3 complete my answer to your non-simple question. May I,  
4 Treasurer?

5                   TREASURER MERCER: Of course.

6                   MR. FALCONER: Thank you. Respectfully,  
7 so I stole that, that three-part analysis, to be honest,  
8 from Ms. Shin Doi because, from my perspective, that  
9 three-part analysis animates how you watch and  
10 understand the role of governors of the legal profession  
11 in the public interest. So we are different than a  
12 simple conflict of interest analysis. We are different  
13 than the non-regulatory directors. We are in a field of  
14 our own. I say, by the way, that even if this test  
15 applied they would fail, but I do say, and I want to  
16 emphasize this, the statutory obligation to govern in  
17 the public interest takes us another level higher.

18                   TREASURER MERCER: So let me ask one  
19 further simple question. Are any of the authorities  
20 that you have cited in your notice of motion, do any of  
21 them stand for that proposition?

22                   MR. FALCONER: I think they all do.

23                   TREASURER MERCER: Are any of them in  
24 the regulatory or public interest context?

25                   MR. FALCONER: They don't have to be.

1 That is why the conflict between a personal interest and  
2 a fiduciary interest can take on a public dimension, but  
3 can be easily recognized in other contexts. It is that,  
4 if you will, irreconcilable matching up of a private  
5 stake versus a public obligation. It's that private and  
6 public duty that run smack against each other.

7 So I say that what you see in the case  
8 law, including the Supreme Court of Canada case law we  
9 provided to you, repeatedly is the caution against that  
10 running -- that running afoul of the rule.

11 I simply close my answer to your  
12 non-simple question, Treasurer, as follows. If it's  
13 okay to do this, if it's okay to have personal  
14 litigation going on and then you vote on the very  
15 substance that you are running your personal litigation  
16 on, then this is not the Law Society I know. These are  
17 not the governors I know and this is not the capacity I  
18 know. So it's fine today to say it's about the  
19 statement of principles, but tomorrow it could be a  
20 lawsuit I have a stake in and, as a governor, someone  
21 will say, well, Falconer, you have a stake in that  
22 lawsuit.

23 My answer will be Klippenstein, Alford,  
24 the ruling you gave, I can show up here with that  
25 personal stake and I can still vote, even though I have

1 an obvious stake in the outcome. So I simply emphasize  
2 let's be careful to appreciate there's a much broader  
3 significance to permitting this to go forward this way,  
4 matched against 30 days to unplug the proceeding.

5 DR. ALFORD: A point of privilege,  
6 Treasurer.

7 TREASURER MERCER: I was going to turn to  
8 you and Mr. Klippenstein to respond as you wish at this  
9 point. So if that's consistent with what you wish to  
10 say, just start.

11 DR. ALFORD: Thank you, Treasurer.

12 I'll begin with a small correction about  
13 the facts as they played out. So I do appreciate that  
14 Bencher Esquega raised this with myself and Bencher  
15 Klippenstein over the weekend. Unfortunately, I have no  
16 e-mail at my personal residence so I cannot check e-mail  
17 on the weekend, but after seeing the exchange with  
18 Bencher Klippenstein and Bencher Esquega, I did, in  
19 fact, weigh in in the correspondence. Perhaps Bencher  
20 Esquega didn't see that reply, but in my response I  
21 pointed to two particular lines of case law which I  
22 think are particularly applicable here.

23 One begins with a case in the Supreme  
24 Court of Canada called Newfoundland and Newfoundland  
25 Telephone. I raised those to Bencher Esquega because I

1 thought they were of particular import. Given that I  
2 heard nothing from him after that, I was actually quite  
3 surprised to see the formal motion, I was quite  
4 surprised to see it at a quarter to eight this morning  
5 coming from an e-mail from the Secretary. There are  
6 some procedural issues this raises, but I just received  
7 this at a quarter to eight.

8 I feel that this raises serious  
9 allegations against myself and Bencher Klippenstein.  
10 I'm sure he will have his own response to this, and I  
11 also think that there are implications for how  
12 Convocation handles this. I haven't had much time to  
13 look at it, but I will move through it point by point.  
14 I just want to take up point one on the formal notice of  
15 motion noticed by Jim Varro at a quarter to eight this  
16 morning.

17 It notes that we were formally requested  
18 to voluntarily recuse. I have, in fact, made a  
19 consideration on the basis of the informal request from  
20 Bencher Esquega, so I did search my conscience at that  
21 time and I also did a searching review of the case law.  
22 And I would also like to mention that my full-time job  
23 is to teach constitutional administrative law at the  
24 Bora Laskin Faculty of Law at Lakehead University. So I  
25 was able to refresh my memory of that case law and those

1 lines of cases that I mentioned to Bencher Esquega, in  
2 particular.

3 I'd also like to mention that I discussed  
4 them as a preliminary matter with the Treasurer this  
5 week, and I'm not sure if that formally qualifies with  
6 discussions with him in his capacity as ethics lead  
7 under the bencher code of conduct, but, at the very  
8 least, there were discussions about those cases and my  
9 understanding of those cases and what they mean for a  
10 conflict of interest, because I agree entirely with  
11 Bencher Falconer that there is a specific test here, but  
12 it's not in this case law that he cites. It's in the  
13 cases that I mentioned to Bencher Esquega. We do, in  
14 fact, come to Convocation with all kinds of personal  
15 interests, because we come here to Convocation to  
16 operate in a quasi-legislative capacity at times at  
17 Convocation.

18 The relevant test is not the test from  
19 Valenti. We have to think about the colour that it  
20 takes on, and this is good law, Supreme Court of Canada,  
21 in this quasi-legislative context, and it is not a  
22 simple question to resolve, but I did do my best to  
23 resolve it informally when Bencher Esquega quite  
24 properly raised his concerns with me informally and I  
25 was apprised of them upon reading his e-mail on Monday.

1                   Now I turn to point two. The relief  
2 requested is disqualification. Bencher Klippenstein and  
3 I will be disqualified from moving motions and from  
4 voting on motions. I'm not sure if that also extends to  
5 participating in debate. This is not a formality. This  
6 is not Robert's Rules of Order. Where in the by-laws is  
7 there any mention of that power on the Treasurer's part  
8 or the ability of benchers to make that request of the  
9 Treasurer? There is a bencher code of conduct, both of  
10 the speakers previously have alluded to it. It states  
11 that when a fellow bencher perceives that another  
12 bencher is in a position of conflict of interest, they  
13 may raise that in writing with the Treasurer.

14                   That is what should have unfolded. And  
15 that is not a formality, because I then would have had  
16 the right to respond in writing and elaborated my  
17 understanding of the relevant test with all of the case  
18 law that I'd investigated when resolving this  
19 personally. Now here I am at Convocation having  
20 received notice of this approximately two hours ago,  
21 walking you through this analysis as best I can.

22                   I would also like to note the by-laws  
23 specifically forbid benchers from making allegations  
24 against other benchers at Convocation. There is a  
25 reason why the bencher code of conduct contemplates

1 written notice to the Treasurer of this. Because  
2 precisely this is what poisons debate at Convocation,  
3 and the well today has quite effectively been poisoned  
4 by these very serious allegations.

5 --- Applause.

6 TREASURER MERCER: Come to order, please.

7 DR. ALFORD: Moving to point 3. What we  
8 see here is a discussion of the personal stake in the  
9 litigation and we see the argument outlined about costs  
10 and we see the relevant test, which is about reasonable  
11 apprehension of bias, which I raised with Bencher  
12 Esquega by references to case law on Monday. I'll  
13 return to that.

14 Let me first talk about point four. The  
15 relief sought herein is made on the following legal  
16 principles. And I think, as the Treasurer intimated in  
17 a very delicate manner, I recognize some of these cases  
18 because I taught business organizations previously. So  
19 there's some very esteemed case law here, Viscount  
20 Sankey from Regal Hastings, a classic of conflict of  
21 interest in business associations. And I also see  
22 Can. Aero, another classic of fiduciary duties in the  
23 context of corporate boards. I have never seen them  
24 cited in any case discussing the fiduciary duties of  
25 regulators. So despite the fact that they are venerable

1 cases, one of them being from 1896, I fail to see the  
2 relevance.

3           The principle here is inflexible rule of  
4 a court of equity that a person in a fiduciary position  
5 is not allowed to put himself in a position where his  
6 interest and duty conflict. As a general principle, I  
7 think that's quite sound. At no time has anyone  
8 mentioned the nature of the litigation that Bencher  
9 Klippenstein and I brought. It is public interest  
10 litigation.

11           What was my personal stake in the relief  
12 that I sought in that application? It was a declaration  
13 that a regulation was unconstitutional. Now, if that  
14 puts me out of alignment with the interests of not only  
15 the profession but the public in constitutionally sound  
16 regulation, I fail to see it, and I need a much better  
17 analysis from case law than this.

18           What this puts forward is a set of  
19 principles, equitable principles, which is now combined  
20 with the power in the Treasurer - let me just come back  
21 to point three - to make findings, to make findings  
22 against benchers after they have been noticed an hour  
23 and a half before what becomes a hearing, investing the  
24 chance -- sorry, investing the Treasurer with the powers  
25 of a chancellor, where my right to respond is so limited

1 that it would also turn Convocation into a star chamber;  
2 and I say that quite advisedly. If we take a look at  
3 the test, we do actually see there is apprehension of  
4 bias test in point three. What colour does it take on  
5 in this context when we do an appropriate review of the  
6 case law in administrative law. What would a reasonable  
7 member of the public, who was fully informed of the  
8 reality of the situation, think about the possibility  
9 that my decision-making would be tainted by the  
10 allegedly personal stake of my public interest  
11 litigation.

12 As a brief aside, in the first case on  
13 public interest litigation, it's called Thorson v.  
14 Attorney General. Bora Laskin said, "Concern for the  
15 constitutionality of legislation is the hallmark of  
16 public interest". If that's what I was seeking, if  
17 that's what I seek to gain, I fail to see how it is a  
18 personal stake that a reasonable member of the public,  
19 fully apprised, would think puts me in a position of  
20 conflict.

21 And there's an additional layer here, of  
22 course. I can make the case on the case law, and I can  
23 certainly do it in writing, I'd rather not do it now  
24 because we have important matters to discuss today. I  
25 would just merely add, without doing that complete

1 analysis, reasonable person, what would a reasonable  
2 person think about whether or not I'm in a conflict of  
3 interest? Do we really think that I received 5,000  
4 votes from the lawyers of this province to bring me here  
5 into a position of conflict of interest? Is that  
6 feasible? Is it plausible that the legal profession in  
7 Ontario has become so unhinged as to overlook an obvious  
8 conflict? Or perhaps when I put forward in my elections  
9 materials that I was the applicant in this  
10 constitutional challenge they saw the alignment of my  
11 interest with that of the public and the profession.

12 I'll reserve the rest of my time for  
13 Bencher Klippenstein.

14 TREASURER MERCER: I'm not sure what that  
15 means, but, Bencher Klippenstein, please proceed.

16 MR. KLIPPENSTEIN: Mr. Treasurer and  
17 fellow benchers, I decided I would come and stand here  
18 at the podium because my colleague, Mr. Falconer, has  
19 repeatedly accused me of being clothed in a conflict of  
20 interest, and so I thought I would let you see what I'm  
21 actually clothed in.

22 Mr. Treasurer, I would like to make some  
23 comments picking up on what other folks have said about  
24 our, my duties to the public, and I would like to keep  
25 in mind the people outside this room who may be watching

1 now or later, a group of lawyers arguing about  
2 procedural points and wondering what the significance of  
3 this is. Mr. Esquega emphasized that on issues of  
4 conflict of interest we must take into account  
5 licensees, lawyers and paralegals, other members -- that  
6 is, other members of the professions who are outside  
7 this room, and also the public. And repeatedly, my  
8 colleagues have mentioned that the law requires us to  
9 think about the public interest.

10 So I actually want to partly speak to the  
11 members of the public out there who may see this and may  
12 see a group of lawyers arguing about what looks like a  
13 really technical point about conflict of interest, and  
14 what's happening here is an exercise in a group of  
15 lawyers making decisions about how we as a profession  
16 govern ourselves and do so on important issues and, as  
17 has been said, what's underlying this is a dispute about  
18 what I call a compulsory statement of principles, which  
19 affects all lawyers, and I believe, indirectly, the  
20 members of the public.

21 And that's what we are talking about  
22 here. We're doing so as a group of lawyers, we're doing  
23 so independently of the government, except for the  
24 valuable input of public benchers, because we are  
25 independent of the government, we do not answer to the

1 government, we don't answer to anybody except what we  
2 here, in the duties we have, resolve for the  
3 professions, the administration of justice in Ontario  
4 and in Canada as a whole. And we, as lawyers, I'm going  
5 to suggest, play a role when we as a group act  
6 independently of the powers that be, we act  
7 independently of the popular opinion out there because  
8 we think if something is right -- we think about  
9 things, we debate things and we do what we as lawyers in  
10 our duties and obligations and our thoughts think is  
11 right.

12                   And we are not unanimous. We disagree.  
13 And in the 50,000-plus lawyers in this province and  
14 eight or nine thousand paralegals, there is lots of room  
15 for people to disagree strongly and for people in the  
16 public to find a lawyer or paralegal who will represent  
17 their position against the powers that be, regardless  
18 how unpopular they are.

19                   So the citizens out there who may be  
20 watching this may say what I see is a bunch of lawyers  
21 fighting about conflict of interest, but what I would  
22 suggest to you, there's another perspective, which is  
23 you're seeing a group of independent thinkers in this  
24 province who can take a stand when necessary for what's  
25 right. So we create a special space in society for

1 others out there to have their interests -- their  
2 interests protected and their thoughts spoken in court  
3 and elsewhere. So far from this being a dispute about  
4 conflict of interest, which it is, and I'll get to that,  
5 there's much more at stake here.

6 The issue here, going back, we'll decide  
7 this later, is about the statement of principles and the  
8 freedom of lawyers to act independently. I'm not saying  
9 this is all wonderful. The public out there will roll  
10 their eyes and say, yeah, there's problems here.

11 As a thirty-year legal practitioner, I  
12 know the legal system isn't perfect, to say the least.  
13 I could write a book about the shortcomings of our  
14 profession and our legal system, I could write nine  
15 books about it, but I've also dealt with cases in other  
16 countries where the legal system is dysfunctional and  
17 corrupt and I know what it's like, I think, to have a  
18 pretty good legal system here where there's lawyers like  
19 lawyers in this room, including Mr. Falconer, who go to  
20 bat for, you know, the little person and the person who  
21 is getting squeezed.

22 So what looks like, in this room, a  
23 debate about conflict of interest, I would say to the  
24 public, take a breath, reflect, what's going on here is  
25 an independent profession that creates space for the

1 citizens in this province and this country to live their  
2 lives with their families in freedom.

3 Now back to conflict of interest. My  
4 colleagues have repeatedly said that what -- that part  
5 of the perspective must be how we, I, Professor Alford,  
6 can deal with the issues here from the point of view of  
7 other lawyers, paralegals, the public interest, when we  
8 appear to have another thing going on that we are  
9 personally interested in that conflicts with our duties  
10 to think in this room. And Mr. Falconer and Mr. Esquega  
11 have identified it, basically one thing about that, and  
12 I think they're probably suggesting others, which is the  
13 financial costs of litigation.

14 Now, Professor Alford has made a key  
15 point, which is that the lawsuit application in which  
16 Professor Alford, and he initiated it, he's -- deserves  
17 the credit, I would suggest, for taking the first  
18 initial step in this, which he said, and I believe, is  
19 public interest litigation. And what is being asked for  
20 in that application is nothing in his interest or my  
21 interest. And I can tell you when I considered and  
22 eventually became an applicant, I believed that taking  
23 that stand was fundamentally in the interests of this  
24 profession as lawyers, that what was at stake, the  
25 compulsory statement of principles, was an incredible

1 invasion of our independence as independent thinking  
2 lawyers and that that was bad for society. That's why  
3 I joined that, and that is the position put forward in  
4 that application.

5           There's nothing in it for me. In fact,  
6 from a point of view of personal self-interest, joining  
7 that was about the nuttiest thing I could do. There's  
8 nothing but burdens and risks in that and, at that time,  
9 and getting back to the specifics of the financial  
10 issue, Mr. Falconer has mentioned that there's a  
11 possibility that legal costs -- let me say, as a thirty  
12 year litigator, many of you will know, the general rule  
13 in litigation is that the loser pays half or two-thirds  
14 of the costs of the winner. So there's a possibility  
15 that, in theory, if we lose that, then we could be  
16 liable for significant legal costs of the Law Society  
17 and, therefore, I think the logic goes if we happen to  
18 lose that, we could be on the hook personally, and  
19 therefore we have an interest in this room in repealing  
20 the statement of principles to save us the financial  
21 risk in the lawsuit.

22           Well, as you know, as a decades-long  
23 experienced litigator, I'll tell you when I joined the  
24 application I knew about those risks, and my situation  
25 at that time was I viewed the infringement of rights

1 that I consider the compulsory statement of principles  
2 to be so fundamental, that I simply -- and I wrote a  
3 letter to the benchers in November 2017, it's public,  
4 that I would never comply.

5 So as far as I was concerned, I mulled  
6 about this for a year, many walks in the night, my  
7 career was over, and not because I didn't have a good  
8 career that I could continue for the next ten or fifteen  
9 years managing my small, growing law firm with wonderful  
10 colleagues, because that was my plan and that's what I  
11 was going to do, but when this thing came out I  
12 concluded that that was over because I could not comply  
13 with something that was such a basic breach of freedoms,  
14 it was over for me.

15 And, furthermore, going into that  
16 position is, and I accepted this, a financial disaster  
17 and I probably -- not probably, I possibly face personal  
18 bankruptcy as a result of that. In that context,  
19 becoming an applicant in this application meant nothing  
20 to me financially.

21 Now, part of the test is what would a  
22 reasonable member of the public, who is well informed,  
23 think about a possible conflict? I'm telling you that  
24 my interest in potentially avoiding the risk of adverse  
25 legal costs in that application meant nothing to me then

1 and means nothing to me today. If it had, I would  
2 not have done what I did.

3 So for you sitting here and for the  
4 members of the public, you know, reflect that, and that  
5 position was made clear by me in an open letter to the  
6 benchers, in an article in OTLA (ph.) Online, in my  
7 bencher statement. So one of the issues -- and, by the  
8 way, one of the wonderful things about conflict of  
9 interest rules which members of the public may shake  
10 their head and roll their eyes at, is it is a mechanism  
11 to avoid corruption and maintain focus, and that's  
12 what's happening here, and that's one of the wonderful  
13 things about lawyers and the legal system about  
14 preventing conflict of interest...

15 TREASURER MERCER: How much longer are  
16 you likely to be?

17 MR. KLIPPENSTEIN: Is that negotiable?

18 TREASURER MERCER: No.

19 MR. KLIPPENSTEIN: I'll wrap it up, thank  
20 you, Mr. Treasurer.

21 ...is the public awareness of potential  
22 or alleged conflicts, and in this case, the public knew  
23 times ten about my position, as Professor Ryan has said,  
24 in this litigation and so there was full awareness of  
25 it. And as Professor Ryan has said, the results of the

1 election in the profession, and I don't need to  
2 reiterate this, but was resounding and overwhelming.  
3 And to my total astonishment, I received the most votes  
4 of any candidate from Toronto, and it wasn't because I'm  
5 handsome, charming and witty. It's because I took that  
6 position.

7                   So the profession and the people in the  
8 profession who care about the public interest and the  
9 interests of the public presumably said this is what  
10 needs to go forward.

11                   Now, sitting here today I have  
12 obligations, as Professor Ryan said, to look at the  
13 bigger issues and to hear arguments and to think about  
14 it, and that's what I will do, but there is no  
15 conflicting public interest looking at things in all  
16 reality, and to do so, to do what Mr. Falconer says,  
17 would derail the resoundingly expressed view of the  
18 profession in the last election. Thank you.

19                   TREASURER MERCER: I'm --

20                   --- Applause.

21                   TREASURER MERCER: I'm going to call on  
22 either Mr. Esquega or Mr. Falconer or someone they  
23 designate to respond in up to five minutes.

24                   MR. FALCONER: Thank you, Treasurer.

25 Mr. Esquega and I discussed it, and I'm going to be

1 responding.

2 So I want to start with the concern  
3 expressed about Mr. Alford not learning of this --

4 DR. ALFORD: It's "Doctor".

5 MR. FALCONER: I'm sorry.

6 I want to start with the concern  
7 expressed by Bencher Dr. Ryan Alford with him receiving  
8 the notice at eight a.m. I started by saying that the  
9 notice, when it came off my printer, went directly to  
10 Bencher Klippenstein and Bencher Alford, and I simply  
11 point out that I now understand he does not read his  
12 private e-mail or access it, so I guess that's just a  
13 matter that we'll have to address down the road, but it  
14 didn't happen that I produced such a motion and didn't  
15 provide my colleague the courtesy of a copy immediately  
16 that happened.

17 Secondly, I want to address this notion  
18 of public interest litigation. It fascinates me. I  
19 would like to think that I've spent close to thirty  
20 years arguing public interest cases. At the start of  
21 our motion we make reference to a costs order for \$9,952  
22 that was made against the applicant, Alford and  
23 Klippenstein.

24 In the cost decision, the judge cited  
25 Dr. Alford's argument that he made today. This is

1 page one of our motion that refers, third paragraph, to  
2 the costs order. He specifically cited Bencher Alford's  
3 reference to it being public interest litigation and  
4 then proceeded to make a \$9,952 costs order.

5 Let me say this about public interest  
6 litigation, because I have been doing it for a long  
7 time. It is anticipated that private citizens will do  
8 exactly what Ryan Alford and Murray Klippenstein have  
9 done. I don't agree with them, but I applaud them for  
10 employing and resorting to the courts to invoke the  
11 Canadian Charter of Rights and Freedoms. That is  
12 precisely why our society is, as Mr. Klippenstein quite  
13 properly pointed out, governed by the rule of law and  
14 remains a model for the world, but, and here's the but,  
15 the reason for the \$9,952 costs order is because the  
16 system recognized that private litigants will raise  
17 public interest issues. It happens every day. It  
18 doesn't take away the private interest, it simply  
19 properly describes what's going on.

20 Both Benchers Klippenstein and Alford  
21 have spoken to the fact that there was a vote, and I  
22 spoke to that vote at the outset of this, and I want to  
23 emphasize this. There is an option here, and that is  
24 discontinue the private litigation that you have started  
25 and clean it up.

1                   This is not rocket science. You allow  
2 this to go ahead today so that private litigants today  
3 get to argue and rule and vote on a matter for which  
4 they have a private litigation going on, then it happens  
5 tomorrow and the next day and the day after that on  
6 other issues, and there is nothing about the fact of a  
7 vote in this case that will change that, I mean nothing  
8 in terms of a general election for benchers.

9                   I understand that Dr. Alford is a  
10 professor at Lakehead. I get that, I respect that.  
11 There is case law dating back to Booth v. Huxter, the  
12 Junior case involving Mr. Koncovsky (ph.), and other  
13 case law that keeps observing the following, and my  
14 colleague, Former Justice Armstrong - he's not in the  
15 room anymore; good move by him, eh - will recognize this  
16 passage, and that is often there is no one who struggles  
17 more to see the conflict than the lawyer mired in the  
18 conflict.

19                   So I get it that this is upsetting to my  
20 colleagues. I understand that this is not pleasant,  
21 that is why I started my presentation by making it clear  
22 this was not a personal or professional aspersion, but a  
23 technical issue we needed to sort out, and I get it's  
24 upsetting to them, but, frankly, that upset is precisely  
25 the private interest I refer to.

1 They shouldn't be upset today. And I appreciate  
2 Dr. Alford laughing, because it's hard for me to get  
3 laughs often in this room, so anything he can send my  
4 way, I'll take it.

5 I will emphasize that you heard personal  
6 interests. You heard Mr. Klippenstein speak to his  
7 future, his bankruptcy. You've heard it all. The judge  
8 heard about Dr. Alford's theory of public interest  
9 litigation.

10 But in the end, what are you really  
11 hearing? You're hearing about private interests. I'm  
12 not saying kick them out of room, lose the vote for the  
13 StopSOP slate or anything like that.

14 I'm encouraging, really, cooler heads to  
15 prevail here. Adjourn this thing, table it. I'm  
16 encouraging you to do that, table it, come back without  
17 this in place.

18 Now, I can only encourage you to do that,  
19 and since obviously that olive branch hasn't been taken  
20 up, then I say and I ask for the relief in the motion.

21 And I'm closing now, Treasurer, and it's  
22 this. Dr. Alford is dead right, he's correct when he  
23 says there has to be a power in you as Treasurer to  
24 direct the relief we're seeking. There is absolutely  
25 that power. You are not required, Treasurer, to



1 prospect for an appeal, but we'll come to that when it  
2 happens.

3                   First of all, my view is that I do have  
4 jurisdiction to disqualify if I conclude that that is  
5 required, and the reason that I think that is section 75  
6 of by-law 3. It seems to me that both before and after  
7 we adopted the bench code of conduct it is necessary  
8 to be able to deal with disqualifying conflicts of  
9 interest, disqualifying reasonable apprehensions of  
10 bias, whichever way one comes at it, it must be  
11 available to the Treasurer to declare a  
12 disqualification.

13                   There are two theories which have been  
14 put forward. One is conflict of interest, the other is  
15 reasonable apprehension of bias. The code of conduct  
16 refers in section 32 to material conflicts between their  
17 personal and professional responsibility or interests in  
18 matters for deliberation in Convocation, in committee  
19 and/or Convocation.

20                   As I indicated, The Supreme Court of  
21 Canada, outside of the lawyer context, has had two cases  
22 in the period since 2011 dealing with conflicts of  
23 interest and fiduciary law and the test for a conflict  
24 of interest, and in both cases they have adopted the  
25 test set by Justice Binnie in Neil as a test for a

1       disqualifying conflict of interest, and that is a  
2       substantial risk arising from a personal interest or  
3       other duty which gives rise to material impairment.

4               So the law is clear in the Supreme Court  
5       of Canada, in my view, as a matter of the law of equity,  
6       common law, that the applicable test for a conflict of  
7       interest is substantial risk of a material impairment  
8       arising from another personal interest or duty.

9               I'm aware of no case which changes that  
10       where the fiduciary obligation has a -- is not merely a  
11       private fiduciary obligation, I'm aware of no such case,  
12       and it seems to me that if we turn to reasonable  
13       apprehension of bias, the test for reasonable  
14       apprehension of bias is whether a reasonable, well  
15       informed person would think the decision maker would not  
16       decide fairly as a result of the duty or interest, and  
17       that manifestly is a public interest context, a public  
18       interest test, and I don't perceive a realistic  
19       difference between substantial risk of material  
20       impairment and a reasonable, well-informed person would  
21       think that the decision maker would not decide fairly.  
22       It seems to me to come to very much the same thing in  
23       the end.

24               Our context is self-regulation, and there  
25       is no one in this room who does not have an interest one

1 way or another in the matter which is before us. There  
2 are many who are passionately in support of statement of  
3 principles because of their personal position or being  
4 allies of others in such a position, and there are many  
5 here who are passionately of the views that they hold  
6 because they are subject to the statement of principles  
7 requirement. I expect there is no one in the room,  
8 subject to our publicly appointed benchers, that doesn't  
9 have -- who is not affected personally by the outcome  
10 here, and so that's the starting point.

11           The second point which I think is  
12 important is that the nature of the litigation commenced  
13 by Mr. Alford and Mr. Klippenstein is by way of judicial  
14 review. It didn't start that way, but that's where it  
15 is now, and the judicial review, as I read the notice of  
16 application, takes largely, if not entirely, the same  
17 position which is taken here, and I conceive of the  
18 judicial review application as asking a judge to do, on  
19 much the same basis what this motion asks Convocation to  
20 do, and so it seems to me that there is not a separate  
21 personal interest animating the judicial review  
22 application and the position taken here today, it seems  
23 to me to be essentially the same.

24           That leaves the costs question, and there  
25 is a risk of costs. I simply note the current context.

1 The cost order for the period up to delivery of the  
2 fresh as amended notice of application deals with costs  
3 before that point. What's happened in the application  
4 since then is delivery of affidavits on the part of the  
5 applicants; the respondent Law Society has not yet  
6 delivered responding material. If there was a  
7 declaration of mootness as a consequence of the decision  
8 here, that might arguably have an effect. It wouldn't  
9 be, I expect, a huge effect given where the litigation  
10 is currently, but there could be some effect. But it  
11 seems to me, if one looks at a substantial risk of  
12 material impairment of a bencher's duty, or if one looks  
13 at whether a reasonable, well informed person would  
14 think the decision maker would not decide fairly, I find  
15 it very difficult to think anybody would reasonably  
16 think in the context of all of this that a potential  
17 costs order in the event of mootness would make very  
18 much difference to any part of this debate or any part  
19 of the moving of motions. It's a theoretical,  
20 ephemeral, insubstantial risk to me, and so I do not see  
21 a basis to disqualify on either thread, and my  
22 conclusion is, therefore, I will not disqualify.

23 --- Applause.

24 TREASURER MERCER: Applause is not  
25 necessary. Do we have a motion to appeal? May I have

1 the envelope, please? Mr. Falconer would like ten  
2 minutes to consider his position. That's fine. We'll  
3 sit here and wait until 11:15.

4 MR. FALCONER: Thank you, Treasurer.

5 --- Recess taken at 11:08 a.m.

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

7 TREASURER MERCER: Could Convocation come  
8 to order, please. Apparently I was wrong. We have two  
9 minutes to wait. Sit quietly. Stand as you were.

10 --- Recess taken at 11:15 a.m.

11 --- On resuming at 11:21 a.m.

12 TREASURER MERCER: Convocation will come  
13 to order. Is there a motion arising from my ruling?  
14 Please proceed, Ms. Shin Doi.

15 MS. SHIN DOI: Thanks very much,  
16 Treasurer. Bencher Esquega and I are appealing the  
17 finding, your ruling that there is no conflict of  
18 interest, and we would like some guidance as to the  
19 process that you wish to follow with this appeal.

20 TREASURER MERCER: The rules provide, or  
21 the by-laws provide that there is debate in the ordinary  
22 course. Part of the ordinary course enables me, as  
23 Treasurer, to set time limits in total and individually  
24 and to decide when there has been sufficient debate for  
25 Convocation to be in a position to make a decision.

1           My current view, because we have had  
2           coming up to nearly two hours on the point, that if we  
3           have one proponent for the appeal and one opponent for  
4           the appeal, each with five minutes, I expect that  
5           Convocation will be sufficiently well informed. That's  
6           an expectation at this point, so it's a provisional  
7           ruling and I invite you to decide who should speak for  
8           the appeal for five minutes.

9           MS. SHIN DOI: Treasurer, I really  
10          appreciate that point and we all sat through that hour  
11          and a half, two hours of argument. Unfortunately, many  
12          of us around the table in Convocation weren't able to  
13          debate on this issue and we do have some important  
14          grounds that we would like to cover, so we are appealing  
15          the ruling that there was no conflict of interest and we  
16          would like an opportunity for members of Convocation to  
17          speak to the substantive issue of whether there's a  
18          conflict of interest.

19          If I could just go further. One of the  
20          things -- and I appreciate Dr. Alford teaches at law  
21          school, but one of the things that we have to consider  
22          are corporate governance practices, and a practice of  
23          good governance is conflict of interest, and I disagree  
24          with Bencher Klippenstein that it's a technical matter.  
25          It's a substantive matter. And one of the principles of

1 conflict of interest and good governance is that you  
2 have to look at conflict of interest broadly. Conflict  
3 of interest is actual or it's perceived or apparent or  
4 it's potential. So those three categories of conflict  
5 of interest have to be looked at and Convocation has not  
6 had the opportunity to debate that issue.

7           And I'd also like to add that, to your  
8 question, I didn't have an opportunity to respond to  
9 your question about any other regulatory authorities  
10 that have adopted that analytical framework. There are  
11 many, including the Canadian Internet Registration  
12 Authority and other authorities. If you look at the  
13 corporate governance literature on conflict of interest,  
14 it's not just about pecuniary gain, it's not just about  
15 actual conflict, it's about perceived conflict of  
16 interest and apparent conflict of interest.

17           When Convocation acts in the public  
18 interest, it has to take into account perceived conflict  
19 of interest. There has to be no undivided loyalty, and  
20 so that is a very important point. I see Bencher Alford  
21 shaking his head. So, Treasurer, I'd like to turn to my  
22 seconder, Bencher Esquega, to add his comments with  
23 respect to the finding that there's no conflict of  
24 interest.

25           MR. FALCONER: I have a point of order,

1 Treasurer.

2 TREASURER MERCER: Yes?

3 MR. FALCONER: So you have indicated your  
4 preliminary views in answer to Ms. Shin Doi's procedural  
5 question around appeal. My point of order is this.  
6 Section 97 through 99 and the provisions that govern  
7 debate at Convocation obviously apply, and I  
8 respectfully accept that you have a discretion. But  
9 what I'm urging you to consider, I hear you on the  
10 passage of time, is that you limited the participants in  
11 the debate in the first instance. You limited them to  
12 myself, Mr. Esquega, Mr. Klippenstein and Bencher  
13 Alford, and in doing so, in doing so, the message was  
14 clearly sent that it was not going to be the standard  
15 debate of Convocation where parties simply indicated  
16 they wanted to be on the list and would be heard. You  
17 made that -- you took that step and I say, having taken  
18 that step at that level, not inviting the debate of  
19 Convocation as it ordinarily would unfold, it would be a  
20 mistake and a procedural injustice to do it again.

21 Now the rules provide that this is now a  
22 decision of Convocation, and our decisions are preceded  
23 by a debate, and to treat this specially and then again  
24 not time restricted, but restricted to who can  
25 participate in the debate, would be procedurally flawed,

1 respectfully.

2                   There is no reason that this debate of  
3 Convocation should be different than others. Any member  
4 of Convocation who wishes to participate in the debate  
5 should feel free to do so. And I say that for those who  
6 agree with my submissions before and those who don't,  
7 though I would prefer that those who don't not say  
8 anything. I do emphasize that, because there is no  
9 reason to start sending a signal to my colleagues in  
10 this room that their views are somehow less important  
11 for this issue than others.

12                   So I encourage you to conduct this debate  
13 of Convocation the way any other appropriate debate of  
14 Convocation is. This is a decision of Convocation.  
15 Your decision is being appealed, and restricting it in  
16 this fashion would make it no longer a debate of  
17 Convocation.

18                   MR. GOLDSTEIN: Point of order, Mr.  
19 Treasurer. May I respond to Bencher Shin Doi's comments  
20 about how to proceed in the appeal, whether it should be  
21 limited to one person representing each side or allowing  
22 everyone to speak? May I comment?

23                   TREASURER MERCER: I'd rather not, thank  
24 you, at this stage, because we're going to get into  
25 points of order on points of order on points of order --

1 MR. GOLDSTEIN: Well, I --

2 TREASURER MERCER: Let me finish  
3 speaking, as you are required to let me do. I accept  
4 that Ms. Shin Doi has asked Mr. Esquega to complete  
5 remarks. It's still within the five minutes. It seems  
6 to me appropriate that he complete that, and I'll come  
7 back to you, Mr. Goldstein. Go ahead.

8 MR. ESQUEGA: Thank you, Treasurer.

9 I don't have a lot more to add to what  
10 I've already said earlier today. I do maintain that  
11 there's a conflict of interest, not just a perceived  
12 conflict of interest, and I was reflecting on some of  
13 the things Mr. Klippenstein was saying about the public  
14 perception and the duty as a regulator.

15 To me, when I got elected to be a  
16 bencher, I took those responsibilities very seriously,  
17 as everyone else around here has, but from my own  
18 personal reflection on those is that we have to be  
19 showing the public that we're not allowing any form of  
20 perceived or actual conflicts of interest to carry on  
21 here. We don't know what the cost order will be, so  
22 it's hard to speculate that it's going to be minimal.  
23 We know that there's already a \$9,000 costs order. From  
24 my perspective, it doesn't matter if that was a one  
25 dollar costs order or a million dollar costs order, it's

1 still very personal and it's still material, in my mind  
2 regardless, because it's a personal interest. That's  
3 what our code requires us to focus on, the personal  
4 interests. And clearly, from my perspective, there's a  
5 personal interest in that lawsuit because it's not a  
6 class proceeding, it's not a represented proceeding,  
7 it's something that they advanced in their own personal  
8 will because they were unhappy with something the Law  
9 Society was doing, and the fact that they're showing up  
10 here now advancing a motion to address that very issue  
11 puts them in a conflict of interest. Those are my  
12 submissions. Thank you.

13 TREASURER MERCER: Thank you. I'm going  
14 to wait for Mr. Goldstein until we hear from someone on  
15 the responding side, if I can describe it that way, but  
16 I will come back. Mr. Fagan -- Mr. Klippenstein, Mr.  
17 Alford, how do you wish to proceed? I'm not sure why  
18 Mr. Fagan is getting up. He may be your designated  
19 hitter.

20 DR. ALFORD: I would like to make a brief  
21 point about how the debate might unfold, if you're  
22 considering a broader debate. I just think that because  
23 we have rights and interests at stake, perhaps we would  
24 be given a right to speak at the end of the remarks, but  
25 I'm very happy to allow Dr. Fagan to speak to now.

1                   TREASURER MERCER: Well, it's not your  
2 decision whether or not he will. I want to understand  
3 in what capacity he's about to speak.

4                   MR. FAGAN: Treasurer, I thought you were  
5 starting to move to respondent's comments in support of  
6 your ruling.

7                   TREASURER MERCER: At this stage what I  
8 have said tentatively is that I would hear five minutes  
9 on each side, and I propose now to have the five minutes  
10 in response. And I'm not going to decide how that gets  
11 used, but I would have thought that that's, given the  
12 requirement of fairness, a decision for Mr. Klippenstein  
13 and Mr. Alford. Mr. Fagan, you may go ahead, based on  
14 the hand signals as I appreciate them.

15                   MR. FAGAN: Thank you, Treasurer.

16                   As Treasurer Mercer has, I submit,  
17 correctly stated, there must be a substantial risk of  
18 harm before we take the view that there is a dangerous  
19 or, indeed, any real conflict of interest at play at  
20 this moment. On the issue of whether there is any  
21 substantial risk of harm, I submit to my fellow benchers  
22 in support of Treasurer Mercer's ruling that there is  
23 not a person in this room who believes that either Mr.  
24 Klippenstein or Dr. Alford has ever been motivated by  
25 personal financial considerations in bringing their

1 judicial application and in bringing and supporting the  
2 motion, the main motion before the floor today.

3           There is not a single person who  
4 believes that they would ever or will ever be motivated  
5 by personal financial considerations in anything they do  
6 in these matters. My colleague, Bencher Falconer,  
7 stated in his own comments that he had no doubt about  
8 the integrity of either Dr. Alford or Bencher  
9 Klippenstein. There is no danger, there is no real  
10 conflict of interest. Treasurer Mercer has ruled  
11 correctly. Thank you.

12           MR. CHARETTE: I'll take the balance of  
13 the time, if I may.

14           MS. SHIN DOI: Treasurer Mercer, just --  
15 and Jim, I'm just wondering, normally in corporate  
16 governance practices when the people who are the subject  
17 of the conflict of interest issue need to exit the room  
18 during the debate of whether they're in conflict of  
19 interest or not. That's a good governance practice, so  
20 I'm just asking you as a point of order whether you're  
21 going to follow that or allow them to remain.

22           TREASURER MERCER: I'm inclined to allow  
23 them to remain, given that this is webcast. It's very  
24 unlike the ordinary board of directors, and so whether  
25 they watch it outside or watch it in here and whether

1 they sit here I think makes no impact.

2 MR. GOLDSTEIN: Point of order, Mr.  
3 Treasurer. Am I allowed to address the issue as to  
4 whether this will be an open discussion or whether it  
5 will be limited to one person on each side?

6 TREASURER MERCER: Well, let's wait for  
7 Mr. Charette to take the balance of the five minutes and  
8 we'll come to you.

9 MR. CHARETTE: How much time do I have,  
10 Treasurer, do we know?

11 TREASURER MERCER: It rather depends  
12 whether we count the interruptions, but I have two more  
13 minutes.

14 MR. CHARETTE: Well, let me keep it  
15 simple, if I can.

16 We had a vote in Ontario. 5,000 people,  
17 lawyers, voted for Murray knowing full well, and Dr.  
18 Alford as well, what their position was. And the key  
19 point here, and I know it's a hard one to follow, is  
20 they are acting in a quasi-legislative matter and the  
21 rules change. We must do things in the public interest,  
22 and let me refer you to section 13 of the Law Society  
23 Act which, admittedly, is a very obscure statute.  
24 Section 13 says that it is the Attorney General who is  
25 the guardian of the public interest.

1                   Now, the fact that there's a guardian  
2     presupposes that there is a keeper of the public  
3     interest, and the guardian's task is to monitor and  
4     supervise that guardian and to call that guardian to be  
5     corrected. It's a little bit like Boeing's new guidance  
6     system. It has a pilot and two Doberman Pinschers, and  
7     the Doberman Pinschers are carefully trained to go for  
8     the jugular of the pilot if the pilot touches anything,  
9     right? It's a kind of absurd thing, but the fact is if  
10    this Convocation runs astray today, the Minister of the  
11    Attorney General will have every privilege to call  
12    Convocation to order, and he is the guardian of the  
13    public interest.

14                   We have to make a fair-minded assessment  
15    that this election occurs, and it is the lawyers who  
16    hold the public interest. We are the holders of the  
17    public interest, and the Minister of the Attorney  
18    General is our guardian. So if we run astray today,  
19    then the Minister will let us know. We have no reason  
20    to be afraid. The Minister will call us to attention if  
21    he thinks it's wrong. Thank you.

22                   TREASURER MERCER: Mr. Goldstein, now  
23    back to you.

24                   MR. GOLDSTEIN: Two issues. One is the  
25    standard in which the appeal should be heard, and I ask

1 -- I'm asking you whether -- my understanding would be  
2 that your decision could only be appealed on the  
3 Dunsmuir test, which your decision would have to be  
4 found to be patently unreasonable. That's my first  
5 question to you specifically, Mr. Treasurer.

6           The second one has to do with your  
7 suggestion to limit the debate to one person each, and I  
8 may just speak to that now specifically. I, first of  
9 all, want to point out I agree with my friends, perhaps  
10 across the aisle, if I say that the public interest is  
11 very important, and Bencher Shin Doi raised the issue of  
12 governance, good governance is very important. But one  
13 of the principles of good governance is to make sure  
14 that one's meeting is conducted efficiently and that  
15 one's meeting does not drag on and engage in redundancy.  
16 And, as a matter of fact, Treasurer, I'm sure you're  
17 well aware that that power is within your position to  
18 make sure that the meeting runs efficiently, and  
19 certainly I think that your decision to allow one person  
20 on each side would be a fair way of allowing that issue,  
21 this issue of the appeal, to be heard. But to start  
22 engaging now and allowing further people, respectfully,  
23 and I come from the criminal world, and we usually use  
24 the terms of bringing the administration of justice into  
25 disrepute.

1                   And I think, and I say this to lay  
2 benchers specifically, I think we see now what happens  
3 when the other side, who have the best intentions as  
4 well, start delaying and attacking people who are  
5 raising certain positions, and I think the public, in  
6 the public interest it would be that we should be  
7 limiting this discussion to get on with the main motion,  
8 because that's what people truly want to debate, not  
9 these sort of technical issues. I think the public are  
10 tired of seeing these technical issues being debated. I  
11 say technical, although I understand they're important  
12 technical issues, but we could certainly engage in good  
13 governance by being efficient in our time, and the  
14 efficiency in our time, Mr. Treasurer, I think I join  
15 you and support your decision to allow one person each  
16 to speak on each side. Thank you.

17                   I know -- I'm sure you didn't forget, but  
18 just am I correct in suggesting that the appeal standard  
19 is patently unreasonable.

20                   TREASURER MERCER: Well, I would have  
21 thought not. Dunsmuir is an administrative law test  
22 which applies to judicial review of administrative  
23 proceedings, which wouldn't apply to an appeal within  
24 an organization. So I wouldn't have thought Dunsmuir  
25 would have anything to do with it. Dunsmuir stands for

1 the proposition that the courts have a limited  
2 constitutional role in ensuring that those assigned by  
3 the legislature responsibilities exercise them. All of  
4 us here, whether we're on appeal or me at the starting  
5 point, don't fall within the Dunsmuir logic at all.

6 For what it's worth, it seems to me that  
7 each bencher will have to decide based on their own  
8 view, and my direction as to what the standard of appeal  
9 is for people would not be all that helpful, but I don't  
10 think Dunsmuir applies. You invited the answer.

11 MR. GOLDSTEIN: I simply wanted to know  
12 what the answer was, that's all.

13 TREASURER MERCER: So I think the reality  
14 is that Convocation is sufficiently well informed to  
15 come to a conclusion on the motion before it and I'll  
16 ask the Secretary to call the motion. That's exactly  
17 what the Secretary will do.

18 SECRETARY: Benchers, the question for  
19 you to decide, the "yes" or "no" answer, is: Should the  
20 ruling or decision of the Treasurer be upheld? If you  
21 agree with the ruling, you would answer "yes". If you  
22 disagree, you answer "no". We will call the vote.

23 Mr. Adourian?

24 MR. ADOURIAN: Yes.

25 SECRETARY: Please use your microphone.

1 MR. ADOURIAN: Yes.

2 SECRETARY: Mr. Alford?

3 DR. ALFORD: Yes.

4 SECRETARY: Mr. Bateman?

5 MR. BATEMAN: Yes.

6 SECRETARY: Mr. Braithwaite?

7 MR. BRAITHWAITE: No.

8 SECRETARY: Mr. Brown?

9 MR. BROWN: Yes.

10 SECRETARY: Mr. Burd?

11 MR. BURD: No.

12 SECRETARY: Mr. Charette?

13 MR. CHARETTE: Yes.

14 SECRETARY: Mr. Chiummiento?

15 MR. CHIUMMIENTO: Yes.

16 SECRETARY: Mr. Cooper?

17 MR. COOPER: No.

18 SECRETARY: Ms. Corbiere?

19 MS. CORBIERE: No.

20 SECRETARY: Ms. Corsetti?

21 MS. CORSETTI: No.

22 SECRETARY: Mr. Da Silva?

23 MR. DA SILVA: Yes.

24 SECRETARY: Mr. Desgranges?

25 MR. DESGRANGES: Yes.

1 SECRETARY: Ms. Donnelly?  
2 MS. DONNELLY: No.  
3 SECRETARY: Mr. Epstein?  
4 MR. EPSTEIN: Yes.  
5 SECRETARY: Mr. Esquega?  
6 MR. ESQUEGA: No.  
7 SECRETARY: Mr. Fagan?  
8 MR. FAGAN: Yes.  
9 SECRETARY: Mr. Falconer?  
10 MR. FALCONER: No.  
11 SECRETARY: Mr. Goldstein?  
12 MR. GOLDSTEIN: Yes.  
13 SECRETARY: Mr. Graham?  
14 MR. GRAHAM: Yes.  
15 SECRETARY: Mr. Groia?  
16 MR. GROIA: Yes.  
17 SECRETARY: Mr. Horgan?  
18 MR. HORGAN: Yes.  
19 SECRETARY: Ms. Horvat?  
20 MS. HORVAT: Yes.  
21 SECRETARY: Mr. Klippenstein?  
22 MR. KLIPPENSTEIN: Yes.  
23 SECRETARY: Ms. Lalji?  
24 MS. LALJI: Yes.  
25 SECRETARY: Mr. Lau?

1 DR. LAU: Yes.

2 SECRETARY: Ms. Lean?

3 MS. LEAN: Yes.

4 SECRETARY: Ms. Lewis?

5 MS. LEWIS: No.

6 SECRETARY: Ms. Lippa?

7 MS. LIPPA: Yes.

8 SECRETARY: Ms. Lockhart?

9 MS. LOCKHART: Yes.

10 SECRETARY: Ms. Lomazzo?

11 MS. LOMAZZO: Yes.

12 SECRETARY: Mr. Lyon?

13 MR. LYON: Yes.

14 SECRETARY: Mr. Marshall?

15 MR. MARSHALL: Yes.

16 SECRETARY: Ms. Merali?

17 MS. MERALI: No.

18 SECRETARY: Ms. Painchaud?

19 MS. PAINCHAUD: Yes.

20 SECRETARY: Ms. Papageorgiou?

21 MS. PAPAGEORGIOU: Yes.

22 SECRETARY: Mr. Parry?

23 MR. PARRY: Yes.

24 SECRETARY: Mr. Pineda?

25 MR. PINEDA: Yes.

1 SECRETARY: Mr. Poliacik?  
2 MR. POLIACIK: Yes.  
3 SECRETARY: Mr. Pollock?  
4 MR. POLLOCK: Yes.  
5 SECRETARY: Mr. Prill?  
6 MR. PRILL: Yes.  
7 SECRETARY: Ms. Sellers?  
8 MS. SELLERS: Yes.  
9 SECRETARY: Mr. Sheff?  
10 MR. SHEFF: Yes.  
11 SECRETARY: Ms. Shi?  
12 MS. SHI: Yes.  
13 SECRETARY: Ms. Shin Doi?  
14 MS. SHIN DOI: No.  
15 SECRETARY: Ms. Shortreed?  
16 MS. SHORTREED: Yes.  
17 SECRETARY: Mr. Spurgeon?  
18 MR. SPURGEON: Yes.  
19 SECRETARY: Mr. Troister?  
20 MR. TROISTER: Yes.  
21 SECRETARY: Ms. Walker?  
22 MS. WALKER: No.  
23 SECRETARY: Mr. Wellman?  
24 MR. WELLMAN: Yes.  
25 SECRETARY: Mr. Wilkes?

1 MR. WILKES: Yes.

2 SECRETARY: Ms. Wilkinson?

3 MS. WILKINSON: Yes.

4 SECRETARY: Mr. Wright?

5 MR. WRIGHT: Yes.

6 SECRETARY: The Treasurer's ruling is  
7 upheld, a vote of 41 to 12.

8 TREASURER MERCER: So thank you for not  
9 applauding or booing. One of the things I should have  
10 said earlier is the convention here is that we don't  
11 applaud, we don't boo, we are simply a meeting of  
12 Convocation, and it distracts if people make this more  
13 political than it need be. It's hard enough without  
14 that, so I'm going to ask that you continue what you've  
15 just done, which is to just be businesslike, and I thank  
16 you.

17 We now have the Klippenstein/Lean motion,  
18 and I take it, Mr. Klippenstein, you're moving that  
19 motion now.

20 MR. KLIPPENSTEIN: Yes.

21 TREASURER MERCER: And, Ms. Lean, you're  
22 seconding that motion now?

23 MS. LEAN: Yes.

24 TREASURER MERCER: What I propose to do  
25 now is to deal with the amendment. My intention is that

1 we -- now that the main motion has been moved, there has  
2 been notice of an intent to move to amend and there has  
3 been notice of an intent to move to amend the amendment.  
4 I propose to get all of those on the table and then to  
5 have a debate which is not confined to the main motion,  
6 the amendment or the amendment to the amendment.

7 My current view are is that it will be  
8 impossible for Convocation to separate the issues and  
9 that the most efficient way to decide what we have to  
10 decide is to have the motion moved, as it has been now,  
11 the amendments moved, have the debate and then call a  
12 vote on the amendment to the amendment, and then call a  
13 vote on the amendment, and then call a vote on the main  
14 motion, amended or not.

15 Now, I understand there may be an issue  
16 with that, but that is my current intention.

17 DR. ALFORD: Point of order, Treasurer.

18 TREASURER MERCER: Yes?

19 DR. ALFORD: I find myself in agreement  
20 with Mr. Falconer. Convocation has to be the master of  
21 its own procedure here.

22 MR. FALCONER: I take it back, then.

23 DR. ALFORD: I definitely laughed.

24 TREASURER MERCER: I accept Mr.  
25 Falconer's submission.

1 DR. ALFORD: I think we can only have one  
2 motion on the floor at once. I understand your position  
3 is that you can deviate from the by-laws where  
4 necessary, but here they serve a really important  
5 purpose. I think it's important that before people  
6 consider amendments there is debate on the original main  
7 motion. It is in the course of that debate that people  
8 begin to understand whether or not amendment is  
9 required. I don't want to say it's presumptuous to move  
10 an amendment before there's been any debate on the main  
11 motion, but there is an implication that as it currently  
12 stands it really isn't worth discussing. I'm concerned  
13 about that, and when I look at the by-laws, and I've  
14 looked at this in some detail, we see two proposals  
15 here, two very clear proposals. I'll leave aside the  
16 amendment to the amendment, but with respect to the  
17 Klippenstein/Lean motion and the Groia/Donnelly motion,  
18 they both are separate proposals that propose quite  
19 different things, and more importantly, because of the  
20 by-laws they're both self-standing, they're both  
21 self-sufficient.

22 If you look at the text of the  
23 Groia/Donnelly motion in particular, we don't see any  
24 language that says strike out these words, insert these  
25 words, et cetera. What we see is the entire text of the

1 motion shall be obliterated and this text shall replace  
2 it. Now we're getting into dangerous waters. I think  
3 we're setting a number of bad precedents today with  
4 respect to how we proceed at Convocation. I just want  
5 to refer to the by-laws and just to give people a sense  
6 of how clear it is.

7 Section 74, subsection (1) of by-law 3  
8 defines a substantive motion as a self-contained  
9 proposal capable of expressing a decision of the  
10 benchers present at Convocation describing a matter of  
11 import to the Society, and that describes the  
12 Groia/Donnelly motion perfectly. It is a self-contained  
13 proposal that would express a decision of the benchers  
14 concerning a matter of import to the society.

15 Now, if the main motion is on the floor  
16 and, in fact, it has just been moved by Bencher  
17 Klippenstein and seconded by Bencher Lean, then section  
18 95.1 applies, "A substantive motion may be moved at any  
19 time at Convocation, provided that no other substantive  
20 motion is before Convocation at this time".

21 I just suggest that this is the plain  
22 language of the by-laws and that there's a reason for  
23 proceeding in this fashion. Please allow the main  
24 motion to be debated and if at a certain point people  
25 want to make motions to amend it, including Bencher

1 Groia and Bencher Donnelly, they should be free to do  
2 so, of course, but in keeping with our by-laws and I  
3 think what our best practices universally observed.

4 Thank you, Treasurer.

5 TREASURER MERCER: Mr. Groia, you're the  
6 mover of the amendment. It seems to me right to turn to  
7 you.

8 MR. GROIA: Thank you, Treasurer.

9 Regrettably, I disagree with Bencher  
10 Alford. We thought carefully about the decision to  
11 bring a motion to amend, because in my view there should  
12 be choices that are debated right from the beginning and  
13 the choices I think are best put to Convocation if all  
14 of the motions, including my friend, Mr. Charette's,  
15 motion are on the table at the same time.

16 The only change I would make to the  
17 suggestion that we debate them all together is I think  
18 it would be appropriate to allow the movers and the  
19 seconders of the motions to be allowed to speak to them  
20 perhaps in order before we open the floor to general  
21 debate.

22 The effect of Bencher Alford's proposal  
23 would be, I think, to cause the debate to be unhelpful  
24 to the issues we have to wrestle with and I think it  
25 would also be inconsistent with the precedent that we've

1 established in prior cases where amendment motions are  
2 dealt with before the main motion is brought so that  
3 everyone in the room knows exactly what it is that we're  
4 finally going to be voting on. So my proposal to have  
5 it dealt with as an amendment is not only procedurally  
6 correct, it's supported by precedent, and as a more  
7 important matter of principle, it allows the debate to  
8 be a fair and focused debate, not one that would be  
9 stilted as a result of dealing with them in a kind of  
10 seriatim basis.

11 TREASURER MERCER: Thank you.

12 MR. KLIPPENSTEIN: Point of order, Mr.  
13 Treasurer.

14 TREASURER MERCER: Yes?

15 MR. KLIPPENSTEIN: As the mover of the  
16 first motion, I would point out that the first motion  
17 is, by intention, simple and clear. There is no  
18 preamble and it is very focused and that was the  
19 intention of myself, the mover, in consultation with  
20 many other people.

21 There is a context here, Mr. Treasurer,  
22 it is obvious to everyone and I won't needlessly get  
23 into it, but this was unexpectedly, but then I believe  
24 most certainly the main issue in the recent election in  
25 which the voters spoke resoundingly. In my submission,

1 that process, the results should be respected in the  
2 normal course of a motion being put forward, and absent  
3 any major departures, that should be dealt with. If  
4 there is an amendment proposed, as Dr. Alford says,  
5 there's a question whether it is really an amendment or  
6 it is something else.

7           In my view as the mover, it is something  
8 else. It is quite an extensive reworking of the first  
9 primary motion. There is a long complicated preamble  
10 which I would like to address, if necessary, and it is  
11 obvious to all that there is an extremely important  
12 change in the amendment, or the new motion is what it  
13 is, in that proposal to create what is now a new version  
14 of the statement of principles with a sort of political  
15 recording process. That is a tremendously important  
16 change, and to mix everything together, which is, I  
17 understand, the proposed procedure, when there has been  
18 and ought to be a simple clear question, which is the  
19 motion put forward by myself and Ms. Lean, to mix that  
20 all together disrespects the normal process and the  
21 election.

22           TREASURER MERCER: So I'm going to rule  
23 that the amendment is proper and may be brought,  
24 including the amendment to the amendment. I conclude  
25 that section 95(1) is not designed to prohibit

1 substantive amendments, but it is designed to ensure  
2 that there are not two substantive motions on the table  
3 at the same time, because that can be confusing and  
4 difficult to debate.

5 I have a broad discretion under section  
6 75 to make Convocation work, and it seems manifestly  
7 clear to me that Convocation faces the necessity of  
8 choosing between three broad alternatives; maintaining  
9 the status quo, putting in place a voluntary version of  
10 the statement of principles, with or without Law Society  
11 involvement or repealing. It seems to me the way I  
12 should exercise my authority is to allow Convocation's  
13 will to be expressed in an efficient and clear way after  
14 due debate, and it seems manifestly clear to me the best  
15 way to accomplish that today is to have the main motion  
16 and the amendments on the table, to allow benchers to  
17 signal to argue which of the three directions they think  
18 is the right direction, then to vote on the ultimate  
19 amendment to the motion.

20 Those who are in favour of a voluntary  
21 version will vote in favour of the amendment, those who  
22 are not will vote against it. We will determine thereby  
23 whether or not the decision, the will of Convocation is  
24 to maintain the status quo, to go with a voluntary  
25 approach or to repeal entirely, and simply because

1 someone ran on the platform doesn't mean to say there  
2 are competing perspectives in Convocation which need to  
3 be canvassed in an orderly way.

4 DR. ALFORD: Treasurer, I would like to  
5 take appeal of your ruling. I understand this is  
6 time-consuming. I really feel strongly that we're  
7 becoming unmoored from our by-laws, and if that's the  
8 case, it will be impossible for people to function  
9 effectively at Convocation. When you put in a motion  
10 you will not know how it will be debated in the future.  
11 I think that the structure matters, and my final point  
12 would be we use a manual of parliamentary procedure at  
13 Convocation, it's mentioned in by-law 2, which  
14 admittedly refers specifically to the annual general  
15 meeting. It is Bourinot. Under "Amendments" in  
16 Bourinot, it reads:

17 "While a substantive motion is under  
18 debate any member may, without notice, move to amend it.  
19 An amendment is to designed to alter or vary the terms  
20 of the main motion without substantially changing its  
21 purport. It may propose that certain words be left out,  
22 that certain words be omitted and replaced by others or  
23 that certain words by inserted or added." [As read]

24 We are deviating quite far from fairly  
25 basic principles of parliamentary privilege. I think

1 that merits, as tedious as it might be, an appeal from  
2 your ruling.

3 TREASURER MERCER: Well, let me first --

4 MR. FALCONER: Point of order, 87.2,  
5 decision on a --

6 TREASURER MERCER: Could you wait for me  
7 to recognize you, please.

8 MR. FALCONER: Sorry, sorry.

9 TREASURER MERCER: And I was about to  
10 speak, if I may. Simply to say to Mr. Alford section 75  
11 of by-law 3 says Convocation shall be conducted in  
12 accordance with this part; what you've just referred to  
13 is another by-law.

14 Go ahead, Mr. Falconer.

15 MR. FALCONER: Simply a point of order  
16 that section 87(2)(1) of our by-law provides  
17 specifically that, despite the appeal provisions, the  
18 following decisions of the Treasurer made in Convocation  
19 are not subject to an appeal; a decision on a question  
20 of procedure.

21 TREASURER MERCER: Yes, I was aware of  
22 that --

23 MR. FALCONER: Okay, good.

24 TREASURER MERCER: And my view is that an  
25 appeal is not allowed because I've just decided to

1 question the procedure. Mr. Alford.

2 DR. ALFORD: Very briefly, Treasurer, to  
3 rehearse [sic] the argument that I made previously.

4 I believe that this is a point of order  
5 in the strictest sense, and not a question of procedure,  
6 because we are talking about the order of the  
7 introduction of motions. And if we look at the  
8 carve-out from what is not appealable, with the  
9 distinction being made between points of order in the  
10 strict sense, from which there is only a very specific  
11 carve-out for matters that are (inaudible) and questions  
12 of procedure.

13 And that's my position on that  
14 difference, Treasurer.

15 TREASURER MERCER: Well, I don't accept  
16 that. Thank you.

17 We'll proceed, Mr. Groia, to  
18 introduce the motion to amend.

19 DR. ALFORD: Point of procedure.

20 TREASURER MERCER: Yes?

21 DR. ALFORD: I'd like to know a point of  
22 information. Is it possible to appeal from your ruling  
23 that your previous ruling is unappealable?

24 TREASURER MERCER: I wouldn't have  
25 thought so.

1 DR. ALFORD: It has appeal.

2 TREASURER MERCER: Yes, there's a lot of  
3 stuff that has appeal and much that doesn't. It seems  
4 to me that the discretion which I am given, the  
5 responsibility which I am given, is to decide whether or  
6 not we have appeals and because that's a question of  
7 procedure and it seems to me that what you're processing  
8 becomes an end run around that, I think I have to be the  
9 decision maker.

10 MR. KLIPPENSTEIN: Mr. Treasurer?

11 TREASURER MERCER: Yes.

12 MR. KLIPPENSTEIN: As you have indicated,  
13 it appears to be your intention to allow Mr. Groia to  
14 proceed with his amendment or new motion or whatever you  
15 want to call it. I'm wondering at what point myself  
16 and Ms. Lean, as the movers of the main motion that  
17 started this, get to address, and substantively and  
18 substantially what I fear is coming, which is a dramatic  
19 change to what is before --

20 TREASURER MERCER: Perhaps you could wait  
21 for your opportunity to make your points before you make  
22 your points. What I intend to do is to have the motions  
23 tabled. I then propose to turn to you and Ms. Lean to  
24 make your remarks first, then to Mr. Groia and Ms.  
25 Donnelly, and then to Mr. Charette, and I think it was

1 Ms. Shi, and proceed in that way so you get the first  
2 word, as I think you're entitled to have.

3 MR. KLIPPENSTEIN: Thank you.

4 TREASURER MERCER: Mr. Groia, do you make  
5 the motion to amend as tabled?

6 MR. GROIA: Yes, Treasurer. I move that  
7 the motion now before Convocation be amended as set out  
8 in my notice of amendment motion and, essentially, that  
9 Convocation repeal requirement 3.1 on the basis set out  
10 in my amendment motion.

11 TREASURER MERCER: Ms. Donnelly, do you  
12 second?

13 MS. DONNELLY: I do.

14 TREASURER MERCER: Mr. Charette, you have  
15 given notice of an intended amendment to the amendment.  
16 Do you now move that?

17 MR. CHARETTE: Yes, I do. It's very  
18 short. It's to delete paragraph (b) of Mr. Groia's  
19 motion and paragraph (c) as well, and that's the  
20 substance of the amendment that I've brought.

21 TREASURER MERCER: Ms. Shi, do you second  
22 that?

23 MS. SHI: Yes, I do, Treasurer.

24 TREASURER MERCER: Proceed, Mr.  
25 Klippenstein. What I should say is we've indicated in

1 advance, and this was in consultation with Ms. Shi and I  
2 when we didn't know, she and me, when we didn't know who  
3 would be doing this, that a five-minute limitation for  
4 speakers would be appropriate. Mr. Klippenstein has  
5 said, and I accept that he's entirely right, in a  
6 communication to me that the mover and seconder ought  
7 not to be constrained in that way because it's  
8 appropriate for them to have a fuller opportunity for  
9 them to say their piece. I say that to reaffirm the  
10 five minutes but explain why Mr. Klippenstein will not  
11 be held to it.

12 MR. KLIPPENSTEIN: Thank you, Mr.  
13 Treasurer, and my fellow benchers.

14 I have to reflect for a moment about this  
15 procedure, which seems to combine a variety of confusing  
16 things when dealing with this issue, but let me start by  
17 focusing on the actual primary motion, which is a  
18 simple, clear and clean repeal of the compulsory  
19 statement of principles.

20 And I find that I now will have to divert  
21 some of my comments to the various layers of amendments,  
22 but let me say this about the primary motion. I recall  
23 the first time I read this compulsory statement of  
24 principles in the fall of 2016 when, as a manager of a  
25 law firm, I took note that the Law Society was dealing

1 with important issues related to diversity, and I, as a  
2 manager, looking ahead for years down the road,  
3 downloaded the materials and started reading them.

4           And I recall the shock I felt, the  
5 disbelief, when I saw that I was now going to be  
6 compelled, coerced by force of law to publicly  
7 promulgate principles that someone else was dictating to  
8 me, and those were going to be very clearly specified,  
9 although the way I was going to be coerced to do it was  
10 simply to click a mouse on a box on the screen.

11           I was thinking about this again last  
12 night, Mr. Treasurer, and in my 30 years of a career as  
13 a lawyer and the roughly 25 years before that, I think  
14 that was the first time I have ever felt that I was no  
15 longer in control of my thoughts and my belief and my  
16 conscience. And who was causing this? Unbelievably,  
17 the Law Society. And I felt, Mr. Treasurer, like the  
18 hands and fingers of the Law Society had gotten into my  
19 skull and my brain and were typing words on the keyboard  
20 in my brain that I would now have to speak. And I  
21 thought I must be mistaken about what was going on and I  
22 spent a year studying what was going on and decided I  
23 would not comply.

24           Now, that is, very briefly, the main  
25 motion.

1                   Now, by combining the amendments and so  
2 forth, I now will turn to some of that. The -- a motion  
3 by Mr. Groia and Ms. Donnelly has an extended preamble  
4 and in my motion with Ms. Lean I was trying to avoid  
5 those topics, but now we're into it.

6                   Now, let me say a couple of comments on  
7 those preamble points. One thing that puzzled me from  
8 the very beginning was the assertion that somehow the  
9 Ontario Human Rights Code created a legal obligation to  
10 promote diversity, an obligation that bound me. As a  
11 long term lawyer partly dealing with human rights, as  
12 far as I was concerned, that was false. It just wasn't  
13 true, but I spent a long time recognizing that the Law  
14 Society and the good people here are usually thoughtful  
15 and careful in what they propound, and so I researched  
16 to an enormous degree whether I might be mistaken.

17                   And I said several years ago that this  
18 presentation of the Human Rights Code seemed to me to be  
19 a misrepresentation. And since then I have not heard  
20 from anybody any explanation why that -- why or how, how  
21 the Human Rights Code requires me or anyone else to  
22 advance the diversity, but yet now I see this in the  
23 preamble and I think it's, I'm sorry to say, misleading.

24                   You know, just last week I called up one  
25 association's website on diversity that purports to --

1 not purports, that does advocate something called  
2 diversity. By the way, Treasurer, I've come to draw a  
3 distinction. There's the ordinary sense of diversity in  
4 terms of small "d" diversity, and there seems to be  
5 something else which I call capital "D" Diversity, which  
6 is some kind of political package, in fact, a particular  
7 political ideology. And that distinction is important  
8 to me, because I think that this is politicizing the Law  
9 Society in a way that is really unfortunate, that isn't  
10 necessary and is ill-founded.

11           Anyway, I looked at the report of this  
12 association that had a review of all the human rights  
13 codes in the country prepared by several lawyers, and  
14 there was no mention that any human rights code in any  
15 way creates some kind of obligation to promote or  
16 advance diversity, and yet here we have this in the  
17 preamble, and I'm concerned that the public or members  
18 of the profession who are busy and don't specialize in  
19 this will get the wrong impression. It seems to me that  
20 we, as lawyers, should be careful when we suggest or  
21 represent that something is the law.

22           Now let me turn to the first paragraph of  
23 the preamble, which talks about the report, "Working  
24 Together for Change". Again, Mr. Treasurer, I didn't  
25 want to get into this, I didn't want to get into this.

1 My fellow colleague, Mr. Groia, I gather, said yesterday  
2 or the day before publicly that he wishes people in my  
3 position would study the reports. Well, Mr. Treasurer  
4 and my colleagues, I have studied those reports,  
5 "Working for Change", the Stratcom Report, the various  
6 collaboration reports, I spent a year and more studying  
7 them because I could not understand what was happening  
8 and why, because it meant this incredible what I thought  
9 odious requirement to bind my mind publicly.

10 And I've reread those many times from  
11 beginning to end with highlights and sticky tabs and  
12 parsed the paragraphs under microscopes. I do not find  
13 them convincing, Mr. Treasurer. I find so many errors,  
14 so many misleading statements frankly, and, frankly,  
15 what seemed to me to be misrepresentations.

16 When this body decided to try and deal  
17 with challenges faced by racialized licensees, and then  
18 broadened the scope, and we got this, it is an awfully  
19 sad mistake and a mess, in my respectful and sad  
20 opinion. And I don't find these reports convincing, I  
21 don't find them helpful. They jump to conclusions  
22 without considering alternative explanations or causes  
23 or factors. When they seem -- when the Stratcom report,  
24 which was prepared by a lobbying firm, says that results  
25 of a survey of the entire profession, some 48,000, give

1 or take, plus 6,000 paralegals, give or take, reports a  
2 tiny percentage responsiveness of about 3300 people and  
3 doesn't say how many of those are racialized, and that's  
4 the key point. We don't even know how many, quote,  
5 unquote, racialized people responded.

6 Then it goes on to say that it has  
7 somehow, through some magical algorithm, extrapolated  
8 those to what all, quote, unquote, racialized people  
9 think. That is not valid social science. I spent  
10 countless hours as a litigation lawyer who deals with  
11 experts trying to understand how they could say that.  
12 They can't. And to say that the results of that survey  
13 represent the views and opinions and experiences of the  
14 entire profession just isn't right as far as -- it's not  
15 accurate, it's not true, as far as I can tell.

16 So here in this preamble we are putting  
17 forward a series of reports which I think are badly,  
18 badly misrepresentative and, frankly, manipulative, and  
19 put forward what I call particular political ideology of  
20 capital "D" Diversity. I, as a lawyer who wants to  
21 think freely, you know, Mr. Treasurer, it seems to me  
22 that lawyers tend to be smart, and likewise for  
23 paralegals, and that's a good thing, and lawyers tend to  
24 be independent, and likewise for paralegals, and that's  
25 a good thing. By spotlighting a series of reports

1     which, under scrutiny, seem driven more by a particular  
2     political ideology than clear thinking and facts, that  
3     nobody wins, including the people who should benefit  
4     from this.

5                     So I think that putting this forward as  
6     an amendment unfortunately raises more questions than  
7     it solves, and people may be looking for a compromise,  
8     but this is not a good compromise.

9                     Then to go finally, in the last minute or  
10    two, Mr. Treasurer, going to the substance of the  
11    motion, we are now going to be encouraged to adopt what  
12    I say is a particular political ideology, and to advance  
13    it, and to do so in the legal profession, and then these  
14    words appear, and elsewhere, elsewhere.

15                    So this is an attempt through working in  
16    our minds, turning us into some kind of missionaries for  
17    someone else's political ideology and, Mr. Treasurer, I  
18    have spent pretty much all my career taking the point of  
19    view of the disadvantaged and fighting for them, and we,  
20    as a profession, we must hear those concerns, we must  
21    study them, not in this way, this is an unfortunate  
22    result, it's a mess. We must be open and openminded, we  
23    must be welcoming, we must offer opportunities and we  
24    must recognize effort and smarts and give people  
25    competence pathways, but this is something else.

1                   And then finally, Mr. Treasurer, to put  
2     in place a kind of political registry of people who are  
3     signing up to this is not what a regulatory body with  
4     the force of law behind it in a large organization  
5     should be doing. This year it's this particular point  
6     of view. Five years from now it's a different one and  
7     then a different one, Mr. Treasurer.

8                   And so in my submission, the best path  
9     forward is to recognize that we need to start by simply  
10    repealing the compulsory statement of principle, and  
11    then we have more discussion, more work to do. We don't  
12    need to do it all today and it would be a mistake to do  
13    it today in this way, in my respectful submission.

14                   Thank you, Mr. Treasurer.

15                   TREASURER MERCER: Thank you. Ms. Lean,  
16    you have a choice to either speak now or speak at the  
17    end. How do you wish to proceed?

18                   MS. LEAN: I'll speak now, and I won't go  
19    over the important points that Mr. Klippenstein made on  
20    the amending motion, but I want to say the people who  
21    voted for me want a clean repeal. They do not want to  
22    have some sort of dishonest play where we're going to be  
23    checked out by whether you voluntarily checked the box  
24    or not. We're going to --

25                   MR. GROIA: Could I raise a point of

1 personal privilege, Treasurer.

2 TREASURER MERCER: What is your point?

3 MR. GROIA: The accusation that my  
4 motion is a dishonest play, in my respectful submission,  
5 is an unworthy comment, and I would ask that  
6 it be withdrawn.

7 MS. LEAN: Well, I will withdraw that if  
8 Mr. Groia interpreted it as a personal attack.  
9 Certainly I didn't intend that.

10 TREASURER MERCER: Thank you for that.  
11 I remind benchers that there is an obligation not to  
12 allege false, improper or ulterior motives to another  
13 bencher. Everybody thinks everybody else is doing it,  
14 and we should all stop.

15 MS. LEAN: I'm told that I won the most  
16 votes in a bencher election ever. I am a sole  
17 practitioner in a back water, Prince Edward County, and  
18 I practice family law and child welfare. I'm like  
19 thousands of lawyers across Ontario who practice with  
20 the public every day in their office and in courts.  
21 These are the people that are being really affected by  
22 this and are very, very unhappy and upset. It affects  
23 our independence as lawyers.

24 When I received the e-mail, and I was not  
25 ahead of the situation like Murray, I didn't really

1 become aware of it until the fall of 2017, and I  
2 received an e-mail reminding me that I had to create --  
3 that there was a mandatory statement of principles  
4 saying that I needed to promote these things and I was  
5 to do this and I was to check my box -- check the box on  
6 the annual report. When I received that, I just could  
7 not believe that the Law Society would be infringing on  
8 my rights and freedoms.

9           This is -- you know, my job is to defend  
10 people's rights and freedoms, and yet the Law Society is  
11 telling me what to say and think. It wasn't what the  
12 Law Society was telling me to say and think, it was the  
13 fact that the Law Society felt that it could do that and  
14 make a mandatory requirement that I sign up. What's  
15 next? If the Law Society can tell you to do this, say  
16 this, what's the next step?

17           This is a first step to tyranny, in my  
18 humble opinion, Treasurer. So I never expected to run  
19 for bencher. The only reason I felt a need, it was run  
20 for bencher or leave the profession. I felt that if the  
21 profession was moving in this direction, that within a  
22 very short period of time I would not feel comfortable  
23 practising. The Law Society has deemed itself  
24 systemically racist and I interpret that to mean that  
25 all of the previous benchers and treasurers who have

1 acted over the years for this society have constructed  
2 a racist organization and institution.

3 I don't accept that. I think that there  
4 are -- the benchers and the treasurers have acted with  
5 good will. In the last number of years how many  
6 racialized candidates have been called to the Bar? It's  
7 huge. Does that show that we're acting in a racist  
8 manner and not admitting people? You know, the facts --  
9 it just doesn't stand up. Certainly, I'm not here  
10 saying that racism doesn't exist and it doesn't exist in  
11 our profession, I'm not saying that. But to claim that  
12 everyone associated with the Law Society of Ontario is a  
13 racist and in need of reeducation, I find that  
14 appalling.

15 And it's the sole practitioners, the  
16 small firms, the medium-size firms in towns and cities  
17 across Ontario that are actually serving the public  
18 interest. There seems to be in the report an  
19 implication that these folks are the inferior members of  
20 the profession, because what we want to do is raise  
21 racialized people into the big firms. These are the  
22 firms that don't even act for people, they act for legal  
23 persons. So this whole project has been demoralizing  
24 for our profession. It's induced fear, it's silenced  
25 many, and during our campaign that was the thing that

1 struck me the most. The students in law schools who  
2 wrote to us, the members of big firms who said they  
3 couldn't say, they couldn't indicate their support for  
4 us within their firms.

5 The legal profession is being asked to  
6 submit; this is an act of submission. You have to  
7 accept these terms, these words. Then you can practice.  
8 It is political. It is political, and I object to my  
9 Law Society becoming political.

10 The Law Society has a duty to regulate  
11 the profession and to discipline lawyers when they get  
12 out of line, and paralegals, of course. So the mandate  
13 was reduced last year and we weren't required to  
14 disclose our statement of principles, and this was  
15 described to me as, well, you could just write on a  
16 paper "F the Law Society," seal it, put it away, check  
17 the box.

18 Well, I don't want a Law Society that  
19 thinks that that's okay. I want a Law Society that  
20 promotes integrity and honesty in the profession, and  
21 this is not the way to do it. We want a clean repeal of  
22 the statement of principles. There's no preamble in our  
23 motion, our motion is a clean repeal, and I'm asking  
24 benchers, Treasurer, to support a clean repeal. The  
25 profession needs it. The profession is very divided and

1 upset and the reason why we're here today is because of  
2 the statement of principles. That's all.

3 TREASURER MERCER: Thank you. Mr. Groia.

4 MR. GROIA: Would you mind, Treasurer, if  
5 I spoke from the podium?

6 TREASURER MERCER: I wouldn't try to stop  
7 you.

8 MR. GROIA: Thank you.

9 In December 2017, during my motion  
10 seeking a conscientious objection exemption to the  
11 statement of principles, I said this: Today, we need to  
12 ask ourselves what we gain by offending many men and  
13 women of conscience and faith.

14 I said that in December 2017, intending  
15 my remarks to be directed to one group of the  
16 profession, and I say that again today, but I say it  
17 about a different group of the profession. There have  
18 been very few decisions of this society that have been  
19 as divisive as the statement of principles. Even the  
20 TWU decision did not cause as much heartache and upset  
21 as has the statement of principles.

22 Today, hopefully, will be the end of this  
23 long journey, and today we should really be focused on  
24 what we will do tomorrow to encourage equity, diversity  
25 and inclusion.

1           At the moment, there are on the floor  
2 several paths for us to choose from. One, we can vote  
3 to keep the statement of principle as it is. In my  
4 view, that is a bad choice as it does not deal with the  
5 serious concerns that many lawyers have expressed about  
6 the mandatory nature of that requirement. Even the  
7 watered-down version of the statement of principle that  
8 came about as a result of my defeated motion for  
9 conscientious objection was not supported by the  
10 profession.

11           Secondly, you can vote to just harshly  
12 repeal the statement of principle with no thought to the  
13 message that that will send to the profession or to the  
14 public. While many of us believe we have a mandate from  
15 the profession to just get rid of the statement of  
16 principles, in my view we all know that is not true.  
17 The mandate that I have seen and that has brought so  
18 many of us here was to get rid of the mandatory or  
19 compulsory nature of the statement of principles.

20           In my respectful opinion, there is no  
21 right for this bench to undo all of the hard work that  
22 previous benchers have done to try to improve the  
23 equality, diversity and inclusion options for all  
24 lawyers. The motion before you today that has been  
25 brought by Bencher Donnelly and myself offers you the

1 opportunity to get rid of the mandatory statement of  
2 principles and to replace it with voluntary choices that  
3 will hopefully become rallying points for the profession  
4 to show that it does truly believe in the efforts we  
5 have been making towards a profession that is truly  
6 colour- and gender-blind.

7 I want to be clear that what our motion  
8 does is no more than to provide voluntary choices, and  
9 in response to one of the things that was said earlier,  
10 when you read the preamble that is in our motion, that  
11 is, and I hope it's a perfect quote, but that is an  
12 exact quote taken from our Rules of Professional  
13 Conduct, rule 6.3.3-1. There's no reference in our  
14 motion to human rights legislation. All we've attempted  
15 to do is to bring us back to the Rules of Professional  
16 Conduct and the obligations we all have now as lawyers  
17 in the province of Ontario. Our motion would result in  
18 three changes to the main motion. We would still repeal  
19 the mandatory requirement of the statement of  
20 principles. We would encourage all lawyers and  
21 paralegals to have their own private -- their own  
22 private, personal and voluntary statement of principles.  
23 There's no thought control, there's no reaching into the  
24 minds of anyone, there's no attempt to tell anyone to do  
25 anything other than as part of our initiative, please

1 think about adopting a statement of principles that's  
2 yours and yours alone.

3           Secondly, if a lawyer or a paralegal  
4 chooses to have a statement of principles and if they  
5 want to do so, there will be an opportunity for them to  
6 tell the profession that they have done so and they can  
7 voluntarily disclose on their LAR or their PAR the fact  
8 that they have chosen to adopt their own statement of  
9 principles.

10           As I'm sure all of our colleagues are  
11 aware, the information on the LAR and PAR is  
12 confidential. No one is entitled to see it, no one does  
13 see it, and all that we would do as the third part of  
14 our motion is to provide an anonymous tally of the  
15 number of lawyers and paralegals who have chosen to do a  
16 statement of principles and who has chosen to disclose  
17 the fact that they have done that.

18           So, in conclusion, as you all know,  
19 those of you who still claim that this voluntary  
20 approach is compelled speech or compelled thought or  
21 some kind of totalitarian effort towards thought  
22 control, I would simply ask you to go and read our  
23 motion again and I would ask you to go and read the  
24 Rules of Professional Conduct again. If you're opposed  
25 to the preamble in our motion, you're opposed then to

1 the Rules of Professional Conduct, and I daresay on  
2 another day we will have a larger problem than the one  
3 we're trying to put behind us today.

4 So I see this as a chance for this bench  
5 to show real leadership, to show that in the profession  
6 we are doing away with the compelled requirement for a  
7 statement of principles, but at the same time we are  
8 replacing it with encouragement, with support, with a  
9 rallying opportunity and a chance for a purposeful  
10 result to this motion, as opposed to what is being  
11 proposed in the main motion, which, in my view, sends a  
12 blunt and a harsh message to the profession.

13 Thank you, Treasurer.

14 TREASURER MERCER: Thank you, Mr. Groia,  
15 and I apologize for my attempt at levity.

16 Ms. Donnelly, do you wish to speak now or  
17 later?

18 MS. DONNELLY: I wish to speak later.

19 TREASURER MERCER: Mr. Charette, for  
20 your amendment.

21 MR. CHARETTE: Thank you, Mr. Treasurer.

22 I must confess at the outset that I think  
23 Mr. Klippenstein was too easy on me. I am very  
24 dissatisfied with my own motion, I really am, and I  
25 hope one day that we will have and work toward the

1 elimination of preambles, but I made a calculated  
2 decision, and it's my motion, and I'm going to speak to  
3 it.

4                   So I appreciate what Ms. Lean and Mr.  
5 Klippenstein have said, and I adopt what they said  
6 expressly. Let me explain that we've come through a big  
7 tussle, it's a big war, but it's been good, it's been  
8 invigorating, and I know it will be.

9                   The one point I want to address right  
10 away is Mr. Groia's tenet that it's purely voluntary  
11 and, I'm sorry, within the environment within which we  
12 function the voluntary becomes mandatory, practically  
13 speaking.

14                   If one looks at the Toronto Sun, my name  
15 as an ordained deacon was mentioned in close proximity  
16 to a right-wing religious zealot. What becomes  
17 voluntary, what is voluntary becomes mandatory,  
18 practically speaking. And I will share a story shortly  
19 about Chi-Kun that is even more odious. I can take care  
20 of myself, I don't mind. The gentleman who made that  
21 comment, I left him a message on his voicemail saying,  
22 don't worry, we'll work it out. And we will. I have  
23 every hope and confidence that we're going to work this  
24 out in a way that leaves us all in good relations, I  
25 really do. Maybe I'm unnecessarily optimistic, but I

1 am.

2                   Here's what I would put before you today  
3 in terms of what the function of this Law Society is.  
4 We talked about space this morning, and the Law  
5 Society's function is fundamentally to protect that  
6 sacred space, that inviolate space between a lawyer and  
7 his or her client. And the statement of principles and,  
8 indeed, my own motion to some extent, although it's a  
9 distinct improvement, intrudes into that sacred space.  
10 It is intrusive, and I'll explain to you why I see that  
11 it is so.

12                   The rules of conduct require that I not  
13 have a conflict of interest, and we heard about conflict  
14 of interest this morning, which is unusual. Great  
15 timing. The fact is that if I have an obligation to  
16 promote or advance, as Mr. Groia says, some version or  
17 notion of inclusivity, diversity and equality, I have to  
18 adopt that as a personal interest in my being. I'm not  
19 two persons, I'm not schizophrenic, I don't think, and I  
20 have to espouse that.

21                   Well, if a client comes into my office  
22 and that client has been sued on some basis of equality,  
23 diversity and inclusivity, I have a disclosable  
24 interest. And in that sacred space between me and my  
25 client, it's a conversation that happens with only two

1 people in the room. I have an obligation to disclose  
2 that I have a personal interest. You, my client, or my  
3 perhaps client, are about to hire a man who has promised  
4 to his governing regulator, 'By the way, I have promised  
5 that someone who can take away my livelihood to practice  
6 law, I have had to promise to them that I will promote  
7 equality, diversity and inclusivity.' I ask you now  
8 sincerely, is that client likely to think that I'm on  
9 his side? He's certainly going to have a doubt as to my  
10 total devotion to his case.

11                   And so what I see the Law Society has  
12 done is it has intruded itself into the sacred space  
13 between the client and his or her lawyer. This is  
14 something we ought not to do because this Law Society  
15 is created to be a jealous guardian, a jealous guardian  
16 of our professional autonomy and our professional  
17 independence, that nothing, nothing that this Law  
18 Society does is to intrude between me and my client.  
19 Because, as Ms. Lean mentioned, they are the ones, we  
20 are the first line of defence. When clients come to  
21 seek to enforce their rights, we're it.

22                   I don't care if I'm a real estate lawyer,  
23 because that's a noble endeavour, but if I'm doing real  
24 estate it's the client that will call me, what does my  
25 real estate lawyer say about some dispute I'm having

1 about equality and diversity and inclusivity. We are  
2 the first line of defence and this Law Society ought not  
3 in any way intrude into that autonomy that we hold as  
4 sacred, Treasurer, not for our benefit, for the benefit  
5 of a client.

6 And in the same way that we serve the  
7 clients, this Convocation has to serve the legitimate  
8 needs of its members, because they are the ones who  
9 serve the public interest by being a place, a person  
10 that someone can go to with full confidence, knowing  
11 that there is no conflict, there is no compulsion, and  
12 I'm afraid that this Law Society has taken a very bad  
13 step in injecting itself into that sacred space. That's  
14 my first point.

15 Secondly, we lead ourselves into the  
16 politics of personal destruction. As I mentioned, my  
17 name was mentioned in close proximity to some very  
18 odious words. That's okay, I can take care of myself,  
19 but let me say this.

20 Recently, Chi-Kun was appointed to  
21 represent the Treasurer at a public ceremony. After  
22 that was done, somebody got a call, that person called  
23 somebody else and that other person, in turn, called  
24 Chi-Kun and said we would rather that you not show up at  
25 the public ceremony. Why? Because her name was

1 mentioned in a rather odious way in a Globe and Mail  
2 article - this, by her own opponents, by their own  
3 standards, a racialized woman was invited not to attend.  
4 She was not excluded, although she was, worse, she was  
5 invited to exclude herself, herself, and have we not had  
6 many examples in history where people were invited to  
7 move themselves along out of the way. This was  
8 outrageous, and I say that the Law Society was as much a  
9 victim as was Chi-Kun. That we would allow a third  
10 organization to interfere in the process of this  
11 Convocation is a scandal, it's an outrage. I say this  
12 quite personally. Chi-Kun didn't want me to raise this,  
13 but it happened not two weeks ago that she was invited  
14 not to attend because of the scandalous wording in this  
15 article.

16                   So brother and sister benchers, we  
17 should not go down this path, and my amendment is a very  
18 pale fix. What it does is it takes away this virtue  
19 signalling whereby people can ask me did you sign this  
20 voluntary statement, and you know that will happen, that  
21 will happen. It will be on lawyers' websites, we signed  
22 the statement. How come it's not on your website? So  
23 that which people call voluntary, in effect, becomes  
24 mandatory, and that's why I move to remove paragraphs  
25 (b) and (c), to send a clear signal that this Law

1 Society is not to encourage political thought, it's not  
2 to require it, nor is it its position to encourage it.

3 So I've made the motion, I hope you'll  
4 accept it, but, frankly, my heart is with Mr.  
5 Klippenstein and Ms. Lean, it really is.

6 So those are the substance of my  
7 comments. I blame no one in the Law Society for what's  
8 happened, I really do not. As I said, we're more of a  
9 victim than anyone else, but that someone would dare to  
10 interfere with the proceedings of this law society on  
11 the basis that they don't agree with the opinions of a  
12 racialized woman, I'm sorry, that just shows you that  
13 this is political ideology, it's not about human rights,  
14 and Murray is absolutely correct when he says  
15 that.

16 Thank you, Mr. Treasurer.

17 TREASURER MERCER: Thank you. Ms. Shi,  
18 do you wish to speak now, or do you wish to speak at the  
19 end?

20 MS. SHI: I wish to speak at the end,  
21 Treasurer.

22 TREASURER MERCER: Thank you. I believe  
23 Ms. Lewis is the first person that I have seen who  
24 wishes to speak to the motions.

25 MS. LEWIS: The Law Society has a duty to

1 protect the public interest, that's why I support the  
2 statement of principles. I'm sure you're going to hear  
3 lots of arguments about why the SOP or the statement of  
4 principles should be preserved, either completely or in  
5 some fashion, but I want to focus on one topic, and  
6 that's racism and ensuring a diverse Bar, ensuring that  
7 we have a diverse Bar responsive to the public that we  
8 serve. The Supreme Court of Canada in Trinity Western  
9 held a bar that reflects the diversity of the public it  
10 serves undeniably promotes the administration of justice  
11 and the public's confidence in the same. A diverse Bar  
12 is more responsive to the needs of the public it serves,  
13 a diverse Bar is a more competent Bar.

14 I wrote an op ed in the Globe and Mail  
15 two weeks ago outlining why I support the statement of  
16 principles. The reaction to the Globe and Mail article  
17 exemplifies exactly why we need the statement of  
18 principles. There were some anonymous comments to the  
19 article that were undeniably racist.

20 To those who think that this debate is  
21 about freedom of expression, don't be fooled. This is  
22 about denying the existence of racism. Racism is real.  
23 It comes in many forms, some overt, some subtle and more  
24 insidious. It is very real to the people that are here  
25 today who have taken time out of their work and their

1 lives to be here. They are here because the statement  
2 of principles matter to them.

3 I want to share some stats from the 2017  
4 Law Society data that we have, just to put a full pin on  
5 the whole notion of whether or not racism exists.  
6 Racialized lawyers are underrepresented in the legal  
7 profession. 20.73 percent of lawyers in Ontario are  
8 racialized compared to 28.7 percent of the Ontario  
9 population and 36.94 percent of educated members of the  
10 work force.

11 It's not a culture of learning that  
12 explains the lack of representation. In 2017 racialized  
13 lawyers were overrepresented in solo practice and  
14 underrepresented in law firm partnership.

15 And to go through some of the stats, 25  
16 percent of racialized lawyers practise as sole  
17 practitioners in contrast to 19 percent of white  
18 lawyers; 8 percent of racialized lawyers are law firm  
19 partners in contrast to 18 percent of white lawyers.

20 I support a mandatory statement of  
21 principles. I will support Mr. Groia and Ms. Donnelly's  
22 motion in order to take repeal off the table, and I make  
23 that decision in terms of the practical realities, how  
24 I know that the votes are going to shake out at  
25 Convocation, but I do want to note, as the Indigenous

1 Bar Association noted in their letter to all benchers of  
2 June 20th, 2019, racialized lawyers do not have the  
3 luxury of opting out of being racialized.

4 This is an important vote. This vote  
5 will set the tone of the Law Society's commitment to  
6 diversity and addressing racism. Before voting, I ask  
7 my fellow benchers to consider their fiduciary duty and  
8 I ask benchers to consider, have you read the Challenges  
9 Report? If not, I don't think you've met your fiduciary  
10 duty and you should abstain from voting. Do you accept  
11 that systemic discrimination and discrimination exists?  
12 If so, what do you plan to do about it? Racialized  
13 lawyers have waited decades for the robust  
14 recommendations unanimously approved by the Law Society  
15 in 2016. We cannot wait another four years.

16 TREASURER MERCER: Mr. Alford. There's  
17 no need to go to the podium. If you want to sit, that's  
18 fine. We'll save a bit of time if everybody doesn't go  
19 up, but your call.

20 DR. ALFORD: Thank you.

21 I want to tell you a positive story about  
22 the Law Society. Shortly over 25 years ago, the Law  
23 Society had one of its finest hours here at Convocation.  
24 I take it some of you who are new benchers, lay  
25 benchers, have been to call ceremonies. Note the one

1 element of the call ceremony that is optional: The oath  
2 of allegiance. Why is that? Indigenous licensing  
3 candidates brought a constitutional challenge making  
4 arguments very similar to those made by myself and Mr.  
5 Klippenstein in our constitutional challenge. Compelled  
6 speech cannot stand.

7                   It was really inspiring what Convocation  
8 did. That when people were saying this is an  
9 absolutely paramount value, you go back to those  
10 debates, take a look at the text, what's happening in  
11 Convocation was debated in 1991, and you see people  
12 saying we cannot get rid of the oath of allegiance; it  
13 is essential to make people loyal and in line with the  
14 Canadian state.

15                   Two years after that, the Premier of  
16 Ontario, Mike Harris, made the oath of allegiance  
17 mandatory again for certain professions, including  
18 police officers, but the Law Society distinguished  
19 itself by bringing in two top constitutional litigators,  
20 Donald Brown and Ian Binnie, and they concluded that the  
21 oath of allegiance was compelled speech and could not  
22 stand. We have stood by that for over 25 years. I  
23 think it's one of our finest hours, because there was so  
24 much pressure.

25                   The statements that were being made about

1 how this was a paramount goal. Things change over time.  
2 At one point it's loyalty to the Canadian state, at  
3 another time it's something else. When you use that  
4 regulatory power, when we have state power here at  
5 Convocation, delegated statutory power, we cannot use it  
6 to promote values or different values will end up being  
7 promoted which we can barely even predict further down  
8 the road.

9 Now, I'd like to contrast this also with  
10 the attitude of Convocation in 2016. What was raised in  
11 that report was a litany of problems. Freedom of  
12 conscience, freedom of religion, freedom of speech.  
13 They were all acknowledged in report of outside counsel  
14 to Convocation. There was a very brief statement  
15 saying, look, you know, we think this is probably  
16 compelling, it was an extremely tentative conclusion.  
17 I encourage you to go back and read that and then take  
18 the extra step of asking Law Society staff for the legal  
19 opinion of Donald Brown and Ian Binnie in 1991.

20 Now, with respect to the Groia motion,  
21 there's this notion of what is truly voluntary, which I  
22 think is very important. What if we told those  
23 licensing candidates at Convocation, feel free not to  
24 take the oath of allegiance, but we're going to keep a  
25 record of who doesn't. In the 1960s when they're

1 talking about how important this is to loyalty of the  
2 Canadian state, imagine there was a record of who chose  
3 not to affiliate with the preferred value being promoted  
4 by the Law Society, loyalty to the Canadian state.

5 Now consider in 1970 during the October  
6 Crisis that lists were drawn up of people whose values  
7 were not in accord with the Canadian state,  
8 particularly those who were perceived to be disloyal  
9 within the province of Québec. Some of those lists were  
10 done up by the government. Reports from that time  
11 indicate that the RCMP then more or less doubled it,  
12 purportedly disloyal people. When you hear "disloyal",  
13 what you should be hearing is people who refuse to  
14 submit to the values test being imposed by the  
15 government of the day. I think it has a lot more to do  
16 with that attitude than the particular value being  
17 promoted. That is a list of dissidents, it is a list of  
18 people who say I may have that value, I may agree with  
19 this, but I will not agree to put myself on a list of  
20 people that endorse what the government wants me to  
21 endorse.

22 I have been consistent all throughout  
23 this process from the time of the constitutional  
24 application. I think that these values are very much my  
25 own values. I do not care what value is being promoted,

1 whether it's the oath of allegiance, a statement of  
2 principles, or anything else. It is not the business of  
3 the Law Society to say which values are orthodox and  
4 which people should associate with. And the temptation,  
5 mind you, is to do it when the value seems compelling.

6           The reason why we have entrenched  
7 constitutional rights is not because we fear a  
8 tyrannical government who will do this for no reason.  
9 They do it for the best of reasons. When people were  
10 interned without trial in the Second World War, that was  
11 for the best of reasons. When people said I disagree  
12 with conscription and they were taken to Camp Petawawa,  
13 when the mayor of Montreal was arrested outside Montreal  
14 City Hall and put into internment without trial for five  
15 years, it was because we thought there was a paramount  
16 goal to promote and we would not tolerate dissidence.  
17 If we heard about this, if we heard about even a  
18 voluntary requirement, with the list being kept at the  
19 Law Society, purportedly confidentially for now, in a  
20 foreign country, and that came to us through a human  
21 rights monitoring group, have you heard, there's a  
22 country out there where they promote a particular value  
23 and they ask lawyers to voluntarily affiliate themselves  
24 with it, and then they keep that list.

25           TREASURER MERCER: Time, Mr. Alford.

1 DR. ALFORD: One last remark, Treasurer.

2 It always seems to be the case that we  
3 don't need to worry about those periods in history,  
4 until we do.

5 I think the Law Society has a  
6 distinguished record. I ask us to look back to 1991, to  
7 one of the finest hours in the Law Society, and then  
8 think about the corollary with respect to the Groia  
9 motion. How would we feel about a list of people who  
10 took the oath of allegiance in the Law Society's  
11 possession? Thank you.

12 TREASURER MERCER: I'm going to call on  
13 Ms. Papageorgiou out of time because she needs to speak  
14 now.

15 MS. PAPAGEORGIU: Thank you.

16 It's my daughter's grade 12 graduation  
17 this afternoon, so I have to leave at 1:00. I  
18 apologize, my comments are not going to be that eloquent  
19 because I've just been scribbling away as people have  
20 been speaking. I have a few points that I want to  
21 cover, and I'm going to give you the list first, and  
22 then I'm going to talk about them.

23 The first one is the values that Mr.  
24 Alford spoke about; second one is the mandate that I  
25 believe Mr. Klippenstein talked about that they had;

1 then I'd like to talk about what I see the Law Society's  
2 prime duty to be, because there has been some discussion  
3 about what the obligation is.

4 I would like to talk about -- this is  
5 going -- I'm going to have to really squeeze this in,  
6 comments about the working group report, and then the  
7 Groia motion. And I'd also like to talk about my  
8 personal feeling about the statement of principles.

9 So Mr. Alford spoke a lot about value --  
10 am I saying it wrong?

11 DR. ALFORD: It's Dr. Alford.

12 MS. PAPAGEORGIOU: Pardon?

13 DR. ALFORD: It's "Doctor".

14 MS. PAPAGEORGIOU: I'm so sorry. Dr.  
15 Alford spoke about values.

16 The first thing that I'd like to point  
17 out is that this is not really about values. What is in  
18 the statement of principles is what is in the Human  
19 Rights Code and in the by-laws. If I take out the  
20 compulsory nature of it, the whole thing is actually the  
21 law. Lawyers must abide by these laws. So I say that  
22 these are immutable, these are not values that change  
23 over time.

24 On the mandate, yes, there was an  
25 election, and yes, 22 of the StopSOP vote got elected,

1 and I congratulate them for that. But that campaign,  
2 that is the first time that there's ever been a slate.  
3 It was such a defined issue that made it so easy for  
4 people to vote for them, and we had even less of a  
5 turnout this election than we did last time.

6 By my calculation, the StopSOP group got  
7 5,000 of the 16,000 votes that were made, which is about  
8 a third. So, yes, there are a significant number of  
9 voters who definitely opposed the statement of  
10 principles. The majority of the profession don't care  
11 one way or another. And then there are a significant  
12 portion of the voters who I suggest if they didn't vote  
13 for the StopSOP, they support the statement of  
14 principles. So I don't see this broad mandate that Mr.  
15 Klippenstein talks about.

16 So the Law Society's duty, again, Ms.  
17 Lean talked about, and I think she said that the Law  
18 Society's duty was to basically regulate lawyers and not  
19 get between lawyers and their clients. And that's  
20 actually -- that's not the main duty. The main duty is  
21 to regulate the profession in the public interest, and  
22 so what we have to consider now is what is in the public  
23 interest, not what one group of lawyer wants or what one  
24 other group of lawyer wants, but what's in the public  
25 interest. And what's in the public interest is, that we

1 have a diverse Bar that is treated fairly, that can then  
2 serve their communities. That's what's in the public  
3 interest.

4           The working group's report. I frankly  
5 don't know or understand what Mr. Klippenstein was  
6 talking about when he criticized that report so  
7 stringently. That group worked for four years, meeting  
8 with people, doing their own studies, reviewing the  
9 literature. I daresay there is no credible literature  
10 out there that says there is no systemic racism out  
11 there, and I would be shocked if the legal profession  
12 was the one place it doesn't exist. So I frankly, I  
13 frankly don't understand why we would eliminate  
14 something and start all over again when the report has  
15 already been done and it's been done consistent with all  
16 the other research that's out there.

17           Now, we heard about the Groia motion, and  
18 when I heard Mr. Klippenstein speak he talked about how  
19 the words -- what did he say, "promote" is still in  
20 there. It's a bit of a -- it's not really that -- it  
21 doesn't really say that. What it says in the preamble  
22 is that whereas Convocation approved a series of  
23 recommendations outlined in the report to Convocation on  
24 December 2nd, titled blah, blah, blah, intended to  
25 promote and enhance equality, diversity and other anti-

1 discriminatory initiatives. So it's a preamble that the  
2 report was entitled -- was intended it promote those,  
3 and whereas a motion has been brought to repeal the  
4 mandatory requirement. And then it says and whereas it  
5 is of critical importance to the public interest in  
6 Ontario that all licensees acknowledge their special  
7 responsibility to respect requirements of human rights  
8 laws in force in Ontario and, specifically, to honour  
9 their obligations not to discriminate on the grounds of  
10 race, ancestry, place of origin, colour, ethnic origin,  
11 citizenship, creed, sexual orientation, gender identity,  
12 gender expression, age, record of offenses, marital  
13 status, family status, or disability. Okay, so to  
14 promote --

15 TREASURER MERCER: Time, Ms.

16 Papageorgiou.

17 MS. PAPAGEORGIOU: Is time up?

18 TREASURER MERCER: Time. Please  
19 complete.

20 MS. PAPAGEORGIOU: Can I just -- can I  
21 have two minutes?

22 TREASURER MERCER: No. Please come to  
23 an end. You have had five minutes in total, and please  
24 wrap up your remarks.

25 MS. PAPAGEORGIOU: Okay, I think I've

1 finished that point.

2 My personal feeling is I promote the  
3 statement of principles. I am a privileged white woman,  
4 I have had a wonderful run at this profession, and it is  
5 so difficult for many of the racialized lawyers who are  
6 younger, who are coming out -- coming up in this  
7 profession, and I think we have to ask ourselves, are we  
8 going to make a statement that we don't care or are we  
9 going to stand for something and lay out the welcome mat  
10 for them, and that's what I think we should be doing.

11 TREASURER MERCER: Thank you. Ms.  
12 Merali.

13 MS. MERALI: Thank you, Treasurer.

14 First of all, I would like to acknowledge  
15 those who have taken the time to write to the Law  
16 Society about the motions before us and who have  
17 attended today. The submissions from many organizations  
18 representing thousands of licensees were meaningful to  
19 read, and I want to thank the Equity Advisory Group,  
20 EAG, for its tireless historical research on the Law  
21 Society's long journey towards finally addressing  
22 issues of equity, inclusion and diversity, as well as  
23 the excellent submissions made by RODA and its members,  
24 the Indigenous Bar Association, and the Association of  
25 Law Officers of the Crown.

1                   As vice-chair of EIAC, a member of the  
2 former working group on the Challenges Facing Racialized  
3 Licensees, and former member of six years on EAG prior  
4 to becoming a benchler, these were all important to  
5 consider.

6                   Today is a very difficult day for us,  
7 particularly for those who have done this work  
8 throughout their careers and who have watched the slow  
9 progress at the Law Society towards equity and inclusion  
10 halted in this manner. I wrote what I wanted to say  
11 probably a hundred times in my head. Each time it was  
12 different, and each time I tried to write it on paper I  
13 failed. I think the reason was that today, the journey  
14 towards today felt to me like a failure in so many ways.  
15 Failure on the part of those who have brought this  
16 motion to recognize the continued pervasiveness of  
17 systemic racism in the legal professions. Failure to  
18 understand how human rights laws, which I have practised  
19 my entire career, have been interpreted to incorporate  
20 an obligation to take proactive steps to promote human  
21 rights. Failure to refuse to educate themselves on the  
22 need for implementation for concrete and proactive steps  
23 to address this as a regulator and in the public  
24 interest. Failure on the part of many to even read the  
25 report that is based on four and a half years of

1 research, best practices, consultation across the  
2 province and compromise.

3           This, in my respectful view, is, at its  
4 best, misguided and, at its worst, a failure of good  
5 governance in the public interest. But in the scheme of  
6 failures and disappointment that I see today is my  
7 failure, my own failure to anticipate, yet again, the  
8 hostile opposition and tenure of attacks amongst what I  
9 actually believe, like Ms. Papageorgiou, is a very small  
10 group in our profession to equity, diversity and  
11 inclusion. Opposition to taking simple and small steps  
12 to change this culture, opposition to taking a few  
13 moments to reflect on our current human rights  
14 obligations and responsibilities in our professional  
15 capacity. The statement of principles is nothing more,  
16 but more importantly, nothing less.

17           So I find myself reminded that our work  
18 as a regulator and as legal professionals is far from  
19 done. This motion I believe is just the beginning of  
20 the dismantling of the Law Society's informed and  
21 significant work over the last four and a half years,  
22 which I was honoured to be a part of. In fact, I think  
23 it's the first step towards dismantling the work over  
24 the last twenty years. Justice Laforme said recently at  
25 the LSO Pride Month event, "Once the right is achieved,

1 the battle to safeguard, maintain and build on that  
2 right begins," and that is what I am compelled to do  
3 again today and what I ask you as my fellow benchers to  
4 do, especially those who, like me, stood firm each time  
5 a motion to separate or dilute the statement of  
6 principles arose and those who voted to support the 13  
7 recommendations.

8 I will stand firm for what I believe is  
9 the right thing to do in the public interest. I choose  
10 to be fully on the right side of history on this issue.  
11 Moreover, I believe a strong dissent is critical to  
12 maintain on the record. I will be voting against the  
13 main motion, and I cannot, unfortunately, in good  
14 conscience support any fracturing or regression of the  
15 important and needed work that we have achieved on  
16 equity, diversity and inclusion. I ask you to do the  
17 same. Thank you.

18 TREASURER MERCER: Thank you. We'll  
19 take our -- Mr. Desgranges?

20 MR. DESGRANGES: I take exception to one  
21 of the comments of the last speaker, being that she has  
22 actually directed the qualification as being hostile on  
23 the part -- to the people who brought a motion against  
24 the SOP or to repeal the SOP, and I think that is  
25 offensive, and I wish that to be struck. Thank you.

1 MS. MERALI: May I respond? I was not  
2 referring to this group. I was referring to the hostile  
3 attacks that were found in comments to Ms. Lewis'  
4 article, which I think is a fair comment.

5 TREASURER MERCER: Thank you. We'll take  
6 our luncheon break until two clock. We'll be back at  
7 two o'clock here. Lunch is in the benchers' dining  
8 room.

9 --- Luncheon recess at 1:01 p.m.

10 --- On resuming at 2:00 p.m.

11 MR. COOPER: Thank you, Mr. Treasurer.

12 I know that everybody's had an  
13 opportunity to have a wonderful lunch, and hopefully  
14 nobody's 'hangry' anymore, and I just want to say Happy  
15 Pride to everybody. It's 50 years, and I want to share  
16 some history. It's 50 years ago that in New York City  
17 there was an original demonstration, and that  
18 demonstration has turned into the tradition to have a  
19 parade.

20 Now, the reason why I bring that up is  
21 because it's a function of free speech, and what we will  
22 do here today and what we've done here today thus far  
23 does not have limits on free speech but to enjoy that.

24 And part of what I've heard and what I've  
25 tried to learn and tried to decipher from this morning

1 was I found it quite interesting that one speaker wanted  
2 to dismiss the Stratcom research because it only dealt  
3 with 3,000 people, 3,000 members of our profession, done  
4 scientifically but dismissed that as if there was no  
5 mandate but to indicate that they are here or that  
6 person is here and stands for 5,000 voters and thus now  
7 has a mandate. It's a little ironic.

8           Where is the political ideology? Let's  
9 leave it at the side of the road. What you should be  
10 concerned in our concerns as directors and benchers is  
11 the public interest, and the public interest is our  
12 primary goal. At points it will be in accordance with  
13 what the profession wants, and at points it may split.

14           So wearing your hat as a bencher and  
15 acting in the public interest, Ms. Lewis shared with us  
16 the words from the Supreme Court of Canada about the  
17 power of a diverse population, a diverse profession,  
18 and, more important, we have a diverse community. So I  
19 challenge everybody if they come up here to speak. Tell  
20 me, tell us, say it publicly: There is systemic racism.  
21 Or if you don't think there is, say that doesn't exist.  
22 Say that there's no such thing as lived experience if  
23 that's what you believe.

24           See, the history of our Law Society has  
25 been of exclusion, and if we look at the history of the

1 Law Society, whether it's been women, people of  
2 different faiths, racialized individuals, our history  
3 has been of exclusion. We have embarked upon a road of  
4 inclusion, and inclusion can exist in the public  
5 interest and can also co-exist with the benefit of the  
6 profession.

7 See, today people still experience  
8 racism, they still experience sexual harassment, and we  
9 have the data that shows this. We have the obligation  
10 to ask ourselves what can we do that is in the public  
11 interest.

12 Ms. Lewis has reminded us of the words  
13 from the Supreme Court of Canada, "The diverse Bar is a  
14 more competent Bar." But I want you to reflect on a  
15 newer case from the Court of Appeal as well where issues  
16 were discussed. There was a case where doctors were  
17 being compelled, they said, by the regulated body to  
18 refer patients to end-of-life care even when it  
19 conflicted with their own personal moral/religious  
20 beliefs.

21 The Court in *Christian Medical and Dental*  
22 *Society of Canada v. The College of Physicians and*  
23 *Surgeons of Ontario* stated:

24 "As the Divisional Court observed, the  
25 appellants have no common law, proprietary or

1 constitutional right to practise medicine. As members  
2 of a regulated and publicly-funded profession, they are  
3 subject to requirements that focus on the public  
4 interest," remember, "rather than their interests."

5 So when the Supreme Court of Canada says  
6 a diverse Bar is a more competent Bar, that is the  
7 public interest.

8 Now, it's not about restriction or  
9 compelling free speech. This is not about our rights as  
10 citizenry because I am in the trenches every day  
11 fighting for those rights. This is not about a right.  
12 This is about a privilege. It's a privilege to practise  
13 law. It's a privilege to be a member of the Law Society  
14 whether you're a paralegal or you're a lawyer licensee.

15 And so that is what I'm asking you to  
16 think about when you vote. Think about our history,  
17 think about what our mandate is in respect of the public  
18 interest, and think about how if we promote the ability  
19 for people to reflect on things -- and I again invite  
20 everybody to reflect, come here, stand at the podium and  
21 say I believe sadly there is systemic racism.

22 TREASURER MERCER: Time, Mr. Cooper.

23 MR. COOPER: Okay, I'll finish up.

24 Lastly, I want to say just don't be  
25 fooled by people who try to hijack the conversation,

1 where they want to say it's diversity of thought as  
2 opposed to diversity which means lived experience.  
3 Don't be fooled. Come forward, everybody here who is  
4 acting in the public interest, with solutions to deal  
5 with EDI. Let's make this a better practice so that we  
6 can support the public the best that we can.

7 Thank you.

8 TREASURER MERCER: Mr. Brown?

9 MR. BROWN: Thank you, Mr. Treasurer.

10 I'm newly elected to this place. I  
11 didn't set out to come here. I have no burning ambition  
12 to govern my colleagues or the profession, and I don't  
13 seek status within this place. I came here because the  
14 last group, frankly, lost its way, a legal regulator  
15 that sought to impose an unconstitutional compelled  
16 speech measure on lawyers. As I said, I don't really  
17 want to be here. I don't need the ad hominem attacks,  
18 the innuendo from activists, from my fellow benchers,  
19 and now from a sitting judge. I weather this nonsense  
20 to protect this institution from its own authoritarian  
21 instinct.

22 Now, I come fortified by the public  
23 interest. The public stares aghast at what this place  
24 has become breezily passing a compelled speech measure  
25 as part of an omnibus package or grab-bag of policies,

1 parliamentary shorthand at a legal regulator on a  
2 compelled speech measure.

3           The editorial board of the National Post  
4 said, "The Law Society's controversial statement of  
5 principles should be struck down." Even if every last  
6 lawyer agreed with its values, the statement of  
7 principles would still be wrong in principle.

8           And if you think for a minute that it's  
9 only the political right that's condemning you, the  
10 editorial board of The Globe and Mail said:

11           "Any lawyer - or anyone else, really -  
12 who is familiar with the Charter of Rights and Freedoms  
13 knows that the state is not allowed to put words in  
14 people's mouths, or force them to swear their devotion  
15 to political viewpoints in order to keep their jobs.

16           "So why, then, is the Law Society of  
17 Upper Canada obliging its members to write and sign a  
18 'statement of principles' in order to demonstrate  
19 'a personal valuing of equality, diversity, and  
20 inclusion'?"

21           "This is extremely uncomfortable to  
22 contemplate."

23           I'm not going to bother getting into the  
24 widespread controversy, uproar, condemnation beyond  
25 those items that I just read you. You all know about

1 it. It's the outrage that got people like me elected to  
2 this place.

3 But true to form, this place doesn't even  
4 have the courage of its own convictions. The original  
5 announcement of the statement of principles in an e-mail  
6 in September 2017 said that this new obligation would  
7 require reporting in the next annual report, no  
8 sanctions in year one. Immediately the climb-down  
9 begins.

10 No specific form required. Look, here  
11 are some precedents of what you must say to us. No  
12 sanctions yet. It won't be audited.

13 And my personal favourite, "It only  
14 requires that you affirm existing duties." So much for  
15 the celebrated culture shift that the statement of  
16 principles was to usher forward. Maybe that was always  
17 supposed to be an operational issue and well below  
18 Convocation.

19 Even now when finally a group of benchers  
20 has the fortitude to abide by the public interest and  
21 kill this thing with a clean repeal some move to pick  
22 over the carcass. They try to water it down further and  
23 make it more digestible.

24 Recognize what you've done. You've  
25 implemented a compelled speech measure on lawyers

1 requiring that they swear allegiance and promote a  
2 certain ideology. If you don't see that you have  
3 imposed an ideology, then you're part of the problem.  
4 Your authoritarianism is showing.

5 The statement of principles has been a  
6 policy debacle from the beginning with lawyers'  
7 independence and their speech rights hanging in the  
8 balance. It's time to get the Law Society out of the  
9 thought control business. Kill the statement of  
10 principles with a clean repeal. Anything less is,  
11 frankly, an embarrassment to this body.

12 TREASURER MERCER: Mr. Burd.

13 MR. BURD: Mindful of the time, I'll stay  
14 seated.

15 I want to take this from a different  
16 point. I appreciate all of the law that's been tossed  
17 around, but I want to take it to a more core issue, and  
18 I want to tell you about my journey here.

19 I was elected in March 2010, and when I  
20 was first elected I was told, sorry, there's no locker  
21 for you. And then I was told you can go to committee,  
22 but you can't go to Convocation. And then I was told  
23 you can go to Convocation, but you can't speak and you  
24 certainly can't vote. And then I was told you can  
25 speak, but you still can't vote. And then eventually

1 that all changed with paralegals being accepted and  
2 there was an amendment to the Law Society Act, and then  
3 myself and my fellow paralegals have the same rights and  
4 privileges as all elected and appointed benchers.

5           So why do I bring that up? Because I  
6 felt this big at that point in time, and I resented it.  
7 I resented that I could contribute but I couldn't vote  
8 on what I was attributing to. And I'll bring this back  
9 a little bit later on as to why this is important.

10           I was very fortunate that Tom Conway  
11 appointed me to the Challenges Facing Racialized  
12 Licensee Working Group, and then Paul Schabas appointed  
13 me to the Indigenous Review Panel. And I'll explain  
14 that, why, later.

15           But when I was first appointed to the  
16 Racialized Working Group I thought, like many of you  
17 think, what could a white guy possibly attribute to the  
18 challenges facing racialized licensee report, because I,  
19 like John Rosen, the criminal lawyer who was quoted in  
20 the Advocate Daily, thought the smarter you are and the  
21 harder you work the more opportunities you're going to  
22 have.

23           And then the working group went and  
24 toured all over Ontario, and we spoke to hundreds of  
25 racialized licensees and they told us that was

1 completely wrong, that even though they were top in  
2 their class they couldn't get an articling position, and  
3 even though they were the smartest and worked the  
4 hardest they could never get a job. And I looked at  
5 those people in their face, and I said I was going to  
6 help and do something about it, because I was listening.  
7 And I realized at that point in time I was ignorant, and  
8 I was ignorant for the fact that I didn't believe racism  
9 existed in the legal profession because I thought we  
10 were above all of that. But I was wrong. And I admit  
11 now today that I was wrong back then.

12                   So moving forward, that feeling when I  
13 first got here started to resonate with me, what it  
14 would be like to not be accepted even though you've put  
15 in all of the work and the effort. And so at that point  
16 in time I said to myself: What is the statement of  
17 principles really going to achieve?

18                   And we've heard people say it's not going  
19 to end racism. Of course not. That would be absurd to  
20 think it would. But if you look at the report, the  
21 first three recommendations is to accelerate a culture  
22 shift, and what that means, and what we've seen over the  
23 course of the last two years, it's been the most talked  
24 about and most debated issue at the Law Society in the  
25 last two years, more so than the articling crisis, more

1 so than pro bono law funding, more so than the legal aid  
2 cuts as of late, more than all of that.

3 So if you think the initiative and the  
4 reason for Recommendation 3 was to accelerate a culture  
5 shift, well, we have brought systemic racism from the  
6 background to the foreground, and in my mind, that's  
7 what the purpose of the statement of principles was for,  
8 was to bring it to the forefront that we can all talk  
9 about it.

10 Look what it's done. It's gotten 22  
11 lawyers, who I ultimately respect, to rally, to argue  
12 against it, and it's had equity-seeking groups here in  
13 attendance today who have bonded together and rallied  
14 together to vote for it. So if that isn't doing its  
15 purpose of accelerating a culture shift I don't know  
16 what it is. So if we look at does the statement of  
17 principles work for the objective of accelerating a  
18 culture shift, my answer to you is yes.

19 And then I hear people say, well, I'm not  
20 going to vote for it because it doesn't achieve  
21 anything, it doesn't accomplish anything, and even  
22 Chi-Kun said that she thinks it's failing because there  
23 needs to be prosecution, and I couldn't agree more.

24 And I remember, as we all probably did,  
25 when we were younger my mum said to me you always say

1 "please" and you always say "thank you", and I never  
2 argued that. And even to this day what a justice rules  
3 against my client I still say "please" and "thank you".  
4 Why? Because it's the right thing to do. So when we  
5 hear about compelled speech, if it's the right thing to  
6 do it's the right thing to do. And so in my mind over  
7 the last... Sorry.

8 TREASURER MERCER: Time, Mr. Burd.

9 MR. BURD: Thank you. I'm just about  
10 finished.

11 What I want to say to the slate is before  
12 you vote I do want you to pause for a moment and think  
13 and imagine that no matter how hard you worked and no  
14 matter how smart you were you weren't afforded an  
15 opportunity simply because of the colour of your skin.  
16 To me that's wrong, and that's why I'm in support of the  
17 statement of principles and all of the recommendations  
18 on the report. Thank you.

19 TREASURER MERCER: Mr. Goldstein?

20 MR. GOLDSTEIN: I want to speak to the  
21 lay benchers as well as all the benchers, but you  
22 obviously, the lay benchers, represent the balance of  
23 power in this vote. That's just the reality of it.

24 I know you're all concerned about what's  
25 in the public interest, but let me tell you what's in

1 the public interest. What's in the public interest is  
2 to make sure lawyers are competent and that they're  
3 ethical. That is what is primarily in the public's  
4 interest, that lawyers don't steal their money and they  
5 know what they're doing.

6 Because let me tell you something. I've  
7 been a Crown attorney for five and sixteen years a  
8 defence lawyer, and I can tell you that all clients care  
9 about is I keep them out of jail; all clients care  
10 about, that you get their children back; all clients  
11 care about is that your real estate transaction goes  
12 through. Clients don't care what race you are, what  
13 religion you are, what colour your skin is. They just  
14 want you to get the best result for them. That's what's  
15 in the public interest, is making sure lawyers know what  
16 they're doing.

17 It is not the adoption, lay benchers, of  
18 a statement of principles that's going to bring shame  
19 from the public on the Law Society -- sorry, it's not  
20 the getting rid of the statement of principles. I'm  
21 speaking off the cuff; I got rid of my remarks. It is  
22 the adoption of the statement of principles that will  
23 bring shame.

24 And my friend talks about a culture  
25 shift, an accelerated culture shift. I remember Pol Pot

1 talking about an accelerated culture shift when he  
2 marched all the Phnom Penh out into the rice fields and  
3 the killing fields. That's accelerated culture shift,  
4 that's what it reminds me when I hear the words.

5 But we really have a culture shift going  
6 on because, contrary to what my friend bencher Cooper  
7 says, we're not a history of exclusion in this law  
8 society. We are a history of inclusion. Look at the  
9 history of this, look at us all around us, look at the  
10 multiculturalism that exists in this body right here.  
11 We have black people, we have white people, we have old,  
12 we have young, we have Jews, we have non-Jews, we have  
13 Native Canadians. That is a history of inclusion, I  
14 tell you. Asians, sorry. That is a history of  
15 inclusion, not a history of exclusion. It happens  
16 organically, and it has been happening for 400 years of  
17 freedom, 400 years to get to this stage. And while my  
18 friend who is no longer here talked about you're doing  
19 away with four years of work, this Law Society in four  
20 years is doing away with 400 years of freedom to get to  
21 this stage now.

22 And what is -- and lay benchers, don't be  
23 fooled by Mr. Groia's statement that this statement of  
24 principles, the diversity, inclusion, equity are really  
25 very simple things. They're motherhood issues. I ask

1 you to take a look at the - sorry, I've got so many  
2 papers in front of me - take a look at the licensing  
3 process examination study materials for paralegals, and  
4 look at their definitions of what things mean. Equity.  
5 They talk about equality.

6 "Substantive equality is the legal  
7 standard by which equality is measured in Canada. It  
8 involves looking at the real impact that policies,  
9 practices and actions have on people."

10 Inclusion. "Inclusion is a practice that  
11 conscientiously employs cultural competence in order to  
12 achieve substantive equality."

13 It doesn't have anything to do with our  
14 reflections upon clients. Mr. Fagan, bencher Fagan, is  
15 exactly correct about our conflict with our clients.

16 "Inclusive Legal Practice", Chapter 2,  
17 9.3:

18 "Beyond delivering inclusive client  
19 services and workplace, paralegals must ensure that the  
20 principles of inclusion and cultural competence shape  
21 all aspects of their legal practice and their dealings  
22 with all whom they encounter in their legal practice."

23 [As read]

24 Their interactions with witnesses. Now,  
25 I don't know about you. I do a lot of sexual assault

1 claims. According to one former bencher, that would  
2 mean then apparently I'm in favour of sexual assault.  
3 That former bencher may in fact become a bencher because  
4 he's next in line.

5 But I don't know about you, but when I  
6 cross-examine a witness I'm not interested in being  
7 polite to them no matter who they are or what they are.  
8 They are my target. I defend my client. I'm not  
9 interested in being, you know, inclusive towards the  
10 witness. I am interested only in exposing the lies of  
11 that witness. That's what's in the public interest,  
12 because that's my duty, to defend my client.

13 So these issues of diversity, inclusion,  
14 equity sound very good, but when you take a look at what  
15 they're actually teaching they're not the liberalism  
16 which we know of, and so I was asked by a bencher what  
17 would I do about racism, sure it exists, but is it  
18 systemic? That's a very harsh word, very -- very leap  
19 of logic to use.

20 What will I do about racism? My last  
21 name's Goldstein. I'm Jewish. Let's be honest. Let's  
22 be upfront. When we talk about racialized lawyers  
23 we're not talking about Jews, we're not talking about  
24 anti-Semitism. I've been a member, I've been national  
25 policy advisor for B'nai Brith League of Human Rights

1 for about a year and a half now. And the way we  
2 approach it -- and I had a meeting with former AG  
3 Caroline Mulroney talking about hate speech.

4 TREASURER MERCER: Time, Mr. Goldstein.

5 MR. GOLDSTEIN: Sorry. Let me finish my  
6 thought.

7 TREASURER MERCER: Of course.

8 MR. GOLDSTEIN: Is that five minutes?

9 TREASURER MERCER: It was.

10 MR. GOLDSTEIN: And the way you deal with  
11 racism, the way you deal with inequality is you treat it  
12 through individualism. The best way to defend a group,  
13 to defend group rights is to defend individual rights.  
14 And do you know who said that, Mr. Treasurer? Do you  
15 know who said that? It's rhetorical, don't worry.  
16 Pierre Elliott Trudeau said that. Pierre Elliott  
17 Trudeau on French Canadians and federalism said that the  
18 best way to protect group rights is to protect  
19 individual rights first and to allow individuals then to  
20 associate.

21 So to answer your question what do I do  
22 because I want to defend racism, --

23 TREASURER MERCER: Time, Mr. Goldstein.

24 MR. GOLDSTEIN: -- you defend individual  
25 rights.

1                   But that's not what diversity, equity and  
2 inclusion does. It is about group rights, and if you  
3 start talking about group of rights then you're going to  
4 start talking about the factionalization of Canadian  
5 society, because I don't believe in lived experience, I  
6 believe in shared experience. If all you want to talk  
7 about is lived experience, then we can never have a  
8 conversation.

9                   TREASURER MERCER: Time, Mr. Goldstein.  
10 Thank you. Mr. Desgranges?

11                   M. DESGRANGES: Merci, Monsieur le  
12 trésorier.

13                   If you don't mind, I shall address --  
14 make my address in the language of Molière --

15                   TREASURER: Of course.

16                   M. DESGRANGES: -- because I think that  
17 we are a great part of this wonderful profession, and I  
18 think that some of their voices should be put across.

19                   Donc, Monsieur le trésorier, le 30 avril  
20 dernier, la profession s'est clairement exprimée, s'est  
21 clairement exprimée contre l'adoption forcée d'un énoncé  
22 des principes qui, effectivement, est l'objet de la  
23 motion aujourd'hui et devrait...et cette motion, ou  
24 plutôt cet énoncé des principes perce le coeur de la  
25 liberté de conscience que la Charte des droits et

1       libertés et les garanties.

2                       La profession, par une majorité très  
3       claire, dans un système démocratique, a dit non de  
4       poursuivre une politique qui empiète sur leurs droits à  
5       une pensée indépendante.

6                       La motion Klippenstein/Lean a pour but de  
7       permettre de respecter l'appel de la profession,  
8       l'appel... notre... c'est-à-dire notre société du  
9       barreau n'a pas à dicter les valeurs que doivent adopter  
10      ses membres. Notre profession ne peut pas se doter de  
11      mesures répressives, de mesures qui forcent à adopter un  
12      point de vue plutôt qu'un autre. Notre association, la  
13      Société du barreau a effectivement comme rôle de  
14      réglementer la façon dont on agit avec nos clients pour  
15      s'assurer de l'éthique et de la compétence de ceux qui  
16      fournissent le service juridique.

17                      Ce n'est pas la première fois qu'on se  
18      retrouve dans une situation qui va nous mener sur une  
19      pente savonneuse. Ça s'est passé au siècle dernier sous  
20      le régime de Stalin. Ça s'est passé aussi sous le  
21      régime Nazi. Ça commence par des énoncés très gentils,  
22      très, très beaux, qui se veulent être quelque chose de  
23      merveilleux pour aller vers une société utopique.

24                      Ce qui s'est passé, en effet, c'est qu'on  
25      sait que ce n'est pas ce qui a suivi. Ce qui a suivi

1 c'était clairement un dérapage total vers un  
2 totalitarisme. Je ne dis pas que ce sont les intentions  
3 de ceux qui ont proposé l'énoncé des principes. Ce  
4 n'est certainement pas leurs intentions. Mais il faut  
5 se rendre compte que beaucoup, beaucoup de choses qui  
6 mènent vers l'enfer commencent par de bonnes intentions.  
7 Les bonnes intentions étaient présentes et, à mon avis,  
8 et même de l'avis de plusieurs de ceux qui m'ont élu,  
9 avec qui j'ai parlé, c'est effectivement un pas vers le  
10 retrait d'une liberté de conscience que chacun a le  
11 droit d'avoir, non seulement de droit, de droit naturel,  
12 mais qui a été instauré dans notre Constitution du  
13 Canada.

14                   Monsieur le trésorier, nous avons déjà  
15 des lois qui assurent une société libre de racisme, de  
16 sexisme, plein d'autres choses qui finissent en  
17 « isme ». Je ne vois pas dans quelle mesure un énoncé  
18 des principes vient ajouter quoi que ce soit à cela,  
19 sauf peut-être de tenter un genre de brainwashing pour  
20 amener les gens à se sentir coupables alors qu'il y a  
21 aucune raison d'être coupable.

22                   Nous sommes chacun des individus. Chacun  
23 sait dans son propre cœur, surtout s'ils sont plus  
24 jeunes que moi, car ils ont vécu dans une société qui  
25 est beaucoup plus juste et démocratique que nos

1 prédécesseurs d'il y a, mettons, 60 ans, ou même plus.  
2 Je suis en train de me dater un peu, là, peut-être une  
3 centaine d'années.

4 Soyons clairs, l'énoncé des principes ne  
5 fait que nous causer une culpabilité non méritée. Nous  
6 savons ce que nous faisons. Nous vivons dans une  
7 société qui rejette le racisme, le sexisme. Il n'y a  
8 aucune raison de forcer la note, car chacun de nous  
9 savons que nous ne travaillons pas vers ces buts.

10 C'est tu mon signal pour le temps ça?

11 LE TRÉSORIER: Non.

12 M. DESGRANGES: J'aimerais parler un peu  
13 des statistiques que notre collègue nous a données,  
14 notre collègue Mme Lewis nous a données plus tôt. Ces  
15 statistiques peuvent être très, très intéressantes, mais  
16 tout ce que ça reflète, tout ce que ça réfléchit,  
17 pardon, tout ce que ça donne... tout ce que ça donne comme  
18 résultat c'est que les données ne sont pas égales dans  
19 notre société.

20 En d'autres mots, on peut régler tout le  
21 problème en disant que s'il y a 10 pour cent d'une  
22 certaine race dans la société, bien, il devrait y avoir  
23 10 pour cent de cette race-là au sein de la profession.  
24 Ça s'appelle, en gros, l'équité des résultats, l'égalité  
25 des résultats. L'égalité des résultats, elle nous mène,

1 Monsieur le trésorier, vers une situation où tout le  
2 monde veut être égal. Et on sait très bien, Monsieur le  
3 trésorier, que cette attitude et cette philosophie a  
4 mené à un dérapage incroyable.

5 Mon collègue, M. Goldstein, a parlé de  
6 Pol Pot au Cambodge. Et bien, c'est exactement une des  
7 situations où tout le monde est devenu égal très  
8 rapidement et tout ça s'est passé dans une atmosphère où  
9 on faisait un culture shift, comme on dit.

10 LE TRÉSORIER: Temps, Maître.

11 M. DESGRANGES: Notre association a un  
12 devoir de s'assurer que... de s'assurer d'être le  
13 fer-de-lance, c'est-à-dire de s'assurer de ne pas  
14 devenir l'exemple qui mène à un dérapage parmi toutes  
15 les autres professions qui pourrait emboîter le pas et  
16 nous ramener...nous amener dans une situation qui a été  
17 vécue au siècle dernier.

18 Thanks very much for your time.

19 TREASURER MERCER: Mr. Prill?

20 MR. PRILL: I appreciate Mr. Cooper's  
21 comments with regards to lived experience. My lived  
22 experience since entering into and attempting to enter  
23 into the profession of law are such that the professor  
24 who taught legal theory entered into the classroom, took  
25 one look around the multicultural classroom that I sat

1 in, and said, "If you're white you're racist." That's  
2 my lived experience: I'm a racist not because of  
3 anything I've said, not because of anything I've done,  
4 I'm a racist because of who my mum and dad are. My son,  
5 at the time about sixteen, he's white. He's a racist  
6 according to that law professor. And according to the  
7 work of this body, he's a systemic racist because racism  
8 exists.

9 Well, I don't think anybody can argue  
10 with the fact that racism exists, but it exists across  
11 all nationalities. It exists across white  
12 nationalities, it exists across coloured nationalities,  
13 it exists across Indigenous nationalities. There's not  
14 an ethnicity that does not have racism within it.

15 The statement of principles, however,  
16 does not treat all racism as being worthy of correction.  
17 It's only the systemic racism that exists amongst those  
18 people who, through no fault of their own, happen to  
19 have parents that are white in nature.

20 Now, many people have argued that this is  
21 an issue of compelled speech, and I support that  
22 argument because, as it sits, the statement of  
23 principles is compelled speech, and it does need to be  
24 repealed.

25 However, from my perspective, the

1 statement of principles functionally infringes upon my  
2 freedom of religion.

3           Many years ago, a young man at the age of  
4 35, I decided to accept the Christian faith as my way of  
5 life. It contains a statement of principles that begins  
6 at Genesis and ends at Revelation. Two that come to my  
7 mind and that are the ones that I live my life by are  
8 that I need to love my neighbour the same way I love  
9 myself. That means that I care for every person that  
10 comes in front of me.

11           For those that know something of the  
12 Scriptures, they all understand the parable of the Good  
13 Samaritan. Whoever that person is that is laid in front  
14 of you, that is the person that you should stop and  
15 help. It should never be the case that we should look  
16 through the statement of principles lens to decide if  
17 that person needs assistance. That has got to be  
18 morally wrong, and despite all of the very eloquent  
19 legal arguments that I have heard placed today you  
20 cannot get over that legal wrong. You cannot get over  
21 that morally wrong underpinning to the statement of  
22 principles.

23           Many of you have sat through the recent  
24 Bar call, and you've watched -- I believe Malcolm said  
25 there were over 1,700 people that walked across the

1 stage. I took a look at that audience, and if you think  
2 that this body is diverse, that audience that I've seen  
3 was so multicultural that it makes this body look white.  
4 It was -- there were people from every race, every  
5 nationality, every ethnicity that were located within  
6 the Bar, and they were all called to become lawyers.

7 But what struck me the most was when one  
8 young man came up with all of the hopes, all of the  
9 aspirations, all of the dreams that were embodied in  
10 every one of those individuals there, and I realized  
11 that to that individual when it came to promotion, well,  
12 I was going to have to actually look to somebody else  
13 because he was white, he's a racist. He's not  
14 racialized. He does not qualify for me to look at him  
15 as somebody that deserves promotion because he does not  
16 fit the definition. He's not racialized, he's not  
17 equity-seeking; he happens to be white.

18 I think, Mr. Treasurer, that pretty much  
19 concludes most of what I have to say. The statement of  
20 principles needs to be repealed not because of compelled  
21 speech, not because of eloquent legal arguments, but  
22 because it is functionally, morally wrong.

23 TREASURER MERCER: Mr. Fagan?

24 MR. FAGAN: Thank you, Mr. Treasurer.

25 I speak in favour of a complete, clean

1 and total repeal of the statement principles  
2 requirement. In that context, I make the following  
3 comments.

4 In the many-month argument we have had  
5 since September 2017 about the statement of principles  
6 requirement I have heard two very good questions asked  
7 by those who favour the statement of principles and,  
8 therefore, oppose its repeal. I want to address those  
9 questions.

10 One of the questions I've heard is: What  
11 do those who wish a total repeal of the statement of  
12 principles with nothing to replace it say to those  
13 racialized licensees who are the intended beneficiaries  
14 of the statement of principles?

15 Here is my response, here is what I say  
16 to the intended beneficiaries of the statement of  
17 principles requirement.

18 My young fellow salt-of-the-earth  
19 working-class sisters and brothers - and that's who we  
20 are - even though I am not very young anymore, I once  
21 was. How did you ever let yourselves get talked into  
22 the idea that the statement of principles requirement  
23 was a good thing for you, would ever achieve anything  
24 for you, would be anything but trouble for you?

25 The rest of the EDI package passed into

1 promulgation by the Law Society in December 2016 could  
2 have and should have stood without the statement of  
3 principles. It wasn't needed. Some of the other  
4 recommendations may well be helpful. Compulsory classes  
5 every once in a while to remind us that there might be  
6 lurking unconscious racism around, fine. I've started  
7 attending them even though as a retired lawyer I don't  
8 have to. I love the face-to-face interaction. People  
9 on opposite sides of issues must have as much face-to-  
10 face interaction as possible.

11           But the statement of principles  
12 requirement has done nothing but poison the image of the  
13 entire EDI report and program. Why the 2016 benchers  
14 did not recognize that is beyond me. The statement of  
15 principles requirement is a stick in the eye to lawyers  
16 who have, such as myself, been working in the  
17 small-sized practice or government milieu all these  
18 years. I mean, what goes on in the fat-cat Bay Street  
19 firms, I don't know, but in the vast bulk of the  
20 profession the statement of principles has been reacted  
21 to, quite properly, as poison, as nonsense. But from  
22 the point of view of the intended beneficiaries of the  
23 statement of principles requirement, don't you realize  
24 how it's poisoned the image of the entire rest of the  
25 EDI report? Please, don't let anybody tell you that

1 this statement of principles is a good thing for you.

2                   But over the months since September 2017  
3 I've also heard another question which deserves an  
4 answer or a comment that deserves an answer. That  
5 comment is: Members of equity-seeking groups are tired  
6 of people of privilege telling them what will or will  
7 not work in terms of getting them the equity they seek  
8 and deserve. I ask you, if you're trying to change the  
9 minds of people of privilege from whom else would you  
10 seek advice as to how to change those minds? What you  
11 have to do is discern which so-called people of  
12 privilege are potential allies and which are not. Don't  
13 go distancing yourself from the potential allies. How  
14 else do you find out what will work? It's the so-called  
15 people of privilege whose minds you want to change.  
16 Listen to some of us as to what will and will not work.

17                   To my fellow benchers, I ask you to admit  
18 to yourselves that you know perfectly well that the  
19 statement of principles requirement never would have and  
20 never will actually help anyone achieve any advancement  
21 in the legal profession. I ask you to recognize that  
22 you know perfectly well that until the statement of  
23 principles requirement is totally repealed it will  
24 remain as a chicken bone in the collective throat of the  
25 Ontario legal profession --

1                   TREASURER MERCER: Time.

2                   MR. FAGAN: -- which has demonstrated so  
3 clearly that it wants the statement of principles  
4 removed from the scene. In your own best interest, my  
5 young colleagues, please get rid of this statement of  
6 principles requirement so that we can actually get some  
7 benefit out of the rest of the EDI report. Thank you.

8                   TREASURER MERCER: Mr. Graham?

9                   MR. GRAHAM: Thank you, Mr. Treasurer.

10                  I invite those that are still with us to  
11 have a look at the amendment proposed by Mr. Groia.  
12 I'll go right to it. I'll ignore the recitals and focus  
13 on (a), (b) and (c). It is what we would be left with  
14 were it to be approved. It says, I'll go one by one:

15                  "(a) all licencees be encouraged to  
16 voluntarily adopt their own personal and private  
17 statement of principles on how to best advance the goals  
18 of equality, diversity and inclusion in the legal  
19 profession and elsewhere."

20                  Let's go back over those words more  
21 slowly, "all licencees be encouraged". It's not saying  
22 are "hereby" encouraged. "Be encouraged." How will  
23 this be used in the future? What form of encouragement  
24 will I be subject to? I can voluntarily adopt my own  
25 personal and private statement of principles, but it is

1 to be one that tells how I will best advance these  
2 undefined goals of EDI. So that's (a).

3 "(b) the Society provide a section in  
4 the Lawyer Annual Report and the Paralegal Annual Report  
5 in which any licensee may choose to disclose that they  
6 have voluntarily adopted a statement of principles."

7 So we're going to make a space for those  
8 who believe in this to say so.

9 This is (c):

10 "(c) the Society shall provide  
11 Convocation with an annual tally of the number of  
12 licensees who choose to make such a disclosure."

13 Am I less of a licensee because I haven't  
14 contributed to a greater number of licensees, having  
15 submitted a statement of principles as to how I could  
16 best advance those values?

17 So that's the Groia motion. There's a  
18 proposed amendment to it which takes out (b) and (c).

19 But if you actually eliminate  
20 recordkeeping, if you take the requirement out that it  
21 be in the annual report, then there's no reason to have  
22 it at all. The recordkeeping and publication is the  
23 purpose. Any attempt to eliminate it but keep a  
24 voluntary SOP a number of us feel is a mirage.

25 Anyone can already do a voluntary

1 statement of principles. We don't need the Law Society  
2 to tell us we can do that. The purpose of this is to  
3 gather a record and to require people to say whether  
4 they did or did not do it and to publish the results.

5 There's no compromise here. If you don't  
6 signal, then you're without virtue. You haven't joined  
7 in, you're bad. And the LSO has a mandate to deal with  
8 bad lawyers.

9 There's no reason for the Law Society to  
10 have the power to dictate to us, to suggest to us, to  
11 encourage us, to embarrass us into thinking anything.  
12 We should be able to think what we think. We should be  
13 judged on our conduct. Our conduct is subject to legal  
14 control; our thoughts ought not to be. It's not the  
15 role of the Law Society to keep track of who thinks what  
16 or to promote the thinking of something that others may  
17 not believe.

18 Thank you.

19 TREASURER MERCER: Ms. Shortreed?

20 MS. SHORTREED: Thank you.

21 I wanted to address one of the underlying  
22 issues that has animated this discussion, Mr. Treasurer,  
23 and that is the ability of the regulator to compel its  
24 licensees to do anything and, in this case, to  
25 acknowledge their obligations by way of a private

1 statement. In my view, much of the debate about the  
2 SOP has been framed in terms of individual licensees'  
3 rights without appropriate focus on licensees'  
4 responsibilities.

5 Quite apart from the statement of  
6 principles - and I am concerned about this on a broader  
7 context from what I've heard today - the concept of  
8 regulator-mandated action and even speech is an  
9 important part of what this and every regulator does.  
10 It is something this bench must be mindful of in all of  
11 its decision-making as it will arise from time to time  
12 again in all of the work we do.

13 It starts from the premise that lawyers  
14 and paralegals by necessity practise in a highly  
15 regulated profession. The right to practise law and to  
16 provide legal services is a privilege which imposes  
17 overriding duties and responsibilities on licencees.  
18 The courts have repeatedly told us that -- they've  
19 upheld the ability and, indeed, the duty of regulators  
20 to prescribe and compel activities on regulated  
21 professionals, constraining their rights and freedoms  
22 that they would otherwise have as private citizens or,  
23 as Mr. Charette says, intrude into their autonomy.

24 The Supreme Court noted in *Green v. Law*  
25 *Society of Manitoba* that the law society was given a

1 broad public interest mandate and a broad regulatory  
2 power to accomplish its mandate, a mandate which must be  
3 interpreted using a broad and propulsive approach.

4 In the TWU cases, the Supreme Court  
5 confirmed that the law society's mandate includes an  
6 overarching interest in protecting the values of  
7 equality and human rights, including by eliminating  
8 inequitable barriers in the profession.

9 As recently as last month, as Mr. Cooper  
10 noted, the Ontario Court of Appeal in no less than the  
11 Chief Justice affirmed these principles in the Christian  
12 Medical and Dental Society case and held that the CPSO  
13 can require physicians who object to providing certain  
14 medical procedures on the basis of religion or  
15 conscience to engage in compelled speech by providing a  
16 patient with an effective referral.

17 Here at the Law Society the Rules of  
18 Professional Conduct are replete with examples of  
19 compelled conduct and speech. I counted over 30 rules,  
20 including rules on retainer terms, mandated content of  
21 advice and disclosures to clients and the courts,  
22 mandatory referrals and withdraws, not only constraints  
23 on speech and advertising but compelled statements in  
24 advertising and mandated speech in the form of  
25 communications and reports to the Law Society and to the

1 insurer.

2                   We know that many of the obligations  
3 placed on lawyers and paralegals are not popular. They  
4 would not win a popular vote or referendum. I'm sure  
5 many of the licensees would rather not be regulated at  
6 all.

7                   But as fiduciaries governing the  
8 regulator, benchers exercise their fiduciary obligations  
9 not to the Bar or to the electorate but to the public,  
10 and they must recognize that the Law Society imposes  
11 obligations not to unduly burden licensees but to meet  
12 important objectives. In short, we cannot make these  
13 decisions based on what licensees like or don't like or  
14 vote for or against in bencher elections.

15                   So we turn to the objectives here. The  
16 evidence in the Bicentennial Report, the Stratcom  
17 Report, the Challenges Report clearly established a  
18 pressing and substantial objective to ameliorate  
19 discrimination that has been too long present in our  
20 professions.

21                   The statement of principles, in my view,  
22 imposes a very minimal obligation on lawyers to simply  
23 acknowledge that you have obligations concerning equity.  
24 The fact of the obligation is patent. Since 1991 this  
25 Law Society has adopted the policy, and I quote, that

1 "lawyers have a responsibility to take a lead in  
2 eliminating discrimination."

3           The Rules of Professional Conduct plainly  
4 state that licensees have a special obligation in this  
5 regard. This week I watched the new licensees  
6 acknowledge their obligations in the mandatory oath,  
7 including not only promises to refrain from certain  
8 conduct but to promote and advance important  
9 commitments. They promise to ensure access to justice,  
10 to improve the administration of justice, to champion  
11 the rule of law.

12           And I ask you, is the mere  
13 acknowledgement of a similar obligation to promote  
14 equality really so different? In my view, it is not.

15           I agree with my friends on both sides of  
16 this debate that this comes down to a policy choice  
17 about whether equality is one of the objectives for  
18 which the LSO should decide to compel an acknowledgement  
19 among many, many other compelled statements it requires  
20 of its licensees. For me, the objective of reducing  
21 barriers created by racism, unconscious bias and  
22 discrimination is an important one, and we ought to vote  
23 accordingly. Thank you.

24           TREASURER MERCER: Ms. Lippa.

25           MS. LIPPA: Thank you, Treasurer.

1           There are many reasons to support the  
2 motion to repeal the statement of principles and not  
3 support any amendments to it, and for the sake of time I  
4 will focus on a few.

5           By swearing to uphold the rule of law, we  
6 acknowledge our obligation to obey the law and conform  
7 with human rights legislation in our behaviour towards  
8 colleagues, employees, clients and the public. These  
9 are principles I and most licensees followed before  
10 licensing and now as a paralegal or lawyer. I do not  
11 need to be told to be this way. I already live by it.  
12 I understand my obligations. My clients and colleagues  
13 are all treated with respect and inclusion and without  
14 prejudice.

15           An amendment to the statement of  
16 principles to make it non-mandatory would not end the  
17 Law Society's monitoring of compliance in the licensees'  
18 annual reports. Nor would it prevent the use of that  
19 data in areas of the Society that are intentionally not  
20 transparent to the public. Changing the statement of  
21 principles from required to voluntary also makes it very  
22 easy for a future Convocation to make it mandatory  
23 again.

24           The statement of principles is, at best,  
25 badly drafted regulation, and we owe a duty not to

1 promote bad drafting, especially when its ambiguity can  
2 be used improperly.

3 I acknowledge wholeheartedly that a  
4 problem with discrimination does exist for racialized  
5 lawyers and paralegals. Paralegals are discriminated  
6 against within the legal profession by mere virtue of  
7 them being paralegals. But, in my opinion, the  
8 offenders are the minority rather than the majority.

9 Nevertheless, something must be done.  
10 Rather than adding artificial life support with the  
11 amendments to a redundant, ambiguously drafted and  
12 divisive provision, Convocation has the obligation to  
13 admit that it bit off more than it could chew and  
14 certainly more than licensees could be expected to  
15 digest, to repeal the statement of principles and its  
16 dangerous monitoring provisions and to work together  
17 with the legal profession to put in place real tools  
18 that include a safe and confidential line of  
19 communication, that creates real consequences for  
20 behaviour and breach of the Human Rights Code; in other  
21 words, something with teeth.

22 We do have the Discrimination and  
23 Harassment Council available. A bigot is still a bigot  
24 even if they sign a paper that they're not. The legal  
25 profession deserves better than to create a good hiding

1 spot for them. The implementation of the statement of  
2 principles has caused a huge divide in the legal  
3 profession and created a situation of anger and mistrust  
4 where licensees judge each other in a way that allows  
5 bigots to hide behind it says they support the statement  
6 of principles while quite viciously attacking racialized  
7 licensees who are against it. Given any reasonable  
8 definition of prejudice, the statement of principles has  
9 caused far more than it has cured, and that needs to  
10 end, and I urge you to repeal the statement of  
11 principles. Thank you.

12 TREASURER MERCER: Based on the current  
13 speakers list, we have about an hour before us. I'm  
14 going to close the speakers list, having given everybody  
15 an opportunity to add themselves to it.

16 And I now turn to Ms. Corbiere.

17 MR. ESQUEGA: Mr. Treasurer, I would like  
18 to be added to the speakers list before you close it if  
19 that's possible, please.

20 MR. LYON: So do I, Mr. Treasurer. I  
21 didn't realize you were going to close the speakers  
22 list.

23 TREASURER MERCER: I do that from time to  
24 time. It's part of my job to stay within --

25 MR. LYON: I appreciate that, but some

1 forewarning would be appreciated.

2 TREASURER MERCER: I'm sure --

3 MR. FALCONER: Could my colleague use the  
4 mic so we can hear him?

5 TREASURER MERCER: Let's now proceed to  
6 Ms. Corbiere.

7 MS. CORBIERE: Good afternoon.

8 For those of you that don't know, this is  
9 my second term as a bencher. It's a privilege for me to  
10 not represent the people that voted for me but to do  
11 work which is my duty to protect the public interest,  
12 maintain and advance the cause of justice, and promote  
13 the rule of law.

14 I have been co-Chair and the current  
15 Chair of the Equity and Indigenous Affairs Committee for  
16 the four years I've been a bencher and now still sitting  
17 Chair. And I guess my message is I've been very torn  
18 about my position, and I would encourage especially our  
19 new benchers, Mr. Bateman and his new colleagues, to  
20 read the letters from our partners.

21 I'm not here to represent the lawyers  
22 that voted for me, and I shouldn't be. I am here, and I  
23 can tell you we worked with our partners not just on  
24 working together for change, this important report that  
25 we're talking about today that includes the statement

1 principles. We also have other reports, the Indigenous  
2 Review Panel, the Indigenous Framework, a lot of work  
3 with our partners, Advocates' Society, Ontario Bar  
4 Association. It's not just equity-seeking  
5 organizations. We spent a lot of time, and we consult.  
6 And you will see in their letters that their message is  
7 uniformly telling us not to vote, to consult again, and  
8 do what is right.

9                   Now, people are trying to tell you that  
10 systemic discrimination or systemic racism doesn't  
11 exist, and they're quoting from newspapers, journalists.  
12 I'm going to quote from the Supreme Court of Canada in  
13 R. v. Barton, and the Court goes on to talk about how  
14 many times they have found racism and systemic racism  
15 and discrimination against Indigenous people. And the  
16 quote says this:

17                   "This Court recognized that Indigenous  
18 people are the target of hurtful biases, stereotypes,  
19 and assumptions... Moreover, in Ewert, this Court  
20 stressed that 'discrimination experienced by Indigenous  
21 persons, whether as a result of overtly racist attitudes  
22 or culturally inappropriate practices,' et cetera.

23                   It concludes after talking about how many  
24 times they've told our legal profession that systemic  
25 racism exists. The court says:

1           "With this in mind," in my view, "our  
2 criminal justice system and all participants," that  
3 means judges, lawyers, court workers, everyone, "all  
4 participants within it should take reasonable steps to  
5 address systemic biases, prejudices, and stereotypes  
6 against Indigenous [persons]."

7           And so they're sending a message to us  
8 that we have a lot of work to do.

9           I supported the statement of principles  
10 because we consulted broadly, and I stand by the  
11 statement of principles, and I think it's just one part  
12 of necessary work that has to be done.

13           But I do recognize that others have come  
14 here with a mandate from the 5,000 of the 50,000 people  
15 that voted for them to get rid of it, and they committed  
16 as long as it's not mandatory then the work is done.

17           So as a concession, even though one of  
18 our partners, the Indigenous Bar Association and the  
19 Indigenous Advisory Group said that we shouldn't amend  
20 the statement of principles without consulting and the  
21 Indigenous Bar Association said, and I quote, "Amending  
22 statement of principles is an unwanted compromise."

23           But it is a compromise nonetheless, and I  
24 too have read the votes in the room, and I am in support  
25 of bencher Donnelly and Groia's motion, and I hope you

1 really look at the letters from our partners that have  
2 suggested that that's not out of the realm of -- they  
3 didn't speak against their motion, I would say. They  
4 preferred us to do something else.

5           But I feel I don't have a choice, and I  
6 look forward to working with the benchers for four years  
7 on understanding that we have to do more as a  
8 profession, that Indigenous people expect us to do more  
9 as an example. And in the Truth and Reconciliation  
10 Commission Report we were identified, lawyers, judges,  
11 as the people least trustworthy, and they had no faith  
12 that we would do the right thing even though they're  
13 overrepresented in the criminal justice system and the  
14 child welfare system. So I heard one of the movers talk  
15 about being a child welfare lawyer. Well, we have a lot  
16 of work to do for First Nations and Indigenous peoples.

17           Thank you, Treasurer.

18           TREASURER MERCER: Mr. Troister?

19           MR. TROISTER: Thank you, Treasurer.

20           This will be the third time that I have  
21 spoken about the statement of principles, and I frankly  
22 hope that it will be the last time I will ever have to  
23 speak about the statement of principles.

24           First, for those of you who don't know  
25 me, this is my second term as a bencher. I am not a

1 member of any political party, slate, stakeholders  
2 group, and I am not a human rights lawyer. I'm a  
3 solicitor, and I pride myself in being a common sense,  
4 fair-minded, practical and reasonable person. So you  
5 won't hear me talk about the law at all.

6           Permit me to offer a brief history. In  
7 2016 in my second year as a bencher I was presented with  
8 the recommendations of the working group tasked with  
9 addressing challenges facing racialized licensees. I  
10 read the report. I liked some of the recommendations, I  
11 had difficulty with others.

12           In an information session I asked the  
13 question: If I like 2, 4, 6, 8 and 10 but don't like 1,  
14 3, 5, 7 and 9, can I pick and choose which ones I like?  
15 I was told no, it was a comprehensive package, it was  
16 all or nothing. And that did not fly with me. So I  
17 brought a motion, despite the stacked odds against me,  
18 to have each of the recommendations considered  
19 separately. It led to a four-hour debate. My motion  
20 lost to the political correctness and social pressure of  
21 the day. A year later I supported the motion to permit  
22 conscientious objection. That motion also failed. So  
23 the requirement that every lawyer has a statement of  
24 principles remains without exception.

25           I had two objections when I made my

1 presentation. I will only speak of one today, and that  
2 was, I objected to the mandatory statement of  
3 principles. Why? Because it was either sloppy language  
4 or, worse, intentional language, and it required me and  
5 all lawyers to promote diversity, equity and inclusion.  
6 I took particular exception to my obligation to promote  
7 a cause, any cause, and others had a similar problem  
8 with the word.

9           And you know that subsequently in the  
10 heat of all of the debate the benchers played word games  
11 with the word "promote" so that "promote" really didn't  
12 mean promote, it means don't do anything bad. But in  
13 any event, the word "promote" stays.

14           So for me, I decide what I believe in and  
15 what I will say. I will obey all laws. I don't  
16 knowingly discriminate. But do not tell me what I have  
17 to believe or say, and do not tell me what I have to  
18 promote.

19           I have four reasons to support the motion  
20 as amended.

21           First, in 2016 when I brought my motion  
22 to separate the recommendations I said I found the  
23 discussions about politics and religion to be divisive,  
24 and I usually avoid them. And this statement of  
25 principles was sure to be divisive and that I could not

1 support it. And that this requirement has been so  
2 divisive proved that I was right right from the start.  
3 It has divided our professions in a way that I have  
4 never seen in my 45 years of practice. For that alone,  
5 I object to the mandatory provision.

6 Second, many people think that it's a  
7 good thing that licensees be guided by a statement of  
8 principles regarding equity. I have sat on the Equity  
9 Committee for the last three years, and I support our  
10 efforts to educate and enhance an understanding of the  
11 benefits of recognizing equity, diversity and inclusion.  
12 For that reason, for some an optional statement of  
13 principles may focus them on the need to recognize our  
14 responsibilities. I support sensible efforts to foster  
15 equity, diversity and inclusion in our profession. A  
16 mandatory requirement to promote does not do that and,  
17 in my view, is counterproductive. We can be smarter,  
18 and we can do better.

19 Third, those who support the requirement  
20 for a statement of principles have not carefully  
21 considered what the word "requirement" means. The  
22 recommendation says the Law Society "will require" every  
23 licensee to have a statement of principles. It is  
24 mandatory, there is no exception, there is 'no comply or  
25 explain why you don't comply' provision. There is no

1 option.

2 In the discussion back two and a half  
3 years ago the consequences of non-compliance were  
4 considered. The proponents said it would be  
5 professional misconduct and the Law Society would use  
6 progressive enforcement efforts to get compliance. The  
7 Treasurer at the time, when pressed, said we won't  
8 enforce for now and let's see what happens.

9 To me, it's simple. If you don't comply  
10 you can be disciplined. And if you say, well, we're not  
11 going to discipline, then what you've already said is  
12 there are no consequences; ultimately, it becomes an  
13 option.

14 Finally, diversity. For me, diversity  
15 means difference, and it means accepting difference.  
16 For us to promote diversity we must promote the  
17 acceptance of difference. It is not just about colour  
18 or race; it's about accepting difference in points of  
19 view, in lifestyle, religion, sexual preference.

20 Promoting and encouraging diversity is  
21 not a one-way street. Yours may not be my cup of tea,  
22 but diversity requires acceptance of difference, again  
23 whether it is colour, religion, politics, values, and  
24 yes, even how we interpret the statement of principles  
25 requirement. And if you cannot accept the diversity of

1 views on the topic and that there is no absolute, then  
2 maybe it is time for us to take diversity off the table.  
3 Some of you may not really like diversity at all because  
4 you cannot accept difference.

5                   Ultimately, what's in the public  
6 interest? For me, the critical issue is the  
7 cost/benefits of the rule. In my view, the benefits are  
8 meagre. Individual private statements of principle and  
9 ticking off a box under threat won't change anything.  
10 We need to be smart about changing the culture. You  
11 make change not with dogma but with education, and  
12 that's why I support the amendment that still recognizes  
13 the importance of our efforts. But the costs of a  
14 mandatory statement to our profession have been  
15 profound. Ticking off the box under threat of  
16 consequences is no endorsement of the principle.

17                   TREASURER MERCER: Time, please.

18                   MR. TROISTER: The intentions of the  
19 working group were good, but like all legislation, you  
20 have to review it and see if it is working. The  
21 mandatory statement of principles has not worked. It  
22 has backfired. We have seen the damage done. We need  
23 to learn from it.

24                   I will vote in favour of the motion as  
25 amended. Thank you.

1                   TREASURER MERCER: Mr. Spurgeon?

2                   MR. SPURGEON: Thank you, Treasurer.

3                   I'm going to work very hard to truncate  
4 my remarks. I wrote a speech. I will not give you the  
5 speech. I'm going to give you a couple of personal  
6 reflections.

7                   The one thing that I think I want to  
8 bring new to the table here is my view of what the  
9 function of the statement of principles is. I think  
10 it's about causing us all to reflect on how we treat  
11 each other, and in that sense it's about how we act and  
12 function with each other.

13                   The reason I think that is, well, none of  
14 us has to publish this, none of us has to disclose it.  
15 It's all private. But it makes you think in a moment  
16 with a pen in hand and a paper on your table and you  
17 think about, well, what do I believe in and how am I  
18 going to treat my fellow man, how am I going to treat my  
19 colleague, how am I going to treat the people who work  
20 for me. That's important.

21                   And I tell you why for me. Because I  
22 have a daughter, and my daughter does not share my  
23 colour. I am married to a black woman, she is  
24 dark-skinned, and I worry that when she gets called to  
25 the Bar she will not have the same opportunities I had.

1 I have good reason to think that, and I think we all can  
2 accept that.

3 I also am very strongly -- when I...  
4 This is the third debate I've participated in. I did  
5 not speak in the first two iterations of this debate.  
6 The first I didn't speak in because I wasn't sure how I  
7 was going to vote because I saw both sides of the issue.  
8 I accept the power of the arguments relating to  
9 conscience. I accept that my colleagues are coming to  
10 the table newly with good faith and in good conscience.

11 However, my view of the statement of  
12 principles through much conversation and much reflection  
13 is what I've told you. I'm going to vote for  
14 Mr. Groia's motion, Ms. Donnelly's motion because of  
15 something that nobody's really brought to the table or  
16 said today, and that is, we are all fellows in this  
17 society, we are all lawyers, we share this profession  
18 together, and one of the virtues of this profession is  
19 we are self-regulating, and the concern about losing  
20 self-regulation is very strong in my mind.

21 The biggest threat to self-regulation is  
22 not the government, it's not the media, it's not the  
23 public. It's the governed. And if the governed  
24 withdraw their consent there will be no one there to  
25 defend self-regulation, and I see consent ebbing, and

1 that is why I will vote for Mr. Groia's motion.

2 Thank you.

3 TREASURER MERCER: Mr. Pineda?

4 MR. PINEDA: Thank you, Mr. Chair.

5 It is an honour and, in my view, a duty  
6 to speak in favour of a clean repeal of the statement of  
7 principles.

8 Now, I apologize to my fellow bencher,  
9 Mr. Goldstein, but I will speak about my limited  
10 experience in order to give a unique perspective.

11 Now, I am Hispanic by background, I  
12 always have been. (General Laughter) And my experience  
13 in Canada begins when I was a little boy landing in  
14 Pearson Airport with my family, all immigrants. And  
15 at Pearson Airport they rolled out the welcome mat.  
16 Throughout my life this has been the case. When I wrote  
17 the LSAT and applied to law school they rolled out the  
18 welcome mat. When I moved back to Ontario to practise  
19 law they rolled out the welcome mat. This has been my  
20 lived experience. And I recoil at the suggestion that  
21 there is widespread racism among the profession. I  
22 recoil at that. I recoil as being labelled racialized.  
23 Racialized is the politicization of race. Racialized  
24 implies that I'm oppressed and that I'm a victim, and I  
25 recoil at that suggestion.

1                   Now, I've been a lawyer since 2014. I  
2                   love being a lawyer. It's great to be a lawyer. It's  
3                   an incredible privilege. It's an honour. But I was  
4                   willing to and am still willing this day to risk  
5                   disbarment to not comply with the requirement to write a  
6                   statement of principles that are not my own because no  
7                   one should cede the jurisdiction of their mind to  
8                   anybody, elected or appointed or otherwise.

9                   And specifically I want to address the  
10                  lay benchers here. When we talk about equity,  
11                  diversity -- or equality, diversity and inclusion, let  
12                  us not be fooled. If you read the reports, you look  
13                  through the reports that have led to the 13  
14                  recommendations, these are political, political terms  
15                  with political ideology. By promoting the statement of  
16                  principles or by encouraging on a voluntary basis that  
17                  the professions adopt a statement of principles we are  
18                  ceding the power to the Law Society to encourage a  
19                  specific, a certain ideology with which reasonable  
20                  people could and should disagree with.

21                  I'll wrap it up there. Thank you.

22                  TREASURER MERCER: Mr. Falconer?

23                  --- No response.

24                  TREASURER MERCER: I'm going to go to  
25                  Seymour Epstein.

1                   MR. EPSTEIN: Thank you, Treasurer.

2                   When Mr. Goldstein spoke specifically to  
3 the lay benchers or the appointed benchers it made me  
4 think. Then I listened to a lot of the comments here,  
5 and I realized quite reasonably that the people who are  
6 speaking were, in fact, licensees, were looking at how  
7 this affected them, and frankly not thinking about it  
8 from the point of view of the ultimate client. As  
9 public benchers perhaps we do have a role to play here.

10                   About a dozen years ago the Law Society  
11 Act was amended. For the first time we were expected to  
12 facilitate access to justice. Access to justice doesn't  
13 just mean getting money to pay the lawyer. In my  
14 experience, there are many minority groups, immigrants  
15 especially, who are very uncomfortable at having to go  
16 to a lawyer to which they have no close or no good  
17 feelings for. Being able to go to a person who is a  
18 part of your community I think is very important to  
19 those people. Some of them end up going into court  
20 without representation, which I think we all agree isn't  
21 the best solution. So inclusiveness to me also means  
22 that we're trying to make sure that every member of  
23 society can find the lawyer that they're comfortable  
24 with, that they can communicate with and hopefully get  
25 them the result that they want.

1                   It's a point worth remembering when we  
2 talk about our responsibilities and what will be a  
3 continuing issue here: What does access to justice  
4 mean?

5                   I will be voting for the amendment of the  
6 amendment, Mr. Charette's motion. If that fails, I will  
7 be voting for Mr. Groia's motion. If that fails, I will  
8 be voting for the Klippenstein motion. I don't have any  
9 problem opposing the forced speech part, but looking at  
10 it from the point of view of the Law Society, I think we  
11 have to make sure that the public understands we care  
12 about inclusiveness. Thank you.

13                   TREASURER MERCER: Mr. Falconer?

14                   MR. FALCONER: Thank you, Treasurer.  
15 It appears that my decision to take a bio-break was  
16 ill-timed. So my apologies.

17                   MR. CONWAY: It was the best speech you  
18 ever gave. (General laughter)

19                   TREASURER MERCER: Time, Mr. Falconer.

20                   MR. FALCONER: You know, that's why I  
21 supported keeping former Treasurers out of the  
22 Convocation. (General laughter)

23                   The Canadian Association of Black  
24 Lawyers, the Federation of Asian-Canadian lawyers, the  
25 South Asian Bar Association, the Canadian Association of

1 South Asian lawyers, the Indigenous Bar Association,  
2 RODA, the Toronto Lawyers' Association, the Advocates'  
3 Society, I go on and on. They're just all wrong; the 22  
4 members of StopSOP are right.

5 Here's what's interesting to me as I  
6 reflect on the arguments I heard today unburdened by any  
7 conflict.

8 What I heard was how each of these  
9 benchers felt. What I didn't hear was an  
10 acknowledgement that 40 percent of racialized lawyers  
11 identified their race as a barrier to entry. As I heard  
12 how the StopSOP folks feel, what I didn't hear is an  
13 acknowledgement that more than 50 percent of racialized  
14 respondents said because of their race they were  
15 expected to perform to a higher standard.

16 I heard in some cases, frankly in many  
17 cases, how white privileged lawyers felt offended by  
18 references to systemic racism. What I didn't hear was  
19 the acknowledgement that 43 percent of racialized  
20 lawyers cited their racialized identity as a barrier in  
21 the profession, whereas only three percent of  
22 non-racialized lawyers saw it as a barrier.

23 And not to leave out licensees, what  
24 I didn't hear from the StopSOP folks was an  
25 acknowledgement that while 57 percent of non-racialized

1     paralegals identified their first job as the one they  
2     were seeking in their preferred area, only 37 percent of  
3     racialized paralegals so identified. What I did not  
4     hear from the StopSOP folks was anybody else's voice but  
5     their own.

6                     Now, what I do hear is a prescription of  
7     what is good for racialized people, and that must be  
8     comforting to them, that those who orchestrated  
9     colonialism, orchestrated residential schools have the  
10    right idea on how to right the ship. But here's the  
11    challenge. We haven't righted the ship. The ship  
12    continues to take on water.

13                    A very brilliant article that I am no  
14    doubt going to butcher as I try to find it in my  
15    materials... A very brilliant article by Hadiya  
16    Roderique written in November 2017 for The Globe and  
17    Mail described her experience on Bay Street, and I  
18    commend the article to you because it is absolutely  
19    riveting when it talks about the common practice for  
20    racialized licensees and candidates to, quote, "whiten"  
21    their résumés in order to be accepted.

22                    What I didn't hear from Professor Dr.  
23    Alford was how, in fact, Indigenous students are few and  
24    far between at the very place supposed to be accredited  
25    to welcome and expand the Indigenous Bar. What I have



1 don't hear what you want to build. Please, we have four  
2 years together. We need to start building. We need to  
3 start protecting people, not simply ourselves. Thank  
4 you.

5 TREASURER MERCER: Mr. Chiumminto?

6 MR. CHIUMMIENTO: Thank you, Treasurer.

7 That's a tough act to follow. I always  
8 like listening to Mr. Falconer. He has a very eloquent  
9 way of putting things.

10 My concern is that we all share the  
11 importance of public interest and understand that access  
12 to justice is important and that the singular issue of  
13 the compelled speech or the statement of principles has  
14 really, you know, brought this to the forefront. We  
15 sometimes differ on how to achieve the interests of  
16 access to justice and maybe differ on what we believe  
17 the rule of law means and how we fulfill our duties as  
18 benchers.

19 My concern -- and I don't want to take  
20 away from anyone who's -- a lot of my colleagues have  
21 been involved in working groups and spent a lot of hard  
22 work and time and effort in creating the statement of  
23 principles and with the best intentions. But the  
24 overarching concern for me, it appears the Law Society  
25 has adopted a culture of activism, and as a regulator,

1 using the principles of EDI, as good as they are, as a  
2 shield and a sword is both concerning to me and  
3 dangerous. On a macro level, the Law Society, or the  
4 regulator, seems to be trying to expand its jurisdiction  
5 from licensees to law firms, legal education, and  
6 ultimately thoughts and feelings.

7 The statement of principles is one  
8 symptom of a larger issue. Moving from regulation and  
9 governance to an aggressive activism runs counter to the  
10 200-plus years of Law Society history. Maybe it's time,  
11 maybe it isn't. Maybe the mandate and the focus need to  
12 change.

13 My concern with the statement of  
14 principles is well-founded. We've all heard different  
15 views, and we are all entitled to our own opinions. I  
16 would ask you consider what you believe the role of the  
17 Law Society is because it's a bigger issue than just the  
18 statement of principles.

19 Thank you, Treasurer.

20 TREASURER MERCER: Mr. Horgan?

21 MR. HORGAN: Thank you, Treasurer.

22 I'm quite humbled to be part of this  
23 august institution and to be voted in by my supporters  
24 or those who voted for me. I feel like I'm taking up  
25 the torch of my good friend Paul Lepsoe, an Ottawa

1 lawyer who spoke, in writing at least, to this group in  
2 2017 opposing the statement of principles while  
3 suffering from the brain cancer that killed Gord Downie  
4 and others. Paul passed away in July of 2018. His  
5 submission is still available on the Resource Centre, I  
6 presume.

7 I'm also mindful of urging folks to have  
8 a look at the submissions in the current round from  
9 lawyers Grace Pang, Don Hutchinson, Derek Ross, Dina  
10 Warren, Barry Bussey, and I propose to speak to a couple  
11 of points that I hope won't be repetitive.

12 One of Paul Lepsoe's -- all of those  
13 folks talked about the importance of the principle of  
14 the independence of our profession, the chilling effect  
15 this had on free speech, the failure of the Society of  
16 the last bench to take into account its own legal  
17 opinion that was obtained at the time critical of the  
18 language that was used.

19 Paul Lepsoe was a part-time Small Claims  
20 judge, and unlike other members of the judiciary, those  
21 350 part-time Small Claims judges remain on the rolls of  
22 the Law Society, and if 98 percent of them checked the  
23 box, think about the implications on the independence of  
24 that, of those judges in the context of perhaps hearing  
25 a human rights fact or complaint before them perhaps in

1 a discrimination case or an employee case. Should they  
2 recuse? We have to be mindful that this has brought in  
3 sometimes unintended consequences on many of our  
4 colleagues.

5 I'm also mindful of submissions made by a  
6 reference to Professor Galbraith in which there seems to  
7 be this oversimplification of moral experience or  
8 imperatives when we bring forward values assessments  
9 into working lives. It's quite dangerous, in my view,  
10 that the Society has seen fit to impose demands or  
11 sanctions on private actors. On private actors.  
12 Lawyers are private actors, and in the circumstances,  
13 they should be preserved and protected by the Charter of  
14 Rights and not imposed effectively an ideology that the  
15 statement of principles represents.

16 I mentioned how honoured I was to be  
17 elected. Within three days of my election I was called  
18 in a national media article by a bencher who supported  
19 the EDI initiative, I presume, an extremist,  
20 fundamentalist zealot. During the course of our  
21 campaign, the folks on the StopSOP platform were  
22 variously called racists and bigots on Twitter by our  
23 fellow licensees.

24 We ran a principled campaign on ideas and  
25 principles upon which we've taken a position and

1 received overwhelming support, and when folks talk about  
2 the fact that we only received 30 percent of the votes,  
3 with respect, that invalidates your previous position  
4 since none of you received 50 percent of the votes of  
5 the membership. We received the great number of votes.  
6 I think that should be a matter of a reminder.

7           But I'm thinking of these words: racist,  
8 bigot, zealot. Is that the fruit of the accelerated  
9 culture shift that you're trying to achieve? If so,  
10 think again. Think again. Thank you.

11           TREASURER MERCER: Ms. Wilkinson?

12           MS. WILKINSON: Thank you, Mr. Treasurer.

13           I have listened carefully to all the  
14 comments from all of you today, and I'd like to identify  
15 three misunderstandings that I heard.

16           The first is the suggestion that the  
17 results of the bencher election should be in some way a  
18 measure of the public interest. Do not make that  
19 mistake. The bencher election was the will of lawyers  
20 and paralegals, and I accept that it sent a statement.  
21 I'm going to talk about that. But do not interpret that  
22 as somehow a measure of public interest.

23           Secondly, the fact that we have evidence  
24 of multiculturalism in this room or at the Calls to the  
25 Bar is not evidence that systemic racism doesn't exist,

1 so don't make that mistake.

2 And finally, Mr. Fagan, I too am a small  
3 town -- well, Burlington. I'm a small practitioner, I  
4 have a corporation in a small law firm, and I don't  
5 think the statement of principles is poison. So I don't  
6 think it's accurate to suggest that just because you're  
7 a small firm lawyer or a sole practitioner that you  
8 necessarily agree that the statement of principles is  
9 poison.

10 So you've probably gathered from my  
11 comments that I am in favour of the statement of  
12 principles. And I appreciate Ms. Lean's comment when  
13 she said she was elected on the StopSOP slate, and she  
14 wants to carry through with that point of view. I, too,  
15 was elected very publicly supporting the statement of  
16 principles, and so when I considered Mr. Groia and  
17 Ms. Donnelly's motion I was quite conflicted, and I had  
18 to give it an awful lot of thought, and I have listened  
19 to what you have said today, and I've heard the  
20 arguments and the concerns about compelled speech, and I  
21 understand the message that our membership delivered  
22 about its concerns as well. And for that reason I find  
23 myself in the position of supporting the Groia/Donnelly  
24 motion.

25 Now, there were two concerns that I heard

1 today about that motion. The first was raised by  
2 Mr. Klippenstein, and he was talking about the preamble  
3 and concerns about the language in the preamble of the  
4 Groia/Donnelly motion. But Mr. Groia responded that  
5 that language was taken out of the Rules of Professional  
6 Conduct so I don't see that as a controversial issue.

7 And finally, Mr. Charette said voluntary  
8 becomes mandatory. I don't understand that. Voluntary  
9 is voluntary. And I encourage all of you to support the  
10 Groia/Donnelly motion. Thank you.

11 TREASURER MERCER: Mr. Braithwaite?

12 MR. BRAITHWAITE: Thank you, Treasurer.

13 I'll just say right at the start that I  
14 do not support the amendments, and I will not support  
15 the main motion to repeal.

16 Back in December 2016 when the SOP motion  
17 was originally put forth and debated for about seven  
18 hours, after four years of putting some principles to  
19 paper for debate I was of the view that it had to be  
20 adopted in its entirety or not at all. I was of a view  
21 that without any teeth the principles amounted to  
22 nothing more than platitudes. I was in fact a little  
23 embarrassed that after four years these principles  
24 enshrined in our Charter and the Human Rights Code was  
25 all that could be agreed to after four years.

1           The endorsement of a written commitment  
2 was, in my view, integral and the very least one could  
3 adopt and endorse to give any meaning to the principles  
4 after four years of compromises. Yet, it took seven  
5 hours of debate just to get it through.

6           I had argued that I wasn't surprised  
7 because the issue was originally about race, an issue  
8 which has disturbingly troubled generations of hatreds  
9 and wars. And I don't adopt the statement about 400  
10 years of freedom.

11           I said race matters although I don't know  
12 why, a point that has become salient once again in the  
13 Missing and Murdered Indigenous Women and Girls Report,  
14 but it raised its head in this august body and continues  
15 to do so. That concern was emphasized back then at the  
16 end of the original debate when immediately following  
17 the lengthy debate and adopting the racialized report  
18 another motion was put forth to include all equity  
19 groups, a motion which, in my view, not only served to  
20 water down the original racialized report but was a  
21 means to avoid having to deal directly with the subject  
22 of race.

23           In any event, we have motions before us  
24 to amend which for all intents and purposes further  
25 waters down the SOP to nothing, to nothing I can't

1 simply read in legislation, to nothing I can't read by  
2 revisiting the oath I took on being licensed and  
3 regarding myself under our code of conduct.

4           The purpose of a SOP was to put some  
5 teeth as lawyers into our obligation as lawyers, to  
6 express commitment in the public interest for what we do  
7 and protect under our rule of law. It was to obviate  
8 historical tendencies, if not wrongs, to create racial  
9 silos as human beings. It was to get ahead and show  
10 leadership as lawyers in recognizing and building a  
11 different social structure in line with equity,  
12 diversity, inclusiveness going forward in the public  
13 interest, a struggle which this profession has  
14 historically and honourably strived to instill and  
15 protect. In light of reconciliation and the MMIWG  
16 Report, this message should be foremost in our minds to  
17 do something different than repeat in some instances an  
18 ignominious past.

19           The motion put forward today, in my view,  
20 is concerning. I will guide myself under equity,  
21 diversity, inclusiveness, but I won't commit to it; I  
22 will guide myself under equity, diversity and  
23 inclusiveness when it suits me; I will support equity,  
24 diversity and inclusiveness, "some of my best friends  
25 are".

1           The motion put forth today, whether  
2 amended or not, is no more than a face-saving venture  
3 which amounts to saying and doing nothing. It may  
4 amount to good politics and no doubt with good  
5 intentions to bring this body together, but in my view,  
6 it is not a compromise I can accept. It represents a  
7 continual slap in the face to all racialized groups. I  
8 will not support it.

9           I say look around. You have virtually  
10 every racial group present here today. This issue  
11 matters. Other than Chi-Kun, who a friend indicated in  
12 one e-mail a change is going to come, another person  
13 said that the times, they are a-changing. To that I say  
14 the face of the profession, they are a-changing; the  
15 face of the public we serve, they are a-changing. SOP  
16 is meant to be a recognition of those changes.

17           TREASURER MERCER: Time, Mr. Braithwaite.

18           MR. BRAITHWAITE: As part of and at least  
19 one step towards access to justice in the public  
20 interest, you can hold back the tide of equity,  
21 diversity and inclusiveness for only so long. An  
22 evolving history combined with the future will prevail.  
23 I leave you with those thoughts.

24           TREASURER MERCER: Mr. Wilkes?

25           MR. WILKES: Thank you, Treasurer.

1                   Most of what I wanted to say has already  
2           been said so I'll keep this brief. But basically where  
3           I find myself after today, I think it's clear we all  
4           want an inclusive society, we want to reach the end goal  
5           of a society where who you sleep with or what your skin  
6           tone is is irrelevant to how you're judged. As Martin  
7           Luther King put it, you view people by their quality of  
8           character, not by colour of skin. If they're a good  
9           person they're a good person; if they're a schmuck,  
10          they're a schmuck. Anything else is irrelevant. And  
11          that point has been made by virtually all my colleagues.  
12          Bencher Groia mentioned that as he was hoping for a  
13          truly colour- and gender-blind society, which I think we  
14          all support. What I think the issue comes from and  
15          where we disagree is in terms of how to reach that  
16          society.

17                   I'm having a bit of difficulty with  
18          anything other than a clean repeal, and I'm leaning  
19          towards only voting for the clean repeal because I don't  
20          see, if that's the goal for society, how we get there by  
21          categorizing ourselves in groups based on meetable  
22          characteristics, making that front and centre, comparing  
23          statistics of the legal profession, for example, to  
24          society at large and trying to make judgments based on  
25          that. I don't see how we're leading to anything other

1 than tribalism.

2 I think my concern can be seen partially  
3 in Bencher Lewis's comments in The Globe and  
4 earlier today when she mentioned the overrepresentation  
5 of racialized lawyers in sole practice and  
6 underrepresentation at the large firms.

7 Now, as a 2017 call, I think I take a  
8 slightly different position on that in that my call was  
9 incredibly diverse. I've been to all the calls this  
10 month, and they've all been incredibly diverse.

11 From where I'm standing, the big firms  
12 are spectacular, but they can't absorb, what are we at,  
13 2,500 lawyers a year? The vast majority of the  
14 profession, racialized included, will be sole  
15 practitioners or in small firms unless something radical  
16 changes in the next little while in the future, in my  
17 opinion, and trying to correct imbalances when it may  
18 not be systemic racism that's the cause. It could be,  
19 for example, that since 2008 the number of associates  
20 per partner at the large firms have gone down because  
21 they're not as much work, they're more competition,  
22 there's more automation, there are other issues at play.

23 The problem I think other people touched  
24 on with EDI generally is we all support equality, we all  
25 support diversity, we all support inclusion, but the EDI

1 package as a package is political.

2                   And it's not a set of terms that we as  
3 the Law Society invented. It's been used by other  
4 people, and it's inherently structured in a way that we  
5 are all fighting over the same pie, and there's  
6 oppressors and oppressed, and if you are on top it must  
7 be because you got there via putting someone else down.  
8 And where this leads I can't support, and the best  
9 example I can give that's in public right now is from  
10 Western University. They've basically taken the EDI  
11 package and they're running with it to try and seek  
12 applicants for a Canada Research Chair position, and  
13 this is the words they use. They say:

14                   "Western recognizes that our commitment  
15 to equity, diversity and inclusion is central to the  
16 University's mandate as a research-intensive institution  
17 of higher learning and a community leader and  
18 understands that our pursuit of research excellence and  
19 our commitment to equity, diversity and inclusion are  
20 mutually supporting. To address Western's commitment to  
21 equity, diversity and inclusion and in recognition of  
22 the underrepresentation of members of the designated  
23 groups and our shareholders and pursuant to section 14  
24 of the Ontario Human Rights Code, only applicants who  
25 self-identify as a woman, Indigenous person or a person

1 with disability will be considered for the CRC  
2 opportunities."

3                   So the end result of any of these  
4 policies that have the intersectional's backing of --  
5 when intersectionality is taken away from the individual  
6 role where it's accurate and valid and to society at  
7 large where you say everything is a zero-sum game and  
8 we're all fighting over the top position, the end result  
9 is someone has to be excluded to try and build  
10 inclusivity, and I don't feel that's the best way  
11 forward, and I would focus on more positive attempts at  
12 fostering inclusivity that don't rely on the EDI  
13 framework in the way that it is currently and in the way  
14 that I feel it's going. Thank you.

15                   TREASURER MERCER: Mr. Esquega?

16                   MR. ESQUEGA: Thank you, Treasurer.

17                   I want to start by addressing Mr.  
18 Klippenstein's comments about -- and I've heard him say  
19 it on a few occasions now about this profoundly one  
20 across Ontario -- profound numbers of support, and I  
21 would just like to note for everyone here in Convocation  
22 that I'm not here because of any other votes but the  
23 northwest region.

24                   StopSOP did not get support in my region.

25                   So that's, quite frankly, a misrepresentation of that

1 assertion that's been said here on many occasions. Six  
2 candidates ran in my region. I came in first, Dr.  
3 Alford came in fifth. Clearly, the mandate was given to  
4 me to come represent the region here, and when I ran I  
5 made it very clear that I am supportive of the statement  
6 of principles.

7 I just want to clean that up because it's  
8 been bothering me that these representations have been  
9 made when we don't look at the actual numbers, including  
10 the other numbers that we heard about the percentages  
11 that my colleagues are relying upon.

12 You have a letter in your package from  
13 the Women's Legal Education Action Fund, the Thunder Bay  
14 chapter, and that's women legal practitioners in Thunder  
15 Bay who wrote a letter to us, and they are opposed to  
16 the abolishment of the statement of principles, and in  
17 fact, they want to see more done. They want more  
18 information published so that the public has information  
19 and know exactly who is participating and who is not.  
20 And this does not just address for other licensees, but  
21 they feel this information would be helpful for the  
22 public as well.

23 Now, I heard my friend Mr. Wilkes just  
24 talk about tribalism, and I have an issue with that. A  
25 lot of people refer to my First Nation as a tribe or as

1 a First Nation. And we are separate, we are distinct,  
2 we're unique, we're the first peoples of this country,  
3 we've lived in our traditional territories for time  
4 immemorial, and we're all entitled to be different, and  
5 we're all entitled to equitable access to justice.

6 We have heard and we have reports from  
7 the racialized members which talk about racism, systemic  
8 racism in our institutions, in particular in our legal  
9 institutions, and I'm very concerned about how those  
10 concerns have been dismissed at this level.

11 We've had many Indigenous reports done  
12 that also express concerns about these similar concerns  
13 our racialized colleagues are bringing to our attention,  
14 and I'm very concerned there's a suggestion that this is  
15 all political.

16 From the Indigenous perspective, it's  
17 clear that there was a nation-to-nation relationship  
18 when the settlers first came here. It's been proven  
19 that there were promises of mutual use and benefit of  
20 the lands and resources of this country. Right up by  
21 our benches' entrance there's a wampum belt. For those  
22 of you who don't know what a wampum belt is, it's a  
23 reflection of that nation-to-nation relationship. It  
24 signifies two boats, two nations going down a river  
25 together side by side peacefully and in harmony, each in

1 their own distinct boat.

2           Historically, we know that the red carpet  
3 was not rolled out for Indigenous people. We heard the  
4 red carpet earlier was rolled out for others. We know  
5 that's not the case. Indigenous people were moved to  
6 small tracts of land, precluded from leaving their  
7 communities, precluded from leaving their communities to  
8 go get an education or pursue a career unless they  
9 agreed to give up their identity and abandon their  
10 nation.

11           Then the government has engaged in all  
12 sorts of policy and attempts to assimilate Indigenous  
13 people. They've taken young babies from their homes and  
14 put them in residential schools at a very young age. My  
15 family members were part of that system. And now we're  
16 hearing stories, for example, of forced sterilization,  
17 which was not that long ago. I had a client come talk  
18 to me not that long ago, and she's devastated about what  
19 she went through with that.

20           This has all led to significant problems  
21 within the Indigenous communities unfortunately.  
22 Communities are plagued by substance abuse problems.  
23 There's poverty. Kids are still to this day being taken  
24 way from their homes and having to go miles and miles,  
25 hundreds of miles away to attend high school because of

1 the system that's in place right now. We have many  
2 communities who can't even get a clean tap of drinking  
3 water like we can go out in the hallway and go drink out  
4 of the tap. And we have many communities, as my  
5 colleague Ms. Corbiere mentioned, in the child welfare  
6 system.

7 TREASURER MERCER: Time, Mr. Esquega.

8 MR. ESQUEGA: So when we consider these  
9 problems it's no wonder why it's a barrier for  
10 Indigenous people to access the legal systems and  
11 institutions. And I support the statement of principles  
12 because of that experience. Thank you.

13 TREASURER MERCER: Mr. Lyon?

14 MR. LYON: Thank you, Treasurer.

15 This afternoon's been illuminating, and  
16 I'm going to focus my comments on the public interest.  
17 I'm going to follow up on Seymour Epstein's comments.

18 I think that we seem to have lost sight  
19 of the fact that this debacle has done nothing to  
20 further the public interest.

21 If you think that not voting for a clean  
22 repeal today is somehow going to wipe the slate clean,  
23 no pun intended, and solve the problem, then I think  
24 you're sadly mistaken. The concern I have is unless we  
25 remove mandated speech in its entirety - and Mr. Groia's

1 motion doesn't count because in fact it's half a loaf -  
2 we're going to be left with this hanging over our heads  
3 for four years.

4                   You saw some of the shenanigans this  
5 morning, and I don't think that was in the public  
6 interest. It would be improper for me to impugn bench  
7 Falconer's motives, and I'm not going to, but we  
8 certainly saw the games that get played with notices of  
9 motion being provided at the very last minute, and I  
10 don't think that serves the public interest. The public  
11 interest is served if we can get on with the business at  
12 hand, and mandated speech is what the issue that we have  
13 to deal with here today. It's not about the statement  
14 of principles underlying equity, inclusiveness and  
15 diversity. That's an entirely separate issue.

16                   The issue that brought me here today was  
17 compelled speech, and unless it's cleanly taken off the  
18 table, then I fear we're going to be lost in what we saw  
19 here this morning with Mr. Falconer's type of action.  
20 We're going to see that for the next four years.

21                   Thank you.

22                   MR. FALCONER: Since my colleague wants  
23 me to make a point of order I don't want to let him  
24 down. Since he brought me up in a negative light twice  
25 right after he said he didn't mean to cast aspersions, I

1 don't want to disappoint him, so I applaud him for not  
2 doing exactly what he then did.

3 Thank you, Treasurer.

4 TREASURER MERCER: You're welcome.

5 MR. LYON: Well, I listened very  
6 carefully this morning, and --

7 TREASURER MERCER: Excuse me. Your  
8 comments are completed. Thank you.

9 Is there anyone on the telephone who  
10 wishes to speak?

11 --- No responses.

12 TREASURER MERCER: I'm going to assume  
13 the answer is no. We have now the -- if we could...  
14 Thank you.

15 We have now seconders and movers of the  
16 motions. I encourage you at this point, despite the  
17 natural inclination for rhetorical flourish, to confine  
18 your thoughts, if you would, to things which haven't  
19 been said and things which need to be said, and I'm  
20 going to start with Ms. Donnelly.

21 MS. DONNELLY: I'm a second-term elected  
22 lawyer bencher. I supported the statement of principles  
23 twice in Convocation. I have publicly supported the  
24 statement of principles. My campaign materials speak  
25 about supporting the recommendations of the Challenges

1 Report. However, I am the seconder on a motion to  
2 change the main motion before you to take repeal off the  
3 table and to debate the issue about whether the  
4 statement of principles should stay as compelled speech  
5 or whether it should be made voluntary.

6 Why have I done that? My view is that  
7 simply repealing the mandatory statement of principles  
8 or making it voluntary with no tie to the Law Society is  
9 not the right message to send to the public of Ontario.

10 The Law Society of Ontario has an  
11 incredibly important role to play as a leader in the  
12 effort to see that all legal professionals understand  
13 their obligations to support equality, diversity and  
14 inclusive initiatives.

15 Our motion is an opportunity for there to  
16 be an important compromise which satisfies the concerns  
17 regarding compelled speech by making the statement of  
18 principles voluntary but, more importantly, still  
19 connected to the Law Society, reaffirming the Law  
20 Society's commitment to equality, to diversity and to  
21 inclusion.

22 I ask you to vote against the Charette  
23 motion. I ask you to vote in favour of the  
24 Groia/Donnelly motion.

25 What's been said in support of the

1 Charette motion is that there's some spectre that the  
2 Law Society is going to improperly use information. And  
3 let's be clear. The Groia/Donnelly motion is voluntary.  
4 The ticking of any box is voluntary.

5           It's been said that there's some concern  
6 that there will be a chilling effect because there's  
7 this spectre that the Law Society is going to wrongly  
8 and improperly use information for those who chose to  
9 tick a box. So let's understand and acknowledge the  
10 processes that are currently in place at the Law Society  
11 to protect personal information.

12           In an effort to better understand  
13 demographic trends in the legal professions the Law  
14 Society began asking lawyers and paralegals whether they  
15 self-identify as members of equality-seeking communities  
16 in 2009 in their annual reports. That was ten years  
17 ago. It was clear at the time that the questions were  
18 voluntary and the information was to be kept  
19 confidential and only used in aggregate form in  
20 accordance with human rights and privacy legislation.

21           The information collected was to prepare  
22 statistics about the legal professions, in part to allow  
23 the Law Society to develop programs and initiatives to  
24 increase equality and diversity in the professions. The  
25 data was to be kept confidential and maintained in a

1 secure information system with access to the information  
2 to be restricted to staff members who require access for  
3 the purpose of reporting aggregate information only in  
4 analysing trends in the professions. Access guidelines  
5 were to be developed to ensure consistency in access to  
6 the data and the confidentiality of the data. That's  
7 been in place for ten years.

8           So what's happening now? As a result of  
9 the adoption of the Challenges Report, section 2 was --  
10 and I only speak to the lawyers' report because I'm a  
11 lawyer, but I believe there are parallel processes in  
12 place for the paralegal annual report.

13           So to get ready to speak to you today I  
14 accessed my annual report. This is a report that I'm  
15 obliged as a lawyer to complete. The Law Society, for  
16 those who don't know, has a portal. This portal is  
17 accessed by me; it's my private portal. I went on the  
18 portal. I accessed my documents. This is my annual  
19 report. I wanted to see what I had said in my annual  
20 report in section 2. Let's be clear about what section  
21 2 is. It's the section on equality, diversity and  
22 inclusion.

23           And do you know what I found? I found  
24 that on my private portal, on the documents in my  
25 private portal, that I was unable to access the answers

1 that I had provided to the Law Society. Why was I  
2 unable to access those answers? Because at the top of  
3 every page in that section it talks about the  
4 confidential nature of that information and that it's  
5 not recorded on the .pdf version that I am able to  
6 access.

7 In addition to that, there's a box, and  
8 in the box on red it says:

9 "Due to the confidential nature of the  
10 information about equality, diversity and inclusion  
11 collected in section 2, responses to the questions in  
12 this section have not been recorded on the .pdf version  
13 of your annual report."

14 So there's a spectre in this room that  
15 the Law Society is going to take this information that  
16 may be voluntarily completed and used against you when I  
17 can't even access myself my own answers to find out what  
18 I said in my annual report. And not only that. There's  
19 no suggestion that any other information that's  
20 collected in the annual report has ever been used  
21 improperly.

22 So let's think about a couple of these  
23 other questions. There's a mandatory question called  
24 question number 8, and what does that question ask? It  
25 asks about every lawyer's provision of pro bono services

1 in Ontario. Is there any suggestion that any of that  
2 information has ever been used to prevent someone from  
3 getting a judicial application or to prevent someone  
4 from getting a Law Society appointment? No.

5 And there's another one that says  
6 self-study, that, you know, we're asked to say how much  
7 self-study we do.

8 So we have to respect that there are  
9 provisions in place with respect to the collection of  
10 information and not raise the spectre that there is  
11 going to be improper use.

12 I close by saying the Supreme Court of  
13 Canada has told us in June of 2018, so a year ago, the  
14 following things, and this is in a case specifically  
15 involving the Law Society of then Upper Canada, now  
16 Ontario.

17 Number one. Diversity within the Bar  
18 falls within the scope of the Law Society of Ontario's  
19 duty to uphold the public interest.

20 Number two. The public interest  
21 necessarily - and this is a quote - "necessarily  
22 includes upholding a positive public perception of the  
23 legal profession."

24 Number three. There is a, quote,  
25 "societal trust enjoyed by the legal profession."

1                   And, quote, "As a public actor, the Law  
2 Society of Upper Canada has an overarching interest in  
3 protecting the values of equality and human rights in  
4 carrying out its functions."

5                   Our motion to amend protects the values  
6 of equality and human rights, and we urge you to support  
7 it. As the Toronto Lawyers' Association letter  
8 wrote...which was written on June the 6th after the  
9 Donnelly/Groia motion came out, so it was in reference  
10 to our motion to amend to make voluntary and not the  
11 Charette motion. It's found at page 21 of Diligent.  
12 And what it says at the very end is:

13                   "Maintaining a voluntary statement of  
14 principles is the very least we can do to convey to  
15 racialized and equity-seeking licensees that the door is  
16 open and that they are welcome as vital and essential  
17 members of this esteemed profession."

18                   We come full circle to Mr. Groia's  
19 comments in the beginning --

20                   TREASURER MERCER: Time.

21                   MS. DONNELLY: -- and I ask you to vote  
22 against the Charette motion and in favour of the  
23 Donnelly/Groia motion to amend. Thank you.

24                   TREASURER MERCER: Ms. Shi?

25                   MS. SHI: Thank you, Treasurer.

1                   I've heard a lot of submissions about the  
2 viewpoints of different groups, and I hope you will now  
3 accept submissions from me, an individual. I don't  
4 belong to any of the groups that have been mentioned,  
5 and I must admit, sometimes when I hear someone bombard  
6 me with the viewpoints of groups it has a silencing  
7 effect. The implication is if all these groups bearing  
8 ethnic names think one way, then my viewpoint that's  
9 opposed to them doesn't matter.

10                   So I want to share with you some of my  
11 own personal experience because with all the eloquence  
12 that has gone on I will not try to exceed any  
13 discussions on principles.

14                   During and after the bencher election I  
15 received a barrage of e-mails, most of them from ethnic  
16 minority lawyers and licensees, paralegals, and they  
17 contained two themes: one, thank God you're going to go  
18 in there and tell them that we don't want our  
19 professional lives to be governed by political  
20 correctness, we are just fine dealing with ourselves on  
21 merit; and number two, and please do not circulate this  
22 e-mail, I'm right behind you but really can't afford to  
23 come out in public to support any of you guys.

24                   It's an eye-opener for me, and I share  
25 and I ask you to please consider it. There is a

1 disconnect, a serious distrust between the profession  
2 and the Law Society, and it is especially a problem  
3 amongst small practitioners such as myself. And that's  
4 why I seem to get approached non-stop by total strangers  
5 even, you know, in this building, near the library and  
6 all that. They all know that I've been elected. Why?  
7 Because I'm one of the small guys. I mean, I think when  
8 we got elected one of the former benchers, a prominent  
9 lawyer himself, referred to us as a group of  
10 lesser-known lawyers. So we are connected to the lesser  
11 known, and for what it's worth, that's what's happening  
12 on the ground.

13           Someone made a comment about colonialism  
14 and that we all need to learn about what it is to be  
15 colonized. Well, I was born into a colony, and I lived  
16 there during my formative years. I left Hong Kong when  
17 I was fifteen. It was still under British rule. And I  
18 came to Canada. So for what it's worth, I know a bit of  
19 what it is to live in a society that has freedom and  
20 democracy and one that has not.

21           Perhaps that's why sometimes I may appear  
22 to be so overzealously enthusiastic about freedoms and  
23 democracy. To me, it's not something that I take for  
24 granted at all. What's going on in Hong Kong I think  
25 you all know, and on that subject, I'd like to thank

1 Treasurer Mercer for having mentioned it at the Call to  
2 the Bar. It meant a lot to me. Thank you.

3           There are thoughts that had the British  
4 under colonialism given Hong Kong a basis for democracy,  
5 practised it, built up the institution, then the Hong  
6 Kong today in its resistance against totalitarianism  
7 from the Mainland Chinese government, that movement will  
8 have a much better chance to succeed as what I believe  
9 part of the theme of Treasurer Mercer's address in the  
10 Call to the Bar.

11           And so I'm calling out to you today to  
12 please value the democratic and free tradition that we  
13 have in Canada. It is very precious. It's the best  
14 thing we have to ensure that us and our children have a  
15 bright future.

16           Thank you.

17           TREASURER MERCER: Five minutes each for  
18 the movers, starting with Mr. Charette.

19           MR. CHARETTE: Thank you, Mr. Treasurer.  
20 Just a few reactions real quick.

21           Someone mentioned that there was a  
22 minority in the study and there was a minority in the  
23 vote, this Strathcom Report. The fact is that a  
24 specialist coming up with a report is much different  
25 than an election. There was an election, and that's a

1 much different thing. And so the majority, clear  
2 majority, who voted in the election far and away  
3 out-rules the weight of some study produced in an office  
4 somewhere by a group, a small group of people, albeit  
5 they're well-intentioned.

6           Second, if I can use an analogy, when you  
7 fly on a jet, we've all had that experience, if someone  
8 is travelling with a youngster or maybe an elderly  
9 person, the person who is leading them is advised in the  
10 event that the oxygen mask comes down put your own mask  
11 on first; otherwise, you will not be able to advocate  
12 for the one whose life is in your hands. And this is  
13 the exact same position that lawyers are in.

14           We cannot advocate for the rights and  
15 liberties of our clients unless we ourselves are first  
16 the jealous guardians that I mentioned. We must protect  
17 our own professional rights and liberties so that we  
18 will be completely free to advocate for the rights and  
19 liberties of our clients. That's the real point of it.  
20 And someone who is said, well, we're worried about our  
21 rights. No, we're not. We're worried about the rights  
22 and liberties of our clients. And we serve their needs.  
23 And it does no good for me to have my mind, my thoughts  
24 put into a straightjacket if I have to serve the rights  
25 and liberties of another person. I need to protect

1 those.

2                   And as to this issue of voluntary, I can  
3 see it happening already because it happened in the  
4 campaign. People were out there, did you sign the  
5 voluntary statement, are you going to... People are  
6 going to advertise it on their websites, and people are  
7 going to feel coerced in the marketplace, in the lives  
8 of the profession. And so whether or not this  
9 information is held in the Law Society and secure, where  
10 the rubber hits the road people are going to be out  
11 there putting pressure on lawyers to voluntarily sign.  
12 And so what is said to be voluntary is not really  
13 voluntary. We must concern that.

14                   I've heard a lot about judges today.  
15 Well, I quote Judge John Sirica of Nixon Watergate fame.  
16 Someone asked him, "How do you feel about being  
17 overruled?" And Judge Sirica said, "Well, I don't think  
18 they were right, they just had the last word."

19                   So I think we're staring at some bad law  
20 made by some of our courts, and, frankly, I'm not  
21 ashamed to say that, that we, lawyers, have to be  
22 leaders, and I hope the courts will recognize, as  
23 they've said so far, that we have complete domain,  
24 complete freedom to determine what is professionally  
25 appropriate. So just because they have the last word

1 doesn't mean they were right.

2                   And, Chairman, I think those are the  
3 limits of my comments. I appreciate everybody's  
4 patience today for all of us. We all did a great job.  
5 So thank you very much.

6                   TREASURER MERCER: Mr. Groia.

7                   MR. GROIA: Thank you.

8                   I'd like at the end to bring us back to a  
9 clear understanding of what it is we're going to vote on  
10 in a very few minutes, and I'd like to dispel if I can  
11 the myth of what has come to be called the "clean  
12 repeal" today. I think that the resort to numbers of  
13 voters who voted for some of us is really not very  
14 helpful. It somehow suggests that the newly appointed  
15 lay benchers who are going to play an enormously  
16 important role in this vote are somehow unworthy of  
17 their participation because they didn't get 5,000 or  
18 6,000 votes from the profession.

19                   And let me just put five- or six thousand  
20 votes into context. Ninety percent of all lawyers,  
21 totalling about 50,000 lawyers, did not vote for the  
22 StopSOP group. Fifteen million people who live in  
23 Ontario and who we are duty-bound to protect have not  
24 said that they support the StopSOP group. Four million  
25 visible minorities and Indigenous people who live in

1 Ontario have not said they support the StopSOP group.  
2 And so rather than trying to present these arguments on  
3 the basis of a vote that represents a tiny, tiny  
4 proportion of all these people who live in this  
5 province, why don't we talk about really how this issue  
6 should be voted upon?

7           At the end of the day, in my view, the  
8 vote should be either we get rid of the statement of  
9 principles as it now stands, we keep it as it now  
10 stands, or we replace it with a voluntary statement of  
11 principles.

12           And if you don't support the amendment,  
13 the only choices that you'll be giving yourselves on  
14 this vote is a harsh repeal of the statement of  
15 principles with no real recognition of all of the people  
16 who are extremely concerned about that.

17           And if you do support the amendment, what  
18 you will be saying is that while we accomplish the, I  
19 still believe, laudable goal and Paul Lepsoe thought the  
20 goal that we needed to focus on was removing the  
21 mandatory requirement, if you accomplish that and  
22 replace it with a voluntary statement that is...I think  
23 the expression was used the 'minimum requirement' of the  
24 equity and diversity groups, then I think you've done a  
25 very good thing.



1 guess in reply that came up specifically.

2 A number of benchers, including Mr.  
3 Troister and others, have talked about the public  
4 interest as opposed to focusing on lawyers' interests,  
5 and I think those are both important and lawyers'  
6 interests are important because we do indeed play a role  
7 in the broader public interest.

8 But in terms of the public interest - and  
9 Mr. Troister has a good point - the difficulty or part  
10 of the difficulty that I have when that is given as a  
11 reason to go for the Groia/Donnelly amendment or  
12 motion/amendment - it's styled as an amendment - even if  
13 the amendment by Mr. Charette is put in place is that it  
14 still, when you look at it, is all about the Law Society  
15 encouraging licensees to advance diversity, and I have a  
16 couple of concerns with that.

17 I said earlier on that what I've seen in  
18 the four years of study, "Working Together For  
19 Change" -- incidentally, it's a little ironic that it's  
20 called "working together", and then within the first few  
21 paragraphs it becomes compulsory. But I saw a division  
22 between what I called small "d" "diversity" and  
23 capital "D" "Diversity", and it really...it becomes  
24 apparent that beneath the surface and behind I'm going  
25 to call it the mask there is a serious political

1 ideology that is associated with the word "diversity"  
2 sometimes.

3 "Diversity" in the small "d" is a  
4 valuable idea up to a point, but it's not the entire  
5 picture, and there are other factors as well. It's  
6 almost as if you're not allowed to say what I just said  
7 without being called a racist, misogynist and  
8 phobic-this and phobic-that. But that seems to me to  
9 make sense.

10 Capital "D" "Diversity" is a whole other  
11 matter, and my concern is if this is passed, this  
12 encouragement, I can already start to see what's going  
13 to happen. The machinery of the Law Society will  
14 continue in the goal of social reconstruction in  
15 accordance with that capital "D" "Diversity" plan.  
16 That's what I see in the reports and elsewhere.

17 And so I don't think I as the mover of  
18 this motion - and I believe I can speak for Ms. Lean as  
19 well - could support or accept that amendment to this,  
20 to the motion of repeal.

21 Now let me address something else that  
22 quite a few people have said and quite rightly. You've  
23 heard quite a bit of critique and have heard me critique  
24 the "Working Together For Change" reports. What really  
25 hurts me about that and about saying that, there are

1 voices that haven't been heard that need to be heard,  
2 that have to be listened to, that we have to care about,  
3 and we have to think about what those things mean, and  
4 it is a tragedy, I think, that that's not what happened  
5 properly in that report and those series of reports.

6           Mr. Falconer specifically addressed me by  
7 name and said I disparaged the report without, you know,  
8 really dealing with it. Well, early on in that report,  
9 in that process, the study group said they identified 27  
10 key informants who were experts, and those were the  
11 people they interviewed first to structure the rest of  
12 the study, and twenty...I believe 24 of them were  
13 racialized. We don't know who they are. And there's  
14 some logic to that. If you feel your views have been  
15 suppressed and resuppressed you may not want to become  
16 public. But fair enough.

17           We don't know what they said. We have no  
18 way of evaluating from any point of view what they said  
19 and how that structured the rest of this major project.  
20 So to me, that seriously takes away from the credibility  
21 of that process.

22           Now, another thing we see throughout this  
23 report is somebody summarizes the statements of focus  
24 groups, key informants, the survey results, and we  
25 constantly hear "some participants said this", "one

1 participant said this", "participants said this". We  
2 don't know what people said or how many people said it,  
3 and we are left with what I consider a biased and, in  
4 fact, ideological summary of what some people said, and  
5 I wish I could hear those people and listen to them from  
6 a point of view of not saying everybody's lived  
7 experience automatically is a hundred percent valid  
8 because we know that that's not a hundred percent true,  
9 including in our own lives, --

10 TREASURER MERCER: Time.

11 MR. KLIPPENSTEIN: -- but as a Law  
12 Society we need to care, but we also need to think, in  
13 my submission.

14 Finally, very quickly on that point, the  
15 word "racialized" appears throughout. When I started  
16 reading this I discovered that that word is a technical  
17 word from sociological theory originating with  
18 Professors Omi and Winant in the '80s who have been  
19 incredibly influential. They wrote a book, second  
20 edition in the '90s I believe, third edition in 2015. I  
21 went and bought that book, read it cover to cover. It's  
22 full of highlights and -- and to use that idea in a  
23 public survey and throw it out to people and say 'are  
24 you racialized' is not a good way to get a sense of  
25 reality. And furthermore, as I said before, to use a

1 self-selected, tiny group of people and to inject that  
2 as a reality to the whole Law Society is just not  
3 accurate. So we've been let down.

4 Now, what can we do about that here? In  
5 my submission, it would be a mistake to go further down  
6 this road with the Groia/Donnelly amendment because it  
7 is just going further down this road. We don't know  
8 what we are going to get. And it does not show a lack  
9 of concern about the public or disadvantaged members of  
10 the public to say when we've gone down a wrong road we  
11 will need to back up, start again, and do better and  
12 think about things.

13 TREASURER MERCER: Time, please.

14 MR. KLIPPENSTEIN: The result is, and  
15 I've discussed with my seconder of the motion, if the  
16 Groia/Donnelly amendments pass I do not think that I and  
17 Ms. Lean can live with the amended motion, and we would  
18 withdraw it. I don't know. I say that very regretfully  
19 with great concern, but I don't know how else to resolve  
20 that particular problem.

21 TREASURER MERCER: Can I ask you to come  
22 to an end, please, --

23 MR. KLIPPENSTEIN: Yes.

24 TREASURER MERCER: -- now.

25 MR. KLIPPENSTEIN: Thank you.

1                   TREASURER MERCER: Thank you. It's 4:27.  
2 I expect people are going to need a break for a variety  
3 of reasons. Some of them I can't help you with, but  
4 there is some sustenance in the benchers' reception. If  
5 you could be back here at a quarter to 5:00, and we will  
6 start.

7                   MR. COOPER: Treasurer, before we go can  
8 you just lay out what the different votes will mean for  
9 everybody so that they can think about it?

10                  TREASURER MERCER: I had proposed to do  
11 that when we returned, but if it will assist, I will  
12 call the vote on Mr. Charette's motion to amend the  
13 amendment first. If that passes, the motion to amend  
14 will be amended; it will then be voted on. If that  
15 carries, that will amend the main motion. If it doesn't  
16 carry, the main motion won't be amended. The main  
17 motion will be voted on in any event.

18                  We're adjourned until a quarter to.

19                  --- Recess taken at 4:28 p.m.

20                  --- On resuming at 4:45 p.m.

21                  TREASURER MERCER: So we have an  
22 amendment to amend. We have an amendment, and we have a  
23 main motion. We will deal first with the amendment to  
24 amend.

25                  The amendment to amend seeks to delete

1 two paragraphs from the amendment. If the amendment to  
2 amend carries, it changes the motion to amend by  
3 deleting two paragraphs and, if you care, by adding a  
4 period.

5 If the motion to amend the amendment  
6 fails, then the motion to amend stands as Mr. Groia and  
7 Ms. Donnelly propose. The motion to amend will either  
8 be amended or not amended based on the first vote.

9 The second vote will be to determine  
10 whether or not to adopt the motion to amend, which may  
11 or may not by then have been amended. If it carries,  
12 then the main motion is amended. If it doesn't carry,  
13 the main motion isn't amended.

14 The final vote, the third vote, is to  
15 decide on the main motion, which may or may not have  
16 been amended, may or may not have been withdrawn, and  
17 we'll deal with that issue if and when it happens.

18 As a practical matter, if you want  
19 ultimately to vote on a voluntary version based on  
20 Mr. Charette's proposal, you will vote "yes" on the  
21 first motion. If you want to proceed with the  
22 Groia/Donnelly voluntary approach, you will vote "no" on  
23 the first motion because you won't want the motion to  
24 amend to be changed.

25 I can't give you much guidance on how

1 you're going to vote after that because it depends  
2 on where you are on the decision tree, but as a  
3 practical matter, if what you want is ultimately repeal,  
4 you're not going to vote "yes" on the second motion,  
5 irrespective of what happens.

6 If you want voluntary, depending on  
7 what's acceptable to you as a voluntary matter, you'll  
8 vote "yes" on the second motion.

9 I hesitate, although Mr. Sheff thinks I'd  
10 be wise to do this, to ask if there are any questions.  
11 (General laughter) My experience is that rarely leads  
12 to clarification.

13 All right. So the first motion is Mr.  
14 Charette's motion, and Mr. Charette -- and I'm going to  
15 read this because it does help to remember exactly what  
16 is said. He moves to amend the motion moved by  
17 Mr. Groia and seconded by Ms. Donnelly. So the effect  
18 of this motion is only to amend the motion, the  
19 Groia/Donnelly motion.

20 The proposed amendment is to delete  
21 paragraphs (b) and (c). Paragraph (b) is reporting in  
22 the annual report, paragraph (c) is disclosing aggregate  
23 information from the annual report to Convocation.

24 I'm going to ask Mr. Varro to call a roll  
25 call in respect of Mr. Charette's motion.

1                   SECRETARY: Mr. Adourian?

2                   MR. ADOURIAN: No.

3                   SECRETARY: If you could say "for" or  
4 "against", that would help. Thank you.

5                   TREASURER MERCER: I should also say,  
6 please don't turn on your microphone before you need to  
7 because it drives people crazy trying to make the  
8 machines work.

9                   MR. FALCONER: A point of order. We got  
10 help from the Treasurer using "yes" and "no", and I'm  
11 just encouraging us to stay the line because you will  
12 confuse the 60-year-old man over here. So can we stay  
13 with what the Treasurer...

14                   SECRETARY: Sure.

15                   MR. FALCONER: Thanks.

16                   TREASURER MERCER: We'll live with "yes"  
17 and "no". If you are in favour of Mr. Charette's  
18 motion, you will say "yes". If you are opposed to Mr.  
19 Charette's motion, you will say "no".

20                   SECRETARY: Dr. Alford?

21                   DR. ALFORD: No.

22                   SECRETARY: Mr. Bateman?

23                   MR. BATEMAN: No.

24                   SECRETARY: Mr. Braithwaite?

25                   MR. BRAITHWAITE: No.

1                   SECRETARY: Mr. Brown?  
2                   MR. BROWN: No.  
3                   SECRETARY: Mr. Burd?  
4                   MR. BURD: No.  
5                   SECRETARY: Mr. Charette?  
6                   MR. CHARETTE: Yes.  
7                   SECRETARY: Mr. Chiummiento?  
8                   MR. CHIUMMIENTO: No.  
9                   SECRETARY: Mr. Cooper?  
10                  MR. COOPER: No.  
11                  SECRETARY: Ms. Corbiere?  
12                  MS. CORBIERE: No.  
13                  SECRETARY: Ms. Corsetti?  
14                  MS. CORSETTI: No.  
15                  SECRETARY: Mr. Da Silva?  
16                  MR. DA SILVA: No.  
17                  SECRETARY: Mr. Desgranges?  
18                  MR. DESGRANGES: No.  
19                  SECRETARY: Ms. Donnelly?  
20                  MS. DONNELLY: No.  
21                  SECRETARY: Mr. Epstein?  
22                  MR. EPSTEIN: Yes.  
23                  SECRETARY: Mr. Esquega?  
24                  MR. ESQUEGA: No.  
25                  SECRETARY: Mr. Fagan?

1 MR. FAGAN: No.

2 SECRETARY: Mr. Falconer?

3 MR. FALCONER: No.

4 SECRETARY: Mr. Goldstein?

5 MR. GOLDSTEIN: No.

6 SECRETARY: Mr. Graham?

7 MR. GRAHAM: No.

8 SECRETARY: Mr. Groia?

9 MR. GROIA: No.

10 SECRETARY: Mr. Horgan?

11 MR. HORGAN: No.

12 SECRETARY: Ms. Horvat?

13 MS. HORVAT: No.

14 SECRETARY: Mr. Klippenstein?

15 MR. KLIPPENSTEIN: No.

16 SECRETARY: Ms. Lalji?

17 MS. LALJI: No.

18 SECRETARY: Dr. Lau?

19 DR. LAU: No.

20 SECRETARY: Ms. Lean?

21 MS. LEAN: No.

22 SECRETARY: Ms. Lewis?

23 MS. LEWIS: No.

24 SECRETARY: Ms. Lippa?

25 MS. LIPPA: No.

1 SECRETARY: Ms. Lockhart?  
2 MS. LOCKHART: No.  
3 SECRETARY: Ms. Lomazzo?  
4 MS. LOMAZZO: No.  
5 SECRETARY: Mr. Lyon?  
6 MR. LYON: No.  
7 SECRETARY: Mr. Marshall?  
8 MR. MARSHALL: No.  
9 SECRETARY: Ms. Merali?  
10 MS. MERALI: No.  
11 SECRETARY: Ms. Painchaud?  
12 MS. PAINCHAUD: No.  
13 SECRETARY: Mr. Parry? I'm sorry, you  
14 said "no"? Thank you.  
15 MS. PAINCHAUD: I'm sorry.  
16 SECRETARY: Ms. Papageorgiou?  
17 MS. PAPAGEORGIOU: No.  
18 SECRETARY: Mr. Parry?  
19 MR. PARRY: No.  
20 MS. PAPAGEORGIOU: Did they hear me?  
21 SECRETARY: I heard you. Thank you.  
22 MS. PAPAGEORGIOU: Oh, okay.  
23 SECRETARY: Mr. Pineda?  
24 MR. PINEDA: No.  
25 SECRETARY: Mr. Poliacik?

1 MR. POLICIK: No.

2 SECRETARY: Mr. Pollock?

3 MR. POLLOCK: No.

4 SECRETARY: Mr. Prill?

5 MR. PRILL: No.

6 SECRETARY: Ms. Sellers?

7 MS. SELLERS: No.

8 SECRETARY: Mr. Sheff?

9 MR. SHEFF: No.

10 SECRETARY: Ms. Shi?

11 MS. SHI: Yes.

12 SECRETARY: Ms. Shin Doi?

13 MS. SHIN DOI: No.

14 SECRETARY: Ms. Shortreed?

15 MS. SHORTREED: No.

16 SECRETARY: Mr. Spurgeon?

17 MR. SPURGEON: No.

18 SECRETARY: Mr. Troister?

19 MR. TROISTER: No.

20 SECRETARY: Ms. Walker?

21 MS. WALKER: (No audible response)

22 SECRETARY: Mr. Wellman?

23 MR. WELLMAN: No.

24 SECRETARY: Mr. Wilkes?

25 MR. WILKES: No.

1                   SECRETARY: Ms. Wilkinson?

2                   MS. WILKINSON: No.

3                   SECRETARY: Mr. Wright?

4                   MR. WRIGHT: No.

5                   MS. WALKER: Hello?

6                   SECRETARY: Yes? Who is that?

7                   MS. WALKER: It's Tanya Walker.

8                   SECRETARY: Oh. And your vote, Tanya?

9                   MS. WALKER: "No."

10                  SECRETARY: Thank you. The motion is

11 lost: 3 for, 50 against.

12                  TREASURER MERCER: We will now vote on

13 the Groia/Donnelly amendment. If you say "yes", you are

14 in favour of the amendment. If you say "no", you are

15 not. If you say "yes", effectively you will be choosing

16 in the next motion between mandatory and voluntary. If

17 you say "no" and that is successful, on the next motion

18 you will essentially be choosing between repeal and

19 mandatory.

20                  All those in favour of the roll call on

21 the Groia/Donnelly motion to amend?

22                  SECRETARY: Mr. Adourian?

23                  MR. ADOURIAN: No.

24                  SECRETARY: Dr. Alford?

25                  DR. ALFORD: No.

1                   SECRETARY: Mr. Bateman?  
2                   MR. BATEMAN: Yes.  
3                   SECRETARY: Mr. Braithwaite?  
4                   MR. BRAITHWAITE: No.  
5                   SECRETARY: Mr. Brown?  
6                   MR. BROWN: No.  
7                   SECRETARY: Mr. Burd?  
8                   MR. BURD: Yes.  
9                   SECRETARY: Mr. Charette?  
10                  MR. CHARETTE: No.  
11                  SECRETARY: Mr. Chiummiento?  
12                  MR. CHIUMMIENTO: No.  
13                  SECRETARY: Mr. Cooper?  
14                  MR. COOPER: Yes.  
15                  SECRETARY: Ms. Corbiere?  
16                  MS. CORBIERE: Yes.  
17                  SECRETARY: Ms. Corsetti?  
18                  MS. CORSETTI: Yes.  
19                  SECRETARY: Mr. Da Silva?  
20                  MR. DA SILVA: Yes.  
21                  SECRETARY: Mr. Desgranges?  
22                  MR. DESGRANGES: No.  
23                  SECRETARY: Ms. Donnelly?  
24                  MS. DONNELLY: Yes.  
25                  SECRETARY: Mr. Epstein?

1 MR. EPSTEIN: Yes.

2 SECRETARY: Mr. Esquega?

3 MR. ESQUEGA: Yes.

4 SECRETARY: Mr. Fagan?

5 MR. FAGAN: No.

6 SECRETARY: Mr. Falconer?

7 MR. FALCONER: Yes.

8 SECRETARY: Mr. Goldstein?

9 MR. GOLDSTEIN: No.

10 SECRETARY: Mr. Graham?

11 MR. GRAHAM: No.

12 SECRETARY: Mr. Groia?

13 MR. GROIA: Yes.

14 SECRETARY: Mr. Horgan?

15 MR. HORGAN: No.

16 SECRETARY: Ms. Horvat?

17 MS. HORVAT: Yes.

18 SECRETARY: Mr. Klippenstein?

19 MR. KLIPPENSTEIN: No.

20 SECRETARY: Ms. Lalji?

21 MS. LALJI: No.

22 SECRETARY: Dr. Lau?

23 DR. LAU: Yes.

24 SECRETARY: Ms. Lean?

25 MS. LEAN: No.

1 SECRETARY: Ms. Lewis?  
2 MS. LEWIS: Yes.  
3 SECRETARY: Ms. Lippa?  
4 MS. LIPPA: No.  
5 SECRETARY: Ms. Lockhart?  
6 MS. LOCKHART: Yes.  
7 SECRETARY: Ms. Lomazzo?  
8 MS. LOMAZZO: Yes.  
9 SECRETARY: Mr. Lyon?  
10 MR. LYON: No.  
11 SECRETARY: Mr. Marshall?  
12 MR. MARSHALL: No.  
13 SECRETARY: Ms. Merali?  
14 MS. MERALI: I'm abstaining on this.  
15 SECRETARY: Ms. Painchaud?  
16 MS. PAINCHAUD: Yes.  
17 SECRETARY: Ms. Papageorgiou?  
18 MS. PAPAGEORGIU: Yes.  
19 SECRETARY: Mr. Parry?  
20 MR. PARRY: No.  
21 SECRETARY: Mr. Pineda?  
22 MR. PINEDA: No.  
23 SECRETARY: Mr. Poliacik?  
24 MR. POLIACIK: No.  
25 SECRETARY: Mr. Pollock?

1 MR. POLLOCK: (No audible response)

2 SECRETARY: Mr. Prill?

3 MR. PRILL: No.

4 SECRETARY: Ms. Sellers?

5 MS. SELLERS: Yes.

6 SECRETARY: Mr. Sheff?

7 MR. SHEFF: Yes.

8 SECRETARY: Ms. Shi?

9 MS. SHI: No.

10 SECRETARY: Ms. Shin Doi?

11 MS. SHIN DOI: Yes.

12 SECRETARY: Ms. Shortreed?

13 MS. SHORTREED: Yes.

14 SECRETARY: Mr. Spurgeon?

15 MR. SPURGEON: Yes.

16 SECRETARY: Mr. Troister.

17 MR. TROISTER: Yes.

18 SECRETARY: Ms. Walker?

19 MS. WALKER: Yes.

20 SECRETARY: Mr. Wellman?

21 MR. WELLMAN: Yes.

22 SECRETARY: Mr. Wilkes?

23 MR. WILKES: No.

24 SECRETARY: Ms. Wilkinson?

25 MS. WILKINSON: Yes.

1 SECRETARY: Mr. Wright?

2 MR. WRIGHT: No.

3 SECRETARY: The motion carries: 27 for,  
4 25 against, one abstention.

5 TREASURER MERCER: The main motion is now  
6 amended. Mr. Klippenstein?

7 MR. KLIPPENSTEIN: Thank you. Thank you,  
8 Mr. Treasurer.

9 Unfortunately, and with some sadness, I  
10 feel that I cannot in good conscience, based on the  
11 various things I've said today, carry forward with the  
12 motion as amended, and with the consent of the seconder  
13 I therefore withdraw the motion under section 96(2)  
14 which says:

15 "A bencher who has moved a motion may  
16 withdraw the same at any time with the consent of the  
17 bencher who seconded the motion." [As read]

18 TREASURER MERCER: So I accept that the  
19 motion as amended is withdrawn. I understand that  
20 Mr. Groia and Ms. Donnelly wish to move the motion --  
21 move a motion in terms of just withdrawn. And as I said  
22 at the outset, it seems to me that what is important in  
23 this process is that we learn the will of Convocation.  
24 I respect entirely Mr. Klippenstein's, Ms. Lean's  
25 position, but Mr. Groia --

1                   MR. GROIA: I move the motion as amended,  
2    Treasurer.

3                   MS. DONNELLY: I second that motion.

4                   TREASURER MERCER: I'm going to call a  
5    roll call on that. The effect is if you are in favour  
6    of the motion as amended --

7                   MR. FAGAN: Chair, I wish to challenge  
8    your ruling that it is proper now to change course when  
9    all day the Groia/Donnelly motion was being dealt with  
10   as an amendment, not a free-standing motion. I  
11   challenge the proposition that it can now be voted on  
12   independently.

13                  MR. FALCONER: I also have a point of  
14   order when it's appropriate, Treasurer.

15                  TREASURER MERCER: Let's hear yours  
16   first, Mr. Falconer. We'll then hear from Mr. Groia.

17                  MR. FALCONER: My point of order is as  
18   follows. As in the case of many complex decisions we  
19   must make at Convocation, we are guided by the options  
20   you present as Chair. You presented those options, and  
21   I exercised my vote on the basis of those options. It  
22   would seriously change the landscape of how I exercise  
23   my vote, and I suspect others', if you were to now  
24   introduce a new motion that is not before Convocation, I  
25   suppose on the basis of you -- because, understand, this

1 motion is not before Convocation. The motion was to  
2 amend the Klippenstein motion; it was not a  
3 free-standing motion on its own, and I voted on the  
4 basis of three decisions on a decision tree that you  
5 described, Treasurer.

6 And I do not say this in a way to be  
7 either disrespectful or critical of you. To be honest,  
8 Treasurer, this is as complex as I've seen in any of our  
9 Convocations. But I emphasize that my vote and my  
10 decisions to make my votes were on the basis of that  
11 decision tree and not any other motions.

12 And to put it another way, after Groia  
13 and Donnelly bring this new motion, then I'll bring a  
14 new motion, too, about a new statement of principles  
15 where I change some more words. I mean, there's no end  
16 to it. We had three votes, we decided on the three  
17 votes. And by the way, Klippenstein and crew, the  
18 StopSOP, made their decisions to withdraw on the basis  
19 of three votes. And my worry is now there is no end in  
20 sight. Procedurally, it actually turns substantive, and  
21 it turns substantive because now my decision and the way  
22 I voted is undermined, so I'm -- and I again say it,  
23 appreciating how complex this has become, but I urge you  
24 not to create new motions at this stage because that  
25 wasn't what was on the table before. We had three

1 decisions to make.

2 TREASURER MERCER: Mr. Groia?

3 MR. GROIA: I disagree with my friend as  
4 a matter of both procedure and as a matter of the need  
5 of the Society to move ahead with this. The result of  
6 the second motion was effectively to create a motion  
7 that is before Convocation, I believe appropriately now  
8 as amended at the request of Convocation, and I think we  
9 can call it the Donnelly/Groia motion which is still for  
10 consideration.

11 More importantly, what I think the effect  
12 of a delay would be is that this matter would become  
13 simply a Ground Hog Day. In September, we would have  
14 more motions and more discussions, and we need for the  
15 good of the profession and for the good of the public to  
16 put this matter to rest. I believe Convocation will put  
17 it to rest on the basis of replacing the SOP with a  
18 voluntary provision. That will satisfy, I believe, the  
19 expectations of the members of the profession who are  
20 concerned with the mandatory nature of the SOP, and I  
21 believe it will meet at least the minimum requirements  
22 of the Indigenous and racialized groups who are  
23 concerned about this decision.

24 So both as a matter of procedure I say  
25 the motion is properly on the floor, and I've moved it,

1 and I would ask that it be voted on, but, more  
2 importantly, as a matter of the needs to move ahead, we  
3 simply need to resolve this and move on to other issues  
4 that are of concern to all professionals.

5 Thank you, Treasurer.

6 TREASURER MERCER: So I'm not calling for  
7 debate on this. This is a matter of procedure.

8 MR. BRAITHWAITE: It's a matter of  
9 procedure. I just want a clarification.

10 TREASURER MERCER: Please.

11 MR. BRAITHWAITE: It was my understanding  
12 that this particular motion was based on the original  
13 motion, it was an amendment to the original motion. If  
14 that is the case, if this Groia motion was an amendment  
15 to the original motion and the original motion no longer  
16 exists, then I don't think this motion exists.

17 TREASURER MERCER: Yes, I think that's  
18 the same point which has just been made.

19 MR. BRAITHWAITE: So there's nothing to  
20 vote on.

21 TREASURER MERCER: Well, we're about to  
22 find out whether or not you're right.

23 96(2), which is the provision that  
24 Mr. Klippenstein relied on, is that a bencher has moved  
25 a motion, may withdraw the same at any time with the

1 consent of the bencher who seconded the motion. That  
2 could be read as referring to an unamended motion. That  
3 would be, I think, Mr. Varro's view. I don't think  
4 that's right. I think at the end of the day a mover of  
5 a motion under this rule or this section in the by-law  
6 is entitled to withdraw the motion as amended.

7 But it seems to me clear, as a matter of  
8 substance as opposed to a matter of technical procedure,  
9 that what was voted on by Convocation was an amendment  
10 of a motion that was successful. Presumably,  
11 Convocation voted to amend so it could then consider the  
12 motion as amended, and that is available to be done now  
13 by virtue of exactly the same amended motion being put  
14 before Convocation, and it is open for a bencher to move  
15 and second a motion where there is the same substance  
16 where it's germane to the topic which has been before  
17 Convocation. It's clear to me that the motion is in  
18 order, it is clear to me that the motion is fair because  
19 Convocation collectively decided to amend the main  
20 motion to create exactly this motion.

21 And so I'm going to rule that it's in  
22 order, and we've had debate on it, and I'm going to ask  
23 that the roll be called.

24 In favour of the Groia/Donnelly motion,  
25 please say "yes". Opposed, please say "no".

1 MS. DONNELLY: -- is voluntary and  
2 opposing it means it stays the same way, the way it is?

3 TREASURER MERCER: Effectively, but this  
4 is only paraphrase, "yes" means voluntary, "no" means  
5 mandatory.

6 UNIDENTIFIED SPEAKER: Sorry, Mr.  
7 Treasurer, you've ruled that the appeal is out of order?

8 TREASURER MERCER: I haven't... What I  
9 have done is dismissed the objection. That is a matter  
10 of procedure. There is no appeal.

11 MR. FALCONER: Point of order, Treasurer.  
12 Point of order.

13 TREASURER MERCER: Yes?

14 MR. FALCONER: Number one, I do not know  
15 what the Groia/Donnelly motion actually is.

16 If you are telling me or if you have  
17 ruled that the Groia/Donnelly motion is, in essence, the  
18 Klippenstein motion with amendments, that, of course, is  
19 impossible because it was withdrawn.

20 If you're telling me that Groia and  
21 Donnelly have started a new motion that replicates the  
22 Klippenstein motion with amendments, then I need to  
23 understand that and I need to understand where that  
24 motion is, because that isn't the motion they brought.

25 TREASURER MERCER: Yes, you're rearguing

1 your point, and I've made a ruling. To be clear, I'll  
2 say it one more time, and then we'll proceed.

3 The motion which Mr. Groia and Ms.  
4 Donnelly have moved is a motion identical to the main  
5 motion as brought by Klippenstein and Lean as amended by  
6 Convocation as proposed by Groia and Donnelly.

7 MR. FALCONER: Then I urge you to  
8 consider the following, Treasurer, that this is no  
9 longer a matter of procedure. You are accepting that a  
10 new motion may appear before Convocation. You are  
11 actually foreclosing debate on the new motion, and that  
12 is not procedure. You are permitting a new motion  
13 substantively, and I have been hoodwinked because I  
14 understood Donnelly and Groia's motion to be because of  
15 the existence of the Klippenstein motion. I never once  
16 thought, for example, those two people wanted to change  
17 the current statement of principles as it exists. I  
18 understood they wanted to change it because of the  
19 Klippenstein motion. I'm hearing for the first time  
20 that, in fact, Donnelly and Groia would like to replace  
21 the current statement of principles, period, which I  
22 never understood was the case.

23 So what I'm saying is your ruling is not  
24 procedural. Your ruling is now determining that a new  
25 motion at this late stage may be brought, a new motion

1 that neither Donnelly nor Groia proposed before. That  
2 is not procedural. So I'm asking for the right of an  
3 appeal.

4 TREASURER MERCER: I don't agree. It's  
5 procedural. It's clear that any two members of  
6 Convocation can now bring a motion on the topic which  
7 has just been mooted. The question then is whether or  
8 not debate is required. In my judgment, debate is not  
9 required because we've had ample debate on the  
10 substance.

11 If you want voluntary, Mr. Falconer, you  
12 can vote in favour of voluntary. If you want to  
13 continue with the status quo, you can do that, too.

14 Call the roll, Mr. Varro.

15 SECRETARY: Mr. Adourian.

16 MR. ADOURIAN: Abstain --

17 MR. HORGAN: Sorry. Treasurer, can I  
18 just -- can we just have... I'm new. This is pretty  
19 wild. Can I request five minutes - I'm mindful of the  
20 time of day - but really to consider whether we  
21 entertain a motion to adjourn the meeting to a Special  
22 Convocation in the summer months?

23 MR. FALCONER: That would be a motion at  
24 table.

25 TREASURER MERCER: No, it wouldn't. It's

1 a different motion.

2 MR. HORGAN: Just a motion to adjourn  
3 this session.

4 TREASURER MERCER: A motion to table is a  
5 different motion. A motion to adjourn is a different  
6 motion than motion to table. I'm content to hold this  
7 matter down for five minutes so that you can consider  
8 whether to move to adjourn.

9 --- Recess taken at 5:21 p.m.

10 --- On resuming at a few minutes later.

11 MR. HORGAN: Treasurer?

12 TREASURER MERCER: Yes. Just a minute  
13 before I go to you, Mr. Horgan. I just want to read to  
14 Convocation so you have it section 93(4) of by-law 3,  
15 which deals with motions which can be brought:

16 "A bencher may make a substantive motion  
17 without notice at Convocation if the motion relates to a  
18 matter then being debated at Convocation." [As read]

19 And so I was referring to that and  
20 paraphrasing it because that allows explicitly a new  
21 substantive motion to be brought if it's on topic, and I  
22 simply note for your reference 93(4).

23 That being said, Mr. Horgan?

24 MR. HORGAN: Yes, I move to adjourn  
25 today's meeting to a date to be fixed perhaps via

1 Special Convocation by you, Treasurer.

2 TREASURER MERCER: Yes, I can call a  
3 Convocation. I have that authority. So if you move to  
4 adjourn to a Convocation to be set by me, that does what  
5 I think you want. Is there a seconder?

6 MR. ADOURIAN: I second it.

7 TREASURER MERCER: Mr. Adourian, a motion  
8 to adjourn is not debatable. I'll ask the Secretary how  
9 he wants to cope. Do you prefer roll?

10 SECRETARY: Yes, I do.

11 TREASURER MERCER: Yes. Mr. Varro  
12 prefers a roll because then he doesn't risk getting  
13 lost.

14 MR. GROIA: Treasurer, I'm just raising  
15 the question of is it appropriate to allow a motion to  
16 adjourn in the face of you having called the vote on the  
17 amended motion, and I wonder if Mr. Varro might give  
18 advice about that. My understanding is that once the  
19 vote has been called it's generally too late to bring a  
20 motion to adjourn. But I'll be guided by Mr. Varro's  
21 views. He's never let me down in the past.

22 TREASURER MERCER: Actually, I'll be  
23 guided by his views, and I'll now take them.

24 MR. FALCONER: I just want to emphasize  
25 the context. I brought a point of order. So after this

1 got raised and there was a suggestion that we would have  
2 a vote, I brought a point of order, and so it's the  
3 point of order brought by me and actually by Mr. Horgan  
4 that brought us to this point, and I only raise that to  
5 emphasize that it is not true that we were in the midst  
6 of voting. We were in the midst of addressing our  
7 points of order.

8 TREASURER MERCER: I take your point.  
9 Mr. Varro helpfully -- and because I entirely agree with  
10 him I'll pass this on. And I say that with a smile, to  
11 be clear. Section 95(4), "A motion to adjourn  
12 Convocation may be made at any time." And I thank  
13 Mr. Varro.

14 Please call the roll. In favour of  
15 adjournment, say "yes". Say "no" if you don't.

16 SECRETARY: Mr. Adourian?

17 MR. ADOURIAN: Yes.

18 SECRETARY: Dr. Alford?

19 DR. ALFORD: Yes.

20 SECRETARY: Mr. Bateman?

21 MR. BATEMAN: No.

22 SECRETARY: Mr. Braithwaite?

23 MR. BRAITHWAITE: No.

24 SECRETARY: Mr. Brown?

25 MR. BROWN: Yes.

1 SECRETARY: Mr. Burd?  
2 MR. BURD: No.  
3 SECRETARY: Mr. Charette?  
4 MR. CHARETTE: Yes.  
5 SECRETARY: Mr. Chiummiento?  
6 MR. CHIUMMIENTO: Yes.  
7 SECRETARY: Mr. Cooper?  
8 MR. COOPER: No.  
9 SECRETARY: Ms. Corbiere?  
10 MS. CORBIERE: No.  
11 SECRETARY: Ms. Corsetti?  
12 MS. CORSETTI: (No audible response)  
13 SECRETARY: Mr. Da Silva?  
14 MR. DA SILVA: No.  
15 SECRETARY: Mr. Desgranges?  
16 MR. DESGRANGES: Yes.  
17 SECRETARY: Ms. Donnelly?  
18 MS. DONNELLY: No.  
19 SECRETARY: Mr. Epstein?  
20 MR. EPSTEIN: No.  
21 SECRETARY: Mr. Esquega?  
22 MR. ESQUEGA: No.  
23 SECRETARY: Mr. Fagan.  
24 MR. FAGAN: Yes.  
25 SECRETARY: Mr. Falconer?

1 MR. FALCONER: No.

2 SECRETARY: Mr. Goldstein?

3 MR. GOLDSTEIN: Yes.

4 SECRETARY: Mr. Graham?

5 MR. GRAHAM: Yes.

6 SECRETARY: Mr. Groia?

7 MR. GROIA: No.

8 SECRETARY: Mr. Horgan?

9 MR. HORGAN: Yes.

10 SECRETARY: Ms. Horvat?

11 MS. HORVAT: No.

12 SECRETARY: Mr. Klippenstein?

13 MR. KLIPPENSTEIN: Yes.

14 SECRETARY: Ms. Lalji?

15 MS. LALJI: No.

16 SECRETARY: Dr. Lau?

17 DR. LAU: No.

18 SECRETARY: Ms. Lean?

19 MS. LEAN: Yes.

20 SECRETARY: Ms. Lewis?

21 MS. LEWIS: No.

22 SECRETARY: Ms. Lipppa?

23 MS. LIPPPA: Yes.

24 SECRETARY: Ms. Lockhart?

25 MS. LOCKHART: No.

1 SECRETARY: Ms. Lomazzo?  
2 MS. LOMAZZO: No.  
3 SECRETARY: Mr. Lyon?  
4 MR. LYON: Yes.  
5 SECRETARY: Mr. Marshall?  
6 MR. MARSHALL: Yes.  
7 SECRETARY: Ms. Merali?  
8 MS. MERALI: No.  
9 SECRETARY: Ms. Painchaud?  
10 MS. PAINCHAUD: Yes.  
11 SECRETARY: Ms. Papageorgiou?  
12 MS. PAPAGEORGIOU: No.  
13 SECRETARY: Mr. Parry?  
14 MR. PARRY: Yes.  
15 SECRETARY: Mr. Pineda?  
16 MR. PINEDA: Yes.  
17 SECRETARY: Mr. Poliacik?  
18 MR. POLIACIK: Yes.  
19 SECRETARY: Mr. Pollock?  
20 MR. POLLOCK: Yes.  
21 SECRETARY: Mr. Prill?  
22 MR. PRILL: Yes.  
23 SECRETARY: Ms. Sellers?  
24 MS. SELLERS: No.  
25 SECRETARY: Mr. Sheff?

1 MR. SHEFF: No.

2 SECRETARY: Ms. Shi?

3 MS. SHI: Yes.

4 SECRETARY: Ms. Shin Doi?

5 MS. SHIN DOI: No.

6 SECRETARY: Ms. Shortreed?

7 MS. SHORTREED: No.

8 SECRETARY: Mr. Spurgeon?

9 MR. SPURGEON: No.

10 SECRETARY: Mr. Troister?

11 MR. TROISTER: No.

12 SECRETARY: Ms. Walker?

13 MS. WALKER: No.

14 SECRETARY: Is that "no", Ms. Walker?

15 MS. WALKER: Yes.

16 SECRETARY: Mr. Wellman?

17 MR. WELLMAN: No.

18 SECRETARY: Mr. Wilkes?

19 MR. WILKES: Yes.

20 SECRETARY: Ms. Wilkinson?

21 MS. WILKINSON: No.

22 SECRETARY: Mr. Wright?

23 MR. WRIGHT: Yes.

24 MS. CORSETTI: Mr. Varro, it's Cathy

25 Corsetti. Either my name wasn't called or I didn't

1 hear. My vote would be "no".

2 SECRETARY: Thank you, Ms. Corsetti.

3 MS. CORSETTI: Thank you.

4 MR. BURD: Mr. Varro, it's Robert Burd.

5 Did you get my vote?

6 SECRETARY: I did, yes.

7 MR. BURD: Thank you.

8 SECRETARY: The motion is lost: 24 for,  
9 28 against.

10 TREASURER MERCER: So we have  
11 Mr. Falconer's objection, and it's my ruling that the  
12 Groia/Donnelly motion which has been brought is  
13 consistent and is permitted by the section/subsection of  
14 the by-law that I read a moment ago, and I so order.

15 And it also seems to me exercising the  
16 discretion that I have with respect to limiting debate  
17 that all of the debate that has been necessary or  
18 appropriate has been had, and so I now ask Mr. Groia to  
19 proceed with the roll call on the --

20 MR. GROIA: I think you mean Mr. Varro.

21 TREASURER MERCER: Yes, I'm sorry. Thank  
22 you. I'm speaking slowly, and somewhere in the back of  
23 my head as I'm doing it -- I'll ask... (Telephone  
24 background noise) Well, we have to have it open so  
25 people can vote.

1                   MR. ESQUEGA: Mr. Treasurer, a  
2 clarification. Can you please explain the consequences  
3 for a "yes" vote versus a "no" vote?

4                   TREASURER MERCER: So the motion that we  
5 have, it's been brought by Mr. Groia, it's been seconded  
6 by Ms. Donnelly. The ultimate effect of it is if you  
7 say "yes" the statement of principles becomes voluntary  
8 in accordance with the amendment originally proposed by  
9 Groia and Donnelly, and if you say "no" we remain with  
10 the status quo, which is mandatory statement of  
11 principles. "Yes", voluntary. "No", mandatory.

12                   MR. CHARETTE: Mr. Treasurer, could we  
13 please have another five minutes? I think we need to...

14                   TREASURER MERCER: No.

15                   MR. CHARETTE: We've got so much going on  
16 here. I mean, really.

17                   TREASURER MERCER: Yes, I think we're  
18 ready to proceed. It's 5:30.

19                   MR. FALCONER: "Yes" for another five  
20 minutes. "No" for not another five minutes.

21                   TREASURER MERCER: Thank you for... Now,  
22 please proceed, Mr. Varro.

23                   SECRETARY: Mr. Adourian?

24                   MR. ADOURIAN: No.

25                   SECRETARY: Dr. Alford?

1 DR. ALFORD: No.

2 SECRETARY: Mr. Bateman?

3 MR. BATEMAN: Yes.

4 SECRETARY: Mr. Braithwaite?

5 MR. BRAITHWAITE: No.

6 SECRETARY: Mr. Brown?

7 MR. BROWN: No.

8 SECRETARY: Mr. Burd?

9 MR. BURD: No.

10 SECRETARY: Mr. Charette? That was "no"?

11 MR. CHARETTE: Correct.

12 SECRETARY: Yes, thank you. "No", thank  
13 you. Mr. Chiummiento.

14 MR. CHIUMMIENTO: No.

15 SECRETARY: Mr. Cooper?

16 MR. COOPER: No.

17 SECRETARY: Ms. Corbiere?

18 MS. CORBIERE: No.

19 SECRETARY: Ms. Corsetti?

20 MS. CORSETTI: No.

21 SECRETARY: Mr. Da Silva?

22 MR. DA SILVA: No.

23 SECRETARY: Mr. Desgranges?

24 MR. DESGRANGES: No.

25 SECRETARY: Ms. Donnelly?

1 MS. DONNELLY: Yes.

2 SECRETARY: Mr. Epstein?

3 MR. EPSTEIN: Treasurer, I apologize.

4 I'm not clear on exactly what we're voting on.

5 SECRETARY: "Yes" equals voluntary. "No"  
6 equals mandatory.

7 MR. EPSTEIN: Um... "No", I guess.

8 SECRETARY: Mr. Esquega?

9 MR. ESQUEGA: No.

10 SECRETARY: Mr. Fagan.

11 MR. FAGAN: No.

12 SECRETARY: Mr. Falconer?

13 MR. FALCONER: Negatory.

14 SECRETARY: Mr. Goldstein?

15 MR. GOLDSTEIN: No.

16 SECRETARY: Mr. Graham?

17 MR. GRAHAM: No.

18 SECRETARY: Mr. Groia?

19 MR. GROIA: Yes.

20 SECRETARY: Mr. Horgan?

21 MR. HORGAN: Abstain.

22 SECRETARY: Ms. Horvat?

23 MS. HORVAT: Yes.

24 SECRETARY: Mr. Klippenstein?

25 MR. KLIPPENSTEIN: No.

1 SECRETARY: Ms. Lalji?  
2 MS. LALJI: No.  
3 SECRETARY: Dr. Lau?  
4 DR. LAU: Yes.  
5 SECRETARY: Ms. Lean?  
6 MS. LEAN: No.  
7 SECRETARY: Ms. Lewis?  
8 MS. LEWIS: Happily no.  
9 SECRETARY: Ms. Lippa?  
10 MS. LIPPA: No.  
11 SECRETARY: That was "no", Ms. Lippa?  
12 MS. LIPPA: "No."  
13 SECRETARY: Thank you. Ms. Lockhart.  
14 MS. LOCKHART: Yes.  
15 SECRETARY: Ms. Lomazzo?  
16 MS. LOMAZZO: No.  
17 SECRETARY: Mr. Lyon?  
18 MR. LYON: No.  
19 SECRETARY: Mr. Marshall?  
20 MR. MARSHALL: No.  
21 SECRETARY: Ms. Merali?  
22 MS. MERALI: No.  
23 SECRETARY: Ms. Painchaud?  
24 MS. PAINCHAUD: No.  
25 SECRETARY: Ms. Papageorgiou?

1 MS. PAPAGEORGIOU: No.  
2 SECRETARY: Mr. Parry?  
3 MR. PARRY: No.  
4 SECRETARY: Mr. Pineda?  
5 MR. PINEDA: Abstain.  
6 SECRETARY: Mr. Poliacik?  
7 MR. POLIACIK: Abstain.  
8 SECRETARY: Mr. Pollock?  
9 MR. POLLOCK: No.  
10 SECRETARY: Mr. Prill?  
11 MR. PRILL: Abstain.  
12 SECRETARY: Ms. Sellers?  
13 MS. SELLERS: Yes.  
14 SECRETARY: Mr. Sheff?  
15 MR. SHEFF: Yes.  
16 SECRETARY: Ms. Shi?  
17 MS. SHI: No.  
18 SECRETARY: Ms. Shin Doi?  
19 MS. SHIN DOI: No.  
20 SECRETARY: Ms. Shortreed?  
21 MS. SHORTREED: No.  
22 SECRETARY: Mr. Spurgeon?  
23 MR. SPURGEON: Yes.  
24 SECRETARY: Mr. Troister?  
25 MR. TROISTER: Yes.



1 through the motion we're dealing with. Mr. Epstein  
2 indicated he wished to change his vote.

3 MR. EPSTEIN: Yes, (inaud).

4 TREASURER MERCER: And let's get through  
5 the vote before we talk about what we do next.

6 MR. FALCONER: Treasurer, I have a point  
7 of order.

8 TREASURER MERCER: I am content to do  
9 that, and I would ask my colleague, Mr. Falconer, to  
10 wait for the outcome of the vote.

11 MR. FALCONER: Well, that's interesting  
12 by the person who just spoke.

13 Treasurer, the ruling you just made  
14 permitting Mr. Epstein to change his vote, in the  
15 ordinary course I would be extremely careful to respect  
16 Mr. Epstein's right to follow through with his original  
17 intentions.

18 I only caution us this way. You get to  
19 hear the outcome the roll call, and then it wouldn't be  
20 Mr. Epstein, who I would never ascribe this kind of  
21 intention to, but once we open this door after you close  
22 a vote and you allow a vote to be changed what you're  
23 really saying is for a strategic voter they would ask to  
24 be able to change their vote. So I raise it. I  
25 understand that Mr. Epstein doesn't operate that way.

1 In fact, my experience with Mr. Epstein is the opposite.

2 But I simply --

3 TREASURER MERCER: If it assists,  
4 Mr. Epstein came to me immediately and told me --

5 MR. FALCONER: Okay. Thank you.

6 TREASURER MERCER: -- that he had erred.

7 MR. FALCONER: Thank you very much for  
8 that. That does assist, and it changes my view on it.  
9 Thank you.

10 TREASURER MERCER: Yes.

11 SECRETARY: Results of the vote,  
12 benchers. Motion fails: 13 for, 36 against, and four  
13 abstentions.

14 MR. WELLMAN: Mr. Treasurer, can I just  
15 confirm that everything we've done today, nothing has  
16 changed, the statement of principles as it is now  
17 remains?

18 TREASURER MERCER: I'm not sure who asked  
19 that.

20 UNIDENTIFIED SPEAKER: And that the  
21 StopSOP was voted for.

22 TREASURER MERCER: Yes, that's correct.

23 MR. GROIA: Thank you.

24 MR. HORGAN: Treasurer, on the same basis  
25 that you allowed the motion that was the amended motion,

1 I move to bring back the Klippenstein/Lean motion for a  
2 clean vote, up or down, on the original proposition that  
3 they raised.

4 MR. FALCONER: Move to table.

5 TREASURER MERCER: So let me just be  
6 clear. First of all, Mr. Horgan, you've moved. Who's  
7 seconded?

8 MR. POLLOCK: I'll second.

9 TREASURER MERCER: Mr. Pollock seconds.

10 MR. FALCONER: Move to table.

11 TREASURER MERCER: Mr. Falconer has moved  
12 to table. Is there a seconder for that?

13 MS. LEWIS: I will.

14 TREASURER MERCER: All right. Roll call  
15 on table. No debate.

16 MR. HORGAN: Treasurer, can you explain  
17 what the effect of a motion to table is?

18 TREASURER MERCER: I will in a moment.  
19 Let me try to get things into order.

20 MR. HORGAN: Thank you.

21 TREASURER MERCER: Mr. Pollock was the  
22 seconder. So it was Horgan/Pollock, then  
23 Falconer/Lewis.

24 So a motion to table, the effect of a  
25 motion to table is to cause the motion being tabled not

1 to be proceeded with at today's meeting. In order for  
2 it to be proceeded with, it has to be brought back by  
3 notice of motion, and Convocation has to then move to  
4 take it off the table if Convocation is so advised, and  
5 then if it is taken off the table it gets decided one  
6 way or the other, so the practical effect is to kick it  
7 down the road. Technically, what I've described is  
8 accurate.

9 MR. HORGAN: So for clarification,  
10 Treasurer, that means that my motion has been brought  
11 and seconded. It's on the floor but for the tabling  
12 motion that we're going to vote on right now?

13 TREASURER MERCER: That's right. It  
14 still exists. It can be brought back on on notice.  
15 It's then for Convocation to decide whether or not to  
16 take it off the table.

17 Calling the roll on motion to table. All  
18 in favour of tabling the motion by Mr. Horgan. I'd  
19 rather do a roll. We might as well get this clear.

20 MS. SELLERS: I'm sorry?

21 TREASURER MERCER: The motion is a motion  
22 to table, the motion just brought by Mr. Horgan. The  
23 motion just brought by Mr. Horgan in its gut is a motion  
24 to decide between repeal and mandatory.

25 MS. SELLERS: And for clarity, when would

1 we be voting on that?

2 TREASURER MERCER: That is a matter of  
3 there being a scheduled Convocation and somebody  
4 choosing to bring a notice of the motion to that  
5 Convocation, so it's not tabled to a particular  
6 Convocation. It is just tabled.

7 MS. SELLERS: So it isn't a matter that  
8 we could carry on with currently.

9 TREASURER MERCER: Correct.

10 MS. LALJI: Treasurer, may I ask a point  
11 of clarification? Is it properly brought if it's not --  
12 it's a brand new motion, --

13 TREASURER MERCER: A motion --

14 MS. LALJI: -- duly seconded again.

15 TREASURER MERCER: Yes.

16 MS. LALJI: Does it not have to be  
17 brought --

18 TREASURER MERCER: Well, I don't have to  
19 deal with that because there's a motion to table, and if  
20 and when it's ever brought back we can determine whether  
21 or not it's a proper motion at that time.

22 MS. LALJI: Okay. Thank you.

23 MR. CHARETTE: So, Mr. Treasurer, if the  
24 motion to table fails do we bring Mr. Horgan's motion  
25 forward?

1                   TREASURER MERCER: We have to deal with  
2 it if the motion to table fails, that's correct.

3                   MR. SHEFF: Can you please clarify again  
4 what exactly we're voting on?

5                   TREASURER MERCER: Could you please wait  
6 for a moment.

7                   --- Off record.

8                   TREASURER MERCER: -- deal with it  
9 separately.

10                   So the motion which is on the table or  
11 the motion -- that's ridiculous. The motion before us  
12 is a motion to table. If you wish to table, to have the  
13 Horgan motion determined subsequently if Convocation so  
14 elects, you will say "yes". If you wish to continue,  
15 you will say "no". Mr. Varro?

16                   MS. LALJI: Sorry, Treasurer. Can you  
17 repeat that? Because I'm confused, too, now with this  
18 motion.

19                   TREASURER MERCER: The motion is to  
20 table. If the motion to table succeeds, the effect of  
21 tabling is that Mr. Horgan's motion will not be dealt  
22 with today.

23                   UNIDENTIFIED SPEAKER: And if you vote  
24 "no"?

25                   --- Short pause.

1                   TREASURER MERCER: Is there anybody who  
2 doesn't understand what a motion to table is currently?

3                   (No response) Please call the roll.

4                   SECRETARY: Mr. Adourian?

5                   MR. ADOURIAN: No.

6                   SECRETARY: Mr. Alford -- sorry, Dr.  
7 Alford. Sorry.

8                   DR. ALFORD: No.

9                   SECRETARY: Mr. Bateman?

10                  MR. BATEMAN: No.

11                  SECRETARY: Mr. Braithwaite?

12                  MR. BRAITHWAITE: Yes.

13                  SECRETARY: Mr. Brown?

14                  MR. BROWN: No.

15                  SECRETARY: Mr. Burd?

16                  MR. BURD: Yes.

17                  SECRETARY: Mr. Charette?

18                  MR. CHARETTE: No.

19                  SECRETARY: Mr. Chiummiento?

20                  MR. CHIUMMIENTO: No.

21                  SECRETARY: Mr. Cooper?

22                  MR. COOPER: Yes.

23                  SECRETARY: Ms. Corbiere?

24                  MS. CORBIERE: Yes.

25                  SECRETARY: Ms. Corsetti?

1 MS. CORSETTI: Yes.

2 SECRETARY: Mr. Da Silva?

3 MR. DA SILVA: Yes.

4 SECRETARY: Mr. Desgranges?

5 MR. DESGRANGES: No.

6 SECRETARY: Ms. Donnelly?

7 MS. DONNELLY: Yes.

8 SECRETARY: Mr. Epstein?

9 MR. EPSTEIN: Yes.

10 SECRETARY: Mr. Esquega?

11 MR. ESQUEGA: Yes.

12 SECRETARY: Mr. Fagan.

13 MR. FAGAN: No.

14 SECRETARY: Mr. Falconer?

15 MR. FALCONER: Yes.

16 SECRETARY: Mr. Goldstein?

17 MR. GOLDSTEIN: No.

18 SECRETARY: Mr. Graham?

19 MR. GRAHAM: No.

20 SECRETARY: Mr. Groia?

21 MR. GROIA: Yes.

22 SECRETARY: Mr. Horgan?

23 MR. HORGAN: No.

24 SECRETARY: Ms. Horvat?

25 MS. HORVAT: Yes.

1 SECRETARY: Mr. Klippenstein?  
2 MR. KLIPPENSTEIN: No.  
3 SECRETARY: Ms. Lalji?  
4 MS. LALJI: Yes.  
5 SECRETARY: Dr. Lau?  
6 DR. LAU: Yes.  
7 SECRETARY: Ms. Lean?  
8 MS. LEAN: No.  
9 SECRETARY: Ms. Lewis?  
10 MS. LEWIS: Yes.  
11 SECRETARY: Ms. Lipppa?  
12 MS. LIPPA: No.  
13 SECRETARY: Ms. Lockhart?  
14 MS. LOCKHART: Yes.  
15 SECRETARY: Ms. Lomazzo?  
16 MS. LOMAZZO: (No audible response)  
17 SECRETARY: Mr. Lyon?  
18 MR. LYON: No.  
19 SECRETARY: Mr. Marshall?  
20 MR. MARSHALL: No.  
21 SECRETARY: Ms. Merali?  
22 MS. MERALI: Yes.  
23 SECRETARY: Ms. Painchaud?  
24 MS. PAINCHAUD: No.  
25 SECRETARY: Ms. Papageorgiou?

1 MS. PAPAGEORGIOU: Yes.  
2 SECRETARY: Mr. Parry?  
3 MR. PARRY: No.  
4 SECRETARY: Mr. Pineda?  
5 MR. PINEDA: No.  
6 SECRETARY: Mr. Poliacik?  
7 MR. POLIACIK: No.  
8 SECRETARY: Mr. Pollock?  
9 MR. POLLOCK: No.  
10 SECRETARY: Mr. Prill?  
11 MR. PRILL: No.  
12 SECRETARY: Ms. Sellers?  
13 MS. SELLERS: Yes.  
14 SECRETARY: Mr. Sheff?  
15 MR. SHEFF: Yes.  
16 SECRETARY: Ms. Shi?  
17 MS. SHI: No.  
18 SECRETARY: Ms. Shin Doi?  
19 MS. SHIN DOI: Yes.  
20 SECRETARY: Ms. Shortreed?  
21 MS. SHORTREED: Yes.  
22 SECRETARY: Mr. Spurgeon?  
23 MR. SPURGEON: Yes.  
24 SECRETARY: Mr. Troister?  
25 MR. TROISTER: Yes.

1 SECRETARY: Ms. Walker?

2 MS. WALKER: (No audible response)

3 SECRETARY: Mr. Wellman?

4 MR. WELLMAN: No.

5 SECRETARY: Mr. Wilkes?

6 MR. WILKES: No.

7 SECRETARY: Ms. Wilkinson?

8 MS. WILKINSON: Yes.

9 SECRETARY: Mr. Wright?

10 MR. WRIGHT: No.

11 --- Short pause.

12 UNIDENTIFIED SPEAKER: Holy mackerel.

13 TREASURER MERCER: I second that.

14 SECRETARY: It's a tie vote: 26 for, 26

15 against.

16 UNIDENTIFIED SPEAKER: A tie vote?

17 --- Off record.

18 TREASURER MERCER: A motion requires a

19 majority to be passed. The motion fails.

20 MR. FALCONER: May I request an

21 understanding? In what circumstances does the Chair

22 cast a deciding vote for tie votes?

23 TREASURER MERCER: When the Chair

24 chooses.

25 MR. FALCONER: Well, in fact, I

1 understood that that is part and parcel of the role of  
2 the Chair in the case of a tie vote. Are you saying,  
3 Treasurer, that that doesn't happen just simply by an  
4 exercise of discretion?

5 TREASURER MERCER: Well, let's test  
6 your... 101, by-law 3:

7 "The Treasurer shall not vote on a motion  
8 except in the case of a tie when the Treasurer may cast  
9 a tie-breaking vote." [As read]

10 MR. FALCONER: Thank you. So I'd like to  
11 bring a point of order on the issue of a tie vote.

12 TREASURER MERCER: Please.

13 MR. FALCONER: Thank you.

14 Treasurer, it would be a mistake for you  
15 not to assist us, having arrived at a tie. I don't even  
16 want to speculate on the number of hours we have all  
17 invested in this. To abstain or to leave this  
18 unaddressed when you can cast a deciding vote for or  
19 against I think is a mistake, respectfully, and I think  
20 it's important that you weigh in, that's your role,  
21 unless there was something overwhelming to suggest you  
22 shouldn't weigh in, but there isn't in this case. And I  
23 don't know which way you're going to vote, so that's not  
24 why. I simply say that's your role, and unless there is  
25 something that you feel puts you in an impossible

1 position, we can use your help one way or the other to  
2 decide the issue.

3 MR. CHIUMMIENTO: Treasurer, just a  
4 clarification. Did you make a decision and say you  
5 wouldn't vote and now are reconsidering, or are we  
6 dealing with something different?

7 TREASURER MERCER: Yes, I wasn't explicit  
8 and said that I didn't vote. I simply said that a  
9 majority had not been attained and therefore it was  
10 lost. I think formally I didn't address whether or not  
11 I was required to exercise my discretion and choose to  
12 vote or not, and so I think it's a legitimate question  
13 of order and --

14 DR. ALFORD: Point of order, Treasurer?

15 TREASURER MERCER: Who is doing that now?  
16 Yes.

17 DR. ALFORD: I just would like to point  
18 out that you announced the result of the vote. You said  
19 that the motion to table failed.

20 TREASURER MERCER: Yes, I understand  
21 that. Thank you.

22 DR. ALFORD: You recently said that  
23 changing votes is a -- atypical experience.

24 TREASURER MERCER: I said no such thing.  
25 I believe you're referring to Mr. Falconer, who can be

1 confused with me at times.

2 --- General laughter.

3 MR. FALCONER: Quiet and unassuming.

4 TREASURER MERCER: I'm going to vote  
5 against tabling, and the motion fails. It seems to me  
6 that Convocation -- what I said at the beginning of  
7 today is that we need to understand Convocation's will,  
8 and the thing which is most important is to allow  
9 Convocation to choose between the various options  
10 irrespective of what I think of the various options.

11 And so we have Mr. Horgan's motion. I  
12 believe there was a point of order taken with respect to  
13 it. Can I have that again if it's being maintained?

14 MR. FALCONER: The point of order  
15 advanced is as follows, that the Klippenstein motion was  
16 before Convocation, there was a series of amendments,  
17 including amendments by Mr. Charette from the StopSOP  
18 slate.

19 The short answer is: Their motion was  
20 before Convocation, they did not like the look of the  
21 lay of the land so they determined to withdraw the  
22 motion. A determination to withdraw a motion isn't a  
23 light matter with all of the eyes upon us and all of the  
24 energy and time that's been put, but they did that. It  
25 would be an abuse of the process of this Convocation to

1 turn around and bring that motion back on literally on  
2 the turn of a dime, because I can tell my friends that  
3 my next step immediately after a ruling on this point of  
4 order is to bring back on the Groia/Donnelly motion to  
5 amend. And Ground Hog Day is here, folks. And, you  
6 know, our entitlement, our right to self-regulate is  
7 predicated on us actually getting something done in a  
8 day.

9 Now, what happened? The net effect does  
10 not make the StopSOPers happy because the net effect is  
11 that the current status quo remains. It is a huge  
12 mistake to start all over again today, and it's an abuse  
13 of the process.

14 I assume that the slate that determined  
15 they wished to withdraw that motion not half an hour ago  
16 did so in a deliberative fashion. They shouldn't be  
17 entitled to turn on a dime and reverse it, and that's  
18 what they're doing. And I simply point out that it  
19 becomes this inevitable tactical back-and-forth because,  
20 of course, once you rule that that motion can go there  
21 couldn't possibly be a reason, as a matter of fairness  
22 or equity, that a motion to amend can't also go, and  
23 we're right back where we started, and that doesn't look  
24 good on any of us.

25 So I understand the disappointment, but

1 that decision to withdraw was real. It was done by a  
2 group after deliberation. They shouldn't be entitled to  
3 simply reverse it on a whim. And if they are, then  
4 obviously the rest of us will be required to do the same  
5 thing, and I just see no end in sight.

6 So I just encourage us to recognize that  
7 we did know the results of our votes, and those results  
8 are done, including the decision to withdraw.

9 TREASURER MERCER: Mr. Horgan, I'm going  
10 to give you a chance to respond, given it's your motion.

11 MR. HORGAN: It's interesting because it  
12 relates back to the original objection raised by Dr.  
13 Alford to the nature of an amending motion, which you  
14 allowed, as opposed to treating it as a standalone  
15 motion.

16 What I propose to do is have the  
17 original, independent motion of Klippenstein and Lean  
18 brought back expressly for the point that you've just  
19 raised about seeking to understand the will of  
20 Convocation because we didn't get a chance to vote for  
21 the clean repeal option. Those were one of the three  
22 options you laid out today. We did not get a chance to  
23 vote on that.

24 My motion now allows for a clean  
25 expression of the will of Convocation on a clean repeal.

1                   MR. FALCONER: Treasurer, I'd like to  
2 move an amendment to Mr. Horgan's motion, and it's going  
3 to be seconded by Ms. Donnelly, and it will be identical  
4 to the motion to amend that was before Convocation a  
5 couple of hours ago.

6                   MR. GROIA: It was defeated, that motion.

7                   TREASURER MERCER: Correct. Yes.

8                   MR. FALCONER: And you just withdrew your  
9 motion.

10                  TREASURER MERCER: So can we do this in  
11 an orderly way? There's a high question whether that's  
12 possible, but please don't speak out of turn and debate  
13 across with each other.

14                  It seems to me that the motion to amend  
15 is out of order as abusive. It does get us into the  
16 never-ending circle that's been described. Those who  
17 voted in favour of the Groia/Donnelly amendment, the  
18 majority, then chose to vote against the motion as  
19 amended, and it failed, and so I think I have to view  
20 that as a failed amendment, and, in effect, it's  
21 deprived Convocation of the ability to reach a decision  
22 on the question.

23                  And so I'm going to rule the motion to  
24 amend out of order, and I'm going to conclude that the  
25 Horgan motion is in order.

1                   MR. GROIA: Could I move an amendment  
2 asking Convocation to vote on whether the Horgan  
3 amendment -- or the Horgan motion is an abuse of process  
4 of Convocation? And I have Mr. Cooper to second that  
5 amendment.

6                   MR. COOPER: And I second that.

7                   TREASURER MERCER: I think actually what  
8 you'd have to do -- I think you can get there, but I  
9 don't think you can do it that way. I think that the  
10 motion -- the conclusion I just reached is capable of  
11 appeal.

12                   MR. GROIA: Then, I would ask for an  
13 appeal of your decision.

14                   TREASURER MERCER: I'm going to allow ten  
15 minutes on each side to explain their positions on  
16 appeal, and then we'll vote.

17                   Mr. Groia, you've sought to appeal?

18                   MR. GROIA: Yes, Treasurer. The basis  
19 for my appeal is one of procedural fairness and also  
20 respect for the votes that have been taken today. After  
21 a long and anxious debate, a decision was made not to go  
22 forward with the original Klippenstein motion. It was  
23 made on the basis that Convocation wished to have an  
24 opportunity to vote on a voluntary or a mandatory SOP,  
25 and Convocation did not want to have the hard and what

1 I'll call mean-spirited option that comes from a repeal  
2 or no-repeal option.

3 MR. GOLDSTEIN: Point of order, please?

4 Earlier, Mr. Treasurer, you had indicated  
5 not to use language such as Mr. Groia's using. It's  
6 imputing mean intentions.

7 MR. KLIPPENSTEIN: The motion was, I  
8 would submit, anything but mean-spirited. It was  
9 principled and thoughtful. So that was inappropriate of  
10 Mr. Groia, I would respect.

11 TREASURER MERCER: Can we have one  
12 objection at a time? And can I simply ask -- so we  
13 don't have to end up in a procedural mess worse than  
14 we're in, Mr. Groia, could I simply ask that you limit  
15 the rhetoric if you can just so that we're not getting  
16 into issues we don't have to get into.

17 MR. GROIA: I'll go further and withdraw  
18 the comment that the attempt to withdraw the motion was  
19 mean-spirited, and I regret any offence that that may  
20 have caused.

21 But let's come back to where we are.  
22 What essentially is being done by allowing this motion  
23 to proceed is a frustration of the will of Convocation  
24 on a vote that was taken not more than two hours ago.  
25 And so by allowing this debate to continue today

1 essentially, in my respectful submission, you're doing  
2 exactly what we ought not to be doing.

3 This has become divisive, it has become  
4 damaging, and I think the appropriate outcome,  
5 Treasurer, would be to allow these matters to be put  
6 over, I'm suggesting until next year, so we can get on  
7 with other business.

8 And to allow Mr. Horgan's vote, in my  
9 view you made an incorrect ruling and it amounts to an  
10 abuse of the process of this Convocation, and on that  
11 basis I'm asking you to rule this motion by Mr. Horgan  
12 out of order.

13 TREASURER MERCER: I think we're on the  
14 appeal of my motion to do something else, but I take the  
15 substance of your point.

16 MR. GROIA: We get to the same place.

17 MR. FALCONER: Point of order. I just  
18 want to make sure we don't have to go backwards and have  
19 a technical issue. It requires two benchers to file an  
20 appeal, so I'm prepared to be the second bencher.

21 MR. COOPER: I seconded it.

22 TREASURER MERCER: Mr. Cooper already  
23 has, I'm told.

24 DR. ALFORD: Is there a debate on this  
25 appeal, Mr. Treasurer?

1                   TREASURER MERCER: I'm going to try to  
2 limit it to I said ten minutes on the Groia side, and  
3 then I'll follow with ten minutes on the Horgan side.  
4 So if there's anybody who wishes to follow Mr. Groia?  
5 Mr. Braithwaite.

6                   MR. BRAITHWAITE: The concern that I have  
7 with respect to this whole process is that when the  
8 Groia/Donnelly motion was defeated it was based on the  
9 fact that the Klippenstein motion was gone, and so to  
10 put us in the situation now where it's been raised again  
11 misleads this whole Convocation. So I think it's  
12 inappropriate that we should be voting on it or that the  
13 Klippenstein -- or that the Groia/Donnelly motion be  
14 denied because it was voted on based on a certain  
15 purpose, and that purpose was that the Klippenstein  
16 motion was gone, and so that would have left -- that  
17 would have left this Convocation with its will, and the  
18 will was that the original motion, the SOP, remain.

19                   TREASURER MERCER: Mr. Falconer?

20                   MR. FALCONER: This is an appeal, and  
21 respectfully I'm suggesting to you, Treasurer, that are  
22 you were wrong to find a difference between the Horgan  
23 motion basically bringing back on the Klippenstein  
24 motion and the Groia/Donnelly motion bringing back on  
25 their motion. There is no principled difference between

1 the two actions. Both of them are either ill-advised  
2 and we should all go home or they're both okay.

3 But you drew a line, respectfully,  
4 arbitrary. Honestly, from a point of view of principle,  
5 they're both the same problem or they can both stand.  
6 To have picked one is the error that makes your ruling,  
7 respectfully, incorrect, and I say and encourage us as  
8 Convocation to appreciate that at this stage we should  
9 simply find that ultimately that ruling was incorrect  
10 when you said that the Horgan motion was in order, that  
11 we should find as a Convocation that it was out of  
12 order, and that would leave us in the position of all  
13 going home.

14 TREASURER MERCER: Yes, I think you're  
15 confused as to what's on the table, Mr. Falconer. Mr.  
16 Groia moved an amendment. I ruled the amendment out of  
17 order. There is an appeal from that question.

18 MR. FALCONER: Which is what I thought I  
19 just said.

20 TREASURER MERCER: No, you just talked  
21 about the Horgan motion and said that Convocation should  
22 vote to say the Horgan motion was out of order.

23 MR. FALCONER: Fair enough. You  
24 correctly quoted me, Treasurer, so I stand corrected in  
25 this sense. I am asking Convocation to determine that

1 like the motion by Horgan -- well, actually, if you can  
2 appeal the ruling that it's out of order, why can't you  
3 appeal the ruling that it's in order?

4 TREASURER MERCER: Well, you might, but  
5 that's not what's happened.

6 MR. FALCONER: Well, actually, I did say  
7 "appeal". So I thought that's what we were arguing.

8 TREASURER MERCER: Sorry, you're quite  
9 right, and it seemed to me that the difference was I had  
10 concluded that the amendment was an abuse of process,  
11 which I considered to be not a mere matter of procedure  
12 and that that was capable of appeal.

13 MR. FALCONER: And I say both as a point  
14 of order and the appeal, which I'm sure Ms. Lewis will  
15 second me on, that we're entitled to appeal both  
16 rulings, the ruling that one's in order and the ruling  
17 that the other is out of order. They're both exactly  
18 the same.

19 TREASURER MERCER: Well, let's get on  
20 with the appeal that we're actually getting on with, and  
21 then we can deal with your issue.

22 MR. FALCONER: Thank you.

23 TREASURER MERCER: Certainly. So let's  
24 just be clear because Mr. Varro has a different view  
25 than I do. What I understand Mr. Groia did was move to

1 amend in accordance with the amendment previously  
2 brought. Is that not right, Mr. Groia?

3 MR. GROIA: I'm sorry, I was talking to  
4 my seconder, Treasurer. Would you mind kindly repeating  
5 that?

6 TREASURER MERCER: My understanding and  
7 recollection is that you brought a motion to amend the  
8 Horgan motion and that that -- I concluded and directed  
9 that that was out of order, and there is an appeal from  
10 my decision in that respect. Do I have that right?

11 MR. GROIA: That's correct.

12 TREASURER MERCER: Mr. Horgan, can you  
13 respond? We've had submissions by three benchers in  
14 favour of the appeal.

15 MR. HORGAN: I would oppose the appeal  
16 and vote in favour of your ruling that the amendment is  
17 out of order essentially because that vote is already  
18 had. In fact, it's actually the further reason why the  
19 original Klippenstein/Lean motion, which is now a  
20 Horgan/Pollock motion for a clean repeal, is in order.

21 When we started this day we took  
22 exception to this effort to amend, which was a  
23 substantial change to the original motion. You made a  
24 ruling on that. We've now not had the opportunity to  
25 vote on the one option that you laid out to us earlier

1 today, being three options, which is the clean repeal  
2 option.

3 In the circumstances, it would be rather  
4 unfair and rather arbitrary, to use Mr. Falconer's  
5 words, to effectively allow the amended motion to be  
6 voted upon but not the original.

7 So in terms of the appeal, I don't think  
8 much more need be said, but it seems to me I support  
9 your ruling. I oppose the appeal.

10 TREASURER MERCER: Is there anybody who  
11 wishes or thinks it's necessary to add to that?

12 MS. LEWIS: Just a further point of  
13 order. Mr. Mercer, I think there is a fundamental  
14 difference here. What we voted on is rejecting the --

15 TREASURER MERCER: Now, you're making a  
16 submission on the appeal, and I had already called for  
17 submissions on the appeal side. Are you making a  
18 submission on the appeal, or are you making a different  
19 point of order?

20 MS. LEWIS: Well, I think there's a  
21 distinction that we haven't fully appreciated, and I'd  
22 like to articulate that.

23 TREASURER MERCER: All right. Please  
24 proceed briefly.

25 MS. LEWIS: So my point is I think

1       there's a difference between rejecting the amendment and  
2       rejecting the amended motion.  So we, as Convocation,  
3       have never voted on the motion tabled as amended.  So I  
4       think it's important that when you rule that this is an  
5       abuse of process we've actually as a Convocation have  
6       not voted on the motion that has been amended.

7                   TREASURER MERCER:  I'm sorry, I thought  
8       that we voted on the motion in exactly those terms as  
9       was put forward by amendment by Mr. Groia and  
10      Ms. Donnelly.

11                   MS. LEWIS:  But there's a difference  
12      between a motion that has been brought and then amended  
13      and then brought anew as a new and separate motion.  
14      Those are two, in my mind, two very different things.  
15      And we have not voted as Convocation on the motion, the  
16      Klippenstein motion as amended by the Groia motion, and  
17      I think we ought to vote on that motion because we  
18      haven't had an opportunity to vote on that motion.

19                   TREASURER MERCER:  All right.  Well, I'll  
20      only say they're substantially identical although they  
21      come to Convocation in different ways.

22                   Mr. Horgan, do you have anything further  
23      to say?

24                   MR. HORGAN:  We spoke a lot this week at  
25      Calls to the Bar about the courage to make known our

1 views. All I'm seeking through this appeal by upholding  
2 your decision is to allow my motion to proceed so that  
3 we get the will of the Convocation and understand each  
4 other rather clearly going forward. Thank you.

5 TREASURER MERCER: Mr. Varro, could you  
6 call the roll on the appeal.

7 SECRETARY: Benchers, just to repeat, the  
8 question you will need to answer is: Should the ruling  
9 of the Treasurer be upheld? If you agree with the  
10 ruling, you answer "yes". If you don't agree with the  
11 ruling that it should be upheld, you answer "no".

12 MR. FALCONER: Could you please  
13 articulate the ruling?

14 TREASURER MERCER: I held that  
15 Mr. Groia's motion was out of order, the motion to amend  
16 was out of order.

17 MR. BURD: Treasurer? Treasurer, now  
18 that are the phones are not on mute, you haven't  
19 afforded anyone on the phone an opportunity to speak.

20 TREASURER MERCER: That's entirely true.  
21 It seems to me we --

22 MR. BURD: I put forth a motion to  
23 adjourn for the following reason.

24 TREASURER MERCER: Your motion is out of  
25 order.

1 MR. BURD: When --

2 TREASURER MERCER: We've had a motion.

3 MR. BURD: You said a motion to adjourn  
4 could be done at any point in time in the proceedings.

5 TREASURER MERCER: Ah, come on.

6 UNIDENTIFIED SPEAKER: Point of order,  
7 Treasurer?

8 MR. BURD: I say that, Treasurer, because  
9 we have now lost two voters because of the time  
10 constraint. It is now ten after 6:00. I can no  
11 longer -- I have other commitments. And if we want the  
12 will of Convocation, it should be Convocation in its  
13 entirety, not dragged on to the point where people have  
14 not been given/afforded an opportunity to vote. At no  
15 point in time should anyone have expected that at seven  
16 o'clock tonight we would still be voting on this issue.  
17 I think it's unfair, and I don't think it's due process,  
18 and I would ask that I get a seconder on the motion to  
19 adjourn.

20 MR. FALCONER: I second Mr. Burd's motion  
21 to adjourn.

22 DR. ALFORD: Point of order,  
23 Mr. Treasurer. I believe you have the authority to say  
24 that multiple motions to adjourn are abusive, and I  
25 would support that ruling.

1                   TREASURER MERCER: Yes, the last one was  
2 a motion to table.

3                   MR. FALCONER: I was told at the time  
4 that a motion to table is not the same as a motion to  
5 adjourn. That's why I just seconded Mr. Burd's motion  
6 to adjourn.

7                   TREASURER MERCER: So I think Mr. Burd is  
8 right, and I apologize for reacting intemperately to it.  
9 A motion to adjourn has been brought. It can be brought  
10 at any time. It is not debatable. And let's have a  
11 roll call on the motion to adjourn.

12                   MR. FALCONER: I assume voting "yes"  
13 means to adjourn and voting "no" means not to?

14                   TREASURER MERCER: Correct.

15                   SECRETARY: Mr. Adourian?

16                   MR. ADOURIAN: No.

17                   SECRETARY: Dr. Alford?

18                   DR. ALFORD: No.

19                   SECRETARY: Mr. Bateman?

20                   MR. BATEMAN: (Inaudible)

21                   TREASURER MERCER: Adjourn is "yes".  
22 Don't adjourn is "no".

23                   MR. BATEMAN: Yes.

24                   SECRETARY: Mr. Braithwaite?

25                   MR. BRAITHWAITE: This will be my first

1 "yes" of the day.

2 SECRETARY: Mr. Brown?

3 MR. BROWN: No.

4 SECRETARY: Mr. Burd?

5 MR. BURD: Yes.

6 SECRETARY: Mr. Charette?

7 MR. CHARETTE: No.

8 SECRETARY: Mr. Chiummiento?

9 MR. CHIUMMIENTO: No.

10 SECRETARY: Mr. Cooper?

11 MR. COOPER: Yes.

12 SECRETARY: Ms. Corbiere?

13 MS. CORBIERE: (Inaudible)

14 SECRETARY: Ms. Corsetti?

15 MS. CORSETTI: Yes.

16 SECRETARY: Mr. Da Silva?

17 MR. DA SILVA: Yes.

18 SECRETARY: Mr. Desgranges?

19 MR. DESGRANGES: No.

20 SECRETARY: Ms. Donnelly?

21 MS. DONNELLY: Yes.

22 SECRETARY: Mr. Epstein?

23 MR. EPSTEIN: Yes.

24 SECRETARY: Mr. Esquega?

25 MR. ESQUEGA: Yes.

1 SECRETARY: Mr. Fagan.  
2 MR. FAGAN: No.  
3 SECRETARY: Mr. Falconer?  
4 MR. FALCONER: Yes.  
5 SECRETARY: Mr. Goldstein?  
6 MR. GOLDSTEIN: No.  
7 SECRETARY: Mr. Graham?  
8 MR. GRAHAM: No.  
9 SECRETARY: Mr. Groia?  
10 MR. GROIA: Yes.  
11 SECRETARY: Mr. Horgan?  
12 MR. HORGAN: No.  
13 SECRETARY: Ms. Horvat?  
14 MS. HORVAT: Yes.  
15 SECRETARY: Mr. Klippenstein?  
16 MR. KLIPPENSTEIN: No.  
17 SECRETARY: Ms. Lalji?  
18 MS. LALJI: No.  
19 SECRETARY: Dr. Lau?  
20 DR. LAU: Yes.  
21 SECRETARY: Ms. Lean?  
22 MS. LEAN: No.  
23 SECRETARY: Ms. Lewis?  
24 MS. LEWIS: Yes.  
25 SECRETARY: Ms. Lippa?

1 MS. LIPPA: No.

2 SECRETARY: Ms. Lockhart?

3 MS. LOCKHART: Yes.

4 SECRETARY: Ms. Lomazzo?

5 MS. LOMAZZO: Yes.

6 SECRETARY: Mr. Lyon?

7 MR. LYON: No.

8 SECRETARY: Mr. Marshall?

9 MR. MARSHALL: No.

10 SECRETARY: Ms. Merali?

11 MS. MERALI: Yes.

12 SECRETARY: Ms. Painchaud?

13 MS. PAINCHAUD: (No audible response)

14 SECRETARY: Ms. Papageorgiou?

15 MS. PAPAGEORGIU: Yes.

16 SECRETARY: Mr. Parry?

17 MR. PARRY: No.

18 SECRETARY: Mr. Pineda?

19 MR. PINEDA: No.

20 SECRETARY: Mr. Poliacik?

21 MR. POLIACIK: No.

22 SECRETARY: Mr. Pollock?

23 MR. POLLOCK: No.

24 SECRETARY: Mr. Prill?

25 MR. PRILL: No.

1 SECRETARY: Mr. Sheff?  
2 MR. SHEFF: Yes.  
3 SECRETARY: Ms. Shi?  
4 MS. SHI: No.  
5 SECRETARY: Ms. Shin Doi?  
6 MS. SHIN DOI: Yes.  
7 SECRETARY: Ms. Shortreed?  
8 MS. SHORTREED: Yes.  
9 SECRETARY: Mr. Spurgeon?  
10 MR. SPURGEON: Yes.  
11 SECRETARY: Mr. Troister?  
12 MR. TROISTER: Yes.  
13 SECRETARY: Ms. Walker?  
14 MS. WALKER: (No audible response)  
15 SECRETARY: Mr. Wellman?  
16 MR. WELLMAN: No.  
17 SECRETARY: Mr. Wilkes?  
18 MR. WILKES: No.  
19 SECRETARY: Ms. Wilkinson?  
20 MS. WILKINSON: Yes.  
21 SECRETARY: Mr. Wright?  
22 MR. WRIGHT: No.  
23 --- Off-the-record discussion.  
24 MS. SELLERS: I didn't hear my name. Are  
25 we going to have a vote to --

1 UNIDENTIFIED FEMALE SPEAKER: Who is  
2 that?

3 MS. SELLERS: I do not vote to adjourn.

4 --- Off-the-record discussion.

5 SECRETARY: It's a tie vote: 25 for, 25  
6 against.

7 TREASURER MERCER: Ms. Sellers' vote was  
8 not included because she was not here when she was  
9 called. On the other hand, I'm going to not vote and  
10 reach the same result, which is the motion to adjourn  
11 fails.

12 Now call the roll on the appeal of my  
13 motion -- or appeal of my order that Mr. Groia's motion  
14 to amend was out of order. Mr. Groia will read it, but  
15 the question is whether or not my decision is upheld  
16 that the Groia amendment is out of order.

17 MR. FALCONER: So what does "yes" mean,  
18 and what does "no" mean?

19 TREASURER MERCER: "Yes" means that the  
20 motion cannot be amended, the motion to amend will not  
21 be considered; we will proceed with Mr. Horgan's motion  
22 unamended.

23 MR. FALCONER: Respectfully, Treasurer,  
24 may I simply suggest appeal is "yes", appeal is allowed,  
25 "no", appeal is not allow, so that we all --

1                   TREASURER MERCER: Yes, the by-law  
2 actually says what it has to be. Mr. Varro will now  
3 read what the by-law requires the motion to be.

4                   SECRETARY: The question for benchers is:  
5 Should the ruling of the Treasurer be upheld?

6                   TREASURER MERCER: Please proceed.

7                   SECRETARY: Mr. Adourian?

8                   MR. ADOURIAN: Yes.

9                   SECRETARY: Mr. Alford.

10

11                   DR. ALFORD: Yes.

12                   SECRETARY: Sorry. Dr. Alford.

13

14                   DR. ALFORD: Thank you.

15                   SECRETARY: Mr. Bateman?

16                   MR. BATEMAN: Yes.

17                   SECRETARY: Mr. Braithwaite?

18                   MR. BRAITHWAITE: No.

19                   SECRETARY: Mr. Brown?

20                   MR. BROWN: Yes.

21                   SECRETARY: Mr. Burd?

22                   MR. BURD: No.

23                   SECRETARY: Mr. Charette?

24                   MR. CHARETTE: Yes.

25                   SECRETARY: Mr. Chiummiento?

1 MR. CHIUMMIENTO: Yes.

2 SECRETARY: Mr. Cooper?

3 MR. COOPER: No. No.

4 SECRETARY: Thank you. Ms. Corbiere.

5 MS. CORBIERE: No.

6 SECRETARY: Ms. Corsetti?

7 MS. CORSETTI: No.

8 SECRETARY: Mr. Da Silva?

9 MR. DA SILVA: No.

10 SECRETARY: Mr. Desgranges?

11 MR. DESGRANGES: Yes.

12 SECRETARY: Ms. Donnelly?

13 MS. DONNELLY: No.

14 SECRETARY: Mr. Epstein?

15 MR. EPSTEIN: No.

16 SECRETARY: Mr. Esquega?

17 MR. ESQUEGA: No.

18 SECRETARY: Mr. Fagan.

19 MR. FAGAN: Yes.

20 SECRETARY: Mr. Falconer?

21 MR. FALCONER: No.

22 SECRETARY: Mr. Goldstein?

23 MR. GOLDSTEIN: Yes.

24 SECRETARY: Mr. Graham?

25 MR. GRAHAM: Yes.

1 SECRETARY: Mr. Groia?  
2 MR. GROIA: No.  
3 SECRETARY: Mr. Horgan?  
4 MR. HORGAN: Yes.  
5 SECRETARY: Ms. Horvat?  
6 MS. HORVAT: No.  
7 SECRETARY: Mr. Klippenstein?  
8 MR. KLIPPENSTEIN: Yes.  
9 SECRETARY: Ms. Lalji?  
10 MS. LALJI: Yes.  
11 SECRETARY: Dr. Lau?  
12 DR. LAU: No.  
13 SECRETARY: Ms. Lean?  
14 MS. LEAN: Yes.  
15 SECRETARY: Ms. Lewis?  
16 MS. LEWIS: No.  
17 SECRETARY: Ms. Lippa?  
18 MS. LIPPA: Yes.  
19 SECRETARY: Ms. Lockhart?  
20 MS. LOCKHART: No.  
21 SECRETARY: Ms. Lomazzo?  
22 MS. LOMAZZO: No.  
23 SECRETARY: Mr. Lyon?  
24 MR. LYON: Yes.  
25 SECRETARY: Mr. Marshall?

1 MR. MARSHALL: Yes.

2 SECRETARY: Ms. Merali?

3 MS. MERALI: No.

4 SECRETARY: Ms. Painchaud?

5 MS. PAINCHAUD: (No audible response)

6 SECRETARY: Ms. Papageorgiou?

7 MS. PAPAGEORGIOU: No.

8 SECRETARY: Mr. Parry?

9 MR. PARRY: Yes.

10 SECRETARY: Mr. Pineda?

11 MR. PINEDA: Yes.

12 SECRETARY: Mr. Poliacik?

13 MR. POLIACIK: Yes.

14 SECRETARY: Mr. Pollock?

15 MR. POLLOCK: Yes.

16 SECRETARY: Mr. Prill?

17 MR. PRILL: Yes.

18 SECRETARY: Ms. Sellers?

19 MS. SELLERS: No.

20 SECRETARY: Mr. Sheff?

21 MR. SHEFF: No.

22 SECRETARY: Ms. Shi?

23 MS. SHI: (No audible response)

24 SECRETARY: Ms. Shin Doi?

25 MS. SHIN DOI: No.

1 SECRETARY: Ms. Shortreed?

2 MS. SHORTREED: No.

3 SECRETARY: Thank you. Mr. Spurgeon.

4 MR. SPURGEON: (No audible response)

5 SECRETARY: Mr. Troister?

6 MR. TROISTER: No.

7 SECRETARY: Ms. Walker?

8 MS. WALKER: (No audible response)

9 SECRETARY: Mr. Wellman?

10 MR. WELLMAN: No.

11 SECRETARY: Mr. Wilkes?

12 MR. WILKES: Yes.

13 SECRETARY: Ms. Wilkinson?

14 MS. WILKINSON: No.

15 SECRETARY: Mr. Wright?

16 MR. WRIGHT: Yes.

17 SECRETARY: The answer to the question is  
18 no: 25 for, 26 against.

19 TREASURER MERCER: If I understand  
20 correctly, and I just want to be sure that I do, it  
21 seems to me that we are where we were now a couple or  
22 three hours ago. We have Mr. Groia's motion to amend  
23 the motion, the same substantive motion which was  
24 originally brought by Mr. Klippenstein.

25 And there are two ways forward. One is

1 to decide that we're in an infinite loop, which would be  
2 how engineers would think of this potentially. The  
3 other is to promptly call the roll on the amendment  
4 and on whatever the main motion is and see if we're  
5 different.

6 MR. FALCONER: And point of order,  
7 Treasurer. We are -- I don't call it an infinite loop.  
8 I call it a gong show. In ten years I've been a  
9 bencher. I am the oldest elected -- longest standing  
10 elected lawyer bencher in the room, and I have never  
11 experienced this, and I'm saying that we need to bring  
12 it to an end. And I understand the challenge we have  
13 presented to you, Treasurer; in other words, we have  
14 been a challenge to you, and I get that. And so we're  
15 all responsible for where we're at.

16 TREASURER MERCER: But if you're making a  
17 point of order --

18 MR. FALCONER: Yes, I am.

19 TREASURER MERCER: -- you have to tell me  
20 what to do.

21 MR. FALCONER: So the point of order is  
22 this. You have the power now with the will of  
23 Convocation having been made clear, with certain votes  
24 having actually been determined -- because of the length  
25 of time, Tanya Walker ultimately had to get on a plane.

1 You have the power now to adjourn this thing because of  
2 what you've called the "infinite loop". And my point of  
3 order to you is to no longer put questions to  
4 Convocation.

5 We are absolutely gassed. We are not  
6 making good decisions. A boiler-room approach to our  
7 deliberations is not consonant with the public interest.  
8 So what I'm imploring you to do is step in and simply  
9 call this thing for what it is, which is it needs to be  
10 put off to another time. Let cooler heads prevail down  
11 the road where we have good discussions, either in  
12 committee or informally, so that we bring this thing  
13 back on in an appropriate way.

14 So my point of order is: Do not present  
15 us with more options because honestly --

16 TREASURER MERCER: I understand you.

17 MR. FALCONER: -- there's a capacity  
18 issue.

19 TREASURER MERCER: If you could be simple  
20 in your presentation.

21 MR. DA SILVA: I second Julian's motion  
22 to adjourn.

23 TREASURER MERCER: Well, let me just --  
24 he raised a point of order, he didn't move to adjourn.  
25 So we could try to help each other and stay simple?

1 MR. DA SILVA: I'd like to move to  
2 adjourn, Mr. Treasurer, if I may.

3 MR. FALCONER: Please consider my point  
4 of order a motion to adjourn. And please consider my --  
5 if I am too late with that, I will second the motion to  
6 adjourn.

7 TREASURER MERCER: Who has moved to  
8 adjourn?

9 MR. DA SILVA: Orlando Da Silva.

10 MR. FALCONER: And I will second that.

11 MR. GOLDSTEIN: Point of order,  
12 Mr. Treasurer. I just wanted to say that maybe because  
13 I'm younger than Mr. Falconer and just more recently  
14 elected that my capacity is in full swing. I'm prepared  
15 to stay on. Maybe I just have more stamina than Mr.  
16 Falconer.

17 UNIDENTIFIED SPEAKER: Can I speak to the  
18 motion?

19 TREASURER MERCER: Thank you for that  
20 assistance. If you could just wait a moment before we  
21 continue.

22 UNIDENTIFIED SPEAKER: Speak to the  
23 motion, Mr. Treasurer?

24 TREASURER MERCER: No. It's a motion to  
25 adjourn; it's not capable of debate. Would you please

1 stop for a moment so I can consult with Mr. Varro.

2 --- Off-the-record discussion.

3 MR. FALCONER: I've just been apprised  
4 that two of our benchers on the phone have kids  
5 graduating, and they are sitting on the phone.

6 TREASURER MERCER: Please stop,  
7 Mr. Falconer.

8 --- Recess taken at 6:15 p.m.

9 --- On resuming at 6:26 p.m.

10 TREASURER MERCER: Section 75 of by-law 3  
11 gives me the broad ability to waive compliance with any  
12 requirement, alter any requirement, abridge or extend  
13 any time period mentioned in this part in respect of  
14 Convocation. Subsection (3) provides that any matter or  
15 procedure not provided for in this matter may be  
16 determined by the Treasurer.

17 Section 80 says, unless otherwise  
18 provided, the business and the order of business at  
19 Convocation shall be determined by the Treasurer.

20 It seems to me that unless the movers of  
21 the motion to adjourn object, I can conclude that we are  
22 at a point where it is reasonable, given the unusual  
23 circumstances in which we find ourselves, the length of  
24 time that we've been debating and, at least speaking for  
25 myself, the tiredness which is starting to cloud

1 judgment, that I propose to adjourn Convocation to a  
2 Special Convocation in July to continue that which is  
3 before Convocation.

4 I think I have to take the motion to  
5 adjourn unless those who have moved it though are  
6 prepared to allow me to proceed.

7 MR. DA SILVA: Mr. Treasurer, I'm the  
8 mover. I'm prepared to allow you to proceed.

9 TREASURER MERCER: Thank you. In the  
10 circumstances, and so we can have a certain time to  
11 think about the unusual situation in which we find  
12 ourselves, I'm going to adjourn Convocation to a date to  
13 be set in July. And I thank you.

14 --- Whereupon proceedings adjourned at 6:26 p.m.

15

16

WE HEREBY CERTIFY THE FOREGOING

17

to be a true and accurate

18

transcription of our shorthand notes

19

to the best of our skill and ability.

20

21

---

SHARI CORKUM, CSR

22

CAROL DENMAN, CSR

23

Chartered Shorthand Reporters

24

25