

LAW SOCIETY OF ONTARIO

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MAY 27, 2021

MOVED BY: Julian Falconer

SECONDED BY: Andrew Spurgeon

THAT Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

DRAFT

MINUTES OF CONVOCATION

Thursday, 22nd April, 2021
9:00 a.m.
Via Videoconference

PRESENT:

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

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Secretary: James Varro

The Reporter was sworn.

IN PUBLIC

TREASURER'S REMARKS

The Treasurer welcomed everyone to Convocation.

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

When Convocation meets in Toronto, the Treasurer acknowledges that Convocation meets on the traditional territory of the Mississaugas of the Credit First Nation. She advised that for this Convocation, benchers are participating across the province and perhaps elsewhere, and across many First Nations territories. She recognized the long history of all the First Nations in Ontario and the Métis and Inuit peoples and thanks the First Nations people who lived and live in these lands for sharing them with us in peace.

LL.D. CEREMONY – BARBARA McISAAC, Q.C.

The Treasurer introduced Barbara McIsaac, Q.C., the candidate for the degree of Doctor of Laws, *honoris causa*.

Mr. Wilkes read the citation.

The Treasurer admitted Ms. McIsaac to the degree of Doctor of Laws, *honoris causa*.

Ms. McIsaac addressed Convocation.

The Treasurer thanked Ms. McIsaac for honouring Convocation with her presence.

TREASURER'S REMARKS

The Treasurer addressed the protocol for Convocation via Zoom videoconference.

The Treasurer expressed condolences to the family of former bencher Philip M. Epstein, C.M., O.Ont, Q.C., LL.D., LSM who passed away on April 4, 2021.

The Treasurer congratulated the family of former bencher William J. Simpson, Q.C. who posthumously received the Meritorious Service Cross (Civilian) from the Governor General for leading the Law Society's paralegal regulation effort.

The Treasurer advised that the Law Society Awards ceremony will be held virtually on May 26, 2021 and congratulated all recipients.

The Treasurer congratulated Professor Payam Akhavan, the recipient of the Law Society's Human Rights Award, which will be bestowed at a virtual ceremony scheduled for June 15, 2021.

The Treasurer noted the renaming of the Ryerson University Faculty of Law to the Lincoln Alexander School of Law, which will officially occur at an inaugural year end virtual event on May 6, 2021.

The Treasurer noted upcoming events:

- Mental Health Awareness Week, May 3 to 9, 2021
- Asian South Asian Heritage Event, May 6, 2021 from 5:00 to 6:00 p.m.

The Treasurer advised that the Law Society's Annual General Meeting will take place on Wednesday, May 12, 2021 online. Details on access to the meeting will be provided by email and on the Law Society website.

The Treasurer reported on some of her outreach initiatives:

- in March, the Law Students' Society of Ontario (LSSO) and the Law Society hosted meetings with Ontario Law Students
- in April, a Women's Roundtable was held in partnership with the Law Society and the Canadian Chapter of the International Association of Women Judges
- a Paralegal Roundtable was held on April 28, 2021

The Treasurer updated Convocation on the changes with respect to contingency fee regulation.

MOTION – CONSENT AGENDA – Tab 2

It was moved by Mr. Desgranges, seconded by Mr. Parry, that Convocation approve the consent agenda set out at Tab 2 of the Convocation Materials.

Carried

Tab 2.1 – DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of February 25, 2021 were confirmed.

Tab 2.2 – MOTIONS

Re: Tab 2.2.1: Appointments

THAT Catherine Banning be appointed to the Audit and Finance Committee, the Equity and Indigenous Affairs Committee and the Tribunal Committee.

THAT Jorge Pineda be removed from the Professional Regulation Committee at his own request.

Carried

Re: Tab 2.2.2: Tribunal Appointments

THAT Catherine Banning and Joseph Chiumminto be appointed to the Hearing Division of the Law Society Tribunal for a term ending May 31, 2023.

Carried

TREASURER'S REPORT

Re: LAWPRO Annual Shareholders Resolutions

That Convocation authorize the Treasurer to sign the shareholder resolutions for the Lawyers' Professional Indemnity Company (LAWPRO) set out at Tab 2.3.1.

Carried

IN PUBLIC

Mr. Adourian declared a conflict with respect to the Technology Task Force Report and removed himself from the meeting.

TECHNOLOGY TASK FORCE REPORT

Ms. Horvat presented the Report.

Re: Report on Regulatory Sandbox for Innovative Technological Legal Services

It was moved by Ms. Horvat, seconded by Mr. Graham, that Convocation:

1. Approve the launch of a regulatory sandbox as a five-year pilot with the following features:
 - Approved participants will receive permission from the Law Society to serve consumers through innovative technological legal services while complying with requirements for risk-based monitoring and reporting.
 - The Law Society will determine whether, and under what conditions, participants may receive a permit to continue providing the services after their participation in the sandbox has ended.
 - Annual reports will be submitted to Convocation to enable consideration of possible regulatory changes
2. Adopt amendments to the Law Society's By-Laws, as set out at Tab 1.1.

Mr. Fagan moved, seconded by Ms. Shi, that the Technology Task Force Report currently before Convocation be referred to Convocation's Professional Regulation Committee for further study, the matters to be studied further there, after solicitations for input from the legal and paralegal professions at large, to include:

- a) What is in the true overall public interest in this matter?
- b) What might the LSO do to attempt to deter any unauthorized legal practice/provision of legal services via technology?
- c) Such further considerations as may be presented to the Professional Regulation Committee for further study.

Mr. Desgranges moved, seconded by Mr. Prill, that the motion be amended as follows:

That paragraph 1 be amended as follows:

That:

1. Subject to paragraphs 2, 3 and 4 below, Convocation approve the launch of a regulatory sandbox as a five-year pilot with the following features:
 - Approved participants will receive permission from the Law Society to serve consumers through innovative technological legal services while complying with requirements for risk-based monitoring and reporting.
 - The Law Society will determine whether, and under what conditions, participants may receive a permit to continue providing the services after their participation in the sandbox has ended.

- Annual reports will be submitted to Convocation to enable consideration of possible regulatory changes.

That paragraph 2 be added to the motion to read:

2. As of October 31, 2022, the pilot project shall be continued on a full cost-recovery basis (which may include grants from outside funding sources) such that no annual fees or other monies derived from Licensees shall be used to subsidize: (i) the ongoing operations of the sandbox or any derivative thereof, (ii) any staffing salaries, benefits or other costs associated with retaining any staff, data analysts, program managers, advisory councils or any other consultants of any nature whatsoever with respect to the operations of the sandbox or (iii) any additional costs associated with any additional internal or external resources that may be needed to support the sandbox project.

That paragraph 3 be added to the motion to read:

3. A detailed yearly financial report be presented to Convocation for consideration of the progress of the pilot project.

That paragraph 4 be added to the motion to read:

4. As soon as possible and at the latest, after the five-year pilot period after the completion of the five-year pilot project the LSO devolves itself of the responsibility of managing the sandbox project, the development or regulation of ITLS software and the approval or permitting of any other legal software whatsoever.

That paragraph 5 be amended as follows:

5. Convocation adopt amendments to the Law Society's By-laws as set out at Tab 1.1.

That Tab 1.1 be amended as to include paragraph 2:

1. For the purposes of the Act, By-law 16 shall be a temporary exemption from the Society's requirements with respect to the practicing of law or providing legal services and By-Law 16 shall expire and be automatically repealed with no further action on the part of the Society on the earlier of 5 years from the date this By-Law is brought into force or such other date as such other independent regulatory body is brought into existence for the purposes of approving or permitting such ITLS tools or programs.

So that the motion would now read:

That:

1. Subject to paragraphs 2, 3 and 4 below, Convocation approve the launch of a regulatory sandbox as a five-year pilot with the following features:
 - Approved participants will receive permission from the Law Society to serve consumers through innovative technological legal services while complying with requirements for risk-based monitoring and reporting.
 - The Law Society will determine whether, and under what conditions, participants may receive a permit to continue providing the services after their participation in the sandbox has ended.
 - Annual reports will be submitted to Convocation to enable consideration of possible regulatory changes.
2. That as of October 31, 2022, the pilot project shall be continued on a full cost-recovery basis (which may include grants from outside funding sources) such that annual fees or

other monies derived from Licencees shall not used to subsidize the: (i) the ongoing operations of the sandbox or any derivative thereof, (ii) any staffing salaries, benefits or other costs associated with retaining any staff, data analysts, program managers, advisory councils or any other consultants of any nature whatsoever with respect to the operations of the sandbox or (iii) additional costs associated with any additional internal or external resources that may be needed to support the sandbox project.

3. A detailed yearly financial report be presented to Convocation for consideration of the progress of the pilot project.
4. As soon as possible and at the latest, after the five-year pilot period after the completion of the five-year pilot project the LSO devolves itself of the responsibility of managing the sandbox project, the development or regulation of ITLS software and the approval or permitting of any other legal software whatsoever.
5. Convocation adopt amendments to the Law Society's By-laws as set out at Tab 1.1

And that Tab 1.1 would now read:

1. For the purposes of the Act, a person, including an individual, corporation or other entity, who is an approved participant in the Societies innovative technological legal services ("ITLS") sandbox program, or who has received a permit from the Society to provide an ITLS, and in each case is operating an ITLS tool or program in compliance with the Societies requirements, shall be deemed to not be practicing law or providing legal services with respect to the operation of that ITLS tool or program.
2. For the purposes of the Act, By-law 16 shall be a temporary exemption from the Society's requirements with respect to the practicing of law or providing legal services and By-Law 16 shall expire and be automatically repealed with no further action on the part of the Society on the earlier of 5 years from the date this By-Law is brought into force or such other date as such other independent regulatory body is brought into existence for the purposes of approving or permitting such ITLS tools or programs.

The Treasurer called for debate on the motion to amend.

The motion to amend was lost.

ROLL-CALL VOTE

Alford	For
Banning	Against
Braithwaite	Against
Brown	Against
Burd	Against
Charette	For
Chiumminto	Against
Cooper	Against
Corbiere	Against
Corsetti	Against
Desgranges	For
Epstein	Against

Fagan	For
Falconer	Against
Goldstein	Against
Graham	Against
Groia	Against
Horgan	Against
Horvat	Against
Klippenstein	For
Lalji	Against
Lau	Against
Lean	Against
Lesage	For
Lewis	Against
Lippa	Against
Lockhart	Against
Lomazzo	Against
Lyon	For
Marshall	Against
Merali	Against
Murchie	Against
Painchaud	Against
Parry	Against
Poliacik	Against
Pollock	For
Prill	For
Rosenthal	Against
Sellers	Against
Sheff	Against
Shi	For
Shin Doi	Against
Shortreed	Against
Spurgeon	Against
Troister	Against
Walker	Against
Wellman	Against
Wilkes	Against
Wilkinson	Against
Wright	Against

Vote: 10 For; 40 Against

The Treasurer called for debate on the Fagan/Shi motion.

The Fagan/Shi motion was lost.

ROLL-CALL VOTE

Alford	For
Banning	Against
Braithwaite	Against
Brown	Against
Burd	Against

Charette	For
Chiumminto	For
Cooper	Against
Corbiere	Against
Corsetti	Against
Desgranges	For
Epstein	Against
Esquega	For
Fagan	For
Falconer	Against
Goldstein	Against
Graham	Against
Groia	Against
Horgan	For
Horvat	Against
Klippenstein	For
Lalji	Against
Lau	Against
Lean	For
Lesage	For
Lewis	Against
Lippa	For
Lockhart	Against
Lomazzo	Against
Lyon	For
Marshall	Against
Merali	Against
Murchie	Against
Painchaud	Against
Parry	For
Poliacik	For
Pollock	For
Prill	For
Rosenthal	Against
Sellers	Against
Sheff	Against
Shi	For
Shin Doi	Against
Shortreed	Against
Spurgeon	Against
Troister	Against
Walker	Against
Wellman	Against
Wilkes	Against
Wilkinson	Against
Wright	Against

Vote: 17 For; 34 Against

The main motion carried.

ROLL-CALL VOTE

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

Wilkinson For
Wright For

Vote: 34 For; 12 Against; 5 Abstain

Mr. Adourian returned to Convocation.

FINANCIAL UPDATE

Mr. Groia provided an update on the Law Society's financial situation for information.

AUDIT AND FINANCE COMMITTEE REPORT

Mr. Groia presented the Report.

Re: Law Society of Ontario Annual Financial Statements for the Year Ended December 31, 2020

It was moved by Mr. Groia, seconded by Mr. Poliacik, that Convocation approve the audited annual financial statements for the Law Society of Ontario for the financial year ended December 31, 2020, including the net inter-fund transfers listed in Note 14, which are as follows:

- \$1,519,000 from the Capital Allocation Fund to the Invested in Capital and Intangible Assets Fund representing assets capitalized during the year in compliance with the Society's accounting policies;
- \$156,000 from the Special Projects Fund to the General Fund to fund the facilities condition assessment, work related to the implementation of approved recommendations from the Challenges Faced by Racialized Licensees Working Group and maintenance of the Society's grounds, net of funding transferred to the Special Projects Fund to fund the next bench election; and
- \$100,000 from the lawyer General Fund to the Repayable Allowance Fund, as provided in the 2020 budget to fund the Repayable Allowance Program in the Licensing Process.

Carried

For Information

- LAWPRO Audited Financial Statements for the year ended December 31, 2020
- LIRN Inc. Audited Financial Statements for the year ended December 31, 2020
- Investment Compliance Reports for the Quarter ended December 31, 2020
- In Camera Matters

LAWPRO ANNUAL REPORT

Mr. Spurgeon presented the report for information.

PROFESSIONAL REGULATION COMMITTEE REPORT

Ms. Shortreed presented the Report.

Re: Amendments to the Rules of Professional Conduct – Definition of “Lending Client”

It was moved by Ms. Shortreed, seconded by Mr. Adourian, that Convocation approve the amendments to Rules 3.4-13 at Tab 4.1.1 (English) and Tab 4.1.2 (French), as detailed in this report and summarized as follows:

- That the definition of “lending client” in Rule 3.4-13 be amended to clarify those entities that qualify as “finance companies”.

Carried

It was moved by Ms. Lomazzo, seconded by Mr. Rosenthal, that Convocation approve the amendments to Rules 3.4-14 at Tab 4.1.1 (English) and Tab 4.1.2 (French), as detailed in this report and summarized as follows:

- That Rule 3.4-14 be amended to increase the amount of consideration from \$50,000 to \$75,000 for a mortgage or loan under which a lawyer may act for both borrower and lender.

Carried

Mr. Adourian, Mr. Esquega, Mr. Graham, Mr. Spurgeon and Ms. Walker abstained.

Re: Amendments to the By-Laws – Mobility for Quebec Lawyers

It was moved by Ms. Shortreed, seconded by Ms. Horvat, that Convocation approve the motion at Tab 4.2.1, which amends By-Law 4 in order to permit lawyers from Quebec to practise in Ontario on the same basis as lawyers from all other Canadian provinces as detailed in this report.

Carried

ROLL-CALL VOTE

Adourian	Abstain
Alford	Against
Banning	For
Braithwaite	For
Brown	For
Burd	For
Charette	For
Chiumminto	For
Corbiere	For
Corsetti	For
Desgranges	Against
Epstein	For
Esquega	For
Fagan	Against

Falconer	For
Graham	For
Groia	For
Horgan	Abstain
Horvat	For
Klippenstein	For
Lalji	For
Lau	For
Lean	Against
Lesage	Against
Lewis	For
Lippa	For
Lockhart	For
Lomazzo	For
Lyon	Against
Marshall	For
Murchie	For
Painchaud	For
Parry	Against
Poliacik	For
Pollock	Against
Prill	For
Rosenthal	For
Shi	Abstain
Shin Doi	For
Shortreed	For
Spurgeon	For
Troister	For
Walker	For
Wellman	For
Wilkes	For
Wilkinson	For
Wright	For

Vote: 36 For; 8 Against; 3 Abstain

For Information

- 2020 Annual Report of the Complaints Resolution Commissioner

REPORTS FOR INFORMATION

TRIBUNAL COMMITTEE REPORT

The Treasurer highlighted the report on the proposed amendments to the Law Society Tribunal Rules of Practice and Procedure.

TRIBUNAL COMMITTEE AND EQUITY AND INDIGENOUS AFFAIRS COMMITTEE REPORTS

Benchers raised questions and offered comments on the information reports from the Tribunal Committee and the Equity and Indigenous Affairs Committee.

IN PUBLIC

REPORTS FOR INFORMATION ONLY

EQUITY AND INDIGENOUS AFFAIRS COMMITTEE REPORT

- Report of the Discrimination and Harassment Counsel for July 1, 2020 to December 31, 2020
- In Camera Item
- Human Rights Monitoring Group Intervention (Myanmar)

TRIBUNAL COMMITTEE REPORT

- Proposed Amendments to the Law Society Tribunal Rules of Practice and Procedure
- Law Society Tribunal Quarterly Statistics for the period from October 1, 2020 to December 31, 2020

LAWPRO ANNUAL REPORT

IN CAMERA REPORT

CONVOCATION ROSE AT 3:47 P.M



Tab 1.2

Tribunal Committee

For Decision

May 27, 2021

Committee Members:

Julia Shin Doi (Chair)

Ryan Alford (Vice-Chair)

Marian Lippa (Vice-Chair)

Malcolm M. Mercer (*ex officio*)

Catherine Banning

Jared Brown

Jean-Jacques Desgranges

John Fagan

Michael LeSage

C. Scott Marshall

Isfahan Merali

Barbara Murchie

Geneviève Painchaud

Chi-Kun Shi

Tanya Walker

Authored By:

Lisa Mallia,
Tribunal counsel, lmallia@lso.ca

For Decision

Tab 1.2.1 Law Society Tribunal Reappointments

Tab 1.2.2 *In Camera* Appointments

FOR DECISION

ADJUDICATOR APPOINTMENTS / REAPPOINTMENTS

Convocation is requested to consider three motions: one for reappointments, the second for appointment of the Hearing Division Vice-Chair and the third *in camera* for appointments to the Law Society Tribunal.

MOTION 1a:

That Convocation appoint or reappoint the following for a term from May 27, 2021 to May 31, 2023:

a. to the Hearing Division of the Law Society Tribunal:

Ryan Alford, Raj Anand, Larry Banack, Jack Braithwaite, Chris Bredt, Jared Brown, Robert Burd, Jean-Jacques Desgranges, Seymour Epstein, Etienne Esquega, Sam Goldstein, Philip H. Horgan, Vern Krishna, Shelina Lalji, Cheryl R. Lean, Michael B. Lesage, Atrisha S. Lewis, Marian Lippa, Cecil Lyon, Scott Marshall, Isfahan Merali, Barbara Murchie, Ross Murray, Geneviève Painchaud, Jorge Pineda, Lubomir Poliacik, Geoff Pollock, Brian Prill, Clayton Ruby, Chi-Kun Shi, Julia Shin Doi, Megan Shortreed, Harvey Strosberg, Tanya Walker, Peter Wardle, Doug Wellman, Alexander Wilkes, Bradley Wright

b. to the Appeal Division of the Law Society Tribunal:

Ryan Alford, Raj Anand, Cathy Banning, Jack Braithwaite, Chris Bredt, Robert Burd, Seymour Epstein, Scott Marshall, Isfahan Merali, Barbara Murchie, Geneviève Painchaud, Lubomir Poliacik, Julia Shin Doi, Megan Shortreed, Tanya Walker, Peter Wardle, Doug Wellman

MOTION 1b:

That Convocation appoint Jack Braithwaite as Vice-Chair of the Hearing Division for a term from May 27, 2021 to May 31, 2023.

Rationale

The current term for these adjudicators ends on May 28, 2021. The Tribunal Chair recommends the re-appointments listed above. Subject to the approval of the above roster, Ms. Murchie will remain as Vice-Chair of the Appeal Division.

Following Mr. Paul Cooper's appointment to the bench, the Tribunal Chair recommends Jack Braithwaite as Vice-Chair of the Hearing Division.

Most of the current complement of adjudicators with expiring terms are proposed for reappointment.

Some adjudicators are proposed as new appointments to the Appeal Division, namely Ryan Alford, Catherine Banning, Tanya Walker and Doug Wellman. Especially in the case of the lay Benchers Banning and Wellman, these appointments will increase the roster of adjudicators who can sit on appeals and reflects that two current members will not continue.

Raj Anand, Christopher Bredt and Peter Wardle are lawyer appointees, first approved by Convocation on May 23, 2019. The Tribunal Chair recommends their reappointment so that the Tribunal may continue to benefit from their experience and expertise. These appointments were initially proposed because of the substantial turnover in Convocation in 2019 and the need for continuity and expertise on the Tribunal. While new bencher adjudicators have gained experience and expertise, the Tribunal Chair considers that it remains appropriate that these appointees continue to serve. There are currently 14 lawyer appointees in total. One appointee is not being reappointed at her request. The terms of seven lawyer appointees end in 2022 and the terms of the remaining appointees end in 2023. The appropriate complement of lawyer appointees will be a matter of ongoing consideration taking into account the desirability of a mixed complement of elected and appointed adjudicators in the independent tribunal of a self-regulating profession.

Reappointment Process

The Tribunal Chair conducted performance meetings with all of the adjudicators as set out in the 2012 Hearings Process report. Since the Tribunal Chair was appointed in November 2020, the meetings were collaborations between the Chair and the adjudicator, giving the Chair the opportunity to learn more about not only the adjudicator but also receive insight and comment from the adjudicators regarding improvements at the Tribunal.

LAW SOCIETY OF ONTARIO

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MAY 27, 2021

WHEREAS Paul M. Cooper who was elected from the Province of Ontario "B" Electoral Region (Outside the City of Toronto) on the basis of the votes cast by all electors, has been appointed a judge of the Ontario Court of Justice; and

WHEREAS upon being appointed a judge of the Ontario Court of Justice, Paul M. Cooper became unable to continue in office as a bencher thereby creating a vacancy in the number of benchers elected from the Province of Ontario "B" Electoral Region (Outside the City of Toronto) on the basis of the votes cast by all electors.

MOVED BY: Julian Falconer

SECONDED BY: Andrew Spurgeon

THAT under the authority contained in By-Law 3, Quinn M. Ross, having satisfied the requirements contained in subsection 43(1) and section 45 of the By-Law, and having consented to the election in accordance with paragraph 12(1)(d) of the By-Law, be elected by Convocation as bencher to fill the vacancy in the number of benchers elected from the Province of Ontario "B" Electoral Region (Outside the City of Toronto) on the basis of the votes cast by all electors.

LAW SOCIETY OF ONTARIO

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MAY 27, 2021

THAT Jack Braithwaite be appointed to the Tribunal Committee.



Law Society
of Ontario

Barreau
de l'Ontario

Tab 1.3

HUMAN RIGHTS MONITORING GROUP

Letters of Intervention on Behalf of Hejaaz Hizbullah, and Dr. Margaret Ng Ngoi-ye, Martin lee Chu-ming, and Albert Ho Chun-yan

May 27, 2021

Committee Members:

Julian Falconer (Co-Chair)

Tanya Walker (Co-Chair)

Paul Cooper

Atrisha Lewis

Marian Lippa

Isfahan Merali

Lubomir Poliacik

Doug Wellman

Authored By:

Jason Pichelli

JPichell@lso.ca

FOR DECISION

HUMAN RIGHTS MONITORING GROUP REQUEST FOR INTERVENTION

That Convocation approve the letters and public statements in the following cases:

Hejaaz Hizbullah – Sri Lanka – letter of intervention and public statement presented at TAB 1.3.1; and

Dr. Margaret Ng Ngoi-yee, Martin Lee Chu-ming, and Albert Ho Chun-yan – China – letter of intervention and public statement presented at TAB 1.3.2.

Rationale

The request for interventions falls within the mandate of the Human Rights Monitoring Group (the “Monitoring Group”) to,

- a. review information that comes to its attention about human rights violations that target members of the professions and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
- b. determine if the matter is one that requires a response from the Law Society; and
- c. prepare a response for review and approval by Convocation.

Key Issues and Considerations

The Monitoring Group considered the following factors when making a decision about the cases:

- a. there are no concerns about the quality of sources used for this report; and
- b. the letters and public statements regarding the arrest and detention of lawyer Hejaaz Hizbullah, and the conviction and unjust sentencing of lawyers Dr. Margaret Ng Ngoi-yee, Martin Lee Chu-ming, and Albert Ho Chun-yan fall within the mandate of the Monitoring Group.

KEY BACKGROUND

SRI LANKA – ARREST AND DETENTION OF HEJAAZ HIZBULLAH

Sources of Information

The background information for this report was retrieved from the following sources:

- a. Amnesty International.^{1,2}
- b. Lawyers for Lawyers³
- c. The United Nations⁴
- d. Al Jazeera⁵
- e. The Columbo Telegraph⁶
- f. The Island Online⁷
- g. The Daily Financial Times^{8,9}

Background

Hejaaz Hizbullah is a prominent minority rights advocate and lawyer in Sri Lanka. He has been involved in several important constitutional cases, such as the controversial dissolution of Parliament during Sri Lanka's 2018 constitutional crisis. Mr. Hizbullah has represented clients in several human rights cases involving the arrest and detention of members of minority communities, and has been an outspoken voice in Sri Lanka on

¹ Amnesty International. "Sri Lanka: Prominent human rights lawyer arbitrarily detained for six months must be released". October 16, 2020. Online: <https://www.amnesty.org/en/latest/news/2020/10/sri-lanka-prominent-human-rights-lawyer-arbitrarily-detained-for-six-months-must-be-released/>

² Amnesty International. "Sri Lanka: Government suffocating dissent and obstructing justice for historic crimes say Amnesty Report". Press Release. February 18, 2021. Online: <https://www.amnesty.ca/news/sri-lanka-government-suffocating-dissent-and-obstructing-justice-historic-crimes-says-amnesty>

³ Lawyers for Lawyers. "Hejaaz Hizbullah granted confidential access to counsel". December 17, 2020. Online: <https://lawyersforlawyers.org/en/hejaaz-hizbullah-granted-confidential-access-to-counsel/>

⁴ United Nations Office of the High Commissioner for Human Rights. "Sri Lanka on alarming path towards recurrence of grave human rights violations". Statement. January 27, 2021. Online: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26695&LangID=E>

⁵ Siddiqui, Usaid. "Why Sri Lanka jailed a Muslim lawyer with charge for 6 months". Al Jazeera. October 15, 2020. Online: <https://www.aljazeera.com/news/2020/10/15/sri-lanka-muslim-lawyer>

⁶ Columbo Telegraph. "Hejaaz Hizbullah: Case Reduced to a single child's statement: February 21, 2021. Online: <https://www.colombotelegraph.com/index.php/hejaaz-hizbullah-case-reduced-to-a-single-childs-statement/>

⁷ Saman Indrajith. "Kiriella complains about Hizbullah catching coronavirus in custody; govt reveals serious charges being probed against him". The Island Online. January 11, 2021. Online: <https://island.lk/kiriella-complains-about-hizbullah-catching-coronavirus-in-custody-govt-reveals-serious-charges-being-probed-against-him/>

⁸ Daily FT. "European Human Rights Ambassadors criticize treatment of Hejaaz Hizbullah". March 12, 2021. Online: <http://www.ft.lk/news/European-Human-Rights-Ambassadors-criticise-treatment-of-Hejaaz-Hizbullah/56-714637>

⁹ Daily FT. "PRG expresses extreme concern about demonization of Muslim community". March 19, 2021. Online: <http://www.ft.lk/opinion/PRG-expresses-extreme-concern-about-demonisation-of-Muslim-community/14-714981>

issues of reconciliation and minority rights for the country's Muslim population in the years following the conclusion of the 25 year civil war¹⁰.

Mr. Hizbullah was arrested on April 14 2020 under the Prevention of Terrorism Act, which allows the government to detain suspects for 90 days without pressing charges or bringing them before a judge. The 90-day detention can be renewed, without due process or appeal, for up to 18 months¹¹. The detention order that led to Mr. Hizbullah's arrest came directly from the President of Sri Lanka¹². Mr. Hizbullah has been detained for a full year, without any credible evidence of wrongdoing according to both Amnesty International and Human Rights Watch¹³. Sri Lankan authorities have stated he has been detained while the state investigates links to the April 2019 Easter Bombings, which claimed the lives of over 250 people and left more than 500 injured¹⁴.

The accusations against Mr. Hizbullah stem from:

- his work as chair of Save the Pearl charity, which has been accused of funding a school that promotes extremism,
- his association with Yussuf Mohammad Ibrahim, whose sons were two of the seven perpetrators of the Easter Bombings.

Prior to being arrested, Mr. Hizbullah was Mr. Ibrahim's lawyer, and the two served together on the board for Save the Pearl charity¹⁵. The charity works with underprivileged children, and one of its charitable activities including funding a school for Muslim children between the ages of 5 and 14, called the Al Zuhriya Madrasa. Upon discovering Mr. Hizbullah's association with Mr. Ibrahim, Sri Lankan officials began investigating all of Mr. Hizbullah's affairs. When the police investigated the school, the children were held in custody for three days, without supervision, and repeatedly interrogated¹⁶. Mr. Hizbullah's lawyer has claimed that the children were threatened and coerced during their interrogations¹⁷. Despite the questionable means by which the

¹⁰ Amnesty International. "Sri Lanka: Prominent human rights lawyer arbitrarily detained for six months must be released". October 16, 2020. Online: <https://www.amnesty.org/en/latest/news/2020/10/sri-lanka-prominent-human-rights-lawyer-arbitrarily-detained-for-six-months-must-be-released/>

¹¹ Siddiqui, Usaid. "Why Sri Lanka jailed a Muslim lawyer with charge for 6 months". Al Jazeera. October 15, 2020. Online: <https://www.aljazeera.com/news/2020/10/15/sri-lanka-muslim-lawyer>

¹² Lawyers for Lawyers. "Hejaaz Hizbullah produced before court". February 22, 2021. Online: <https://lawyersforlawyers.org/en/hejaaz-hizbullah-produced-before-court/>

¹³ Siddiqui, Usaid. "Why Sri Lanka jailed a Muslim lawyer with charge for 6 months". Al Jazeera. October 15, 2020. Online: <https://www.aljazeera.com/news/2020/10/15/sri-lanka-muslim-lawyer>

¹⁴ Siddiqui, Usaid. "Why Sri Lanka jailed a Muslim lawyer with charge for 6 months". Al Jazeera. October 15, 2020. Online: <https://www.aljazeera.com/news/2020/10/15/sri-lanka-muslim-lawyer>

¹⁵ Siddiqui, Usaid. "Why Sri Lanka jailed a Muslim lawyer with charge for 6 months". Al Jazeera. October 15, 2020. Online: <https://www.aljazeera.com/news/2020/10/15/sri-lanka-muslim-lawyer>

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¹⁷ Colombo Telegraph. "Hejaaz Hizbullah: Case Reduced to a single child's statement: February 21, 2021. Online: <https://www.colombotelegraph.com/index.php/hejaaz-hizbullah-case-reduced-to-a-single-childs-statement/>

police obtained statements from the students, according to statements made in court by the Attorney General, the case against Mr. Hizbullah rests on a single statement made by a one child.¹⁸

Critics of the Sri Lankan government's treatment of Mr. Hizbullah believe he has been deliberately targeted because of his work on reconciliation issues¹⁹. Since the Easter Bombings there has been a rise of Islamophobia in Sri Lanka and the country's existing ethnic divisions have only worsened.²⁰ Sri Lankan President Gotabaya Rajapaksa assumed office in November 2019, after a campaign in which he promised to boost national security in the wake of the recent bombings²¹. Since then, Human Rights Watch reports that he has waged "a campaign of fear and intimidation against human rights activists, journalists, lawyers, and others challenging government policy"²². According to a recent report by Amnesty International, the Sri Lankan government has "launched a renewed crackdown on dissent that is severely curtailing civil society freedom" in response to the 2019 bombings²³. The report details a pattern of deliberate targeting by government of individuals who have reported, documented, investigated, or advocated on behalf of the victims of human rights violations, including six incidents where lawyers were targeted²⁴.

In the past few weeks, the Sri Lankan government has continued to target the country's Muslim population, by banning the burqa and requiring that all Islamic religious books brought into the country be seized by customs officers, and only released on the approval of the Ministry of Defense²⁵. On March 12, the Sri Lankan President granted powers to the military and police to arrest anyone they perceive as holding an 'extremist ideology' and send them to 'de-radicalisation centres' without any legal process²⁶

¹⁸ Columbo Telegraph. "Hejaaz Hizbullah: Case Reduced to a single child's statement: February 21, 2021. Online: <https://www.colombotelegraph.com/index.php/hejaaz-hizbullah-case-reduced-to-a-single-childs-statement/>

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²³ Amnesty International. "Sri Lanka: Government suffocating dissent and obstructing justice for historic crimes say Amnesty Report". Press Release. February 18, 2021. Online: <https://www.amnesty.ca/news/sri-lanka-government-suffocating-dissent-and-obstructing-justice-historic-crimes-says-amnesty>

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²⁵ Daily FT. "PRG expresses extreme concern about demonization of Muslim community". March 19, 2021. Online: <http://www.ft.lk/opinion/PRG-expresses-extreme-concern-about-demonisation-of-Muslim-community/14-714981>

²⁶ Daily FT. "PRG expresses extreme concern about demonization of Muslim community". March 19, 2021. Online: <http://www.ft.lk/opinion/PRG-expresses-extreme-concern-about-demonisation-of-Muslim-community/14-714981>

Current Status

During his detention, Mr. Hizbullah has tested positive for COVID-19²⁷ and had limited access to his lawyer and his family²⁸. During the first nine months of his detention, he was permitted only four visits with legal counsel, and on each occasion, authorities were present²⁹. To secure a confidential meeting with Mr. Hizbullah, his lawyers had to file a petition to the Court of Appeal³⁰. The petition was granted on December 15, 2020.

On March 3, 2021, after being in custody for 11 months, Mr. Hizbullah was officially charged with “inciting communal disharmony” under the Sri Lanka’s controversial Prevention of Terrorism Act³¹. The charges are in relation to the alleged teachings at the Madrasa school. According to local reports, Mr. Hizbullah was scheduled to appear before a local court on March 18, 2021, however reports indicate that the proceeding has been delayed³². There have been no updates from Sri Lankan officials on the status of Mr. Hizbullah’s case.

Additionally, despite the seriousness of the accusations made against Mr. Hizbullah, the Madrasa school and the Save the Pearl charity have both been allowed to continue operating, which according to an Member of Parliament from the Official Opposition, should seriously call into question the validity of the charges³³.

²⁷ Saman Indrajith. “Kiriella complains about Hizbullah catching coronavirus in custody; govt reveals serious charges being probed against him”. The Island Online. January 11, 2021. Online: <https://island.lk/kiriella-complains-about-hizbullah-catching-coronavirus-in-custody-govt-reveals-serious-charges-being-probed-against-him/>

²⁸ Lawyers for Lawyers. “Concerns about the situation of lawyers in Sri Lanka”. July 29, 2020. Online: <https://lawyersforlawyers.org/en/concerns-about-the-situation-of-lawyers-in-sri-lanka/>

²⁹ Lawyers for Lawyers. “Hejaaz Hizbullah granted confidential access to counsel”. December 17, 2020. Online: <https://lawyersforlawyers.org/en/hejaaz-hizbullah-granted-confidential-access-to-counsel/>

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³² Daily FT. “European Human Rights Ambassadors criticize treatment of Hejaaz Hizbullah”. March 12, 2021. Online: <http://www.ft.lk/news/European-Human-Rights-Ambassadors-criticise-treatment-of-Hejaaz-Hizbullah/56-714637>

³³ Pavani Hapuarachchi. “MP Sumanthiran questions denial of justice for Attorney-at-Law Hejaaz Hizbullah”. News First. December 10, 2020. Online: <https://www.newsfirst.lk/2020/12/10/mp-sumanthiran-questions-denial-of-justice-for-attorney-at-law-hejaaz-hizbullah/>

CHINA – CONVICTION AND UNJUST SENTENCING OF DR. MARGARET NG NGOI-YEE, MARTIN LWW CHU-MING, AND ALBERT HO CHUN-YAN

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- c. Lawyers for Lawyers³⁶
- d. The International Bar Association³⁷
- e. The New York Times³⁸
- f. The Guardian³⁹
- g. The Hong Kong Free Press^{40, 41, 42, 43}

³⁴ Lawyers' Rights Watch Canada. "Hong Kong: Arrest and Prosecution of Pro-Democracy Figures Contravenes International Law Obligations". May 12, 2020. Online: <https://www.lrwc.org/hong-kong-arrest-and-prosecution-of-pro-democracy-figures-contravenes-international-law-obligations-letter/>

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³⁷ International Bar Association. "Winners announced for Human Rights and Pro Bono IBA 2019 annual awards." September 4, 2019. Online: <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=7e6e2427-ddc5-4e9f-bdfa-1f7b90454f68>

³⁸ Wu, Jin; Lai, K.K. Rebecca; and Yuhas, Alan. "Six Months of Hong Kong Protests. How Did We Get Here?". The New York Times. November 18, 2019. Online: <https://www.nytimes.com/interactive/2019/world/asia/hong-kong-protests-arc.html>

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⁴³ Grundy, Tom. "14 reactions to Hong Kong's crackdown on democrats." Hong Kong Free Press. April 18, 2020. Online: <https://hongkongfp.com/2020/04/18/8-reactions-to-hong-kongs-crackdown-on-democrats-this-is-not-the-rule-of-law-says-ex-governor-chris-patten/>

Background

On 18 April 2020, Hong Kong police arrested 15 high-profile, pro-democracy figures including Democratic Party founder and barrister Martin Lee Chu-ming, former lawmaker and barrister Margaret Ng Ngoi-ye, and solicitor and former member of the Legislative Council of Hong Kong Albert Ho Chun-yan.⁴⁴

Albert Ho Chun-yan has been a frequent, outspoken critic of the persecution of human rights lawyers and defenders in China, and has organized protests calling for the release of detained and imprisoned Chinese human rights defenders on many occasions.⁴⁵ Martin Lee Chu-ming and Dr Margaret Ng Ngoi-ye are the International Bar Association's 2019 Human Rights and Pro Bono award winners.

All 15 individuals were arrested on suspicion of organizing and participating in unauthorized protests on August 18, October 1, and October 20, 2019. These protests were directed to the government of the Hong Kong Special Administrative Region ("HKSAR") regarding the proposed extradition bills.⁴⁶ The individuals were released on bail after being charged with unlawful assembly.⁴⁷ The law is summarized in the following way by Front Line Defenders: "Under Hong Kong's Public Order Ordinance, organisers of public demonstrations involving more than thirty people must notify police seven days in advance, and obtain a "notice of no objection" from the police before proceeding. Public assemblies for which prior notice is not given or those to which the police object, but which proceed anyway are considered "unlawful" and participation in them is a prosecutable offence. Unlike in mainland China, the International Covenant on Civil and Political Rights (ICCPR) applies in Hong Kong. The UN Human Rights Committee, which monitors compliance with the treaty, cautioned in 2013 that implementation of the POO may facilitate "excessive restriction" on the right to peaceful assembly"⁴⁸.

⁴⁴ Lawyers' Rights Watch Canada. "Hong Kong: Arrest and Prosecution of Pro-Democracy Figures Contravenes International Law Obligations". May 12, 2020. Online: <https://www.lrwc.org/hong-kong-arrest-and-prosecution-of-pro-democracy-figures-contravenes-international-law-obligations-letter/>

⁴⁵ Front Line Defenders. "Arrests of human rights defenders threaten rights to freedom of assembly and expression in Hong Kong". April 20, 2020. Online: <https://www.frontlinedefenders.org/en/statement-report/arrests-human-rights-defenders-threaten-rights-freedom-assembly-and-expression-hong>

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The 2019 protests⁴⁹ were widely reported by media, and began peacefully with demands for the HKSAR to comply with its international human rights obligations.⁵⁰ The HKSAR conceded that protests were peaceful but claimed they inconvenienced the community⁵¹. The October 1st protests saw increasing conflicts between protesters and riot police after a police officer shot a protester with a live round of ammunition.⁵² The October 20th protest was organized in direct response to an anti-mask law imposed by the HKSAR (so that protesters could be more easily identified by police) after months of social protests in opposition to the government's proposed extradition bills⁵³. This march and protest also remained peaceful until Hong Kong police deployed water cannons, projectiles, and tear gas against the non-violent protesters.⁵⁴ An estimated 1.7 million⁵⁵ people – a full quarter of the population⁵⁶ - participated in each of these protests.

Front Line defenders, an Irish organization dedicated to protecting human rights defenders at risk, believes the arrests were politically motivated, since the three lawyers are strong pro-democracy voices, and have been heavily involved in the Democratic Party of Hong Kong.⁵⁷ These sentiments are echoed by Amnesty International's Asia-Pacific Regional Director Yamini Mishra, who said that Hong Kong authorities were seeking to eliminate all political opposition: "Having arrested the majority of Hong Kong's most prominent dissidents using the repressive national security law, the authorities are now mopping up remaining peaceful critics under the pretext of bogus charges related to the 2019 protests. These convictions are a violation of international law, which states that participating in and organizing peaceful assemblies does not

⁴⁹ Wikipedia. "2019-2020 Hong Kong protests". Online:

https://en.wikipedia.org/wiki/2019%E2%80%932020_Hong_Kong_protests

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require prior permission by the state. Nor does failure to notify the authorities about an assembly make it unlawful to take part in it.”⁵⁸

Current Status

On April 16, 2021 Martin Lee received an 11-month jail sentence, while Dr. Margaret Ng and Albert Ho were handed 12-month sentences, each of their sentences was suspended for 24 months.⁵⁹

After the convictions were announced, the Hong Kong Bar Association began an investigation into Dr. Ng and Mr. Lee’s conduct to determine if their cases should be reviewed by the Barristers Disciplinary Tribunal⁶⁰. Dr. Ng and Mr. Lee’s license to practice law could be revoked if the investigation leads to conduct proceedings. The Hong Kong Bar Association also noted that the Code of Conduct for barristers states that any conduct resulting in a criminal conviction is subject to investigation.⁶¹

⁵⁸ Chau, Candice & Ho, Kelly. “Hong Kong ‘Father of Democracy’ Martin Lee handed suspended jail sentence over peaceful 2019 demo’. Hong Kong Free Press. April 16, 2021. Online: <https://hongkongfp.com/2021/04/16/breaking-hong-kong-father-of-democracy-martin-lee-handed-2-year-suspended-jail-sentence-over-peaceful-2019-demo/>

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May xx, 2021

Gotabaya Rajapaksa
President, Democratic Socialist Republic of Sri Lanka
Janadhipathi Mawatha,
Colombo 00100
Sri Lanka

Your Excellency:

Re: Arrest and detention of lawyer Hejaaz Hizbullah

I write on behalf of the Law Society of Ontario to voice our grave concern over reports regarding the arrest and ongoing detention of lawyer Hejaaz Hizbullah. When reports of serious issues of injustice to legal professionals and the judiciary come to our attention, we speak out.

Mr. Hejaaz Hizbullah is a prominent minority rights advocate and lawyer in Sri Lanka. He is a respected human rights defender, and has been an outspoken voice in Sri Lanka on issues of reconciliation and minority rights for many years.

Mr. Hizbullah was arrested on April 14 2020 under the Prevention of Terrorism Act, and the detention order that led to Mr. Hizbullah's arrest came directly from your office. He has been detained for almost a full year, without any credible evidence of wrongdoing. While in detention, he has contracted COVID-19, and had limited access to his lawyer and family.

Prominent human rights groups have been critical of your Government's treatment of Mr. Hizbullah, and have stated they believe he is being deliberately targeted due to his work on reconciliation issues. Additionally, recent reports by Amnesty International and the UN Office of the High Commissioner for Human Rights have concluded that your government continues to wage a campaign of fear and intimidation against human rights defenders and lawyers who challenge government policy.

In light of these circumstances, the Law Society urges the Sri Lankan Government to comply with its obligations under international human rights laws, including the United Nations' *Universal Declaration of Human Rights* and *The Basic Principles on the Role of Lawyers*.

Article 9 of *The Universal Declaration of Human Rights* states:

No one shall be subjected to arbitrary arrest, detention, or exile.

Article 7 of the *Basic Principles on the Role of Lawyers* states:

Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

Article 8 states:

All arrested, detained, or imprisoned persons shall be provided with adequate opportunities, time, and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception, or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

Article 18 states:

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their duties.

Furthermore, Article 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association, and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society urges Sri Lanka to:

- a. immediately and unconditionally release lawyer Hejaaz Hizbullah;
- b. immediately and unconditionally withdraw all charges against lawyer Hejaaz Hizbullah;
- c. ensure that all lawyers, paralegals, judges, law students and human rights defenders in Sri Lanka can carry out their professional duties and activities without fear of reprisals, physical violence, or other human rights violations; and

- d. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours truly,

Teresa Donnelly
Treasurer

**The Law Society of Ontario is the governing body for more than 55,000 lawyers and 9,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

The mandate of the Law Society is to govern the legal profession in the public interest, and the Law Society has a duty advance the cause of justice and the rule of law.

cc:

Kapila S. Jayaweera
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Consulate General of Sri Lanka
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The Honourable Marc Garneau, Minister of Foreign Affairs

His Excellency, the Honourable Bob Rae, Canadian Ambassador to the United Nations

Ketty Nivyabandi, Secretary General, Amnesty International Canada

Andrew Anderson, Executive Director, Front Line Defenders

Emma Achili, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Sophie de Graaf, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers' Rights Watch Canada

Mary Lawlor, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Marina Brilman, International Human Rights Policy Adviser, The Law Society of England and Wales

Public Statement on Sri Lanka

The Law Society of Ontario calls for the immediate release of lawyer and human rights defender Hejaaz Hizbullah

Toronto, ON — The Law Society of Ontario is calling for the immediate release of lawyer and human rights defender Hejaaz Hizbullah.

Mr. Hejaaz Hizbullah is a prominent minority rights advocate and lawyer in Sri Lanka. He is a respected human rights defender, and has been an outspoken voice in Sri Lanka on issues of reconciliation and minority rights for many years.

Mr. Hizbullah was arrested on April 14 2020 under the Prevention of Terrorism Act, which allows the government to detain suspects for up to 18 months without pressing charges. He has been detained for almost a full year, without any credible evidence of wrongdoing. Government suspicions of Mr. Hizbullah stem from his legal representation of Yussuf Mohammad Ibrahim, whose sons were two of the seven perpetrators of the April 2019 Easter Bombings, which claimed the lives of over 250 people and injured more than 500. While in detention, Mr. Hizbullah has contracted COVID-19, and had almost no access to his lawyer or family.

Prominent human rights groups have been critical of the Sri Lankan Government's treatment of Mr. Hizbullah, and have stated they believe he is being deliberately targeted due to his work on reconciliation issues. Additionally, recent reports by Amnesty International and the UN Office of the High Commissioner for Human Rights have concluded that the government continues to wage a campaign of fear and intimidation against human rights defenders and lawyers who challenge government policy.

In light of these circumstances, the Law Society is urging the Sri Lankan Government to comply with its obligations under international human rights laws, including the United Nations' *Universal Declaration of Human Rights* and *The Basic Principles on the Role of Lawyers*.

Article 9 of *The Universal Declaration of Human Rights* states:

No one shall be subjected to arbitrary arrest, detention, or exile.

Article 7 of the *Basic Principles on the Role of Lawyers* states:

Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

Article 8 states:

All arrested, detained, or imprisoned persons shall be provided with adequate opportunities, time, and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception, or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

Article 18 states:

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their duties.

Furthermore, Article 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association, and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society urges Sri Lanka to:

- a. immediately and unconditionally release lawyer Hejaaz Hizbullah;
- b. immediately and unconditionally withdraw all charges against lawyer Hejaaz Hizbullah;
- c. ensure that all lawyers, paralegals, judges, law students and human rights defenders in Sri Lanka can carry out their professional duties and activities without fear of reprisals, physical violence, or other human rights violations; and
- d. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

May 27, 2021

H.E. Xi Jinping
President of the People's Republic of China
State Council General Office
2 Fuyoujie
Xichengqu
Beigingshi 10017
People's Republic of China

Your Excellency:

Re: Conviction and unjust sentencing of lawyers Dr. Margaret Ng Ngoi-yee, Martin Lee Chu-ming, and Albert Ho Chun-yan

I write on behalf of the Law Society of Ontario to voice our grave concern over the conviction and unjust sentencing of lawyers Dr. Margaret Ng Ngoi-yee, Martin Lee Chu-ming, and Albert Ho Chun-yan. When lawyers, paralegals, judges, and human rights advocates have suffered from fundamental injustices, we advocate for the protection of their rights.

On 18 April 2020, Hong Kong police arrested 15 individuals on suspicion of organizing and participating in unauthorized protests. Among those arrested were Democratic Party founder and barrister Martin Lee Chu-ming, former lawmaker and barrister Margaret Ng Ngoi-yee, and solicitor and former member of the Legislative Council of Hong Kong Albert Ho Chun-yan. On April 16, 2021 Mr. Lee received an 11-month jail sentence, while Dr. Ng and Mr. Ho were handed 12-month sentences.

Albert Ho Chun-yan has been a frequent, outspoken voice against the persecution of human rights lawyers and defenders in China, and he has organized protests calling for the release of detained and imprisoned Chinese human rights defenders on many occasions. Martin Lee Chu-ming and Dr Margaret Ng Ngoi-yee are the International Bar Association's 2019 Human Rights and Pro Bono award winners, and have both had long careers devoted to the advancement of human rights and democratic ideals.

The recent convictions and unjust sentencing of lawyers and pro-democracy advocates lawyers Dr. Margaret Ng Ngoi-yee, Martin Lee Chu-ming, and Albert Ho Chun-yan underscore the continuing assault on freedom of expression and right to assembly in Hong Kong. Arresting and charging lawyers and other human rights defenders who have engaged in peaceful assembly and advocacy creates a dangerous standard for all those who work to promote and defend human rights and the rule of law in Hong Kong.

In light of these circumstances, the Law Society urges Your Excellency to comply with China's obligations under international human rights laws, including the United Nations' *Universal Declaration of Human Rights*.

Article 19 of the *Universal Declaration of Human Rights* states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20 states:

Everyone has the right to freedom of peaceful assembly and association.

Furthermore, Article 23 of the United Nations' *Basic Principles on the Role of Lawyers* provides:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society urges the Government of China to:

- a. immediately and unconditionally release Dr. Margaret Ng Ngoi-yee, Martin Lee Chu-ming, and Albert Ho Chun-yan;
- b. immediately and unconditionally vacate the conviction rendered against Dr. Margaret Ng Ngoi-yee, Martin Lee Chu-ming, and Albert Ho Chun-yan;
- c. ensure that all lawyers, paralegals and human rights defenders in China can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- d. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours truly,

Teresa Donnelly
Treasurer

**The Law Society of Ontario is the governing body for more than 55,000 lawyers and 9,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

The mandate of the Law Society is to govern the legal profession in the public interest, and the Law Society has a duty advance the cause of justice and the rule of law.

cc:

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Kenneth Roth, Executive Director, Human Rights Watch

Albert Ho Chun-yan, Chairperson, China Human Rights Lawyers Concern Group

Sophie de Graaf, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers' Rights Watch Canada

Mary Lawlor, Special Rapporteur on the situation of human rights defenders,
Office of the United Nations High Commissioner for Human Rights

Diego García-Sayán, Special Rapporteur of the Human Council on the
independence of judges and lawyers, Office of the United Nations High
Commissioner for Human Rights

Marina Brilman, International Human Rights Policy Adviser, The Law Society of
England and Wales

Proposed Public Statement on behalf of Dr. Margaret Ng Ngoi-yee, Martin Lee Chu-ming, and Albert Ho Chun-yan

The Law Society of Ontario condemns the conviction and unjust sentencing of lawyers Dr. Margaret Ng Ngoi-yee, Martin Lee Chu-ming, and Albert Ho Chun-yan

Toronto, ON — The Law Society of Ontario is condemning the conviction and unjust sentencing of lawyers Dr. Margaret Ng Ngoi-yee, Martin Lee Chu-ming, and Albert Ho Chun-yan. When lawyers, paralegals, judges, and human rights advocates have suffered from fundamental injustices, we advocate for the protection of their rights.

Albert Ho Chun-yan has been a frequent, outspoken voice against the persecution of human rights lawyers and defenders in China, and he has organized protests calling for the release of detained and imprisoned Chinese human rights defenders on many occasions. Martin Lee Chu-ming and Dr Margaret Ng Ngoi-yee are the International Bar Association's 2019 Human Rights and Pro Bono award winners, and have both had long careers devoted to the advancement of human rights and democratic ideals.

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The recent convictions and unjust sentencing of lawyers and pro-democracy advocates lawyers Dr. Margaret Ng Ngoi-yee, Martin Lee Chu-ming, and Albert Ho Chun-yan underscore the continuing assault on freedom of expression and right to assembly in Hong Kong. Arresting and charging lawyers and other human rights defenders who have engaged in peaceful assembly and advocacy creates a dangerous standard for all those who work to promote and defend human rights and the rule of law in Hong Kong.

We are calling on the Chinese government to comply with its obligations under international human rights law, including the United Nations' *Universal Declaration of Human Rights*.

Article 19 of the *Universal Declaration of Human Rights* states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

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The Law Society urges the Government of China to:

- a. immediately and unconditionally release Dr. Margaret Ng Ngoi-yee, Martin Lee Chu-ming, and Albert Ho Chun-yan;
- b. immediately and unconditionally vacate the conviction rendered against Dr. Margaret Ng Ngoi-yee, Martin Lee Chu-ming, and Albert Ho Chun-yan;
- c. ensure that all lawyers, paralegals and human rights defenders in China can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- d. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.



Law Society
of Ontario

Barreau
de l'Ontario

Tab 1.4

Report on the AGM Motion Respecting Civil Rules

May 27, 2021

Working Group Members:

Andrew Spurgeon (Chair)

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Issue for Consideration and Decision

Convocation is requested to consider the Professional Regulation Committee's recommendation, based on the Civil Rules Group (the "Rules Group") report to the Committee, that a motion brought at the Law Society's 2020 Annual General Meeting (AGM) relating to the civil rules not be considered further, and if in agreement, approve the recommendation.

Executive Summary

The Rules Group was established by the Treasurer in response to a motion brought prior to the Law Society's 2020 AGM. The Rules Group was given the task of assisting the Professional Regulation Committee to review the points raised in the motion. This report provides a summary of the Rules Group's review.

It is recommended that no further action be taken with respect to the motion.

Background

Prior to the Law Society AGM on August 10, 2020, a motion was brought by a group of licensees which sought a resolution that the Law Society shall encourage the Government of Ontario, the Civil Rules Committee, and court administration to take the following steps:

1. Permanently interpret Section 9 of the *Commissioners for Taking Affidavits Act*, RSO 1990, c. C.17 as permitting virtual commissioning. The Law Society shall no longer discipline any licensee for virtual commissioning;
2. Recognize all documents (other than the initial pleadings) as validly served if served via email, to the address of counsel;
3. Recognize "Certificates of Service" on pleadings as the equivalent of Affidavits of Service, to eliminate redundancy;
4. Allow full electronic filing and viewing of all court documents, eliminating the need for process servers to attend at court and potentially spread contagion, in order to protect public health, reduce person-to-person contact, and promote access to justice; and
5. Finally, to allow the resumption of normal operations, albeit remotely, to offer each counsel the option of appearing at hearing remotely, via teleconference and/or videoconference, and interpret same as proper in-person attendance for all purposes.¹

¹ A copy of the Motion is attached at Tab 1.1.

Due to the pandemic, the 2020 AGM was held virtually. Recognizing that there would be limited opportunity for discussion or live debate, the Treasurer wrote to the licensees supporting the motion and suggested that:

“...in exchange for the withdrawal of this motion, I would like to ask the Professional Regulation Committee to engage in this broader review and report to Convocation by February.”

The Treasurer also noted that:

“...motions that are carried at the AGM are not binding on Convocation but must be considered by Convocation within six months after the AGM. This offer would provide that same commitment.”

Based on the Treasurer’s commitment the motion was withdrawn.

Given the Committee’s full agenda in the fall, the Treasurer formed the Rules Group to assist with the review. The Rules Group was tasked with considering and discussing the proposals in the motion and making recommendations to the Committee. The Rules Group provided an update to Convocation in February 2021, and now provides the Committee with this report.

Jurisdiction

The motion sought the Law Society’s intervention with respect to a number of matters addressed in the rules of court as established under the *Courts of Justice Act* R.S.O. 1990, c. C.43 (the “CJA”).

Section 65 of the CJA establishes a Civil Rules Committee. Subject to the approval of the Attorney General, the Civil Rules Committee

“may make rules for the Court of Appeal and the Superior Court of Justice in relation to the practice and procedure of those courts in all civil proceedings”²

Although the Law Society of Ontario appoints four lawyers to the Civil Rules Committee³, it should be remembered that the Law Society does not have jurisdiction over that Committee itself and does not have the ability to establish, interpret or direct the operation of the rules of practice and procedure that govern the civil proceedings in the province.

² Courts of Justice Act, R.S.O. 1990, c. C.43, section 66.

³ Ibid, paragraph 65(2)(h).

The Motion

The motion moves five points. A number of these points were subsequently addressed by actions of the Attorney General, the Legislature, and the Civil Rules Committee. Each of the five points in the motion are discussed below.

Point #1: Permanently interpret s. 9 of the *Commissioners for Taking Affidavits Act* as permitting virtual commissioning. The LSO shall no longer discipline a licensee for virtual commissioning.

This point in the motion has two features. The first is advocating for an amendment to a provincial statute; the second relates to how the Law Society would treat licensees who allegedly breach that statute.

On August 1, 2020, the *Commissioners for Taking Affidavits Act* was amended. The operative section was section 9. It required that:

“Every oath and declaration shall be taken by the deponent in the presence of the commissioner, notary public, justice of the peace or other officer or person administering the oath or declaration...”

This section was repealed and replaced by new section 9 containing three subsections reading as follows:

“Administration of oath, declaration in person

9 (1) Every oath and declaration shall be taken by the deponent or declarant in the physical presence of the commissioner, notary public or other person administering the oath or declaration. 2020, c. 7, Sched. 4, s. 6.

Not in person

(2) Despite subsection (1), if the regulations made under this Act so provide and the conditions set out in the regulations are met, an oath or declaration may be taken by a deponent or declarant in accordance with the regulations without being in the physical presence of a commissioner, notary public or other person administering the oath or declaration. 2020, c. 7, Sched. 4, s. 6.

Duty of commissioner, etc.

(3) A commissioner, notary public or other person administering an oath or declaration shall satisfy himself or herself of the genuineness of the signature of the deponent or declarant and shall administer the oath or declaration in the manner required by law before signing the jurat or declaration.”

An additional amendment to Ontario Regulation 431/20, augments sub-section 9(2) now permits an oath or declaration to be taken by a deponent without being in the physical

presence of the person administering the oath or declaration, provided that a number of conditions are satisfied proscribed in the regulation.⁴

These amendments, have substantially addressed the first component of point #1 in the motion.

With respect to the second component of point #1 if the motion, this issue is moot and need not be addressed further. The Law Society would not subject licensees to regulatory action if they administer an oath or declaration in accordance with the requirements in the Act and the Regulation.

Point #2 Recognize all documents (other than the initial pleadings) as validly served if served via email, to the address of counsel.

On November 30, 2020, the Attorney General of Ontario announced changes to the *Rules of Civil Procedure*, which came into effect on January 1, 2021. These changes implemented a number of temporary measures that had been put into place at the beginning of the COVID-19 pandemic.

Among the changes to the *Rules of Civil Procedure*, documents (other than originating documents) may now be served by email. Court staff may also communicate and send certified court documents by email.

These changes have largely rendered point #2 of the motion moot.

Point #3 Recognize “Certificates of Service” on pleadings as the equivalent of Affidavits of Service, to eliminate redundancy.

An originating process, either a claim or an application, must be effected by personal service. Normally, personal service is effected by a person other than the solicitor. For that solicitor to provide a certificate of service in respect of the personal service effected by another person would be hearsay. Recognition of “certificates of service” on pleadings should not be recommended further.

It should be noted however, that the Rules Group considers a solicitor’s “certificate of service” as proof of service in respect of all documents other than originating process documents to be a promising and potentially useful tool for provision of proof of service, while reducing burdens on small and sole practitioners. The Rules Group plans to study this concept further.

⁴ See [O. Reg. 431/20: Administering Oath or Declaration Remotely](#)

Point #4 Allow full electronic filing and viewing of all court documents, eliminating the need for process servers to attend at court and potentially spread contagion, in order to protect public health, reduce person-to-person contact, and promote access to justice.

The Ministry of the Attorney General's procurement of Thomson Reuters CaseLines largely renders point #4 in the motion moot.

CaseLines is a cloud-based document sharing, storage and e-hearing platform for remote and in-person court proceedings. CaseLines allows all parties, counsel, judges, masters, court staff, and others as authorized, to access all of the documents for a proceeding in one electronic location.

The CaseLines pilot project began in August 2020, for selected civil motions and pre-trial conferences in Toronto, and was subsequently implemented for civil and divisional court, family, and criminal matters. Over the past year, CaseLines has been expanded throughout the province. It is expected that all judicial regions will be using CaseLines by the end of summer 2021.

Point #5 Finally, to allow the resumption of normal operations, albeit remotely, to offer each counsel the option of appearing at hearing remotely, via teleconference and/or videoconference, and interpret same as proper in-person attendance for all purposes.

Courts have the general jurisdiction to control their own process and judges govern their court rooms and the hearings over which they preside.

There does appear to be a general recognition by the courts that creative solutions are required for efficient trial management and that discretionary case management decisions should be encouraged.⁵

Recommendation

That the Motion filed at the 2020 Law Society Annual General Meeting not be considered further.

⁵ See: *Louis v. Poitras*, 2021 ONCA 49.