

TAB 5



Report to Convocation

June 29, 2017

Equity and Indigenous Affairs Committee/ Comité sur l'équité et les affaires autochtones

Committee Members

Dianne Corbiere, Co-Chair
Julian Falconer, Co-Chair
Sandra Nishikawa, Vice-Chair
Gina Papageorgiou, Vice-Chair
Marion Boyd
Suzanne Clément
Robert Evans
Avvy Go
Howard Goldblatt
Marian Lippa
Isfahan Merali
Sidney Troister
Tanya Walker

Purpose of Report: Decision and Information

**Prepared by the Policy Secretariat
(Marian MacGregor – 416-947-3464)**

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COMMITTEE PROCESS

1. The Equity and Indigenous Affairs Committee/Comité sur l'équité et les affaires autochtones ("EIAC" or the "Committee") met on June 8, 2017. In attendance were Dianne Corbiere (Co-Chair), Julian Falconer (Co-Chair) Sandra Nishikawa (Vice-Chair) as well as Committee members Suzanne Clément, Marian Lippa, Isfahan Merali, Bob Evans and Sidney Troister.
2. Sonia Ouellet, representative of the Association des juristes d'expression française de l'Ontario ("AJEFO") was present. Paul Saguil, representative of the Equity Advisory Group ("EAG"), and Kathleen Lickers, representative of the Indigenous Advisory Group ("IAG"), also participated by telephone.
3. Staff members Jim Varro, Terry Knott, Karen Manarin, Marian MacGregor, Darcy Belisle and Hyacinth Khin were present.

FOR DECISION

INDIGENOUS FRAMEWORK

Motion

4. That Convocation approve the Indigenous Framework for the Law Society, set out at [Tab 5.1.1](#).

Introduction and Purpose

5. As stated in the [Treasurer's September 22, 2017 Memorandum](#) (Treasurer's Memorandum) to the Equity and Indigenous Affairs Committee (EIAC),

the promotion of equity and diversity must prioritize reconciliation with Indigenous peoples. The Truth and Reconciliation Commission of Canada's Final Report reminded us of the reality that Indigenous peoples have a "deep and abiding distrust of Canada's...legal systems". The Law Society can play a part in working towards reconciliation.

6. At the Treasurer's direction, the EIAC, in partnership with the Indigenous Advisory Group (IAG), has developed an Indigenous Framework. The Framework is before Convocation for approval as a document to guide the Law Society's work within its mandate on Indigenous issues and the relationship with the Indigenous community.
7. The Indigenous Framework represents the Law Society's work towards fulfilment of the Law Society's mandate, particularly in relation to access to justice, and the equity and other principles by which it regulates, in relation to legal and regulatory issues affecting Indigenous peoples.
8. It also represents progress towards reconciliation with First Nations, Métis and Inuit communities, whose members are licensees, clients, individuals who interact with the justice and legal systems, and Ontarians to whom the Law Society, in accordance with s. 4.2(2) of the *Law Society Act*, owes a duty to act so as to facilitate access to justice.

Background to Development of the Framework

The Indigenous Advisory Group (IAG)

9. Following the release of the 94 Calls to Action from the Truth and Reconciliation Commission of Canada's Final Report (TRC Report), the Law Society expressed its

desire to formally re-establish and strengthen its relationship with Indigenous people on justice issues.

10. Reaching out to the Indigenous Bar Association for support, an interim IAG was formed to begin addressing issues related to reconciliation and Indigenous issues as well as the development of a permanent IAG. In April 2016, this interim Indigenous Advisory Group provided Terms of Reference to EIAC and was introduced to EIAC members.
11. On June 23, 2016, this IAG was publicly announced at the *Celebration of Indigenous Peoples* event at the Law Society.
12. The IAG was established as an independent body to:
 - a. advise the Law Society on the unique issues faced by Indigenous practitioners, paralegals and Indigenous peoples in Ontario and to
 - b. promote the development of the relationships between Indigenous peoples and Canadian legal structures and institutions in a manner that respects Indigenous values, beliefs and legal systems.
13. The Terms of Reference of the Indigenous Advisory Group are attached at [TAB 5.1.2](#).
14. To fulfill the Terms of Reference and mandate of the IAG, diverse representation amongst IAG members is key factor to facilitating discussion and decision on policies to address the wide ranging and unique realities that First Nations, Metis and Inuit communities and individuals across Ontario face in relation to the regulation of legal profession and access to justice. Thus, the IAG is inclusive of representatives from First Nations, Métis, Inuit communities that are located across the province, including southern and northern Ontario. Moreover, members are representative of the legal professions (lawyers and paralegals) and also include non-licensees. A range of experience is also key to maintaining balance within the group with experienced lawyers and early career representatives.
15. The IAG is also comprised of an Elders Council. Elders play central roles First Nations, Métis and Inuit communities. Among the many roles that Elders play, they hold significant wisdom in areas of traditional knowledge, are recognized as having that wisdom by their communities and Nations and have the capacity to transmit this knowledge to others. The role of the Elders Council is to establish a foundation of knowledge and wisdom to ground the IAG's efforts. The Elders Council also played a significant role in the formation of the IAG, having provided recommendations in relation to potential members.
16. As a key partner with the Law Society, the IAG, through the diverse voices of its membership and Elders Council, is helping to identify and assist the Law Society in

making critical changes to the practices and policies of the Law Society that are reflective of the critical justice and regulatory issues that affect First Nation, Métis and Indigenous communities and peoples in Ontario.

The EIAC and IAG: Collaborative Development of The Indigenous Framework

17. In September 2016, the IAG and the EIAC embarked on a collaboration in the development of the Law Society's Indigenous Framework. It was also decided in late 2016 that the IAG, as a partner with EIAC, the Chair and members of the Elders Council would attend EIAC meetings to provide updates on the work of the IAG and to provide Indigenous teachings to the EIAC members. This informs the work of the EIAC and enhances the knowledge of EIAC members.
18. The EIAC and the IAG met in November 2016 to discuss the development of the Indigenous Framework and began the development of a Draft Indigenous Framework. In collaboration with staff, the EIAC and the IAG made progress on the Indigenous Framework throughout 2017. In early June, the IAG completed its work on the Framework, which was reviewed at the June meeting of the EIAC.

Key Features of the Indigenous Framework

19. The Treasurer's Memorandum indicates that one of the initiatives that is to be undertaken by the EIAC in collaboration with the IAG is the development of an "Indigenous lens to all we do at the Law Society". The Indigenous Framework is responsive to this direction as it outlines a series of principles that form the scope of this lens. As stated in the Indigenous Framework:

The IAG define the Indigenous lens as inclusive of the Anishinabe Seven Sacred Laws; the teachings of the Haudenosaunee of peace, respect, friendship and a good mind; Cree principles compliment the Seven Sacred Laws, are supported by the Métis and the 8 Inuit Qaujimajatuqangit guiding principles.

20. The Indigenous lens sets the Indigenous Framework on four foundational pillars, which provide perspective and guidance for the Law Society in its interaction with Indigenous peoples. These four pillars, which were distilled from priorities outlined in documents that informed the development of the Indigenous Framework (e.g. Treasurer's Mandate), include:

- Creating and Enhancing Cultural Competency
- Achieving and Improving Access to Justice
- Promoting and Supporting Knowledge of Indigenous Legal Systems

- Taking Action on Reconciliation

21. A number of things, described below, have informed the development of a foundation, now realized in the Framework, to guide the actions of the Law Society in relation to Indigenous issues.
22. They include the Law Society's 2009 [*Final Report of the Indigenous Bar Consultation*](#), particularly around mentorship initiatives for Indigenous law students and licensees and the 94 Calls to Action outlined in the TRC Final Report, particularly those that provide direction to institutions and individuals on how to take action towards the achievement of reconciliation. It should be noted that a detailed response to the TRC Final Report is proposed within the priorities identified under the pillar of Taking Action on Reconciliation. This response is not to be limited to Calls to Action 27¹ and 28², but is to include all matters identified in the report that intersect with the mandate of the Law Society. This includes but is not limited to issues such as cultural competency and equity for Indigenous people in the justice system.
23. The discussions within the Law Society between the EIAC, IAG and Law Society staff and information from events such as the 2016 Indigenous Bar Association Conference, where a review of Law Society functions in the context of reconciliation was led by the IAG Chair and members, have also been helpful in contributing to the content of the Indigenous Framework.
24. Critical provincial and national issues have also influenced the development of the Indigenous Framework, particularly those that intersect with justice issues, including but not limited to
 - a. the crisis of missing and murdered Indigenous women, girls and LGBTQ2S people and the current National Inquiry into Missing and Murdered Indigenous Women and Girls;
 - b. the Crisis of Indigenous Children and Youth in Care;

¹ We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal– Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

² We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and antiracism.

- c. barriers to access to justice that disproportionately affect First Nations, Métis and Inuit peoples and the resulting and urgent need to accommodate the unique historical and cultural circumstances of Indigenous peoples and Indigenous approaches to conflict resolution in the justice system;
 - d. the overrepresentation of Indigenous people in legal proceedings, care and incarceration;
 - e. as identified in the TRC Final Report, “the need for lawyers to develop a greater understanding of Aboriginal history and culture as well as the multi-faceted legacy of residential schools”³; and
 - f. the historical suppression of and resonant need to support and promote Indigenous legal traditions, laws and their applications across Canada.
25. The EIAC and the IAG have also considered key policy and justice reports and documents that have been produced by provincial, national and international bodies, which are identified in Appendix A of **TAB 5.1.1**, in developing the Indigenous Framework.
26. Not unlike the TRC Final Report, many of these reports include recommendations that support improved relations between Indigenous and non-Indigenous peoples. These reports are provided in the Appendix to the Framework as they are critical in understanding the legacy of marginalization from contemporary discourse and action in relation to Indigenous peoples locally, nationally and globally, and the need to move forward to achieve equality and inclusion:
- Report of the Royal Commission on Aboriginal Peoples (also known as RCAP)
 - The Ipperwash Inquiry - Final Report
 - the *United Nations Declaration on the Rights of Indigenous Peoples*
 - The Iacobucci Report – First Nations Representation on Ontario Juries

Next Steps

27. The Indigenous Framework provides the Law Society with a foundation to take action on reconciliation within the ambit of its mandate, which as the TRC states “is about

³ [*Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*](#) at Pg. 168.

establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples in this country".⁴

28. In moving forward with the Framework, the Law Society will collaborate with the IAG beginning in the summer on the development of a work plan to be derived from the Framework which will set the groundwork for the implementation of the Framework. The EIAC will report to Convocation on the progress of this work in the fall of 2017.

⁴ [Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada](#) at Pg. 6.



Law Society of Upper Canada Draft Indigenous Framework

**Draft Date: December 2, 2016
May 1st 2017 (revised)
June 5th 2017 (revised)**

**Prepared by the Policy Secretariat
and the Indigenous Advisory Group**

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¹ These Terms of Reference are subject to amendment as of June 5th

BACKGROUND

1. The Law Society of Upper Canada (Law Society), as a regulator of all lawyers and licensed paralegals in the province of Ontario, pursuant to its legislative mandate under the *Law Society Act R.S.O. 1990, Chapter L.8* (the *Act*) must have regard to the following duties:
 - To maintain and advance the cause of justice and the rule of law;
 - To act so as to facilitate access to justice for the people of Ontario;
 - To protect the public interest;
 - To act in a timely, open and efficient manner; and
 - Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized
2. In 2000, consistent with the duties encoded in the *Act*, the Law Society established a standing committee of Convocation called the Equity and Aboriginal Issues Committee (now the Equity and Indigenous Affairs Committee or EIAC)², to develop policies, programs and initiatives to best serve and promote an inclusive profession. Subject to Convocation's approval, the EIAC's mandate is to develop policy options for the promotion of equity and diversity having to do in any way with the practice of law in Ontario or provision of legal services in Ontario and for addressing all matters related to Indigenous peoples and French-speaking peoples. As a best practice, the EIAC consults with Indigenous peoples, Francophone citizens and other communities in the development of such policy options.
3. As part of the Law Society's efforts over the years to consult with Indigenous peoples, a number of working groups and strategies have been established including Rotiio>taties³ in 1998.
4. Rotiio>taties was an independent board of Elders, Indigenous lawyers⁴, community representatives and law students who advised various bodies, including the Law Society, on Indigenous issues arising in law and the legal profession. The membership of Rotiio>taties changed over the years until its eventual transition to an Aboriginal Working Group.

² By motion of February 9, 2017, EAIC amended its name to the Equity and Indigenous Affairs Committee.

³ Meaning "continuously working" in the Mohawk language.

⁴ At the time Rotiio>taties was created, paralegals were not yet licensees within the profession.

5. In 2009 Convocation approved the *Final Report of the Indigenous Bar Consultation* which identified a number of recommended actions the Law Society could undertake. These recommendations included:
 - Expanding the Members' Annual Report Practice Categories to include Aboriginal Law (to determine how many lawyers in Ontario self-identify as practicing Aboriginal law)
 - Mentoring and Networking Program
 - Continuing Legal Education Course in Aboriginal Law and Issues
 - Certified Specialist Program in Aboriginal Law⁵
6. In 2014, Convocation affirmed its commitment to place emphasis, through the EIAC, on Indigenous issues. In June 2016, the Indigenous Advisory Group⁶ (IAG) was established as an independent body to advise the Law Society on the unique issues faced by Indigenous practitioners, paralegals and Indigenous peoples in Ontario and to promote the development of the relationships between Indigenous peoples and Canadian legal structures and institutions in a manner that respects Indigenous values, beliefs and legal systems.
7. In September 2016, the EIAC and the IAG committed to work collaboratively in the development of the Law Society's Indigenous Framework and on November 5, 2016, the EIAC and the IAG held a joint meeting to begin the development of this Indigenous Framework.

INTRODUCTION

8. The Indigenous Framework has been developed in accord with the priorities identified in three key Law Society documents:
 - Convocation's 2015-2019 Strategic Plan, as relevant to the EIAC's mandate;
 - Treasurer's Memorandum to the Equity and Aboriginal Issues Committee (September 22, 2016); and
 - Approaches for the Law Society of Upper Canada's Responses to the Truth and Reconciliation Commission of Canada (TRC) Final Report (Sept. 2, 2016).⁷

⁵ 2009 *Final Report of the Indigenous Bar Consultation*, pp. 32-35.

⁶ The Indigenous Advisory Group's Terms of Reference are attached as Appendix A. For greatest certainty, the term "Indigenous" is inclusive of First Nations, Status, non-Status, Inuit and Métis peoples.

⁷ Each of these key documents has been reproduced in Appendix B.

9. The priorities identified in the above documents often intersect and coalesce, helping to shape this Framework into the following Four Pillars:
- Creating and Enhancing Cultural Competency
 - Achieving and Improving Access to Justice
 - Promoting and Supporting Knowledge of Indigenous Legal Systems
 - Taking Action on Reconciliation
10. The development of every initiative by the Law Society within any one of these Four Framework Pillars must be guided through an “Indigenous lens” in order to fully meet the objective of this Framework. The Treasurer, through his Memorandum to the Equity and Aboriginal Issues Committee, directed the EIAC to develop policies that will ensure an Indigenous lens to all the Law Society does.
11. The IAG define the Indigenous lens as inclusive of the Anishinabe Seven Sacred Laws ; the teachings of the Haudenosaunee of peace, respect, friendship and a good mind; Cree principles compliment the Seven Sacred Laws, are supported by the Métis and the 8 Inuit Qaujimajatuqangit guiding principles.⁸ Such principles are: :
- **Love:** To know love is to know peace.
 - **Respect:** To honour all Creation is to have respect
 - **Courage:** To face life with courage is to know bravery
 - **Honesty:** To walk through life with integrity is to know honesty
 - **Humility:** To accept yourself as a sacred part of Creation is to know humility
 - **Wisdom:** To cherish knowledge is to know wisdom
 - **Truth:** To know of these things is to know truth

⁸ Inuuqatigiitsiarniq- Respecting others, relationships and caring for people.

Tunnganarniq- Fostering good spirit by being open, welcoming and inclusive.

Pijitsirniq- Serving and providing for family and/or community. Aajiqatigiinni- Decision making through discussion and consensus. Pilimmaksarniq- Development of skills through practice, effort and action.

Piliriqatigiinni/Ikajuqtigiingniq- Working together for a common cause.

Qanuqtuurniq- Being innovative and resourceful

Avatittinnik Kamatsiarniq- Respect and care for the land, animals and the environment. (Source:Tungasuvvingat Inuit Restorative Justice Initiative)

THE FOUR FRAMEWORK PILLARS

CREATING AND ENHANCING CULTURAL COMPETENCY⁹

12. The Law Society will work in partnership with the IAG to create and enhance cultural competency recognizing the continued need for licensees to be equipped with the cultural, historical and legal knowledge that will enable the provision of legal services in a manner that supports Indigenous peoples in addressing their unique interests, issues and challenges.
13. The Law Society prioritizes life-long competence for lawyers and paralegals. The Treasurer's Memorandum to the Equity and Aboriginal Issues Committee further contextualizes this priority, and directs the EIAC to develop programs that will enhance cultural competence internally to the Law Society (staff, Benchers) and the profession (licensees) in dealings with Indigenous peoples.¹⁰
14. Specific proposed approaches towards supporting cultural competency are detailed in the Approaches for the Law Society of Upper Canada's Responses to the Truth and Reconciliation Commission of Canada Final Report and include knowledge enhancements, working with the Federation of Law Societies of Canada and developing skills-based training and other supports.

I. Creating and Enhancing Knowledge

- a. Ensure Law Society ***staff and Benchers*** have the opportunity to access cultural competency training within the Law Society that includes unconscious bias, the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws, Aboriginal-Crown relations and basic cultural protocols.
- b. Ensure ***licensees*** have the opportunity to access cultural competency training that includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws, and Aboriginal-Crown relations and basic cultural protocols.
- c. Ensure ***licensees that are required by their employment*** to engage directly with the Indigenous people of Ontario, undertake cultural competency training

⁹ To be clear, the language of inter-cultural "competency" comes from the Truth and Reconciliation Calls to Action. In applying the term within this Framework, the IAG is not asking everyone to adopt the cultural practices that are unique to the Indigenous peoples of Ontario, rather, to gain knowledge of and respect for each Indigenous person's right to maintain justice in their own way. The IAG will further develop what is the intended meaning within this Framework and include examination of systemic barriers and anti-racism measures.

¹⁰ Convocation's 2015-2019 Strategic Plan prioritizes life-long competence for lawyers and paralegals. Priorities include enhancing licensing standards, improving and increasing practice supports and considering education beyond traditional Continuing Professional Development formats (e.g. possible multiple-day courses including practical application of knowledge and skills), and working with the professions to develop initiatives that institutionalize mentoring, advisory services and other types of support.

which includes the history of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws, and Aboriginal-Crown relations and basic cultural protocols.

- d. Work with **Deans, law faculty and students** of Ontario Law Schools and colleges (paralegal education) to enhance their knowledge of a range of subjects, including but not limited to the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws and Aboriginal-Crown relations.
- e. Develop and offer **Continuing Professional Development (CPD)** programs and legal education sessions independently and in collaboration with partners to illustrate the relevance of the *United Nations Declaration on the Rights of Indigenous Peoples* in Ontario and its relevance to various practice areas.

II. Working with Partners

- a. Participate with **other Law Societies in Canada and the Federation of Law Societies** in examining whether changes can be made to the *National Standards* and other licensing requirements to enhance knowledge of a range of subjects, including but not limited to the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws and Aboriginal-Crown relations.
- b. In partnership with the **Indigenous Bar Association**, examine the codes of professional conduct and the commentaries as well as the Federation Model Code to explore changes, where necessary, to promote reconciliation and culturally competent provision of legal services.
- c. Engage with **other legal associations, advocates and professional entities** in Ontario to further educate, consult and inform.

III. Developing Skills-Based Training and Other Supports

- a. Support, develop and offer independently and/or in partnership with other providers, skills-based training and practice supports in inter-cultural competency, conflict resolution, human rights and anti-racism.
- b. Support Deans, law faculty and students of Law Schools and Colleges in Ontario regarding how skills-based training in inter-cultural competency, conflict resolution, human rights, and anti-racism can be introduced into experiential learning in Law Schools and Colleges.
- c. Support the Law Society's Equity Legal Education programs—developed, as appropriate, in partnership with Deans, faculty and students of Law Schools as well as Indigenous knowledge keepers, practitioners, organizations and others—to address the legacy of the Indian Residential School experience and Canada's colonialist law and policy, Treaty and Aboriginal Rights, the meaning of the *United Nations Declaration on the Rights of Indigenous Peoples* and current initiatives of First Nations, Métis and Inuit peoples.

ACHIEVING AND IMPROVING ACCESS TO JUSTICE

15. The Law Society will work with the IAG recognizing that achieving and enhancing Access to Justice across Ontario is a key priority of the Law Society. It identifies strategic goals towards increasing collaboration with access to justice partners and other stakeholders as well as developing and implementing a more concrete access to justice action plan.
16. Additional priorities in the Strategic Plan, including engaging stakeholders and the public with responsive communications and increasing organizational effectiveness, will also support enhancing access to justice.
17. An important element of achieving and improving access to justice will be the review and improvement of the Mentoring and Networking Program to ensure it continues to deliver the objectives called for in 2009 by the Final Report of the Indigenous Bar Consultation.
18. The Treasurer's Memo provides further direction on specific priorities in relation to improving access to justice for Indigenous peoples, including improving access to the complaints process for Indigenous communities.
19. Improve the Law Society's hearing and regulatory process, including the Tribunal, in every interaction with Indigenous people.
20. Engage with the Law Society's Legal Aid Working Group to examine and improve the delivery of legal aid to Indigenous people community and address the financial barriers that prohibit meaningful access to justice.
21. Provide support for the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG), including:
 - a. Further support for Inquiry processes
 - b. Develop communication materials to promote awareness and access to justice, published in English, French and Indigenous languages.
 - c. Commit to address Inquiry recommendations.
22. Contribute to the elimination of the overrepresentation of Indigenous people in legal proceedings, care and incarceration through a number of channels:
 - a. Supporting the implementation of the recommendations of the Debwewin Implementation Committee's Final Report and Feathers of Hope.
 - b. Considering the results of TAG's cluster on "the Seventh Generation – the Crisis of Aboriginal Children and Youth in Care".

- c. Considering, as a justice system stakeholder, actions the Law Society can take and what collaborative opportunities exist with other stakeholders to promote alternatives to community sanctions, mandatory minimum sentences, bail procedurals and supporting culturally appropriate services to reduce domestic violence, dispute resolution mechanisms, Aboriginal healing lodges and halfway homes.
- d. Undertaking a study on barriers to access to justice in Northern Ontario, including the efficacy and standardization of the preparation of Gladue Reports (across all of Ontario).
- e. Expanding the Guidelines for Lawyers Representing Residential School Claimants to other areas within the Law Society's regulatory scope.

PROMOTING AND SUPPORTING KNOWLEDGE OF INDIGENOUS LEGAL SYSTEMS

23. The Law Society will work with the IAG recognizing that knowledge of Indigenous legal systems is an essential as part of the Law Society's commitment to prioritizing life-long competence and enhancing access to justice for Indigenous peoples. The promotion and support of knowledge of Indigenous legal systems can include:
- a. In response to Call to Action 50, support "the establishment of Indigenous Law institutes for the development, use and understanding of Indigenous laws and access to justice in accordance with the unique characteristics of Aboriginal peoples in Canada."
 - b. Develop and offer Continuing Professional Development (CPD) programs and legal education sessions independently and with partners to support understanding, respect for and application of Indigenous legal systems in Ontario.
 - c. Develop and enhance services available to licensees, including practice supports and learning resources that could provide guidance on Indigenous justice issues, including but not limited to the application of the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal Rights, and the MMIWG.
 - d. Enhance the Law Society's Lawyer Referral Program and Mentorship to provide support and guidance on Indigenous justice issues.
 - e. Enhance the Member Assistance Program to provide for the well-being of Indigenous licensees in ways that promote and support Indigenous, traditional healing methods.
 - f. Enhance supports for small and solo firm practices within the Indigenous community (i.e. mentoring).

TAKING ACTION ON RECONCILIATION

24. The Law Society recognizes that it will work in partnership with the IAG and be guided by Indigenous knowledge keepers, leaders and citizens, Indigenous practitioners and others, in the development of the Law Society's responses to the Final Report of the Truth and Reconciliation's Calls to Action.
25. The Law Society's priority to engage with stakeholders and the public with responsive communications will support strengthened relationships with Indigenous and non-Indigenous licensees and members of the public, as well as build greater awareness of the Law Society's role in the reconciliation process.
26. Specific proposed actions related to reconciliation are outlined in the TRC Responses document and include:
 - a. A statement of support for the adoption and implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* as a framework for reconciliation.
 - b. A commitment to actively consider opportunities to collaborate with partners, including legal and professional entities in Ontario to extend the impact of the responses the Law Society undertakes and explore how the Law Society can support the work of partners in advancing reconciliation.
 - c. Examine, in partnership with the Indigenous Bar Association, the codes of professional conduct and the commentaries as well as the Federation Model Code to consider changes to promote reconciliation and culturally competent service delivery.

List of References

1982

- [*The Constitution Act, 1982*](#)

1996

- [Report of the Royal Commission on Aboriginal Peoples](#)

1999

- [*R v. Gladue*, \[1999\] 1 S.C.R. 688](#)

2005

- [The Kelowna Accord](#)

2007

- [The Ipperwash Inquiry - Final Report](#)

2008

- [United Nations Declaration on the Rights of Indigenous Peoples](#)

2012

- [Forsaken: The Report of the missing Women Commission of Inquiry](#) (The BC Missing Women Commission of Inquiry)

2013

- [The Iacobucci Report – First Nations Representation on Ontario Juries](#)
- [Feathers of Hope: A First Nations Youth Action Plan](#)
- [Feathers of Hope: Justice and Juries](#)

2015

- [The Truth and Reconciliation of Canada Final Report](#)
- [Concluding observations on the sixth periodic report of Canada, United Nations Human Rights Committee](#)

April 5th, 2016 Draft

Indigenous Advisory Group

Draft

Terms of Reference

Purpose:

Adopting the United Nations Declaration on the Rights of Indigenous¹ Peoples as its framework, the Indigenous Advisory Group will advance and encourage the reconciliation of Indigenous peoples and Indigenous legal systems with the Canadian legal system (its Constitution, laws and legal framework) and promote the development of the relationships between Indigenous peoples and Canadian legal structures and institutions in a manner that respects Indigenous values, beliefs and legal systems.

Principles:

The conduct of each member and the work of the Indigenous Advisory Group will be guided by the following core principles:

- **Mutual Respect and Understanding**: Each member will afford respect to and strive to understand one another, the diversity of Indigenous cultures, legal systems, clients' needs and experiences, and the issues to be addressed.
- **Consensus Building**: Each member and as a group will work to find consensus in the discussion of issues. Disagreements will be acknowledged and the members commit to compromise to find solutions wherever possible and practical.
- **Cooperation**: Each member and as a group will work together toward realizing our shared purpose.
- **Words and Action Match**: Each member and as a group will work to demonstrate integrity in carrying out our work. Efforts will be put forth towards prompt follow up on actions identified by the Advisory Group.
- **Confidentiality**: Each member commits to maintaining the confidences of the membership and the discussions that occur and to refrain from disclosing any material deemed confidential that may come into the possession of the group.

¹For greatest certainty, the term "Indigenous" is inclusive of First Nations, Status, Non-Status, Inuit and Métis peoples.

April 5th, 2016 Draft

Mandate:

To provide a forum:

- To promote the implementation of recommendations and calls to action from reports generated regarding Indigenous peoples and Canada's legal system, including the Truth & Reconciliation Commission of Canada's Final Report and Calls to Action (2015) and the First Nations Representation on Ontario Juries Report by Justice Frank Iacobucci (2013).
- To encourage partnerships and relationships between Indigenous peoples, the Indigenous Bar Association in Canada and the Law Society.
- To directly interact and partner with the Law Society, its Equity and Aboriginal Issues Committee, Benchers committees and affiliated working groups; Executive Director, Policy, Equity & Public Affairs; Director – Equity, Indigenous Initiatives Counsel and other staff at the Law Society on all issues affecting Indigenous peoples in relation to the Law Society;
- To identify priorities and make recommendations on the provision of legal services by and for Indigenous peoples in Ontario;
- To initiate, inform, promote and advance reform of policies, procedures, rules and regulations for the benefit of Indigenous peoples;
- To promote public awareness and educate members of the Law Society on issues related to and affecting Indigenous peoples;
- To review, comment and make recommendations on reports affecting Indigenous peoples with respect to the legal profession;
- To assess the progress and effectiveness of initiatives undertaken by the Law Society that address or relate to legal issues affecting Indigenous Peoples.

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Membership:

The membership of the Indigenous Advisory Group will comprise of diverse representation by up to nine individuals from the Indigenous community, including lawyers and paralegals from various geographic regions of Ontario, Indigenous law professors, community members and youth.

Members of the Indigenous Advisory Group will be recommended for appointment by an "Elders Council" and confirmed by consensus by the existing membership.

Members of the "Elders Council" will be comprised of at least three individuals and will be selected by the membership of the Indigenous Advisory Group as needed. The Elders Council will forever be standing members of the Indigenous Advisory Group.

A "Proto Group" was established to create these Terms of Reference. Members of the "Proto Group" will become the initial members of the Indigenous Advisory Group and will serve as members over a period of six months to one year until such time as new membership of the Indigenous Advisory Group is determined.

Co-Chairs:

There shall, whenever possible, be two co-Chairs that represent a gender balance. Co-chairs are appointed through consensus of the membership and will sit for a term of two years.

In the interests of continuity, relationship building and effectiveness, where possible these terms will be staggered to ensure an overlap and avoid situations where both co-Chairs begin their terms simultaneously.

Responsibilities of the Co-Chairs are shared, and include:

- chairing the meetings (on a rotating basis) of the Indigenous Advisory Group
- taking direction from the Indigenous Advisory Group;
- overseeing the work of the ad hoc / working committees;
- representing the Indigenous Advisory Group at Committees of the Law Society;

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- working with the Law Society's Executive Director, Policy, Equity & Public Affairs Department and Indigenous Initiatives Counsel in supporting the work of the Advisory Group.

Committees:

Ad hoc / working committees will be struck as required and will be subject to time designated existence.

The work of the ad hoc/working committees will be shared with the Advisory Group for discussion and action, as necessary.

Quorum and Meetings:

There must be quorum to constitute a meeting, which shall consist of at least 50% plus one of the membership participating in person or by telephone, at least one of whom must be a co-Chair.

The Indigenous Advisory Group will meet bi-monthly, or as deemed necessary by the Co-Chairs at a location agreed upon by the Indigenous Advisory Group.

Members will seek reimbursement from the Law Society for reasonable out of pocket expenses incurred for travel, where travel is determined necessary by the co-Chairs for the workings of the Advisory Group. The Law Society's Executive Director, Policy, Equity & Public Affairs will determine whether the Law Society will reimburse such expenses.

All decisions will be reached by consensus. Consensus means that all members participating in a meeting have an opportunity to openly and freely discuss issues raised with an earnest and sincere attempt to arrive at agreement and acceptance of a decision. Consensus does not require that all members must be present, nor does it necessitate that all members voice an opinion or agree.

All decisions will be recorded and a summary of each meeting will be prepared by an agreed upon member at the start of each meeting.

The Law Society will provide:

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- advice and resources as appropriate;
- support to facilitate meeting location, reports and minutes on a regular basis;
- prepare proposals, submissions etc as approved and directed by the Indigenous Advisory Group

Review of the Mandate:

This mandate may be subject to review as determined necessary by a consensus of the membership.

DRAFT

TAB 5.2

FOR DECISION

HUMAN RIGHTS MONITORING GROUP REQUEST FOR INTERVENTION

29. **That Convocation approve the letters and public statements in the following cases:**
- a. **Chief Justice Sushila Karki – Nepal – letters of intervention and public statement presented at [TAB 5.2.1](#).**
 - b. **Fayzinisso Vohidova – Tajikistan – letters of intervention and public statement presented at [TAB 5.2.2](#).**
 - c. **Muazzamakhon Kadirova (Muazzama Qodirova) – Tajikistan – letters of intervention and public statement presented at [TAB 5.2.3](#).**
 - d. **Buzurgmehr Yorov – Tajikistan – letters of intervention and public statement presented at [TAB 5.2.4](#).**
 - e. **Michel Togué – Cameroon – letters of intervention and public statement presented at [TAB 5.2.5](#).**

Rationale

30. The request for interventions falls within the mandate of the Human Rights Monitoring Group (the “Monitoring Group”) to,
- a. review information that comes to its attention about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
 - b. determine if the matter is one that requires a response from the Law Society; and
 - c. prepare a response for review and approval by Convocation.

Key Issues and Considerations

31. The Monitoring Group considered the following factors when making a decision about the impeachment proceedings against Chief Justice Sushila Karki in Nepal:
- a. there are no concerns about the quality of sources used for this report; and
 - b. the impeachment proceedings against Chief Justice Sushila Karki fall within the mandate of the Monitoring Group.

32. The Monitoring Group considered the following factors when making a decision about the travel ban against lawyer Fayzinisso Vohidova in Tajikistan:
 - a. there are no concerns about the quality of sources used for this report; and
 - b. the travel ban against lawyer Fayzinisso Vohidova falls within the mandate of the Monitoring Group.

33. The Monitoring Group considered the following factors when making a decision about the harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova) in Tajikistan:
 - a. there are no concerns about the quality of sources used for this report; and
 - b. the harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova) falls within the mandate of the Monitoring Group.

34. The Monitoring Group considered the following factors when making a decision about the conviction and pending charges against lawyer Buzurgmehr Yorov in Tajikistan:
 - a. there are no concerns about the quality of sources used for this report; and
 - b. the conviction and pending charges against lawyer Buzurgmehr Yorov falls within the mandate of the Monitoring Group.

35. The Monitoring Group considered the following factors when making a decision about the harassment and intimidation of lawyer Michel Togué in Cameroon:
 - a. there are no concerns about the quality of sources used for this report; and
 - b. the harassment and intimidation of lawyer Michel Togué falls within the mandate of the Monitoring Group.

KEY BACKGROUND

NEPAL – IMPEACHMENT PROCEEDINGS AGAINST CHIEF JUSTICE SUSHILA KARKI

Sources of Information

36. The background information for this report was retrieved from the following sources:
 - a. Aljazeera;¹
 - b. BBC;²

¹ "Nepal: Chief justice Sushila Karki suspended", *Aljazeera* (1 May 2017), online: <<http://www.aljazeera.com/news/2017/05/nepal-chief-justice-sushila-karki-suspended-170501124314347.html>>.

- c. The Himalayan Times;³
- d. Hindustan Times;⁴
- e. NDTV;⁵ and
- f. Sri Lanka Guardian.⁶

Background

37. Sushila Karki is the first female Chief Justice of the Supreme Court of Nepal. She is known for her zero-tolerance stance on corruption in the judiciary and has been instrumental in a number of high-profile and politically sensitive decisions. Recent rulings by the Supreme Court, with Sushila Karki as its Chief Justice, have been critical in advancing human rights in Nepal, assisting victims seeking justice for the crimes and serious human rights violations committed against them.
38. On April 30, 2017, the two main parties in the ruling coalition government brought an impeachment motion against Chief Justice Sushila Karki, resulting in her automatic suspension. The motion, which came on the heels of the Supreme Court's decision to overturn the Nepalese government's choice for Chief of Police,⁷ accuses the Chief Justice of delivering biased verdicts,⁸ interfering in the executive's jurisdiction, breaching the principle of separation of powers, influencing her fellow justices, and failing to fulfill her judicial duties.
39. On May 5, 2017, the Supreme Court issued an interim order directing Parliament to halt impeachment proceedings against Chief Justice Sushila Karki and to allow her to return to her duties. In making the order, the Supreme Court opined that the allegations against the Chief Justice were baseless and that the commencement of impeachment proceedings against her would be at odds with the spirit of Nepal's Constitution. Relatedly, the UN High Commissioner for Human Rights has stated that "the attempt to remove [Chief Justice Sushila Karki] gives rise to serious concerns about the Government [of Nepal]'s commitment to transitional justice and the rule of law".

² "Nepal's first female chief justice faces impeachment", *BBC* (30 April 2017), online: <<http://www.bbc.com/news/world-asia-39764830>>.

³ Keshav P. Koirala, "Impeachment proposal against CJ Karki on Silwal verdict's eve", *The Himalayan Times* (30 April 2017), online: <<https://thehimalayantimes.com/kathmandu/impeachment-proposal-filed-chief-justice-sushila-karki/>>.

⁴ Anil Giri, "Nepal deputy PM quits over move to impeach first woman chief justice", *Hindustan Times* (30 April 2017), online: <<http://www.hindustantimes.com/world-news/nepal-deputy-pm-quits-over-move-to-impeach-first-woman-chief-justice/story-4JIYN3xW76IJHG9x6YqkvL.html>>; Anil Giri, "Nepal's Supreme Court reinstates Chief Justice Sushila Karki", *Hindustan Times* (5 May 2017), online: <<http://www.hindustantimes.com/world-news/nepal-s-supreme-court-reinstates-chief-justice-sushila-karki/story-SjXTxi8LmnasdQp1ZpLcsL.html>>.

⁵ "Nepal Moves To Impeach First Woman Chief Justice Sushila Karki", *NDTV* (1 May 2017), online: <<http://www.ndtv.com/world-news/nepal-moves-to-impeach-first-female-chief-justice-sushila-karki-1688083>>.

⁶ "Nepal: Moves to impeach Chief Justice — an assault on human rights — UN", *Sri Lanka Guardian* (5 May 2017), online: <<https://www.slguardian.org/2017/05/nepal-moves-to-impeach-chief-justice-an-assault-on-human-rights-un/>>.

⁷ The court ruled that the government had violated existing processes and regulations in appointing Jaya Bahadur Chand as police chief instead of Navaraj Silwal, the highest-ranking officer.

⁸ "We have decided to impeach Chief Justice Sushila Karki... after she visibly started taking sides in cases," Min Biswakarma, a member of the ruling coalition who proposed the motion. (See *NDTV, ibid.*)

40. Nepal has a history of political interference in key civil appointments such as the Chief of Police. Since the end of the civil war in 2006, the country has had nine governments, each of which sought to fill key positions with their respective loyalists. According to her supporters, Chief Justice Sushila Karki is a staunch opponent of such corruption and that her tough stance on this issue “annoyed the politicians”.

TAJIKISTAN – TRAVEL BAN AGAINST LAWYER FAYZINISSO VOHIDOVA

Sources of Information

41. The background information for this report was retrieved from the following sources:
- a. Amnesty International; and⁹
 - b. Human Rights Watch.¹⁰

Background

42. Fayzinisso Vohidova is a Khujand-based lawyer known for her human rights and criminal defence work in politically sensitive cases. As a result of her professional activities, she has long been the target of government harassment. Since July 2015, she has endured surveillance and intimidation. In early 2016, she received credible information that law enforcement officials had initiated a criminal investigation against her.
43. Most recently, on May 14, 2017, border guards with the State Committee on State Security prevented Fayzinisso Vohidova from traveling to Kyrgyzstan. They detained her for eight hours, stating that there was a “defect” in her passport and that she “had no right to leave Tajikistan”. Eventually, the border guards conceded that Fayzinisso Vohidova had been placed on a list of individuals banned from leaving the country. Travel bans cannot be appealed. It should be noted that in the weeks that preceded this incident, Fayzinisso Vohidova had been interrogated several times by Tajik security services.
44. Human rights organizations believe that these latest acts of harassment against Fayzinisso Vohidova are related to the critical remarks she made about the imprisonment of two Tajik human rights lawyers, Buzurgmehr Yorov and Nuriddin Makhkamov. In April 2017, she had publicly appealed to President Emomali Rahmon through social media, criticizing the government’s imprisonment of Yorov and Makhkamov, both of whom were convicted and sentenced in October 2016 following a prosecution and trial that appeared to be politically

⁹ Amnesty International, “Tajikistani lawyers harassed, intimidated and imprisoned” (24 May 2017), online: <<https://www.amnesty.org/en/latest/news/2017/05/tajikistani-lawyers-harassed-intimidated-and-imprisoned/>>; Amnesty International, “In the Line of Duty: Harassment, Prosecution and Imprisonment of Lawyers in Tajikistan” (23 May 2017), online: <<https://www.amnesty.org/en/documents/eur60/6266/2017/en/>>.

¹⁰ Human Rights Watch, “Tajikistan: Travel Ban on Rights Lawyer” (16 May 2017), online: <<https://www.hrw.org/news/2017/05/16/tajikistan-travel-ban-rights-lawyer>>; Human Rights Watch, “Tajikistan: Free Human Rights Lawyers” (4 May 2016), online: <<https://www.hrw.org/news/2016/05/04/tajikistan-free-human-rights-lawyers>>.

motivated. The Law Society intervened on behalf of Buzurgmehr Yorov in February 2016 and January 2017, and on behalf of Nuriddin Makhkamov in January 2017.

Broader Issues Regarding Lawyers in Tajikistan

45. Over the last three years, defence lawyers in Tajikistan who have taken up politically sensitive cases or cases related to national security and counter-terrorism have faced increasing harassment, intimidation and pressure as a result of their legitimate professional activities. In some cases, lawyers have been subjected to punitive arrest, criminal prosecution on national security-related or politically-motivated charges, and sentenced to long prison terms following unfair trials. Some lawyers have fled the country to avoid such persecution. Meanwhile, their families have also been targeted, harassed and threatened with reprisals by security forces and local authorities.
46. Arbitrary arrests of human rights lawyers, their prosecutions on politically-motivated charges, harsh prison sentences and the harassment of their families have served as deterrents for anyone daring to defend the fundamental rights of those willing or perceived to challenge the authority of the president and the government. Most notably, defending arrested lawyers has become increasingly risky for other lawyers. Few have been prepared to take up this role because of the associated risks, and some of those who have have faced harassment and threats as a result.
47. Amendments to legislation which concerns the regulation of the legal profession in Tajikistan (Law on Advokatura) have been instrumental in reducing the number of licensed lawyers by more than half and further restricting the already limited access to justice for Tajikistani citizens. Prominent lawyers and domestic and international experts and NGOs have expressed concern that some of the amending provisions (introduced in November 2015) threaten the independence of the legal profession and jeopardize access to legal services by: 1) bringing control over the licensing of lawyers firmly back into the hands of the executive branch of government, specifically the Ministry of Justice; 2) mandating that the deciding vote on who qualifies as a lawyer be held by a Deputy Minister of Justice; and 3) forcing all lawyers to pass the new qualification exams by the end of March 2016 or lose their licence to practice. As of May 2017, only about half of the previously licensed lawyers had successfully requalified under the new regulatory regime. Tajikistan now has approximately 600 lawyers (a significant decrease from over 1200 in 2015) for a population of over eight million, a ratio of approximately one lawyer per 13,000 inhabitants.

TAJIKISTAN – HARASSMENT OF LAWYER MUZZAMAKHON KADIROVA (MUZZAMA QODIROVA)

Sources of Information

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

- a. Amnesty International; and¹¹
- b. RadioFreeEurope / RadioLiberty.¹²

Background

49. In October 2015 and again in September 2016, human rights lawyer Muazzamakhon Kadirova agreed, at great risk to herself and her family, to act as defence counsel for fellow lawyers Buzurgmehr Yorov and Nuriddin Makhkamov. The Law Society intervened on behalf of Buzurgmehr Yorov in February 2016 and January 2017, and on behalf of Nuriddin Makhkamov in January 2017.
50. Due to the fact that the trials of Buzurgmehr Yorov and Nuriddin Makhkamov were conducted behind closed doors, Muazzamakhon Kadirova was effectively the only link between them, their families and the wider public. She told journalists and other activists that the prosecution had not been able to present any compelling evidence against her clients and that the trials were clearly politically motivated.
51. As the trials progressed, Muazzamakhon Kadirova became increasingly aware of the risks associated with representing Buzurgmehr Yorov and Nuriddin Makhkamov; by November 2016, she was concerned about her safety and possible reprisals from Tajikistani authorities. On December 27, 2016, Muazzamakhon Kadirova was summoned to the Prosecutor General's Office and questioned about her professional activities for several hours. In the days that followed her questioning, she noticed that she was under surveillance.
52. In January 2017, Muazzamakhon Kadirova learned from a confidential source that a criminal case was being prepared against her. Fearing for her safety and concerned that she could be arrested at any time, Muazzamakhon Kadirova fled Tajikistan and sought protection abroad. In March 2017, she told journalists that Tajikistani authorities had threatened to launch a criminal case against her, accusing her of leaking confidential information about Buzurgmehr Yorov's case to foreign media. As of March 29, 2017, she is seeking refuge in Germany and has applied for political asylum there.
53. See also "Broader Issues Regarding Lawyers in Tajikistan" under **Tajikistan – Travel Ban Against Lawyer Fayzinisso Vohidova**.

TAJIKISTAN – CONVICTION AND PENDING CHARGES AGAINST LAWYER BUZURGMEHR YOROV

¹¹ Amnesty International, "Tajikistani lawyers harassed, intimidated and imprisoned" (24 May 2017), online: <<https://www.amnesty.org/en/latest/news/2017/05/tajikistani-lawyers-harassed-intimidated-and-imprisoned/>>; Amnesty International, "In the Line of Duty: Harassment, Prosecution and Imprisonment of Lawyers in Tajikistan" (23 May 2017), online: <<https://www.amnesty.org/en/documents/eur60/6266/2017/en/>>.

¹² RadioFreeEurope / RadioLiberty, "Rights Watchdog Condemns Tajikistan's Crackdown On Lawyers" (24 May 2017), online: <<https://www.rferl.org/a/tajikistan-amnesty-lawyers-crackdown-yorov-mahkamov-kudratov/28505124.html>>; RadioFreeEurope / RadioLiberty, "Lawyer For Jailed Tajik Human Rights Attorney Flees To Germany" (30 March 2017), online: <<https://www.rferl.org/a/lawyer-jailed-tajikistan-human-rights-attorney-flees-germany/28399757.html>>.

Sources of Information

54. The background information for this report was retrieved from the following sources:
- a. Amnesty International;¹³
 - b. Human Rights Watch;¹⁴
 - c. Lawyers for Lawyers;¹⁵ and
 - d. RadioFreeEurope / RadioLiberty.¹⁶

Background

55. The Law Society previously intervened on behalf of Buzurgmehr Yorov in February 2016¹⁷ and January 2017.¹⁸
56. Several developments have taken place since the Law Society's last intervention. In February 2017, the Supreme Court of Tajikistan rejected Buzurgmehr Yorov's appeal, upholding his conviction and the accompanying 23-year prison term. That same month, additional charges of fraud were brought against Buzurgmehr Yorov. Alleged to be based on new complaints made against him by members of the public, these charges carry a sentence of up to 12 years in prison.
57. On March 16, 2017, the Supreme Court of Tajikistan found Buzurgmehr Yorov guilty of contempt and "insulting government officials", and added an additional two years to his sentence (for a total of 25 years). The hearing into these charges opened on December 12, 2016 after authorities accused him of disrespecting the court and insulting government officials by quoting a celebrated 11th century poet in his closing statement to the Dushanbe City Court during his original trial.
58. As of May 2017, yet another criminal case is pending against Buzurgmehr Yorov. This new charge of "insulting the leader of the Nation" apparently stems from statements he made in court in response to the aforementioned fraud charges. According to his wife Zarina

¹³ Amnesty International, "Tajikistani lawyers harassed, intimidated and imprisoned" (24 May 2017), online: <<https://www.amnesty.org/en/latest/news/2017/05/tajikistani-lawyers-harassed-intimidated-and-imprisoned/>>; Amnesty International, "In the Line of Duty: Harassment, Prosecution and Imprisonment of Lawyers in Tajikistan" (23 May 2017), online: <<https://www.amnesty.org/en/documents/eur60/6266/2017/en/>>.

¹⁴ Human Rights Watch, "Tajikistan: Travel Ban on Rights Lawyer" (16 May 2017), online: <<https://www.hrw.org/news/2017/05/16/tajikistan-travel-ban-rights-lawyer>>.

¹⁵ Lawyers for Lawyers, "Tajikistan Court rejects appeal of lawyer Buzurgmehr Yorov" (11 April 2017), online: <<http://www.advocatenvooradvocaten.nl/12527/tajikistan-court-rejects-appeal-of-lawyer-buzurgmehr-yorov/>>.

¹⁶ RadioFreeEurope / RadioLiberty, "Reading Of 11th-Century Poem Could Earn More Time For Imprisoned Tajik Lawyer" (14 December 2016), online: <<https://www.rferl.org/a/tajikistan-lawyer-rights-poem-yorov/28176119.html>>.

¹⁷ The Law Society of Upper Canada, "Re: Detention of human rights lawyer Buzurgmehr Yorov" (4 February 2016), online: <http://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Human_Rights_Monitoring_Group/Tajikistan-Buzurgmehr%20Yorov.pdf>.

¹⁸ The Law Society of Upper Canada, "Re: Convictions of Human Rights Lawyers Buzurgmehr Yorov and Nuriddin Makhkamov" (23 January 2017), online:

<http://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Human_Rights_Monitoring_Group/Tajikistan_Convictions%20of%20Human%20Rights%20Lawyers%20Buzurgmehr%20Yorov%20and%20Nuriddin%20Makhkamov.pdf>.

Nabieva, Buzurgmehr Yorov had told the court that, as a lawyer, he had always operated within the country's legal framework. Given that this legal framework had been approved by the president of Tajikistan, he argued that if he was guilty of fraud, then so was everyone else in the country, including the president. The subsequent publication of this statement on the independent news website Payom.net apparently served as the grounds upon which the criminal charge was advanced.

59. Buzurgmehr Yorov's family has been unable to find an independent lawyer willing to represent him in court. Consequently, his wife Zarina Nabieva has taken on his legal defence.
60. See also "Broader Issues Regarding Lawyers in Tajikistan" under **Tajikistan – Travel Ban Against Lawyer Fayzinisso Vohidova**.

CAMEROON – HARASSMENT AND INTIMIDATION OF LAWYER MICHEL TOGUÉ

Sources of Information

61. The background information for this report was retrieved from the following sources:
 - a. Council of Bars and Law Societies of Europe;¹⁹
 - b. Human Rights Watch;²⁰ and
 - c. NewNowNext.²¹

Background

62. Michel Togué is a human rights lawyer who defends clients charged with homosexuality in Cameroon, where consensual same-sex conduct is criminalized and subject to a maximum prison sentence of five years. In March 2017, he was awarded the Dutch Geuzenpenning Award for his work and advocacy on behalf of the LGBT community in his country.
63. In early 2017, Michel Togué received multiple death threats as a result of his legal work on behalf of individuals who identify as LGBT. Reports indicate that when he subsequently approached Cameroon's Lawyer's Association for assistance, its president advised Michel Togué: "Stop defending the LGBT community and you won't have problems anymore." Similarly, his request for protection was denied by Cameroonian police.

¹⁹ Council of Bars and Law Societies of Europe, "Re: Concerns regarding threats against human rights lawyer Michel Togué" (3 May 2017), online:

<http://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Cameroon_-_Cameroon/2017/EN_HRL_20170503_Cameroon_Concerns-regarding-threats-against-human-rights-lawyer-Michel-Togue.pdf>.

²⁰ Human Rights Watch, "Your Children Will Die if You Don't Stop" (13 March 2017), online: <<https://www.hrw.org/news/2017/03/13/your-children-will-die-if-you-dont-stop>>.

²¹ Brandon Voss, "Cameroon Lawyer Told That His Family Will Die If He Doesn't Stop Defending LGBT People", *NewNowNext* (8 April 2017), online: <<http://www.newnownext.com/cameroon-lawyer-michel-togue-death-threats-africa-homophobia/04/2017/>>.

64. Michel Togué, along with his wife and children, first began receiving death threats in the form of emails and text messages in October 2012. As the death threats against him and his family escalated, his wife and children sought asylum in the United States. Michel Togué, however, chose to remain in Cameroon to continue his work with the LGBT community.

FOR INFORMATION

HUMAN RIGHTS MONITORING GROUP RESPONSES TO INTERVENTIONS

65. The Human Rights Monitoring Group (“the Monitoring Group”) monitors cases of members of the legal profession and the judiciary who are facing persecution as a result of the discharge of their legitimate professional duties. When appropriate, the Monitoring Group prepares intervention letters and public statements related to these cases for Convocation’s approval. Intervention letters are sent to heads of state and are copied, for information, to relevant bar associations, human rights organizations and, when contact information is available, to the lawyers and/or judges who are the subjects of the interventions.
66. In June 2017, the Monitoring Group received two responses to the Law Society’s recent intervention letters:
- a. The Monitoring Group received a response from the High Commissioner of Cameroon, regarding the Law Society’s intervention in the case related to the arrest and detention of Justice Paul Ayah Abime (Cameroon);
 - b. The Monitoring Group received a response from Front Line Defenders, thanking the Law Society for its efforts regarding the Law Society’s intervention in the case of Emil Kurbedinov (Crimea).

HUMAN RIGHTS MONITORING GROUP ANNUAL UPDATE

67. The Human Rights Monitoring Group (“the Monitoring Group”) monitors cases of members of the legal profession and the judiciary who are facing persecution as a result of the discharge of their legitimate professional duties. When appropriate, the Monitoring Group prepares intervention letters and public statements related to these cases for Convocation’s approval. Intervention letters are sent to heads of state and are copied, for information, to relevant bar associations, human rights organizations and, when contact information is available, to the lawyers and/or judges who are the subjects of the interventions.
68. There are seven bench member members of the Monitoring Group: Teresa Donnelly (Chair), Robert Evans, Julian Falconer, Avvy Go, Judith Potter, Heather Ross and Joanne St. Lewis.

Orientation Materials

69. Members of the Monitoring Group, including new members, receive orientation materials that include:
- The mandate of the HRMG
 - Information about interventions and the interventions to date
 - Criteria for intervention
 - The Basic Principles on the Role of Lawyers and on the Independence of the Judiciary
 - The Facilitating International Access to Justice Through Intervention – Report to Convocation October 2014.
 - Information about the Human Rights Award
 - Information about Human Rights Monitoring Group events

Interventions

70. An extensive Access to Justice document was prepared in October 2014 and presented to Convocation entitled *Facilitating International Access to Justice Through Intervention*. An updated report was provided to Convocation in January 2017. It will now be kept as a living document that is continually updated each time the Law Society intervenes.
71. The Monitoring Group has also prepared two different lists which will be updated when the Law Society intervenes in a case. The lists are organized by country and by the name of the person on whose behalf the Law Society has intervened. The intent of these lists is to ensure that the Monitoring Group can easily and quickly determine if the Law Society has previously intervened in the country or on behalf of the individual or group.

72. In an effort to standardize the language for interventions, the Monitoring Group has prepared a document that contains suggested wording for its interventions to ensure that it is consistent across its interventions.
73. The Monitoring Group continues to bring forward interventions in cases of lawyers and judges who face human rights violations as result of their legal work.

Outreach to National and International Partners

74. To ensure that the Monitoring Group understands the work of our national and international partners, it has invited guests to attend its meetings. This process has been very rewarding, informative and validating for the work of the Monitoring Group. It is in the process of collating its notes of these meetings into one document so that going forward, starting in September 2017, it will have substantive discussion about how to expand its role within the mandate and also collaborate with its partners.
75. Speakers to date have been:
 - November 10, 2016 - Andrew Guaglio, Board Member, Lawyers' Rights Watch Canada
 - January 12, 2017 - Marina Brilman, International Human Rights Policy Adviser, International Department The Law Society of England and Wales
 - February 9, 2017 - Alex Neve, Secretary General, Amnesty International
 - April 6, 2017 - Judith Lichtenberg, Board Member, Lawyers for Lawyers
 - June 8, 2017 – Farida Deif, Canada Director, Human Rights Watch

Human Rights Award

76. The Law Society presented the second Human Rights Award to Dr. Cindy Blackstock and Waleed Abu al-Khair. The Awards lunch was very moving and the ceremony was very powerful. The Award reinforces the Law Society's commitment to protecting human rights.

Looking forward to 2017-2018

77. For 2017-2018, the Monitoring Group intends to focus on the following:
 - Finalizing the standardized intervention document
 - Reviewing how to expand its role within the mandate
 - Increasing collaboration with national and international partners
 - Continuing to intervene in cases
 - Continuing to promote human rights through education and outreach.

TAB 5.2.1

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

CHIEF JUSTICE SUSHILA KARKI

H.E. Pushpa Kamal Dahal
Prime Minister of the Federal Democratic Republic of Nepal
Office of the Prime Minister and Council of Ministers
Singh Durbar
Kathmandu, Nepal
Fax: 4211065, 4211086, 4211038, 4211021, 4211047
P.O. Box: 23312
Email: info@nepal.gov.np

Your Excellency:

Re: Impeachment proceedings against Chief Justice Sushila Karki

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the impeachment proceedings against Chief Justice Sushila Karki. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Sushila Karki is the first female Chief Justice of the Supreme Court of Nepal. She is known for her zero-tolerance stance on corruption in the judiciary and has been instrumental in a number of high-profile and politically sensitive decisions. Recent rulings by the Supreme Court, with Sushila Karki as its Chief Justice, have been critical in advancing human rights in Nepal, assisting victims seeking justice for the crimes and serious human rights violations committed against them.

It has come to the Law Society's attention that on April 30, 2017, the two main parties in the ruling coalition government brought an impeachment motion against Chief Justice Sushila Karki, resulting in her automatic suspension. The motion, which came on the heels of the Supreme Court's decision to overturn the Nepalese government's choice for Chief of Police, accuses the Chief Justice of delivering biased verdicts, interfering in the executive's jurisdiction, breaching the principle of separation of powers, influencing her fellow justices, and failing to fulfill her judicial duties.

On May 5, 2017, the Supreme Court issued an interim order directing Parliament to halt impeachment proceedings against Chief Justice Sushila Karki and to allow her to return to her duties. In making the order, the Supreme Court opined that the allegations against the Chief Justice were baseless and that the commencement of impeachment proceedings against her would be at odds with the spirit of Nepal's Constitution. Relatedly, the UN High Commissioner for Human Rights has stated that "the attempt to remove [Chief Justice Sushila Karki] gives rise

to serious concerns about the Government [of Nepal]'s commitment to transitional justice and the rule of law”.

Nepal has a history of political interference in key civil appointments such as the Chief of Police. Since the end of the civil war in 2006, the country has had nine governments, each of which sought to fill key positions with their respective loyalists. According to her supporters, Chief Justice Sushila Karki is a staunch opponent of such corruption and that her tough stance on this issue “annoyed the politicians”.

In light of these circumstances, the Law Society urges Your Excellency to comply with Nepal's obligations under international human rights laws, including the United Nations' *Basic Principles on the Independence of the Judiciary*.

Articles 1 to 6 of the *Basic Principles on the Independence of the Judiciary* state:

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

The Law Society urges the Government of Nepal to:

- a. immediately and unconditionally discontinue the impeachment proceedings against Chief Justice Sushila Karki, if this has not already occurred;
- b. immediately and unconditionally lift the interim suspension imposed on Chief Justice Sushila Karki so that she may return to her judicial duties and activities, if this has not already occurred;
- c. put an end to all acts of harassment against Chief Justice Sushila Karki and all other judges in Nepal;
- d. guarantee in all circumstances the physical and psychological integrity of Chief Justice Sushila Karki;
- e. ensure that all judges in Nepal can carry out their judicial duties and activities without fear of reprisals, physical violence or other human rights violations; and
- f. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours truly,

Paul B. Schabas
Treasurer

**The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.

cc:

H.E. Mr. Kali Prasad Pokhrel
Ambassador of Nepal

Embassy of Nepal
408 Queen Street
Ottawa, Ontario
K1R 5A7
Fax: 613 422 5149
Email: nepalembassy@rogers.com; eonottawa@mofa.gov.np

Mr. Raman Kumar Shrestha, President
Nepal Bar Council
Park Ln, Patan 44600
Kupondole, Lalitpur, Nepal
Fax: 977-01-5261884
Email: info@nepalbarcouncil.org.np

Sher Bahadur K.C., President
Nepal Bar Association
Ramshah Path, Kathmandu, Nepal
Fax: 977-1-4218049; 4262755
Email: neba@wlink.com.np

The Honourable Chrystia Freeland
Minister of Foreign Affairs
125 Sussex Drive
Ottawa, Ontario
K1A 0G2
Email: chrystia.freeland@international.gc.ca

Consulate of Canada in Kathmandu
GPO Box 3596
Kathmandu
Nepal

Alex Neve, Secretary General, Amnesty International Canada

Andrew Anderson, Executive Director, Front Line Defenders

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

Kenneth Roth, Executive Director, Human Rights Watch

Farida Deif, Canada Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

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

Hina Jilani, President, Observatory for the Protection of Human Rights Defenders

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

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

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

Proposed Letter to Lawyers' Associations

Dear [Name],

Re: Impeachment proceedings against Chief Justice Sushila Karki in Nepal

I write to inform you that on the advice of the Human Rights Monitoring Group*, the Law Society of Upper Canada sent the attached letter to Prime Minister Pushpa Kamal Dahal, the Prime Minister of the Federal Democratic Republic of Nepal, expressing our deep concern over reports of the impeachment proceedings against Chief Justice Sushila Karki.

We would be very interested in hearing from you in regard to the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have misapprehended any of the facts in this case. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Ekua Quansah, Policy Counsel, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to equansah@lsuc.on.ca.

I thank you for your time and consideration.

Sincerely,

Teresa Donnelly
Chair, Human Rights Monitoring Group

* The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary in Canada and abroad. The Human Rights Monitoring Group reviews such information and determines if a response is required of the Law Society.

Letter to be sent to:

- Raman Kumar Shrestha, President, Nepal Bar Council
- Sher Bahadur K.C., President, Nepal Bar Association

- Alex Neve, Secretary General, Amnesty International Canada
- Andrew Anderson, Executive Director, Front Line Defenders
- Emma Achili, Head of European Union Office, Front Line Defenders
- Kenneth Roth, Executive Director, Human Rights Watch
- Farida Deif, Canada Director, Human Rights Watch
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers' Rights Watch Canada
- Hina Jilani, President, Observatory for the Protection of Human Rights Defenders
- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights
- Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Marina Brilman, International Human Rights Policy Adviser, The Law Society of England and Wales

PROPOSED PUBLIC STATEMENT

The Law Society of Upper Canada expresses grave concern about the impeachment proceedings against Chief Justice Sushila Karki in Nepal

Toronto, ON — The Law Society of Upper Canada expresses grave concern about the impeachment proceedings against Chief Justice Sushila Karki in Nepal.

Sushila Karki is the first female Chief Justice of the Supreme Court of Nepal. She is known for her zero-tolerance stance on corruption in the judiciary and has been instrumental in a number of high-profile and politically sensitive decisions. Recent rulings by the Supreme Court, with Sushila Karki as its Chief Justice, have been critical in advancing human rights in Nepal, assisting victims seeking justice for the crimes and serious human rights violations committed against them.

It has come to the Law Society's attention that on April 30, 2017, the two main parties in the ruling coalition government brought an impeachment motion against Chief Justice Sushila Karki, resulting in her automatic suspension. The motion, which came on the heels of the Supreme Court's decision to overturn the Nepalese government's choice for Chief of Police, accuses the Chief Justice of delivering biased verdicts, interfering in the executive's jurisdiction, breaching the principle of separation of powers, influencing her fellow justices, and failing to fulfill her judicial duties.

On May 5, 2017, the Supreme Court issued an interim order directing Parliament to halt impeachment proceedings against Chief Justice Sushila Karki and to allow her to return to her duties. In making the order, the Supreme Court opined that the allegations against the Chief Justice were baseless and that the commencement of impeachment proceedings against her would be at odds with the spirit of Nepal's Constitution. Relatedly, the UN High Commissioner for Human Rights has stated that "the attempt to remove [Chief Justice Sushila Karki] gives rise to serious concerns about the Government [of Nepal]'s commitment to transitional justice and the rule of law".

Nepal has a history of political interference in key civil appointments such as the Chief of Police. Since the end of the civil war in 2006, the country has had nine governments, each of which sought to fill key positions with their respective loyalists. According to her supporters, Chief Justice Sushila Karki is a staunch opponent of such corruption and that her tough stance on this issue "annoyed the politicians".

In light of these circumstances, the Law Society urges the Government of Nepal to comply with Nepal's obligations under international human rights laws, including the United Nations' *Basic Principles on the Independence of the Judiciary*.

Articles 1 to 6 of the *Basic Principles on the Independence of the Judiciary* state:

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

The Law Society urges the Government of Nepal to:

- a. immediately and unconditionally discontinue the impeachment proceedings against Chief Justice Sushila Karki, if this has not already occurred;
- b. immediately and unconditionally lift the interim suspension imposed on Chief Justice Sushila Karki so that she may return to her judicial duties and activities, if this has not already occurred;
- c. put an end to all acts of harassment against Chief Justice Sushila Karki and all other judges in Nepal;
- d. guarantee in all circumstances the physical and psychological integrity of Chief Justice Sushila Karki;

- e. ensure that all judges in Nepal can carry out their judicial duties and activities without fear of reprisals, physical violence or other human rights violations; and
- f. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 5.2.2

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

FAYZINISSO VOHIDOVA

H.E. Emomali Rahmon
President of the Republic of Tajikistan
Rudaki Avenue, 80
Dushanbe 734023
Republic of Tajikistan

Your Excellency:

Re: Travel ban against lawyer Fayzinisso Vohidova

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the travel ban against lawyer Fayzinisso Vohidova. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Fayzinisso Vohidova is a Khujand-based lawyer known for her human rights and criminal defence work in politically sensitive cases. As a result of her professional activities, she has long been the target of government harassment. Since July 2015, she has endured surveillance and intimidation. In early 2016, she received credible information that law enforcement officials had initiated a criminal investigation against her.

It has come to the Law Society's attention that on May 14, 2017, border guards with the State Committee on State Security prevented Fayzinisso Vohidova from traveling to Kyrgyzstan. They detained her for eight hours, stating that there was a "defect" in her passport and that she "had no right to leave Tajikistan". Eventually, the border guards conceded that Fayzinisso Vohidova had been placed on a list of individuals banned from leaving the country. Arbitrary bans on travel violate article 12(2) of the *International Covenant on Civil and Political Rights* (ICCPR), which guarantees every individual the right to leave any country, including his or her own. Tajikistan became a party to the ICCPR in 1999.

According to information received by the Law Society, in the weeks that preceded the above-mentioned incident, Fayzinisso Vohidova had been interrogated multiple times by Tajik security services. Human rights organizations believe that these latest acts of harassment against Fayzinisso Vohidova are related to the critical remarks she made about the imprisonment of two Tajik human rights lawyers, Buzurgmehr Yorov and Nuriddin Makhkamov. In April 2017, she had publicly appealed to Your Excellency through social media, criticizing the government's imprisonment of Yorov and Makhkamov, both of whom were convicted and sentenced in October 2016 following a prosecution and trial that appeared to be politically motivated. The

Law Society intervened on behalf of Buzurgmehr Yorov in February 2016 and January 2017, and on behalf of Nuriddin Makhkamov in January 2017.

The Law Society of Upper Canada is deeply troubled by Fayzinisso Vohidova's situation, particularly in light of reports that repressive tactics are commonly used by Your Excellency's government to intimidate and silence lawyers in Tajikistan, effectively precluding their legitimate professional activities. Arbitrary arrests of human rights lawyers, their prosecutions on politically-motivated charges, harsh prison sentences and the harassment of their families have served as deterrents for anyone daring to defend the fundamental rights of those willing or perceived to challenge the authority of Your Excellency's government. Most notably, defending arrested lawyers has become increasingly risky for other lawyers. This and other government actions (for example, legislative amendments regarding the licensing of lawyers which were introduced in November 2015) have led to a dramatic decrease in the number of licensed lawyers in Tajikistan over the last two years (from more than 1200 in 2015 to just 600 today).

In light of the foregoing, the Law Society urges Your Excellency to comply with Tajikistan's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 18 states:

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

Furthermore, Article 23 provides:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and

protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society urges the Government of Tajikistan to:

- a. immediately and unconditionally lift all restrictions on Fayzinisso Vohidova's freedom of movement;
- b. put an end to all acts of harassment against Fayzinisso Vohidova and all other lawyers in Tajikistan;
- c. guarantee in all circumstances the physical and psychological integrity of Fayzinisso Vohidova;
- d. ensure that all lawyers in Tajikistan can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours truly,

Paul B. Schabas
Treasurer

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The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.

cc:

H.E. Mr. Mahmamin Mahmaminov
Permanent Representative of Tajikistan to the United Nations
216 East 49th Street, 4th Floor

New York, NY 10017
USA

The Honourable Chrystia Freeland
Minister of Foreign Affairs
House of Commons
Ottawa, Ontario
K1A 0A6
Email: chrystia.freeland@parl.gc.ca

Alex Neve, Secretary General, Amnesty International Canada

Andrew Anderson, Executive Director, Front Line Defenders

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

Kenneth Roth, Executive Director, Human Rights Watch

Farida Deif, Canada Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

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

Hina Jilani, President, Observatory for the Protection of Human Rights Defenders

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

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

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

Proposed Letter to Lawyers' Associations

Dear [Name],

Re: Travel ban against lawyer Fayzinisso Vohidova in Tajikistan

I write to inform you that on the advice of the Human Rights Monitoring Group*, the Law Society of Upper Canada sent the attached letter to President Emomali Rahmon, the President of the Republic of Tajikistan, expressing our deep concern over reports of the travel ban against lawyer Fayzinisso Vohidova.

We would be very interested in hearing from you in regard to the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have misapprehended any of the facts in this case. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Ekua Quansah, Policy Counsel, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to equansah@lsuc.on.ca.

I thank you for your time and consideration.

Sincerely,

Teresa Donnelly
Chair, Human Rights Monitoring Group

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Letter to be sent to:

- Alex Neve, Secretary General, Amnesty International Canada
- Andrew Anderson, Executive Director, Front Line Defenders
- Emma Achili, Head of European Union Office, Front Line Defenders

- Kenneth Roth, Executive Director, Human Rights Watch
- Farida Deif, Canada Director, Human Rights Watch
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers' Rights Watch Canada
- Hina Jilani, President, Observatory for the Protection of Human Rights Defenders
- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights
- Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Marina Brilman, International Human Rights Policy Adviser, The Law Society of England and Wales

PROPOSED PUBLIC STATEMENT

The Law Society of Upper Canada expresses grave concern about the travel ban against lawyer Fayzinisso Vohidova in Tajikistan

Toronto, ON — The Law Society of Upper Canada expresses grave concern about the travel ban against lawyer Fayzinisso Vohidova in Tajikistan.

Fayzinisso Vohidova is a Khujand-based lawyer known for her human rights and criminal defence work in politically sensitive cases. As a result of her professional activities, she has long been the target of government harassment. Since July 2015, she has endured surveillance and intimidation. In early 2016, she received credible information that law enforcement officials had initiated a criminal investigation against her.

More recently, on May 14, 2017, border guards with the State Committee on State Security prevented Fayzinisso Vohidova from traveling to Kyrgyzstan. They detained her for eight hours, stating that there was a “defect” in her passport and that she “had no right to leave Tajikistan”. Eventually, the border guards conceded that Fayzinisso Vohidova had been placed on a list of individuals banned from leaving the country. Arbitrary bans on travel violate article 12(2) of the *International Covenant on Civil and Political Rights (ICCPR)*, which guarantees every individual the right to leave any country, including his or her own. Tajikistan became a party to the ICCPR in 1999.

Reports further indicate that in the weeks that preceded the above-mentioned incident, Fayzinisso Vohidova had been interrogated multiple times by Tajik security services. Human rights organizations believe that these latest acts of harassment against Fayzinisso Vohidova are related to the critical remarks she made about the imprisonment of two Tajik human rights lawyers, Buzurgmehr Yorov and Nuriddin Makhkamov. In April 2017, she had publicly appealed to President Emomali Rahmon through social media, criticizing the government’s imprisonment of Yorov and Makhkamov, both of whom were convicted and sentenced in October 2016 following a prosecution and trial that appeared to be politically motivated. The Law Society intervened on behalf of Buzurgmehr Yorov in February 2016 and January 2017, and on behalf of Nuriddin Makhkamov in January 2017.

The Law Society of Upper Canada is deeply troubled by Fayzinisso Vohidova’s situation, particularly in light of reports that repressive tactics are commonly used by the Government of Tajikistan to intimidate and silence lawyers in Tajikistan, effectively precluding their legitimate professional activities. Arbitrary arrests of human rights lawyers, their prosecutions on politically-motivated charges, harsh prison sentences and the harassment of their families have served as deterrents for anyone daring to defend the fundamental rights of those willing or perceived to challenge the authority of the Tajikistani government. Most notably, defending arrested lawyers has become increasingly risky for other lawyers. This and other government actions (for example, legislative amendments regarding the licensing of lawyers which were introduced in

November 2015) have led to a dramatic decrease in the number of licensed lawyers in Tajikistan over the last two years (from more than 1200 in 2015 to just 600 today).

In light of the foregoing, the Law Society urges the Government of Tajikistan to comply with Tajikistan's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 18 states:

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

Furthermore, Article 23 provides:

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

The Law Society urges the Government of Tajikistan to:

- a. immediately and unconditionally lift all restrictions on Fayzinisso Vohidova's freedom of movement;
- b. put an end to all acts of harassment against Fayzinisso Vohidova and all other lawyers in Tajikistan;

- c. guarantee in all circumstances the physical and psychological integrity of Fayzinisso Vohidova;
- d. ensure that all lawyers in Tajikistan can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 5.2.3

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

MUZZAMAKHON KADIROVA (MUZZAMA QODIROVA)

H.E. Emomali Rahmon
President of the Republic of Tajikistan
Rudaki Avenue, 80
Dushanbe 734023
Republic of Tajikistan

Your Excellency:

Re: Harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova)

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova). When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

It has come to the Law Society's attention that in October 2015 and again in September 2016, human rights lawyer Muazzamakhon Kadirova agreed, at great risk to herself and her family, to act as defence counsel for fellow lawyers Buzurgmehr Yorov and Nuriddin Makhkamov. The Law Society intervened on behalf of Buzurgmehr Yorov in February 2016 and January 2017, and on behalf of Nuriddin Makhkamov in January 2017.

Due to the fact that the trials of Buzurgmehr Yorov and Nuriddin Makhkamov were conducted behind closed doors, Muazzamakhon Kadirova was effectively the only link between them, their families and the wider public. She told journalists and other activists that the prosecution had not been able to present any compelling evidence against her clients and that the trials were clearly politically motivated.

As the trials progressed, Muazzamakhon Kadirova became increasingly aware of the risks associated with representing Buzurgmehr Yorov and Nuriddin Makhkamov; by November 2016, she was concerned about her safety and possible reprisals from Tajikistani authorities. On December 27, 2016, Muazzamakhon Kadirova was summoned to the Prosecutor General's Office and questioned about her professional activities for several hours. In the days that followed her questioning, she noticed that she was under surveillance.

In January 2017, Muazzamakhon Kadirova learned from a confidential source that a criminal case was being prepared against her. Fearing for her safety and concerned that she could be arrested at any time, Muazzamakhon Kadirova fled Tajikistan and sought protection abroad. In March 2017, she told journalists that Tajikistani authorities had threatened to launch a criminal case against her, accusing her of leaking confidential information about Buzurgmehr Yorov's

case to foreign media. As of March 29, 2017, she is seeking refuge in Germany and has applied for political asylum there.

The Law Society of Upper Canada is deeply troubled by Muazzamakhon Kadirova's situation, particularly in light of reports that repressive tactics are commonly used by Your Excellency's government to intimidate and silence lawyers in Tajikistan, effectively precluding their legitimate professional activities. Arbitrary arrests of human rights lawyers, their prosecutions on politically-motivated charges, harsh prison sentences and the harassment of their families have served as deterrents for anyone daring to defend the fundamental rights of those willing or perceived to challenge the authority of Your Excellency's government. Most notably, defending arrested lawyers has become increasingly risky for other lawyers. This and other government actions (for example, legislative amendments regarding the licensing of lawyers which were introduced in November 2015) have led to a dramatic decrease in the number of licensed lawyers in Tajikistan over the last two years (from more than 1200 in 2015 to just 600 today).

In light of the foregoing, the Law Society urges Your Excellency to comply with Tajikistan's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 18 states:

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

Furthermore, Article 23 provides:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and

protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society urges the Government of Tajikistan to:

- a. immediately and unconditionally cease the preparation of a criminal case against Muazzamakhon Kadirova;
- b. put an end to all acts of harassment against Muazzamakhon Kadirova and all other lawyers in Tajikistan;
- c. guarantee in all circumstances the physical and psychological integrity of Muazzamakhon Kadirova;
- d. ensure that all lawyers in Tajikistan can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours truly,

Paul B. Schabas
Treasurer

**The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.

cc:

H.E. Mr. Mahmamin Mahmaminov
Permanent Representative of Tajikistan to the United Nations
216 East 49th Street, 4th Floor

New York, NY 10017
USA

The Honourable Chrystia Freeland
Minister of Foreign Affairs
House of Commons
Ottawa, Ontario
K1A 0A6
Email: chrystia.freeland@parl.gc.ca

Alex Neve, Secretary General, Amnesty International Canada

Andrew Anderson, Executive Director, Front Line Defenders

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

Kenneth Roth, Executive Director, Human Rights Watch

Farida Deif, Canada Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

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

Hina Jilani, President, Observatory for the Protection of Human Rights Defenders

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

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

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

Proposed Letter to Lawyers' Associations

Dear [Name],

Re: Harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova) in Tajikistan

I write to inform you that on the advice of the Human Rights Monitoring Group*, the Law Society of Upper Canada sent the attached letter to President Emomali Rahmon, the President of the Republic of Tajikistan, expressing our deep concern over reports of the harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova).

We would be very interested in hearing from you in regard to the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have misapprehended any of the facts in this case. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Ekua Quansah, Policy Counsel, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to equansah@lsuc.on.ca.

I thank you for your time and consideration.

Sincerely,

Teresa Donnelly
Chair, Human Rights Monitoring Group

* The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary in Canada and abroad. The Human Rights Monitoring Group reviews such information and determines if a response is required of the Law Society.

Letter to be sent to:

- Alex Neve, Secretary General, Amnesty International Canada
- Andrew Anderson, Executive Director, Front Line Defenders
- Emma Achili, Head of European Union Office, Front Line Defenders

- Kenneth Roth, Executive Director, Human Rights Watch
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- Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Marina Brilman, International Human Rights Policy Adviser, The Law Society of England and Wales

PROPOSED PUBLIC STATEMENT

The Law Society of Upper Canada expresses grave concern about the harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova) in Tajikistan

Toronto, ON — The Law Society of Upper Canada expresses grave concern about the harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova) in Tajikistan.

It has come to the Law Society's attention that in October 2015 and again in September 2016, human rights lawyer Muazzamakhon Kadirova agreed, at great risk to herself and her family, to act as defence counsel for fellow lawyers Buzurgmehr Yorov and Nuriddin Makhkamov. The Law Society intervened on behalf of Buzurgmehr Yorov in February 2016 and January 2017, and on behalf of Nuriddin Makhkamov in January 2017.

Due to the fact that the trials of Buzurgmehr Yorov and Nuriddin Makhkamov were conducted behind closed doors, Muazzamakhon Kadirova was effectively the only link between them, their families and the wider public. She told journalists and other activists that the prosecution had not been able to present any compelling evidence against her clients and that the trials were clearly politically motivated.

As the trials progressed, Muazzamakhon Kadirova became increasingly aware of the risks associated with representing Buzurgmehr Yorov and Nuriddin Makhkamov; by November 2016, she was concerned about her safety and possible reprisals from Tajikistani authorities. On December 27, 2016, Muazzamakhon Kadirova was summoned to the Prosecutor General's Office and questioned about her professional activities for several hours. In the days that followed her questioning, she noticed that she was under surveillance.

In January 2017, Muazzamakhon Kadirova learned from a confidential source that a criminal case was being prepared against her. Fearing for her safety and concerned that she could be arrested at any time, Muazzamakhon Kadirova fled Tajikistan and sought protection abroad. In March 2017, she told journalists that Tajikistani authorities had threatened to launch a criminal case against her, accusing her of leaking confidential information about Buzurgmehr Yorov's case to foreign media. As of March 29, 2017, she is seeking refuge in Germany and has applied for political asylum there.

The Law Society of Upper Canada is deeply troubled by Muazzamakhon Kadirova's situation, particularly in light of reports that repressive tactics are commonly used by the Government of Tajikistan to intimidate and silence lawyers in Tajikistan, effectively precluding their legitimate professional activities. Arbitrary arrests of human rights lawyers, their prosecutions on politically-motivated charges, harsh prison sentences and the harassment of their families have served as deterrents for anyone daring to defend the fundamental rights of those willing or perceived to challenge the authority of the Tajikistani government. Most notably, defending arrested lawyers has become increasingly risky for other lawyers. This and other government actions (for example, legislative amendments regarding the licensing of lawyers which were introduced in

November 2015) have led to a dramatic decrease in the number of licensed lawyers in Tajikistan over the last two years (from more than 1200 in 2015 to just 600 today).

In light of the foregoing, the Law Society urges the Government of Tajikistan to comply with Tajikistan's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 18 states:

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

Furthermore, Article 23 provides:

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

The Law Society urges the Government of Tajikistan to:

- a. immediately and unconditionally cease the preparation of a criminal case against Muazzamakhon Kadirova;
- b. put an end to all acts of harassment against Muazzamakhon Kadirova and all other lawyers in Tajikistan;

- c. guarantee in all circumstances the physical and psychological integrity of Muazzamakhon Kadirova;
- d. ensure that all lawyers in Tajikistan can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 5.2.4

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

BUZURGMEHR YOROV

H.E. Emomali Rahmon
President of the Republic of Tajikistan
Rudaki Avenue, 80
Dushanbe 734023
Republic of Tajikistan

Your Excellency:

Re: Conviction and pending charges against lawyer Buzurgmehr Yorov

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the conviction and pending charges against lawyer Buzurgmehr Yorov. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

The Law Society first intervened on behalf of Buzurgmehr Yorov in February 2016 and again in January 2017. It has come to the Law Society's attention that several developments have taken place since its last intervention. In February 2017, the Supreme Court of Tajikistan rejected Buzurgmehr Yorov's appeal, upholding his conviction and the accompanying 23-year prison term. That same month, additional charges of fraud were brought against Buzurgmehr Yorov. Alleged to be based on new complaints made against him by members of the public, these charges carry a sentence of up to 12 years in prison.

On March 16, 2017, the Supreme Court of Tajikistan found Buzurgmehr Yorov guilty of contempt and "insulting government officials", and added an additional two years to his sentence (for a total of 25 years). The hearing into these charges opened on December 12, 2016 after authorities accused him of disrespecting the court and insulting government officials by quoting a celebrated 11th century poet in his closing statement to the Dushanbe City Court during his original trial.

As of May 2017, yet another criminal case is pending against Buzurgmehr Yorov. This new charge of "insulting the leader of the Nation" apparently stems from statements he made in court in response to the aforementioned fraud charges. According to his wife Zarina Nabieva, Buzurgmehr Yorov had told the court that, as a lawyer, he had always operated within the country's legal framework. Given that this legal framework had been approved by the president of Tajikistan, he argued that if he was guilty of fraud, then so was everyone else in the country, including the president. The subsequent publication of this statement on the independent news website Payom.net apparently served as the grounds upon which the criminal charge was advanced.

Further compounding Buzurgmehr Yorov's situation is the fact that his family has been unable to find an independent lawyer willing to represent him in court. Consequently, his wife Zarina Nabieva has taken on his legal defence.

The Law Society of Upper Canada is deeply troubled by Buzurgmehr Yorov's situation, particularly in light of reports that repressive tactics are commonly used by Your Excellency's government to intimidate and silence lawyers in Tajikistan, effectively precluding their legitimate professional activities. Arbitrary arrests of human rights lawyers, their prosecutions on politically-motivated charges, harsh prison sentences and the harassment of their families have served as deterrents for anyone daring to defend the fundamental rights of those willing or perceived to challenge the authority of Your Excellency's government. Most notably, defending arrested lawyers has become increasingly risky for other lawyers. This and other government actions (for example, legislative amendments regarding the licensing of lawyers which were introduced in November 2015) have led to a dramatic decrease in the number of licensed lawyers in Tajikistan over the last two years (from more than 1200 in 2015 to just 600 today).

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The Law Society urges the Government of Tajikistan to:

- a. immediately and unconditionally release Buzurgmehr Yorov;
- b. pending his release, ensure that Buzurgmehr Yorov is detained in an official place of detention; is not subjected to torture or other ill-treatment; and has regular, unrestricted access to his family, lawyer(s) of his choice, and medical care on request or as necessary;
- c. immediately and unconditionally vacate the convictions rendered against Buzurgmehr Yorov;
- d. immediately and unconditionally withdraw all charges against Buzurgmehr Yorov;
- e. guarantee all of the procedural rights that should be accorded to Buzurgmehr Yorov in accordance with the *Universal Declaration of Human Rights*, including equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence;
- f. ensure that Buzurgmehr Yorov is able to secure the services of and is able to communicate and consult in confidence with independent legal counsel;
- g. put an end to all acts of harassment against Buzurgmehr Yorov and all other lawyers in Tajikistan;
- h. guarantee in all circumstances the physical and psychological integrity of Buzurgmehr Yorov;
- i. ensure that all lawyers in Tajikistan can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- j. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours truly,

Paul B. Schabas
Treasurer

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We would be very interested in hearing from you in regard to the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have misapprehended any of the facts in this case. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Ekuia Quansah, Policy Counsel, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to equansah@lsuc.on.ca.

I thank you for your time and consideration.

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Chair, Human Rights Monitoring Group

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The Law Society of Upper Canada is deeply troubled by Buzurgmehr Yorov's situation, particularly in light of reports that repressive tactics are commonly used by the Government of Tajikistan to intimidate and silence lawyers in Tajikistan, effectively precluding their legitimate professional activities. Arbitrary arrests of human rights lawyers, their prosecutions on politically-motivated charges, harsh prison sentences and the harassment of their families have served as deterrents for anyone daring to defend the fundamental rights of those willing or perceived to challenge the authority of the Tajikistani government. Most notably, defending arrested lawyers

has become increasingly risky for other lawyers. This and other government actions (for example, legislative amendments regarding the licensing of lawyers which were introduced in November 2015) have led to a dramatic decrease in the number of licensed lawyers in Tajikistan over the last two years (from more than 1200 in 2015 to just 600 today).

In light of the foregoing, the Law Society urges the Government of Tajikistan to comply with Tajikistan's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

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Furthermore, Article 23 provides:

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The Law Society urges the Government of Tajikistan to:

- a. immediately and unconditionally release Buzurgmehr Yorov;
- b. pending his release, ensure that Buzurgmehr Yorov is detained in an official place of detention; is not subjected to torture or other ill-treatment; and has

regular, unrestricted access to his family, lawyer(s) of his choice, and medical care on request or as necessary;

- c. immediately and unconditionally vacate the convictions rendered against Buzurgmehr Yorov;
- d. immediately and unconditionally withdraw all charges against Buzurgmehr Yorov;
- e. guarantee all of the procedural rights that should be accorded to Buzurgmehr Yorov in accordance with the *Universal Declaration of Human Rights*, including equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence;
- f. ensure that Buzurgmehr Yorov is able to secure the services of and is able to communicate and consult in confidence with independent legal counsel;
- g. put an end to all acts of harassment against Buzurgmehr Yorov and all other lawyers in Tajikistan;
- h. guarantee in all circumstances the physical and psychological integrity of Buzurgmehr Yorov;
- i. ensure that all lawyers in Tajikistan can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- j. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 5.2.5

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

MICHEL TOGUÉ

H.E. Paul Biya
President of the Republic of Cameroon
Presidency of the Republic
Civil Cabinet
Communication Unit
E-mail: cellcom@prc.cm

Your Excellency:

Re: Harassment and intimidation of lawyer Michel Togué

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the harassment and intimidation of lawyer Michel Togué. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Michel Togué is a human rights lawyer who defends clients charged with homosexuality in Cameroon, where consensual same-sex conduct is criminalized and subject to a maximum prison sentence of five years. In March 2017, he was awarded the Dutch Geuzenpenning Award for his work and advocacy on behalf of the LGBT community in his country.

It has come to the Law Society's attention that in early 2017, Michel Togué received multiple death threats as a result of his legal work on behalf of individuals who identify as LGBT. Reports indicate that when he subsequently approached Cameroon's Lawyer's Association for assistance, its president advised Michel Togué: "Stop defending the LGBT community and you won't have problems anymore." Similarly, his request for protection was denied by Cameroonian police.

Michel Togué, along with his wife and children, first began receiving death threats in the form of emails and text messages in October 2012. As the death threats against him and his family escalated, his wife and children sought asylum in the United States. Michel Togué, however, chose to remain in Cameroon to continue his work with the LGBT community.

In light of these circumstances, the Law Society urges Your Excellency to comply with Cameroon's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

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The Law Society urges the Government of Cameroon to:

- a. immediately conduct a fair, impartial and independent investigation into the harassment and intimidation of Michel Togué in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- b. put an end to all acts of harassment against Michel Togué and all other lawyers in Cameroon;
- c. guarantee in all circumstances the physical and psychological integrity of Michel Togué;
- d. ensure that all lawyers in Cameroon can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and

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

Yours truly,

Paul B. Schabas
Treasurer

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cc:

H.E. Mr. Solomon Azoh-Mbi
High Commissioner of the Republic of Cameroon in Canada
High Commission for the Republic of Cameroon in Canada
170 Clemow Avenue
Ottawa, Ontario
K1S 2B4
Fax: 613-236-3885
E-mail: cameroun@rogers.com

Ngnie Kamga Jackson
President of the Cameroon Bar Association
816-824 Rue Frédéric
Foe, BP 13488
Yaoundé, Cameroon

The Honourable Chrystia Freeland
Minister of Foreign Affairs
House of Commons
Ottawa, Ontario
K1A 0A6
Email: chrystia.freeland@parl.gc.ca

Jean Pierre Lavoie, The High Commissioner

The High Commission of Canada
P.O. Box 572
Yaoundé, Cameroon

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

Proposed Letter to Lawyers' Associations

Dear [Name],

Re: Harassment and intimidation of lawyer Michel Togué in Cameroon

I write to inform you that on the advice of the Human Rights Monitoring Group*, the Law Society of Upper Canada sent the attached letter to President Paul Biya, the President of the Republic of Cameroon, expressing our deep concern over reports of the harassment and intimidation of lawyer Michel Togué.

We would be very interested in hearing from you in regard to the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have misapprehended any of the facts in this case. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Ekua Quansah, Policy Counsel, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to equansah@lsuc.on.ca.

I thank you for your time and consideration.

Sincerely,

Teresa Donnelly
Chair, Human Rights Monitoring Group

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Letter to be sent to:

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- Alex Neve, Secretary General, Amnesty International Canada
- Andrew Anderson, Executive Director, Front Line Defenders

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- Kenneth Roth, Executive Director, Human Rights Watch
- Farida Deif, Canada Director, Human Rights Watch
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- Executive Director, Judges for Judges
- David F. Sutherland, Chair, Lawyers' Rights Watch Canada
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- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights
- Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Marina Brilman, International Human Rights Policy Adviser, The Law Society of England and Wales

PROPOSED PUBLIC STATEMENT

The Law Society of Upper Canada expresses grave concern about the harassment and intimidation of lawyer Michel Togué in Cameroon

Toronto, ON — The Law Society of Upper Canada expresses grave concern about the harassment and intimidation of lawyer Michel Togué in Cameroon.

Michel Togué is a human rights lawyer who defends clients charged with homosexuality in Cameroon, where consensual same-sex conduct is criminalized and subject to a maximum prison sentence of five years. In March 2017, he was awarded the Dutch Geuzenpenning Award for his work and advocacy on behalf of the LGBT community in his country.

It has come to the Law Society's attention that in early 2017, Michel Togué received multiple death threats as a result of his legal work on behalf of individuals who identify as LGBT. Reports indicate that when he subsequently approached Cameroon's Lawyer's Association for assistance, its president advised Michel Togué: "Stop defending the LGBT community and you won't have problems anymore." Similarly, his request for protection was denied by Cameroonian police.

Michel Togué, along with his wife and children, first began receiving death threats in the form of emails and text messages in October 2012. As the death threats against him and his family escalated, his wife and children sought asylum in the United States. Michel Togué, however, chose to remain in Cameroon to continue his work with the LGBT community.

In light of these circumstances, the Law Society urges the Government of Cameroon to comply with Cameroon's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 18 states:

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

Furthermore, Article 23 provides:

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

The Law Society urges the Government of Cameroon to:

- a. immediately conduct a fair, impartial and independent investigation into the harassment and intimidation of Michel Togué in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- b. put an end to all acts of harassment against Michel Togué and all other lawyers in Cameroon;
- c. guarantee in all circumstances the physical and psychological integrity of Michel Togué;
- d. ensure that all lawyers in Cameroon can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

*THIS SECTION CONTAINS
IN CAMERA MATERIAL*

TAB 5.5

FOR INFORMATION

UPDATE ON IMPLEMENTATION OF THE RECOMMENDATIONS OF THE CHALLENGES FACED BY RACIALIZED LICENSEES REPORT ("THE CHALLENGES REPORT")

Introduction

126. This report provides an update on the implementation of certain recommendations of the [Challenges Report](#).
127. To manage the implementation of the Challenges Report, the Equity Initiatives department is tasked with management oversight from the operations perspective and works in tandem with the EIAC which is tasked with the oversight and facilitation of the implementation of the recommendations.
128. Close attention is being paid to recommendations that are to be implemented in 2017 and 2018 which is co-ordinated with the timeline set out in the Challenges Report (**TAB 5.5.1**). The EIAC is updated on the progress of implementation at its Committee meetings.
129. Recommendations that are to be implemented in 2017 and 2018 are the current focus. As discussed in the Challenges Report, the recommendations are part of a framework that is designed to permit implementation to be strategically undertaken to support continuing implementation of recommendations for 2019 and beyond.
130. The following is a recommendation by recommendation review of the steps taken towards implementation for 2017 and 2018.

Implementation Update

Recommendations 3(1) and 3(2)

Changes to the Lawyer and Paralegal Annual Reports (LAR and PAR)

131. With respect to implementation of Recommendations 3(1) and (2), the Law Society is required to make changes to the Lawyer Annual Report and the Paralegal Annual Report (LAR/PAR) in 2017 to enable reporting on certain requirements in early 2018. These changes are being implemented and are on track for completion in anticipation of the March 31, 2018 reporting deadline. The requirements include a declaration with respect to abiding by a statement of principles to promote equality, diversity and inclusion and a requirement to create and implement a human rights/diversity policy for legal workplaces of 10 or more licensees.

Communications Initiatives

132. Communications are currently being prepared, which will provide information and guidance to the professions on the requirements outlined in the Challenges Report. The first of these will appear in the *Ontario Reports* in the upcoming weeks. Particular attention is paid to Recommendations 3(1) and 3(2) and the timelines associated with these requirements. Beginning in June 2017, information will be made available and distributed to the legal professions to create awareness around the requirements and obligations of recommendations 3(1) and 3(2).
133. Resources to assist members in meeting the obligations of this recommendation are being developed. Part of the communications approach is to maintain a dedicated webpage for members to access resources as needed. This will include a series of FAQs and similar resources to address questions and concerns that may arise when licensees take steps to meet the requirements.

Recommendations 4 and 5

134. Work has begun at the staff level to prepare language that will be included in the LAR/PAR for 2017 advising of the anticipated change in the use of inclusion and diversity data currently captured through the LAR and PAR in the self-identification demographic questions. Once prepared, this will serve as notice to profession regarding the changing use of data in the coming year (2018 LAR/PAR).

Recommendation 7

135. Work has also begun to conceptualize the inclusion survey required of this recommendation, which the report suggests will be similar to that conducted by Stratcom in 2016. This recommendation is to be implemented by the end of 2017.

Recommendation 12 (2)

136. As required by Recommendation 12(2), the Committee received a report from the Executive Director, Professional Regulation Division advising that the Division has created multi-functional enforcement teams with a range of types of Investigators and Discipline Counsel/Paralegals who are working together to be sensitive to, recognize and deal with issues of systemic discrimination. Training of the teams is planned.

Recommendation 13(1)(g) – Leading by Example

137. The Law Society has established a Diversity and Inclusion Committee with a mandate to organize educational events for Law Society staff to promote an equality and inclusive workplace. With the Committee membership, which is comprised of Law Society staff, now established, they have had the opportunity to meet and are developing a plan for diversity and inclusion events for 2017 and 2018.

| | |
|------|---|
| 2016 | <ul style="list-style-type: none"> • Recommendation 13 - Leading by Example. |
| 2017 | <ul style="list-style-type: none"> • Recommendations 3(1), 3(2) and 3(3) - The Law Society will communicate to the professions the requirements outlined in Recommendation 3(1), 3(2) and 3(3) and the timelines associated with each. • Recommendation 7 - The Law Society will repeat the Challenges Faced by Racialized Licensees Project inclusion survey. |
| 2018 | <ul style="list-style-type: none"> • Recommendation 3 (1) - Licensees will be required to have adopted and to abide by a statement of principles. The 2017 Lawyer Annual Report and Paralegal Annual Report, completed in 2018, and every annual report thereafter, would ask licensees to indicate whether or not they have adopted, and are abiding by, a statement of principles. • Recommendation 3 (2)- Each legal workplace of at least 10 licensees in Ontario will be required to have a human rights/diversity policy. The 2017 Lawyer Annual Report and Paralegal Annual Report would ask licensees in legal workplaces of over 10 licensees to indicate whether or not their workplace has a human rights/diversity policy. • Recommendation 3(3)- The Law Society will require a representative of each legal workplace of at least 10 licensees in Ontario to engage in a diversity and inclusion self-assessment every two years, the results of which would be reported to the Law Society. • Recommendation 4 - The Law Society will include a paragraph in the demographic data questions section of the 2017 Lawyer Annual Report and Paralegal Annual Report, completed in 2018, informing licensees of the changes in the Law Society's use of self-identification data. • Recommendation 5 - Notice would be provided to the professions in the 2017 Lawyer Annual Report and Paralegal Annual Report, completed by the professions in 2018, of the Law Society's intention collect qualitative inclusion data. • Recommendation 9 - CPD Programs on Topics of Equality and Inclusion in the Professions |
| 2019 | <ul style="list-style-type: none"> • Recommendation 4 - Beginning with the 2018 Lawyer Annual Report and Paralegal Annual Report, completed in 2019, the Law Society would prepare a profile of each legal workplace of at least 25 lawyers and/or paralegals (containing, for example, the proportion of racialized partners, associates, and other licensed staff) and would confidentially provide it to each licensee within the workplace. • Recommendation 5 - The Law Society would begin compiling quantitative data of legal workplaces using the 2018 Lawyer Annual Report and Paralegal Annual Report – to be completed in 2019 – and would continue to compile this data every four years thereafter. • Recommendation 6 - The Law Society would begin publishing the Inclusion Index and would update the index every four years. |
| TBD | <ul style="list-style-type: none"> • Recommendation 1 - Reinforcing Professional Obligations • Recommendation 2 - Diversity and Inclusion Project • Recommendation 8 - Progressive Compliance Measures • Recommendation 10 - The Licensing Process • Recommendation 11 - Building Communities of Support • Recommendation 12 (2), 12(3), 12(4) - Addressing Complaints of Systemic Discrimination |

TAB 5.6

FOR INFORMATION

UPDATE ON REVIEW OF THE DISCRIMINATION AND HARASSMENT COUNSEL PROGRAM

Introduction

138. As a companion report to this month's update on implementation of the recommendations in the Challenges Faced by Racialized Licensees Report ("the Challenges Report"), this update provides information on the status of the review of the Discrimination and Harassment Counsel (DHC) Program.

Background

139. Recommendation 12(1) of the Report directs the Law Society to "review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC)¹, including considering effective ways for the DHC to address issues of systemic discrimination."
140. The concept for the review of the Program predated the Report's approval at December 2016 Convocation, as the EIAC in June 2015 directed that a review be undertaken. This was based on a number of factors, which coincide with those reflected in the Report, and include the following:
- a. The Challenges Faced by Racialized Licensees Working Group (RWG), relying on the results of an extensive consultation with the profession, identified the reluctance of racialized licensees to bring forward matters of systemic discrimination;
 - b. In discussing the renewal of the Indigenous Framework, the EIAC noted that the DHC Program does not have a counsel in the North or a counsel that is versed in Indigenous ways of knowing and being; and
 - c. The DHC Program has been reviewed on two previous occasions—in 2001 and 2005. In 2005, Convocation approved a recommendation that the Law Society undertake a review of the DHC Program every three years to determine how to improve the Program's effectiveness.
141. The [Treasurer's mandate letter to EAIC](#) (September 2016) also indicated that the Committee should undertake: A review and assessment of the Office of Discrimination

¹ A description of the Program appears at [TAB 5.6.1](#)

and Harassment Counsel with specific reference to its effectiveness in addressing various forms of discrimination.

142. Following the June and other developments described above, the review of the DHC Program was placed on hold given the work that was progressing on the Report and which eventually led to adoption of the recommendations, including Recommendation 12(1), in December 2016.
143. In February 2017, the EIAC approved a process for the review and staff began work on the review shortly thereafter.

Update on Recruitment of Alternate Discrimination and Harassment Counsel

144. On a matter related to the operation of the DHC, pursuant to the Law Society's by-laws, the EIAC may recommend to Convocation the appointment of one or more Alternate DHCs.
145. As reported to Convocation in April 2017, the Law Society has recently engaged in a recruitment process for the appointment of Alternate DHCs, which included a job posting, in French and English, in the *Ontario Reports* and advertising the position on the Law Society's website. The recruitment committee, struck by EIAC as part of the process in accordance with the authority in the by-laws, was composed of:
 - Sandra Nishikawa, Co-Chair of EIAC
 - Tanya Walker, Licensee Bencher
 - Gisele Chretien, Appointed Bencher
 - Michael Doi, Member of the Equity Advisory Group

 - Constance Simmonds, Member of the Indigenous Advisory Group
146. The EIAC will report to Convocation on the results of the recruitment process and its recommendations at the appropriate time and, in accordance with the by-law provisions, in the absence of the public.

Scope of the DHC Program Review

147. According to the Challenges Report, "The objective of [the review identified under Recommendation 12(1)] would be to identify how the DHC role can be better used to address discrimination and harassment in the professions, including systemic discrimination, while keeping in mind the independent arms-length position of the DHC and the duty of the DHC to maintain the confidentiality of any individuals who use the Program".
148. The review is intended to determine how effective the DHC Program is in addressing issues of discrimination and harassment, including individual and systemic racism. The

review is designed to be comprehensive and will take into account the current circumstances surrounding the DHC, seek information from relevant sources about the Program and determine how the issues identified can be addressed.

149. The EIAC Executive has been designated as the steering group for the review which is being managed by Equity Initiatives staff.

Status of the DHC Program Review

150. The first part of the review, a Phase I Literature Review, has been completed.
151. Staff engaged in a review of key resource material at the Law Society and elsewhere to identify key originating documents, policy directions and previous Program reviews. The reviewers also looked at best practices for similar ombuds programs in Ontario and in other jurisdictions. The staff is also assessing the DHC budget.
152. Phase II will commence within the next few months. This phase will gather qualitative data about the Program. The methodology will include interviews with the current DHC and the alternate DHCs to gather their input on the key questions and issues related to the Program. The reviewers will also interview key staff within the Law Society whose roles intersect with those seeking access to the Program such as Client Services Department, Professional Regulation Division and Equity Department. The plan also involves hosting a number of focus group interviews utilizing existing advisory groups, such as L'Association des juristes d'expression française de l'Ontario (AJEFO), the Indigenous Advisory Group, Equity Advisory Group, Treasurer's Liaison Group and others as appropriate.
153. Phase III will commence following the completion and assessment of the results of information from Phase II. Phase III, utilizing the qualitative data from Phase II, will involve a survey of the legal professions and licensing process students to explore such things as awareness of the Program, consideration of use of the Program, views on the purpose and value of the Program and options for improvements or enhancements to the Program. The survey would be conducted by a third party and the results reported and assessed.
154. As work progresses on the review, further reports will be provided to keep Convocation apprised of this important work.

TAB 5.6.1

DISCRIMINATION AND HARASSMENT COUNSEL PROGRAM DESCRIPTION

Background

1. Funded by the Law Society of Upper Canada, the [Discrimination and Harassment Counsel \(DHC\) Program](#) operates at arm's length, and is available free-of-charge to the Ontario public, lawyers, paralegals and students. The DHC derives its mandate and authority from [By-law 11- Regulation of Conduct, Capacity and Professional Competence Part II](#).
2. In May 1997, the Law Society adopted the [Bicentennial Report and Recommendations on Equity Issues in the Legal Profession](#) (Bicentennial Report) which has since guided the Law Society's efforts to advance equity and diversity in the legal profession. Recommendation 11 of the report stated that, "The Law Society should ensure that it is effectively meeting its responsibilities as a regulator to eliminate discriminatory practices within the legal profession." The description of the recommendation speaks to the creation of a "safe counsel" program for "victims of discrimination and harassment" that would operate independent of the Law Society.
3. In fall 1998, Convocation approved the creation of a Discrimination and Harassment Ombudsperson role. In June 1999, Convocation adopted a submission from the Treasurer's Equity Advisory Group setting out the parameters for the position. On September 1, 1999, the DHC began operating as a pilot project. In June 2001, after a [review of the program](#), which included consideration of the relationship of the DHC with the professional regulation functions and the equity initiatives function of the Law Society, the Discrimination and Harassment Counsel was established as a permanent initiative.
4. While operating at arms-length,¹ the DHC forms an integral part of the Law Society's equity initiatives and regulatory functions. The DHC's role is primarily directed to support complainants and the resources of the DHC have been focused in this area.
5. The DHC assists anyone who may have experienced discrimination or harassment based on human rights grounds by a lawyer, paralegal or student member of the Law Society. Since its creation, the person who has held the position of DHC has been bilingual (French and English).

¹ The DHC is not an in-house employee of the Law Society. As outlined in By-law 11 Part II Discrimination and Harassment Counsel, information received by the DHC is kept confidential. The only information provided to the Law Society is anonymous statistical data showing the number and type of complaints and anonymous demographic data about complainants.

6. The DHC's role is to:
 - Listen to concerns;
 - Clarify issues;
 - Provide information and advice;
 - Review options and avenues of recourse (e.g. filing a complaint with the Law Society, filing an application with the Human Rights Tribunal of Ontario);
 - Explain the advantages and disadvantages of each option; and
 - Provide referrals to other resources that may be of assistance.
7. Upon request, the DHC may attempt to resolve issues through intervening informally as a neutral facilitator or by conducting formal mediation, where appropriate. Mediation is a voluntary process and requires the consent of all parties. The DHC facilitates the discussion and assists the parties in crafting their own resolution.
8. The DHC does not have investigative powers and does not operate a formal complaints process that involves fact-finding. The DHC also does not provide legal advice or legal representation and cannot make referrals to lawyers or paralegals.
9. All information obtained by the DHC is kept in strict confidence. By-law 11 formally exempts the DHC from reporting requirements under the Rules of Professional Conduct. As the program was created to provide counsel to those who do not wish to approach the Law Society through its complaints process, there is a separation of the DHC and professional regulation. The DHC's duty of confidentiality overrides any requirement to report misconduct of another lawyer or paralegal under the Rules of Professional Conduct and the Paralegal Rules of Conduct.
10. The current DHC was appointed on November 21, 2002, replacing the first DHC, and has been in the position since that date. She was reappointed on September 25, 2003, following a search for candidates pursuant to what was then By-Law 36 – Discrimination and Harassment Counsel. She was then reappointed in 2006, 2009, 2012 and 2015.
11. In May 2016, Convocation approved the reappointment of the current DHC, effective, September 28, 2016, for a term of one year. The Committee recommended the reappointment for one year in order to allow it to conduct a review of the DHC Program and, if required, implement changes in a timely fashion.
12. In November 2003, Convocation approved the creation of an Alternate DHC position to provide backup when the permanent DHC is unable to fulfill their duties. Following a recruitment process, the Alternate DHC position was filled. The Alternate DHC assumes the functions of the DHC when she is unavailable. There are currently two Alternative DHC.