

MINUTES OF CONVOCATION

Thursday, 27th February, 2020
9:00 a.m.

PRESENT:

The Treasurer (Malcolm M. Mercer), Adourian, Alford, Armstrong, Banack (by telephone), Braithwaite, Brown, Burd, Charette, Chiumminto, Cooper, Corbiere, Corsetti, Desgranges, Donnelly, Epstein, Esquega, Fagan, Falconer, Ferrier, Goldstein, Graham, Groia, Horgan, Horvat, Klippenstein, Krishna (by telephone), Lalji, Lau, Lean, Lewis, Lippa, Lockhart (by telephone), Lomazzo, Lyon (by telephone), Marshall, Merali (by telephone), Minor, Painchaud, Papageorgiou, Parry, Pineda (by telephone), Poliacik, Pollock, Prill, Rosenthal, Sellers, Sheff, Shi (by telephone), Shin Doi, Shortreed, Spurgeon, Strosberg, Troister, Walker (by telephone), Wellman, Wilkes, Wilkinson, N. Wright (by telephone).

.....

Secretary: James Varro

The Reporter was sworn.

IN PUBLIC

TREASURER'S REMARKS

The Treasurer welcomed those joining Convocation by public webcast.

The Treasurer recognized that Convocation is meeting in Toronto which is a Mohawk word that means "where there are trees standing in the water".

The Treasurer acknowledged that Convocation is meeting on the traditional territory of the Mississaugas of New Credit First Nation and acknowledged the Haudenosaunee, and the long history of all of the First Nations in Ontario and the Métis and Inuit peoples. The Treasurer thanked the First Nations people who lived and live in these lands for sharing them with us in peace.

The Treasurer addressed the protocol for Convocation in the Lamont Learning Centre.

The Treasurer expressed condolences to the family of Peter W. Hogg, CC, Q.C., FRSC, a renowned legal scholar and lawyer, who passed away on February 4, 2020.

The Treasurer expressed condolences to the family of appointed benchers Robert Bateman, who passed away on February 10, 2020.

The Treasurer congratulated former Treasurer Janet E. Minor who was granted an honorary LL.D. at the Call to the Bar ceremony on January 31, 2020.

The Treasurer noted the candidates who were called to the bar on January 31, 2020 listed at Tab 1.3.2 of the Convocation materials.

The Treasurer noted for benchers information reports in the Convocation materials from the Professional Regulation Committee and the Law Society Tribunal.

MOTION – CONSENT AGENDA – Tab 1

It was moved by Mr. Burd, seconded by Mr. Troister, that Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

Carried

Tab 1.1 – DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of November 29, 2019 were confirmed.

Tab 1.2 – MOTIONS

Re: Tab 1.2.1 – Annual General Meeting

THAT Convocation approve Wednesday May 13, 2020 at 5:15 p.m. at Osgoode Hall, 130 Queen Street West, Toronto as the time and place of the 2020 Annual General Meeting, in accordance with Section 5 of By-Law 2 [Corporate Provisions].

Carried

Re: Tab 1.2.2 – Tribunal Appointments

HEARING DIVISION

That the following be reappointed to the Hearing Division of the Law Society Tribunal for a term from March 14, 2020 to March 11, 2022:

- S. Margot Blight
- Barbara A. Laskin
- Michelle Lomazzo
- Anna Mascieri-Boudria
- W. Andrew Oliver
- Maurice A. Portelance
- Frederika Rotter

APPEAL DIVISION

That S. Margot Blight and Frederika Rotter be reappointed to the Appeal Division of the Law Society Tribunal for a term from March 14, 2020 to March 11, 2022.

Carried

Tab 1.3 – REPORT OF THE EXECUTIVE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

THAT the Report of the Executive Director of Professional Development and Competence listing the names of the call to the bar candidates be adopted.

Carried

PARALEGAL STANDING COMMITTEE REPORT

Mr. Burd presented the Report.

Re: Ending Licensee Exemption for Injured Workers' Groups

It was moved by Mr. Burd, seconded by Ms. Shortreed, that Convocation approve amendments to By-Law 4, as detailed in the motion at Tab 2.1.1 of the Convocation materials.

Carried

Re: Amendments to the Conflict of Interest Rules – Pro Bono and Other Short-Term Legal Services

It was moved by Mr. Burd, seconded by Ms. Shortreed, that Convocation approve the amendments to Rule 3.04(18) to (22) of the *Paralegal Rules of Conduct* at Tabs 2.2.1 (English), 2.2.2 (English, redlined), 2.2.3 (French), and 2.2.4 (French, redlined) of the report, updating the rules regarding conflicts of interest in the provision of *pro bono* and other short-term legal services.

Carried

PRIORITY PLANNING COMMITTEE REPORT

Ms. Horvat presented the Report.

Re: 2019-2023 Law Society of Ontario Strategic Plan

It was moved by Ms. Horvat, seconded by Mr. Chiumminto, that Convocation approve the Strategic Plan for the Law Society of Ontario for the 2019-2023 bench term, as set out in the report.

Carried

AUDIT AND FINANCE COMMITTEE REPORT

Ms. Donnelly presented the Report.

Re: Compensation Fund Motion

Ms. Donnelly advised that the Recitals to the motion are amended to delete the word “Lawyer” in the second recital.

It was moved by Ms. Donnelly, seconded by Mr. Poliacik, that:

Whereas:

S51(1.1) of the Law Society Act (the “Act”) provides that “The Society shall maintain the [Compensation Fund] and shall hold it in trust for the purposes of this section.”

And Whereas:

Section 51(12) of the Act provides that “There may be paid out of the [Compensation Fund] the costs of its administration, including the costs of investigations and hearings and all other costs, salaries and expenses necessarily incidental to the administration of the Fund.”

And Whereas:

Commencing in or before 1990, a portion of Law Society investigation expenses and discipline expenses was allocated to the Compensation Fund on the basis that such expenses were costs of investigations and other necessarily incidental costs as contemplated by section 51(12) of the Act;

And Whereas:

In 1998, the Law Society established a spot audit program, on the recommendation of the Compensation Fund Committee, intended to avoid claims against the Compensation Fund and commenced allocation of spot audit expenses to the Compensation Fund;

And Whereas:

The amounts of expenses for investigation, discipline and spot audits (“additional expenses”) that were allocated to the Compensation Fund were disclosed annually in the Law Society’s audited financial statements;

And Whereas:

From 2013 to 2017, the total annual amounts of the additional expenses that were allocated to the Compensation Fund Levy were approximately eight million dollars;

And Whereas:

In 2017, the Audit and Finance Committee concluded “that the Compensation fund levy should be limited to the direct costs of the Compensation Fund” and the Compensation fund levy proposed by the Audit and Finance Committee and approved by Convocation has been on this basis for the Law Society’s fiscal years 2018, 2019 and 2020;

And Whereas:

There have been differences of opinion as to whether including the anticipated amount of the additional expenses in the Compensation Fund Levy and allocating the additional expenses to the Compensation Fund was in strict compliance with Section 51(12) of the Law Society Act (the "Act")

And Whereas:

In November 2019, a member of the Compensation Fund Committee presented his concerns about the additional expenses previously having been charged to the Compensation Fund in a memorandum dated October 30, 2019.

And Whereas:

It is desirable that Convocation establish a policy in regard to the allocation of expenses to the Compensation Fund;

It is the policy of Convocation that:

- a) no costs, salaries and expenses shall be allocated by the Law Society of Ontario to the Compensation Fund other than the direct costs, salaries and expenses of the Compensation Fund;
- b) the audited financial statements of the Law Society disclose whether any costs have been allocated to the Compensation Fund other than the direct costs of the Compensation Fund and that the Audit & Finance Committee shall report to Convocation annually in respect of such allocation; and
- c) An external legal opinion as to compliance with section 51(12) of the Act be obtained prior to any subsequent amendment to this policy which would have the effect of allocating any indirect costs, salaries or expenses to the Compensation Fund.

Ms. Shi, seconded by Mr. Goldstein, moved that the motion be amended as follows:

That Convocation replace paragraph (c) of the motion with the following:

- c) An application to a court of proper jurisdiction seeking direction as to what expenditure for the Compensation Fund and the levies collected under it shall be permitted in compliance with section 51, in particular subsections (2) and (12) of the *Act*, shall be obtained prior to any subsequent amendment to this policy which would have the effect of allocating any indirect costs, salaries or expenses to the Compensation Fund.

Lost

ROLL-CALL VOTE

Adourian	Against	Lewis	Against
Alford	For	Lippa	Against
Braithwaite	Against	Lockhart	Against
Brown	For	Lomazzo	Against
Burd	Against	Lyon	For
Charette	For	Marshall	Against
Chiummiento	Against	Merali	Against
Cooper	Against	Painchaud	Against
Corbiere	Against	Papageorgiou	Against
Corsetti	Against	Parry	Against
Desgranges	For	Poliacik	Against
Donnelly	Against	Pollock	Against
Epstein	Against	Prill	For
Esquega	Against	Rosenthal	Against
Fagan	For	Sellers	Against
Falconer	Against	Sheff	Against
Goldstein	For	Shi	For
Graham	Against	Shin Doi	Against
Groia	Against	Shortreed	Against
Horgan	Against	Spurgeon	Against
Horvat	Against	Troister	Against
Klippenstein	For	Wellman	Against
Lalji	Against	Wilkes	Against
Lau	Against	Wilkinson	Against
Lean	For	Wright	For

Vote: 12 For; 38 Against

Ms. Shi, seconded by Mr. Goldstein, moved that the motion be amended as follows:

That Convocation add after paragraph (c) of the motion the following:

- d) Audit and Finance Committee shall study and report back to Convocation as soon as possible on the feasibility of the following budgetary measures for the budgets of the next 9 years commencing on 2021:

- (i) waive the Compensation Fund levy or its equivalent, while all the while restoring and maintaining the dollar amount held in the Compensation Fund to and at its required level; and
- (ii) freeze annual dues at the level in the 2020 budget.

Lost

ROLL-CALL VOTE

Adourian	Against	Lewis	Against
Alford	For	Lippa	Against
Braithwaite	Against	Lockhart	Against
Brown	Against	Lomazzo	Against
Burd	Against	Lyon	For
Charette	For	Marshall	Against
Chiummiento	Against	Merali	Against
Cooper	Against	Painchaud	Against
Corbiere	Against	Papageorgiou	Against
Corsetti	Against	Parry	Against
Desgranges	For	Poliacik	Against
Donnelly	Against	Pollock	Against
Epstein	Against	Prill	For
Esquega	Against	Rosenthal	Against
Fagan	For	Sellers	Against
Falconer	Against	Sheff	Against
Goldstein	For	Shi	For
Graham	Against	Shin Doi	Against
Groia	Against	Shortreed	Against
Horgan	Against	Spurgeon	Against
Horvat	Against	Troister	Against
Klippenstein	For	Wellman	Against
Lalji	Against	Wilkes	Against
Lau	Against	Wilkinson	Against
Lean	For	Wright	For

Vote: 11 For; 39 Against

The main motion carried.

ROLL-CALL VOTE

Adourian	For	Lewis	For
Alford	For	Lockhart	For
Braithwaite	For	Lomazzo	For
Brown	For	Lyon	For
Burd	For	Marshall	For
Charette	For	Merali	For
Chiummiento	For	Painchaud	For
Cooper	For	Papageorgiou	For
Corbiere	For	Parry	For
Corsetti	For	Poliacik	For
Desgranges	For	Pollock	For
Donnelly	For	Prill	For
Epstein	For	Rosenthal	For
Esquega	For	Sellers	For
Fagan	For	Sheff	For
Falconer	For	Shi	For
Goldstein	For	Shin Doi	For
Graham	For	Shortreed	For
Groia	For	Spurgeon	For
Horgan	For	Troister	For
Horvat	For	Wellman	For
Klippenstein	For	Wilkes	For
Lalji	For	Wilkinson	For
Lau	For	Wright	For
Lean	For		

Vote: 49 For; 0 Against

For information:

- LawPRO Financial Statements for the Nine Months Ended September 30, 2019
- LibraryCo Inc. Financial Statements for the Nine Months Ended September 30, 2019

NOTICE OF MOTION

It was moved by Mr. Fagan, seconded by Mr. Brown:

WHEREAS

- (1) Benchers shall govern the affairs of the LSO in accordance with s. 10 of the *Law Society Act, R.S.O. 1990, c. L.8 as amended*; and
- (2) The Equity & Indigenous Affairs Committee (“EIAC”) of the LSO conducts meetings with Equity Advisory Group (“EAG”) representatives present from time to time to discuss the affairs of the LSO; and
- (3) EAG’s proper role in the EIAC is to assist the EIAC and the LSO by carrying out its work according to the EIAC’s accepted practice of resolving debates and disagreements and disputes within EIAC to the extent possible; and
- (4) An EAG representative has egregiously disrupted the accepted practice of EIAC in that the EAG representative
 - a. Deliberately disregarded the EIAC practice of resolving disputes and disagreements within the EIAC not long after a gathering of EIAC at which said representative was in attendance, and
 - b. Published on Twitter a serious and highly damaging allegation against a specific bencher without identifying the bencher,
 - c. Thereby seriously impugning the integrity of all benchers and Convocation, and infringing the privileges of Convocation; and
- (5) The LSO’s department of Discrimination & Harassment Counsel and at least one bencher re-published the highly damaging allegation with retweets thereby magnifying the damaging allegation; and
- (6) Redress for the conduct of the EAG representative and the DHC, and the proper safeguarding of bencher privileges against any possible further such conduct, are required in order to restore the rights and role and privileges of Convocation and LSO committees so that they may continue to be fora in which open discussion may occur without fear that injurious social media campaigns will be initiated and prolonged by participants and others within the LSO;

THAT Convocation hereby expresses its censure of the EAG representative for his serious and highly damaging Twitter allegation; and

THAT Convocation hereby expresses its censure of the DHC for the retweeting of the serious and highly damaging Twitter allegation.

The Treasurer ruled the motion out of order pursuant to s.91(2) of By-Law 3 as it concerns a matter in respect of which there could be a hearing conducted under the *Law Society Act*.

NOTICE OF MOTION

Mr. Fagan advised that with Mr. Brown's agreement the words "unelected persons" in paragraph (b) of the motion are replaced with "non-benchers".

It was moved by Mr. Fagan, seconded by Mr. Brown:

WHEREAS

- (1) Benchers shall govern the affairs of the LSO in accordance with s. 10 of the Law Society Act, R.S.O. 1990, c. L.8 as amended;
- (2) Benchers are entitled to attend all Standing Committee meetings in accordance with s. 115(2) of Bylaw 3 of LSO;
- (3) The Equity & Indigenous Affairs Committee ("EIAC") regularly accords to representatives of the Equity Advisory Group ("EAG") and other selected external groups the privilege of regular attendance and participation at EIAC Committee meetings and other EIAC events;
- (4) One such EIAC event occurred on January 16, 2020 in the form of a Talking Circle. On that occasion, EAG representatives were permitted to speak while several non-Committee member Benchers were not permitted to speak;
- (5) While EAG has a limited mandate to assist in the governance of the LSO, neither it nor its representatives take precedence over the statutory mandate of Benchers who are elected or appointed by the Provincial government pursuant to the LSO Act to govern LSO;
- (6) The above denial of the right of Benchers to speak while, in the same meeting, invited EAG advisors were permitted to do so breaches each Bencher's privileges;
- (7) Pursuant to Subsection 2(2) of the LSO Act, the LSO is constituted as a corporation without share capital that is subject to the provisions of the Corporations Act of Ontario, and whose directors are designated as Benchers by the LSO Act;
- (8) When the EIAC sits in Committee or conducts other EIAC events it exercises powers of Convocation delegated to it by Convocation;
- (9) The blanket denial of a Bencher's right of participation and speaking at any meeting or other event of an LSO Committee improperly impairs each Bencher, in exercising his or her powers and discharging his or her duties as a director pursuant to Subsection 127.1 (1) of the Corporations Act;
- (10) Denying a bencher the right to attend and to fully participate at a meeting of an LSO Committee or other Committee event, while at the same time according to non-benchers

the right to participate and speak at such meeting or event, therefore constitutes a violation of the Corporations Act.

That:

- (a) EIAC is hereby directed to recognize the right of all Benchers to attend, to participate and to speak at EIAC committee meetings and other EIAC events, subject only
 - i. to the exclusive right of the appointed Bencher members of such committee to vote on all matters coming before the committee, and
 - ii. the right of the chair of such meeting or event to give precedence to the appointed Bencher members of such committee, and to manage the meeting having regard to time constraints and other factors as seem relevant to the chair;

- (b) pending the report of the committee of Benchers referred to in paragraph (c) below, EIAC shall conduct its meetings without the regular attendance and participation of non-benchers, except for the purpose of allowing such persons to submit reports requested by the EIAC or make submissions to the EIAC, as permitted by the EIAC.

- (c) a committee of Benchers be appointed by Convocation at its next regular meeting to
 - i. study the question of the advisability of according to non-benchers the privilege of regular attendance and participation at meetings and other events of the Committees of Convocation.
 - ii. Study the advisability of creating and maintaining a standing group of unelected advisors such as the EAG.

Ms. Corbiere moved, seconded by Mr. Burd, that the motion be tabled.

Carried

ROLL-CALL VOTE

Adourian	Against	Lippa	Against
Alford	Against	Lockhart	For
Braithwaite	For	Lomazzo	For
Brown	Against	Lyon	Against
Burd	For	Marshall	Against
Charette	Against	Merali	For
Chiummiento	Against	Painchaud	For
Cooper	For	Papageorgiou	For
Corbiere	For	Parry	Against
Corsetti	For	Pineda	Against
Desgranges	Against	Poliacik	Against
Donnelly	For	Pollock	Against
Epstein	For	Prill	Against
Esquega	For	Rosenthal	For
Fagan	Against	Sellers	For
Falconer	For	Sheff	For
Goldstein	Against	Shi	Against
Graham	Against	Shin Doi	For
Groia	For	Shortreed	For
Horgan	Against	Spurgeon	For
Horvat	For	Troister	For
Klippenstein	Against	Walker	For
Lalji	For	Wellman	For
Lau	For	Wilkes	Against
Lean	Against	Wilkinson	For
Lewis	For	Wright	Against

Vote: 29 For; 23 Against

POINT OF PERSONAL PRIVILEGE

Ms. Lean addressed her concerns about the tabling of the motion given the issue the motion addressed.

POINT OF PERSONAL PRIVILEGE

Mr. Falconer expressed concerns about the event that led to the notices of motion.

IN PUBLIC

REPORTS FOR INFORMATION ONLY

PROFESSIONAL REGULATION COMMITTEE REPORT

- 2019 Annual Report of the Complaints Resolution Commissioner
- Professional Regulation Division 2019 End-of-Year Report

TRIBUNAL COMMITTEE REPORT

- Law Society Tribunal Quarterly Statistics from October 1, 2019 to December 31, 2019

CORRESPONDENCE RECEIVED BY LSO RE: FAGAN/BROWN NOTICES OF MOTION

CONVOCATION ROSE AT 1:28 P.M.