

LAW SOCIETY OF ONTARIO

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON SEPTEMBER 28, 2023

MOVED BY: Michelle Lomazzo

SECONDED BY: Geneviève Painchaud

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

MINUTES OF CONVOCATION

Wednesday, 28th June, 2023
9:00 a.m.
Via Videoconference

PRESENT:

The Treasurer (Jacqueline Horvat), Adourian, Alford, Banack, Banning, Callaghan, Chan, Chugh, Conway, Dimokopoulos, Donnelly, Durcan, Emmett, Enenajor, Epstein, Ferrier, Gold, Hansen, Hrick, Hulan, Kitagawa, Klippenstein, Konanur, Krishna, Levitt, Lewis, Lomazzo, Malette, Marrocco, McDowell, Mietkiewicz, Monforton, Moriah, Murray, Ouellet, Painchaud, Pawlitza, Radan, Rodriguez, Rosenthal, K. Ross, Q. Ross, Rotstein, Sellers, Sheff, Shortreed, Siran, Spurgeon, Strosberg, Surchin, Sutherland, Troister, Waddell, Walker, Wardle, Wellman, Whitehead, Wilson and Winward.

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Secretary: James Varro

The Reporter was sworn.

IN PUBLIC

ELECTION OF TREASURER

The Secretary announced that at the close of nominations at 5:00 p.m. on May 26, 2023, there was one candidate for the election of Treasurer. Jacqueline Horvat was declared elected as Treasurer for the term commencing June 28, 2023.

TREASURER'S REMARKS

The Treasurer thanked benchers for the honour of being re-elected.

The Treasurer advised that benchers have gathered virtually today, but when gathered at Osgoode Hall in Toronto, it is recognized that Toronto 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 Inuit and Métis peoples and thanked all Indigenous peoples who lived and live in these lands for sharing them with us in peace.

The Treasurer acknowledged Eid-al-Adha which will be celebrated by members of the Muslim community on June 29, 2023.

The Treasurer advised benchers that she is honoured to work with them to fulfill the commitments made to the professions and the public, and highlighted a number of regulatory and other matters, including competence, and the commitment to govern competently. The Treasurer encouraged benchers to learn, study and debate respectfully and productively and to make known their unique perspectives and views in their work as benchers.

The Treasurer addressed the protocol for Convocation via videoconference.

MOTION – CONSENT AGENDA – TAB 1

It was moved by Mr. Spurgeon, seconded by Mr. Wardle, 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 the May 25, 2023 Convocation meeting were confirmed.

Tab 1.2 – MOTIONS

Tab 1.2.1 – Election of Benchers

THAT Murray Klippenstein, having satisfied the requirements contained in subsection 43(1) and section 45 of By-Law 3, and having consented to election as bencher in accordance with paragraph 12(1)(d) of the By-Law, be elected by Convocation in accordance with subsection 43(1) of the By-Law as bencher to fill the vacancy in the number of benchers elected from the Province of Ontario “A” Electoral Region (City of Toronto) on the basis of the votes cast by all electors, as a result of the appointment of John Callaghan as a judge of the Ontario Superior Court of Justice, who was elected from the Province of Ontario “A” Electoral Region (City of Toronto) on the basis of the votes cast by all electors, and being appointed as a judge became unable to continue in office as a bencher, thereby creating the vacancy.

AND

THAT Robert Adourian, having satisfied the requirements contained in subsection 43(1) and section 45 of By-Law 3, and having consented to election as bencher in accordance with paragraph 12(1)(d) of the By-Law, be elected by Convocation in accordance with subsection 43(1) of the By-Law as bencher to fill the vacancy in the number of benchers elected from the Province of Ontario “A” Electoral Region (City of Toronto) on the basis of the votes cast by all electors, as a result of the appointment of Catherine Rhinelander as a judge of the Ontario Superior Court of Justice, who was elected from the Province of Ontario “A” Electoral Region (City of Toronto) on the basis of the votes cast by all electors, and being appointed as a judge became unable to continue in office as a bencher, thereby creating the vacancy.

Carried

Tab 1.2.2 – Tribunal Appointments

THAT Ryan Alford and Murray Klippenstein be appointed to the Hearing Division of the Law Society Tribunal for a term ending June 30, 2025.

Carried

IN PUBLIC

TREASURER'S REMARKS

The Treasurer welcomed elected benchers Murray Klippenstein and Robert Adourian to Convocation.

The Treasurer congratulated former benchers John Callaghan and Catherine Rhinelanders on their appointments as Judges of the Ontario Superior Court of Justice.

IN PUBLIC

REPORT FOR INFORMATION ONLY

AUDIT AND FINANCE COMMITTEE REPORT

- Law Society of Ontario Financial Statements for the Quarter ended March 31, 2023
- LiRN Inc. Financial Statements for the Quarter ended March 31, 2023
- Investment Compliance Reports for the Quarter ended March 31, 2023

CONVOCATION ADJOURNED AT 10:29 A.M.

DRAFT

MINUTES OF SPECIAL CONVOCATION

Thursday, 27th July, 2023

9:00 a.m.

Via Videoconference

PRESENT:

The Treasurer (Jacqueline Horvat), Adourian, Alford, Banack, Banning, Callaghan, Chan, Chugh, Dimokopoulos, Durcan, Emmett, Enenajor, Gold, Hansen, Hrick, Hulan, Kalajdzic, Kitagawa, Klippenstein, Konanur, Levitt, Lewis, Lomazzo, Malette, Merali, Mietkiewicz, Monforton, Moriah, Ouellet, Painchaud, Pawlitz, Radan, Rodriguez, Rosenthal, K. Ross, Q. Ross, Rotstein, Sellers, Shortreed, Siran, Strosberg, Surchin, Sutherland, Troister, Walker, Wardle, Wellman, Whitehead, Wilson and Winward.

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Secretary: James Varro

The Reporter was sworn.

IN PUBLIC

TREASURER'S REMARKS

The Treasurer welcomed everyone to Convocation.

The Treasurer advised that benchers have gathered virtually today, but when gathered at Osgoode Hall in Toronto, it is recognized that Toronto 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 Inuit and Métis peoples and thanked all Indigenous peoples who lived and live in these lands for sharing them with us in peace.

The Treasurer addressed the protocol for Convocation via videoconference.

The Treasurer noted the email sent to benchers yesterday respecting virtual verification of client identification and advised that a notice to the profession will be issued on this subject this week.

The Treasurer acknowledged the appointed benchers whose terms end on July 31, 2023 and on behalf of Convocation, thanked them for their service:

Dr. Benson Lau
Clare Sellers

Gerald Sheff
Seymour Epstein

The Treasurer offered a special thank you to Seymour Epstein, the longest serving appointed bencher, for his commitment to the Law Society's work over the past 20 years.

The Treasurer advised that the following new appointed benchers will take office on August 1, 2023:

Dr. Louis Gagnon
Sarah Letersky
Frank McCrea
Hassan Pirnia
Trevor Townsend

MOTION – COMMITTEE AND OTHER APPOINTMENTS

The Treasurer introduced the motion.

It was moved by Ms. Lewis, seconded by Mr. Quinn Ross:

THAT the attached list of appointments under Schedule A be approved.

THAT Shalini Konanur be appointed to the Law Commission of Ontario Board of Governors for a term of three years.

THAT Convocation approve Rebecca Durcan, Heather Hansen, Andrew Spurgeon and Mark Surchin as nominees for election to the LAWPRO Board of Directors.

THAT Jennifer Gold be appointed to the Ontario Justice Education Network Board of Directors for a three-year term.

THAT Robert Adourian and Gerald Chan be appointed to the Hearing Division of the Law Society Tribunal for a term ending June 30, 2025.

SCHEDULE A
COMMITTEE, TASK FORCE, WORKING GROUP AND OTHER APPOINTMENTS

COMMITTEES

Access to Justice

Cheryl Siran (Co-Chair)
Doug Wellman (Co-Chair)
Robert Adourian
Paula Callaghan
Neha Chugh
Jennifer Gold
Mitchell Kitagawa
Shalini Konanur
Joelle Malette
Deborah Moriah
Jonathan Rosenthal
Stephen Rotstein

Audit & Finance

Sidney Troister (Chair)
Michelle Lomazzo (Vice-Chair)
Rebecca Durcan
Laura Emmett
Heather Hansen
Howard Levitt
Atrisha Lewis
Hassan Pirnia
Michael Radan
Stephen Rotstein
Mark Surchin
Trevor Townsend

Audit & Finance – Compensation Fund Subcommittee

Laura Emmett (Chair)
Hassan Pirnia
Michael Radan
Stephen Rotstein
Trevor Townsend

Compensation

Jacqueline Horvat (Chair)
Michelle Lomazzo
Geneviève Painchaud
Megan Shortreed
Sidney Troister

Equity and Indigenous Affairs

Catherine Banning (Co-Chair)
Gerald Chan (Co-Chair)
Annamaria Enenajor (Vice Chair)
Neha Chugh
Mitchell Kitagawa
Shalini Konanur
Joelle Malette
Isfahan Merali
Deborah Moriah
Natalia Rodriguez
Kevin Ross
Stephanie Sutherland

Futures

Karen Hulan (Co-Chair)
Quinn Ross (Co-Chair)
Demetra Dimokopoulos
Sarah Letersky
Howard Levitt
Cathi Mietkiewicz
Michael Radan
Natalia Rodriguez
Tanya Walker
Kathryn Whitehead

Paralegal Standing

Michelle Lomazzo (Chair)
Geneviève Painchaud (Vice-Chair)
Paula Callaghan
Demetra Dimokopoulos
Louis Gagnon
Mitchell Kitagawa
Shalini Konanur
Greg Monforton
Deborah Moriah
Michael Radan
Cheryl Siran
Stephanie Sutherland
Doug Wellman

Proceedings Authorization

Jonathan Rosenthal (Chair)
Atrisha Lewis
Frank McCrea
Deborah Moriah
Megan Shortreed
Matthew Wilson

Professional Development and Competence

Atrisha Lewis (Chair)
Jasminka Kalajdzic (Vice-Chair)
Peter Wardle (Vice-Chair)
Paula Callaghan
Gerald Chan
Demetra Dimokopoulos
Karen Hulan
Greg Monforton
Sonia Ouellet
Margaret Waddell
Tanya Walker
Doug Wellman
Michael Winward

Professional Regulation

Megan Shortreed (Chair)
William McDowell (Vice-Chair)
Pam Hrick
Michelle Lomazzo
Cathi Mietkiewicz
Sonia Ouellet
Geneviève Painchaud
Kevin Ross
Quinn Ross
Andrew Spurgeon
Margaret Waddell
Kathryn Whitehead
Matthew Wilson
Michael Winward

Strategic Planning and Advisory

Jacqueline Horvat (Chair)
Catherine Banning
Gerald Chan
Atrisha Lewis
Michelle Lomazzo
Geneviève Painchaud
Jonathan Rosenthal
Megan Shortreed
Cheryl Siran
Sidney Troister
Diana Miles (*Ex-officio*)

Tribunal

Rebecca Durcan (Chair) (*Ex-officio*)
Catherine Banning (Vice-Chair)
Ryan Alford
Paula Callaghan
Neha Chugh
Jasminka Kalajdzic
Murray Klippenstein
Peter Wardle (*Ex-officio*)

TASK FORCES, WORKING GROUPS AND OTHER APPOINTMENTS

Governance Review Task Force

Geneviève Painchaud (Co-Chair)
Peter Wardle (Co-Chair)
Rebecca Durcan
Mitchell Kitagawa
Michelle Lomazzo
William McDowell
Cathi Mietkiewicz
Sonia Ouellet
Hassan Pirnia
Kevin Ross
Megan Shortreed
Andrew Spurgeon

Lawyers Professional Indemnity Review Task Force

William McDowell (Chair)
Pam Hrick (Vice-Chair)
Paula Callaghan
Laura Emmett
Annamaria Enejajor
Louis Gagnon
Karen Hulan
Greg Monforton
Harvey Strosberg
Doug Wellman
Matthew Wilson
Michael Winward

Human Rights Monitoring Group (Equity)

Tanya Walker (Chair)
Annamaria Enejajor
Shalini Konanur
Deborah Moriah
Natalia Rodriguez
Doug Wellman

Law Foundation of Ontario Board

Linda Rothstein (Chair)

Catherine Banning

Gerald Chan

Summary Orders

Tanya Walker

Carried

Prof. Alford and Mr. Klippenstein abstained.

TREASURER'S REMARKS

The Treasurer reminded benchers of the strategic planning session in September and advised that, with the exception of the Audit and Finance Committee, there will be no scheduled committee meetings in September.

REPORT FOR INFORMATION ONLY

MOTION – COMMITTEE AND OTHER APPOINTMENTS

- Schedule B – Other Appointments

CONVOCATION ADJOURNED AT 9:31 A.M.

LAW SOCIETY OF ONTARIO

MOTIONS TO BE MOVED AT THE MEETING OF CONVOCATION ON SEPTEMBER 28, 2023

THAT Heather Hansen be removed from the Hearing Division of the Law Society Tribunal at her own request.

THAT Deborah Moriah be removed from the Hearing Division of the Law Society Tribunal due to her position as a member of the Proceedings Authorization Committee.

Motions Respecting the Federation of Law Societies of Canada

Motion 1

That Teresa Donnelly, currently the Law Society of Ontario's representative on the Council of the Federation of Law Societies of Canada, be nominated for election as the Federation's Second Vice-President, effective October 14, 2023.

Motion 2

THAT Atrisha Lewis be nominated for election as the Law Society of Ontario's representative on the Council of the Federation of Law Societies of Canada, effective November 15, 2023.

Explanatory Note:

Jacqueline Horvat is resigning as the Federation's First Vice-President and President Elect effective October 14, 2023. Under the Federation's Governance Policy, the current Second Vice President from the Law Society of Saskatchewan will fill the vacancy created by Ms. Horvat's resignation until November 14, 2023 and will then become President on November 15, 2023.

Through **Motion 1**, the Law Society of Ontario's nominee for the resulting vacancy in the role of Second Vice President, by operation of the Federation's Governance Policy, will be filled by Teresa Donnelly who will become Vice President and President-Elect on November 15, 2023.

As Teresa Donnelly will become the Federation's Vice-President and President-Elect on November 15, 2023, vacating her position as Council representative, a vacancy is created for the Law Society's Council representative, requiring the appointment through **Motion 2**.

Tab 1.3

Audit & Finance Committee

CONSENT AGENDA FOR DECISION

Fund Balance Management Policies

Committee Members:

Sidney Troister (Chair)
Michelle Lomazzo (Vice Chair)
Rebecca Durcan
Laura Emmett
Heather Hansen
Howard Levitt
Atrisha Lewis
Hassan Pirnia
Michael Radan
Stephen Rotstein
Mark Surchin
Trevor Townsend

Authored By:

Finance
Brenda Albuquerque-Boutilier
Executive Director, Finance & CFO

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CONSENT AGENDA FOR DECISION

Fund Balance Management Policy Lawyer Pool of the Compensation Fund

Motion

The Audit & Finance Committee recommends that Convocation approve maintaining the current Fund Balance Management Policy for the lawyer pool of the Compensation Fund set out below:

- a) The Law Society's policy is to maintain the fund balance of the lawyer pool of the Compensation Fund at an amount sufficient to provide for a minimum of one 97.5th percentile aggregate claim scenarios (one-in-forty-year event) and a maximum of four 99th percentile aggregate claim scenarios (one-in-one-hundred-year event). The estimated amount of aggregate claims is to be actuarially reviewed at least every three years.
- b) If the fund balance of the lawyer pool of the Compensation Fund is less than the minimum of one one-in-forty-year event, Convocation shall budget for an annual surplus to restore the fund balance to its minimum policy objective. The minimum policy benchmark should be restored within three fiscal years.
- c) If the fund balance of the lawyer pool of the Compensation Fund is more than the minimum of one one-in-forty-year event and less than four one-in-one-hundred-year events Convocation may:
 - Mitigate the Compensation Fund component of the lawyer annual fee for the next fiscal year;
 - Budget for a surplus sufficient to increase the fund balance to its maximum policy objective of four one-in-one-hundred-year events;
 - Leave the fund balance at its current balance for the upcoming fiscal year.
- d) If the fund balance of the lawyer pool of the Compensation Fund exceeds four one-in-one-hundred-year events, Convocation shall utilize some or all of the excess for the following:

- **Mitigation of the Compensation Fund component of the lawyer annual fee for the next fiscal year;**
- **Annual mitigation of the Compensation Fund component of the lawyer annual fee shall continue such that within the next three fiscal years, the maximum benchmark shall be achieved.**

Application of the existing Fund Balance Management Policy based on a 2023 update of the stochastic modelling analysis completed by the actuarial firm engaged by the Law Society will result in:

- A minimum fund balance benchmark of \$20.4 million, or one 97.5th percentile aggregate claim scenario (a one-in-forty-year event)
- A maximum fund balance benchmark of \$103.3 million, or four 99th percentile aggregate claim scenarios (one-in-one-hundred-year event)

Purpose

As part of its oversight function, the Audit & Finance Committee (“Committee”) reviews the Law Society’s fund balance policies every three years for relevance and consistency with best practices applicable to not-for-profit organizations, and recommends changes, when appropriate, for approval by Convocation. The fund balance represents the equity within the lawyer pool of the Fund or the equivalent of assets net of liabilities.

The current Fund Balance Management Policy (“Policy”) for the lawyer pool of the Compensation Fund (“Fund”) at **Tab 1.3.1.1** requires an actuarial review of the aggregate claims against the Fund at least every three years. The Law Society engages an actuarial firm to provide a stochastic modelling report on the Fund to:

- guide the annual amount budgeted for the provision for unpaid grants expense¹, and
- determine the minimum and maximum fund balance benchmarks.

The minimum benchmark establishes the level at which action must be taken to replenish the Fund.² It serves as a cushion in the event of unforeseen financial pressures such as actual claims activity exceeding budgeted projections or notable unrealized losses on investments in a given year.

¹ The budgeted provision for unpaid grants expense is an estimate of the value of claims that may be incurred during a fiscal year using the mean value of aggregate claims calculated using the stochastic modeling analysis.

² According to the Policy, if the Fund falls below its minimum benchmark, Convocation shall budget for an annual excess of revenues to restore the minimum balance within three fiscal periods.

The last full review of Compensation Fund claim activity was completed in 2020. Based on information available at the time and Convocation's tolerance for risk, the minimum benchmark for the fund balance was changed to its current level: a one-in-forty-year event (97.5th percentile aggregate claim scenario) or \$19.6 million³. The minimum benchmark prior to 2020 was one one-in-two-hundred-year event (99.5th percentile). The maximum benchmark remained unchanged. The current review was conducted by the same actuarial firm engaged in prior years and analyzed historical lawyer licensee claim activity between 2002 and 2022.

Discussion

Following a presentation by the actuarial firm Principal engaged by the Law Society and discussion about the results of the stochastic modelling report on claims activity, the Committee considered the following key points in making its recommendation:

- The acceptable level of risk tolerance given the unpredictability of claims activity and volatility in the fair market value of the Compensation Fund's investments,
- The impact of the \$500,000⁴ limit per claimant on the fund balance and that a small number of high dollar value claims can have a notable negative impact on the fund balance,
- The timing between receipt of an inquiry, it becomes a formal claim to the Fund, its investigation and subsequent payment of a grant, which can generally range from 12 to 18 months,
- The impact on the Compensation Fund component of the annual fee to maintain the minimum fund benchmark — every \$1 million in required funding to replenish the fund equates to about a \$20 annual fee increase for lawyers,
- The discretionary nature of Fund's requirement to pay grants.

The fund balance of the lawyer pool of the Fund at the end of June 2023 is \$24.6

³ Prior to 2020 the minimum benchmark for the fund balance was set at a higher level — a one-in-two-hundred-year event, or the 99.5th percentile. Under the 2023 stochastic modelling analysis, this would set the minimum benchmark at \$29.7 million.

⁴ The present limit of \$500,000 per claimant applies to claims involving funds advanced to a lawyer on or after September 22, 2016. The per claimant limit for funds given to a lawyer between April 24, 2008 and September 21, 2016 is \$150,000

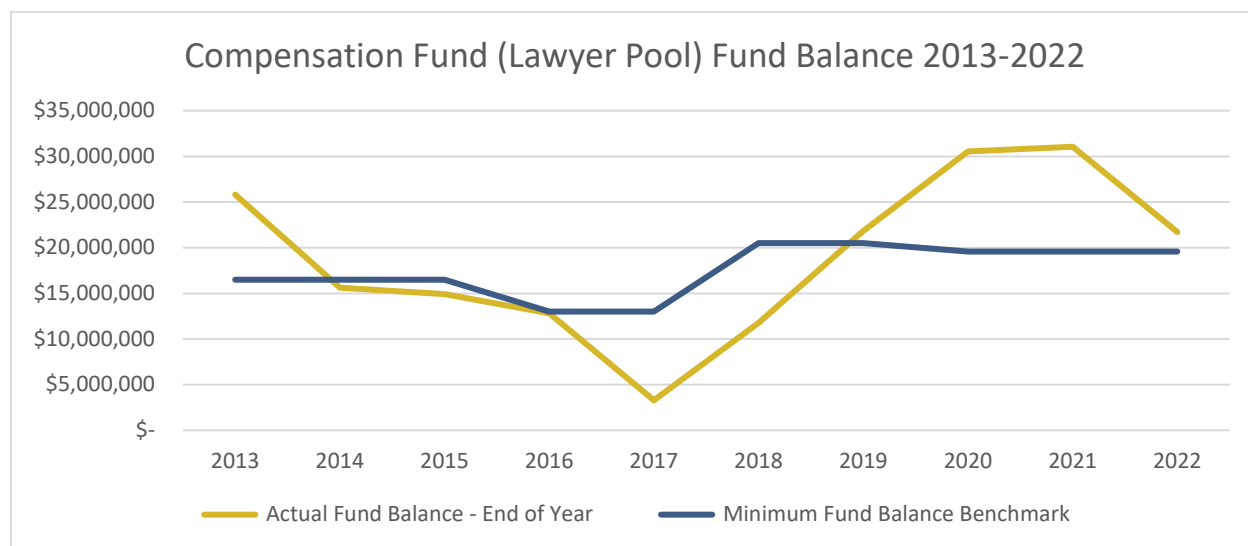
million and is forecast to decrease to \$23.2 million by the end of 2023. Based on the current Policy and the updated stochastic modelling, the fund balance at the end of 2023 for the lawyer pool of the Fund is projected to be within the minimum and maximum policy benchmarks of \$20.4 and \$103.3 million.

The 2023 stochastic modeling report presented two models for discussion: one with a 0% annual trend assumption for growth in claims and severity, similar to historical stochastic models, and one reflecting a 2% annual trend assumption, which had not been factored in previously. The use of the 2% trend assumption is to allow for the possibility of claims inflation over time and in particular, an increase in the average severity of the claims. The Committee considered historical fund balance experience in deciding to maintain a 0% trend assumption in setting the minimum and maximum benchmarks. The impact of these two models is summarized in the table below:

Benchmark for Fund Balance	With 0% Annual Trend	With 2% Annual Trend
Minimum	\$20.4 million	\$22.9 million
Maximum	\$103.3 Million	\$115.2 million

Using the 0% annual trend, and a minimum threshold at \$20.4 million, the forecasted fund balance would be less than \$3.0 million over the minimum benchmark. It would only take 6 claims at the maximum grant amount of \$500,000 or a notable decline in the fair value of the Fund’s investments to bring the fund below the minimum threshold.

The following graph shows the change in the actual fund balance (gold line) of the lawyer pool of the Fund relative to the minimum Policy benchmark (blue line), over the last 10 years.



The fluctuations in the fund balance (gold line) are the result of significant claims activity above the projected annual provision for unpaid grants and/or unbudgeted unrealized gains or losses on investments. The variation in the minimum fund balance benchmark (blue line) reflects changes in the values following updated stochastic modelling results and changes to the benchmark in the Policy in 2016 and 2020.

Section 50.5 of the *Law Society Act* provides Convocation with discretion to award and to set the value of a grant resulting from lawyer dishonesty. The grant may relieve the loss in its entirety or merely mitigate the loss. The *Law Society Act* also allows Convocation to establish grant maximums and to establish guidelines around what losses are eligible for compensation and which are not. This discretion provides an additional backstop to a fund balance management policy supporting the financial integrity of the lawyer pool of the Fund.

Recommendation

The Committee carefully considered the information presented in the stochastic modelling report, and the factors noted above, in making the recommendation to maintain the current Policy to set the minimum and maximum benchmarks of the fund balance for the lawyer pool of the Fund using the 0% annual trend model. The discretionary nature of the grants, along with the time lag between a claim inquiry and payment of a valid grant, mitigates some of the risk of claim activity to the Fund, and supports the Committee's recommendation to establish the minimum and maximum benchmarks for the fund balance at \$20.4 million and \$103.3 million, respectively, under the current Fund Balance Management Policy.

Given the recent history of claim activity and increasing severity of claims, maintaining an adequate minimum balance is essential to absorb extraordinary shocks and to prevent the balance of the Fund from being depleted to a point that would require significant increases in the Compensation Fund component of the lawyer annual fee to restore the fund balance.

Tab 1.3.1.1

Fund Balance Management Policy Lawyer Pool of the Compensation Fund

Current as of June 2020

The Law Society's policy is to maintain the Lawyer Compensation Fund balance at an amount sufficient to provide for a minimum of one 97.5th percentile aggregate claim scenarios (one-in-forty-year event) and a maximum of four 99th percentile aggregate claim scenarios (one-in-one-hundred-year event). The estimated amount of aggregate claims is to be actuarially reviewed at least every three years.

If the Lawyer Compensation Fund balance exceeds four one-in-one hundred-year events, Convocation shall utilize some or all of the excess for the following:

- Mitigation of the Lawyer Compensation Fund levy for the next fiscal year;
- Annual mitigation of the Lawyer Compensation Fund levy shall continue such that within the next three fiscal years, the maximum benchmark shall be achieved.

If the Lawyer Compensation Fund balance is less than the minimum of one one-in-forty-year event, Convocation shall budget for an annual surplus to restore the fund balance to its minimum policy objective. The minimum policy benchmark should be restored within three fiscal periods.

If the Lawyer Compensation Fund balance is more than the minimum of one one-in-forty-year event and less than four one-in-one-hundred-year events Convocation may:

- Mitigate the Lawyer Compensation Fund levy for the next fiscal year;
- Budget for a surplus sufficient to increase the fund balance to its maximum policy objective of four one-in-one-hundred-year events;
- Leave the fund balance at its current balance for the upcoming fiscal year.

CONSENT AGENDA FOR DECISION

Fund Balance Management Policy Paralegal Pool of the Compensation Fund

Motion

The Audit & Finance Committee recommends that Convocation approve a Fund Balance Management Policy for the paralegal pool of the Compensation Fund, as follows:

- a) The Law Society's policy is to maintain the paralegal pool of the Compensation Fund balance at an amount sufficient to provide for a minimum of one 97.5th percentile aggregate claim scenarios (one-in-forty-year event) and a maximum of four 99th percentile aggregate claim scenarios (one-in-one-hundred-year event). The estimated amount of aggregate claims is to be actuarially reviewed at least every three years.**
- b) If the paralegal pool of the Compensation Fund balance is less than the minimum of one one-in-forty-year event, Convocation shall budget for an annual surplus to restore the fund balance to its minimum policy objective. The minimum policy benchmark should be restored within three fiscal years.**
- c) If the paralegal pool of the Compensation Fund balance is more than the minimum of one one-in-forty-year event and less than four one-in-one-hundred-year events Convocation may:**
 - Mitigate the Compensation Fund component of the paralegal annual fee for the next fiscal year;**
 - Budget for a surplus sufficient to increase the fund balance to its maximum policy objective of four one-in-one-hundred-year events;**
 - Leave the fund balance at its current balance for the upcoming fiscal year.**
- d) If the paralegal pool of the Compensation Fund balance exceeds four one-in-one hundred-year events, Convocation shall utilize some or all of the excess for the following:**

- **Mitigation of the Compensation Fund component of the paralegal annual fee for the next fiscal year;**
- **Annual mitigation of the Compensation Fund component of the annual fee shall continue such that within the next three fiscal years, the maximum benchmark shall be achieved.**

Purpose

It is best practice for not-for-profit organizations to have policy that provides for sufficient cashflow and equity to meet operating needs. The Audit & Finance Committee assesses the Law Society's fund balance management policies every three years.

To date, the paralegal pool of the Compensation Fund has not had a fund balance management policy as there was insufficient historical claims data to model future claims activity. The modeling is required to inform the setting of minimum and maximum fund balance benchmarks.

After 15 years of paralegal regulation, there is now sufficient historical claims data to model potential future claims volumes and severity. This presents an opportunity to establish a policy to manage fund balances within the paralegal pool of the Compensation Fund that will:

- Support a risk-based, measured approach to setting the minimum fund balance intended to sustain activities of the Fund in a year of unforeseen pressures,¹
- Set minimum and maximum fund balance benchmarks that can mitigate the need for significant fluctuations in funding requirements through the Compensation Fund component of the paralegal fee, and
- Prevent the accumulation of excess fund balances.

This year, the Law Society asked the actuarial firm engaged to update the stochastic model for the lawyer pool of the Compensation Fund to also conduct the first stochastic modeling analysis of paralegal related claims and inquiries experience between 2008 to 2022. The stochastic modeling analysis assumed a 2% annual growth trend.²

¹ Pressures may include claims activity in excess of budget, unrealized investment losses, sudden decline in annual fee revenue, etc.

² The stochastic modeling report for the lawyer pool included analysis with both a 0% and a 2% growth trend. The 0% growth trend was excluded from the actuarial review of paralegal pool analysis as the difference between the results using the 2% growth trend was nominal.

Assuming the sensitivity to potential adverse circumstances and likelihood of outcomes that can fully deplete the paralegal fund balance are similar to those of the lawyer pool of the Compensation Fund, the analysis of the paralegal data results in:

- A minimum fund balance benchmark of \$143,000, or one 97.5th percentile aggregate claim scenario (a one-in-forty-year event),
- A maximum benchmark of \$707,000, or four 99th percentile aggregate claim scenarios (one-in-one-hundred-year event),

The fund balance of the paralegal pool of the Compensation Fund at the end of June was \$854,000, higher than the maximum benchmark should the policy be approved. As the current fund balance of the paralegal pool of the Compensation Fund exceeds the proposed maximum benchmark, the 2024 budget recommends a minimal amount of \$1 for the Compensation Fund component of the paralegal annual fee. If a fund balance management policy is approved, the Law Society will assess ways to bring the paralegal pool of the Compensation Fund below the maximum benchmark over the next three years.

Discussion

The Principal of the actuarial firm engaged to complete the analysis presented to the Audit & Finance Committee the results of the stochastic modeling report on claims activity for the paralegal pool of the Compensation Fund.

Based on the presentation by the actuary and the briefing material, the Audit & Finance Committee decided that implementing a policy to manage the fund balance of the paralegal pool of the Compensation Fund is appropriate. The decision to implement a fund balance management policy and the level of sensitivity to adverse circumstances was based on the following:

- Having a fund balance management policy is a best practice for not-for-profit sector, in particular for fund balances that an organization is dependent on for operations. It supports having sufficient funding during adverse periods with a minimum benchmark balance and mitigates maintenance of excessive reserves.

- The Fund Balance Management Policy, as it applies to the lawyer pool of the Compensation Fund, has been effective as the Law Society has been able to fund claims during periods of significant volatility and increased severity without completely depleting funding available within the lawyer pool of the Compensation Fund. This is important in fulfilling the Law Society's public interest mandate.
- Using a consistent approach to measuring average claim frequency and severity for both the lawyer and paralegal pools of the Compensation Fund will be easier for licensees to understand and the Law Society to monitor.

While not applicable to the fund balance management policy, it is important to note that the Audit & Finance Committee also considered the stochastic modelling analysis of future claims activity as related to the setting of annual budget for the provision for unpaid grants expense, essentially, the amount of expected claims against the paralegal pool in year. Based on the analysis of paralegal claims activity from 2008 to 2022, the estimated provision amount is \$46,890.

Recommendation

The recommendation of the Audit & Finance Committee is to establish a fund balance management policy for the paralegal pool of the Compensation Fund, as set out in the motion at the beginning of this report, and that the policy require an actuarial review of the aggregate claims at least every three years.

CONSENT AGENDA FOR DECISION

Fund Balance Management Policy Lawyer General Fund

Motion

The Audit & Finance Committee recommends that Convocation maintain the existing Fund Balance Management Policy for the Lawyer General Fund, set out below:

- a) The Law Society's policy is to maintain the sum of the fund balance of the Lawyer General Fund at no less than two, and no more than three months of General Fund budgeted expenses.**
- b) If the fund balance of the Lawyer General Fund is less than two months of budgeted Lawyer General Fund expenses, Convocation shall budget for an annual surplus to restore the fund balance to its minimum policy objective. The minimum policy benchmark should be restored within three fiscal periods.**
- c) If the fund balance of the Lawyer General Fund is more than two months of budgeted Lawyer General Fund expenses and less than three months of budgeted Lawyer General Fund expenses, Convocation may appropriate funds from the fund balance of the Lawyer General Fund for one or more of the following:**
 - Mitigate the Lawyer General Fund component of the annual fee for the next fiscal year;**
 - Transfer the excess to another Law Society fund.**
- d) If the fund balance of the Lawyer General Fund exceeds three months of budgeted Lawyer General Fund expenses, Convocation shall utilize the excess for one or more of the following:**
 - Mitigate the Lawyer General Fund component of the annual fee for the next fiscal year;**
 - Transfer the excess to another Law Society fund.**

Purpose

The Lawyer and Paralegal General Funds are the operating funds that account for the Society's program delivery and administrative activities related to the regulation and licensing of lawyers and paralegals. The Audit & Finance Committee ("Committee") reviews the Law Society's fund balance management policies regularly to ensure relevance and best practices as applicable for not-for-profit organizations, and recommends changes, when appropriate, for approval by Convocation.

The existing Lawyer General Fund Balance Management Policy was adopted by Convocation in May 2013. Minor amendments were made in 2016, and no changes were made with the last review in 2020. The Paralegal General Fund does not currently have a fund balance management policy in place, which is a reasonable approach considering the purpose of a policy and the size of the fund balance.

Discussion

The key consideration in establishing a fund balance policy is how much is appropriate to ensure an organization is positioned to manage risks of unexpected needs or events, while mitigating the accumulation of excessive fund balances.

The Committee considered three options for the Lawyer General Fund Balance Management Policy ("Policy"):

- 1) Continue with the current "fee stabilization" approach and maintain the current Policy threshold benchmarks — a minimum at no less than two months of budgeted expenses and a maximum at no more than three months of budgeted expenses;
- 2) Alter the minimum and maximum benchmarks for the fund balance while maintaining the fee stabilization approach;
- 3) Adopt a "pay-as-you-go" approach, where annual fees are established to fund anticipated operating any existing fund balance that result from revenues exceeding expenses is immediately utilized to fund the next available budget.

Along with the three options, the Committee also considered the Law Society's recent experience managing its finances under the current Policy, general best practices of fund balance management, and fund balance management policies of similar not-for-profit organizations.

Under a fee stabilization approach as implemented with the existing Policy, the objective is to maintain a reasonable fund balance¹ within benchmarks to address normal and unexpected operating needs. It uses the concept of a 'rainy day fund'. Fund balances that exceed the benchmark are used in a prescribed fashion, such as the mitigation of future annual fees. When fund balances fall below the set benchmark, they are restored over a set number of fiscal periods. This enables the Law Society to accumulate and reserve an appropriate fund balance, providing for greater flexibility in establishing the licensee annual fee and to mitigate fee volatility which could be financially challenging for some licensees.

The current Policy enabled the Law Society to effectively manage recent, unforeseen financial challenges without incurring debt or significant annual fee increases. In 2022, the challenges included a \$1.9 million decrease in the fair value of the General Fund investment portfolios and significant unanticipated expenses incurred to address the inappropriate access by some candidates to licensing examination content.

Under a pay-as-you-go approach, there is no year-over-year accumulation of fund balance as it is used to fund the first available budget. Any existing fund deficiency (expenses exceeding revenues) in a year is immediately eliminated by an increase in annual fees in the subsequent budget year. While this approach matches funding for current expenses to current licensee fees, it increases annual fee volatility because it is impossible to precisely predict revenues and expenditures in any particular budgetary year. The pay-as-you-go approach may also result in the need to borrow funds to deal with interruptions in cash inflows or if a crisis was to adversely affect the Law Society's financial position.

Based on the above, the Committee considered:

- The current Policy for the Lawyer General Fund has proven to be effective, especially in recent years.
- The current minimum and maximum levels of the general fund balance are consistent with best practices and with those of comparable organizations.
- The pay-as-you-go approach could expose the Law Society's operations to significant financial risk in future periods, result in greater volatility in lawyer annual fees, and likely lead to instances of borrowing or use of a credit facility to fund operations.

¹ Fund balances are the cumulative excess of revenues over expenses over time or the equivalent of equity in a for-profit organization.

The Paralegal General Fund does not currently have a fund balance management policy. In 2020, the Committee deferred introducing a fund balance management policy for the Paralegal General Fund pending decisions related to implementation of the Family Legal Service Provider (FLSP) initiative. The FLSP credential framework was approved by Convocation in December 2022 and is currently in the planning and development stage.

Recommendation

The Committee recommends that Convocation maintain the current Policy as set out in option 1 above, with a minimum fund balance of no less than two months of budgeted Lawyer General Fund expenses and a maximum of three months of budgeted expenses.

For the Paralegal General Fund, the Committee deferred recommending a fund balance management policy until the FLSP credential initiative is further developed. Depending on the ultimate structure and number of paralegal licensees seeking the FLSP credential, the Law Society may consider whether to operate one General Fund for all operations rather than manage the complexity of separate operating funds and the allocation of expenses across the Funds. With the fund balance of the Paralegal General Fund at \$2.4 million at the end of June 2023, there is no notable risk to the Law Society.