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CONVOCATION

IN PUBLIC SESSION

THURSDAY, MAY 24TH, 2018 - 9:00 a.m.

OSGOODE HALL, TORONTO

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CONVOCATION ATTENDANCE

Treasurer - Paul Schabas

Lee Ferrier	Vern Krishna
Allan M. Rock (ph.)	Harvey Strosberg (ph.)
Gisèle Chrétien	Suzanne Clément
Seymour Epstein	Jan Richardson (ph.)
Gerald Sheff	Baljit Sikand
Catherine Strosberg	Larry Banack
Paul Copeland (ph.)	Gary Lloyd Gottlieb
Ross Murray (ph.)	Julian Porter
Heather Ross	Clayton Ruby (ph.)
Gerald A. Swaye (ph.)	Bradley H. Wright
Roger Yachetti (ph.)	Raj Anand
Peter Beach (ph.)	Fred Bickford
Jack Braithwaite	Christopher D. Bredt
Robert Burd	John Callaghan
Paul Cooper	Dianne Corbiere
Cathy Corsetti	Janis Criger
Ross F. Earnshaw	Robert Evans
Julian Falconer	Rocco Galati
Avvy Go	Joseph Groia (ph.)
Michelle Haigh	Carol Hartman (ph.)
Jacqueline Horvat	David Howell
Brian Lawrie	Janet Leiper

1	Jeffrey Lem (ph.)	Michael Lerner (ph.)
2	Marian Lippa	Virginia MacLean
3	William McDowell	Susan T. McGrath
4	Isfahan Merali	Malcolm Mercer
5	Barbara Murchie	Gina Papageorgiou
6	Susan Richer	Raj Sharda (ph.)
7	Andrew Spurgeon	Sidney Troister
8	M. Anne Vespry	Tanya Walker
9	Heather Zordel	
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1 --- Upon commencing at 9:18 a.m.

2 -- TREASURER'S REMARKS:

3 TREASURER SCHABAS: Good morning,
4 everyone, welcome to Convocation, and to anyone who is
5 joining us via the public webcast today.

6 Bonjour, bienvenue au Conseil en
7 personne et par law webémissions publique.

8 I wish to start by recognizing that we
9 are here together in Toronto, which is a Mohawk word
10 that means, "where there are trees standing in the
11 water".

12 I would like to acknowledge that we are
13 meeting on the traditional territory of the
14 Mississaugas of New Credit First Nation and acknowledge
15 the Haudenosaunee and the long history of all of the
16 First Nations in Ontario and the Métis and Inuit
17 peoples.

18 I say this in the spirit of
19 reconciliation and the importance of reminding all of
20 us that we share this land with one another and our
21 Indigenous Peoples.

22 I would also like to welcome everyone to
23 Convocation in the Lamont Learning Centre here at the
24 Law Society.

25 First, for any members of the

1 professions, the public and the press who attend, we
2 ask that you not take photographs or videos during the
3 meeting. You may unobtrusively make an audio
4 recording, but only for the purpose of confirming the
5 accuracy of remarks made during the meeting. I do
6 note, however, that we produce a full transcript of the
7 public portion of Convocation, and an archived webcast
8 of the meeting, both of which are available on our
9 website in the days following the meeting.

10 Second, this is a business meeting and
11 we will be going through an agenda. The public are
12 here to observe, but not participate.

13 Now, the usual instructions for the
14 phone system. I sort feel like I shouldn't have to say
15 this every month, but I will anyway.

16 Once we know who is on the phone, we
17 will be placing those calling in to the meeting in what
18 we call "lecture mode," which means that from our end
19 we are muting you. Once muted, you will still be able
20 to hear the meeting, but cannot speak. We will come
21 out of lecture mode to hear callers who wish to speak
22 and vote, and I'll announce when we are coming out of
23 lecture mode, and at that point, unless you wish to
24 speak, we would ask those on the phone to press star 6
25 to ensure that they remain muted, so that we don't hear

1 your dogs barking and things like that. Thank you.

2 We will now turn to who is present on
3 the phone. I've got a list here so I'll ask you to
4 respond when I call your name, and when I finish the
5 list I'll ask if there's anybody else on the phone.
6 Peter Beach?

7 MR. BEACH: Yes, present.

8 TREASURER SCHABAS: Paul Copeland?

9 MR. COPELAND: Present.

10 TREASURER SCHABAS: Joseph Groia?

11 MR. GROIA: Present.

12 TREASURER SCHABAS: Carol Hartman?

13 MS. HARTMAN: I'm here, thank you.

14 TREASURER SCHABAS: Jeffrey Lem?

15 MR. LEM: Present.

16 TREASURER SCHABAS: Michael Lerner?

17 MR. LERNER: Present.

18 TREASURER SCHABAS: Ross Murray?

19 MR. MURRAY: Present.

20 TREASURER SCHABAS: Jan Richardson?

21 MS. RICHARDSON: Present.

22 TREASURER SCHABAS: Clayton Ruby?

23 Harvey Strosberg?

24 MR. STROSBERG: Present. Good morning.

25 TREASURER SCHABAS: Good morning, Mr.

1 Strosberg. I was waiting for you to say good morning
2 to your wife, which you usually do, but...

3 MR. STROSBERG: Good morning, Cathy.

4 TREASURER SCHABAS: Thank you. I feel
5 like it's better that way. Thank you. Gerry Swaye?

6 MR. SWAYE: Present.

7 TREASURER SCHABAS: Jerry Udell? Roger
8 Yachetti?

9 MR. YACHETTI: Present.

10 TREASURER SCHABAS: Thank you. Is there
11 anybody's name that I didn't call who is on the
12 telephone?

13 MR. ROCK: Allan Rock.

14 TREASURER SCHABAS: Allan Rock, thank
15 you.

16 MR. ROCK: Good morning.

17 TREASURER SCHABAS: Anybody else? All
18 right. Good, thank you.

19 I would like to welcome some special
20 guests who have joined us today. I'd like to welcome
21 Ovide Mercredi, the Independent Reviewer for the Review
22 Panel on Regulatory and Hearing Processes Affecting
23 Indigenous People. It's an honour to have you with us
24 today, Mr. Mercredi.

25 Also Chief Myeengun Henry, Chief of the

1 Chippewas of the Thames First Nation, member of the
2 Review Panel and a Co-Chair of the Indigenous Advisory
3 Group. It's great to have you with us as well, Chief
4 Henry, thank you.

5 Also great to have our, as of last
6 night, our Law Society Medallist, Kathleen Lickers,
7 member of the Review Panel and Co-Chair of our
8 Indigenous Advisory Group is also present and
9 congratulations, Kathleen, it's great to have you with
10 us as well.

11 As you'll have seen from our agenda, we
12 have dedicated a considerable amount of time today to
13 receiving the report of the Review Panel on Regulatory
14 and Hearing Processes Affecting Indigenous Issues.
15 This is an important report and a very timely one and
16 we will be hearing from Mr. Mercredi, as well as Ms.
17 Corbiere, the Chair of the Review Panel, and others on
18 this as we provide yet another important response to
19 the need to address Indigenous issues at the Law
20 Society.

21 On that note, I will mention a few other
22 matters in the same theme. For those of you who
23 attended the Law Society's Annual General Meeting on
24 May 9th, you will know that the first motion that was
25 filed, which related to the Law Society's good

1 character requirement for the licensing process, was
2 withdrawn after I advised the mover of the motion, Mr.
3 McRobert, prior to the meeting that we will undertake a
4 review, as requested in the Notice of Motion.

5 I have instructed the Professional
6 Regulation Committee to conduct a review of the process
7 for assessing a candidate's good character, giving
8 particular consideration to the matters outlined in the
9 motion, and I've asked the Indigenous Advisory Group to
10 provide guidance and input to PRC throughout the
11 entirety of the review. I have asked PRC and IAG to
12 proceed expeditiously, with the intent of bring a
13 preliminary report on the review to Convocation in the
14 fall.

15 As well, a launch was held, or a
16 reception was held on Tuesday in partnership with the
17 Indigenous Bar Association and the Advocates' Society
18 to launch the Advocates' Society Guide for Lawyers
19 Working with Indigenous Peoples, which is a resource of
20 litigators working with Indigenous Peoples and on
21 Indigenous matters.

22 I would urge you all to look at the
23 guide. The guide will serve as a practical tool to
24 help lawyers represent Indigenous clients, as well as
25 be a helpful resource for lawyers and paralegals to

1 learn about important historical and cultural elements
2 that provide context for the professional relationships
3 among Indigenous persons, their advocates and other
4 participants in the justice system.

5 The guide is available on-line on the
6 Advocates' Society website today and I gather it will
7 be posted on our website in the coming few days, and we
8 have taken on, as well, the task of having it
9 translated into French, and it may get translated into
10 other languages in due course, so it will be up on our
11 website in the next few days as well.

12 As I mentioned, the Law Society Awards
13 Ceremony was held last night and I would like to
14 congratulate as well all the award winners.

15 This year's recipients of the Law
16 Society Medal were Lenny Abramowicz, Kathleen Lickers,
17 as I noted, John Andrew Olthuis, Gilles LeVasseur,
18 Professor Carissima Mathen, Walter Martin Traub.

19 The William J. Simpson Distinguished
20 Paralegal Award was awarded to Harry Fine; the Lincoln
21 Alexander Award to Jim Cimba, the Laura Legge Award to
22 Mary Lou Fassel, and the J. Shirley Denison Award to
23 Antree Demakos.

24 I know I speak for all of us when I say
25 that we are honoured to call these recipients our

1 professional colleagues. We thank them not only for
2 their significant contributions to the lives of
3 Ontarians, but also for elevating the reputation of the
4 professions in the public eye.

5 Congratulations to all of the award
6 winners.

7 -- Applause.

8 TREASURER SCHABAS: I am pleased to
9 announce at Convocation today the distinguished
10 individuals who will be receiving the degree of Doctor
11 of Laws, honoris causa from the Law Society in the
12 upcoming calls to the bar ceremonies in June.

13 The 2018 recipients are Professor Bruce
14 Elman, who will receive his degree on June 20th at the
15 London call; the Honourable Eleanor Cronk in Toronto on
16 June 26th in the morning; the Honourable Leonard S.
17 Mandamin in the afternoon of June 26th, and Mr. Reuben
18 Rosenblatt, who will be receiving his LL.D on the June
19 27th call.

20 I should say that we've also invited the
21 Right Honourable David Johnston, who received an LL.D
22 from us many years ago, to be keynote speaker at the
23 Ottawa call to the bar on June 25th.

24 I would also like to remind everyone,
25 speaking of awards, that the call for nominations for

1 the Human Rights Award is open. The deadline has been
2 extended to June 30th, 2018.

3 As many of you know, the Human Rights
4 Award recognizes outstanding contributions to the
5 advancement of human rights and/or the promotion of the
6 rule of law provincially, nationally or
7 internationally. The award will be granted for
8 devotion to the advancement of human rights and the
9 rule of law over a long term or for a single
10 outstanding act of service.

11 Last Tuesday, May 15, we hosted a
12 workshop on emerging legal tech and the future of
13 regulation here at the Law Society.

14 We gathered together leaders in legal
15 technology innovation, legal regulators, and other
16 experts to explore the future regulatory impacts of
17 emerging technologies through a series of interactive
18 roundtable discussions and panel sessions.

19 We were very pleased with the event. We
20 received very positive feedback from attendees. We had
21 a packed house in this room of energetic and engaged
22 participants, including senior Law Society staff and
23 some Benchers who were able to attend.

24 We heard from a range of dynamic
25 speakers who provided great insights into what's

1 happening now with legal technology and where we, as a
2 regulator, need to be focusing going forward.

3 Through the lens of these innovations,
4 we were able to explore some of the most fundamental
5 questions in regulation; questions around who or what
6 exactly should be regulated, how should those rules be
7 structured and whose interests are the rules intended
8 to serve.

9 We also heard about a variety of
10 opportunities that these tools provide to make legal
11 services more effective, faster, cheaper, and more
12 widely available.

13 I think the event helped elevate a
14 conversation around potential regulatory approaches to
15 extraordinary new technologies. It should kickstart
16 further deliberations by Convocation under the guidance
17 of the next Treasurer.

18 This is one moment where I can have two
19 ways of saying I may be getting out just in time when I
20 look at technology and all the changes.

21 Speaking of the next Treasurer, the race
22 is officially on. At the close of nominations on
23 May 10th, the following Benchers, who I will name in
24 alphabetical order, have been nominated for the office
25 of Treasurer of the Law Society for a term commencing

1 June 28th: Ross Earnshaw, Jacqueline Horvat and
2 Malcolm Mercer. I wish you all the best of luck.

3 On another note, a different note about
4 departures, I would also like to recognize and thank
5 Wendy Tysall, our Chief Financial Officer, for her 22
6 years of service to the Law Society. Wendy has
7 announced her retirement, which will take effect on
8 June the 29th.

9 Although we're all very delighted for
10 you, Wendy, as you embark on this new chapter of your
11 life, we'll miss your guidance and stewardship over the
12 Law Society's finances.

13 On behalf of Convocation, I would like
14 to thank Ms. Tysall for her dedication, leadership and
15 tremendous contribution over the past 22 years.

16 -- Applause.

17 TREASURER SCHABAS: Just a couple of
18 other announcements. Public education events. On
19 June 5th is our Access Awareness Event and on June 20th
20 is our Pride Celebration. I would like to encourage
21 Benchers and members of the profession and the public
22 to attend these events.

23 We will also be having some guests for
24 lunch today. I understand Mr. Mercredi has to get back
25 to Ottawa, but I'm pleased that Kathleen Lickers and

1 Chief Henry will be joining us, as well as
2 representatives from the Law Foundation of Ontario,
3 their chair, Linda Rothstein, trustee, Paul Le Vay, and
4 their chief executive officer, Tanya Lee. As well,
5 Elizabeth Hall, the Executive Director of the Ontario
6 Bar Association, will be joining us.

7 -- CONSENT AGENDA:

8 TREASURER SCHABAS: With that, I'll turn
9 to the agenda and the first item is the Consent Agenda,
10 which I understand is moved by Ms. Walker and seconded
11 by Mr. Troister. This includes the draft minutes of
12 Convocation, the reappointment of the Proceedings
13 Authorization Committee, and administrative calls to
14 the bar.

15 Is there any discussion? Any discussion
16 on the telephone? On the phone? Hearing silence, all
17 in favour? Anyone opposed in the room? No one opposed
18 in the room. Is there anybody opposed on the
19 telephone? Thank you, the motion is carried.

20 All right, so the next item is the Law
21 Society Review Panel on Regulatory and Hearing
22 Processes Affecting Indigenous Peoples Report, but
23 before we have the report, I'm going to ask Chief Henry
24 to do a smudging. So Chief Henry, if you could.

25 -- LAW SOCIETY REVIEW PANEL ON

1 REGULATORY AND HEARING PROCESSES

2 AFFECTING INDIGENOUS PEOPLES REPORT:

3 MS. CORBIERE: I'm starting.

4 TREASURER SCHABAS: Okay, Dianne. Over
5 to you.

6 MS. CORBIERE: Someone's actually going
7 to use these eagle feathers in Convocation.

8 -- Speaking in Ojibway.

9 I said that hello in a friendly way and
10 I told you that my spirit name is Spirit of the Deer
11 Woman and that my clan is the Bear Clan and that I'm
12 from M'Chigeeng First Nation.

13 Good morning, Treasurer, Benchers,
14 honoured guests and members of the public. I am here
15 today in my capacity as the Chair of the Review Panel
16 on Regulatory and Hearing Processes Affecting
17 Indigenous Peoples.

18 I have undertaken this role for the last
19 year and continue to fulfill it in accordance with the
20 Treasurer's terms of reference that were established to
21 guide this comprehensive review.

22 I am pleased to present the final report
23 of the Review Panel. It has been a lot of work. My
24 business partner is lapping me in billable hours
25 because I've spent so much time on this, but it means a

1 lot to me.

2 Before I present the report, I would
3 like to start in a good way to open our minds and
4 hearts and acknowledge the ancestors, our clans and our
5 spirit helpers for the benefit of the Indigenous
6 peoples that we are here to serve and for Convocation.
7 And with that, I would invite Elder Henry to do a brief
8 smudge ceremony for us this morning.

9 CHIEF HENRY: Good morning. I wanted to
10 let you know that before all business can be conducted,
11 going back to our traditions and our elders, we were
12 always told that there's things that need to be done
13 first and in order to become full and be able to make
14 decisions, things had to be cleared because everybody
15 has busy lives and sometimes our minds, our hearts, our
16 thoughts aren't always with the business that we need
17 to conduct.

18 In order to do so, our Creator has been
19 very kind to us to give us a way to clear ourselves so
20 that we can make good decisions and think about the
21 things that we need to work on.

22 So today I would like to offer one of
23 those beautiful parts of our culture and tradition and
24 many cultures around the world of cleansing themselves
25 in a good way. One of our medicines that we use, in

1 our language we call it (speaking in Ojibway), which is
2 the sage that we use, and if we look at the sage, it's
3 grey, similar to an elder's hair, and the strength of
4 it, you'll notice when I bring it around the room, it
5 is kind of strong, because that's why our elders'
6 teachings are strong and they need to be that way.

7 I'll start off that way and I'll come
8 back and sing a song for you and we'll get started with
9 today's business.

10 Every time I light the smudge bowl I'm
11 reminded when it wasn't that long ago when this was
12 illegal to do. We were unable to practice our
13 ceremonies not too long ago, practice our smudging
14 ceremonies and even speak our language.

15 We've come a long way, and I want to
16 thank the Law Society for having an open mind and to
17 give us a chance to recognize the beautifulness of what
18 these do. You'll notice it as it goes around the room,
19 and maybe some of the things and challenges that you're
20 facing in life, it will ease a little bit and give us a
21 chance to be the best we can on this given day. So
22 I'll just walk this around the room and I'll be back.

23 I'm not sure if many of you noticed this
24 morning, the sun came up and it was bright orange. It
25 was something that reminded me of the night before as

1 the sun was going down, it was bright orange. It
2 reminded me that there was an obligation that was set
3 upon this world when Creator made it.

4 It's said that at night our grandmother
5 will look after us while we sleep and in the morning,
6 when the sun comes up again, that transition of
7 responsibility will be handed over to Father Sun.

8 And when I noticed that this morning, I
9 started thinking about what this day will bring for
10 many people around the world. Today life in some will
11 be extinguished, today life for some will begin, and
12 for today some will live in hardship and some will live
13 in wealth.

14 And we know that when we come to a day
15 we're given another responsibility to consider all
16 those things before we can conduct our business and so
17 we do that today thinking about those maybe less
18 fortunate or the ones who are considering something
19 that probably isn't very healthy for them, and we have
20 problems with addictions in many communities, not just
21 Aboriginal communities, but around the world, and we
22 want to think about them because they're looking and
23 striving for something. Maybe we could be a model to
24 give them a chance to know that there's something
25 beautiful out there that Creator gave us.

1 I wanted to bring to your attention this
2 eagle feather. This eagle feather here was delivered
3 to this earth one day by a very special ceremony, I
4 guess it would be. The eagle that brought this eagle
5 feather around the world and travelled in its
6 destinations got a chance to share this and give it a
7 chance to pick up knowledge wherever it went.

8 When I think about the eagle feather, I
9 think about ourselves as people, as we all have to
10 learn things. You can just see it in the way the eagle
11 feather has been put together. Right at the bottom
12 it's like all of us when we're born into this world.
13 We have no real knowledge except what we've seen in
14 Creator's world. We come here clean and healthy, with
15 no biases or racism or hurt or pain. All we know is
16 there's something new and exciting and Creator brought
17 those special gifts to that person and to share those
18 gifts into this world.

19 As we grow, we become children, like the
20 feathers on this bottom part. We're not tied to
21 anything, we just know that life is about something
22 very special, and we begin to grow, and they say that
23 middle section within the eagle feather is your
24 lifeline.

25 As we go through our lives we become

1 challenged, sometimes we become hurt. That's why you
2 see the separation in these feathers sometimes.

3 As we grow older and older we gather all
4 those things that are necessary for life. Creator
5 gives us teachings and puts Elders in our path, and
6 sometimes very distinguished people to give us
7 direction.

8 And when we grow even older we see the
9 lifeline becomes thinner and thinner, and as we get to
10 that stage of life where an Elder sits, he knows that
11 this is a part of life where that teaching has to begin
12 in helping others to understand what this life is
13 about, and when that -- end of that lifeline is
14 reached, they say we walk through that western door and
15 we get to meet those ancestors that moved on to that
16 spirit world before us and we get greeted by our
17 Creator in a very special way because we have done our
18 jobs here, whatever Creator wanted us to do, then we
19 have to answer to those things, those decisions that
20 we've made, because we're told somewhere along this
21 trail of life that Creator is not going to answer to
22 everything that you need to have done, but gave you a
23 spirit, a mind and a brain to make those decisions and
24 you make those decisions on your own and then you
25 account for those decisions when you go to that western

1 door and you travel and you visit Creator.

2 I think when we think about the eagle
3 feather and its significance we see beauty, we see life
4 and we see love, all the things that are necessary
5 within this beautiful eagle feather that's been, I
6 guess even here at the Law Society, been offered to the
7 Law Society for that remembrance of those beautiful
8 things that we carry.

9 So we have to honour those in that
10 special way. These feathers that Dianne is carrying,
11 and myself, is a reminder to the Law Society that those
12 things about life is really important for us, to have
13 that ability to know that and to share, that is going
14 to be a contributing factor to the life of this
15 organization in the way that we conduct our business.

16 So I just wanted to remind ourselves
17 when we polish these feathers every now and then that
18 the meaning of these feathers are so significant that
19 we need to remind ourselves because we get so inundated
20 with our work and sometimes we forget. That's why we
21 bring them out at every Convocation, or we should do it
22 more.

23 One more thing before we start. We're
24 told that our drum is the heartbeat of our mother, the
25 earth. The drum carries those stories of long ago, but

1 even deeper from what we can even consider, even in our
2 own brains, because our earth has carried the life
3 substances of everything on creation, everything that
4 here gives us sustenance, and Creator has given all of
5 that responsibility to our mother, the earth, and she
6 provides the medicine, the water and all the things
7 necessary for life, and we tie ourselves to that
8 beautiful Mother Earth because the day that we travel
9 to that western door and it's time to go back to that
10 spirit world, we go back to our Mother the Earth and
11 become part of her again and our ancestors grow and our
12 future gets stronger.

13 I would like to offer this quick song.
14 We'll set our hearts and our minds in tune with one
15 another, because if your heart is beating differently
16 and your mind is thinking differently, we're not
17 converging on the most important thing of a decision
18 that we have to make.

19 So we put our hearts together as one so
20 that when we make our business decisions it could be by
21 a unified heart, mind and body. So I'm just going to
22 offer this real quick.

23 -- Song in Ojibway.

24 CHIEF HENRY: And the last verse of this
25 song is for those that have gone on to that spirit

1 world, they no longer need the heartbeat because the
2 Creator takes care of them in the special way it's
3 done.

4 When we think about them, you have
5 people that have gone on to that spirit world,
6 grandmothers, partners, family, friends, and we think
7 about them today to help us make our decisions and for
8 inspiration, so the last verse is for them.

9 -- Song in Ojibway.

10 CHIEF HENRY: Now we can conduct our
11 business. Miigwetch.

12 TREASURER SCHABAS: Miigwetch, thank
13 you.

14 MS. CORBIERE: Miigwetch, Elder Henry.
15 Thank you for sharing those teachings, the song and the
16 drum with us this morning, and reminding about the
17 importance of eagle feathers.

18 To get -- to provide some more
19 background knowledge, again, the Review Panel was
20 created by Treasurer Schabas, soon to be as he then
21 was, in June 2017.

22 It was established to examine the way in
23 which the Law Society and its Tribunal addresses
24 regulatory matters involving Indigenous persons,
25 complainants and issues. Review Panel members were

1 charged with identifying issues and making
2 recommendations on opportunities for inclusion of
3 Indigenous perspectives in Law Society processes.

4 The scope of the review is comprehensive
5 and examines the Law Society's complaints,
6 investigation, prosecution and adjudication processes
7 in relation to how these impact members of the
8 Indigenous communities, particularly northern First
9 Nations.

10 In the presentation of the report before
11 you, it is of absolute importance to acknowledge the
12 critical role of the Independent Reviewer to the Review
13 Panel, whose mandate carried out alongside the mandate
14 of the Review Panel. Former Assembly of First Nations
15 National Chief Ovide, and I just found out Bill, can I
16 call you Bill, Mercredi was appointed as the
17 Independent Reviewer to engage with the First Nations
18 communities in Treaty 3 and Nishnawbe Aski Nation
19 treaty territories in Northern Ontario.

20 The experience of the First Nations in
21 the north that Mr. Mercredi shared in this report and
22 with the Review Panel, and the valuable perspective
23 and key insights he offered were crucial to forming the
24 recommendations in this report.

25 I use the word "crucial" here because

1 this report would be woefully incomplete were it not
2 for the overwhelming generosity of the community
3 members who continued to tell their stories, despite
4 the challenges we have imposed upon them. I would like
5 to take the opportunity to thank them with humility and
6 deep gratitude for providing us with the knowledge we
7 need to make positive changes at the Law Society.

8 I would also like to express my
9 heartfelt thanks, and it's always a pleasure to be with
10 Former National Chief Mercredi, for his kindness in
11 meeting with impacted residential school survivors,
12 that's never easy, for caring for their stories and for
13 working with the Review Panel so that their words are
14 reflected appropriately in this report.

15 Only with their stories and guidance can
16 we do better at the Law Society supporting First
17 Nations, Inuit and Métis complainants in the future.
18 As the Treasurer said after the Keshen matter, we must
19 do better.

20 At this time in this presentation I
21 would like Former National Chief Ovide Mercredi, Bill,
22 to come and deliver his presentation.

23 MR. MERCREDI: Good morning, everybody.
24 You're very fortunate, because this is my first time
25 ever giving a presentation with a computer.

1 Anyway, recently I have been to a place
2 where Champlain landed and it gave me an opportunity to
3 reflect, try to understand what his perspective was
4 when he first saw Indigenous people. I wonder what he
5 thought.

6 And clearly, the journey that we have
7 been involved in since colonization and the formation
8 of Canada 150 years ago to the present, that journey
9 has all kinds of hiccups along the way, and we're still
10 very much involved in the struggle between two distinct
11 peoples who try to understand each other and try to
12 build a place for each other in a common country.

13 So I want to begin by thanking Elder
14 Henry for his story about the eagle feather and I want
15 to say to him that he must have had the same teacher as
16 I did, but he gave you the annotated version. I'm not
17 about to tell you the full story, but I invite you at
18 some point in time to, if you have the opportunity, to
19 hear the world view of my people about society in
20 general, about the visions for the future for all
21 people, because we do have a contribution to make about
22 how we co-exist and that contribution needs to be
23 accepted and encouraged and hopefully adopted.

24 So my work as the Independent Reviewer
25 was essentially that of a quiet, non-judgmental role

1 that required a compassionate and interested listener.
2 While I was specifically required to focus on the
3 Keshen matter and on the future of First Nations, Law
4 Society of Ontario relationships, the range of issues
5 brought to my attention went deep into the impact of
6 residential schools on personal lives, their families
7 and communities.

8 The shortcomings of the Indian
9 residential schools settlement agreement, their
10 processes and mechanisms, and the Society's regulatory
11 and hearing processes are very instructive in terms of
12 deciding what needs to be corrected, what needs to be
13 improved.

14 My work did allow for many Keshen
15 complainants and other residential school survivors to
16 tell their full stories in a safe, supportive and
17 respectful manner. Their experiences in residential
18 schools hurt them deeply and such wounds were made for
19 many as regrets, doubts and ongoing challenges.

20 The nature and scope of the Indian
21 residential school settlement agreement and the
22 applications to the Indian residential schools
23 adjudication process did little to satisfy the
24 individual hopes for closure and settlement.

25 The majority of the individuals

1 interviewed believed, and for good reason, that the
2 awards they received were very low and did not
3 compensate them based on their stories.

4 The healing journey has been part of
5 their story. That journey began -- began by many
6 returning to their homelands, learning their languages,
7 having families and trying to normalize their daily
8 living.

9 They wanted healing and closure. They
10 wanted to share their life stories without feeling like
11 a loser or a criminal, feelings that were brought to
12 the forefront by a foreign and often adversarial
13 process.

14 Most residential school survivors felt
15 that they were not heard and accepted. It was not easy
16 for them to disclose deep wounds, especially the sexual
17 assaults and the abuses that they experienced in
18 residential schools. Unfortunately for the Keshen
19 complainants and other residential school survivors who
20 were unhappy with their lawyers, the hurt and regrets
21 have been compounded.

22 Where are the reports from the lawyer
23 explaining what was done for their client? Where are
24 the letters explaining the awards granted and the
25 breakdown for legal fees and costs? They want to know

1 the answers, answers no Independent Reviewer can
2 provide them. Can the Law Society of Ontario provide
3 them with the answers? They are waiting.

4 While the hope remains that the Law
5 Society of Ontario will radically alter its
6 understanding of First Nation histories, cultures,
7 societies, customs, traditions, world views and
8 internal sovereignty, the time for reform is present
9 and imminent. The days of the status quo or business
10 as usual will not lead to reconciliation, nor will the
11 relationship with First Nations be provided the
12 requisite priority and appropriate actions and
13 responses.

14 The complainants against Keshen and
15 residential school survivors in general and the
16 administration of justice as it impacts on First
17 Nations in Ontario requires the immediate attention,
18 action, cooperation and support of the entire legal
19 profession.

20 To do less than what justice demands be
21 done will be seen as not just a lost opportunity, but
22 as another betrayal on the ideals of social justice in
23 Canada.

24 Going forward for the Law Society of
25 Ontario as a self-governing professional body will mean

1 recognizing First Nations as self-governing nations who
2 have the right and duty to protect their members and
3 citizens from destructive colonialism and the vestiges
4 of colonial power still exercised by the Canadian state
5 and other institutions within Canada.

6 I have made some recommendations which I
7 will begin to read. Recommendation one. Given the gap
8 between the settler society and Indigenous nations and
9 people, the Law Society of Ontario needs to become more
10 proactive in reconciliation, work directly towards
11 building capacity on cultural competency for lawyers in
12 general and for lawyers practising with Indigenous
13 clients in particular.

14 Cultural competency means knowing and
15 understanding the historical relationships, the impact
16 and legacy of colonialism, the results of federalism
17 and the Indian Act and residential schools, the vision
18 of the treaties and the lack of implementation of
19 treaty rights, the evolution of Canadian laws raised
20 directly with Indigenous people and with greater focus
21 on Indigenous laws, traditions, customs, ceremonies,
22 world views, cultures and societies.

23 Knowing your clients to properly
24 represent them is always a prerequisite to professional
25 conduct and standard of care. For lawyers, for

1 mainstream society, as members of the majority and as
2 products of Canadian society, they more or less have
3 cultural competency to represent non-Indigenous
4 clients, but the same cannot be said concerning
5 Indigenous nations and people.

6 Knowing and being supportive of
7 Indigenous rights and freedoms and their quest for
8 belonging in their homelands, including their
9 aspirations for a better relationship with Canadians
10 and Canada, the Law Society of Ontario is a powerful
11 and significant institution for law reform, the rule of
12 law and the administration of justice as a major
13 obligation, if not an inherent duty to become a strong
14 advocate for fundamental reforms that will perfect
15 Canada and restore the rightful inheritance of
16 Indigenous nations to self determination.

17 Belonging to a multicultural society or
18 country -- belonging to a multicultural country does
19 not mean automatic harmony between distinct peoples and
20 cultures within Canada. Therefore, direct measures and
21 actions are required to address racism, prejudice and
22 discrimination in this country. A human condition that
23 is not a natural consequence of being a human being,
24 but the result of ignorance, fear, hatred or crime.

25 The Law Society of Ontario and lawyers

1 of this province need to become more aware of the
2 negative impacts of prejudice, discrimination and
3 racism on Indigenous peoples, especially now, given the
4 ever increasing urban population of Indigenous people
5 in Ontario, lawyers and the Law Society need to become
6 anti-racism advocates as part of their cultural
7 competency in an increasing pluralistic society.

8 Knowing that Canada has responded to the
9 crimes of the residential schools, albeit under
10 pressure, and inadequately, the Law Society of Ontario
11 needs to call upon the federal government to undertake
12 an immediate review of the adequacy, strengths and
13 weaknesses of the Indian residential schools settlement
14 agreement with continuing attention to the cap on
15 awards and the role of the independent assessment
16 process and the role of lawyers in that regard.

17 Residential school survivors continue to
18 advocate for their healing as individuals, families and
19 communities. Their cry for help is worthy of immediate
20 support and action from lawyers and the Law Society of
21 Ontario.

22 The Aboriginal Healing Foundation closed
23 on September 30th, 2014; thereby, by government
24 neglect, was unable to continue to support important
25 community-based healing initiatives aimed at resolving

1 the individual and collective trauma of the abuses
2 experienced at residential schools. The Law Society of
3 Ontario needs to call upon the federal government to
4 reinstate a properly funded healing foundation.

5 Canadians in general abhor poverty and
6 inequality with regard to income or wealth distribution
7 in our country. Unfortunately for Indigenous people,
8 their poverty remains out of mind and out of sight for
9 the most part, however, the lack of jobs, wealth
10 generation or even a subsistent economy within most
11 Indigenous communities renders Indigenous nations
12 dependent upon the federal government for funding to
13 address their social issues, problems like poor
14 housing, poor health, and emergencies like the diabetes
15 epidemic and the recurring youth suicides.

16 While slow and sporadic gains are being
17 made in addressing Indigenous poverty within Canada,
18 help from other than governmental sources are needed to
19 accelerate the rise from poverty.

20 The Law Society can help by creating a
21 funding opportunity and mechanism for its members to
22 make charitable donations to support the healing call
23 by residential school survivors, their families and
24 communities.

25 The inherent rights -- I should add here

1 that I'm still adding to my thought processes and this
2 will be, I guess, added to the public document. Number
3 7, the inherent rights of Indigenous nations commonly
4 referred to as Aboriginal people and First Nations,
5 exist independently and outside any legal traditions of
6 the settler people and their countries. This
7 indisputable reality derives from the occupation, title
8 and protection of traditional lands and territories.

9 The historical and cultural heritage of
10 Indigenous peoples, their unbroken links and bonds with
11 their ancestors, their traditional customs, ceremonies,
12 spiritual and legal traditions, their human rights to
13 self determination and their rights to unfettered
14 destinies. This understanding, enshrined in Indigenous
15 nations, world views and legal traditions is the reason
16 their rights are inherent.

17 Indigenous nations have in the past and
18 continue to present -- to the present -- I'll never
19 speak from a computer again. Let me start over again.

20 Indigenous nations have in the past and
21 continue to present -- here we go again. I'll grab the
22 eagle feather. Indigenous nations have in the --
23 Indigenous nations have in the past and continue to the
24 present to assert their rights and freedoms from this
25 perspective, that their rights are inherent, not

1 delegated nor granted from the settler, nor, as in more
2 recent times, since Confederation do they believe that
3 their rights and freedoms flow from Canada.

4 Under the British legal traditions, the
5 legal traditions, the Canadian rule of law, the
6 Constitution of Canada, federalism, Canadian legal
7 institutions, and the result is a legal relationship
8 that is imperfect, lacking colonial nature, and in dire
9 need of reforms, reconciliation and the ideals of
10 equity, justice and co-existence between distinct
11 peoples and nations.

12 Under the present colonial relationship
13 that has changed very little since Confederation, we
14 are far apart and the gap in common understanding and
15 the mutual respect is not closing.

16 Although more recent progressive
17 decisions of the Supreme Court of Canada and
18 progressive efforts by certain successive federal and
19 provincial governments to change the barriers inherent
20 in the rule of law are generally regarded as positive
21 developments, such as the constitutional recognition
22 and the affirmation of Aboriginal treaty rights, the
23 fact remains that these developments do not use the
24 existence of inherent rights as a foundation for
25 Canada, nor for Indigenous nations, but, instead,

1 continue to define Aboriginal treaty rights under the
2 notion of precedents that, for obvious reasons, what
3 the state means to protect and enhance the sovereignty
4 and territorial integrity of Canada, the country.

5 The Law Society of Ontario can help to
6 advance the causes of Indigenous peoples and nations
7 and thereby help to discard the colonialism that
8 underlies the body politic and legal regimes of the
9 dominant society.

10 More particularly, the Law Society of
11 Ontario needs to set up an internal mechanism with a
12 mandate to review their investigative, disciplinary and
13 hearing processes with the objective of reforming or
14 modifying such processes concerning disciplinary
15 matters involving lawyers and Indigenous clients and
16 nations.

17 Indigenous nations have their laws for
18 matters related to the land and the environment,
19 children and families, human and individual rights,
20 political and social rights and duties, to mention but
21 a few matters of an orderly and successful society.
22 However, the errors of the notion of terra nullius,
23 however, like the errors of the notion of terra nullius
24 there is a wrong presumption that Indigenous people and
25 nations are empty of laws.

1 The fact is that their traditional and
2 customary laws exist. The other fact is that they have
3 the capacity to make contemporary laws to reflect and
4 accommodate the changes brought about by settlement
5 treaties and Canadian laws.

6 The Law Society of Ontario, as an aspect
7 of continuing education, must make available to all
8 members of the legal profession opportunities for
9 education opportunities in conjunction with Indigenous
10 legal experts and scholars of Indigenous knowledge and
11 ways of settling conflicts and disputes, including, as
12 appropriate, Indigenous leaders and elders.

13 (Speaking in Ojibway.)

14 So in my language I said I am finished
15 and I'll never speak from a computer again. Thank you
16 for your attention. I wish you well in your
17 deliberations. Miigwetch.

18 TREASURER SCHABAS: Thank you,
19 miigwetch, Mr. Mercredi. Ms. Corbiere.

20 MS. CORBIERE: Miigwetch, Ovide. I
21 would like to take moment to acknowledge my fellow
22 Review Panel members who have, like me, put in a lot of
23 time, given up a lot, worked tenaciously with good
24 hearts and good minds towards the completion of the
25 report before you.

1 Kathy Lickers, LSM, co-chair of the
2 Indigenous Advisory Group; Chief Myeengun Henry,
3 co-chair of the Indigenous Advisory Group; Robert Burd,
4 paralegal Bencher, Isfahan Merali, Bencher, and Teresa
5 Donnelly, who couldn't be here with us today, Bencher,
6 she's in a trial until the end of July, I think. We
7 wish her well. Their unique contributions have been
8 invaluable to the development of this report.

9 Also critical to the development of this
10 report are the contributions of the Law Society staff
11 from our Professional Regulation Division, who agreed
12 to tell their stories to us with emotion, precision and
13 candour. And I would just like to share with you, we
14 have some exceptional people that work for us. We were
15 all very impressed with the people that participated in
16 this panel from our staff.

17 We were also fortunate to have advice
18 from a broad spectrum of leaders in Indigenous legal
19 thought and practice. These esteemed members of the
20 Indigenous bars and other experts include Professor
21 John Borrows, who provided insights on reforming Law
22 Society practices and policies; Delia Opekokew, LSM,
23 one of the first First Nation women lawyers in Canada,
24 discussed her experiences as a Deputy Chief Adjudicator
25 in the independent assessment processes and shared her

1 experiences and knowledge with us on the Law Society
2 practices and procedures.

3 Terry Swan, who works in Assistant
4 Deputy Minister Kim Murray's office in the Ontario
5 government. She wasn't a lawyer, but quite brilliant,
6 and she provided insights on how the Law Society needs
7 to understand the path to "cultural safety" and to take
8 trauma informed approaches in the work that they do.

9 And Professor Jeffrey Hewitt, who spoke
10 with the Review Panel about the Law Society's processes
11 in relation to Indigenous legal orders and that
12 presently we have no harmonization with any Indigenous
13 legal orders.

14 And Justice -- and you heard this
15 morning he's going to be one of our honorary
16 doctorates in June, Justice Tony Mandamin of the
17 Federal Court, who provided valuable knowledge about
18 the applications of restorative -- well, I should say
19 First Nation restorative justice principles,
20 referencing his transformative work in leading the
21 establishment of restorative principles in the Federal
22 Court practice guidelines for Aboriginal law
23 proceedings, which, I might add, includes a very
24 extensive section on how you treat Elders as witnesses,
25 and everyone should take note.

1 The final report of the Review Panel to
2 the Law Society sets out ten recommendations. The
3 first, based on Mr. Mercredi's report, and nine from
4 the Review Panel that harmonize with Mr. Mercredi's
5 report. They include proposals for change that will
6 assist the Law Society to begin to establish better
7 relationships with Indigenous communities and
8 particularly First Nation communities in the north.

9 The specific recommendations are
10 qualified in four broad categories; those of general
11 application, communication and engagement, changes to
12 specific professional regulation functions, and
13 additional Law Society functions.

14 Should Convocation approve this report
15 today, these transformative recommendations will be
16 implemented by the Law Society. As they are
17 implemented, it is the belief of the members of the
18 Review Panel that the practical impacts of these
19 recommendations will directly address the issues they
20 speak to, as well as broadly influence and inform
21 additional structures of the Law Society, its functions
22 and its relationships with Indigenous communities.

23 I was going to read all the
24 recommendations, but I know you're all good Benchers
25 and you've done your homework, so in the interests of

1 time, again, I would like to say miigwetch to my
2 friends, colleagues and fellow Benchers and community
3 partner members of the Review Panel, to my fellow
4 co-chair of the Equity Indigenous Affairs Committee,
5 Julian Falconer, for his ongoing support on this
6 initiative; to my Former National Chief, Ovide
7 Mercredi, for his critical contributions to this report
8 and to our understanding of the perspectives of First
9 Nation complainants, who are subject to the challenges
10 created by the Law Society processes.

11 To our Treasurer, for acting quickly and
12 decisively in establishing and in continuing to support
13 the work of the Review Panel and in the implementation
14 of the Indigenous framework.

15 And, most importantly, to those
16 community members who continue to tell their stories;
17 even though they were really mad at us they agreed to
18 work with us so that we can do better in the future. I
19 am so grateful.

20 So at page 28, tab 2.2, for decision of
21 Convocation today, that Convocation approve the
22 recommendations set out in this report to incorporate
23 Indigenous perspectives in the Law Society's regulatory
24 and hearing processes in keeping with the Law Society's
25 commitment through the Indigenous framework adopted by

1 the Law Society to work within its mandate on
2 Indigenous issues and the relationship with the
3 Indigenous community. And I move that and my seconder
4 is Bencher Robert Burd.

5 TREASURER SCHABAS: Thank you very much,
6 Ms. Corbiere. So the floor is open for discussion. I
7 know, Mr. Falconer, you wanted to speak first, so go
8 ahead.

9 MR. FALCONER: Thank you, Treasurer. I
10 apologize if myself and Former National Chief Mercredi
11 have to do a departure if we're still in mid-debate. I
12 have undertaken to be the air Uber for Mr. Mercredi
13 back to an Ottawa conference we're involved in, so we
14 have to hard stop at 10:45. I hope when I leave it's
15 while someone is agreeing with me, rather than
16 disagreeing.

17 I want to acknowledge, first of all,
18 because of how special this is, that we are on the
19 territory of the Mississaugas of New Credit. I want to
20 acknowledge the sacred items in the room, I want to
21 acknowledge the Elders. I want to acknowledge that
22 when I speak I have no special knowledge and I find
23 myself learning every day from our Indigenous brothers
24 and sisters.

25 My legal practice in the north gives me

1 an opportunity to learn, and I'm learning every day.
2 The reality that we grapple with as a society is that,
3 quite plain and simple, we reap the seeds we sow.

4 Through gross treaty violations,
5 residential schools, the 60s scoop, Ralph Rose
6 atrocities in the north, youth suicides,
7 over-incarceration of our Indigenous brothers and
8 sisters, we have see the terrible harm that we have
9 done to our Indigenous communities and we are seeing
10 the inevitable human toll that we have exacted. The
11 so-called justice system is clearly implicated and we,
12 as a Law Society, are clearly implicated.

13 As the co-chair of the Equity and
14 Indigenous Affairs Committee, I want to welcome this
15 report, this important work, and in the name of
16 reconciliation, I welcome this work. We're all
17 grappling with what does reconciliation mean. I
18 suggest that it means appreciating that while we
19 individually may not be directly implicated in causing
20 these harms, we carry a special responsibility in
21 dealing with our Indigenous people, particularly
22 survivors, to get it right.

23 We are talking about vulnerable, injured
24 people, and we have to get it right. We as the Law
25 Society carry the responsibility of regulating those

1 who administer professional services to Indigenous
2 people and we carry the responsibility to get that
3 right.

4 So as co-chair of EIAC I welcome the
5 report and encourage my colleagues to embark on this
6 path of reform fearlessly and without delay. The
7 reforms proposed are, to be honest, no brainers.

8 A northern Ojibway Elder, Barney Batise,
9 speaks of the importance of being courageously
10 innovative. The Indigenous Review Panel and the
11 Independent Reviewer have done an excellent job at
12 being courageously innovative. They are, quite
13 literally, the Indigenous conscience for the Law
14 Society. The leadership includes Bencher Corbiere,
15 IAG Chair Lickers, and Former National Chief Mercredi.
16 When they speak we need to listen and we need to act.

17 I close with this thought. It is very
18 hard to define what reconciliation is. It may be
19 easier to define what it's not. What reconciliation is
20 not is it's not ensnaring the interests of Indigenous
21 people in our political wranglings at the Convocation
22 level. What reconciliation is not, it's not turning a
23 deaf ear to the leadership that appears before us today
24 urging us to act. The work needs to be done and the
25 work needs to start now. Thank you, Treasurer.

1 TREASURER SCHABAS: Thank you, Mr.
2 Falconer. Mr. Galati.

3 MR. GALATI: Thank you. I have a
4 comment then I have a question for Ms. Corbiere, and it
5 relates to recommendation number 8, and that
6 recommendation is a Law Society tribunal adjudicator
7 should receive ongoing training in the history of
8 Indigenous law in Canada, Indigenous methods of dispute
9 resolution, Indigenous ceremony and protocols, the
10 independent assessment process and other relevant
11 related topics.

12 I guess I might sound like a broken
13 record, but I more than welcome this recommendation and
14 the whole report, but, in my view, and I encourage
15 Benchers, speaking as a Bencher, I think this provision
16 needs to go farther and ensure a minimal mandatory
17 appointment of Indigenous adjudicators, particularly on
18 panels where either the complainant or the licensee is
19 Indigenous, and, in my view, with the minimum of one
20 Indigenous adjudicator sitting on that panel.

21 Clearly Canadian colonial law has
22 precedent for that. The Supreme Court of Canada Act
23 requires three Québec judges be appointed as a
24 Constitutional requirement. Our Supreme Court in
25 Parks, Williams and other jury cases has stated that,

1 you know, that is a requirement in certain
2 circumstances.

3 And I would encourage Convocation,
4 sooner rather than later, to enact, either through the
5 Tribunal Committee and the rules an express provision
6 to that effect and go further and recommend to the
7 provincial legislature that that become part of the Law
8 Society Act.

9 And that's my comment. My question is
10 did your committee put your mind to that possibility or
11 thought?

12 MS. CORBIERE: It is in the report and
13 it is the proper process to recommend to the Tribunal
14 Committee, because they're the ones who develop the
15 rules, and we have recommended that, that they consider
16 that, and we discussed it with our Tribunal chair.

17 MR. GALATI: I'm sorry I missed it. It
18 was a quick read, I read it, but I was going straight
19 to the condition.

20 TREASURER SCHABAS: In fact, Ms.
21 Murchie, I know you've indicated -- as the chair of the
22 Tribunal Committee do you want to address this briefly?

23 MS. MURCHIE: I can briefly say that in
24 the last call for adjudicators from the profession it
25 was specifically indicated that those with Aboriginal

1 backgrounds and/or Aboriginal experience would be
2 welcome.

3 So that's part of the process right now
4 to gain some additional licensees with the proper
5 background and experience.

6 TREASURER SCHABAS: Thank you. Ms. Go.

7 MS. GO: Thank you. I'm speaking in
8 favour of the motion and through you, Treasurer, I want
9 to thank Mr. Mercredi not just for your work on this
10 Review Panel, but, in fact -- sorry, I spent the last
11 two weeks organizing a conference on racism, so it's
12 kind of -- like I thought today I can relax, but
13 anyway -- for all the work that you have done over the
14 years and, you know, even before reconciliation became
15 a buzz word, you have been doing the work and reminding
16 us the importance of reconciliation.

17 And although you're reading from the
18 computer, we know you're speaking from your heart, so
19 it's very much appreciated. And thank you, Elder
20 Henry, for your wisdom and for your work on the panel.

21 As I mentioned, I spent two days, last
22 few days on the conference, bringing together people of
23 colour and Indigenous people to talk about the
24 importance of racial equity and racial justice and
25 particularly at this time of uncertainty facing us in

1 this province. So I think that there are, of course,
2 slowly but surely, more and more Canadians are coming
3 to realize the importance of reconciliation and people
4 are talking about using political action and other
5 actions within the broader society to bring about
6 reconciliation.

7 There's very little talk within the
8 legal profession on how do we use the law and there's
9 little -- although the Law Society of Ontario has
10 committed itself, we have yet to come up with very
11 concrete actions and I think this report really speaks
12 to the need for some very concrete pieces of action
13 that we need.

14 So it is a very important beginning and
15 I certainly hope there will be more education around,
16 you know, the issue around the inherent right and how
17 it -- how it plays out in the colonial legal system.
18 I'm really interested in learning more.

19 So my fellow Bencher talked about the
20 recommendation 8, and I think that recommendation
21 really should extend to all Benchers and also all
22 members of the legal profession to learn more about the
23 Indigenous legal system as well.

24 TREASURER SCHABAS: Thank you very much.
25 Ms. Criger.

1 MS. CRIGER: Thank you, Treasurer. I
2 speak in favour of the motion.

3 One of the primary goals of the Law
4 Society's strategic plan in 2015 was to lead as a
5 regulator. This report gives us a concrete path to
6 take in order to lead as a regulator, and when we lead
7 as a regulator in this way and start at this point, we
8 then become influencers, better influencers, stronger
9 influencers in the wider discussion of reconciliation,
10 both federally and provincially.

11 I think that makes this an
12 extraordinarily important report. I think it made it
13 an extraordinarily important Review Panel arising from
14 an extraordinarily important case, and I don't say that
15 just because I was one of the panel members, but the
16 case itself contained a lot of important learning and a
17 lot of important understanding. It's very important
18 that we begin this and that we take our province and
19 our country with us on the road to reconciliation. For
20 those reasons I support the motion. Thank you.

21 TREASURER SCHABAS: Thank you.
22 Ms. Ross.

23 MS. ROSS: Thank you, Treasurer. I
24 don't have a vote here today, I'm a Life Bencher, but I
25 vote with my heart and I vote with my spirit.

1 During the course of the last two years
2 and the work that has been done under the wonderful
3 leadership of Paul Schabas, Dianne Corbiere and all of
4 the colleagues who have helped, I've cast my mind back
5 many times to where I grew up in Northern British
6 Columbia on the shores of the Skeena River. And where
7 I lived, the Indian reservation, as it was called, was
8 one mile down the road from me.

9 I went to school and had what most
10 people would consider a privileged existence, but my
11 education was grossly deprived, and it's only been in
12 the last number of years that as I cast my mind back, I
13 realized a number of people were missing from my
14 school. We don't notice who's missing, but my school
15 was a sea of little white faces, a stone's throw from
16 the Indian reservation. Where were all the children?
17 I feel deep regret that as a child I didn't know that
18 then, but I know it now.

19 In the past two years, especially here,
20 my education about our Indigenous people has continued
21 in true earnest and for that I'm very grateful. The
22 guide for lawyers working with Indigenous peoples,
23 which was launched officially on the 22nd of this week,
24 has an introduction that I would like to read.

25 "There's a growing recognition in Canada

1 across all sectors and regions of the need for a deeper
2 understanding and more meaningful inclusion of the
3 Indigenous peoples of Canada. One of the centrepieces
4 of this recognition was the final report of the Truth
5 and Reconciliation Commission of Canada released in
6 2015, which included 94 calls to action to affect
7 reconciliation with Indigenous peoples."

8 "Call to action 27 was directed at the
9 legal community of Canada, calling on us, through the
10 Federation of Law Societies of Canada, to," and I
11 quote, "ensure that the lawyers receive appropriate
12 cultural competency training, which includes the
13 history and legacy of residential schools, the United
14 Nations declaration on the rights of Indigenous
15 peoples, treaties and Aboriginal rights, Indigenous law
16 and Aboriginal Crown relations. This will require
17 skills-based training and intercultural competency,
18 conflict resolution, human rights, and anti-racism."

19 The guide that I've just read from and
20 the report today are two tremendous steps in this
21 direction.

22 I want to, again, thank the Treasurer
23 for his tremendous leadership in this area and Dianne
24 Corbiere for her extraordinary courage and commitment
25 to Indigenous people.

1 To our Indigenous leaders, including
2 Kathleen Lickers, LSM, Chief Henry, Ovide Mercredi,
3 Professor John Borrows and Professor Jeffrey Hewitt to
4 name just a few, I am so grateful. Miigwetch.

5 TREASURER SCHABAS: Thank you, Ms. Ross.
6 Ms. Vespry.

7 MS. VESPRY: Thank you, Treasurer.
8 I'm -- actually, I have no idea whether I'm speaking in
9 support of the motion or not, so I -- I had hoped to
10 have a chance to ask that we could potentially have a
11 meeting of the whole and bring this back after the
12 meeting of the whole so that there could be some of the
13 discussion that we've heard today, some of the ideas
14 that may or may not have been addressed that could be
15 added to the recommendations, possibly to make the
16 document even stronger, although it is a very strong
17 and comprehensive document as it is.

18 Some of the recommendations, it is not
19 clear to me, at least, whether they are general
20 recommendations for the improvement of our process,
21 because there are some recommendations, especially
22 around the Tribunal in terms of how witnesses are
23 treated and how witnesses are educated, witnesses or
24 complainants or both, that if our general efforts to
25 make the Law Society more well-known to the public,

1 more relied on by the public go forward and are
2 successful, then we can anticipate that there will be
3 more people from marginalized communities of all kinds
4 coming forward, potentially with complaints or needing
5 redress of some kind or another and needing assistance
6 from the Law Society.

7 So some of these recommendations I
8 support completely wholeheartedly and think that if in
9 the context that they're being brought forward they are
10 going to be used as recommendations that would apply to
11 almost a separate or second area of the Tribunal that
12 deals primarily with Indigenous complainants and/or
13 Indigenous licensees, that we're failing to be as bold
14 in our thinking as we can be and failing to take
15 precautions that would assist other marginalized
16 communities, other marginalized peoples who need that
17 sort of support and that sort of assistance if they're
18 going to be able to use the Law Society to assist them
19 in their dealings with other lawyers or dealings with
20 lawyers.

21 So I guess that's one question. Are the
22 recommendations specifically limited or are these
23 general recommendations that should be applied across
24 the board, or has that been discussed or thought about?

25 MS. CORBIERE: So our mandate was to

1 deal specifically with Indigenous peoples. When this
2 is being implemented, I think that committees or
3 working groups that are implementing would probably
4 think about those issues, because I know we did, and we
5 definitely thought that you're seeing now, for example,
6 people arguing that, you know, Afro-Canadians might
7 benefit from the similar Gladue work that's happening.

8 Indigenous peoples' processes are not
9 unique to them. If they are helpful to other Canadians
10 and if committees who are reviewing this see other
11 vulnerable people, that can be addressed, but, like I
12 said, it was beyond the scope of our Review Panel.

13 MS. VESPRY: Understood, thank you. My
14 primary question, I suppose, and this is one that I
15 don't think can actually be dealt with at Convocation.
16 I think that it -- insofar as Convocation is a public
17 business meeting, I think this crosses over into
18 private business and should be a discussion that we
19 have in camera.

20 It is absolutely unclear to me from
21 reading the materials and then going back and reading
22 Keshen what actually went wrong. In the materials it
23 says that Keshen was a particular paradigm that calls
24 for change, so it's an exemplar or model of a situation
25 that went wrong that needed to be fixed, these

1 recommendations are brought forward to fix it, and yet
2 for those of us who weren't directly involved with the
3 case or with the committee, some of us will be
4 re-elected, some of us will be looking at these
5 recommendations four or five years from now and saying
6 are they doing what they needed to do. And it's really
7 hard to judge a fix unless you know what was actually
8 specifically broken.

9 And I can guess at some of the things
10 that were broken. I suspect that a lot of things were
11 broken. We don't know and I can understand why you
12 wouldn't put the details in this recommendation, I
13 understand that you couldn't, but I think that there's
14 another process problem at the Law Society that those
15 of us who are perfectly happy to vote for most of these
16 recommendations, if not all of these recommendations,
17 are doing so without knowing what we're actually voting
18 for or without knowing what effect what we're voting
19 for is supposed to have. Without knowing what disease
20 it is that we're trying to cure beyond the most general
21 terms, and I have a serious problem with that.

22 I don't think that it's doing my job
23 properly. I don't think that we were elected to, you
24 know, pick the fuzzy, heartwarming solution to problems
25 and go forward on a wave of political correctness and

1 not examine how the suggested resolutions apply to the
2 actual problems.

3 And for that reason I would suggest that
4 if we can we can either delay this for a month and have
5 some sort of meeting of the whole or bring it back and
6 discuss it in camera at the end of the day. Thank you.

7 TREASURER SCHABAS: Do you want to
8 respond first, Ms. Corbiere?

9 MS. CORBIERE: Well, this is a legal
10 matter, Treasurer, so perhaps you should respond.

11 TREASURER SCHABAS: Well, this arose out
12 of a particular case which was a catalyst for
13 recognition by me and many others in the organization
14 that we were not well equipped or handling competently,
15 in my view, the specific and unique issues raised by
16 the residential schools and by the particular
17 traditions and cultures of Indigenous peoples.

18 So my terms of reference which I
19 prepared was for this group to review what had happened
20 in Keshen, go out and talk to the community, and
21 Mr. Mercredi did that, talk to experts, and come
22 forward with forward-looking recommendations,
23 recognizing the urgency of the need, recognizing the
24 calls to action from the Truth and Reconciliation
25 Commission, and that is what we have done.

1 You're quite right that there is some
2 sensitivity around talking about, as you put it, what
3 went wrong specifically in Keshen. The group did look
4 at that. They had a lot of discussions and meetings
5 with people internally and externally about those
6 issues.

7 Obviously, though, that's not the
8 purpose of the report. The report was not meant to be
9 a post mortem on a case, it was meant to go out and
10 educate the group so that they could educate us and
11 come forward with forward-looking recommendations, and
12 that's exactly what they've done.

13 So I'm not sure we can satisfy you
14 entirely on that, but that's the purpose of the report
15 and the exercise is for us to be proactive and showing
16 that we are being responsive.

17 Mr. Falconer, I see you want to get your
18 oar in here, so I'll let you talk briefly, please.

19 MR. FALCONER: Yes, my colleague,
20 Ms. Vespry, raises, in my view, a legitimate question
21 because it goes to the question, really, of
22 implementation and where do we go from here. I don't
23 think it takes away from the importance of today,
24 respecting the -- respecting the viewpoint of both the
25 Independent Reviewer and the Review Panel itself that

1 this needs to be implemented and it needs to be
2 implemented now.

3 But the role of the Equity and
4 Indigenous Affairs Committee, the role of EIAC, is to
5 take charge of implementing this with the guidance of
6 the IAG. That's precisely what I would respectfully
7 suggest to the next Treasurer, and I may well not be
8 involved in EIAC, for all I know, that's the life of
9 politics, but whoever is involved in EIAC, I would
10 suggest Ms. Vespry's point is well taken, that there
11 needs to be a plan.

12 And that's what implementation is all
13 about. We're seeing it with Racialized and we're going
14 to see it with this report. And part of that exercise
15 will be for EIAC to be discussing in the confines of
16 the confidentiality of committee meetings what informed
17 the Review Panel's decisions and where we go from here.

18 So I think there is an opportunity to
19 get it right, I think that's how you do it, and I think
20 you end up chasing your tail if your concerns over
21 implementation cause you not to pass the report. You
22 end up being paralyzed by the very wranglings that I
23 was talking about before.

24 So I do recognize and acknowledge
25 Ms. Vespry's point, I simply say that is exactly the

1 business of EIAC.

2 TREASURER SCHABAS: Thank you.

3 Ms. Corbiere, do you want to say anything more?

4 MS. CORBIERE: Well, just that I've
5 heard Ms. Vespry's concerns and I agree with Mr.
6 Falconer. I would still respectfully request that the
7 motion go ahead today.

8 TREASURER SCHABAS: Well, I haven't
9 heard any kind of a motion to the contrary. It's
10 certainly my wish and desire that we proceed with this
11 today. I think people, Indigenous people are expecting
12 us to move on this.

13 So we'll then return to the speakers'
14 list. Ms. Merali, you're next.

15 MS. MERALI: Thank you, Treasurer. I
16 simply want to say very briefly, of course I'm in
17 support of the motion and the report. I played a small
18 role in the Review Panel and was deeply honoured to be
19 part of that process.

20 Some of you may know, my entire career
21 has been working in the area of human rights and
22 working to represent vulnerable, marginalized people,
23 but that wasn't enough for this work. There was so
24 much learning to be done and I'm really honoured that
25 we had an opportunity to do that. And I say that

1 because as we move forwards in showing leadership on
2 these issues, we all have that learning to do and in
3 the vein of deep humility and thankfulness that the
4 opportunity has come to us to start moving forward in a
5 good way on this issue.

6 I want to thank Dianne Corbiere and
7 Julian Falconer for their leadership on the Review
8 Panel. It was a long and challenging process and their
9 leadership was very important. To Chief Henry for his
10 wisdom and knowledge, to Ovide Mercredi, really, there
11 aren't enough words to thank Ovide for all the work
12 that he's done, his deep commitment, despite the
13 numerous challenges in doing this work.

14 To Kathleen Lickers for her deep
15 commitment to transparency in her principled approach,
16 which is so much part of this report to you and,
17 Kathleen, you're going to have to change your business
18 card now because everyone says LSM after your name.

19 To Teresa Donnelly, who I wish could be
20 here today, who really helped inform this report with
21 her knowledge of criminal law and understanding of
22 witnesses, cross-examination and hearing processes, and
23 to Robert Burd for his deep dedication to this work and
24 for his ability to keep in mind everything, all the
25 materials that were before us.

1 And to the Treasurer for leading the way
2 on this work. I know that when we began this work, the
3 hope was that the recommendations would apply in a
4 general way to all racialized or vulnerable or
5 marginalized people that come before us, and I hope
6 that happens. So thank you.

7 TREASURER SCHABAS: Thank you,
8 Ms. Merali. Mr. McDowell.

9 MR. McDOWELL: I support the report. I
10 think it's excellent and I was interested to look at
11 the work plans month by month as they were set out in
12 BoardBooks. It's a phenomenal amount of work.

13 And I wanted to thank Chief Mercredi for
14 coming to speak to us as well. He remains a real
15 powerhouse in the voices in the Canadian political and
16 cultural spectrum, and you're flying Air Falconer to
17 Ottawa. I hope you booked business class.

18 Let me just ask a practical question. I
19 know that there are some cases spinning off from the
20 independent adjudication process and the TRC, which is
21 mentioned by Chief Mercredi in his remarks. Do we know
22 how many of those are in the pipeline? And just as a
23 matter of transition, will the recommendations,
24 assuming that they're going to be adopted, be
25 incorporated onstream in those pending cases?

1 MS. CORBIERE: I think that we've
2 mentioned there's still an opportunity, I suppose, for
3 people dissatisfied with IAP to come forward again.

4 We also know, and you probably know
5 this, I think it's this week, May 29th, the 60s Scoop
6 Agreement is being approved by the court here in
7 Toronto. We also know about day scholar and day
8 schools. So very similar, big class action cases that
9 are coming down and we're hoping that, as Diana says,
10 we could be better prepared for the next wave of
11 things, and that will -- she's looking forward to
12 implementing this report to make sure that we're ready
13 in the next wave.

14 MR. McDOWELL: So we don't think, right
15 now we don't think there are any residential school
16 survivor cases pending before a tribunal?

17 MS. CORBIERE: I wasn't informed of any.
18 I thought there might be something in the south. Like
19 I said, we were looking at Keshen and we couldn't look
20 at everything.

21 MR. McDOWELL: Oh, no, I'm just
22 wondering how this is going to be taken on board going
23 forward and how quickly.

24 MS. CORBIERE: Yes.

25 MR. McDOWELL: Anyway, thank you so

1 much.

2 TREASURER SCHABAS: Thank you. Ms.
3 Murchie.

4 MS. MURCHIE: Thank you, Treasurer. I
5 just speak briefly in support of the motion. I think
6 the recommendations are well thought out and they
7 provide a wonderful start for us down this path to
8 reconciliation. It's a good first step and I look
9 forward at the Tribunal Committee, at least, and I'm
10 sure the other committees will do the same, to working
11 on an implementation plan that will be satisfactory and
12 it will undoubtedly go beyond just the issues that are
13 addressed here and consider other groups that might
14 benefit from some of these recommendations. So thank
15 you and I support the motion.

16 TREASURER SCHABAS: Thank you very much.
17 I'm just going to pause on the list for a moment
18 because I see Mr. Falconer and Mr. Mercredi, you're
19 about to leave? In five minutes. Well, okay, then
20 we'll carry on with the list. I just want to say
21 something before you go. Mr. Mercer.

22 MR. MERCER: I want to support the
23 report and the recommendations, and I think I do. It's
24 important that we not give lip service when we accept
25 important reports and that the approval, the adoption

1 be genuine.

2 I worry sometimes in our Society that we
3 say yes to things without necessarily knowing what they
4 mean and without being committed to them and I -- my
5 question, my comment is in that spirit. It's not in
6 opposition, it's in concern to be sure that I
7 understand.

8 The numbered recommendations, each of
9 them I support because they're carefully framed and
10 they contemplate work to be done, examinations to be
11 made. The recommendation which troubles me, not in
12 spirit, but wearing a pointy-headed lawyer hat, is the
13 first number, "The Law Society should accept the
14 Independent Reviewer's recommendations, which include
15 recommendations that align with others in this report,"
16 and it goes on.

17 I heard Mr. Mercredi with interest, with
18 support, and I should say, with incomplete
19 understanding. I'm new to this area. I don't
20 understand all that he said, I don't understand all the
21 implications of what he said.

22 I would be pleased to support in spirit,
23 but many significant things were said in Chief
24 Mercredi's statement to us, and if we are being asked
25 to take on genuinely and accept as Law Society policy

1 all that he said in his remarks, I'm concerned that we
2 can't be doing that in a serious and genuine way.

3 Much of it, I think, makes sense, some
4 of which I don't understand, some of which I think is
5 terribly deep and it would be offensive to only
6 superficially accept it, so I want to understand the
7 spirit in which this particular resolution or
8 recommendation is asked for approval.

9 MS. CORBIERE: I don't really -- I'm
10 trying to think of how to say this. A lot of what he
11 said is forward-thinking, that when people are
12 reviewing it, keep it in mind.

13 I think I heard yesterday, for example,
14 just as an example, someone was -- was proudly saying
15 that the Law Society is one of the oldest or is the
16 oldest self-governing institution in Canada, and I was
17 thinking, well, First Nations are the oldest
18 self-governing nations in Canada.

19 So he's really just talking about, you
20 know, the Indigenous laws are separate and distinct
21 from the common-law and civil laws and that needs to be
22 respected. So that when we're doing our work, we have
23 to become more knowledgeable, and reading the guide is
24 a good start, but it's all in this forward-thinking
25 manner.

1 MR. MERCER: With that understanding,
2 I'm pleased to be in support.

3 TREASURER SCHABAS: Thank you,
4 Mr. Mercer. Mr. Troister.

5 MR. TROISTER: Thank you, Treasurer.
6 Two questions, but really following up on what
7 Mr. Mercer said, I'm not quite sure I understand
8 recommendation number 1.

9 Because when I read the report, and I'm
10 looking at BoardBooks on page 35, for example, one of
11 the recommendations is, if we're taking Mr. Mercredi's
12 report, that the Law Society of Ontario needs to call
13 upon the federal government, this is in paragraph 4, to
14 undertake an immediate review of the adequacy, strength
15 and weakness of the settlement.

16 In number 5, the Law Society needs to
17 call upon the federal government to reinstate a
18 properly funded healing foundation, and in number 6,
19 the Law Society can help by creating a funding
20 opportunity and mechanism for its members to make
21 charitable donations to support the healing call by
22 residential school survivors.

23 Now, I'm not quite sure if we are voting
24 to support all of those things and, in fact, take
25 action on all of those things or are we -- what I

1 originally thought we were voting on making changes to
2 our -- our procedures with regard to discipline
3 proceedings at the Tribunal.

4 So I would really like some
5 clarification on recommendation 1, because if it is
6 incorporating paragraphs whatever the numbers are, the
7 recommendations that start at page 34 and go on to
8 page, well, 35 and include three of those things that
9 I've indicated, and I didn't read all of them all that
10 closely, I'd just like to know what am I voting on.
11 Because I'm happy with everything else but, but I need
12 a clarification on 1 to be able to support that as
13 well.

14 MS. CORBIERE: This is part of the
15 Independent Reviewer's reaching out to the First Nation
16 individuals and the Treaty 3 and land territory peoples
17 and their nations amongst them.

18 One of the things that we learned as a
19 Review Panel was some of these survivors of residential
20 school, even though we came up with a class action
21 settlement and we implemented it and we've completed
22 it. Are still broken.

23 Some people committed suicide before
24 their IAP processes, some people committed suicide
25 after. And one of the big failings, and we heard this

1 from the IAP people, is that some of these people, no
2 amount of money is ever going to be able to help them
3 live this life in a good way. That the only thing that
4 will be helpful to them is that we contribute to a
5 healing fund so that they can access healing supports
6 to the end of their days.

7 So these recommendations of Ovide
8 Mercredi are crucial to those survivors, because we did
9 say we want to recognize, and it's simply a letter from
10 our -- whoever the Treasurer is, and hopefully this
11 Treasurer before he leaves, to just suggest these
12 things, and we would suggest it in a good way. We
13 can't bind the federal government to anything, but I
14 can tell you the federal government is already
15 considering this. So we would probably be saying
16 something that they're already thinking about because
17 they, too, realize that now that the residential school
18 agreement and the dust has settled, people are still
19 angry at their lawyers, they're still angry at the
20 administration of justice, and some of them are very
21 broken.

22 MR. TROISTER: Just so I understand, in
23 voting -- approving all of these recommendations, we
24 are incorporating all of the recommendations of
25 Mr. Mercredi in the report, is that right?

1 MS. CORBIERE: Yes, and the one
2 specifically that you actually mentioned.

3 MR. TROISTER: Okay, thank you.

4 TREASURER SCHABAS: Mr. Troister, maybe
5 I could just indicate that the recommendation refers to
6 accepting the Independent Reviewer's recommendations
7 and that we commit to determine the actions that should
8 be taken with respect to those recommendations. So
9 obviously there's detail in it.

10 This stems directly from the terms of
11 reference, which included advice with respect to
12 remedial action that we might be able to --

13 MR. TROISTER: Thank you, Treasurer, I
14 just wanted to understand what I was voting on.

15 TREASURER SCHABAS: Okay, thank you. I
16 know that Mr. Falconer and Mr. Mercredi have to go now.
17 There's been a lot of thank yous, but I get to do
18 another one.

19 I did say a year ago quite publicly that
20 I felt we had failed and that we had a lot to learn.
21 There was no sugar coating around our experiences, that
22 we needed to do better, and I created this panel, I
23 retained Mr. Mercredi in a memorable phone call I had
24 with him when he told me he was very interested, and
25 the report is an extraordinary one. It comes from an

1 extraordinary amount of hard work, of challenging work,
2 of difficult work and, frankly, emotional work, and I
3 think Mr. Mercredi, in particular, who spent a lot of
4 time in the north travelling and meeting with
5 survivors, I know found it very emotional and I'm
6 extraordinarily grateful for his work and the work of
7 all of you on this matter.

8 The report is far-reaching, it pulls no
9 punches, and that's precisely what I wanted it to do.
10 So I want to thank you. I know you've got to go, but,
11 Mr. Mercredi, we're forever in your debt for this and
12 we all want to thank you very much.

13 -- Applause.

14 TREASURER SCHABAS: And I should say
15 that if you read right to the end of the report, I'll
16 be travelling to Sioux Lookout with Mr. Mercredi and
17 other members of the Review Panel for a closing meeting
18 with the communities there in June. So we'll see you
19 then, Ovide, or Bill, as you're now called.

20 So we have a couple more people on the
21 list to bring this to a close. Mr. Gottlieb.

22 MR. GOTTLIEB: Thank you, Treasurer.
23 Mr. Mercer and Mr. Troister raised the issues that I
24 was going to raise and they have been addressed to some
25 extent by Ms. Corbiere.

1 TREASURER SCHABAS: Great, thank you.

2 Ms. Chrétien.

3 MS. CHRÉTIEN: Yes, I strongly support
4 the motion and I guess this is probably a discussion
5 we'll have after the vote, but if it is passed, I hope
6 that we have a very strong implementation plan, it's
7 not just tabled, but with some deadlines and next
8 steps. So that would be my comments. Thank you.

9 TREASURER SCHABAS: Thank you. All
10 right. One more, Mr. Burd.

11 MR. BURD: Thank you, Treasurer. I just
12 want to say, in addition to the thanks to Dianne and
13 her leadership, I also want to thank Darcy and Jim for
14 their leadership as well as the staff in putting --
15 helping us putting together this very lengthy report.

16 But I talk today with two feelings, one
17 of pride and one of regret. The pride is that it's
18 such a humbling and learning experience, and I thank
19 everyone involved and the Treasurer for assigning me to
20 this panel.

21 And my regret is for you, my fellow
22 colleagues and Benchers, for not experiencing
23 everything that this review panel experienced, both
24 internally and externally, with the Indigenous
25 community.

1 It's something that I think you should
2 all venture to push yourselves to learn more. I'm
3 humbled for this experience and I think it's invaluable
4 and priceless what I have learned and I thank everybody
5 involved and I really hope as Benchers we don't just
6 look at this report and move -- and forget it and put
7 it on a shelf. This is an important aspect of us
8 moving forward in reconciliation, and I hope, as Gisèle
9 just said, that there is a strong implementation
10 process that's put forward and I am strongly, strongly
11 in support of this motion.

12 TREASURER SCHABAS: Thank you very much.
13 So I gather -- Ms. Vespry, you have your hand up.
14 You've already spoken. Usually the rules are we just
15 speak to a matter once. Is...

16 MS. VESPRY: Treasurer, I did not bring
17 a motion when I spoke earlier and so I would like to
18 put my informal request in the words of a motion now,
19 if I may.

20 TREASURER SCHABAS: Well, you did speak
21 earlier. We're ready to vote on the matter, so I think
22 if you had wanted to bring a motion you ought to have
23 done it earlier.

24 MS. VESPRY: So call it a motion to
25 amend.

1 TREASURER SCHABAS: Go ahead. What is
2 it you wish to --

3 MS. VESPRY: And obviously I'm not even
4 going to even try to suggest it's a motion to amend
5 that would be necessarily approved by the committee
6 that's bringing this forward.

7 I would like to move that we approve the
8 bold numbered recommendations, the ones that start, I
9 think, on page 36 of BoardBooks, or that that be voted
10 on to be approved, I guess, but that the
11 recommendations from the independent reviewer be
12 approved in principle only and when he finishes writing
13 them, because it was clear that they weren't even
14 complete as of today.

15 We then have a chance to vote on them on
16 a substantive basis, as opposed to a vote now in
17 principle to approve them as sort of generally, yes, we
18 agree, whether we agree with each individual legal
19 point in there.

20 TREASURER SCHABAS: Well, the motion is
21 as written and refers to specific recommendations which
22 are in writing and which you have. If Mr. Mercredi
23 formulates in writing further recommendations and they
24 get brought forward to Convocation, they can be voted
25 on.

1 MS. VESPRY: So the matters that he
2 spoke to that were not already in the paperwork are to
3 be ignored for today?

4 TREASURER SCHABAS: The motion is to
5 approve his recommendations and commit to determining
6 actions that should be taken with respect to
7 recommendations 2, 4, 5 and 6. Those are the ones that
8 are in the motion. Is that a problem for you?

9 We are committing to determine the
10 actions that should be taken with respect to those
11 numbered recommendations.

12 MS. VESPRY: So numbers 2, which means
13 that --

14 TREASURER SCHABAS: Yes, they're there,
15 2, 4, 5 and 6. He numbered them in his report on page
16 35 and 34.

17 MS. VESPRY: Again, so my motion to
18 amend is that those be approved in principle only and
19 the rest of the recommendations be approved, assuming
20 that the vote passes, which I expect it will, as
21 written to go forward.

22 TREASURER SCHABAS: Do you have a
23 seconder?

24 MS. VESPRY: I will ask, do I have a
25 seconder?

1 MS. ZORDEL: I'll second it.

2 TREASURER SCHABAS: Ms. Zordel, all
3 right. There's a motion to amend. Is there any
4 discussion? Mr. Earnshaw.

5 MR. EARNSHAW: Thank you, Treasurer. I
6 feel as though I'm making submissions in court with
7 respect to the nice interpretation of what's before us,
8 but I really think that the wording that we have in
9 front of us addresses the concerns that Mr. Mercer and
10 Mr. Troister and even Ms. Vespry bring forward.

11 It suggests that we accept the
12 recommendations. That's different, in my lexicon, from
13 approving them or agreeing to act on them, as you
14 pointed out a couple of times, Treasurer, and that we
15 commit to determining actions that should be taken with
16 respect to the recommendations 2, 4, 5 and 6, being
17 some of the same recommendations that caused
18 Mr. Troister to ask his question in the first instance.

19 So I speak against the motion that's
20 brought by Ms. Vespry on the basis that it's already
21 been addressed. Thank you.

22 TREASURER SCHABAS: Is there anybody
23 else who wishes to speak to the motion, the amended
24 motion? Yes, Ms. Clément.

25 MS. CLÉMENT: I'm sort of following on

1 what Mr. Earnshaw has raised. I had some difficulty
2 with lack of clarity on that recommendation as well and
3 I was thinking if the Law Society should accept the
4 Independent Reviewer's report, rather than
5 recommendations, and commit to examining the
6 recommendations in the report for future consideration,
7 I think it would bring more clarity.

8 I find now that the way those
9 recommendations are found in a separate document in the
10 report, rather than laid out clearly in the motion,
11 will not, I think, provide the kind of paper trail that
12 we would want on the clarity of this decision. So
13 accepting the report may allow us to do that.

14 TREASURER SCHABAS: Is that another --
15 is that a different motion?

16 MS. CLÉMENT: No, I'm just -- I think we
17 need to find clarity. There's obviously a lack of
18 clarity.

19 MS. VESPRY: Treasurer, if I may, as
20 it's my motion, I'm willing to withdraw my motion if
21 Convocation will commit to an understanding that none
22 of this commits us to anything, if we're just accepting
23 a report and then we'll go forward and do more work.
24 That's roughly what my suggestion of approval in
25 principle would be.

1 I'm willing to withdraw on that basis,
2 but I don't get the impression that that's how we're
3 interpreting it.

4 TREASURER SCHABAS: I doubt that Ms.
5 Corbiere would see that as appropriate. This is a call
6 to action. This does contain a committal to
7 determining actions, so that's a commit to determining
8 actions with respect to the number of recommendations.
9 Ms. Corbiere, do you want address this?

10 MS. CORBIERE: I don't accept any
11 amendments. I think it's clear, I agree with
12 Mr. Earnshaw and the Treasurer and I don't want this to
13 be the last of what we say and we wiggle word on little
14 words when we were all expressing our all commitment to
15 the calls to action, and that's what I would like to
16 see.

17 When this is done, I would also,
18 Treasurer, like to thank a few more people that I
19 missed. So if we have to vote on it, I'm willing to
20 vote and then -- because I don't think it's, with all
21 due respect --

22 TREASURER SCHABAS: I think there has
23 been a lot of discussion and I think we should put this
24 to a vote. So first we'll vote on the amendment put
25 forward by Ms. Vespry. So -- which I think is to

1 accept things in principle, is that how you put it?

2 MS. VESPRY: It is to have the vote for
3 the motion itself apply to the recommendations on pages
4 36, 37, 38 and following on BoardBooks, and for the
5 recommendations on pages 34 and 35 to be approved in
6 principle for further discussion.

7 TREASURER SCHABAS: All in favour?
8 Opposed? The motion is clearly defeated in the room.
9 Mr. Varro advises me that it won't matter, given the
10 overwhelming vote against it in the room, so the motion
11 fails.

12 We're then ready to put the motion,
13 unless Ms. Clément, did you wish to move to change the
14 word recommendation to report?

15 MS. CLÉMENT: No, we'll just use the
16 oral debate as the paper trail for clarity.

17 TREASURER SCHABAS: Thank you. Then
18 we're ready to put the motion from the working group to
19 a vote. All in favour? Anybody opposed in the room?
20 I don't see anybody opposed in the room. Is there
21 anybody opposed on the telephone? Anybody opposed on
22 the phone?

23 I guess I should -- someone is asking
24 whether there are any abstentions. Does anybody
25 abstain? Yes, I see a couple of abstentions.

1 Mr. Epstein and Ms. Vespry. Anybody abstaining on the
2 telephone?

3 MR. LEM: Jeffrey Lem.

4 TREASURER SCHABAS: Jeffrey Lem is
5 abstaining. Thank you, Mr. Lem. All right, the motion
6 is carried.

7 So I've said my thank yous.

8 Ms. Corbiere, do you want to say a few more thank yous
9 before the break?

10 MS. CORBIERE: I did thank the staff
11 that participated and I was remiss because they didn't
12 write it in my notes, and I wanted to give a big thank
13 you to Jim Varro and Darcy for the excellent work that
14 they did supporting the panel.

15 TREASURER SCHABAS: Yes, and I join that
16 as well. Thank you very much to both of you. So thank
17 you, we will take the morning break and resume in 20
18 minutes.

19 --- Recess taken at 11:00 a.m.

20 --- On resuming at 11:28 a.m.

21 TREASURER SCHABAS: All right. If
22 everybody could take their seats and we'll resume,
23 please.

24 So the next item of business is the
25 report of the Professional Development and Competence

1 Committee, and in Mr. Wardle's absence, Ms. Horvat, you
2 are presenting. Go ahead.

3 -- PROFESSIONAL DEVELOPMENT AND
4 COMPETENCE COMMITTEE REPORT:

5 MS. HORVAT: Thank you. Yes, our chair
6 has fled the jurisdiction, but I am pleased to present
7 the report of the Professional Development and
8 Competence Committee today.

9 The Chair did ask me to express the
10 thanks on behalf of the entire committee to the staff,
11 particularly Margaret Drent and Priya Bhatia, who have
12 both worked extremely hard on this report and on the
13 consultation paper.

14 The Professional Development and
15 Competence Committee report is at tab 3 of the
16 Convocation materials. The purpose of this report is
17 to provide Convocation with background and context
18 regarding the launch of the next phase of the dialogue
19 on licensing, which is consultation with the profession
20 and public regarding lawyer licensing.

21 This report is being provided to
22 Convocation today for its information. As you all
23 know, our strategic priority number 1 is directed to
24 enhancing licensing standards and requirements and
25 their assessment, with a focus on competence.

1 In November 2016, Convocation approved
2 the committee's recommendation that an analysis of the
3 licensing process be undertaken for the purpose of
4 making long term recommendations for an appropriate and
5 sustainable licensing process. In February of 2017,
6 the committee provided a report to Convocation
7 regarding its proposal for a licensing review.

8 As part of this review, the committee
9 held the dialogue on licensing between April and June
10 of 2017. The committee has considered the feedback it
11 received during the dialogue on licensing, independent
12 evaluations of the first three years of the Pathways,
13 and the feedback received from articling candidates as
14 part of the articling survey. Based on all of this,
15 the committee developed four options for lawyer
16 licensing outlined in the consultation report.

17 It is now the committee's intention to
18 develop a plan for a long term sustainable licensing
19 system. The consultation paper was prepared to guide
20 participants in the next consultation phase. The
21 consultation paper is attached at tab 3.1.1, page 84 of
22 BoardBooks, and the French translation of the paper is
23 attached at tab 3.1.2, page 129 of BoardBooks.

24 The committee has developed these
25 options at a time of significant changes in the legal

1 services marketplace in order to ensure that the Law
2 Society -- that the Law Society's licensing process is
3 as effective as possible.

4 Some of the factors taken into
5 consideration by the committee include the increasing
6 importance of information technology in the practice of
7 law, globalization, and downward pressure on the cost
8 of providing legal services.

9 The licensing system is facing a number
10 of challenges, including ongoing shortages of articling
11 positions, concerns about the viability of the current
12 licensing system, discrimination and harassment of some
13 licensing candidates due to a power imbalance in
14 articling, and inadequate remuneration during
15 transitional training for some candidates.

16 The committee is aware that the
17 licensing system must stand the test of time. It must
18 ensure competence consistent with the Law Society's
19 statutory responsibility, but it and we must also be
20 forward-looking and must ensure that the lawyers of the
21 future are well equipped to meet the public's needs for
22 competent legal services.

23 The entire committee has come together
24 around this report after almost two years of work and
25 the entire committee agrees that all four options

1 presented in the consultation paper should go out to
2 the public and to the profession for consultation.

3 While many of us may hold personal views
4 on the four options, we ask that you respect the
5 consultation process, keep an open mind and not make up
6 your minds too early.

7 I'll now briefly review the four
8 options.

9 Option number 1 is the status quo.
10 Option number 2 is the status quo with enhancements.
11 Option number 3 is examination-based licensing, and
12 option number 4 is LPP and PPD for all.

13 Please keep in mind that each of the
14 four options continues to require that all licensing
15 candidates pass both the barrister and solicitors'
16 licensing examinations. No changes are proposed to
17 either of the licensing examinations. Two of the
18 options, options 2 and 4, require that candidates write
19 and pass each licensing examination prior to moving on
20 to the transitional training component proposed under
21 each option. And three of the options, options 2, 3
22 and 4, introduce a new skills examination as a
23 requirement for licensure.

24 So option number 1, or the status quo.
25 Under this option, the current two training pathways,

1 articling and the LPP/PPD, which includes the 17 week
2 training course followed by a four month work
3 placement, would be retained and candidates would be
4 able to continue to choose when they write their
5 licensing examinations.

6 Option 2, the status quo with
7 enhancements. The two current training pathways would
8 be retained with the following enhancements. First,
9 all candidates would be required to be paid the
10 statutory minimum wage during their transitional
11 training. Second, audits and greater Law Society
12 oversight of articling and work placements would occur;
13 and, third, a new requirement that all candidates would
14 have to pass the barrister and solicitors' licensing
15 examinations as a prerequisite to moving on to the
16 transitional training component. And, fourth,
17 candidates would also have to pass the new skills
18 examination.

19 The new skills examination could consist
20 of written tasks such as writing an opinion letter or
21 memorandum, drafting an affidavit or a short pleading,
22 providing an analysis of the application of the Rules
23 of Professional Conduct, or identifying proposed
24 solutions to an urgent issue or question.

25 Option 3 is examination-based licensing.

1 This option involves the most significant changes to
2 the system. Candidates would be licensed after they
3 successfully complete the barrister and solicitors'
4 licensing examinations and the new skills examination.

5 Transitional training would be
6 eliminated. Under this option, the management of
7 regulatory risk would shift to the post call period and
8 would depend on the career path chosen by the new
9 licensee. Those candidates who choose not to practice
10 would be called to the bar, but hold a non-practising
11 membership. Candidates who choose not to practice law
12 and licensees practising in a workplace of six or more
13 lawyers would not be subject to any additional
14 regulatory requirements. Licensees who practice as
15 sole practitioners or in a firm of five or fewer
16 lawyers would be required to take a new practice
17 essentials course within 12 to 18 months of choosing
18 this category of practice. And any licensee who moves
19 into a sole or small practice environment from a
20 non-practising membership or from a large firm at any
21 stage in their career would be required to take the
22 practice essentials course within 12 to 18 months of
23 making this transition.

24 One of the factors taken into
25 consideration by option 3 is regulatory risk. Sole

1 practitioners continue to receive a significantly
2 higher number and proportion of complaints. Licensees
3 practising in larger firms continue to receive a
4 significantly fewer number and proportion of
5 complaints.

6 The final option is option number 4,
7 which is the LPP and PPD for all candidates. All
8 licensing candidates under this option would be
9 required to complete the training course component of
10 the LPP or PPD without a work placement. Candidates
11 would also be required to successfully complete the
12 barrister and solicitors' examination and the new
13 skills examination.

14 The consultation paper asks those who
15 respond to the consultation to examine the four options
16 with five evaluative principles in mind. These five
17 principles, which I will describe in a moment, help us
18 to determine if the Law Society has met its statutory
19 responsibility in section 4.1(A) of the Law Society
20 Act to ensure that all persons who practice law in
21 Ontario or provide legal services in Ontario meet
22 standards of learning, professional competence and
23 professional conduct that are appropriate for the legal
24 services they provide.

25 The five evaluative principles are,

1 first, transitional training. Law Society lawyer
2 licensing requirements should ensure that candidates
3 are able to meet the five goals of transition to
4 practice or transitional training that were first
5 established in the 2012 Pathways Report.

6 The five goals are, first, the
7 application of defined practice and problem solving
8 skills through contextual or experiential learning;
9 second, consideration of practice management issues,
10 including the business of law; third, the application
11 of ethical and professionalism principles in
12 professional, practical and transactional contexts;
13 fourth, socialization from student to practitioner;
14 and, fifth, introduction to systemic mentoring.

15 The second principle is competence.
16 Earlier I referred to the Law Society's statutory
17 responsibility to ensure that all licensees meet
18 standards of professional competence. Competence has
19 been described as the habitual and judicious use of
20 communication, knowledge, technical skills and legal
21 reasoning for the benefit of the individual and the
22 community being served.

23 The third principle is fairness.
24 Licensing processes, including transitional training
25 for professional occupations, must be derived in a fair

1 and defensible manner.

2 Fairness legislation, including the Fair
3 Access to Regulated Professions and Compulsory Trades
4 Act, require that licensing practices are consistent
5 with the following objectives: fairness, objectivity,
6 transparency and accountability.

7 The fourth principle is consistency.
8 There must be some degree of uniformity in the nature
9 of each candidate's transitional training experience in
10 order for a transitional training requirement to be
11 defensible. The degree of consistency may be measured
12 by the extent to which all candidates have been exposed
13 to the necessary competencies.

14 The final principle is cost. The
15 licensing process operates on a cost recovery basis.
16 Although there is some contribution from the
17 profession, candidates are required to bear the cost of
18 licensure.

19 The committee is of the view that each
20 option should be evaluated with a view to the estimated
21 financial impact on licensing candidates. I'll now
22 briefly review the consultation process.

23 This consultation is the second phase of
24 the dialogue on licensing. The committee hopes that
25 the lengthy consultation period from May 24th, today,

1 to October 26th, 2018, will encourage participation
2 from as many individuals, including students and
3 organizations, as possible throughout the province.
4 The consultation paper is being made available in the
5 dialogue on licensing's micro site, www.lsdialogue.ca,
6 in both English and in French. Submissions may also be
7 made on-line.

8 In addition, the Law Society will
9 organize eight to ten focus groups in various Ontario
10 cities with a broad range of individuals to ensure that
11 a diverse range of perspectives are incorporated into
12 the consultation.

13 The focus groups will be held from July
14 through the fall and will be moderated by an outside
15 facilitator. In addition to the focus groups, there
16 will also be regional outreach, with at least one
17 session being held in French. In the coming months
18 efforts will also be made to ensure that licensing is a
19 discussion topic at as many Law Society's events as
20 possible, and information on the consultation will be
21 sent directly to the law schools for distribution to
22 students and to others.

23 The committee looks forward to
24 continuing the dialogue on licensing with the
25 profession and the public and thanks participants for

1 taking the time to assist in the committee's
2 deliberations. The committee will carefully consider
3 all of the feedback it receives and will develop
4 recommendations for Convocation's consideration.

5 The committee anticipates that it will
6 report back to Convocation in early 2019, just in time
7 for the next Bencher election.

8 As I already stated, the entire
9 committee has come together around this report after
10 almost two years of work and the entire committee
11 agrees that all four options presented in the paper
12 should go out to the public and profession for
13 consultation.

14 And I want to remind all of you again
15 that while many of us hold personal views on one of
16 these options, or more of these options, we, the
17 committee, ask that you respect the consultation
18 process and keep an open mind throughout the process.
19 And today is not the day to debate the merits of any of
20 the options. That debate is for early 2019.

21 Thank you and I'm happy to take any
22 questions on the consultation process or on the paper.

23 TREASURER SCHABAS: Thank you very much,
24 Ms. Horvat. Ms. Chrétien.

25 MS. CHRÉTIEN: Yes, I'm in favour

1 obviously that you're doing the consultation. One
2 question, I may have missed it. Is the committee as
3 well reflecting on the cost of each of these options,
4 not only for the candidates, but for Law Society, and
5 bringing that forward as well with the consultation
6 report?

7 MS. HORVAT: So the paper mentions an
8 estimated cost for each of the four options and the
9 licensing -- licensing is done on a cost recovery
10 basis, so the candidates bear the cost. With the
11 Pathways Project there was a one-million dollar
12 donation from, I guess donation from the profession.

13 TREASURER SCHABAS: Contribution.

14 MS. HORVAT: Contribution. There's no
15 tax receipt. Thanks.

16 TREASURER SCHABAS: Mr. Callaghan.

17 MR. CALLAGHAN: I was intrigued by the
18 report, and here we go again, as they say, but there is
19 a larger issue which I think your committee needs to
20 look at, and that is legal education from the outset,
21 from a post-secondary perspective.

22 Right now I suspect on average we've got
23 seven years of post-secondary education for most grads.
24 It is not only, in my opinion, unnecessary, but it is
25 prohibitively expensive and with a provincial

1 government that recently pushed the money down the
2 economic stratosphere, but didn't add any more money,
3 that's a big burden. And it seems to me that if we're
4 serious about access to justice we've got to start at
5 that level.

6 I was telling someone just a moment ago
7 about my experience of going to England and visiting a
8 friend whose son just finished a four year undergrad
9 program and was doing a one year conversion course in
10 law, one year. That's five years. We're, on average,
11 seven. It doesn't make any sense. And Québec is even
12 less.

13 So it is a time, I think, that this
14 institution take responsibility for the entirety of it,
15 recognizing you have to work with the academy, that
16 they're going to call -- they're the ones creating the
17 barrier of, you know, undergrad degrees followed by
18 three years, but I think we need leadership and I'm
19 asking whether your committee would take that
20 leadership.

21 MS. HORVAT: Well, I'll certainly take
22 it back to the committee. We'll see what happens at
23 the next meeting.

24 TREASURER SCHABAS: I can't really give
25 them any direction anymore, Mr. Callaghan, try as I

1 might. Mr. Anand.

2 MR. ANAND: I understand that this is a
3 consultation paper with lots of very viable options, I
4 think, and it is a little bit of déjà vu all over
5 again.

6 I think at the last major debate in
7 which, Ms. Horvat, you were part of the minority
8 report, you remarked on the fact that you were not
9 born --

10 MS. HORVAT: 1970 we started talking
11 about articling, getting rid of it.

12 MR. ANAND: At the time of the 1970s, so
13 it is a bit of déjà vu. But speaking of French
14 language, I wanted to say a word about the PPD.

15 There are a lot of -- and I say this not
16 to debate the issue, but simply to ask the committee in
17 its consultations to bear in mind the distinctive
18 nature of the Program de pratique du droit as opposed
19 to the LPP.

20 There are a lot of data points in the
21 report and there have been in the previous report of a
22 couple of years ago about -- which lumped together the
23 LPP and the PPD, and I think all of us in a room in
24 which the vast majority are not French speaking and
25 don't necessarily have a lot of connections with the

1 minority French language community in this province,
2 it's important, I think, for -- in doing the
3 consultation to note how important the PPD is to the
4 minority French language community and that a lot of
5 the information that's given which lumps them together
6 needs to be segregated because, for example, in the
7 case of remuneration, the report properly notes that
8 remuneration is not as much of an issue in the PPD.
9 And it also says that in terms of recruitment,
10 virtually everyone from the French language program at
11 the University of Ottawa gets placed, which is not the
12 same as the LPP.

13 So it serves a very different purpose
14 because it's sort of part of sort of the Constitutional
15 foundation of minority rights in this province where
16 they -- the -- it provides a benefit which will
17 inevitably result in more costs, but that's the nature
18 of promoting minority rights, we don't expect to be
19 able to maintain these kinds of guarantees in this
20 country without having to take special measures in
21 order to do that.

22 And so I think it's fair to say that the
23 PPD is really the lifeblood of the recruitment into the
24 French language services in this province and so we --
25 I guess all I would say in sum is that when

1 consideration is given and when recommendations come
2 forward, I think it's important to keep those two
3 distinct.

4 MS. HORVAT: Thank you.

5 TREASURER SCHABAS: Mr. Burd, did you
6 have your hand up? Mr. Burd.

7 MR. BURD: Thank you. I was going to
8 ask a question about the law schools themselves and
9 what part are they playing in this consultation. Are
10 they being lumped in with the profession or are they a
11 separate category that we're looking at?

12 Because I've heard in the past one of
13 the difficulties we have as a regulator is not being
14 able to regulate our law schools. So perhaps you could
15 direct me, Ms. Horvat, to where in the report it talks
16 about our dialogue with the law schools.

17 MS. HORVAT: I don't think the specific
18 details of outreach have yet been worked out, but I
19 believe the intention, and correct me if I'm wrong,
20 Priya, but the intention is to reach out to each law
21 school and ask that they distribute the consultation
22 paper amongst students and staff.

23 We can't force them to respond to the
24 consultation, but we certainly want them as a member.

25 TREASURER SCHABAS: Mr. Burd, I can

1 assure you that whoever the next Treasurer is will be
2 hearing from the law deans on this. They're not shy or
3 retiring, and, in fact, we liaison regularly with the
4 law deans, so we will be hearing from them. Thank you.
5 Ms. Go.

6 MS. GO: Thank you. I have a question
7 about the evaluative principles. Is that what you call
8 it?

9 MS. HORVAT: The five evaluative
10 principles, yes.

11 MS. GO: Yes, I remember reading
12 somewhere in the report that talks about the
13 differential experiences and also the, and I can't find
14 that right now, you know, sort of like the
15 representation of racialized groups in the articling
16 position versus racialized groups in the LPP. You
17 know, there's a lot higher percentage of people who
18 cannot find articling positions are from racialized
19 groups.

20 So I'm just wondering why within the
21 evaluative principles, the principle of equity or
22 representation or -- sort of like is not identified as
23 a principle. You have the fairness issue, which is a
24 separate issue from equity, and how do you -- we may
25 end up with whatever model that we come up with and

1 have the same -- repeat the same sort of
2 disproportionate experiences as under the current
3 model.

4 MS. HORVAT: So my view certainly is
5 that equity informs each of the principles and, you're
6 right, it's not specifically stated as an individual
7 consideration, but we'll take that back to the
8 committee and make sure that it has the place it
9 should. Thank you.

10 TREASURER SCHABAS: Mr. Galati.

11 MR. GALATI: As reluctant as I am to
12 support Mr. Callaghan's comments, I'm going to echo
13 what he said about we have to deal with this problem of
14 the undergrad, you know, seven years at university.
15 When I was at Osgoode in 1987, my last year, one month
16 in my summer work of delivering furniture paid my
17 entire year's tuition.

18 What we're becoming in the profession,
19 because of these -- the exorbitant tuition fees before
20 you even come here to take a licensing exam, is we're
21 reverting to an 18th century elitist institution in
22 socioeconomic terms.

23 The racialized issue is a separate
24 issue, but I'm talking about -- you're talking about
25 access to justice, you're not going to get the working

1 class and the working poor becoming lawyers, which has
2 a very adverse effect on not only the profession, but
3 on our Society, because you're eliminating certain
4 voices from the profession. So I endorse what Mr.
5 Callaghan said. We have to deal with it.

6 MS. HORVAT: Thank you.

7 TREASURER SCHABAS: Thank you.

8 Ms. Clément.

9 MS. CLÉMENT: I'd like to start by
10 thanking Mr. Anand for his comments about the PPD. I
11 completely agree with the statement that it needs to be
12 addressed in a different perspective than the -- its
13 English program, which I won't say English equivalent,
14 because it isn't.

15 One of the key aspects of the PPD is
16 that it allows an individual to graduate from a French
17 program and work immediately for 17 weeks in a
18 Francophone environment so they get much more
19 acquainted with the specific challenges that the
20 minorities have in Ontario in getting legal services in
21 French. So I think it needs to be looked at in that
22 context.

23 MS. HORVAT: Thank you.

24 TREASURER SCHABAS: I, again, I have
25 been approached about this by the University of Ottawa

1 as well as Treasurer. It's very high in all of our
2 minds, the unique nature of that program. So
3 Mr. Wright.

4 MR. WRIGHT: Thank you. The role of the
5 law schools is to cause the problem that this
6 consultation is going to look at.

7 On page 87 it's stated that the number
8 of licensing candidates increased by 70 percent in the
9 past decade. Over that span of time, the population of
10 Ontario grew by 10.4 percent, so we're calling seven
11 times as many lawyers per capita as we were ten years
12 ago.

13 On page 90 it states that the number of
14 graduates from Ontario law programs rose by 60 percent
15 between 2007 and 2012. During that span, the
16 population of Ontario grew by 4.7 percent. Also on
17 page 90 it points out that 60 percent of NCA applicants
18 are Canadians who obtained their legal education abroad
19 and are returning to Ontario. Some of them went abroad
20 because they got scholarships to Harvard. Others went
21 abroad because they couldn't qualify in the law schools
22 in Canada, and the University of Leicester, for
23 example, I'm not kidding you, will take you with a
24 below average undergraduate mark and no LSAT, and then
25 they come back requiring to be called, and because

1 we're humane at the call stage we do call them because
2 virtually nobody fails the bar exams.

3 On page 93, the report mentions that
4 some employers are taking advantage of the opportunity
5 to employ law school graduates for free or for minimal
6 compensation. Perhaps that is happening, and that's to
7 be decried, but I know of sole practitioners and two
8 person law firms who, despite being super busy and not
9 really having the time to be a proper principal, have
10 nevertheless helped people to the best of their
11 ability, I wasn't one of them, but helping them to the
12 best of their ability, but they just can't afford to
13 hire an articling student.

14 So if we have a blanket prohibition
15 against someone wanting very much to work for free just
16 to get through that requirement, we could inadvertently
17 hurt some people. So that has to be looked at.

18 Option 4 is essentially a resurrection
19 of the bar admission course, which we should never have
20 terminated in the first place. And it's a very good
21 idea on page 111 to require anybody wanting to practice
22 in a sole or small firm to take a preparatory course.
23 You have to do so much more than if you are a partner
24 or an associate in a large firm where you have
25 management teams looking after everything for you.

1 It's a hard beginning to a practice not to have those
2 supports around you.

3 Lastly, for the private practice of law,
4 nothing replaces education at the elbow of an
5 experienced mentor, which is what articling is designed
6 to do. Law school doesn't prepare you for private
7 practice and exams are not the best way of preparing
8 yourself either. It's experience with someone
9 experienced.

10 And the only reason we don't have enough
11 articling positions is not gatekeeping by the
12 profession, not the fault of the Law Society, it's the
13 explosion in the number of graduates. And Mr.
14 Callaghan and others have talked about addressing the
15 problem, not just from the Law Society point where they
16 enter us, but from where they enter first year
17 university.

18 And the very last thing is that the
19 chart that Ms. Go is referring to is on page 105 of
20 BoardBooks.

21 TREASURER SCHABAS: Thank you,
22 Mr. Wright. I would just urge everyone to be reminded
23 of what Ms. Horvat said a couple of times, which is we
24 should all of keep an open mind about all these things.

25 And I do want to correct one thing.

1 There is a 20 percent failure rate on our exams.
2 People do get to write it three times, but even then
3 I'm told seven or eight percent just don't get through.

4 So we'll go to the phone now and see if
5 there are any comments on the telephone. Does anybody
6 wish to speak to this issue on the telephone?

7 MR. ROCK: Treasurer, it's Allan Rock in
8 Ottawa.

9 TREASURER SCHABAS: Yes, Mr. Rock, go
10 ahead.

11 MR. ROCK: I want to express my
12 gratitude to the chair and members. The sensitivity
13 they have shown to the unique circumstances of the
14 PPD here in Ottawa, and I associate myself with the
15 comments of Mr. Anand and Madam Clément, and I look
16 forward in the consultation process to the opportunity
17 to demonstrate the unique value and the special needs
18 of the PPD program as such.

19 As Mr. Anand has said, the presence of
20 the PPD program is essential to the fulfillment by the
21 Law Society of its obligation, not only to provide for
22 a quality of access to the profession by minority
23 linguistic groups, but also our share in the
24 responsibility to provide access to legal services in
25 minority languages in Ontario.

1 So we look forward to that opportunity
2 in the process of consultation, but I am grateful to
3 the committee, which is very sensitive to these
4 realities, and we look forward to the consultation.
5 Thank you, Treasurer.

6 TREASURER SCHABAS: Thank you, Mr. Rock.
7 Is there anybody else on the telephone that wishes to
8 address this? Hearing none, then I thank you very
9 much, Ms. Horvat.

10 And may I take this opportunity to thank
11 Mr. Wardle, yourself and Ms. Vespry as vice chairs, and
12 all members of the committee who I know have worked
13 very hard.

14 It's a -- there have been the comments
15 about déjà vu all over again and so on, but this is, of
16 course, one of our core mandates, and I know it's been
17 challenging and it's great that the committee has
18 coalesced around going forward with a number of
19 different options and quite different options which
20 will give the profession an opportunity to provide
21 input and that I know will be met with an open mind.

22 May I also just thank Priya Bhatia and
23 Margaret Drent as well for their long-suffering support
24 of the committee. Thank you very much.

25 MS. HORVAT: We should also thank Ms.

1 Murchie. She chaired one of the small groups that
2 created two of the four options.

3 TREASURER SCHABAS: Thank you, Ms.
4 Murchie.

5 All right, then we'll move on to the
6 next item, which is, Ms. Murchie, the Tribunal
7 Committee report.

8 -- TRIBUNAL COMMITTEE REPORT:

9 MS. MURCHIE: Thank you, Treasurer. I'd
10 like to start with the third item first, if we might,
11 and that's at BoardBooks 204 and it's tab 3.3 of the
12 agenda.

13 And you'll see this is -- it should be
14 pretty straightforward, but we've all said that before.
15 These are some amendments to the adjudicator's code of
16 conduct to replace references to the Law Society of
17 Upper Canada with Law Society of Ontario, and, in
18 addition, there are amendments replacing the Law
19 Society Hearing Division and Law Society Appeal
20 Division with the Law Society Tribunal Hearing Division
21 and the Law Society Tribunal Appeal Division.

22 TREASURER SCHABAS: So you thought you
23 would start with something controversial?

24 MS. MURCHIE: Exactly. There's also two
25 more substantive changes, if you will. There's some

1 confusing language that's described at paragraph 42 and
2 it's BoardBooks 213, and that's just simplified, and
3 BoardBooks 216, paragraph 59 reflects a staff
4 appointment.

5 So this is moved by me and it's seconded
6 by Mr. Cooper, and I'm happy to take any questions, if
7 there are any, Treasurer. I think it's fairly
8 straightforward, but I could be wrong.

9 TREASURER SCHABAS: You never know. Any
10 questions in the room? We'll go to the telephone.
11 Anybody who wishes to address these amendments on the
12 telephone? Hearing silence, then we'll put it to a
13 vote.

14 All in favour? Anybody opposed in the
15 room? Nobody opposed. Anybody opposed on the
16 telephone? Hearing silence, the motion is carried.
17 Thank you.

18 MS. MURCHIE: The second issue I'd like
19 to address is the rules for summary orders, and that --
20 that's at tab 4.1, and it's found at page 180 of
21 BoardBooks.

22 Just let me give you a little background
23 on this. For those of you who are unfamiliar with the
24 process, and I certainly was unfamiliar until I became
25 a summary disposition Bencher, there are summary

1 disposition Benchers under various sections of the Law
2 Society Act and they make orders suspending people who
3 do not comply with their administrative obligations.

4 You'll know we all have obligation to
5 fill out annual reports, to pay fees, to submit our
6 CPD hours to the portal, to pay LawPro premiums and, of
7 course, deductibles in the event we find ourselves in
8 that situation. And the Law Society and LawPro both
9 have to follow up on these issues to get people to pay
10 attention, and in some cases they have to threaten and
11 then follow through with administrative suspensions for
12 those who don't comply with those administrative
13 obligations.

14 So as I said, I was one a few years ago,
15 and I was replaced by Mr. Mercer and Mr. Callaghan, who
16 now are making orders for administration --
17 administrative suspension.

18 So the summary disposition Bencher
19 reviews the evidence and, you know, if in this case
20 he's satisfied that there's been proper service of
21 notification to the licensee that he or she is in
22 default and that ultimately if he doesn't respond there
23 will be an order made for administrative suspension
24 without further notice, those orders get signed and
25 they're sent to lawyers and they become effective five

1 days after they're made and sent, and in that time
2 period some lawyers do, in fact, cure the default.

3 So before -- I should also say that
4 these orders are not made by the Tribunal, they're made
5 by the summary disposition Benchers, but the summary
6 orders may be appealed to the Appeal Division of the
7 Tribunal.

8 So By-law Administration Services at the
9 Law Society asked the Tribunal Committee to consider
10 the proposed changes and to bring them to Convocation,
11 which we are doing today.

12 So let me just take you to rule 16,
13 which is the old rule that currently governs summary
14 orders. That's set out at page 188 of BoardBooks and
15 it provides for service and appeal of these orders, but
16 116 is contained in the pre-2009 rules and those rules
17 were never repealed, so they're still in effect for
18 summary orders.

19 These rules are not easy to find on-line
20 and there's no equivalent in the current rules and they
21 haven't been updated in a number of years, whereas
22 other rules are periodically updated. So the Law
23 Society has proposed a new rule, and that is found at
24 page 184 of BoardBooks.

25 And if you just go to it now, I'll tell

1 you that there are proposed changes in the service of
2 notice of summary orders and there has been a --
3 there's been a discussion with the two current summary
4 disposition Benchers, who indicated to me their
5 objection to the proposed service by portal notice with
6 the corresponding e-mail that goes on its own.

7 So you'll see in section 2.01(1)C that
8 the notice of a summary order having been made can be
9 made by publishing the notice on the licensee or former
10 licensee's Law Society portal account. That is one of
11 the proposed methods of service, in addition to hand
12 delivery, regular mail, registered mail or courier or
13 any other method agreed to by the person being served.

14 And there was an objection and, indeed,
15 there was some skepticism about it, about the portal
16 service at the Tribunal Committee as well, but
17 Mr. Mercer and Mr. Callaghan have told me that they
18 would be satisfied with a friendly amendment that
19 eliminates rule 2.01(1)C, if you can just put a little
20 note on that, and correspondingly, rule 2.01(2)D, there
21 would have to be an elimination of the words "or
22 published on the licensee or former licensee's Law
23 Society portal account".

24 So it's proposed that this friendly
25 amendment be made, and I'm telling you this rather than

1 leaving it to Mr. Mercer or Mr. Callaghan to make the
2 motion because I've canvassed the committee, with the
3 exception I missed two members, but there's general
4 agreement that this is quite satisfactory.

5 The Law Society does not actually intend
6 to use service by the Law Society portal alone at this
7 time, in any event. They're satisfied that if there's
8 an objection to service by portal alone it should be
9 removed.

10 So the current service provisions
11 provide, then, that the order may be served by regular
12 mail, as well as registered mail, courier and hand
13 delivery, and regular mail is consistent with the Law
14 Society Tribunal rules for service of an originating
15 process.

16 It's also pretty -- the delivery
17 standards are the same as for registered mail and I
18 should tell you as well that registered mail, or remind
19 you that registered mail does not require the licensee
20 to sign for the letter or the notification and so there
21 has not been any problem with using regular mail in
22 the -- at the Law Society Tribunal for the service of
23 originating processes and for services of orders, for
24 that matter either, and so that's proposed, that change
25 is proposed.

1 Otherwise, the notice -- the new rule is
2 simply an intention and an iteration of the old rule
3 with this change so that it can be up-to-date, it can
4 be easily accessible and it can cause no problems.

5 So, Treasurer, unless Mr. Mercer or Mr.
6 Callaghan want to address the friendly amendment, I've
7 taken it out of their hands, they've suggested it, it
8 was satisfactory to the Tribunal Committee, as I said,
9 then I'm prepared to move this, seconded by Ms. Merali,
10 and take any questions.

11 TREASURER SCHABAS: Thank you. Mr.
12 Callaghan has fled the jurisdiction and Mr. Mercer is
13 not putting up his hand. Oh you're still there, you've
14 just moved across the room.

15 MR. MERCER: I'll pass on my lengthy
16 prepared remarks.

17 TREASURER SCHABAS: Thank you,
18 Mr. Mercer. Mr. Callaghan, you don't have anything to
19 say then?

20 MR. CALLAGHAN: Only if someone has a
21 question.

22 TREASURER SCHABAS: Okay. Are there any
23 questions on the floor? Mr. Burd.

24 MR. BURD: I'm wondering in reviewing
25 these options of service, in our annual reports do we

1 not or should we not have the preferred communication
2 with the Law Society; i.e., if in my annual report I
3 indicate that my preferred communication with the Law
4 Society be via e-mail, for example, would we not prefer
5 that we are reaching out to those licensees by their
6 preferred correspondence, rather than these more older,
7 traditional approaches?

8 MS. MURCHIE: I don't recall my annual
9 reports in enough detail to say whether there's a
10 preferred option there. I don't recall that being the
11 case, Mr. Burd.

12 MR. BURD: Well, I'm saying if there
13 isn't then there should be and I'm saying -- I'm
14 wondering if your committee has looked at those types
15 of preferred options.

16 For example, I don't remember the last
17 time I went to my mailbox, but I check my e-mail
18 probably hourly, so I'm just wondering if those sort of
19 delivery options have been considered.

20 MS. MURCHIE: Well, first of all, this
21 is a Tribunal Committee, so as you can appreciate,
22 that's not within our bailiwick to do. Secondly, with
23 respect to the Tribunal Committee and with respect to
24 the summary orders, at least, I can say that the rules
25 require that lawyers and paralegals comply with the Law

1 Society requirements and correspond with the Law
2 Society, including, as I recall, by e-mail.

3 So I don't believe that there is an
4 option for every licensee to indicate a preferred
5 method of being notified, but I'm at a bit of a loss
6 there and I don't know if anyone else in the room is in
7 a position to speak to that issue.

8 TREASURER SCHABAS: Ms. Miles can
9 clarify this for us.

10 MS. MILES: Thank you, Treasurer. So
11 there is no option on the annual report for that type
12 of communication, unless it's related to
13 non-regulatory, non-rules-based information where you
14 could say you don't want your advertising or marketing
15 from the Law Society to come.

16 These are rules-based applications, so
17 there are very strict policies around how we
18 communicate with our members to ensure that they
19 absolutely receive the information that they need so
20 that there's no question later.

21 We can certainly look further, Mr. Burd,
22 but we do expect at this point in the life of the Law
23 Society and other professional organizations that
24 members will always go to their electronic portal to
25 look for information from their regulator.

1 TREASURER SCHABAS: Thank you.

2 Mr. Evans. Sorry, Mr. Evans was next.

3 MR. EVANS: Treasurer, I just hope that
4 Mr. Burd won't have any unpleasant surprises when he
5 gets around to picking up his mail.

6 MS. MURCHIE: I should say, Treasurer,
7 that it's my understanding that the Law Society has
8 every intention of continuing to publish these notices
9 to the portal and there will be an e-mail notification
10 that you should check your portal. So if Mr. Burd
11 checks his e-mail regularly, he wouldn't be surprised
12 and, indeed, the intention of Law Society is to use
13 several methods.

14 The concern was that just using the
15 portal with that generic e-mail that goes out saying
16 check your portal was not sufficient on its own at this
17 time, and the Law Society is not proposing to use it
18 alone at this time.

19 So in due course I have no doubt this
20 change will be proposed again, but maybe at a time when
21 people have become more accustomed to checking their
22 portals, like you.

23 TREASURER SCHABAS: Thank you. Mr.
24 Anand.

25 MR. ANAND: Yes, Ms. Murchie has said

1 part of what I was going to say, but I guess the other
2 part of it is that this is a constant tussle between
3 giving proper notice and making sure that people
4 actually get the correspondence on the one side and, on
5 the other side, the reasonable and deemed obligation of
6 every licensee to keep his or her regulator informed of
7 their contact information.

8 So those of us who do summary hearings,
9 which are typically hearings involving lawyers or
10 paralegals who don't respond to Law Society, often they
11 aren't there at the hearing and the Law Society counsel
12 is at pains to show the number of different ways that
13 they tried to get in touch with them. So e-mail
14 addresses change, it's that kind of balancing that
15 needs to take place, so basically the more lines of
16 contact, the fairer it is.

17 TREASURER SCHABAS: Right.

18 Mr. Braithwaite.

19 MR. BRAITHWAITE: Just as a point of
20 clarification, looking at D where it says, "Any other
21 method agreed to by the person being served". I'm just
22 wondering, when would that agreement take place?

23 MS. MURCHIE: I can't think of a
24 circumstance in this context, Mr. Braithwaite. I know
25 that typically there are circumstances in the context

1 of litigation where they do prefer to be served through
2 counsel, for instance. I'm just -- I didn't -- nobody
3 inquired as to that question when we were discussing it
4 earlier.

5 I think it's just in the case that
6 somebody doesn't have an e-mail address and maybe
7 prefers to be served by fax, it could be in that
8 circumstance.

9 TREASURER SCHABAS: All right.

10 MS. MURCHIE: I don't know is the
11 answer, but it provides some options if there's -- if
12 it's appropriate, unless Ms. Miles can fill us in on
13 that one.

14 MS. MILES: That's correct, Ms. Murchie.
15 We still do have members who may not have certain types
16 of communication vehicles, so when we engage with them
17 in the process, discipline or other processes, they'll
18 advise us how they prefer to be contacted.

19 MS. MURCHIE: Thank you.

20 TREASURER SCHABAS: Thank you. Anybody
21 on the phone? Let's go to the telephone. Does anybody
22 on the phone wish to speak to this matter? Thank you,
23 then -- so the motion, then, Ms. Murchie, is
24 effectively you have modified your motion. I don't
25 think we need to -- it's not like a friendly amendment.

1 And maybe Mr. Varro can just help me with precisely how
2 the motion should read now.

3 SECRETARY: So prior to moving the
4 motion, Ms. Murchie would advise that the rules at tabs
5 4.1 and 4.1.2 were modified to remove reference to
6 service by publication in the licensee's or former
7 licensee's portal account in rules 2.0.1(1) and
8 2.0.1(2), and that's the way the minutes would read,
9 because there was no formal motion to amend, which
10 would be a friendly amendment.

11 MS. MURCHIE: Thank you, Mr. Varro.
12 Yes, that is the motion.

13 TREASURER SCHABAS: So moved by you,
14 seconded by Ms. Merali. All in favour? Anybody
15 opposed in the room? Nobody opposed. Is there anybody
16 opposed on the telephone? Then the motion is carried.
17 Thank you.

18 MS. MURCHIE: Treasurer, the other item
19 is item 3. That's the Tribunal complaint process. I
20 can tell you that the committee determined it was
21 appropriate to do this, to set out or come up with a
22 tribunal complaint process.

23 We canvassed the processes used by other
24 tribunals and, of course, considered the judicial
25 council's processes as well.

1 Treasurer, I've asked Ms. Merali to
2 address this issue because she's got particular
3 expertise, being counsel to one of the other Ontario
4 tribunals, and also having spent some time as counsel
5 to the Ontario Judicial Council. She is well
6 positioned to explain the background and thinking and,
7 I should say, she was certainly instrumental in
8 amending and in developing the complaints process that
9 we have before us now. So I'll just turn that over to
10 her.

11 TREASURER SCHABAS: Thank you very much.
12 Ms. Merali.

13 MS. MERALI: Thank you, Treasurer. Ms.
14 Murchie is being very kind. I think she meant what I
15 did was prolonged our meetings over and over about the
16 complaints process, because we wanted to make sure that
17 we were presenting something that was suitable for the
18 Tribunal process.

19 I'm pleased to address Convocation to
20 present to you, Treasurer, for Convocation's decision
21 and approval, a proposed Law Society Tribunal
22 complaints process. The proposed complaints process
23 can be found in the materials at tab 4.2.1 at page 196.
24 The French version is at 4.2.2, and the background
25 information can be found at tab 4.2 at page 194.

1 process has been in place for many years within our
2 judicial system, of course, and, as Ms. Murchie
3 indicated earlier, it's a process in Ontario that's
4 overseen by the Ontario Judicial Council, which
5 investigates complaints made about the conduct of
6 provincial judges, and we use best practices from that
7 process in this process that we're presenting to you
8 today.

9 In order to ensure that the process was
10 suitable for the Tribunal model, we spent a great deal
11 of time reviewing best practice examples of complaints
12 processes from numerous Ontario administrative
13 tribunals, as well as processes in place from Canadian
14 Law Societies, other Ontario professional regulators,
15 and, of course, the Judicial Council, as mentioned
16 earlier.

17 It's incorporated many of these best
18 practices and has had the benefit of the Tribunal
19 chairs and the Tribunal counsel's expertise and
20 knowledge, as well as a review and feedback of the
21 committee members over a number of meetings. Moreover,
22 it incorporates a number of key principles that are
23 found in best practice complaints processes and some of
24 these examples are that the process is not meant to be
25 used to complain about a decision or an order or to try

1 to re-litigate a matter. That, of course, can more
2 appropriately be dealt with through appeal procedures.
3 It's really to deal with conduct or services.

4 Second, there's a clear statement that
5 if the complaint involves the conduct of a Tribunal
6 member, for example, reasonable apprehension of bias,
7 that the person believes could affect the outcome of
8 their case that they should raise it during the hearing
9 or pre-hearing and that failing to do so could
10 prejudice their rights or interests. And then,
11 finally, a statement that if the complaint is made
12 while a case is ongoing, action on the complaint will
13 be postponed until the final decision is issued or the
14 member's involvement has ended. This is a critically
15 important obviously to protect the fairness and
16 impartiality of any ongoing adjudicative proceeding
17 and, of course, can be found in the Ontario Judicial
18 Council's proceeding process.

19 I would like to just briefly outline the
20 general process that would be used in the complaints
21 process for adjudicator conduct complaints, which I
22 think would be of most interest to Convocation. There
23 is also a process set out for staff, complaints about
24 staff or services generally about the Tribunal.

25 So in terms of these types of

1 complaints, generally complaints relating to the
2 conduct of adjudicators must be made within 60 days of
3 the end of the adjudicative process. Second, they
4 would be sent and triaged by Tribunal counsel, who
5 would review them, assess whether the complaint could
6 be considered under the process, and would recommend an
7 appropriate course of action to the chair or the
8 vice-chair if the complaint happened to be about the
9 chair.

10 In most instances, the complaint would
11 be ultimately addressed or assessed by the chair, in
12 conjunction with staff, and that could also involve a
13 process of informal resolution or further investigation
14 may be warranted, and that process again is consistent
15 with the best practices that are already implemented by
16 Tribunal chairs and Tribunal complaints processes in
17 Ontario.

18 It will also ensure that if a complaint
19 is made, it can be addressed from the general
20 management perspective of the Tribunal to learn from
21 systemic issues perhaps that are arising in services or
22 in conduct in the Tribunal and even more formal action
23 is not required, of course. And then, of course, the
24 chair will also have the option to refer the matter
25 outside where the nature of the complaint makes it

1 desirable, such as a complaint against the chair or the
2 need for an independent person to review the complaint.

3 In all instances, the person who has
4 filed the complaint will be advised in writing of the
5 Tribunal's assessment of the complaint and the outcome
6 of the complaint, as is required by procedural
7 fairness. And some of the outcomes may include
8 recommendations, such as professional development or
9 referring the service issue for policy consideration in
10 order to improve Tribunal services.

11 I note, Treasurer, that the committee is
12 recommending that the Tribunal complaints process be
13 implemented commencing on July 1st, 2018. This will
14 provide the Tribunal with time to advise the public and
15 those who appear before the Tribunal. It's important
16 in the further interests of transparency and
17 accountability to ensure that those that access
18 Tribunal services are aware of the process so that they
19 can access it if they need it.

20 And there's a note on costs in the
21 materials, unless the volume of complaints is greater
22 than expected, costs are expected to be minimal and
23 there's room already in the Tribunal budget for an
24 outside person to be retained on an as needed basis.

25 I can tell you from my experience

1 working with tribunals, it is not a regularly used
2 document. It is there when you need it and certainly,
3 I think, required if we want to be a transparent,
4 accountable process.

5 So before turning the motion to
6 Convocation, I ask if there's any questions.

7 TREASURER SCHABAS: Sure. Moved by you,
8 I take it, and seconded by Ms. Murchie.

9 MS. MERALI: Yes.

10 TREASURER SCHABAS: Are there any
11 comments or questions about this? Anybody on the
12 telephone? Does anybody on the phone wish to address
13 this?

14 Hearing silence, then all in favour?
15 Anybody opposed in the room? Anybody opposed on the
16 telephone? Thank you very much, the motion is carried.
17 Thank you.

18 MS. MERALI: Thank you, Treasurer.

19 TREASURER SCHABAS: Thank you, Ms.
20 Merali. We'll then move to the next item. Ms. Go, the
21 Human Rights Monitoring Group, quickly, if you can.

22 -- EQUITY AND INDIGENOUS AFFAIRS

23 COMMITTEE REPORT:

24 MS. GO: Thank you. I can be quick if I
25 assume everyone has read the report.

1 I have been asked by Ms. Donnelly, the
2 chair of the Human Rights Monitoring Group, to present
3 our report and we are asking the Convocation to approve
4 three requests, and the details are found at tab 5.1.
5 243 to 248 of BoardBooks. And the cases involve three
6 lawyers, one from Niger, one from Turkey and one from
7 Vietnam.

8 In the case of Mr. Abdourahmane from
9 Niger, he was a member of the Patriotic Movement for
10 Responsible Citizenship, a civil society organization
11 that advocates for human rights, and he was arrested by
12 security forces after appearing on television to
13 discuss a public demonstration that he did not attend
14 personally, but he was still charged with a number of
15 charges arising from that.

16 With respect to Mr. Aydin, he has been
17 in police custody since August 2016 for his alleged
18 association with a group that the government of Turkey
19 designates as an armed terrorist organization.
20 According to reports, the arrest was solely motivated
21 by his activity as a lawyer, and since his arrest he
22 has been denied the right to pretrial release, the
23 right to be brought before a competent court to
24 determine the legality of his detention, but on top of
25 all that, Mr. Aydin has been diagnosed with some

1 serious illness for which he has not received medical
2 treatment while in detention.

3 Finally, with respect to Mr. Nguyen, who
4 is a human rights lawyer and defender of religious
5 freedom in Vietnam, he has been sentenced to 15 years
6 in prison for his pro-democracy work. We have
7 previously intervened on his behalf.

8 So all three cases fall within the
9 mandate of the monitoring group and there are no
10 concerns about the source of the reports and I,
11 therefore, move for the Convocation to approve the
12 letter and the public statements in all three cases.
13 And the motion is seconded by Mr. Evans.

14 TREASURER SCHABAS: Thank you. Any
15 discussion? Any discussion on the telephone? Hearing
16 none, all in favour? Is there anybody opposed? Nobody
17 is opposed. Anybody opposed on the phone? Thank you,
18 Ms. Go, the motion is carried.

19 Mr. Earnshaw, Compliance-Based Entity
20 Regulation Task Force Report.

21 -- COMPLIANCE-BASED ENTITY REGULATION
22 TASK FORCE REPORT:

23 MR. EARNSHAW: Thank you, Treasurer.
24 mindful of the time, I will be brief.

25 The Compliance-Based Entity Regulation

1 Task Force is at tab 6 of your materials.

2 Let me say at once that I am indebted to
3 Margaret Drent for the preparation of those materials
4 and, in large measure, for what you're about to hear
5 from me now. This report is being provided to
6 Convocation for information and in order to brief
7 Benchers regarding the task force's intention to hold
8 focus groups to obtain feedback regarding a self
9 assessment tool for practice assessment.

10 A bit of background. You haven't heard
11 from this task force since the report we made in May of
12 2016 and we have been working slowly since then, in
13 large measure because the legislature has not seen fit
14 to pass an amendment to the Law Society Act that will
15 permit us to directly regulate entities, and so we have
16 changed our focus to look at things that we can do in
17 preparation for that day when it comes, if ever it
18 does, and that we can implement in the shorter term.

19 So as part of the consultation that we
20 reported on in May of 2016, we spoke to the professions
21 and the public about proposed practice management
22 principles and, based on that consultation, we have now
23 developed a regulatory framework for compliance-based
24 regulation, a major component of which is a self
25 assessment tool or practice assessment.

1 You will find a version of that in your
2 materials. It provides practitioners with an
3 opportunity to consider the extent to which they have
4 implemented the practice management principles in their
5 practice.

6 It was developed over a series of
7 meetings by the committee and it addresses practice
8 management principles that were the subject of
9 consultation back in 2016, somewhat refined. They are
10 client management, matter management, financial
11 management and sustainability, people management,
12 access to justice and equality, diversity and
13 inclusion.

14 If you take a moment to look at that
15 self assessment tool, you'll see that each --
16 objectives are set out below each of these principles
17 and that each objective is paired with best practice
18 examples. The practice assessment also contains
19 suggested resources that are intended to assist
20 practitioners with the implementation of the principles
21 in their practice.

22 You heard from my colleague, Ms. Horvat,
23 about the consultation paper for the licensing
24 consultation process. Our task force, too, has
25 prepared a consultation paper that would assist

1 participants in looking at this practice assessment
2 tool in a series of focus groups. Because the model of
3 the proposed focus groups and consultation is very
4 similar to that which was outlined for you by
5 Ms. Horvat, I will leave it to you to look at the
6 proposal in this case on your own time.

7 The consultation paper is there for you
8 to review and would be used in the course of the focus
9 groups that we also contemplate having.

10 I should mention that the idea is not to
11 have a series of focus groups and consultations
12 tripping over each other. We're fully aware of the
13 licensing consultation and we would not initiate our
14 own consultation until well into the fall, after it is
15 concluded.

16 The task force hasn't yet reached any
17 conclusions about whether completion of the practice
18 assessment should be mandatory, nor has it determined
19 whether it would be useful for all lawyers in private
20 practice to complete the assessment or only lawyers in
21 firms above a certain size. To assist it in developing
22 recommendations to Convocation regarding these issues,
23 which are still the subject of discussion and debate at
24 the task force, we intend to obtain input regarding the
25 practice assessment tool during the course of our

1 consultation, starting in the fall. And like
2 Ms. Horvat before me, I would suggest that it's wise
3 for us all to keep an open mind and wait for the result
4 of that consultation before we comment further on its
5 contents.

6 The task force will then review and
7 consider all the feedback that it receives from the
8 focus groups before deciding on next steps, which may
9 include revision of the practice assessment, may
10 include further consultation, may even, indeed, include
11 a decision to recommend to Convocation that this
12 initiative should not be pursued further.

13 So I commend to your reading the
14 material at tab 6 and assure you that it will be
15 available on the LSO website in due course. I stand
16 ready to answer any questions that may be posed. Thank
17 you, Treasurer.

18 TREASURER SCHABAS: Thank you,
19 Mr. Earnshaw. Are there any questions for
20 Mr. Earnshaw? Anybody on the telephone with a question
21 for Mr. Earnshaw? I guess everybody has got an open
22 mind, Mr. Earnshaw.

23 MR. EARNSHAW: Good to hear. Thank you.

24 TREASURER SCHABAS: Thank you very much.

25 So I believe that concludes the public portion of the

1 meeting. We will go in camera for the CEO's report.
2 We have one diligent journalist staying with us, but
3 you'll have to pack up.

4 Do you wish to speak, Mr. Cooper?

5 MR. COOPER: Yes, I do. I was called a
6 newbie three years ago and today is the last
7 Convocation that you will lead in its full capacity,
8 full agenda.

9 Many people told me to sit and wait and
10 not be a person to bring up issues or discuss things,
11 just wait and learn. I can only indicate that I have
12 the privilege of being here and that in the last two
13 years and probably before that, Treasurer, you reached
14 out to a lot of us newbies and told us our views are
15 important.

16 I just want to indicate, because I have
17 a very strong view, that I am honoured to have been
18 here for the last two years under your leadership. We
19 have made some substantial changes that affect
20 practice, but more important, it's affected my life.
21 This has caused real gratification for not only being a
22 Bencher, but being a lawyer, being part of a community,
23 so thank you.

24 -- Applause.

25 TREASURER SCHABAS: Thank you very much,

1 Mr. Cooper.

2 --- Upon adjourning in public at 12:43 p.m.

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5 I HEREBY CERTIFY THE FOREGOING

6 to be a true and accurate

7 transcription of my shorthand notes

8 to the best of my skill and ability

9

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11 SHARI CORKUM, C.S.R.

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Computer-Aided Transcript

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