



The Law Society of
Upper Canada | Barreau
du Haut-Canada

January 28, 2016
9:00 a.m.

CONVOCATION MATERIAL

PUBLIC COPY

*THIS PAGE CONTAINS
IN CAMERA MATERIAL*

CONVOCATION AGENDA
January 28, 2016

Convocation Room – 9:00 a.m.

Treasurer's Remarks

- [Treasurer's Engagement Report](#)

Consent Agenda - [Motion \[Tab 1\]](#)

- **Confirmation of Draft Minutes of Convocation – [December 4, 2015](#)**
- **Motions**
 - [2016 Annual General Meeting](#)
 - [Appointments](#)
- **Report of the Director of Professional Development and Competence – [Deemed Call Candidates](#)**

[Mentoring and Advisory Services Proposal Task Force Report \(J. Horvat/P. Wardle\) \[Tab 2\]](#)

- Final Report to Convocation

[Audit and Finance Committee Report \(P. Wardle\) \[Tab 3\]](#)

- Cost and Funding of Mentoring and Advisory Services Proposal Task Force Report

[Professional Regulation Committee Report \(M. Mercer\) \[Tab 4\]](#)

- Proposed Amendments to the Rules of Professional Conduct – Retired Judges Returning to Practice
For Information
- Law Society Response to Proposed Ontario Securities Commission Policy

[Tribunal Committee Report \(B. Murchie/R. Anand\) \[Tab 5\]](#)

- Tribunal Model Three Year Review Final Report

[Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones Report \(P. Schabas/J. Leiper\) \[Tab 6\]](#)

- Human Rights Monitoring Group Request for Interventions
For Information
- Access to Justice in French Update
- Human Rights Monitoring Group Access to Justice Report
- Equity Legal Education and Rule of Law Series Calendar Winter 2016 – Summer 2016

[Audit and Finance Committee Report \(C. Bredt/P. Wardle\) \[Tab 7\]](#)

- Law Society Funding of Coordinator for Lawyers Feed the Hungry Programs
For Information
- LAWPRO Third Quarter Financial Statements for the Nine Months Ended September 30, 2015
- LibraryCo Inc. Third Quarter Financial Statements for the Nine Months Ended September 30, 2015

REPORTS FOR INFORMATION ONLY

[Access to Justice Committee Report \(C. Corsetti\)](#)

- Update on Publications

[Report from The Action Group on Access to Justice \(TAG\) \[Tab 8\]](#)

Lunch – Benchers' Dining Room



The Law Society
of Upper Canada

Barreau du
Haut-Canada

Treasurer's Engagements

January 2016

Date	Engagement
January 7 - 11	Opening of the Legal Year Hong Kong http://www.info.gov.hk/gia/general/201601/11/P201601110428.htm
January 8	Meeting with members of Council and other members of the Hong Kong Law Society http://www.hklawsoc.org.hk/pub_e/default.asp
January 11	Visit to the Hong Kong Department of Justice http://www.doj.gov.hk/eng/index.html
January 14	Central South Regional Meeting <ul style="list-style-type: none"> • Reception with Local members followed by dinner meeting with Law Association representatives in Central South Region • Central South Region includes the County of Brant, and the regional municipalities of Haldimand-Norfolk, Hamilton-Wentworth, Niagara, and Waterloo
January 18	Ministry of the Attorney General Elders Forum on Justice Issues <ul style="list-style-type: none"> • Treasurer spoke at the Law Society sponsored dinner
January 19	Treasurer's Liaison Group The Treasurer's Liaison Group is a group of primary stakeholders who meet quarterly with the Treasurer to discuss current issues. The group includes the following representatives: <ul style="list-style-type: none"> • Association des juristes d'expression française de l'Ontario (AJEFO) • Association of Corporate Counsel, President Ontario Chapter • Association of the Law Officers of the Crown • Canadian Association of Black Lawyers • Canadian Corporate Counsel Association • Federation of Ontario Law Associations • Criminal Lawyers' Association • Federation of Asian Canadian Lawyers • Family Lawyers' Association • Hispanic Bar Association

Convocation - Treasurer's Engagement Report

Date	Engagement
	<ul style="list-style-type: none"> • Indigenous Bar Association • Law Students Society of Ontario • Ontario Bar Association • Ontario Crown Attorneys' Association • Ontario Paralegal Association • Ontario Trial Lawyers Association • Pro Bono Law Ontario • Roundtable of Diversity Associations • South Asian Bar Association of Toronto • The Advocates' Society • Toronto Lawyers' Association • Women's Law Association of Ontario
January 20	Launch of Law Connect https://www.theknot.com/us/ojen-cleo-and-cleo-ojen-jan-2016?utm_source=theknot.com&utm_medium=email&utm_campaign=wedding-websites
January 21	Ottawa Legal Information Centre, First Year Anniversary http://www.centreinfojuridique.ca/en/
January 21	The Advocates' Society President's Reception in Ottawa
January 25	Early Careers Roundtable <ul style="list-style-type: none"> • The group includes a cross-section of lawyers and paralegals who are in the first ten years of their careers as well as law student representatives.
January 26	Endangered Lawyer Rule of Law Event http://www.lawsocietygazette.ca/event/day-of-the-endangered-lawyer/
January 26	Meeting with UIA 2017 Congress Group http://www.uianet.org/en
January 27	Bencher Volunteer Day – Toronto Lawyers Feed the Hungry Program http://www.lawyersfeedthehungry.ca/
January 29	Call to the Bar The Honourable George W. Adams, Q. C., granted Honorary Doctor of Laws

THE LAW SOCIETY OF UPPER CANADA

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JANUARY 28, 2016

MOVED BY:

SECONDED BY:

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

DRAFT

MINUTES OF CONVOCATION

Friday, 4th December, 2015
9:00 a.m.

PRESENT:

The Treasurer (Janet E. Minor), Anand, Armstrong, Banack (by telephone), Beach, Bickford, Boyd, Braithwaite, Bredt, Burd, Chrétien (by telephone), Clément, Cooper, Corbiere, Corsetti, Criger, Donnelly (by telephone), Earnshaw, Epstein, Evans, Falconer, Ferrier, Furlong (by telephone), Go, Goldblatt, Gottlieb, Groia, Haigh, Hartman, Horvat, Krishna (by telephone), Lawrie, Leiper (by telephone), Lem (by telephone), Lerner, Lippa, MacKenzie (by telephone), MacLean, Manes (by telephone), McDowell, McGrath, Merali, Mercer, Murchie, Murray, Nishikawa, Papageorgiou, Pawlitz, Potter (by telephone), Richardson, Richer, Rosenthal (by telephone), Ross (by telephone), Schabas, Sharda, Spence, Spurgeon, St. Lewis, C. Strosberg, H. Strosberg (by telephone), Troister, Udell, Vespry, Wardle, Wright (by telephone) and Yachetti (by telephone).

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Secretary: James Varro

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer welcomed the following guests to Convocation:

- Jeffrey Hirsch, President, Federation of Law Societies of Canada
- Law Foundation of Ontario representatives Tanya Lee, Judy Mark and Kirsti Mathers McHenry
- Law Commission of Ontario representatives Dr. Patricia Hughes and Nye Thomas

The Treasurer informed Convocation of her various activities during the month of November, and highlighted some of the events including her trip to the Law Society of Nunavut. The Treasurer thanked the President of the Law Society of Nunavut, Scott Wheildon and Chief Executive Officer Nalini Vaddapalli for their hospitality.

Other annual conferences attended included The County and District Law Presidents' Association fall conference noting the name change to Federation of Ontario Law Associations, and meetings of The Advocates' Society, the County of Carleton Law Association and the Association of Law Officers of the Crown.

The Treasurer reminded benchers that nominations for the Law Society Awards close on January 29, 2016.

The Treasurer congratulated Isfahan Merali on receiving the SABA Legal Excellence Award at the South Asian Bar Association Gala held recently.

The Treasurer advised that she brought greetings on behalf of the Law Society to the Family Dispute Resolution Institute of Ontario Conference on November 23, and thanked the Attorney General for her remarks, which opened Family Dispute Resolution (FDR) week. The Treasurer indicated that the Law Society hosted a number of FDR sessions in connection with this event, at which the work of the The Action Group on Access to Justice (TAG) was noted.

The Treasurer advised that on November 29 she participated in Attorney General Madeleine Meilleur's Justice Roundtable with representatives of the courts and other legal organizations.

The Treasurer advised that she wrote to the new Minister of Justice, the Honourable Jody Wilson-Raybould, to congratulate her on her appointment, to extend best wishes and the Law Society's desire to collaborate on shared important objectives.

The Treasurer also advised that she wrote to Prime Minister Trudeau, and noted his publicly released mandate letters for each Minister.

The Treasurer advised that in keeping with the strategic plan, a bencher education program will be organized at the start of each Convocation and benchers will be canvassed for topics.

The Treasurer reminded benchers of upcoming events:

- January 26, 2016 – International Day of the Endangered Lawyer Rule of Law Event
- January 27, 2016 – Lawyers Feed the Hungry – Bencher Volunteer Day

MOTION – CONSENT AGENDA

It was moved by Ms. Hartman, seconded by Ms. Corbiere, that Convocation approve the the consent agenda set out at Tab 2 of the Convocation Materials.

Carried

Tab 2.1 – DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of October 29, 2015 were confirmed.

Tab 2.2 – MOTION – Appointments

Re: Tab 2.2.1 – Appointments to the LibraryCo Inc. Board of Directors

THAT Gisèle Chrétien, Ross Earnshaw, Jacqueline Horvat and W. A. Derry Millar be reappointed to the LibraryCo Inc. Board of Directors for a one year term commencing December 31, 2015.

Carried

Re: Tab 2.2.2 – Appointments to the Law Society Tribunal – Pursuant to Section 49.21 of the Law Society Act.

THAT The Hon. James M. Spence and Sidney H. Troister be appointed to the Hearing Division of the Law Society Tribunal effective December 4, 2015 for a term ending May 25, 2017.

Carried

Tab 2.3 – REPORT OF THE EXECUTIVE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

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

Carried

GREETINGS FROM THE PRESIDENT OF THE FEDERATION OF LAW SOCIETIES OF CANADA

Jeffrey Hirsch, President of the Federation of Law Societies of Canada, brought greetings from the Federation.

LAW FOUNDATION OF ONTARIO REPORT

Mr. Schabas presented a report on the Law Foundation of Ontario for information.

ADDRESS BY DR. PATRICIA HUGHES, LAW COMMISSION OF ONTARIO

Dr. Patricia Hughes, Executive Director, addressed Convocation on the work of the Law Commission of Ontario. Nye Thomas, incoming Executive Director, also addressed Convocation on the work of the Commission.

PROFESSIONAL REGULATION COMMITTEE REPORT

The Treasurer advised that the matter respecting the proposed Summary Revocation Authority for Indefinitely Suspended Licenses is deferred.

Mr. Mercer presented the Report.

Re: Professional Regulation Division Quarterly Report

Mr. Mercer presented the Report for information.

For Information:

- Professional Regulation Division Quarterly Report

AUDIT & FINANCE COMMITTEE REPORT

Mr. Bredt presented the Report.

Re: Law Society Financial Statements for the Nine Months Ended September 30, 2015

Mr. Bredt presented the report on the Financial Statements for information.

EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES REPORT

Mr. Falconer presented the Report.

Re: Human Rights Monitoring Group Requests for Interventions

It was moved by Mr. Falconer, seconded by Mr. Goldblatt, that Convocation approve the letters and public statements in the cases set out at paragraph 2, sub-paragraphs a. through g. of the Report, and the letters and public statements set out at Tab 13 of the Convocation Materials, to be modified to indicate that the perpetrator(s) of the death of Tahir Elçi is unknown, and that the government will be requested to effectively and independently investigate the death.

Carried

Mr. Falconer presented the items in the Report at Tab 4.2 for information.

For Information:

- Equity Advisory Group Update
- Equity Legal Education and Rule of Law Series Calendar 2015/2016

PRIORITY PLANNING COMMITTEE REPORT

Ms. Hartman presented the Report.

Re: Convocation's Priority Planning – Details of the Law Society's Strategic Plan 2015-2019

Ms. Hartman presented the report for information.

PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE REPORT

Mr. Goldblatt presented the Report.

Re: Appointment to the Certified Specialist Board

Mr. Goldblatt presented the report for information.

REPORT FROM THE ACTION GROUP ON ACCESS TO JUSTICE

Mr. Goldblatt presented the report for information.

COMPLIANCE-BASED ENTITY REGULATION TASK FORCE REPORT

Mr. Earnshaw presented the Report.

Re: Proposed Consultations

Mr. Earnshaw presented the report for information.

CHIEF EXECUTIVE OFFICER'S REPORT

Mr. Lapper presented the Chief Executive Officer's Report for information.

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REPORTS FOR INFORMATION ONLY

AUDIT AND FINANCE COMMITTEE REPORT

- Law Society Third Quarter Financial Statements
- Investment Compliance Reports
- Other Committee Work

PARALEGAL STANDING COMMITTEE REPORT

- *Paralegal Guideline* Amendments: Transferring Practitioner
- *Provincial Offences Act* Rule Development

PRIORITY PLANNING COMMITTEE REPORT

- Convocation's Priority Planning – Details of the Law Society's Strategic Plan 2015-2019

PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE REPORT

- Appointment to Certified Specialist Board

REPORT FROM THE ACTION GROUP ON ACCESS TO JUSTICE

COMPLIANCE-BASED ENTITY REGULATION TASK FORCE REPORT

- Report on Proposed Consultations

TREASURER'S ACTIVITIES

CONVOCATION ROSE AT 12:54 P.M.

THE LAW SOCIETY OF UPPER CANADA

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JANUARY 28, 2016

THAT Convocation approve Wednesday May 11, 2016 at 5:15 p.m. at Osgoode Hall, 130 Queen Street West, Toronto as the time and place of the 2016 Annual General Meeting, in accordance with Section 5 of By-Law 2 [Corporate Provisions].

Explanatory Note:

Section 5 of By-Law 2 requires that Convocation determine the time and place of the Annual General Meeting each year:

Meeting of members to be held annually

5. A meeting of members shall be held annually at a time and place determined by Convocation.

THE LAW SOCIETY OF UPPER CANADA

MOTION TO BE MOVED AT CONVOCATION ON JANUARY 28, 2016

That Janis Criger be appointed to the Access to Justice Committee.

That Michelle Haigh be appointed to the Law Society Awards/LL.D. Advisory Committee.*

*Explanatory Note:

In keeping with Convocation's decision on the process for considering and recommending recipients of the J. Shirley Denison Award, for which all licensees are eligible, a paralegal benchler is being added to the Law Society Awards/LL.D. Advisory Committee, which makes recommendations for the Denison and the other Law Society awards.

Tab 1.3

To the Benchers of the Law Society of Upper Canada Assembled in Convocation

The Executive Director of Professional Development and Competence reports as follows:

CALL TO THE BAR AND CERTIFICATE OF FITNESS

Licensing Process and Transfer from another Province – By-Law 4

Attached is a list of candidates who have successfully completed the Licensing Process and have met the requirements in accordance with section 9.

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, January 28th 2016

ALL OF WHICH is respectfully submitted

DATED this 28th day of January, 2016

CANDIDATES FOR CALL TO THE BAR
January 28th 2016

Transfer from another province (Mobility)

Cameron Lyall Foster
Meaghan Clara Murphy Gair
Marek Henryk Lorenc
John Todd Martin
Brodie Mulholland
Daniella Cristina Taisa Murynka
Sumbalina Naqi
Ali Mumtaz Shaikh
Brandon Marshall Trask
Tin Yat Amy Yeung
Valérie Marie Gingras
Leïla Yacoubi

Licensing Candidates

Yosheel Bala Bangaroo
Hussain Hassan El Rashidy
Helen Kotsaboikidis
XingZuo Yan



TAB 2

MENTORING AND ADVISORY SERVICES PROPOSAL TASK FORCE

January 28, 2016

Final Report to Convocation

Task Force Members

Jacqueline Horvat (Co-chair)
Peter Wardle (Co-Chair)
Howard Goldblatt (Vice-Chair)
Chris Bredt
Gisèle Chrétien
Dianne Corbiere
Julian Falconer
Michelle Haigh
Virginia MacLean
Derry Millar
Jonathan Rosenthal
Paul Schabas
Raj Sharda

Purpose of Report: Decision

**Prepared by the Policy Secretariat
(Sophia Sperdakos 416-947-5209)**

TASK FORCE PROCESS

1. Since its establishment in November 2013, the Task Force has met on the following dates:
 - March 13, 2014
 - April 25, 2014
 - May 8, 2014
 - August 27, 2014
 - November 26, 2014
 - March 30, 2015
 - September 17, 2015
 - October 9, 2015
 - November 3, 2015
 - December 15, 2015

LAW PRACTICE COACH AND ADVISOR INITIATIVE

EXECUTIVE SUMMARY

Advice like water takes the form of the vessel it is poured into.¹

When a thing is done, advice comes too late.²

All professionals benefit from the coaching and advice of those more experienced who can guide their thinking and assist them to make competent decisions and adopt best practices. Once licensed, lawyers and paralegals have the individual responsibility and obligation to develop their own competent, reflective and ethical careers. But there is also responsibility within the professions to foster collective competence, both in the public interest and in the interest of professional renewal and support.

Many organizations and associations in Ontario offer valuable lawyer and paralegal mentoring programs that serve diverse needs, practice areas and geographic locations. Their goals, depth, breadth, profile, resources and success vary widely, however. A more systematic approach is essential if coaching and advising supports are to be meaningful parts of the toolkit that seeks to enhance the competent practice of law and provision of legal services. To be successful, the approach chosen must be responsive, flexible and capable of growth and development. While “mentoring” as used in the traditional sense to mean networking and general career advice is a valuable tool, what is better described as coach and advisor supports may more effectively address licensee needs.

The purpose of the law practice coach and advisor initiative described in this Report is to provide guidance and assistance in the development of competent legal professionals through supports that use a coherent, flexible, accessible and evolving approach. The initiative will be voluntary and will support licensee needs for short-term advisor supports addressing file-specific and substantive/procedural matters, and longer term coach supports to foster best practices. This will be done in a variety of formats and locations throughout the province, for individuals and groups and with a view to using technology to facilitate access. The initiative will be open to all licensees but, at the outset as it develops its resources, will initially focus on a variety of identified communities of need for such supports.

To facilitate the expeditious implementation of the initiative, the Law Society will establish a dedicated and separate coach and advisor unit within the Professional Development & Competence department. The longer term goal will be to explore the establishment of an external entity to be incorporated and organized to manage the initiative.

¹ Punch. August 1, 1857.

² French proverb.

The Law Society will exercise a coordinating function in identified and evolving areas of licensee need for coach and advisor supports and will assist to connect those licensees to the kinds of supports they require. Where there are legal organizations or associations with coach and advisor programs that provide the supports required and that come within the scope of the initiative, the Law Society will connect licensees with those supports. In the absence of association or organization supports, where the identified need is within the scope of the initiative, the Law Society will assist licensees in their efforts to locate the required support. As well, the Law Society will develop a formal roster of coaches and advisors to further build the infrastructure needed to support licensees. Licensees, coaches and advisors will be entitled to claim up to their entire 12 required CPD hours, annually, if they meet certain requirements. The initiative will be evaluated at a specified point after implementation is underway.

This initiative is a positive and ambitious undertaking. As the Law Society develops the coordinating role described above, the involvement of legal organizations and associations that provide supports and the categories of licensees for whose benefit the initiative operates will evolve as the initiative develops.

The benefit and importance of the structure described in this Report is that it allows the initiative to develop incrementally, to reflect proven needs, resources, continuing involvement of existing programs, focus group, stakeholder and user engagement on options and evaluation of activities. It will draw on existing resources within the legal community and the Law Society. It will also develop new activities and approaches gradually and carefully as need is identified and advisors/coaches are recruited.

Over time and in an incremental way the initiative will seek to expand its capacity, so licensees know that there is a source that can direct them to the supports that will best address their needs. The goal is that the initiative will facilitate a cultural shift that makes coaching and advising an integral part of the legal and competence culture, with offshoots that address different needs and points of intersection and collaboration throughout the province.

DECISION

Motion

2. **That Convocation:**
 - a. **approve a law practice coaching and advisory initiative for lawyers and paralegals, the components of which are set out at paragraph 14 of and the details of which are described in this Report; and**
 - b. **approve funding for the initiative as set out in paragraph 72 of this Report, with the estimated annual cost for 2016 of \$250,000 to be funded from the Law Society's contingency, as recommended by the Audit and Finance Committee.**

Introduction and Background

3. Once licensed, lawyers and paralegals have the individual responsibility and obligation to develop their own competent, reflective and ethical careers. But there is also responsibility within the professions to foster collective competence, both in the public interest and in the interest of professional renewal and support. The Law Society's mandate includes ensuring that all persons who practise law or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide.
4. Mentoring is an ancient concept³ and in a variety of forms has been part of legal culture from earliest times. The apprenticeship model of admission to the bar, which revolved around a student observing and absorbing the behaviour, skills, and values of a senior lawyer to whom he or she was assigned, was a form of mentoring in an intensely concentrated form. Lawyers and paralegals have established legal organizations and associations to foster a wide range of collegial support systems.
5. With the evolution of the licensing process and the articling system, the regulation of paralegals, the growth in numbers entering the professions, the increasing diversity of those being licensed, the increasing pressures on sole and small firm licensees and the rapid changes within the practice of law and the provision of legal services, the need for improved and more systematic mentoring has increasingly become the subject of discussion.
6. Many organizations and associations in Ontario offer valuable lawyer and paralegal mentoring programs that serve diverse needs, practice areas and geographic locations. Their goals, depth, breadth, profile, resources and success vary widely, however. A more systematic approach is essential if coaching and advising are to be a meaningful

³First described in Homer's *Odyssey*. "Mentor" is the name of the person who serves as overseer and teacher of Odysseus' son, Telemachus, to guide him while his father is away.

part of the toolkit that seeks to enhance the competent practice of law and provision of legal services.

7. The components of the Law Society's 2011-2015 strategic plan relating to post-licensing competence included as one element of its work plan "developing initiatives to institutionalize mentoring, advisor and other support services for lawyers and paralegals."
8. The Mentoring and Advisory Services Proposal Task Force ("Task Force")⁴ was established in November 2013 to consider how to work most effectively toward the realization of this component of the strategic plan. Other key elements of the post-licensing competence priority established over the last four years have enabled the discussion of mentoring initiatives to be more coherently situated within the Law Society's competence mandate.
9. The components of the Law Society's recently approved 2015-2019 Strategic Plan have placed even greater focus on the development of a "mentoring" initiative. The Challenges Faced by Racialized Licensees Working Group ("Working Group on Racialized Licensees") has also recognized the importance of such an initiative to the success of racialized licensees, in particular focusing attention on their varied and unique needs and the importance of developing a responsive, flexible approach.
10. In its April 23, 2015 Interim Report to Convocation, the Task Force provided information on a wide range of mentoring programs for regulated professions, internationally, and for lawyers and paralegals in Ontario. It has also benefited from,
 - a. the significant consultation work that the Working Group on Racialized Licensees has done addressing the specific mentoring needs that those licensees identified;
 - b. articles, discussions, blogs, and the websites of regulators and law associations, as well as others, describing their programs; and
 - c. ongoing discussions about mentoring over many years.
11. The Task Force is satisfied that there is ample evidence to support the need for a more co-ordinated approach to coach and advisor supports for lawyers and paralegals that are responsive, flexible and capable of growth and development. While "mentoring," as used in the traditional sense to mean networking and general career advice, is a valuable tool, what is better described as coach and advisor supports may more effectively address licensee needs:

⁴ The current members of the Task Force are named on the cover of this Report. Previous members also included Janet Minor (before becoming Treasurer), Larry Eustace, Susan Hare, Dow Marmur and Linda Rothstein.

- a. Advisor supports are focused primarily on limited scope assistance directed at a defined improvement outcome. An advisor is sought and assigned if the licensee has specific client file work or substantive and procedural issues on which guidance is required.
- b. Coach supports typically have longer term objectives of fostering best practices, supported by developmental criteria and possible curricula. They provide the kind of longer term supportive relationship that reduces isolation and assists to enhance competence, confidence and connections.

THE INITIATIVE

Purpose and Goals

12. The purpose of the initiative is to provide guidance and assistance in the development of competent legal professionals through coach and advisor supports that will be developed using a coherent, flexible, accessible and evolving approach.
13. The goals of the initiative are to,
 - a. provide coherent and systematic opportunities for the enhancement of competence through,
 - i. connecting lawyers and paralegals seeking ethical, substantive, practice management and skills advice with coaches and advisors who can assist them to foster best practices and avoid conduct that may lead to negligence or regulatory proceedings;⁵ and
 - ii. supporting the needs of eligible lawyers and paralegals in completion of legal tasks, including daily management of client files, substantive and procedural issues related to those files and practice management obligations;⁶
 - b. ensure coach and advisor assistance also addresses unique and special needs. As identified in the work of the Working Group on Racialized Licensees, such a system may be of particular assistance to racialized licensees who are significantly represented among sole practice and small firm licensees and who have identified enhanced and focused “mentoring” as a means of potentially reducing the vulnerability and isolation they may face in their professional practices. Moreover, the initiative may recruit advisors with

⁵Recognizing that enhancing competence is a central responsibility of the Law Society overall, this initiative may ultimately also be leveraged as part of a suite of activities all intended to support and foster competence.

⁶ This may address a gap in the professional development of legal practitioners who might not otherwise have ready access to practical guidance from experienced colleagues. Such a system may also provide support for those who seek assistance outside the parameters of what is offered within their firms or employment.

specialized substantive law expertise that can assist in areas where there are fewer supports, for example, in Aboriginal Law;

- c. focus the initiative where it can meet the greatest need (e.g. for sole practice and small firm licensees),⁷ but ensure it is flexible enough to be open to all;
- d. have coach and advisor supports accessible to lawyers and paralegals throughout the province, with particular attention to the use of technology to further connections;
- e. be responsive to evolving needs and changes and add to the initiative based on proven results. The development of an effective and flexible advisory and coaching initiative must be undertaken in an incremental and responsive manner that will, from the outset of implementation,
 - i. engage users and potential users and those currently offering mentoring programs in focus groups and discussions on moving forward and honing the initiative;
 - ii. add components gradually, building upon proven results;
 - iii. include effective and ongoing evaluation of the initiative to ensure it develops based on evidence-based foundations; and
 - iv. provide sufficient funding to allow the initiative to develop in keeping with its purpose and goals.
- f. provide access to senior experts from diverse backgrounds and to those with substantial expertise in certain practice areas who may only be found in some of the larger centres; and
- g. measure outcomes to determine links to improved competence of participants and fulfilment of the initiative's purpose and goals.

Overview of the Initiative

14. Keeping the purpose and goals in mind, the Task Force has developed a law practice coach and advisor initiative for Convocation's approval. While the initiative will grow and evolve over time, the following components, the details of which are set out in the sections that follow, represent its essential profile:

⁷It is true that access to information on substantive law and practice management to assist licensees has never been more readily available and easier to access. At the same time, however, sole practice and small firm licensees, in particular, may lack the contacts and advisors who can assist them to distill the wealth of information, apply it most effectively and develop advising relationships that can become part of their professional development plan.

- a. A law practice coach and advisor initiative will be established to support lawyer and paralegal licensee needs,
 - i. for short term **advisor** supports to address client file-specific matters or substantive or procedural issues; and
 - ii. for longer term **coach** supports to foster best practices and support the enhancement of competence, confidence and connections.
- b. Licensee participation in the initiative will be entirely voluntary.
- c. The initiative will be open to all licensees, but at the outset, as it develops its resources and advisor roster, will focus on a number of already-identified communities of need for coach and advisor supports namely,
 - i. sole practice and small firm licensees;
 - ii. new licensees;
 - iii. racialized licensees;
 - iv. licensees seeking succession planning advice; and
 - v. licensees within defined practice areas of family, criminal, real estate, civil litigation and wills and estates.
- d. Licensees will be able to access supports in a number of ways, including through formalized coaching and training schedules or one-on-one meetings and in a variety of settings and delivery formats.
- e. To facilitate the expeditious implementation of the initiative, the Law Society will establish a dedicated and separate coach and advisor unit within the Professional Development & Competence Department, which, among other features, will,
 - i. have a distinct identity and name;
 - ii. have its own unique and collaborative relationship and engagement with stakeholder groups and individuals;
 - iii. be allocated a dedicated budget and resources from the outset; and
 - iv. be marketed and branded as a coaching and advisory initiative with the key components as set out in this proposal.

The longer term goal will be to explore the establishment of an external third party entity to be incorporated and organized to undertake management of the initiative.

- f. The Law Society will exercise a coordinating function in identified and evolving areas of need for coach and advisor supports and will assist to connect those licensees,
 - i. to the kind of supports they require;
 - ii. with individual advisors or coaches or through group coaching and supports;
 - iii. wherever in the province they practise or provide legal supports, through in person and/or virtual supports; and
 - iv. with those able to meet specialized needs.
- g. Where there are legal organizations or associations with coach and advisor type programs that provide the supports required and that come within the scope of the initiative, the Law Society will connect the licensees with those supports. In the absence of association or organization supports, where the identified need is within the scope of the initiative, the Law Society will assist licensees in their efforts to locate the required support.
- h. The Law Society's coordinating role will also include assisting organizations, through coach and advisor training and materials, to be in a position to maintain and enhance their provision of supports.
- i. The initiative will develop incrementally to reflect proven needs, resources, engagement of existing programs and stakeholder groups in development of a collaborative approach, and evaluation of the initiative as it moves forward.
- j. The Law Society will develop a formal roster of coaches and advisors who meet defined criteria.
- k. Licensees who are advised/coached and coaches and advisors, whether part of the Law Society's formal roster or who provide supports through an organization or association, will be entitled to claim up to their entire 12 required CPD hours annually. To be eligible to claim the required professionalism hours, they must satisfy the Law Society that they have been engaged with professionalism issues for three of those 12 hours.
- l. An evaluation of the initiative and its new processes will take place no earlier than the fall of 2019.

THE DETAILS

What Supports will be Offered?

15. Short term *advisor* supports and longer term *coach* supports will be offered.
16. Advisor supports will be differentiated from coaching supports. The advisor supports will be focused on limited-scope assistance directed at a defined improvement outcome.
17. A licensee who recognizes a specific gap in knowledge or skill will be able to contact the administrator of the initiative, whose role is set out later in this Report. With information on the assistance required, the administrator will seek to connect the licensee with an advisor skilled in the topic or issue.
18. Guidance on client file-related matters has been identified as an essential area of need for advisor support and the Task Force agrees that it is often when an issue arises in a specific context that a senior licensee's expertise and experience can be most valuable. At the same time, it is important that,
 - a. the advisor's relationship remains solely with the advisee;
 - b. both parties be alert to the possibility of conflicts;
 - c. the advisee make reasonable efforts not to disclose the identity of the client; and
 - d. the advisee acknowledges that he or she is responsible for individually and independently satisfying him or herself of the soundness of any suggestions, recommendations or advice related to file work on which he or she chooses to act.
19. The advisor relationship is expected to be shorter than that of the coaching relationship, in most instances. Whereas the coaching support is likely to be one ruled by self-selection, in that participants may canvass their options until they find a good "fit," the advisor support is more about directed-selection. In an advisor system the need for experienced counsel will, in general, outweigh the need to feel a "connection" as in the case of a coach. The correct application of knowledge and skills will in most cases be more critical in this component than incremental development and relationship building. At the same time, the administrator of the initiative will be sensitive to particular needs of the licensee wherever possible.
20. Coaching supports will be established with a longer term objective grounded in developmental criteria. To enhance the group coaching experience, the initiative could, over time, provide coaching lesson plans that could be used as training and information exchange opportunities. All parties could be assisted by a curriculum of issues and discussion points aimed at ensuring core competencies are suitably addressed and the learning and coaching outcomes are achieved.

21. Technology will be an integral part of these supports. The scope and range of what can be achieved through emerging technologies is significant and will be leveraged to facilitate coach and advisor supports, developing incrementally and progressively.

For Whose Benefit?

22. An initiative designed to effect improvement, enhance competence and support best practices should be focused on those licensees for whom it can have the greatest positive effect, while also leaving room for the participation of others who may be interested in the tools offered. This is particularly important at the outset of a new initiative to ensure effective use of resources. It should also be structured to attract interest and participation.
23. For this initiative to attract participants who are genuinely interested and committed to its goals and activities, participation must be entirely *voluntary*.
24. The Task Force has considered whether there might be a component of the initiative that could be applied in discipline cases to address competence issues. In its view, it would be inappropriate to add this component to the initiative, which could have a potentially negative effect on its success. Those who might want to be coached and advised will be reluctant to apply if,
 - a. the supports might be viewed as designed for licensees in difficulty; and
 - b. potential participants might perceive that the focus is more regulatory than supportive.
25. At the outset of the initiative's implementation it will focus on providing supports for already identified communities of need, namely, sole practice and small firm licensees, new licensees, racialized licensees, those seeking succession planning supports and those within certain defined practice areas.
26. Over the course of many discussions over the years in a variety of contexts about pressures and challenges for sole practice and small firm licensees, the need for advisor and coach supports has been raised consistently. The Working Group on Racialized Licensees, for example, has noted that the majority of racialized licensees work in sole or small firm settings. It has commented that in its consultations, participants emphasized the need for sole and small firm racialized licensees to have "strong mentors and networks" and communities of support within the professions to combat the isolation they face. This also is true for sole practice and small firm licensees located in small communities throughout the province and for Aboriginal licensees.
27. Given these realities of need, the Task Force is of the view that the initiative should, at the outset, focus its resources on serving this large cohort of the professionals. The initiative will draw on the work already being done in lawyer and paralegal associations

and organizations across the province and build on this work in a collaborative approach that leverages existing resources for sole and small firm licensees and builds on them.

28. In addition, particularly as the initiative begins and advisors and coaches are recruited, it will be important to focus on those substantive areas of law on which there may be the largest need for assistance among sole and small firm practitioners and in which experienced advisors are available. Law Society and LawPro data and licensees themselves reveal that the prevalent substantive areas of practice for which sole and small lawyer licensees need guidance and support are family, real estate, civil litigation, criminal and wills and estates. For paralegals, scope of practice defines more specifically the areas of need. In addition, coach and advisors will typically be in a position to assist with ethical and practice management issues.
29. At the same time, the Task Force agrees that there must be room for the program to be accessible beyond the main groups and subject areas. So, for example, there may well be licensees who work in large firms or government agencies that have in-house advisor and coach structures, but who will feel more comfortable seeking supports outside their employment contexts. This might be for a variety of reasons, including an absence of coaches or mentors with whom they relate or who are culturally competent or a preference for seeking advice in a non-employment setting, etc. Similarly, there may be areas of law for which there is an identified need for advisors, such as in Aboriginal Law.
30. The key in both these scenarios will be availability of advisors and coaches who can meet the additional areas of identified need. The initiatives will allow for incremental growth and development as needs are identified and capable of being met with appropriate supports. Engagement with stakeholder and user communities will greatly assist this developmental process.
31. The Law Society has also identified that new licensees and those seeking to leave active practice have unique needs for which there are already a number of supports and for which the coaching component of the initiative may be particularly well-suited.
32. The Task Force has considered whether there should be some incentive for those licensees who seek to participate in the initiative as users. Those interested in participating will be expected to apply to participate and will become engaged in a serious and meaningful process that will engage their time, their effort and their commitment.
33. Currently, a licensee who is mentored may claim up to six of their CPD required hours. This should be expanded to allow a licensee to claim up to all 12 of the annual required CPD hours for being advised or coached, provided that if all 12 hours are claimed, he or she can attest to three of those hours meeting the professionalism requirement. In the Task Force's view the kind of hands-on learning, thinking and development of

competence that will occur within the initiative strongly conforms to the goals of the CPD requirement.

Who will Act as Coaches and Advisors?

34. It cannot be over-emphasized that a key component of the success of the initiative will be the quality and availability of advisors and coaches who are highly competent. Participants must have a significant level of comfort with the advisor or coach in order for competence outcomes to be achieved.
35. The Task Force is optimistic that there are many such lawyers and paralegals who are capable of providing this rewarding and important service to the professions, and who are doing so already in the many programs that legal organizations and associations currently provide.
36. There will be two sources for coaches and advisors:
 - a. If legal organizations and associations that offer mentoring programs wish to be connected to licensees seeking advisor or coach support, their advisors will be seen as a resource with whom the Law Society may connect a licensee.
 - b. Coaches and advisors who have been recruited and trained as part of the Law Society initiative and who form part of the initiative's roster will be a resource to provide supports.
37. If the advisors who are working within a legal organization or association program also wish to receive the training the Law Society offers for those on its formal roster, they will be eligible to apply. This training, however, will not be required for law association and organization programs to be included as valuable resources to the Law Society initiative with whom licensees can be connected to meet their needs.
38. The Law Society's development of a formal roster of coaches and advisors will require time once the initiative is approved to publicize the recruitment process, engage with stakeholder groups and associations to build on current resources, develop an appropriate recruitment approach and train advisors and coaches.
39. Without seeking to circumscribe the qualifications for advisors and coaches that seek to be part of the Law Society roster, the Task Force is of the view that included among the recruitment and eligibility factors should be the following:
 - a. Appropriate years of experience for the type of activity the individual will offer and in keeping with the components of the Law Society's competency profile.
 - b. Willingness, ability and skill to act as an advisor or coach.

- c. Understanding of the role and mandate of the Law Society and objectives of the advisory and coaching initiative in the development of competent professionals.
 - d. Depth and breadth of expertise in substantive knowledge, skills application, and practice management.
 - e. Willingness to advise and coach all providers of legal services – lawyers and paralegals.
 - f. Willingness to undergo training where required respecting the specific goals of the program, skilled advisory techniques and approaches and cultural competence.
40. It will be important that coaches and advisors have the depth of knowledge and experience appropriate to the activities they undertake and in keeping with the Law Society's required competencies.
41. Coaches and advisors may need different skill sets, the former role more likely to engage relationship-building with the licensee on a longer term basis than advising will necessitate. In many ways the coaching relationship will be unique to each coach and matched licensee and should be left to develop as organically as possible. At the same time, however, it will be important to provide coaches with training and materials to assist them with topics that will enhance the competence of the licensees they coach.
42. The Task Force has carefully considered whether to recommend that coaches and or advisors, or some of them, be paid for their services. Remunerating all coaches and advisors would not be economically feasible and certainly in the initial years of the initiative would interfere with the ability to develop the materials, tools and technological aids to grow the initiative.
43. At the same time, the Task Force has considered whether as an alternative there should be some categories of coaches or advisors who should receive some remuneration, for example, in situations in which a coach or advisor is required to devote more time than usual to a licensee or an advisor who has special skills, but will not be financially able to devote the time to do so without some remuneration.
44. This is a complex area to consider, particularly in that it would create categories of advisors and coaches and possibly bring different considerations to agreeing to act as an advisor or a coach.
45. This issue is worthy of further discussion, but should be considered within the context of implementation, rather than at this stage. Engagement with stakeholders, users and potential coaches and advisors and better experience and understanding of the time commitments required of them will provide an evidence-based approach to the issue. As the initiative unfolds, if a core group of advisors or coaches is undertaking a significant amount of work in either advising or coaching or both, the issue of some form

of remuneration, whether honorarium or some other type, should be seriously considered to reflect the value of the contribution.

46. As in the case of licensees who are coached and advised, the Task Force has considered whether, in the meantime, there should be some incentive for coaches and advisors. Currently, as is the case with a licensee who is mentored, a licensee who mentors may claim up to six of the CPD required hours, annually. In the Task Force's view this should be expanded to allow a licensee to claim up to all 12 of the required annual CPD hours for coaching or advising, provided that if all 12 hours are claimed, he or she can attest to three of those hours meeting the professionalism requirement. This will apply whether the coach or advisor is part of the Law Society's formal roster or provides supports through an organization or association.

Who will Administer the Initiative?

47. At the centre of the initiative is an administrator that plays a critical coordinating role, encouraging participation among licensees, connecting licensees to the supports they need, recruiting coaches and advisors, coordinating advisor and coach supports and materials, engaging legal organizations and associations and users and holding focus groups to ensure a collaborative approach to implementation, evaluating the initiative on an ongoing basis, ensuring its purpose and goals are being met, marketing the program and managing resources.
48. The Task Force has considered two possible options for how the initiative could be administered:
- a. Establish a new third party entity to be incorporated and organized to undertake management of the initiative in accordance with the purpose, goals, policies and principles established and approved by the Law Society from time to time. The membership in the Corporation would be limited to the Law Society. The structure would be developed to incorporate the components proposed here.
 - b. Establish the initiative within the Law Society, but ensure that it,
 - i. has a distinct identity and name;
 - ii. has its own unique and collaborative relationship and engagement with stakeholder groups and individuals;
 - iii. is allocated a dedicated budget and resources from the outset; and
 - iv. is marketed and branded as a coach and advisor initiative with the key components as set out in this proposal, if approved.
49. Establishing a coach and advisor support system separate from the Law Society may avoid concern that the regulator could invoke its disciplinary authority within the program. If there is a substantial risk that participants will not come forward to use a program that is operated by the regulator its viability may be compromised. On the other hand, creating a new infrastructure with no concrete experience with such an initiative is

a potentially risky and costly alternative and may well take longer to establish and implement. This approach may be challenging for Convocation to approve without evidence that it is, in fact, the only viable option.

50. Upon balance, the Task Force is of the view that having the Law Society administer the initiative is a more practical and viable basis on which to launch it. The Task Force is satisfied that using the structural components set out above and the collaborative engagement with stakeholders that is described, this option is the most appropriate way to begin. The Law Society already has much of the infrastructure in place to be able to move forward with implementation expeditiously. With its built-in and ongoing evaluation, the initiative will also provide evidenced-based information on the progress of the activities and participation that will enable Convocation to continue to monitor progress and alter the direction, if appropriate.
51. The option of establishing a third party entity will be explored in detail as the initiative moves forward, with the purpose of determining whether this option should be the long-term goal. As set out above, there are attractive features to having an external coach and advisor entity and more may be revealed as implementation is undertaken. In monitoring and evaluating the initiative over its early years, one of the criteria should be to examine whether the Law Society's role as the administrator is having an effect on the number and profile of those participating.

How Will the Initiative Operate?

52. Licensees for whose benefit the initiative operates (as described above) will contact the administrator whose function will be to assist to connect licensees,
 - a. to the kind of supports they require;
 - b. with individual advisors or coaches or through group coaching and supports;
 - c. wherever in the province they practise or provide legal services, through in person and/or virtual services; and
 - d. with those able to meet specialized needs.
53. Where there are legal organizations or associations with coach and advisor type programs that provide the supports required and that come within the scope of the initiative, the Law Society will connect the licensees with those supports. These organizations and associations have strong connections throughout the province to specific and varied communities of licensees that make their continued and even expanded roles essential to the initiative's success. Many are doing excellent and innovative work in this area. By connecting the licensee to a particular organization or association program, the Law Society will be the conduit. The organization or association will address the particular need.

54. In the absence of an association or organization that can assist in a particular area, and where the identified need is within the scope of the initiative, the Law Society will assist licensees in their efforts to locate the required support.
55. The Law Society's coordinating role will also include assisting organizations through coach and advisor training and materials to be in a position to maintain and enhance their provision of supports.
56. As the Law Society develops the coordinating role described above, the involvement of legal organizations and associations that provide supports and the categories of licensees for whose benefit the initiative operates will evolve.
57. The benefit and importance of this structure is that it allows the initiative to develop incrementally, to reflect proven needs, resources, involvement of existing programs, focus group, stakeholder and user engagement on options and evaluation of activities. It will draw on existing resources within the legal community and the Law Society and develop new possibilities and activities gradually and carefully as need is identified and advisors/coaches are recruited.
58. As the administrator that connects or assists licensees to find the supports they need, the Law Society will be able to evaluate when individual supports are most required and when team advising may be a valuable and far-reaching approach. This will engage increased numbers of participants by implementing group or "team" advisory and coaching supports whereby a small group of lawyers or paralegals, or both, will become a team with one senior coach. The teams could be organized by practice area/substantive focus, practice management issues, professional development and training requirements, or a combination thereof. This will also facilitate the gathering of data on areas of need and key practice issues that could subsequently be addressed in CPD programming.
59. Specifically, the structure will enable licensees to access supports in a number of ways, including through formalizing coaching and training schedules or one-on-one meetings and in a variety of settings and delivery formats such as,
 - a. live, interactive online one-on-one or group meetings;
 - b. listservs or other discussion forums based on areas of law or discrete legal or practice issues; and
 - c. organized in-person events, ideally in the regions, supporting group activities by organizing a "lead" and participants of like interests.
60. This structure reflects input that has been heard over the years from many different sources and most recently through the Working Group on Racialized Licensees' consultations on mentoring. It reflects a view that a structure such as the one proposed

here can offer licensees a menu of possibilities in their own communities, with access to a variety of supports and with the capacity to evolve as interest and participation increase. The administrator is the coordinator for a variety of inputs and for addressing different needs.

61. Gradually, the initiative will seek to expand its capacity, so licensees know that there is source that can assist to direct them to the supports that will best address their needs. The goal is that over time the initiative will facilitate a cultural shift that makes coaching and advising an integral part of the legal and competence culture with offshoots that address different needs and points of intersection and collaborations throughout the province.

Evaluating and Reviewing the Initiative

62. As with all new Law Society initiatives, this initiative will have outcomes against which to evaluate the viability and success of the program. The evaluation will include qualitative and quantitative information and focus on,
 - a. whether the initiative is meeting the purposes and goals set out in this Report;
 - b. how the initiative is contributing to the enhancement of licensee competence; and
 - c. what changes or additions could be introduced to enhance the initiative further.
63. Collaboration with stakeholders, such as users, legal associations and organizations with relevant programs, advisors and coaches and others and through focus groups will be integral to the initiative on an ongoing basis. Any evaluation will reflect the outcomes and issues emerging from that collaboration.
64. The Task Force is also of the view that there should be ongoing surveys of users (those coaching and advising and those being coached and advised) to seek their input on their experiences and what areas can be improved.
65. It is important that the evaluation take place only after there has been sufficient opportunity for the initiative and its new processes to be well underway. This includes the engagement of users and stakeholders, establishment of the structure, the recruitment of the roster of advisor and coaches, a reasonable period of use of the individual and team coaching and advisor supports and multiple budget cycles. The evaluation will occur no earlier than the fall of 2019.
66. At that time, the Executive Director of Professional Development & Competence and the administrator of the initiative will prepare a written report and any recommendations for consideration of the Professional Development & Competence Committee and Convocation.

67. Annual information on the initiative will also be included in the annual PD&C Division Report on resources and programs beginning in 2017.

Financial Considerations

68. As set out in this Report, the initiative will be implemented incrementally, to reflect proven needs, resources, involvement of existing programs, focus group and stakeholder engagement on options and evaluation of activities. It will draw on existing resources. It will also develop new possibilities and activities gradually and carefully, as need is identified, through engagement with stakeholders and others sources, and as advisors/coaches are recruited.
69. In the Task Force's view it is important to use a three-year budget forecast to project how the initiative will move forward. This accomplishes three things:
- a. It signals the seriousness with which the initiative is viewed and the importance of resourcing it appropriately.
 - b. It enables the Law Society, as administrator, to develop longer-term plans for moving forward, having the benefit of generally knowing available resources over a longer term period.
 - c. It enables approval of the first year's budget immediately, while using the second and third year as a forecast.
70. It is important to note, however, that this budget is anticipatory, based on best estimates and should not preclude a request for additional funds from Convocation. For example, should evidence suggest that some remuneration is appropriate in future years, the appropriate budget request for that component will be made to Convocation, in the usual course, to consider.
71. The budget illustrates the importance of planning and laying the groundwork in 2016 for the activities that will be the foundation of the initiative's success. Part of 2016 will be spent planning the launch, communications, supporting documentation and recruiting efforts to find strong coaches and advisors for the roster. This planning is essential to the fulfilment of engagement and collaboration discussed in this Report.
72. The Audit and Finance Committee reviewed the projected budgets at its January 2016 meeting and voted to recommend approval of the cost and funding information contained in this Report to Convocation.

Projected Budget: Coach and Advisor Supports 2016 - 2018

2016 Budget Estimate

Expense Category	Cost
Staffing/Salaries and Benefits <ul style="list-style-type: none"> Counsel lead and coordinator hired to begin planning and development of support systems, training modules, coaching content, and processes – estimated arrival May or June of 2016 – costs represents salary and benefits assuming hiring is completed by April 2016 	\$200,000
Program Expenses <ul style="list-style-type: none"> Coach and Advisor Training Coach and Advisor expense reimbursements Technology enabled interactivity 	\$15,000 \$15,000 \$20,000
Total Estimated Budget 2016	\$250,000

2017 Budget Estimate

Expense Category	Cost	Increase from Prior Budget Period
Staffing/Salaries and Benefits <ul style="list-style-type: none"> Includes Counsel lead, coordinator and one additional counsel staff 	\$390,000	\$190,000
Program Expenses <ul style="list-style-type: none"> Coach and Advisor Training Coach and Advisor expense reimbursements Technology enabled interactivity 	\$15,000 \$20,000 \$30,000	\$0 \$5,000 \$10,000
Office Expenses <ul style="list-style-type: none"> Annual office requirements and supplies Communications/marketing/outreach 	\$10,000 \$25,000	\$10,000 \$25,000
Total Estimated Budget 2017	\$490,000	\$240,000

2018 Budget Estimate

Expense Category	Cost	Increase from Prior Budget Period
Staffing/Salaries and Benefits <ul style="list-style-type: none"> Counsel lead Counsel Coordinator 	\$440,000	\$50,000

<ul style="list-style-type: none"> • and one new Administrator 		
Program Expenses <ul style="list-style-type: none"> • Coach and Advisor Training • Coach and Advisor expense reimbursements • Technology enabled interactivity 	<p>\$15,000</p> <p>\$20,000</p> <p>\$75,000</p>	<p>\$0</p> <p>\$0</p> <p>\$45,000</p>
Office Expenses <ul style="list-style-type: none"> • Annual office requirements and supplies • Communications/marketing/outreach 	<p>\$10,000</p> <p>\$40,000</p>	<p>0</p> <p>\$15,000</p>
Total Estimated Budget 2018	\$600,000	\$110,000

Conclusion

73. In establishing its 2015-2019 strategic priorities, Convocation reiterated the importance of mentoring as a meaningful component of supporting licensee competence, a central part of the Law Society’s mandate.
74. As lawyers and paralegals face the increasing complexity of practice and the provision of legal services, a proactive approach to providing supports and resources is essential. The Task Force’s proposed initiative is designed to provide a framework whose component parts will contribute to the fulfillment of Convocation’s priority in this area. Developed in an incremental way to engage stakeholders and users and build on proven results, the initiative’s long term goal is to facilitate a cultural shift that makes coach and advisor supports an integral part of the legal and competence culture.
75. The Task Force is confident that now is the time to move forward with this initiative, in keeping with Convocation’s stated priority.



TAB 3

**Report to Convocation
January 28, 2016**

Audit & Finance Committee

Committee Members

Christopher Bredt (Co-Chair)

Peter Wardle (Co-Chair)

Michelle Haigh (Vice-Chair)

John Callaghan

Suzanne Clément

Paul Cooper

Teresa Donnelly

Seymour Epstein

Rocco Galati

Vern Krishna

Janet Leiper

Catherine Strosberg

Purpose of Report: Information

**Prepared by the Finance Department
Wendy Tysall, Chief Financial Officer, 416-947-3322 or wtysall@lsuc.on.ca**

COMMITTEE PROCESS

1. The Audit & Finance Committee (“the Committee”) met on January 13, 2016. Committee members in attendance were Christopher Bredt (Co-Chair), Peter Wardle (Co-Chair), Michelle Haigh (Vice-Chair), John Callaghan, Suzanne Clément, Paul Cooper, Teresa Donnelly (phone), Seymour Epstein, Vern Krishna, Janet Leiper and Catherine Strosberg (phone)
2. Other Benchers in attendance: Derry Millar.
3. Law Society staff in attendance: Robert Lapper, Wendy Tysall, Diana Miles, Brenda Albuquerque-Boutilier, Sophia Sperdakos (phone) and Andrew Cawse.
4. Also in attendance: Kathleen Waters and Steve Jorgensen (LAWPRO).

TAB 3.1

FOR INFORMATION
REPORT FROM MENTORING AND ADVISORY SERVICES PROPOSAL TASK FORCE

5. The Committee recommends funding of a new law practice coaching and advisory initiative for lawyers and paralegals as set out in the Mentoring and Advisory Services Proposal Task Force Report. The estimated annual cost of \$250,000 in 2016 will be funded from the Law Society's contingency in 2016. The estimated annual cost of \$490,000 in 2017 and \$600,000 in 2018 and beyond will be funded in the operating budgets of those years.
6. The report from the Mentoring and Advisory Services Proposal Task is before Convocation this month for approval. In summary, its recommendation is that Convocation approve a law practice coaching and advisory initiative for lawyers and paralegals.
7. A summary of the cost of the recommendations contained in the report is set out below.

2016 Estimate of Costs

Expense Category	Cost
Staffing/Salaries and Benefits - counsel lead and coordinator	\$200,000
Program Expenses - coach and advisor training, expense reimbursements and technology enabled interactivity	\$50,000
Total Estimated Budget 2016	\$250,000

2017 Estimate of Costs

Expense Category	Cost
Staffing/Salaries and Benefits - counsel lead, counsel and coordinator	\$390,000
Program Expenses - coach and advisor training, expense reimbursements and technology enabled interactivity	\$65,000
Office Expenses	\$35,000
Total Estimated Budget 2017	\$490,000

2018 Estimate of Costs

Expense Category	Cost
Staffing/Salaries and Benefits - counsel lead, counsel, coordinator and administrator	\$440,000
Program Expenses - coach and advisor training, expense reimbursements and technology enabled interactivity	\$110,000
Office Expenses	\$50,000
Total Estimated Budget 2018	\$600,000

8. The report notes that this budget is anticipatory, based on best estimates and should not be seen to preclude a request for additional funds from Convocation, through the usual budget process, if for example, remuneration for coaches is to be added to the cost of the program.
9. The 2016 costs were not included in the 2016 budget approved by Convocation in October. The report does not introduce any new areas of funding for the initiative. In the current year, funding would be sourced from the contingency which commenced 2016 with a balance of \$1 million.
10. In subsequent years, these costs would be included in the budget for those years. Adding these costs to the financial projections presented to Convocation in October, for 2017 and 2018, would add around \$10 to the annual fee for lawyers and paralegals in 2017 and an additional \$3 in 2018.

Articulated Objectives and Identified Performance Standards

11. The report notes that the initiative will be evaluated. This would occur no earlier than the fall of 2019. It also proposes to measure outcomes to determine links to improved competence of participants and fulfilment of the initiative's purpose and goals. In the Task Force's view the evaluation should include qualitative and quantitative information and focus on,
 - o whether the initiative is meeting the purposes and goals set out in the report;
 - o how the initiative is contributing to the enhancement of licensee competence; and
 - o what changes or additions could be introduced to enhance the initiative further.
12. The report notes that ongoing collaboration and focus groups with stakeholders, including users, legal associations and organizations with support programs, advisors and coaches and others is an integral part of the initiative on an ongoing basis. Any evaluation should reflect the outcomes and issues emerging from that collaboration. The Task Force is also of the view that there should be ongoing surveys of users.



TAB 4

Report to Convocation January 28, 2016

Professional Regulation Committee

Committee Members

Malcolm Mercer (Chair)
Susan Richer (Vice-Chair)
Paul Schabas (Vice-Chair)
Robert Armstrong
Peter Beach
John Callaghan
Suzanne Clément
Cathy Corsetti
Janis Criger
Seymour Epstein
Robert Evans
Julian Falconer
Patrick Furlong
Carol Hartman
Jacqueline Horvat
Brian Lawrie
William C. McDowell
Ross Murray
Jan Richardson
Heather Ross

Purpose of Report: Decision and Information

**Prepared by the Policy Secretariat
(Margaret Drent (416-947-7613))**

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For Decision

Proposed Amendments to the Rules of Professional Conduct – Retired Judges.....[TAB 4.1](#)

For Information

Letter to the Ontario Securities Commission.....[TAB 4.2](#)

COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on January 14, 2016. In attendance were Malcolm Mercer (Chair), Paul Schabas (Vice-Chair), Susan Richer (Vice-Chair), Suzanne Clément, Paul Cooper, Cathy Corsetti, Janis Criger, Seymour Epstein, Robert F. Evans, Carol Hartman,¹ Jacqueline Horvat, Brian Lawrie, Heather Ross (by telephone), and Jan Richardson (by telephone). Staff members attending were Lesley Cameron, James Varro, Naomi Bussin, Caterina Galati, and Margaret Drent.

¹ Ms. Hartman recused herself for the discussion regarding amendments to the Rules of Professional Conduct regarding retired judges.

FOR DECISION

RETIRED JUDGES RETURNING TO PRACTICE

MOTION

2. That Convocation approve the amendments to the Rules of Professional Conduct set out at [Tab 4.1.1](#) to:
 - a. amend Rules 7.7-1.1, 7.7-1.2, 7.7-1.3 and 7.7-1.4 to
 - i. provide that former judges of the Superior Court of Justice who decide to return to the practice of law are required to apply for approval to appear as counsel or advocate in any court, in chambers, or before an administrative board or tribunal;
 - ii. replace the phrase “committee of Convocation appointed for the purpose” with “panel of the Hearing Division of the Law Society Tribunal”;
 - b. amend Rule 7.6-1.1 to replace the phrase “committee of Convocation appointed for the purpose” with “panel of the Hearing Division of the Law Society Tribunal”.¹

Nature of the Issue

3. Under current Rule 7.7-1.2 of the *Rules of Professional Conduct*, judges who previously served on the Supreme Court of Canada, Ontario Court of Appeal, or Federal Court of Appeal who have retired, resigned, or been removed from the Bench, and have returned to practice are not permitted to appear any court, or in chambers, or any administrative board or tribunal without the express approval of a committee of Convocation appointed for that purpose. This approval may only be granted in exceptional circumstances.
4. Under current Rule 7.7-1.4, retired judges who previously served on the Federal Court, the Tax Court of Canada, the Supreme Court of Ontario (Trial Division), a County or District Court, the Ontario Court of Justice, and the Superior Court of Justice are permitted to appear in Court after a three year “cooling off” period. Those who wish to appear in Court before the end of the three year period must apply to a committee of Convocation or approval, also requiring exceptional circumstances.

¹ A version of the Rules with changes incorporated is shown at [Tab 4.1.2](#).

5. A request has been made to the Law Society for an amendment of current Rule 7.7-1.2 by Associate Chief Justice Frank Marrocco on behalf of the Senior Executive of the Superior Court of Justice.
6. The following issues about the institutional integrity of the Court have been considered in respect of the proposed amendment:
 - a. Judges who have served on the court during the same period as a retired judge have indicated that they are not comfortable presiding over matters in which a retired judge is counsel. In some cases, judges have recused themselves when a former judge appears in their court. Judges also indicated that they intended to recuse themselves in future in any matter in which a former judicial colleague appears as counsel. Newer judges, who did not serve on the court with a former judge, have expressed concerns that regardless of any professional or personal relationship with the judge the appearance of fairness and impartiality of a former judge appearing before them as counsel is very problematic. Newer judges have indicated that they are uncomfortable with raising the issue with a former judge who appears in their court and counsel may be reluctant to appear before a judge who is willing to preside in these circumstances.
 - b. Parties know, or can easily find out, that an opposing judge is a former judge of the court. This may create the impression that the presiding judge, and the court as a whole, cannot be impartial. Parties, and particularly self-represented litigants, may feel intimidated or hesitant to voice their concerns to the presiding judge. In one instance, opposing counsel referred to a retired judge who was appearing as counsel as “His Honour” when commenting on the former judge’s submission. In another instance, a former judge’s advertisements for his practice specifically referred to his former position as a Judge of the Superior Court, ostensibly as an advantage to his clients.
 - c. It is unseemly for a former judge to cite their own case law precedents during argument. A former judge’s clients’ interests may suffer if the former judge is required to argue a position that is contrary to their judicial decisions.
 - d. In some cases, there are delays resulting from judicial recusals, which have a negative impact on opposing parties and their counsel.
7. In summary, notwithstanding the three year “cooling off” period, court appearances by former Superior Court justices raise the following issues:
 - a. A former judicial colleague may feel that they have to recuse themselves when a retired Superior Court judge appears as counsel before them.
 - b. The appearance of fairness, or impartiality, when a former judge appears as counsel may be affected; and
 - c. The interests of a former judge’s clients may be detrimentally affected if a former judge is required to argue a position contrary to his or her judicial decisions.

8. Superior Court judges exercise appellate jurisdiction in all three areas of the court's work – criminal, civil and family. All judges on the Superior Court are also judges of the Divisional Court, which serves also serves as an appellate court, and are *ex-officio* judges of the Court of Appeal.

Proposed Amendments

9. The Committee agreed that amendments to address these issues are required. Rule 7.7-1.1 should be amended to provide that a lawyer who was formerly a judge of the Superior Court of Justice, in addition to a lawyer who was formerly a judge of the Supreme Court of Canada, the Court of Appeal for Ontario, and the Federal Court of Appeal, should be required to apply to a panel of the Hearing Division of the Law Society Tribunal to appear as counsel or advocate in any court.
10. The Committee also proposes to amend Rule 7.7-1.3 by removing the reference to “Superior Court of Justice”.
11. The issues described above, and other related matters, may also be of concern to the Ontario Court of Justice and to the Federal Court. The Committee plans to make inquiries of the Ontario Court of Justice and the Federal Court to invite comment on Rules 7.7-1.3 and 7.7-1.4 if the Courts wish to do so.

Other Related Amendments

12. As a matter of clarification, the Committee recommends the removal of references to a “committee of Convocation appointed for the purpose” in Rules 7.7-1.2 and 7.7-1.4 and their replacement by references to a “panel of the Hearing Division of the Law Society Tribunal”. The Hearing Panel has previously been designated by Convocation as the committee of Convocation for these purposes.² This change is also shown in the blackline at **Tab 4.1.1**.
13. The Committee also recommends the amendment of Rule 7.6-1.1 (Working With or Employing Unauthorized Persons). The phrase “committee of Convocation appointed for the purpose” should be replaced by “panel of the Hearing Division of the Law Society Tribunal”. This amendment also is shown in **Tab 4.1.1**.

² See Professional Regulation Committee Report to Convocation, May 25, 2007, online at http://www.lsuc.on.ca/media/convmay07_prc.pdf, paragraph 52-55.

SECTION 7.6 PREVENTING UNAUTHORIZED PRACTICE

(...)

Working With or Employing Unauthorized Persons

7.6-1.1 Without the express approval of a panel of the Hearing Division of the Law Society Tribunal~~committee of Convocation appointed for the purpose~~, a lawyer shall not retain, occupy office space with, use the services of, partner or associate with, or employ in any capacity having to do with the practice of law or provision of legal services any person who, in Ontario or elsewhere, has been disbarred and struck off the Rolls, has had their licence to practise law or to provide legal services revoked, has been suspended, has had their licence to practise law or to provide legal services suspended, has undertaken not to practise law or to provide legal services, or who has been involved in disciplinary action and been permitted to resign or to surrender their licence to practise law or to provide legal services, and has not had their licence restored.

(...)

SECTION 7.7 RETIRED JUDGES RETURNING TO PRACTICE

7.7-1 [FLSC – not in use]

Definitions

~~**7.7-1.1**~~ ~~In rule 7.7-1.2~~ “retired appellate judge” means a lawyer

(a) — who was formerly a judge of the Supreme Court of Canada, the Court of Appeal for Ontario, ~~or the Federal Court of Appeal;~~

[Amended—January 2009]

(b) — who has retired, resigned, or been removed from the Bench; and

(c) — who has returned to practice.

Application to Supreme Court of Canada, Court of Appeal, and Superior Court Judges

7.7-1.1 Rule 7.7-1.2 applies to a lawyer who was formerly a judge of the Supreme Court of Canada, the Court of Appeal for Ontario, the Federal Court of Appeal, or the Superior Court of Justice and who

(a) has retired, resigned, or been removed from the Bench; and

(b) has returned to practice.

Appearance as Counsel or Advocate

~~7.7-1.2 A lawyer referred to in Rule 7.7-1, to whom this Rule applies~~ ~~1 A retired appellate judge~~ shall not appear as counsel or advocate in any court, or in chambers, or before any administrative board or tribunal without the express approval of a panel of the Hearing Division of the Law Society Tribunal ~~committee of Convocation appointed for the purpose~~. This approval may only be granted in exceptional circumstances and may be restricted as the ~~committee of Convocation~~ panel sees fit.

~~7.7-1.3 In rule 7.7-1.4, “retired judge” means a lawyer~~

~~(a) — who was formerly a judge of the Federal Court, the Tax Court of Canada, the Supreme Court of Ontario, Trial Division, a County or District Court, the Ontario Court of Justice, or the Superior Court of Justice;~~

~~[Amended — January 2009]~~

~~(b) — who has retired, resigned, or been removed from the Bench; and~~

~~(c) — who has returned to practice.~~

Application to other Judges

~~7.7-1.3 Rule 7.7-1.4, applies to a lawyer who was formerly a judge of the Federal Court, the Tax Court of Canada, the Supreme Court of Ontario, Trial Division, a County or District Court, or the Ontario Court of Justice and who:~~

~~(a) — who has retired, resigned, or been removed from the Bench; and~~

~~(b) — who has returned to practice.~~

Appearance as Counsel or Advocate

~~7.7-1.4 A lawyer referred to in Rule 7.7-1.3~~ to whom this Rule applies ~~retired judge~~ shall not appear as counsel or advocate

(a) before the court on which he or she served as a judge ~~the judge served~~ or before any lower court; ~~and~~ or

(b) before any administrative board or tribunal over which the court on which the judge served exercised an appellate or judicial review jurisdiction

for a period of three years from the date of their retirement, resignation, or removal, without the express approval of a panel of the Hearing Division of the Law Society Tribunal ~~committee of Convocation appointed for the purpose~~, which approval may only be granted in exceptional circumstances and may be restricted as the ~~committee of Convocation~~ panel sees fit.

[Amended – October 2014]

SECTION 7.6 PREVENTING UNAUTHORIZED PRACTICE

(...)

Working With or Employing Unauthorized Persons

7.6-1.1 Without the express approval of a **panel of the Hearing Division of the Law Society Tribunal**, a lawyer shall not retain, occupy office space with, use the services of, partner or associate with, or employ in any capacity having to do with the practice of law or provision of legal services any person who, in Ontario or elsewhere, has been disbarred and struck off the Rolls, has had their licence to practise law or to provide legal services revoked, has been suspended, has had their licence to practise law or to provide legal services suspended, has undertaken not to practise law or to provide legal services, or who has been involved in disciplinary action and been permitted to resign or to surrender their licence to practise law or to provide legal services, and has not had their licence restored.

SECTION 7.7 RETIRED JUDGES RETURNING TO PRACTICE

7.7-1 [FLSC – not in use]

Definitions

Application to Supreme Court of Canada, Court of Appeal and Superior Court Judges

7.7-1.1 Rule 7.7-1.2 applies to a lawyer who was formerly a judge of the Supreme Court of Canada, the Court of Appeal for Ontario, the Federal Court of Appeal, or the Superior Court of Justice and who

- (a) has retired, resigned, or been removed from the Bench; and
- (b) has returned to practice.

Appearance as Counsel or Advocate

7.7-1.2 A lawyer **to whom this Rule applies** shall not appear as counsel or advocate in any court, or in chambers, or before any administrative board or tribunal without the express approval of a **panel of the Hearing Division of the Law Society Tribunal**. This approval may only be granted in exceptional circumstances and may be restricted as the **panel** sees fit.

Application to other Judges

7.7-1.3 Rule 7.7-1.4 applies to a lawyer who was formerly a judge of the Federal Court, the Tax Court of Canada, the Supreme Court of Ontario, Trial Division, a County or District Court, or the Ontario Court of Justice **and who**

- (a) has retired, resigned, or been removed from the Bench; and
- (b) has returned to practice.

Appearance as Counsel or Advocate

7.7-1.4 A lawyer **to whom this Rule applies** shall not appear as counsel or advocate

- (a) before the court on which **he or she served as a judge** or **before** any lower court;
or
- (b) before any administrative board or tribunal over which the court on which the judge served exercised an appellate or judicial review jurisdiction

for a period of three years from the date of their retirement, resignation, or removal, without the express approval of **a panel of the Hearing Division of the Law Society Tribunal**, which approval may only be granted in exceptional circumstances and may be restricted as the **panel** sees fit.

FOR INFORMATION

LETTER TO THE ONTARIO SECURITIES COMMISSION

14. On January 15, 2016, the Law Society provided a response to the Ontario Securities Commission (OSC) request for comment regarding its proposed Policy 15-601 (Whistleblower Program), launched on October 28, 2015.
15. Information regarding the request for comment appears on the OSC website at http://www.osc.gov.on.ca/en/SecuritiesLaw_rule_20151028_15-601_rfc-whistleblower-program.htm. As indicated on the website, the purpose of the Program is to encourage individuals to report information on securities or derivatives-related misconduct. The Program provides that individuals who meet certain eligibility criteria and who voluntarily submit information to the OSC regarding a breach of Ontario securities law may be eligible for a financial incentive (whistleblower award) if it is determined that the information submitted was of meaningful assistance to staff in investigating the matter.
16. A specific question for comment was whether in-house counsel should be eligible for a whistleblower award.
17. Section 15 of the proposed policy provides that excluded from eligibility for a whistleblower award are
 - (c) those who obtained information in connection with providing legal services to, or conducting the legal representation of, a client that is, or that employs, the subject of the whistleblower submission, unless disclosure of that information would otherwise be permitted by a lawyer under applicable provincial or territorial barreau or law society rules.
18. The letter describes the Law Society's answer to the specific question, and concern about the possibility that lawyers, who are subject to the "up the ladder" reporting and confidentiality requirements in the Rules of Professional Conduct, may believe that they can "whistleblow" on their client, contrary to the Rules, and reap a reward. The letter also describes concerns arising from the Program regarding the lawyer's obligation to maintain solicitor-client privilege.
19. A copy of the letter is attached as **Tab 4.2.1**.



The Law Society of
Upper Canada | Barreau
du Haut-Canada

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January 15, 2016

Email: comments@osc.gov.on.ca

Ms Josée Turcotte
Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, ON M5H 3S8

Dear Ms. Turcotte,

Re: Proposed OSC Policy 15-601 - Whistleblower Program

The Law Society of Upper Canada appreciates the opportunity to comment on the proposed OSC Policy (“the Policy”) that would institute a Whistleblower Program, and in particular consultation question 1, which is “do you agree with in-house counsel being eligible for a whistleblower award? If not, why?”

The Law Society supports the purpose of the OSC’s Policy and its efforts to address serious securities misconduct in the marketplace. We also note that the Policy reflects an acknowledgement that solicitor and client privileged information and information obtained in course of the provision of legal advice requires specific treatment in the operation of the Policy. However, the Law Society does not support in-house counsel being eligible for a whistleblower award. Our view is that this would create uncertainty for lawyers in fulfilling obligations to maintain confidentiality of client information and protect privileged information, and may offend the lawyer’s duty of commitment to the client’s cause.

Our comments focus on three aspects that relate to the operation of the Policy and lawyer’s duties.

First, lawyer’s ethical rules include requirements to protect the confidentiality of client information, which is broadly defined. This concept is distinguished from solicitor and client privilege, and our *Rules of Professional Conduct* explain that the ethical rule is wider and applies without regard to the nature or source of the

information or the fact that others may share the knowledge. We find it hard to conceive when the confidentiality rules would permit disclosure of confidential client information in a whistleblowing context. The same is equally true with respect to information protected by solicitor-client privilege. It may be very difficult for a lawyer to disclose information under the Policy without offending the professional standard that obliges a lawyer to maintain the confidentiality of client information and without breaching solicitor-client privilege where applicable.

We note that the description of the Policy states

... the Proposed Policy adds that external counsel and in-house counsel may be considered eligible for a whistleblower award where disclosure of the information would otherwise be permitted by a lawyer under applicable provincial or territorial barreau or law society rules.

The Law Society believes that this concept would create a real risk of confusion and possible error, as the Policy would suggest that there could be circumstances where lawyers can ‘blow the whistle’ on their clients and receive a reward, when permitted by Law Society Rules. But as noted above, the Law Society Rules and solicitor-client privilege do not permit lawyers to ‘blow the whistle’ on their clients. In the context of an organizational client, the Rules provide that when the lawyer acting for the organization knows that the organization has acted, is acting or intends to act dishonestly, fraudulently, criminally or illegally, which may include serious securities misconduct, then the appropriate step would be reporting up the chain of command within the organization, and ultimately withdrawing from representation if necessary. However, the Rules do not ordinarily permit or require disclosure of confidential information to third parties, including the Ontario Securities Commission, in such circumstances.¹

The rule in Ontario is based on the Federation Model Code of Professional Conduct, and similar provisions are found in other Canadian jurisdictions. Information protected by solicitor-client privilege would not be properly disclosed in such circumstances unless one of the very limited exceptions to solicitor-client privilege applies which is difficult to imagine in this context. Second, including in-house counsel as individuals eligible for a whistleblower award as described may create a serious conflict between the lawyer’s self-interest and the lawyer’s duty of commitment to the client’s cause. The Supreme Court of Canada recently stated that lawyers’ duty of commitment to their clients’ causes is a principle of fundamental justice, and is essential to maintaining confidence in the integrity of the administration of justice.²

Third, the Law Society is of the view that if lawyers are to be included in the operation of the Policy, whistleblowing in breach of solicitor-client, litigation and other legal privileges should be expressly ineligible. We note that the definition of

¹ *Rules of Professional Conduct*, Rule 3.2-8 and Rules 3.3-1 to 3.3-4.

² *Attorney General of Canada v. Federation of Law Societies of Canada*, 2015 SCC 7, paragraph 91.

"original information" which would be the subject of the whistleblowing report only speaks to the exclusion of information that is obtained through a communication that is solicitor-client privileged.

We would be happy to meet with you to discuss these issues further and thank you for your consideration.

Yours truly,



Janet E. Minor
Treasurer



TAB 5

**Tribunal Committee
Report to Convocation
January 28, 2016**

Tribunal Model Three-Year Review Final Report

Committee Members

Barbara Murchie (Chair)
Peter Wardle (Vice-Chair)
Raj Anand
Larry Banack
Marion Boyd
Jack Braithwaite
Christopher Bredt
Robert Burd
Lee Ferrier
Rocco Galati
Isfahan Merali
Baljit Sikand

Working Group Members

Raj Anand (Chair)
Marion Boyd
Cathy Corsetti
Barbara Murchie

Purpose of Report: Information

**Prepared by the Policy Secretariat
(Sophia Spurdakos 416-947-5209)**

EXECUTIVE SUMMARY

On June 28, 2012 Convocation approved the Tribunal Committee's Hearings Process Report ("June 2012 Report") that established a new Tribunal model with an independent Chair. The model was designed to provide a framework whose component parts contribute to the fulfilment of Convocation's 2011-2015 strategic priorities for hearing process reform. The model is focused on leadership, transparency, quality adjudication and availability, objective criteria for appointment and evaluation, and cost effectiveness.

Pursuant to the June 2012 Report the Tribunal Committee (the "Committee") is required to provide a report to Convocation in early 2016 on the model's implementation. By including a review component in the 2012 Report, the Committee provided for monitoring of the model's implementation in accordance with stated goals. This was important as the model, although building on Tribunal improvements, also represented a new direction. The June 2012 Report represented a conscious Convocation policy shift. Its implementation would begin with the appointment of the Tribunal Chair and continue incrementally as building blocks for the reform were established and added to on an ongoing basis.

The Committee, with the assistance of a working group of Raj Anand (Chair), Marion Boyd, Cathy Corsetti and Barbara Murchie, has now completed the three-year review and is providing this information Report on the ongoing implementation of the Tribunal model to date. Since the review of the model was directed to take place while implementation is ongoing, and the model has only been in operation for approximately 18 months, the review is best characterized as a progress report, considering whether and how the model's implementation is reflecting the goals Convocation approved.

In 2012 Convocation took significant steps to "...enhance the Law Society's commitment to a hearing process that is transparent, fair and effective for both the public and affected licensees...central to the Law Society's proper discharge of its adjudicative responsibility." The implementation reflects these goals and should continue along the path toward them. The Committee is satisfied, from the feedback it has received and from its own analysis, that the direction the Law Society approved in June 2012 is in the public interest and meaningfully promotes a fair process for licensees and licensee applicants involved with it. The model is being thoughtfully and carefully implemented to reflect the goals Convocation established and is being received positively. The activities undertaken to date support the key components of the model for (i) a Tribunal that is separate from the investigations and disciplinary functions of the Law Society, (ii) adjudicative excellence, and (iii) enhanced Tribunal processes. The model's development has so far followed a transparent, methodical and considered path of implementation.

The Committee and the Tribunal Chair have identified ongoing steps and processes to further reflect Convocation's direction, as well as information that may further enhance the measurement of the Tribunal's success, which the Committee discusses in this Report. The Committee will continue to engage in ongoing monitoring of the Tribunal, in discussion with the Tribunal Chair and, where appropriate, with Convocation's involvement, in keeping with its policy role.

THE REPORT

I. INTRODUCTION AND BACKGROUND

(a) Overview to the Hearings Process Report

1. The Law Society's primary responsibility as regulator of Ontario's lawyers and paralegals is public protection. Central to the responsibility to protect the public is a hearing process that is fair, transparent and efficient.
2. Beginning in 1999, the Law Society began implementing a coherent *operational* structure for adjudicative processes to ensure a transparent and modernized hearings process and the separation of the tribunal administration from that of investigations and prosecution. It also made a number of individual enhancements to the *adjudicative* functions of its then Hearing and Appeal Panels directed at streamlining and enhancing quality, fairness and consistency. It introduced improved adjudicative practices.
3. By 2010, however, what had become increasingly clear was that to carry out its commitment to an adjudicative system that is as effective and transparent as possible, and to continue the ongoing process of reform that the Law Society had followed over the previous decade, it was essential to develop a more systematic and effective structure with greater quality assurance measures for its adjudication functions.
4. In establishing its priorities for the 2011-2015 bench term, Convocation recognized the importance of an effective Law Society hearings process to its overall mandate and committed itself to addressing this priority.
5. On June 28, 2012 Convocation approved the Tribunal Committee's Hearings Process Report ("June 2012 Report") that established a new Tribunal model with an independent Chair. The model was designed to provide a framework whose component parts contribute to the fulfilment of Convocation's priority. Focused on leadership, transparency, quality adjudication and availability, objective criteria for appointment and evaluation and cost effectiveness, the model was intended to enhance the Law Society's commitment to a hearings process that was transparent, fair and effective for both the public and affected licensees. This was central to the Law Society's proper discharge of its adjudicative responsibility. The June 2012 Report is set out at [TAB 5.1: June 2012 Report](#).
6. The enhanced adjudicative model consisted of,
 - a. effective and dedicated leadership of the Tribunal through the appointment of a non-bencher full-time lawyer Chair and two part-time bencher Vice-Chairs of the Hearing and Appeal Divisions;
 - b. an adjudicator application and appointment process that continues to reflect the regulatory role of the Law Society's benchers in adjudication as well as a

commitment to broaden its base of adjudicators to include non-bencher lawyers and paralegals and lay/public appointees who meet the many needs of the Tribunal;

- c. the development and implementation of consistent criteria for appointment to the Tribunal and an evaluation process for re-appointment;
 - d. the continuation of the Tribunal Committee (the “Committee”) as the policy conduit by which the Committee Chair, Vice-Chairs and Committee members facilitate and provide policy proposals to Convocation; and
 - e. processes to ensure timely adjudication and decision-making.
7. The *Law Society Act* was amended effective March 12, 2014 to create the Law Society Tribunal. Under s. 49.20.2 of the *Act*, the position of Chair must be held by a non-bencher lawyer. Under ss. 49.22.1 and 49.30.1, the Vice-Chairs of the Hearing and Appeal Divisions must be elected benchers.

(b) Requirement for a Three-Year Review

8. Pursuant to the June 2012 Report, the Tribunal Committee was required to provide a report on the model’s implementation to Convocation by early 2016. Most reports that propose new Law Society initiatives include such review provisions. By including a review component in the June 2012 Report, the Tribunal Committee provided for monitoring of the model’s implementation in accordance with stated goals. This was important as the model, although building on Tribunal improvements, also represented a new direction.
9. That review was to address,
- a. whether and how the new model is addressing the goals and criteria set out in paragraphs 13 and 14 of the June 2012 Report;
 - b. its impact on the Tribunals processes; and
 - c. its cost effectiveness.
10. Convocation approved a review process in January 2015, set out at **TAB 5.2: Approved Review Process**, appointing a working group to assist the Tribunal Committee.
11. At the same time, the June 2012 Report clearly appreciated that implementation will take time and that the impact of the new model would, at least in a number of the more significant components, be measureable only in the longer term. Since the review of the model was directed to take place while implementation was likely to be ongoing, the review could best be characterized as a progress report focusing on whether and how the model is addressing its goals and providing guidance on next steps and

improvements to the model, if any. The review is confined to an evaluation of the Tribunal model, rather than the discipline or any other aspect of the regulatory process.

12. In essence, the goals set out in paragraph 13 of the 2012 Report, can be summarized as follows:
- a. To continue with some of the main philosophical and practical enhancements undertaken prior to the June 2012 Report, building on them and advancing Tribunal reform with a focus on transparency, fairness, cost effectiveness, separation from the discipline stream, and continuation of the role of benchers in the adjudication process as part of an integrated regulatory model.
 - b. To deliver high quality administrative law decisions, measured by how they withstand the close scrutiny that Law Society decisions receive from courts, the public and the profession.
 - c. To foster high quality adjudication, including a commitment to ongoing adjudicator education and training.
 - d. To develop a system that fosters and facilitates the effective use of technology in the hearing process.

13. With the assistance of the working group, the Committee has considered and is reporting upon the progress of the model's implementation and next steps in that process, with observations for ways to further that implementation.

(c) Supporting Information

14. To ground this Report, the Committee has considered the following information:
- a. June 2012 Report.
 - b. Tribunal Chair's Report.
 - c. Law Society Tribunal 2014 Annual Report.
 - d. Tribunal website.
15. The Committee has also sought input from participants in the process and others and has considered the responses it received.

(i) Tribunal Chair's Report

16. The Approved Review Process included the following provision:

To support the review process, the Tribunal Chair will prepare a background report for the review process providing factual information and data addressing the goals and criteria set out in the 2012 Report and providing such other relevant information as he considers useful to inform the review process. This will enable the working group and Committee to flesh out the framework and process for the review and the ultimate report to Convocation.

17. The Tribunal Chair provided a detailed and thorough Report in September 2015, set out at **TAB 5.3: Tribunal Chair's Report**.

18. The Tribunal Chair's Report notes the following:

8. The overarching approach to the model's implementation has been a commitment to carrying out the Tribunal's statutory mandate in accordance with the core values of fairness, quality, transparency and timeliness. This approach flows from both the June 2012 Report and from the Tribunal's early development of a mission statement and four core values.

9. This Report provides information on the activities that have been undertaken, to date, as part of the model's implementation. It will also address how these activities link directly to the goals and criteria set out in paragraphs 13 and 14 of the June 2012 Report.

10. The activities have been grouped into three categories for discussion, with a note on which core values they address:

- a. Those directed at reflecting the Tribunal's separation from the investigative and disciplinary side of the Law Society's regulatory functions and its independence. These activities address both fairness and transparency.
- b. Those directed at adjudicative excellence. These activities address quality and timeliness.
- c. Those directed at enhanced Tribunal processes, including those directed at user accessibility. These activities address all four core values.

19. The Tribunal Chair's Report structure has enabled the working group and the Committee to track the implementation activities described against the review criteria and consider whether they reflect appropriate progress of the model as intended in the June 2012 Report. As well, it has made it possible to consider next steps and further enhancements to the model.

(ii) Law Society Tribunal 2014 Annual Report

20. In addition to requiring the three-year review of the model, the June 2012 Report required the Tribunal Chair to provide annual reports to Convocation. As with the Law Society's Annual Report, the Law Society Tribunal Annual Report ("Annual Report") provides a useful snapshot of operations and of the connection between policy priorities and the activities that support them. The first Annual Report, set out at **TAB 5.4: Annual Report** covers the year 2014 and focuses on many of the components that underlie the June 2012 Report recommendations, including,

- a. Tribunal evolution, advancement and outreach;
- b. Tribunal operations, focusing on fairness, quality, transparency and timeliness; and
- c. some statistical information.

(iii) Tribunal Website

21. As part of the Tribunal's evolution, it has developed its own website, which is a developing resource for multiple users (the public, media, the administrative law community, complainants, licensees, etc.). It is structured to enhance transparency by providing listings of and links to scheduled hearings, orders and reasons and available monthly dates for proceeding management conferences ("PMC") and pre-hearing conferences ("PHC"). It also provides information on processes and resources.

22. Consulting the website in conjunction with the Tribunal Chair's Report and the Annual Report has provided an extensive factual base upon which the working group and Committee have grounded part of the analysis for the review.

II. INPUT

23. The Approved Review Process directed the working group and the Committee to seek focused input in keeping with the purpose, nature and scope of the review as a progress report.¹ The possible sources for input included the Chair's Practice Roundtable, Tribunal adjudicators, representatives who appear regularly before the Tribunal on behalf of lawyers and paralegals, and relevant Law Society divisions and committees.

(a) Sources of Input and Summaries

24. The working group members met with individuals and groups and considered their feedback. The following sources for input were contacted:

¹ Approved Review Process, paragraph 20.

- a. Chair's Practice Roundtable.²
 - b. Treasurer's Liaison Group.³
 - c. Audit and Finance Committee, Equity and Aboriginal Issues Committee, Paralegal Standing Committee and Professional Regulation Committee.⁴
 - d. Hearing and Appeal Division Adjudicators.
 - e. Legal representatives of paralegal and lawyer licensees who have acted or appeared on two or more matters before the Tribunal between March 2014 and October 2015 either as counsel of record or duty counsel. Input from licensees subject to proceedings between March 2014 and October 2015 was sought through their legal representatives.
25. Unlike a number of issues on which the Law Society has consulted, comment on the new model has not been widespread. Comments on Law Society initiatives typically reflect suggestions for change/improvement or disagreement with a direction the Law Society has adopted. The absence of significant comment during the three-year review may well reflect that the model is, overall, being implemented in accordance with the goals and purpose Convocation approved in June 2012 and has not drawn concern from those asked. It is also true, however, that there is currently no system in place for easily collecting ongoing input from licensees and the public on the model. The Committee comments further on this point, below.
26. There have been some very positive comments about improvements to the hearing and pre-hearing process since the model's introduction, as well as constructive suggestions, particularly from the Chair's Practice Roundtable. Overall, the feedback has reflected the Committee's own perception that implementation is proceeding thoughtfully, carefully and well and in accordance with the goals Convocation set in 2012. The comments received by the working group and the Committee were helpful and suggested possible

²**The Roundtable is composed of the following members: Tribunal Representatives:** David A. Wright, Chair and Grace Knakowski, Registrar and Senior Counsel; **Individuals who regularly represent licensees and/or licensee applicants:** Nadia Liva, Barrister & Solicitor, Ian R. Smith, Fenton, Smith Barristers, William Trudell, William Trudell Professional Corporation, Matthew Wilton, Matthew Wilton and Associates; **Individuals who regularly represent The Law Society of Upper Canada:** Leslie Maunder, Discipline Counsel, Law Society, Deborah McPhadden, Acting Senior Counsel & Manager, Discipline, Law Society, Danielle Smith, Discipline Counsel, Law Society, Glenn M. Stuart, StuartLaw; **Individuals who regularly appear as duty counsel:** Blair Bowen, Fogler Rubinoff LLP, Marcy Segal, Toronto criminal lawyer. All were present at the meeting on September 22, 2015 except Matthew Wilton.

³ The names of the groups whose representatives attended the meeting on November 2, 2015 included the Criminal Lawyers Association, Family Lawyers Association, Canadian Corporate Counsel Association, Toronto Lawyers Association, Ontario Crown Attorneys' Association, Association of the Law Officers of the Crown, The Advocates' Society, South Asian Bar Association, Federation of Asian Canadian Lawyers, Ontario Paralegal Association, Ontario Bar Association, Ontario Trial Lawyers Association, Association des juristes d'expression française de l'Ontario, and County and District Law Presidents' Association [now Federation of Ontario Law Associations].

⁴ The input from the committees is public.

additions and improvements to the model's implementation that the Committee may wish to develop with the Tribunal Chair.

27. Summaries of the comments received from each group consulted is set out at **TAB 5.5: Summaries of Comments**. The working group and Committee have considered all comments, but have highlighted particular points in the sections that follow, some of which have assisted the Committee in considering possible enhancements to implementation.

(i) Tribunal Chair's Practice Roundtable

28. The participants on the Roundtable are among those who play the most active role in the Tribunal. They engage frequently with the new model, as they did with the previous hearings process over a number of years, as legal representatives, duty counsel and discipline counsel. Their insight into the implementation has been particularly helpful to the working group and Committee, providing particularly focused feedback and constructive suggestions. These were based on both their own experiences and their observations and interaction with the licensees and complainants subject to the model. Their positive response to the changes that have occurred and their enthusiastic engagement with and continued commitment to the implementation process are encouraging.
29. Some of the key points the representatives made about the new model were as follows:
- a. The model is a significant improvement on the previous system.
 - b. The location of the new premises outside Osgoode is a significant improvement, which affected licensees appreciate. Equal access to the filing "window" is an important improvement.
 - c. Appointed adjudicators have added to the quality of the Tribunal process.
 - d. Continue enhanced use of PHCs to case manage matters.
 - e. Continue adjudicator education, particularly on evidentiary areas.
30. They also made valuable suggestions on additional ways to enhance the model and Tribunal processes:
- a. Consider increasing educational opportunities to educate the profession on what the Tribunal does.
 - b. Provide more information on the website about the Tribunal, its processes and about adjudicators' backgrounds.

- c. Continue to engage on issues around increased duty counsel.
- d. Develop an exit survey of complainants and licensees.
- e. Ensure that lawyer and paralegal adjudicators actively engage and consult with the lay adjudicator on the panel.

(ii) Treasurer's Liaison Group

31. Working group representatives attended a meeting of the Treasurer's Liaison Group to provide an overview to the three-year review. Approximately 20 legal/paralegal organizations and associations and government representatives were at the meeting. Prior to the meeting the Treasurer's Liaison Group was provided with written material relevant to the review. There were no comments about the model at the meeting. Representatives were invited to provide written comments by December 11, 2015. No comments were received.

(iii) Committee Input

32. Working group representatives attended the following committee meetings for input on the model from the committees' perspective: Audit and Finance Committee, Equity and Aboriginal Issues Committee, Paralegal Standing Committee and Professional Regulation Committee. Comments received also reflected some of the members' individual perspectives as adjudicators. Some of the comments were beyond the mandate of the working group and Tribunal Committee to address as they are not part of the implementation of the model. These are noted in the summaries at TAB 5.5, but may not otherwise be reflected in this Report.

33. Some of the key points the committee members made are as follows:

- a. A number of benchers supported the Tribunal's physical relocation outside of Osgoode Hall, the use of technology, the introduction of peer review of draft reasons and adjudicator training.
- b. A few comments related to composition of panels as between bencher and appointed adjudicators. Interconnected with these were a few comments about the Tribunal's size (92 members), whether adjudicators are gaining enough experience, whether benchers are being scheduled enough, whether paralegals are being scheduled to sit on lawyer licensee hearings and appeals, and whether there is an ultimate goal to eliminate benchers as adjudicators.

While some committee members asked whether too few benchers were being scheduled, there has also been input from appointed adjudicators that they are not being scheduled enough.

Interwoven with the comments about scheduling were a few questions about whether it is better to use more bencher adjudicators because they cost less (unpaid for 26 days). These comments are addressed in a later section.

- c. Some discussion occurred on the issue of assessing the cost effectiveness of the model and whether it was possible to do this at this stage of the implementation with available data. This is discussed further below, but this useful discussion highlighted the issue of whether more systematic measures can be introduced to better enable the gathering of such information.
- d. There were a few comments on issues related to the Tribunal Chair's role under the model – sitting on hearings, interplay of independence of the Chair with Convocation's responsibility for the Tribunal and appointing panels.
- e. There were a few comments on whether appointed lay adjudicators have a different perspective than lay benchers, because in some cases they are professional adjudicators and may not have the same kind of public perspective as lay benchers before they began serving as adjudicators.

(iv) Hearing and Appeal Division Adjudicators

- 34. Input was requested from all adjudicators. In addition to comments that were received within the committee context, above, two adjudicators (one bencher, one lay appointee) responded. Among their comments were a few that are beyond the mandate of the working group and Committee to address as they are not part of the implementation of the model. These are noted in the summaries at [TAB 5.5](#), but are not otherwise reflected in this Report.
- 35. The comments relevant to the three-year review mandate included,
 - a. the observation that appointed adjudicators may be focusing more on written reasons that are appeal proof than on considering “what is right,” and thus their previous experience on other Boards is not helpful;
 - b. the model's efficiency would be assisted by the presence of duty counsel for self-represented licensees;
 - c. saving money should not be among the reasons for which the Tribunal Chair sits on hearings; and
 - d. it would be helpful if brief biographical information were available about adjudicators.

(v) Legal Representatives

36. Input was requested from the 34 legal representatives of paralegal and lawyer licensees who have acted or appeared on two or more matters before the Tribunal, either as counsel of record or as duty counsel, between March 2014 and October 2015.
37. The working group and Committee were also interested in the views of licensees who have been subject to a Tribunal proceeding in the same period. To protect these licensees' privacy and ensure that they felt comfortable providing input, they were not directly contacted. Instead, legal representatives were asked to add any impressions or views they acquired from their clients.
38. One comment was received from a legal representative who acts primarily as duty counsel. He noted the following:

From my perspective, the new model represents a significant improvement from the old in respect of presenting a tribunal that is independent and separate from the Law Society. Many unrepresented licensees have commented that they perceived the relationship between the Tribunal and the discipline stream of the Law Society to be too close. Such perception negatively affects the ability of the Tribunal to conduct its work in a fair and unbiased manner. The fact that the Tribunal now has its own website, an independent chair, and a new location for hearings importantly gives the appearance of independence and impartiality.

In addition, the ability to conduct a proceeding management conference ("PMC") and a hearing by teleconference has effectively utilized available technology. It also recognizes the financial and time constraints on some licensees who would otherwise be unable to travel to Toronto to participate in such procedures.

As for the model's use of processes that are transparent, frankly I haven't notice a material difference since prior to the implementation of the new Tribunal model.

39. Overall, the input the Committee received did not propose changes to the model or to the approach being taken to implementation. Comments were more particularized and represented a range of observations to which the Committee pays attention in the analysis that follows. The input reflects approval of specific components of the model as well as questions, more than judgments, about other areas. The Committee is grateful for the guidance the input has provided.

II. ANALYSIS

40. The Law Society's introduction of a new policy approach to an area of its responsibility was an ambitious and forward-looking undertaking. In the case of the Tribunal model, the approach was both to build upon the strengths of the previous hearing process and to set new goals and directions. These goals and directions related to the appointment of an independent Tribunal Chair and the more systematic approach to adjudicator appointment, re-appointment, panel composition, adjudication and reason writing.

41. In analyzing the progress of the model's implementation the Committee has benefited from rereading, in particular, the Introduction and Background to the June 2012 Report to reflect upon the reasons Convocation introduced the changes it did:

...to carry out its commitment to an adjudicative system that is as effective and transparent as possible and to continue the ongoing process of reform that the Law Society has followed over the last decade, it is essential for the Law Society to develop a more systematic and effective structure as well as greater quality assurance measures for its adjudicative functions.⁵

42. At the same time, the June 2012 Report recognized the unique context of the Law Society's hearing process that would need to inform the new model:

The Law Society's adjudicative process has much in common with administrative tribunals that operate across Canada, including the evolving requirements of administrative law as developed in appellate jurisprudence. As a regulatory body, however, it has a distinctive mandate and responsibilities. Accordingly, in considering how best to advance the goals of an effective regulatory administrative body, attention to the principles that govern both administrative justice and professional regulation and to the important role of benchers in the process is essential.⁶

43. The Tribunal Chair's Report notes:

The overarching approach to the model's implementation has been a commitment to carrying out the Tribunal's statutory mandate in accordance with the core values of fairness, quality, transparency and timeliness.⁷

44. In reporting to Convocation on the three-year review, the Committee has kept these underlying principles in mind. For ease of Convocation's reference and to enable cross-

⁵ June 2012 Report. Paragraph 10.

⁶ Ibid. Paragraph 12.

⁷ Tribunal Chair's Report, paragraph 8.

referencing between the Tribunal Chair's description of the activities undertaken in the 18 months of implementation and this Report, the Committee is analyzing the implementation under the headings used in the Tribunal Chair's Report:

- a. Activities Reflecting Law Society Tribunal Separation from Investigative and Disciplinary Functions
 - b. Adjudicative Excellence
 - c. Enhanced Tribunal Processes
 - d. Cost-Effectiveness/Impact on Tribunal Processes
45. Before doing so, the Committee notes one important contextual limitation to its analysis. It has been difficult to assess the nature of the model's implementation from a quantitative or statistical perspective. This is not surprising, given that the implementation has only been underway in earnest for approximately a year and a half. It is unreliable to try to draw conclusions about processes and procedures over such a limited time period because patterns cannot readily be discerned. So, for example, an attempt to link quality of adjudication to the number of appeals issued or allowed is not useful when the sample is so small and the reasons for the number of appeals may be related to much more than the quality of hearing panel decisions. Twenty-three appeal files were opened in 2014 and 16 in 2015.
46. In addition, although the Tribunal has been providing quarterly statistics since 2006, there was no analysis done as part of the June 2012 Report, or prior to the new model being introduced, to determine what specific information should be collected to assess issues such as cost effectiveness, quality of adjudication and other matters in the new model.
47. In the Committee's opinion the absence of quantitative data is not a fault of the implementation process, but rather the reality of the challenges of beginning a new approach. Much has been done during the past year and a half to put in place the model's components. Going forward, the Committee and the Tribunal Chair will consider the type of information that will best lend itself to measurement in relevant areas to provide some insight on issues of effectiveness. At the same time, however, the Committee is of the view that quantitative measures can only go so far in evaluating the model and should be considered in conjunction with qualitative measures and the model's goals as reflected in the June 2012 Report. There will be more discussion of this in the sections below.

ACTIVITIES REFLECTING LAW SOCIETY TRIBUNAL SEPARATION FROM INVESTIGATIVE AND DISCIPLINARY FUNCTIONS

48. Separating the hearing process from the Law Society's discipline stream had been part of Convocation's activities for 16 years. This process began with the seemingly simple step of hearing process staff no longer sharing office space with investigations and discipline staff within Osgoode Hall and culminated in September 2015 with the establishment of Tribunal hearing rooms and offices in premises separate from the Law Society.
49. While that process was an incremental one until June 2012, one of the key objectives of the enhanced adjudicative model, was "to reflect the separation of the Tribunal from the discipline stream of the Law Society."
50. The June 2012 Report made it clear that this is much more than a philosophical underpinning. It must be evidenced by practical steps that demonstrate both internally and externally that while the Tribunal and its functions are an integral part of the Law Society's mandate to regulate the professions in the public interest,
- a. its leadership reflects adjudicative independence in keeping with legislation and modern administrative justice principles; and
 - b. in the interest of fairness and transparency, the operations of the Tribunal are dedicated and separate from other regulatory functions and are perceived by complainants and licensees this way.
51. The Committee has observed the activities that reflect the June 2012 Report's focus on adjudicative independence and are part of the Tribunal Chair's job description. These include the assignment of Hearing Division and Appeal Division panels, the establishment and monitoring of adjudicative practices, adjudicator education, participation as an adjudicator, particularly in matters involving complex or novel issues of law and procedure, and evaluation of adjudicators for recommendations on appointment and re-appointment.
52. Such adjudicative independence, including the responsibilities that accompany it, is a hallmark of the model and reflects the Law Society's recognition and adoption of a key feature of mature public interest tribunals. As the June 2012 Report emphasized,
- ...the independence and effectiveness of the Tribunal is best fostered, enhanced and implemented through the appointment of a full-time Chair...The Committee has considered the role that Chairs play in many of Ontario's important administrative tribunals such as the Ontario Labour Relations Board, the Workplace Safety and Insurance Appeals Tribunal, the Criminal Injuries Compensation Board and many others and agrees that the time has come to pursue a similar approach for the Law Society's

Tribunal... Through the establishment of the position of Chair, Convocation will recognize that its Tribunal has evolved to the next level of its development.⁸

(i) Assignment of Panels

53. A Chair's assignment of panels has been long been recognized as one of the key features of an independent tribunal. The *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 provides, for example,

Panels, certain matters

4.2 (1) A procedural or interlocutory matter in a proceeding may be heard and determined by a panel consisting of one or more members of the tribunal, as assigned by the chair of the tribunal. 1994, c. 27, s. 56 (8).

54. This provision applies generally to administrative tribunals throughout Ontario. Moreover, the *Law Society Act* specifically reflects this responsibility on the part of the Tribunal Chair:

Assignment of members

(2) The chair or, in the absence of the chair, the vice-chair shall assign members of the Hearing Division to hearings. 2006, c. 21, Sched. C, s. 50; 2013, c. 17, s. 26.

Assignment of members

(2) The chair or, in the absence of the chair, the vice-chair shall assign members of the Appeal Division to hearings. 2006, c. 21, Sched. C, s. 55; 2013, c. 17, s. 26.

55. Longstanding jurisprudence also defines assignment of judges or adjudicators by the Chief Justice or Chair as one of the key indicia of an independent court or Tribunal.⁹

56. The Committee is addressing this component of the model in some detail, since it has heard a few comments suggesting discomfort with the adjudicative independence the model has created, particularly on the issue of the panel assignments.

57. The Committee has seen no objective evidence to justify this discomfort or to suggest that this is an inappropriate role for an independent Chair. Indeed, this role is a requirement and key component of an independent Tribunal, reflected in the model.

58. The Committee is convinced that this component of the model is the valuable step forward that the June 2012 Report believed it would be. Indeed, the fact of the Law Society creating the position of an independent Chair has been praised both internally

⁸ June 2012 Report, paragraphs 19-21.

⁹ *Valente v. The Queen* [1985] 2 SCR 673 at para. 49.

and externally as signalling a stronger commitment to fairness and the public interest, as discussed above. The Committee received no feedback from users of the Tribunal that the assignment process for panels has had a deleterious effect on adjudication or quality. Indeed it has received positive feedback on the quality of adjudication.

59. To the extent that adjudicators have raised concern about panel composition it has reflected three types of comments:

- a. Too many non-bencher adjudicators have been appointed to the Tribunal.
- b. The Chair is assigning,
 - i. an insufficient number of benchers to panels; and
 - ii. an insufficient number of appointed adjudicators to panels.
- c. There is a plan to replace benchers altogether with appointed adjudicators.

60. The Committee has seen no evidence to support these comments. This is a large Tribunal. To provide some context, the following charts break down the Tribunal composition by category:

Composition	Number	Percentage
Full-Time Chair - Lawyer	1	1%
Part-Time - All	91	99%
TOTAL	92	100%

Breakdown of Part-Time	Number	Percentage
Elected Benchers		
Lawyers	34	37%
Paralegals	4	4%
Lieut.-Gov.-in-Council Lay Benchers appointments	7	8%
Ex Officio/Former Treasurers	14	15%
Convocation Appointees		
Lawyers	18	20%
Paralegals	4	4%
Public	10	11%
TOTAL	91	99%

61. The following factors are all relevant to an understanding of the size and composition of the Tribunal and to the assignment of panels. In the Committee's view these factors completely belie the suggestion that there is any plan or activity to replace benchers with appointed adjudicators, that there is any bias in favour of appointing either more benchers or more non-benchers to hearings, or that there are "too many" appointed adjudicators.

62. There are many factors in play in scheduling hearing panels: the Tribunal's large size, the requirements of O. Reg. 167/07, policy considerations set out in the June 2012

Report, equity and diversity considerations and the individual scheduling wishes of adjudicators. It is essential to a smoothly running, effective tribunal that the Tribunal Chair have responsibility for this task and have the independence to do so in the best interests of the Tribunal. In its decision in June 2012, Convocation understood this and the Committee is more than satisfied that this component of the model is being implemented professionally and effectively:

- a. The June 2012 Report stated that populating hearing and appeal panels “will form an integral part of the Chair’s role.” Specifically it noted:

In furtherance of his or her responsibility to ensure an effective Tribunal that focuses on quality and availability, the Chair should balance a number of factors including,

- a. appointing panels best able to accomplish those goals;
- b. reflecting a commitment to ensuring that benchers play a hands-on role in adjudication; and
- c. treating the pool of available adjudicators as a collective source for scheduling.¹⁰

and added:

The Committee recommends that the general composition structure set out in Regulation 167/07 remain the same. It does, however, believe that in the interests of effective scheduling, the Chair’s flexibility must be meaningful for the assignment of both Hearing and Appeal panels. As such, the Chair’s ability to alter the composition as set out in the Regulation should be broadened to include factors in addition to undue delay to reflect,

- a. practice and expertise requirements;
- b. experience requirements;
- c. regional and other diversity perspectives;
- d. scheduling effectiveness for reasons other than “undue delay;”
- e. conflicts; and
- f. the public interest.¹¹

- b. Convocation has consciously chosen to establish a part-time Tribunal. Although benchers are free to restrict themselves to policy work, virtually all apply to

¹⁰ June 2012 Report, paragraph 71.

¹¹ Actual O. Reg. 167/07 set out the following areas for the Chair’s flexibility in scheduling:

- (a) compliance with the subsection would unduly delay a hearing or otherwise hinder the timely and efficient scheduling of the hearing;
- (b) assignment of a member in accordance with the subsection would likely give rise to an actual or perceived conflict of interest on the part of the member; or
- (c) the subject matter or nature of the hearing is such that the assignment of one or more members with specific expertise or experience is advisable. O. Reg. 132/13, s. 1 (2).

become members of the Hearing Division. Unless Convocation wishes to limit benchers applications to the Tribunal, which was not contemplated in the June 2012 Report, the number of benchers will by and large reflect the size of the Board.

- c. Benchers' Convocation policy development responsibilities and their professional responsibilities rise and fall, affecting their availability to sit on hearings. Some who are on the Tribunal may not, for a variety of reasons, sign up for any hearings for periods of time. Conflicts of interest, required subject-matter expertise and French language skills also affect availability and panel composition. It is therefore essential to have a substantial pool from which to draw.
- d. At the same time, with 92 members, on average approximately 150 files per year and varying degrees of adjudicator availability at any time, participation by any single adjudicator may well be limited.
- e. The chart above illustrates that 56% of the Tribunal consists of lawyer and paralegal benchers and 24% consists of paralegal and lawyer appointees. Overall, 64% of the Tribunal members are benchers, making it clear that benchers are and continue to be an integral part of the Tribunal.
- f. The chart below provides the breakdown for adjudicator hours by type of adjudicator in 2014 and 2015. It is expected that bencher adjudicator percentages will increase in 2016 as 2015 was a bencher election year resulting in a significant turnover. Newly-elected benchers were not eligible for assignment until after adjudicator education in October 2015. Non-returning benchers were not available after May 2015. A number of lay benchers were also temporarily unavailable.

Adjudicator Hours 2014 and 2015 (Hearing/PMC/PHC time; Table does not include hours for writing or case management outside the hearing room)

Type of Adjudicator	2014	2015
Total hours for lawyer adjudicators other than the Chair	2904 - 69 % benchers, 31% appointees	2167 - 60% benchers, 40% appointees
Total hours for paralegal adjudicators:	263 - 32% benchers, 68 % appointees	169 - 48% benchers, 52% appointees
Total hours for lay adjudicators	1420 - 39% benchers, 61% appointees	1032 - 21% benchers, 79% appointees
Total hours for the Chair	378 - 8% of total hours done by Tribunal adjudicators	306 - 8% of total hours done by Tribunal adjudicators

- g. In the past, some lay benchers have had varying degrees of availability and interest in sitting on hearings and appeals. Given the important requirement to have a lay appointee on every hearing it is essential to have a non-bencher pool of public appointees.

- h. The June 2012 Report made it clear that the adjudicative pool should be expanded in a meaningful way to include paralegal and lawyer adjudicator appointees and that they should “be scheduled regularly,”¹²
- (a) to address the need for a broader pool that can sit on lengthy hearings; and
 - (b) to broaden the pool of those with practice area expertise, regional and other diversity, ability to conduct hearings in French, interest and experience as litigators.
- i. Eight lawyer, one paralegal and five public appointments were made after 2007 and prior to the June 2012 Report. Six more lawyer, three paralegal and four public appointees were approved as part of the June 2012 Report and prior to the Tribunal Chair’s appointment. While Convocation made all the approved lawyer and paralegal appointments it made only one public appointment. Six lawyer, two paralegal and five public appointments have been made since implementation of the model began after September 2013 and three of these are former benchers. It is important to note that the Tribunal Chair does not appoint new adjudicators, either bencher or appointees. He makes recommendations and Convocation decides whether to approve them.
- j. Prior to the 2013 appointments, temporary panel members, who were not required under the *Law Society Act* to be approved by Convocation, were often assigned to panels to meet particular and sometimes time-limited needs. The Tribunal no longer uses temporary adjudicators. The numbers below do not include temporary panelists.

Non-Bencher Appointments	Lawyer	Paralegal	Public
Tribunal appointments prior to June 2012 Report	8	1	5 (of these, 2 are former benchers)
Tribunal appointments approved by June 2012 Report appointed in September 2013 on recommendation of a committee of benchers	6	3 (one passed away after appointment)	4 (4 appointments approved, only 1 appointment made)
Tribunal appointments post June 2012 Report on recommendation of the Chair	6 (of these, 2 are former benchers)	2 (of these, 1 is a former bencher)	5

- k. Pursuant to O. Reg. 167/07 an elected lawyer bencher (and two in the case of an appeal) must sit on every matter in which the subject of the proceeding is a

¹² June 2012 Report. Paragraph 55.

lawyer, unless circumstances exist in which the Tribunal Chair may vary the composition.¹³ Since the majority of proceedings before the Tribunal still affect lawyer licensees, the presence of elected lawyer benchers is and will remain substantial.

- I. Pursuant to O. Reg. 167/07 a person (and two in the case of an appeal) licensed to provide legal services in Ontario must be assigned to every matter in which the subject of the proceedings is a paralegal unless circumstances exist in which the Tribunal Chair may vary the composition.¹⁴ With only four paralegal benchers available to sit on hearings and appeals (one paralegal bencher sits on the Proceedings Authorization Committee), it has been essential to make non-bencher paralegal appointments, to ensure sufficient paralegals, including bilingual adjudicators, are available to meet the requirements of O. Reg. 167/07. In addition, paralegals are eligible to sit on hearings and appeals in which the licensee is a lawyer. Such assignments have happened more often in the appeal than hearing context, but reflect the need for sufficient paralegal adjudicators, both bencher and appointed, to meet the Tribunal's needs.
- m. There are different costs incurred for adjudicators depending upon whether they are,
 - (a) from Toronto or other parts of the province;
 - (b) benchers who have not yet used their 26 days of unremunerated time;
or
 - (c) benchers who claim or do not claim remuneration.

To ensure that panel assignments reflect the broad and diverse goals of the Tribunal in scheduling panels, cost efficiency based on using one type of adjudicator over another is not a primary consideration in scheduling.

- n. The desire of individual adjudicators to be scheduled more frequently is not, and cannot be, a consideration, given that the Tribunal is a body with part-time adjudicators and panel composition must serve the goals of scheduling, balancing and quality as set out in sub-paragraph a. above.

63. The model clearly endorses a balanced approach to panel composition reflecting the myriad factors discussed here. Given the importance of an independent Chair's responsibility for panel composition, the Committee makes two observations that it will consider, in consultation with the Tribunal Chair, on an ongoing basis as the implementation process continues:

¹³ See footnote 11.

¹⁴ Ibid.

- a. The ongoing balancing of bencher and non-bencher adjudicators on panels will continue to be important. Benchers bring their policy perspective to the adjudicative role – an understanding of the myriad issues that affect the public interest, practitioners and self-regulation. Appointed adjudicators bring the perspective of those who are not elected by the professions, are somewhat removed from the considerations mentioned above, and have adjudicative expertise that some elected members may not have.

In the case of lay benchers and appointees, the ongoing balancing of those appointed on the basis of the government's criteria in which there is no requirement for adjudicative experience and Law Society lay appointees who will have had experience as public representatives on other tribunals will continue to be important. In both types of lay appointments, the appointee brings the public perspective to adjudication, an integral component of the Law Society's commitment to the public interest.

These different perspectives among lawyer, paralegal and lay adjudicators enrich the process. This richness was one of the features the June 2012 Report considered in expanding the pool of adjudicators.

- b. Going forward, as part of data collection, the Committee, in consultation with the Tribunal Chair, will monitor information such as,
 - (a) the composition of the Tribunal;
 - (b) the extent to which adjudicators on the Hearing Division make themselves available for scheduling;
 - (c) the average number of hearings adjudicators sit on annually; and
 - (d) the number of bencher and appointee days per year.

(ii) Operational Activities Reflecting Independence

64. On the operational work in this area, as described in the Tribunal Chair's Report, the Committee remarks on the systematic approach that has been followed. The Tribunal's approach is reflected in,
 - a. legislative articulation;
 - b. a mission statement and core values;
 - c. a distinct logo and letterhead;
 - d. a distinct website in English and French;

- e. the evolution of the Tribunal Office Manager position to a Registrar role in keeping with administrative tribunal processes;
- f. consolidation of reasons on CanLII under one Tribunal database;
- g. the production of the first dedicated Law Society Tribunal Annual Report;
- h. the ongoing development of an external awareness of the Tribunal;
- i. the establishment of the Chair's Practice Roundtable of licensees and Law Society counsel; and
- j. the relocation of the Tribunal hearing rooms and offices off-site.¹⁵

65. The Committee has received a number of positive comments about the new premises from committee members, legal representatives and the Chair's Practice Roundtable.

- a. In a Law Times article respecting the November 2, 2015 official opening of the new premises, the Attorney General, the Honourable Madeleine Meilleur, noted that, "before, it was independent but it was still connected physically. This will bring confidence to the public [that] independent review can be conducted and to the people who have the occasion to come here."¹⁶
- b. Legal representatives have remarked that their clients are relieved not to have to attend at Osgoode Hall.
- c. One legal representative who acts as duty counsel noted that, "the fact that the Tribunal now has its own website, an independent chair and a new location for hearings importantly gives the appearance of independence and impartiality."
- d. All parties have equal access to the Tribunal Office. Previously, due to security provisions within Osgoode Hall, licensees and representatives would have to wait in the public areas for a Tribunal staff person to meet them at reception. Law Society discipline counsel were not subject to such strictures, since they work in the building.

66. The Committee agrees with the following passage from the Tribunal Chair's Report:

The key components of establishing the Law Society Tribunal as an independent adjudicative tribunal within the Law Society of Upper Canada are now in place. These activities have been carefully

¹⁵ Details are set out in the Tribunal Chair's Report paragraph 14.

¹⁶ Law Times, November 2, 2015, p. 4.

coordinated to provide the new Tribunal with a framework that supports the commitment to a hearing process that is transparent, fair and effective both for the public and licensees who are subject to the proceedings. At the same time, the Tribunal is situated within the Law Society's legislative regulatory framework, making it an integral part of the Law Society's mandate to regulate in the public interest.¹⁷

ADJUDICATIVE EXCELLENCE

67. The Tribunal Chair's Report notes,

Adjudicative excellence speaks to the quality, skill and availability of adjudicators, their ongoing training and evaluation and their appointment and re-appointment. It also speaks to the quality of the hearings the Tribunal conducts, the decisions it produces, its commitment to timeliness of hearings and release of decisions and reasons and the development and use of Tribunal jurisprudence to ensure coherent procedure and substantive results.¹⁸

68. As discussed in the previous section, the size of the Tribunal poses some challenges for adjudicative excellence. A smaller number of possible adjudicators is easier to monitor for quality assurance, gains experience more quickly, can be scheduled more expeditiously for adjudicator education without multiple offerings of the same program and may have more uniform levels of experience and expertise. The Committee does not underestimate this challenge, but is of the view that important steps have already been taken to address it within the context of the Tribunal as currently constituted.

69. The Committee has received positive input respecting a number of the components related to adjudicator excellence, in particular the more systematic approach being taken to adjudicator education¹⁹ and the establishment of a colleague review of draft reasons to enhance quality and consistency of approach. As well, the Tribunal Chair's development of a Member Position Description provides a consistent definition of the adjudicative role, thereby minimizing the impact of having so many different adjudicators. The jurisprudence that has emerged from the Hearing and Appeal Divisions also provides guidance and consistency. The Tribunal Chair's active participation as an adjudicator provides a quality assurance role and enables him to have a better understanding of the challenges that Law Society Tribunal adjudicators face, which he can seek to address.

¹⁷ Tribunal Chair's Report, paragraph 15.

¹⁸ Ibid, paragraph 17.

¹⁹ The acceptance of the importance of adjudicator education is reflected in suggestions made for additional education topics, including on evidence-related matters and on assisting panels to qualify expert witnesses. The education to date has focused on significant topics including reason writing and mental health.

70. The Tribunal Chair's role in assigning panels also has an effect on the quality of adjudication. In making such assignments he focuses on a variety of issues, including the importance of timely completion of hearings and release of decisions to the effectiveness of the Tribunal, matters of fairness and transparency and the development of experience and competence.
71. The Committee is of the view that the implementation of the model reflects a commitment to best practices. Although it is early in the process to determine, in any definitive way, the impact of the activities on outcomes, the visible introduction of systems, procedures and protocols is an encouraging development.
72. The Committee makes the following observations that it will consider, in consultation with the Tribunal Chair, on an ongoing basis as the implementation process continues. Some of these reflect comments it received:
- a. There should be a universal commitment from all panelists to engage and be seen to engage with the lay panel member. The observation made to the working group that this is not always the case is a concern, as the public perspective is an essential component of the Law Society's mandate in this area.
 - b. Going forward as part of data collection, the Committee, in consultation with the Tribunal Chair, will monitor information such as,
 - (a) Any discernible impact of the size of the Tribunal on adjudicative excellence;
 - (b) The appeals that are taken to the Appeal Division and the Divisional Court to determine,
 - 1. the basis for successful appeals and links to the quality of decisions versus jurisprudential development; and
 - 2. whether there is a pattern of decline in the number of successful appeals; and
 - (c) any discernible effect of the new model on the quality of decisions.

ENHANCED TRIBUNAL PROCESSES

73. The model is implemented through Tribunal processes. Arguably, the better these are the more seamless they are to the public and the licensees, applicants for licence and representatives who use them and to the Committee and Convocation that are responsible for the Tribunal overall. Ideally, they facilitate access to the Tribunal, are transparent, enable the more effective and efficient use of Law Society resources, take advantage of technology and assist in ensuring the hearing process is timely and fair.

74. In the Tribunal Chair's Report he sets out the activities taken to date to enhance processes,²⁰ which in the Committee's view focus in the correct areas:
- a. Communication with those with an interest in the Tribunal's work particularly through the website, Practice Directions, frequently asked questions (FAQs).
 - b. A more efficient hearing and adjudicator scheduling mechanism.
 - c. Development of an electronic case management system.
 - d. Consideration of more streamlined Rules of Practice and Procedure.
75. The Committee has noted, in particular, the following, which it believes are already contributing significantly to the points set out in paragraph 73:
- a. The Tribunal is making increasing and active use of PHCs to encourage parties to,
 - i. address issues as early on in the process as possible;
 - ii. narrow issues;
 - iii. negotiate agreed statements of fact ("ASFs") and joint submissions, where appropriate, well in advance of the hearing date;
 - iv. engage self-represented litigants at an earlier stage;
 - v. reduce unnecessary adjournments; and
 - vi. shorten hearings where possible.

While these goals cannot be achieved in every case, for reasons that may be beyond the Tribunal's control, PHCs can, and already do, make a difference, particularly as the Tribunal develops a roster of PHC adjudicators who become expert at addressing these issues.
 - b. The use of technology to facilitate the processes and increase accessibility is increasing. The new Tribunal premises feature,
 - i. assistive-listening features in the hearing rooms;
 - ii. braille signage;

²⁰ Tribunal Chair's Report, paragraph 27.

- iii. cameras for internal broadcasting that will enable observers who cannot be accommodated in a hearing room or who, as complainants, may be uncomfortable being in the hearing room with the licensee, to watch in “overflow” rooms; and
- iv. monitors for giving evidence remotely, which both promotes accessibility and where appropriate eliminates the cost of bringing witnesses from outside Toronto to testify live.

PMCs and PHCs may also increasingly take advantage of these tools to facilitate the meaningful engagement of those licensees who are living outside of Toronto and for whom multiple attendances might pose a hardship.

- c. The electronic case management system will also facilitate the filing of documents, make the gathering of certain statistics easier and allow adjudicators electronic access to certain documents in the file. The Committee received a number of positive comments about the increasing use of technology and encourages continuation of this trend.

76. The Committee makes the following observations that it will consider, in consultation with the Tribunal Chair, on an ongoing basis as the implementation process continues. Some of these reflect comments the Committee received:

- a. The ability to evaluate the effectiveness of Tribunal processes would be enhanced by input from complainants and licensees subject to the process. The Committee has already noted elsewhere in this Report the difficulty in seeking input from these sources. In its view relatively focused and short user “exit” surveys could be developed and administered that canvass, among other things, whether complainants and licensees received information and had questions answered appropriately, were treated with respect and fairly and understood the process.
- b. The Tribunal Chair has already identified in his Report the plan to revise the Rules of Practice and Procedure with a more uniform and modern organization and drafting style. They would include the definition of values such as proportionality, accessibility and overall fairness and allow for greater use of written processes, active adjudication and technology. The Committee agrees with this.
- c. The suggestion that brief biographies of adjudicators be posted on the Tribunal website would be in keeping with the model’s goal of transparency.
- d. The use of duty counsel has been a repeated theme among those consulted and has been mentioned in the Tribunal Chair’s Report as one of the ongoing issues with which he is engaged. There is little doubt that the presence of duty counsel

through the Advocates' Society program and the PMC program contributes to the effectiveness of the process where licensees are otherwise unrepresented. A number of sources noted the need for a greater presence of duty counsel, particularly in PHCs where their assistance could help licensees to make decisions on how to proceed. The Committee encourages further discussions to enhance the program.

- e. The development of a new approach to data collection to reflect the comments in this Report would supplement the data already being developed by the Tribunal Chair. Together they would enhance the assessment of those aspects of the model that lend themselves to quantitative analysis. So, for example, it might be useful to consider such information as the length of hearings, the use of Agreed Statements of Fact and joint submissions, the impact of active case management, particularly through PHCs, on adjournments and other time-consuming steps. The Committee will engage further on the issue with the Tribunal Chair.

COST-EFFECTIVENESS/IMPACT ON TRIBUNAL PROCESSES

77. Assessing whether the model is cost-effective when it has been operating for less than two years, and component parts of it have been developed at different times, is difficult to do in any systematic way. As was set out in paragraphs 45 - 47 above, the absence of data on which to measure cost effectiveness is not the fault of the implementation process. It is a reflection of the fact that the June 2012 Report did not address the issue for the purposes of the three-year review and the brevity of the period under review makes a reliable statistical analysis difficult in any event. In fact, the June 2012 Report understood potential cost-savings would be evaluated over the longer term:

It is difficult to quantify cost savings of a yet to be introduced system, but the Committee believes that the proposals it has put forward will in the long run result in a number of cost reductions...

78. In considering the challenges of assessing cost effectiveness the Committee has noted the following:

- a. Currently, the Tribunal Chair's budget only includes remuneration (including expenses) for appointed adjudicators. Benchers' remuneration (including expenses) is calculated separately under the Law Society's overall budget. The Tribunal Chair cannot make any comparisons across categories of adjudicators and does not know how many hours benchers' adjudicators claim for such things as reason writing. Arguably this also has an impact on his ability to monitor efficiencies beyond cost. If the Tribunal is to be held accountable for its expenses overall, this system is problematic.

- b. There is the perception among some that bench adjudicators are less expensive than appointed adjudicators because they are required to donate 26 days of their time before seeking remuneration. This is in reality a somewhat misleading perception, since the original calculation of the 26 days was based on an approximation of the number of Convocation and Committee meetings the benchers would do on average each year. If the assessment of adjudicator costs is to be calculated accurately, it is arguable at least that the donated days should not be calculated for Tribunal work, but separately for policy work. As well, bench expense allowances are higher than those of appointed adjudicators.
- c. Some benchers do not accept remuneration, but because of this the time they spend on Tribunal work outside the actual hearing room is not calculated. This makes information about time spent overall on Tribunal work incomplete. The Committee suggests that in moving forward to collect reliable data, it may be worth considering whether all time that could be remunerated should be captured through docketing.
- d. Cost effectiveness is not a simple calculation, because of a number of policy decisions Convocation has made. For example, it may be more cost effective to use adjudicators from the Toronto area, thereby saving considerably over a year for expenses of accommodation and travel. The Tribunal's philosophy, however, which the Tribunal Chair promotes through assigning panels, is to balance geographic considerations, equity and diversity, availability, expertise and other factors other than costs, all with a focus on quality adjudication. Similarly, adjudicator education has a cost to the Tribunal, but reflects a conscious policy decision of the June 2012 Report. The Committee is of the view that this should not change and the cost-effectiveness assessment should not be measured with expenses as a primary determinant. If this were to happen, the policy underpinnings of the Tribunal model would be fundamentally altered.
- e. Given the above, assessment of the Tribunal's efficiency based primarily on time, rather than remuneration or expenses, may be worth exploring. This would involve consideration of how many half-days and full days are used annually by adjudicators on Tribunal matters. The Committee is attracted to this approach because it supplements the inclusion of expenses and can track all adjudicators' time, not just those who seek remuneration. This would provide a meaningful picture of workload at the Tribunal.
- f. While it is worthwhile going forward to collect information on the number of successful appeals from Hearing Division decisions and the reasons for that success (e.g. new jurisprudence versus misapplication of the established jurisprudence), the issue of potentially eliminating the Appeal Division should not be assessed purely on a financial basis as there may be important policy reasons for retaining the Division (e.g. development of jurisprudence).

79. The Committee has observed that the Tribunal has already undertaken a number of activities that are directed at reducing costs over the long term. These are all useful steps that perhaps lend themselves to the collection of data. They include:
- a. active case management through increased use of PHCs, including the use of the PHC memoranda that both the Law Society and the licensee or licensee applicant must provide, to streamline scheduling, direct parties on pre-hearing steps, focus hearing issues and potentially shorten the number of hearing days required;
 - b. the inclusion in the PHC process of steps that previously required the scheduling of PMCs, thereby reducing bifurcated processes;
 - c. use of electronic tools to lessen the need for in-person appearances;
 - d. a new scheduling system that has and should continue to result in more efficient and timely scheduling of hearings and fewer vacated hearing dates and continuation dates;
 - e. the introduction of the Tribunal Book of Authorities to potentially reduce some printing costs; and
 - f. reduction in older case inventory.
80. The Committee considers it important to develop a more systematic approach to the collection of data that can provide some quantitatively useful information on the issue of cost effectiveness, provided the policy context around the model is kept in mind. The Tribunal in conjunction with the Tribunal Chair and in discussion with the Audit and Finance Department will consider the kind of data that might best be collected as a part of the Tribunal's quarterly statistics. Some of the data is already being collected and further discussion in the Committee and with the Chair's Implementation Working Group of the goals of the data collection will facilitate the development of the information.

IV. CONCLUSION

81. The Committee draws Convocation's attention to paragraphs 13 and 14 of the June 2012 Report and paragraphs 41-43 above in considering the goals of and context within which the new Tribunal model can be considered. In the course of its analysis, it has considered how the provisions of paragraphs 13 and 14 are being integrated into the model's implementation. It has also reviewed whether the process of implementation is true to what Convocation intended and has moved forward in a manner than can give Convocation assurance.
82. As a result of this three-year review, the Committee is satisfied that the Tribunal model Convocation approved in June 2012 is being thoughtfully and carefully implemented to

reflect the goals Convocation established. Moreover it is being received positively. The activities undertaken to date support the key components of the model for (i) a Tribunal that is separate from the investigations and disciplinary functions of the Law Society, (ii) adjudicative excellence, and (iii) enhanced Tribunal processes. The Committee is satisfied, from the feedback it has received and from its own analysis that the direction the Law Society approved in June 2012 is in the public interest and meaningfully promotes a fair process for licensees and licensee applicants involved with it. The model's development has followed a transparent, methodical and considered path of implementation.

83. As the Tribunal Chair noted in his Report, the Tribunal Committee and Convocation remain an integral part of the Tribunal model. As implementation has unfolded, the Tribunal Chair and the Committee have maintained a consultative and collaborative role on policy matters relating to the Tribunal, in the context of the Tribunal Chair's independence on adjudicative matters. This has worked effectively. As the Committee continues to monitor the implementation of the model as part of its policy role, the observations it has made in this Report will be part of that continuing role.

84. The model Convocation adopted in 2012 is addressing the goals and purposes set out in the 2012 Report to "...enhance the Law Society's commitment to a hearing process that is transparent, fair and effective for both the public and affected licensees...central to the Law Society's proper discharge of its adjudicative responsibility." Implementation reflects these goals and should continue along the path toward them. The Committee will continue to engage in ongoing monitoring of the Tribunal, in discussion with the Tribunal Chair and, where appropriate, with Convocation's involvement, in keeping with its policy role.



TRIBUNALS COMMITTEE

HEARINGS PROCESS REPORT

Tribunals Committee

Raj Anand (Chair)
Adriana Doyle (Vice-Chair)
Jack Braithwaite
Christopher Bredt
Paul Dray
The Honourable Lee Ferrier
Howard Goldblatt
Jennifer Halajian
Dow Marmur
Wendy Matheson
Linda Rothstein
Mark Sandler

Beth Symes
Robert Wadden
Peter Wardle

Hearings Process Working Group

Raj Anand (Chair)
Marion Boyd
Christopher Bredt
Paul Dray
Howard Goldblatt
Wendy Matheson
Mark Sandler

Purpose of Report: Decision

Prepared by Policy Secretariat
(Sophia Spurdakos 416-947-5209)

EXECUTIVE SUMMARY

The Law Society's primary responsibility as regulator of Ontario's lawyers and paralegals is public protection. Central to the responsibility to protect the public is a hearing process that is fair, transparent and efficient. As hearings become more complex and the number of cases increases, it is important to enhance the way in which the Law Society meets its regulatory mandate at the tribunal level.

Over the last 13 years the Law Society has implemented a coherent *operational* structure for adjudicative processes to ensure a transparent and modernized hearings process and the separation of the tribunals administration from that of investigations and prosecution. It has also made a number of individual enhancements to the *adjudicative* functions of the Hearing and Appeal Panels directed at streamlining and enhancing quality, fairness and consistency and has introduced improved adjudicative practices. However, to carry out its commitment to an adjudicative system that is as effective and transparent as possible, and to continue the ongoing process of reform that the Law Society has followed over the last decade, it is essential that the Law Society develop a more systematic and effective structure and greater quality assurance measures for its adjudication functions. In doing so it should pay attention to the principles that govern both administrative justice and professional regulation and to the important role of benchers in the process.

The Model

The Tribunals Committee, with the assistance of its Hearings Process Working Group, has developed a proposal for an enhanced adjudicative model whose component parts will operate together as an integrated whole. The model will consist of,

- effective and dedicated leadership of the Tribunal through the appointment of a non-bencher full-time lawyer Chair and two part-time bencher Vice-Chairs of the Hearing and Appeal Panels;
- an adjudicator application and appointment process that continues to reflect the regulatory role of the Law Society's benchers in adjudication as well as a commitment to broaden its base of adjudicators to include non-bencher lawyers and paralegals and lay appointees who meet the many needs of the Tribunal;
- the development and implementation of consistent criteria for appointment to the Tribunal and an evaluation process for re-appointment;
- the continuation of the Tribunals Committee as the policy conduit by which the Chair, Vice-Chairs and committee members facilitate and provide policy proposals to Convocation; and
- processes to ensure timely adjudication and decision-making.

The Chair

A professional statutory tribunal requires effective and independent leadership. As a regulatory body the Law Society's overall policy leadership is provided by Convocation, presided over by the Treasurer. Within that larger framework the Law Society's Tribunal operates to provide a fair and transparent process to address regulatory conduct, capacity and competence issues, independent from the investigative and disciplinary side of the Law Society. The independence and effectiveness of the Tribunal is best fostered, enhanced, and implemented through the

appointment of a full-time non-bencher lawyer Chair. Such an appointment will further the Law Society's commitment to a mature hearing process that is independent, dedicated to professionalism, quality appointments, performance and results coupled with operational accountability on financial and other matters and a commitment to the important role that benchers will continue to play in the adjudicative function. The recommended term of appointment is four years, subject to renewal.

The Vice-Chairs

The positions of a part-time bencher Vice-Chair of each of the Hearing and Appeal Panel will be continued under the new model. The Vice-Chairs will support and assist the Chair with the responsibilities of the Hearing and Appeal Panels, including adjudicator training, composition of panels, development of policy recommendations and monitoring of tribunals issues. Through their role as elected benchers, they will also provide input to the Chair on the interplay between the Law Society's policy and adjudicative responsibilities. The recommended term of appointment is two years, subject to renewal.

The Tribunals Committee

The Tribunals Committee will continue to be an essential forum for the development and communication of policy proposals relating to Tribunals structure and process. As the Chair develops systems for the new model and makes recommendations for Convocation's consideration and approval, he or she will benefit from the input and policy guidance of the Tribunals Committee. The Chair will be an *ex officio* member of the Committee and the Vice-Chairs of the Hearing and Appeal Panels will be members. The Committee's current mandate will continue, subject to the addition that in developing policy options it will do so in collaboration with the Chair. Bencher and non-bencher adjudicators will be eligible for appointment to the Committee.

Adjudicator Appointment Process

Qualified and available adjudicators play a central role in the effectiveness, reliability, transparency and fairness of the Tribunal. Self-regulation necessitates that lawyers and paralegals will preside over regulatory proceedings concerning their peers. To ensure the added input of the public, lay appointees are also an integral part of the hearings process. Traditionally, only benchers sat as adjudicators, but since 2006 the *Law Society Act* has provided that benchers, licensees and persons approved by the Attorney General are eligible to sit on hearing and appeal panels.

The Committee affirms the view that benchers should continue to have an important "hands-on" role and responsibility for adjudication. They add a dimension of familiarity with the Law Society's regulatory requirements and policy decisions that inform the regulatory process. Moreover their adjudicative work provides an important context for the policy decisions Convocation makes. At the same time, the self-regulatory mandate is strengthened by the additional involvement of lawyers and paralegals who are not benchers in the adjudicative process. The profession is interested in the operations of its regulator. Indeed, during the consultations that were held on governance reform, participants and legal organizations suggested this expanded approach to adjudication. In 2007 Convocation approved the appointment of lawyer and lay appointees who are not benchers. The experience with these

additional adjudicators has been positive and illustrates the merits of a model that includes non-bencher adjudicators as an integral component of both the Hearing and Appeal Panels.

The use of bencher adjudicators should be predicated not just on the fact of their election, but on the basis of quality and availability. This is essential to a Tribunal that is effective, independent, and transparent. Expanding the pool of adjudicators available for both the Hearing and Appeal Panels strengthens the Law Society's twin commitment to the quality and availability of its adjudicator pool. The effectiveness of the proposed model is enhanced by cross-pollination of the different perspectives that bencher and non-bencher adjudicators bring to the process. As the Law Society undertakes an improved model that will involve a number of significant changes the Committee believes that change should be implemented decisively, but in a measured fashion to allow for a smooth transition.

The Committee recommends a two-pronged approach to enlarging the pool of non-bencher adjudicators. As a first step Convocation will approve an increase in the number of non-bencher lawyer, non-bencher paralegal and non-bencher lay adjudicators to reflect the commitment to a model of bencher and non-bencher adjudicators. The Committee is proposing that Convocation approve the addition as members of the Hearing Panel of 6 non-bencher lawyers, 3 non-bencher paralegals and 4 non-bencher lay appointees, with eligibility to be appointed to the Appeal Panel.

Once the Chair is appointed, he or she will assess the number and availability of current bencher adjudicators who apply to be on the Hearing Panel, the overall adjudicative needs of the Panel based on the principles discussed in this report, and the current pool of non-bencher adjudicators available to sit on long matters and will determine the number of additional non-bencher adjudicators who may be required.

Panel Appointments

Populating panels will be an integral part of the Chair's role, with the assistance of the Vice-Chairs. The Committee recommends that Regulation 167/07, which articulates a general panel composition structure, remain essentially the same with one proposed change. In the interests of effective scheduling, the Chair must have the flexibility to vary the usual assignment of both Hearing and Appeal panels in a meaningful way. The current Regulation provides the Chair with authority to deviate from the normal panel composition, but only where to comply would "unduly delay" a hearing. The Committee recommends that the Chair's ability to alter the composition as set out in the Regulation be broadened to include factors in addition to undue delay to reflect practice area expertise requirements, experience requirements, regional and other diversity perspectives, scheduling effectiveness for reasons other than "undue delay," conflicts and the public interest.

Hearing Panel Appointment Criteria

Another critical feature of an effective adjudicative model is the implementation of meaningful criteria for appointing adjudicators and evaluating their performance for the purpose of quality control and re-appointment determinations. Whereas the current Law Society structure has criteria for the appointment of non-bencher adjudicators, this is not the case for elected benchers, non-bencher members of the Paralegal Standing Committee and lay benchers, who are

essentially appointed to the Hearing Panel by virtue of their status. Further, neither benchers nor non-bencher adjudicators currently undergo an evaluation of their performance.

A newly elected bencher may have minimal or no experience as an adjudicator. While it is important for elected benchers to be involved in adjudication, all adjudicators should be required to meet appointment criteria. The Committee proposes a model that is somewhat asymmetrical as between bencher appointments to the Hearing Panel and non-bencher appointments, reflecting the reality of the electoral structure and the value of introducing benchers early on to their adjudicative role. This asymmetry would apply in two respects: grandparenting existing benchers and adopting different requirements for experience as an adjudicator.

Every bencher, current and future, who wishes to become a member of the Hearing Panel will be expected to apply. Current benchers who apply will in the usual course be grandparented, but thereafter they will be required to meet the same criteria as new benchers or other appointees and to be evaluated for re-appointment on the same basis as other appointees. In the case of new benchers, those who have had no adjudicative experience will be required to complete, to the Chair's satisfaction, adjudicator training designated by the Chair to enable them to provide competent adjudication. Those who have adjudicative experience will not, in the normal course, be required to take training before being eligible to sit, other than the mandatory orientation to the Law Society's Tribunal for all new benchers. New non-bencher adjudicators will be required to meet criteria along the lines of those appointed as non-benchers since 2007, including having adjudicator experience. The Chair will determine what additional or other criteria should be applied on a going forward basis. Adjudicators will be appointed for a two-year term, subject to re-appointment on application.

As no formal evaluation system currently exists, one of the new Chair's responsibilities will be to develop and recommend an evaluation system to Convocation to be used to assist adjudicators to improve and to determine who should be re-appointed. The introduction of an evaluation system will be a significant change to the Law Society's Tribunals structure and culture, but the Committee considers this essential to the effective operation of any model that is designed to ensure quality adjudication.

Timely Adjudication

It is not sufficient that a tribunal have good processes and quality adjudicators if scheduling of matters is drawn out, adjudicators are unable to commit to lengthy matters, or there is unreasonable delay in the rendering of decisions and reasons. To allow for the development of adjudicative experience, the range of hearing subject matter, scheduling and conflict issues, bencher and non-bencher adjudicators will be required to offer a minimum number of hearing days per session. The Chair will determine the appropriate minimum in each case, taking into account that benchers have more extensive Law Society responsibilities than non-benchers who seek out the adjudicator role.

One of the issues of concern to any Tribunal is managing long hearings in a manner that is fair to the participants and meets the public interest in resolving regulatory proceedings expeditiously. In addition to committing to a minimum number of hearings days adjudicators will indicate whether they are available for short hearings only or for both short and long hearings. A

definition of short and long hearings and a short and long hearing list roster of adjudicators will be developed.

Financial Implications

The Committee considers that the main categories of costs will be those associated with the Chair's remuneration and support for his or her office, ongoing adjudicator education and the development of an evaluation system (a one-time cost). In the Committee's view, a reasonable estimate for costs related to the Chair, including administrative support, office space and expenses and his or her remuneration, will be in the area of \$500,000 per annum. To ensure the continuation of adjudicator training that is effective and stimulating, and keeping in mind the need to train new benchers who do not have previous adjudicator experience, an ongoing annual cost of \$100,000 should be anticipated.

The Committee notes some of the challenges of the current approach result in costs being incurred that the recommended reforms are designed to reduce. It is difficult to quantify cost savings of a yet-to-be introduced system, but the Committee believes that the proposals it has put forward will in the long run result in a number of cost reductions, including,

- adjudicator cost savings as hearings are more expeditiously scheduled and completed, resulting in fewer adjudicative hours and fewer hearings that must be drawn out over many months;
- as the Chair will sit on hearings, the remuneration and expenses of another adjudicator will be saved;
- the development of enhanced training in decision-writing that will reduce the time spent on writing reasons; and
- through training, more efficient hearing processes that reduce the time needed for hearings.

The Committee has not studied whether under the enhanced and modernized system the Appeal Panel will still be necessary, but it suggests that this is something that the Chair and Convocation might well consider in the future. If this were to occur it could result in further savings to the Tribunal system. Even if the Appeal Panel continues the enhanced adjudicative model is likely to result in fewer successful appeals, thereby reducing costs. The Committee also notes the potential for the Chair to consider recommendations for increasing the number of single adjudicator hearings, which would have the potential to expedite hearings and also include cost savings. Finally, the Committee notes that if Convocation approves the proposed model, it is likely that costs will not be incurred before 2013 and for some aspects of the model not before later in that year.

Review of the New Model

The new model will include a review process to take place after there has been sufficient opportunity for the model and its new processes to be implemented. The first formal review of the model will take place at the end of the third year of the Chair's first term. Within one year of the Chair's appointment, the Tribunals Committee in conjunction with the Chair, Vice-Chairs, the CEO and the Director of Policy and Tribunals will develop the framework for the model's review, to be approved by Convocation.

Conclusion

In establishing its priorities for the 2011-2015 bench term, Convocation recognized the importance of an effective Law Society hearings process to its overall mandate and committed itself to addressing this priority.

The Committee's proposed model is designed to provide a framework whose component parts will contribute to the fulfillment of Convocation's priority. Focused on leadership, transparency, quality adjudication and availability, objective criteria for appointment and evaluation and cost effectiveness, the model will enhance the Law Society's commitment to a hearings process that is transparent, fair and effective for both the public and affected licensees. This is central to the Law Society's proper discharge of its adjudicative responsibility.

TRIBUNALS HEARINGS PROCESS - PROPOSED MODEL

Motion

- 1. That Convocation approve an enhanced adjudicative model for the Law Society, the integrated components of which are as follows and the details of which are set out in this report:**
 - a. The establishment of the full-time non-bencher lawyer position of Tribunal Chair.**
 - b. The establishment of the part-time elected bencher positions of Vice-Chair of the Hearing Panel and Vice-Chair of the Appeal Panel.**
 - c. With respect to the Tribunals Committee,**
 - i. the appointment of the Tribunal Chair as an *ex-officio* member and the appointment of the Vice-Chairs of the Hearing and Appeal Panels as members of the Tribunals Committee;**
 - ii. the eligibility of non-bencher adjudicators to be members of the Committee as Convocation determines;**
 - iii. that lawyer members of the Tribunals Committee not be members of the Professional Regulation Committee or the Paralegal Standing Committee, and**
 - iv. that paralegals appointed as members of the Tribunals Committee not participate in any regulatory discussions of the Paralegal Standing Committee.**
 - d. The appointment of additional non-bencher adjudicators to the Hearing Panel with eligibility to be appointed to the Appeal Panel.**
 - e. The granting of the authority to the Tribunal Chair to vary the composition of hearing panels to ensure the effectiveness of adjudication.**
 - f. The development and introduction by the Tribunal Chair of criteria for the appointment and evaluation of adjudicators.**
 - g. The requirement that adjudicators apply to be assigned to the Hearing Panel and commit to a minimum number of hearing days within a scheduled session.**
 - h. The development of a roster of adjudicators for short hearings and long hearings.**

- i. **A review and evaluation of the new model in the third year of the new Chair's first term.**

Introduction and Background

2. Following its planning session in the fall of 2011 Convocation established its priorities for the 2011-2015 bench term. In recognition of the importance of an effective Law Society hearings process to its overall mandate, Convocation included the following:

TRIBUNAL ISSUES

The Law Society's primary responsibility as regulator of Ontario's lawyers and paralegals is public protection. Central to the responsibility to protect the public is a hearing process that is fair, transparent and efficient. As hearings become more complex and the number of cases increases, steps need to be taken to enhance the way in which the Law Society delivers its regulatory mandate at the tribunal level. Addressing this priority will include review and consideration of:

- a. Adjudicator training;
- b. Quality of adjudication;
- c. Use of technology in the hearing process;
- d. Enhancements to procedures and processes to improve effectiveness and efficiency; and
- e. The appropriate model for the hearing process.

As reported to Convocation in October 2011, the Tribunals Committee has created working groups that are developing policy options for consideration by the Committee, and through the Committee for Convocation's consideration, on issues related to the hearings process. The issues identified above will logically flow into these initiatives.

3. A self-regulating profession has many responsibilities to the public it serves, not the least of which is the obligation to ensure that its members meet standards of competence and conduct to ensure quality service to that public.
4. The Law Society is an integrated regulatory body, meaning that it has responsibility for the complete range of regulatory activities, including standard setting, rule making, policy development and implementation, admission to the profession, investigation and prosecution of complaints against members, adjudication of conduct, competence and capacity matters and imposition and monitoring of penalties.

5. Responsible for both prosecution and adjudication of regulatory matters, the Law Society has expended considerable effort to ensure a separation between the two branches of its responsibility. A hearings process that is transparent, fair and effective for both the public and affected licensees is central to the Law Society's proper discharge of its adjudicative responsibility.
6. Prior to 1999 Law Society discipline hearings were conducted in a manner that had not kept pace with the professionalization and modernization of administrative tribunals or state-of-the art regulatory processes. In general, a committee of benchers (usually three) presided over a hearing. The committee made a written report and recommendations to Special Convocation on appropriate disposition and penalty. Special Convocation then considered whether to accept the recommendation or make its own determination. Appeals from Convocation's decisions went to the Divisional Court.
7. Beginning in the late 1990s the Law Society began to focus on the importance of a transparent and modernized hearings process. The first step was amendments to the *Law Society Act* in 1999, which established the Hearing Panel and the Appeal Panel.
8. In the thirteen years since the *Law Society Act* amendments, the Law Society has implemented a coherent operational structure for adjudicative processes. This has enhanced both the transparency of the Tribunals process and the separation of the Tribunals administration from that of investigations and prosecution. The plan has included,
 - a. establishing a Tribunals Office;
 - b. providing staff dedicated to the adjudicative process;
 - c. locating Tribunals staff in offices within Osgoode Hall separate from those of investigative and prosecutorial department staff;
 - d. authorizing the Tribunals Office to issue all originating notices and manage all proceedings, separately from the professional regulation division;
 - e. shifting the reporting function for Tribunals from the Secretary, who was also responsible for the former discipline department, to the Counsel - Legal Affairs and since 2004 to the Director, Policy and Tribunals;
 - f. providing that the Chairs of the Hearing and Appeals Panels are available to assist Tribunals staff on issues related to Tribunals operations;

- g. creating the position of Publications Counsel, who performs a legal editor function;
 - h. creating a data base to track the progress of cases and other information relevant to the effective functioning of the Tribunal, with public reports provided to Convocation quarterly;
 - i. developing the first Practice Direction, on adjournments, to better advise parties and counsel on Tribunals practices, with a view to developing further Directions where appropriate;
 - j. posting information on the Law Society web site respecting regulatory notices and hearings; and
 - k. posting reasons for decision on Canlii.
9. The Law Society has also made a number of individual enhancements to the adjudicative functions of the Hearing and Appeal Panels. Through its Tribunals Committee, which it established in 2005, it has developed policies for Convocation's approval directed at streamlining and enhancing quality, fairness and consistency. Improved practices have also been introduced. These policies and practices have included,
- a. *Rules of Practice and Procedure* of the Hearing and Appeal Panel to support the 1999 *Law Society Act* amendments. These were revised, expanded and enhanced in 2009 and 2012 respectively;
 - b. an Adjudicator Code of Conduct introduced in 2006 and updated in 2012;
 - c. the addition of six non-bencher lawyers¹ and four non-bencher lay appointees to the Hearing Panel;
 - d. adjudicator education during Convocation and more formal, mandatory training sessions;
 - e. the expansion of the Proceedings and Appeal Management function to streamline hearings processes;
 - f. further development of the jurisprudence to enhance the consistency of decision-making;
 - g. the implementation of a public hearing process; and
 - h. the development of guidelines for the effective delivery of oral and written reasons.
10. These steps have made important incremental improvements to the quality and consistency of adjudicators' decisions. However, to carry out its commitment to an adjudicative system that is as effective and transparent as possible, and to continue the ongoing process of reform that the Law Society has followed over the last decade, it is

¹ Originally approved for four non-bencher lawyers in April 2007 this number was increased to six in January 2012.

essential for the Law Society to develop a more systematic and effective structure as well as greater quality assurance measures for its adjudicative functions.

11. To facilitate the Committee's development of recommendations on the hearing process for Convocation's approval the Committee established a Hearings Process Working Group to study the issues and report to it.² The Working Group met approximately twice monthly since September 2011 and received the Committee's views at each monthly Committee meeting since October 2011. The Working Group reported formally to the Tribunals Committee in May and June 2012 and the Committee discussed the working group's proposals. The Tribunals Committee Chair also attended the Finance Committee meeting on June 14, 2012.

Principles that Underlie the Committee's Recommendations

12. The Law Society's adjudicative process has much in common with administrative tribunals that operate across Canada, including the evolving requirements of administrative law as developed in appellate jurisprudence. As a regulatory body, however, it has a distinctive mandate and responsibilities. Accordingly, in considering how best to advance the goals of an effective regulatory administrative body, attention to the principles that govern both administrative justice and professional regulation and to the important role of benchers in the process is essential.
13. The Committee has determined the goals of an enhanced Law Society adjudicative model to be as follows:
 - a. To reflect the Law Society's commitment to regulatory processes that are transparent, fair, and cost effective.
 - b. To reflect the separation of the Tribunal from the disciplinary stream of the Law Society and an awareness of the adjudicative and policy-making functions of the Law Society.
 - c. To support and complement the current Tribunals operational structure.
 - d. To reflect the Law Society's integrated regulatory model.

² The members of the Working Group are Raj Anand (Chair), Marion Boyd, Christopher Bredt, Paul Dray, Howard Goldblatt, Wendy Matheson and Mark Sandler. Staff members to the Working Group are Grace Knakowski, Lisa Mallia and Sophia Sperdakos.

- e. To recognize, continue and support the benchers' role as adjudicators as part of the profession's responsibility to regulate itself in the public interest.
- f. To retain and enhance the positive features of the current adjudicative approach.
- g. To deliver high quality administrative law decisions that withstand the close scrutiny that Law Society decisions receive from courts, the public and the profession.
- h. To foster high quality adjudication, including a commitment to ongoing adjudicator education and training.
- i. To develop a system that fosters and facilitates the effective use of technology in the hearing process.
- j. To make more effective and efficient use of Law Society resources through an enhanced adjudicative structure.

14. The Committee has concluded that the following criteria are essential to an enhanced Tribunal adjudicative model:

Process

- a. The process is independent, transparent and accountable. Accountability in the adjudicative structure encompasses among other factors,
 - i. the avoidance of bias, whether perceived or real;
 - ii. the opportunity for parties to participate in the hearing and be heard;
 - iii. adherence to the principle that those who hear the matter decide it;
 - iv. access to an appellate process; and
 - v. processes to address quality of adjudication.
- b. The organization and administration are effective. This includes, among other components,
 - i. leadership;
 - ii. a transparent and consistent structure for recruitment or appointment and evaluation of adjudicators; and
 - iii. an efficient and effective Tribunals Office with enhanced duties related to non-adjudicative matters.

Adjudicators

- c. Adjudicators,
 - i. are open-minded and vigilant to conflicts and bias, whether perceived or real;
 - ii. are committed to developing and maintaining knowledge, skill and expertise; and

- iii. display the appropriate skills, expertise and temperament required for sound adjudication.
- d. There is a requirement for ongoing education and professional development for adjudicators.
- e. Adjudicators adhere to the Adjudicator Code of Conduct.
- f. Within the pool of available adjudicators there is a range of expertise, including features such as content expertise, representation of different practice structures, and litigators and solicitors.
- g. Adjudicators make a time commitment to participate in the range of activities of an adjudicator within an effective administrative tribunal.
- h. Adjudicators are committed to timely adjudication, which includes being available to preside at hearings and write decisions in a timely manner and adhering strictly to any guidelines and benchmarks for writing reasons.
- i. The pool of adjudicators includes,
 - i. bencher lawyers and paralegals;
 - ii. non-bencher lawyers and paralegals;
 - iii. lay representatives;
 - iv. lay, lawyer and paralegal adjudicators qualified to hear cases in the French language; and
 - v. adjudicators reflecting the diversity of the population and the profession.

Quality of Decision Making

- j. Adjudicators are proficient in the Rules of Practice and Procedure and relevant legislation.
 - k. There is consistency and coherence in both procedure and substantive decision-making, while ensuring that discretion is not fettered and natural justice is observed.
 - l. Adjudicators are trained in conducting a hearing and in effective decision writing.
 - m. There is an evaluative process to ensure quality of adjudication and decision writing.
15. To the extent that the Tribunal adjudication model continues to be premised on the use of part-time adjudicators, the challenge for the enhanced approach is to ensure that

within a framework of part-time adjudication the Law Society's responsibility for an effective, timely and competent adjudication process is achieved.

16. The challenges that the current adjudicative structure presents, which are identified in this report, also have resource implications. The Committee believes that the model it proposes here will improve the efficiency and effectiveness of the hearings process and thereby contribute to the reduction of unnecessary costs. So, for example, an adjudicative model that reduces the number of times a long matter must be adjourned for additional hearing dates that are weeks or months apart is likely to reduce adjudicator travel and hearing time and the attendant costs.

Overview to Proposed Model

17. Keeping these principles and criteria in mind, the Committee has developed an adjudicative model for Convocation's approval. The model consists of the following components that operate together as an integrated whole:
 - a. Effective leadership through,
 - i. the appointment of a full-time non-bencher Chair who will be responsible for the overall implementation of the strategic direction and performance of the Tribunal, including its Hearing and Appeal Panels, in conformity with the provisions of the *Law Society Act* and Convocation's policies respecting the Tribunal. The Chair will be accountable to Convocation to provide leadership to the Tribunal to ensure that it operates fairly, efficiently and effectively within its mandate.
 - ii. The appointment of a Vice-Chair of the Hearing Panel and a Vice-Chair of the Appeal Panel,³ who will be elected benchers and whose responsibilities will include the following:
 - To assist the Chair in his or her numerous tasks, including the implementation of adjudicator training, the composition of panels, the development of policy recommendations and the monitoring of Tribunals issues.
 - Through their role as benchers to provide input to the Chair on the interplay between the policy component and adjudicative component of the Law Society.
 - At the Chair's direction to sit as adjudicators on hearings and appeals.

³ The current *Law Society Act* provides for a Chair of the Hearing Panel and a Chair of the Appeal Panel.

- To be available to assume tasks where the Chair has a conflict.
- iii. The continuation of the Tribunals Committee as the policy conduit by which the Chair, Vice-Chairs and committee members facilitate and provide policy proposals to Convocation. Lawyer members of the Committee should not also be members of the Professional Regulation Committee or the Paralegal Standing Committee. Paralegal members of the Committee will not participate in regulatory discussions at the Paralegal Standing Committee.
- b. Effective adjudication through,
 - i. an application and appointment process that continues to reflect the regulatory role of the Law Society's benchers in adjudication as well as a commitment to broaden its base of adjudicators to include non-bencher lawyers and paralegals and also lay appointees who meet the many needs of the Tribunal;
 - ii. scheduling of individual panels with a view to availability and expertise;
 - iii. the development and implementation of consistent criteria for appointment to the Hearing and Appeal Panel as set out in paragraph 14 (c) - (i); and
 - iv. the development and implementation of an effective evaluation process for re-appointment to the Hearing and Appeal Panel.
 - c. Timely adjudication through,
 - i. the commitment of adjudicators to be available for a minimum number of hearing days per session; and
 - ii. the development of a roster of adjudicators for long and short hearings.
18. Implementation of some of the recommendations in this report will require amendments to the *Law Society Act* and Regulation 167/07. These will be pursued if Convocation adopts the report.

EFFECTIVE LEADERSHIP

APPOINTMENT OF A TRIBUNAL CHAIR

19. A professional statutory tribunal requires effective and independent leadership. As a regulatory body the Law Society's overall policy leadership is provided by Convocation, presided over by the Treasurer. This is a statutory authority and is integral to the Law

Society's overall mandate to regulate the profession in the public interest. Within that larger framework the Law Society's Tribunal operates to provide a fair and transparent process to address regulatory conduct, capacity and competence issues. The independence of the Tribunal from the investigative and disciplinary side of the Law Society is essential to the Tribunal's effectiveness. The Committee is of the view that the independence and effectiveness of the Tribunal is best fostered, enhanced and implemented through the appointment of a full-time Chair.

20. The Committee has considered the role that Chairs play in many of Ontario's important administrative tribunals such as the Ontario Labour Relations Board, the Workplace Safety and Insurance Appeals Tribunal, the Criminal Injuries Compensation Board and many others and agrees that the time has come to pursue a similar approach for the Law Society's Tribunal.
21. The activities of the benchers who have acted as Chairs of the Hearing and Appeal Panels, and the policy proposals the Tribunals Committee has brought to Convocation, have fostered useful improvements to the Law Society's adjudicative process. Through the establishment of the position of Chair, Convocation will recognize that its Tribunal has evolved to the next level of its development. Such an appointment will further the Law Society's commitment to a mature hearing process that is independent, dedicated to professionalism, quality appointments, performance and results coupled with accountability on financial and other operational matters. Part of the Chair's role, in collaboration with the Tribunals Committee and staff, will be to consider procedural improvements to benefit the adjudicative process and possible technological assistance for adjudicators in the production of reasons (e.g. transcription services for the typing of reasons).
22. The Committee strongly recommends the appointment of a full-time Chair who is a non-bencher lawyer, with qualifications and administrative law experience that will enable him or her to fulfil responsibilities to promote a hearing process that is timely, coherent,

consistent and effective for the parties, the public and others with an interest in the adjudicative proceedings.

23. A description of the Chair's position is set out at **TAB 9.1.1: CHAIR POSITION DESCRIPTION**. The description sets out the overall purpose of the appointment and a detailed enumeration of the leadership functions of the Chair, the accountability of the position to the Tribunal and the Law Society and the qualifications of the successful candidate. The scope of the Chair's authority and accountability and the features of the position that will support the independence of the Tribunal are part of the description. The Committee is of the view that the depth and breadth of the Chair's position and responsibilities make a full-time appointment essential.

24. The importance of a full-time commitment is also one of the reasons for which the Committee recommends that the Chair not be a bencher. Benchers undertake policy and other Law Society commitments as part of their duties that will make it difficult to assume the full-time responsibilities of the Chair. Moreover, a non-bencher Chair will not be subject to the annual appointment process that takes place when Convocation populates committees and other offices. Other reasons militate against the Chair being a bencher:
 - a. The independence of the Chair respecting adjudicative decisions is an important feature of the position. There may be a perception that an elected bencher with policy responsibilities to Convocation could run into conflicts between his or her dual roles.
 - b. Since benchers are, by virtue of the Law Society's structure, equal members of Convocation, a Chair who is a sitting bencher might have difficulty asserting the kind of leadership role that the position envisages and necessitates to ensure the goals of the model are being met.
 - c. The Tribunal itself should be seen as uncompromisingly professional and, within the context of self-regulation, independent in its decision-making function. A non-bencher Chair in a leadership role will help to promote this understanding.

25. This does not mean that a bencher will be precluded from applying for the position of Chair, but rather that if successful he or she will be required to resign as a bencher.

26. The Committee's recommendation that the full-time appointed Chair be a lawyer is, in its view, essential to the success of the proposed model. A lawyer appointment provides an opportunity to seek out an individual with significant adjudicative and administrative law experience whose expertise and authority will engender the respect of the benchers, the legal profession and the public and meet the position appointment criteria.

27. The Chair, while independent of the Society's bencher structure, will still be a member of the legal profession and will oversee a Tribunal that continues to draw its members from lawyers and paralegals, including benchers, in addition to the lay appointees. The Chair will also be expected to have an understanding of the Law Society's culture and a commitment to the important role that benchers will continue to play in the adjudicative function. These important features of self-regulation will be preserved and enhanced through the changes to the adjudicative model.

28. In considering the role of the Chair, the Committee discussed how the position should be situated within the Law Society structure. The Chair must enjoy independence on matters of adjudication. The nature of his or her term of appointment will support such independence. The Chair will be ultimately accountable to Convocation and will be charged with bringing Tribunal policy matters that require decision to Convocation through the Tribunals Committee. In this way, the Tribunals Committee will interact with the Chair and continue to be the forum for bringing policy matters to Convocation for its ultimate consideration. The Chair will provide direction to the Senior Counsel & Manager of the Tribunals Office on hearing and other adjudicative matters. The Senior Counsel & Manager of the Tribunals office will continue to report to the Director, Policy and Tribunals, with respect to Tribunals Office operational issues. Where hearing and adjudicative issues overlap with operational issues the Director, Chair and Senior Counsel & Manager will consult to determine a resolution. The Chair will also provide an annual report to Convocation relating to adjudication by the Hearing and Appeal Panels.

29. The Chair must be accountable and report to the CEO, who is ultimately responsible to Convocation, on the Tribunal's operational issues. The Law Society has well-developed operational structures that include the Tribunals functions. For example, there are systems in place related to staff hiring, ongoing employment and budgetary matters that are dealt with uniformly across the Law Society and Information Systems and Communications structures that apply to all departments. The CEO will consult fully and regularly with the Chair on operational issues related to the Tribunal.
30. To reflect the importance of an independent Chair on adjudicative matters the Committee recommends that the Chair be appointed by Convocation for a fixed term, subject to renewal as Convocation decides. The term should be long enough to enable the Chair to develop the systems and carry out the responsibilities set out in the position description. The term should also be of sufficient length to provide continuity. In the Committee's view four (4) years is an appropriate length to accomplish this balance.
31. The Committee recommends that the Chair be eligible for re-appointment. The term of any re-appointment(s) will be up to four years, as Convocation determines. The process to determine renewal will begin at least one year before the end of the Chair's term, and will be completed no less than six months before the conclusion of that term.
32. At the same time there must be a process to remove a Chair during his or her term if necessary. That process must meet standards of procedural fairness and its results must be approved by Convocation. The exact nature of the process will be set out in the terms of the Chair's contract.
33. To attract a candidate qualified for the position with the experience, judgment and leadership skills that are mandated by the position description, it will be important for the position to be competitively remunerated. The Committee recommends that the Law Society undertake a recruitment process, as it does for other senior positions. That recruitment process will include the benchmarking of remuneration within the Law

Society and will consider external positions in administrative tribunals and government of a comparable nature. Convocation will approve the ultimate appointee.

APPOINTMENT OF VICE-CHAIRS

(i) Elected Bencher Appointees

34. Currently the *Law Society Act* provides for the appointment of a Chair and Vice-Chair of each of the Hearing Panel and Appeal Panel. The role of the Chair as described in this report will be different from the one described in the current *Act* since one person will have overall responsibility for the Tribunal (including the Hearing and Appeal Panels) and will not be a bencher.
35. The Committee recommends that under the new model the positions of Vice-Chair of each of the Hearing and Appeal Panel will continue. The elected bencher Vice-Chairs will support and assist the Chair with the responsibilities of the Hearing and Appeal Panels. The Vice-Chairs' responsibilities will be somewhat fluid, depending upon the Chair's priorities and responsibilities at any given time, and each Vice-Chair may at times carry out the other Vice-Chair's responsibilities. The proposed general purpose, responsibilities and qualifications of the positions are set out at **TAB 9.1.2: VICE-CHAIR POSITION DESCRIPTION**. The description outlines the purpose of the position, as informed by the list of key responsibilities and qualifications.
36. The Committee discussed whether the Vice-Chairs, like the Chair, should be non-benchers. The Committee is of the view that, particularly at the outset of implementation of the new model, there is merit in the Vice-Chairs being elected benchers, for the following reasons:
 - a. Given the other changes that will be part of the new model, elected bencher Vice-Chairs will provide continuity as the system is established.
 - b. As members of Convocation directly involved in policy making the two elected bencher Vice-Chairs will provide valuable context and background to the Chair.
 - c. Elected bencher Vice-Chairs will provide the non-bencher Chair with valuable assistance on issues related to adjudicators.

- d. Elected benchers Vice-Chairs will demonstrate the continued importance and value of benchers adjudicators in the Tribunals process.

(ii) Nature of the Appointments

- 37. The Committee recommends that the Vice-Chair positions be assigned by the Treasurer as part of the regular Committee appointments he or she recommends to Convocation. It will be important for the Treasurer to consider the time commitment the position requires when determining the Vice Chairs' other committee assignments or responsibilities. It will also be important to allow the Vice-Chairs to remain in the position over a number of years for continuity. For these reasons the Committee recommends that the Treasurer consult with the Chair on the appointments. The Committee also recommends that once appointed the Vice-Chairs take direction from the Chair in their capacity as Vice-Chairs.
- 38. The normal committee appointment process is yearly. A longer term for the Vice-Chairs will be beneficial to achieve continuity and efficiency. While Convocation should be free to appoint a Vice-Chair for a term it considers appropriate, the Committee's view is that two years is not unreasonable. The Committee recommends that each Vice-Chair be appointed for a two-year term, with eligibility for re-appointment. The Vice-Chairs should continue to be remunerated for their work in the same manner as benchers are otherwise remunerated for Law Society activities.
- 39. The Committee also recommends that in furtherance of the separation between the regulatory and adjudicative functions of the Law Society, the Vice-Chairs of the Hearing and Appeal Panels not be members of the Professional Regulation Committee and, if they are lawyers, not be members of the Paralegal Standing Committee. Although the Paralegal Standing Committee also has responsibility over professional regulation matters that affect paralegals, a complete prohibition against Vice-Chairs of the Hearing and Appeal Panels being members of that Committee would preclude a paralegal from being a Vice-Chair. This is because the *Law Society Act* provides that all five paralegals specified under the Act must be on the Paralegal Standing Committee. To address this

issue, the Committee recommends that a paralegal be eligible for appointment as Vice-Chair, but if so appointed he or she will not participate in any regulatory discussions of the Paralegal Standing Committee.

CONTINUATION OF THE TRIBUNALS COMMITTEE

40. The Tribunals Committee is an essential forum for the development and communication of policy proposals relating to the Tribunals structure and process. As the Chair develops systems for the new model and makes recommendations for Convocation's consideration and approval, he or she will benefit from the input and policy guidance of the Tribunals Committee. The Chair will be an *ex officio* member of the Committee. The Committee's current mandate will continue, subject to the addition that in developing policy options it will do so in collaboration with the Chair.
41. The Committee is of the view that the Vice-Chairs of the Hearing and Appeal Panel should both be members of the Committee, to provide input on the areas in which they provide assistance to the Chair. The Committee does not consider it essential that they be the Committee Chairs or Co-Chairs, but does not preclude that possibility.
42. Benchers and non-benchers should be eligible for appointment to the Committee. In the Committee's view it will be important to include representation from among non-benchers to ensure that the breadth of perspectives is taken into account.
43. The Committee is not recommending a change to the Committee's size. It is not intended that all adjudicators be members of the Committee.
44. In furtherance of the separation of the Tribunals process from the disciplinary stream, lawyer members of the Tribunals Committee will not also be members of the Professional Regulation Committee or of the Paralegal Standing Committee. For the reasons discussed above, paralegals appointed as members of the Tribunals Committee

will not participate in any regulatory discussions at the Paralegal Standing Committee meetings.

EFFECTIVE ADJUDICATION

ADJUDICATOR APPOINTMENT PROCESS

45. Qualified and available adjudicators play a central role in the effectiveness, reliability, transparency and fairness of the Tribunal. As a regulatory body the Law Society's Tribunal has an added layer of responsibility as a component in the Law Society's overall mandate to regulate the profession in the public interest. Self-regulation necessitates that lawyers and paralegals will preside over regulatory proceedings concerning their peers. To ensure the added input of the public, lay appointees are also an integral part of the hearings process.
46. In 2007 the Law Society considered the issue of who should sit on regulatory hearings. The Tribunals Composition Task Force considered whether it should recommend a model of benchers-only adjudicators, non-bencher-only adjudicators, or a mixture of benchers and non-bencher adjudicators.
47. The 2007 Task Force decided against recommending a model that excluded benchers from the process, believing that the governors of the Law Society should have a "hands-on" responsibility for regulating this aspect of the profession's standards. The Committee agrees. Benchers add a dimension of familiarity with the Law Society's regulatory requirements and policy decisions that inform the regulatory process. Moreover their adjudicative work provides an important context for the policy decisions Convocation makes.
48. The existence of an Adjudicator Code of Conduct addresses any conflict issues that may arise in individual instances with all adjudicators, including benchers. In addition, jurisprudence governing regulatory bodies and government has settled that integrated regulatory models do not present systemic bias. As such there is no reason to exclude

benchers on the Hearing and Appeal Panels, and many important reasons to include them.

49. At the same time, the use of bencher adjudicators should be predicated not just on the fact of their election, but on the basis of quality and availability. This is essential to a Tribunal that is effective, independent and transparent. Expanding the pool of adjudicators available for both the Hearing and Appeal Panels strengthens the Law Society's commitment to quality and to an adjudicator pool developed on the additional basis of availability.
50. The exclusive use of benchers limits the Law Society's ability to ensure timeliness of scheduling and delivery of reasons, particularly as a number of the cases before the Tribunal increase and become increasingly complex and lengthy. In 2011, 471 Hearing Panel hearings were scheduled on 232 of the 248 available calendar days or approximately 94% of days available, often with multiple hearings proceeding at the same time. Moreover, the number of non-continuous hearings, that is those that must be adjourned numerous times to accommodate schedules, has resulted in a number of matters taking substantial amounts of time to complete.
51. An examination of the active Tribunal files currently before the Hearing Panel for which there have been 10 or more days of hearing scheduled reveals 17 files listed, 15 of which involve lawyers licensees and two of which involve paralegal licensees. Of these, the oldest active file is 933 days and the youngest is 197 days from the first hearing date scheduled, with an average length of 595 days. Most of the hearing blocks are scheduled for fewer than five days with many at only one day. Longer hearing blocks would facilitate moving these matters along. Expansion of the Hearing Panel to include non-benchers who have time to devote to lengthy and continuous hearings may assist. A three-member hearing panel was assigned in all of the 17 files listed. Seventeen non-bencher appointees were assigned to 13 of these files with 34 benchers making up the balance.

52. The increasing length of proceedings is a function of the increasing complexity of the subject matter of the proceedings. The pool of available elected benchers currently in practice to hear these complex matters is limited in number by the unavailability of many elected benchers to devote multiple weeks to law society proceedings. This limitation must be taken seriously in any discussion about furthering the long term effectiveness of the Tribunal.
53. There are important additional reasons for an expanded pool of adjudicators. The availability of non-bencher adjudicators will make it possible to broaden the pool of those with practice-area expertise, regional and other diversity interests and experience as litigators or solicitors. Further, given the part-time adjudicator model the Law Society employs, an expansion of the pool is essential to ensure effective operation. Non-bencher adjudicators will also be required to make a dedicated time commitment and in doing so will greatly enhance the Tribunal's ability to schedule hearings efficiently.
54. The self-regulatory mandate is strengthened by the additional involvement of lawyers and paralegals who are not benchers in the adjudicative process. The profession is interested in the operations of its regulator. Indeed, during the consultations that were held on governance reform, participants and legal organizations suggested this expanded approach to adjudication. Lawyers and paralegals volunteer their time to engage in Law Society educational, mentoring, duty counsel, and other activities. At the same time, however, the Law Society can be viewed as opaque to much of the profession. What goes on at the Law Society? How does the regulatory system work? How are proceedings handled and decided?
55. By involving non-bencher lawyers and paralegals in the hearings and appeals process, the Law Society broadens the profession's appreciation of the regulatory issues that the Law Society must handle on a regular basis. It also sends an important message that self-regulation is represented not just through the elected governors, but by the members of the profession at large. To be an effective addition, the non-bencher adjudicators must be

scheduled regularly so that they can develop the expertise in the subject matter of the Tribunal's work that is acquired by experience.

56. Lawyers and paralegals have a collective responsibility for compliance with regulatory standards in the public interest. More than just benchers have an integral role to play in adjudicating Law Society issues. Through this expansion the Law Society will also be sending a message to the profession that the elected governors value the contribution that the profession as a whole, and the pool of lawyer and paralegal talent within it, can add to the quality of administrative justice that the Law Society must deliver.
57. The need and benefits of an expanded pool extends beyond lawyers and paralegals to include lay appointees. The lay appointees play a fundamental role in the Law Society's three member Hearing Panels and on the Appeal Panel. They will continue to do so under the proposed new model. The Law Society is committed to having lay representation on these hearings. To the extent that lay benchers are unable or unwilling to sit or do not speak French the need for non-bencher lay appointees becomes that much more critical. The Law Society will not schedule three or five member hearings without the requisite lay appointee.
58. As a matter of policy, Convocation has already accepted that benchers should not be the only adjudicators. Since 2006, the *Law Society Act* has provided that benchers, licensees and persons approved by the Attorney General are eligible to sit on hearing and appeal panels. In 2007 Convocation determined that the Hearing Panel should include 4 non-bencher lawyers and 4 non-bencher lay appointees. In January 2012 it expanded the number of non-bencher lawyers to 6. The experience with this initial expansion has been very positive. The additional lay appointees have also enabled the expeditious scheduling of hearings when the complement of lay benchers was insufficient. In the case of the lawyer appointees they have provided additional expertise, particularly as it relates to ability to conduct hearings in French, and greater options for scheduling, particularly of long hearings.

59. The Committee has concluded that the non-bencher adjudicator initiative has benefited the Law Society's Tribunal process by,
 - a. enhancing the Law Society's ability to effectively adjudicate and manage its hearings process in the public interest, through an expanded pool of adjudicators;
 - b. offering an opportunity for non-benchers to play a valuable role in Law Society matters and become more engaged in the issues of self-regulation; and
 - c. facilitating the hearing of French language matters.

60. The existence of an additional pool of adjudicators has provided the Chair of the Hearing Panel with additional scheduling flexibility. On occasion these adjudicators have made it possible to schedule a hearing when the time commitment involved or a last minute change in scheduling made it impossible to assign a bencher adjudicator or where the hearing was to be conducted in French.

61. At the same time, however, the 2007 expansion was based on the additional adjudicators being thought of as an adjunct to the primary model of bencher adjudication. Moreover, in 2007 the appointment of non-bencher adjudicators was limited to the Hearing Panel.

62. The Committee believes that the experience with the non-bencher additional adjudicators illustrates the merits of a model that includes non-bencher adjudicators as an integral component of both the Hearing and Appeal Panels.

63. Moreover, it is essential to the effectiveness of any administrative tribunal, including the Committee's proposed model, that adjudicators have the opportunity to adjudicate on a regular basis to ensure the ongoing development of their skills.

64. In the Committee's view the effectiveness of its proposed model is enhanced by cross-pollination of the different perspectives that bencher and non-bencher adjudicators bring to the process. There should be an expansion of the pool of non-bencher adjudicators, lawyer, paralegal and lay appointees, to ensure adjudication based on optimum quality

and availability and to engage others in the profession beyond benchers in professional regulation.

65. As the Law Society undertakes an enhanced model that will involve a number of significant changes the Committee believes that change should be implemented decisively, but in a measured fashion to allow for a smooth transition. As the new system is implemented the pool of benchers who apply or are available to adjudicate may vary. It is too soon to determine whether the bencher pool will be smaller and the Chair will need time to evaluate the needs of the new model.
66. Accordingly, the Committee recommends a two-pronged approach to enlarging the pool of non-bencher adjudicators:
- a. As a first step, Convocation approves an increase to the number of non-bencher lawyer, non-bencher paralegal and non-bencher lay adjudicators to reflect the commitment to a model of bencher and non-bencher adjudicators.
 - b. Once the Chair is appointed, he or she will,
 - i. assess the number and availability of current bencher adjudicators who apply to be on the Hearing Panel, the adjudicative needs of the Panel overall based on the principles discussed in this report, and the current pool of non-bencher adjudicators available to sit on long matters;
 - ii. consider any other factors that are relevant to determining the appropriate size of the adjudicative pool; and
 - iii. having taken into consideration the addition of non-bencher adjudicators approved by Convocation as a first step under (a), further adjust the size of the non-bencher adjudicative pool to meet those needs as he or she determines appropriate.
67. Currently there are 6 non-bencher lawyer adjudicators, 3 non-bencher elected paralegal adjudicators and 4 non-bencher lay adjudicators. The Committee is of the view that doubling the non-bencher lawyer adjudicators (from 6 to 12) and adding 3 paralegal adjudicators for a total of 8⁴ will provide a reasonable starting point for the enhanced

⁴ Of the five current Paralegal Standing Committee members, one is on the Proceedings Authorization Committee and accordingly does not adjudicate.

model and provide the new Chair with a meaningful pool against which to assess additional needs. With respect to the lay adjudicators, in addition to the 4 non-bencher lay adjudicators there are 4 temporary adjudicators who are regularly scheduled to sit and are essential to the Law Society being able to meet its commitment to having lay participants sit on the hearings. The Committee recommends that in addition to the eight lay benchers, the number of non-bencher lay adjudicators be increased from the current 4 to 8 for a total of 16 lay hearing panel members.⁵

68. In summary, the Committee is proposing the addition as members of the Hearing Panel of,
- a. 6 non-bencher lawyers, for a total of 12 non-bencher Hearing Panel lawyers taking into account the current 6 non-bencher lawyers;
 - b. 3 non-bencher paralegals for a total of 8 Hearing Panel paralegals, taking into account the current 2 paralegal benchers and 3 elected paralegals; and
 - c. 4 non-bencher lay appointees for a total of 16 lay Hearing Panel members, taking into account the current 8 government appointed lay appointees and 4 non-bencher lay appointees;

with eligibility to be appointed to the Appeal Panel.

69. This approach leaves room for the Chair's assessment of additional adjudicator requirements in keeping with the model's goals and his or her consideration of the most effective way forward.

PANEL APPOINTMENTS

70. If quality and availability are to be the key to an effective adjudicative model, then it is important to consider this additional pool of non-bencher adjudicators as an integral part of the Hearing and Appeal Panels, not just as a backstop when bencher adjudicators are unavailable to sit. At the same time, the Committee is of the view that the assignment of

⁵ Adding these additional appointees to the current roster of sitting adjudicators would result in a roster of 57 lawyer benchers (elected, former Treasurer and *ex officio*), 16 lay benchers and appointees, 8 paralegal benchers and appointees and 12 non-bencher lawyer appointees.

adjudicators to panels should keep in mind the valuable perspective benchers adjudicators bring to the process, as discussed above.

71. Populating Hearing and Appeal panels will form an integral part of the Chair's role, with the assistance of the Vice-Chairs. In furtherance of his or her responsibility to ensure an effective Tribunal that focuses on quality and availability, the Chair should balance a number of factors including,
 - a. appointing panels best able to accomplish those goals;
 - b. reflecting a commitment to ensuring that benchers play a hands-on role in adjudication; and
 - c. treating the pool of available adjudicators as a collective source for scheduling.
72. These criteria will apply equally to Hearing and Appeal panel scheduling.
73. Regulation 167/07, set out at **TAB 9.1.3: REGULATION 167/07**, currently provides that panels that hear matters in which a lawyer is the subject of the proceeding should have one elected benchers and one lay appointee. The source for the third member is not specified. For panels that hear matters in which a paralegal is the subject of the proceeding one member is to be a paralegal licensee, one a lay appointee and one a lawyer licensee. The Regulation applies the same principles to Appeal Panel composition, but adjusted to reflect five member panels.
74. Pursuant to Regulation 167/07, the Chair has the authority to deviate from this panel composition, but only where to comply would "unduly delay" a hearing.
75. The general principle of flexibility in scheduling is reflected in Regulation 167/07, both in the flexibility that exists with respect to the appointment of the third Hearing Panel member and the fifth Appeal Panel member in lawyer hearings and through the ability of the Chair to deviate from the Regulation's provisions where to comply will unduly delay the hearing. Flexible scheduling is an essential component of ensuring that the most appropriate panels are scheduled to conform to the Tribunal goals described above.

76. The Committee considered whether to recommend a panel composition structure of one bencher, one non-bencher and one lay adjudicator, with the Chair in the normal course selecting from each of these categories of adjudicators, but recommends a more flexible approach.
77. The Committee recommends that the general composition structure set out in Regulation 167/07 remain the same. It does, however, believe that in the interests of effective scheduling, the Chair's flexibility must be meaningful for the assignment of both Hearing and Appeal panels. As such, the Chair's ability to alter the composition as set out in the Regulation should be broadened to include factors in addition to undue delay to reflect,
- a. practice area expertise requirements;
 - b. experience requirements;
 - c. regional and other diversity perspectives;
 - d. scheduling effectiveness for reasons other than "undue delay;"
 - e. conflicts; and
 - f. the public interest.
78. The Committee recommends that amendments be proposed to Regulation 167/07 to provide authority and discretion in the Chair to vary the composition of the Hearing and Appeal panels to ensure effectiveness of adjudication as set out in paragraph 77.

HEARING PANEL APPOINTMENT CRITERIA

79. Another critical feature of an effective adjudicative model is the implementation of meaningful criteria for appointing adjudicators and evaluating their performance for the purpose of quality control and re-appointment determinations.
80. Whereas the current Law Society structure has criteria for the appointment of non-bencher adjudicators, this is not the case for elected benchers, non-bencher members of the Paralegal Standing Committee and lay benchers, who are essentially appointed to the Hearing Panel by virtue of their status. In the Committee's view this appointment as of

right does not always result in adjudicators who are the most suited to or interested in adjudication. Similarly, some of the lay benchers appointees may have no experience with or interest in adjudication.

81. Moreover, neither benchers nor non-benchers currently undergo an evaluation process following their initial appointment to determine whether on the basis of quality, competence, availability or other criteria they should be re-appointed to the Hearing Panel.
82. At the same time, some efforts have been made to introduce quality assurance into the system through required orientation sessions for new adjudicators, ongoing and regular education sessions in Convocation and, more recently, the development of a training curriculum, the first program of which covered decision-writing.
83. An adjudicative system dedicated to quality must have meaningful evaluative criteria. In the Committee's view this should include,
 - a. criteria for appointment;
 - b. criteria for ongoing training requirements and competencies; and
 - c. criteria for re-appointment.
84. In addition, benchers should be free to choose not to put their names forward for the Hearing and Appeal Panels if they are more interested in policy work, have insufficient time to devote to hearings, are unable to write reasons for decision in a timely manner, or have other issues that make them unsuitable or unable, whether permanently or temporarily, to adjudicate.
85. The issue of appointment criteria is complicated somewhat by the fact that a newly elected benchers may have minimal or no experience as an adjudicator. Since the Committee has expressed the view that it is important for elected benchers to be involved hands-on in adjudication it has considered how best to articulate appointment criteria that will address this issue.

86. The Committee considered the option of recommending identical criteria for the appointment of benchers and non-benchers to the Tribunal, in keeping with the equality of all Tribunal members within the Committee's proposed model. The Committee is of the view, however that it is acceptable for the model to be somewhat asymmetrical as between bencher appointments to the Hearing Panel and non-bencher appointments. This reflects the reality of the electoral structure and the value of introducing benchers early on to their adjudicative role. This asymmetry would apply in two respects: grandparenting existing benchers and adopting different requirements for experience as an adjudicator.
87. If Convocation approves the new model for appointments, as part of the transition process the current members of the Hearing and Appeal Panels will be grandparented if they apply to continue as adjudicators.
88. The Committee's proposal for appointment is as follows:
- a. Every bencher, current and future, who wishes to become a member of the Hearing Panel will be expected to apply.⁶ It will be made clear to benchers that they do not have to apply to sit as an adjudicator if they prefer to do more policy work than adjudicative work or have other reasons for not sitting on the Hearing Panel.
 - b. As part of his or her application, the interested bencher will,
 - i. agree to a minimum amount of availability;
 - ii. agree to attend whatever training and education is required of adjudicators;
 - iii. agree to appropriate timelines for producing written reasons for decision.

Those unable to make such commitments will not be eligible for that round of appointments, but will be free to re-apply when their schedule permits such commitments.
 - c. As part of a transition to the new system, current benchers who apply will in the usual course be grandparented. From that point on and on a going forward basis, however, they will be required to meet the same criteria as new benchers or other

⁶ The Committee is not recommending that candidates for elected bencher would have to declare whether they wish to be adjudicators as part of their election platform. The decision to apply to sit on the Hearing Panel would be made once the bencher is elected.

appointees and to be evaluated for re-appointment on the same basis as other appointees.

- d. In the case of new benchers, those who have had no adjudicative experience will be eligible to sit, but before being scheduled for any hearings will be required to complete, to the Chair's satisfaction, adjudicator training designated by the Chair to enable them to provide competent adjudication. The time required for this training will not count as part of the commitment to a minimum amount of availability. Those who have adjudicative experience will not, in the normal course, be required to take training before being eligible to sit, other than the mandatory orientation to the Law Society's Tribunal for all new benchers.
- e. New non-bencher adjudicators will be required to meet criteria along the lines of those appointed as non-benchers since 2007, including having adjudicator experience. As an illustration, **TAB 9.1.4: CRITERIA FOR NON-BENCHER LAWYER ADJUDICATORS**, sets out the appointment criteria applied to non-bencher lawyer adjudicator applicants in 2008. The Chair will determine what additional or other criteria should be applied on a going forward basis.
- f. Adjudicators will be appointed for a two-year term, subject to re-appointment on application.
- g. As no formal evaluation system currently exists, one of the new Chair's responsibilities will be to develop and recommend an evaluation system to Convocation. The evaluation process will be used to assist adjudicators to improve and to determine who should be re-appointed. Based on the outcome of the evaluation process, the Chair will make recommendations to Convocation for the re-appointment of adjudicators.
- h. Without seeking to circumscribe the development of the evaluation process, the Committee is of the view that it should include,
 - i. observation of adjudicators in hearings;
 - ii. review of adjudicators' orders and reasons for decision;
 - iii. peer review - adjudicators evaluating others adjudicators with whom they have sat on panels;
 - iv. self-review;
 - v. establishment of a list of competencies for adjudicators and evaluation of performance against those competencies. These could include competencies in the following areas:
 - Communication
 - Analytical thinking
 - Conceptual thinking
 - Decision making/judgment
 - Organizational skills
 - Advance preparation
 - Ethics and values

- Interpersonal skills
 - Listening skills
 - Collegiality/teamwork
 - Civility
 - Stamina/stress resistance.
89. Developing the evaluation system will be a complex process. The Chair should be given a reasonable time frame to do so and the possibility of doing so in increments.⁷ The Committee recommends that within six months of the effective date of his or her appointment the Chair will present a proposal to Convocation for the evaluation system and a timeline for implementation.
90. The introduction of an evaluation system will be a significant change to the Law Society's Tribunals structure and culture, but the Committee considers this essential to the effective operation of any model that is designed to ensure quality adjudication.

TIMELY ADJUDICATION

91. The third component of the proposed model involves a structural commitment to timely adjudication. It is not sufficient that a tribunal have good processes and quality adjudicators if scheduling of matters is drawn out, adjudicators are unable to commit to lengthy matters, or there is unreasonable delay in the rendering of decisions and reasons.
92. One of the features that a new model can develop is a more rigorous approach to scheduling that is fair to licensees and counsel and ensures that the public interest in addressing outstanding regulatory matters is also a priority.
93. There are two components to timely adjudication that the Committee addresses:
- a. The commitment of adjudicators to be available for a minimum number of hearing days per session.
 - b. The development of a roster of adjudicators for long and short hearings.

⁷ The development of evaluation systems are beginning in other tribunals. This may provide guidance for the Chair.

94. The Law Society's Tribunal operates within a part-time adjudicator structure. Unlike other tribunals that have a combination of full and part-time members, all the Law Society's panels must be scheduled around adjudicators' other work responsibilities. Benchers and non-bencher adjudicators have varying degrees of availability to act as adjudicators.
95. In furtherance of an effectively-operated Tribunal the Committee considers there to be a number of scheduling processes that the Chair will implement as follows:
- a. To allow for the development of adjudicative experience, the range of hearing subject matter, scheduling and conflict issues, benchers and non-bencher adjudicators will be required to offer a minimum number of hearing days per session. The Chair will determine the appropriate minimum in each case, taking into account that benchers have more extensive Law Society responsibilities than non-benchers who seek out the adjudicator role. The Chair will require the former to offer fewer dates.
 - b. One of the issues of concern to any Tribunal is managing long hearings in a manner that is fair to the participants and meets the public interest in resolving regulatory proceedings expeditiously. One of the difficulties with a part-time Tribunal of adjudicators is that it is difficult to allocate a sufficient number of hearings days together. The Committee is of the view that in addition to committing to a minimum number of hearings days adjudicators will indicate whether they are available for short hearings only or for both short and long hearings. A definition of short and long hearings and a short and long hearing list roster of adjudicators will be developed.

FINANCIAL IMPLICATIONS OF THE MODEL

96. The Committee's focus has been on developing an integrated adjudicative model that will enhance the Law Society's adjudicative structure. This includes introducing leadership that is devoted to adjudication and developing and implementing systemic approaches to ensure quality adjudication, timeliness of hearings and effective decision-making. In the Committee's view the components of the model proposed here are essential to the continued viability and increased effectiveness of the Law Society's Tribunal.

97. The Committee has considered the potential costs of its recommendations. Given that the Chair will implement the model and given the role the search committee will play in determining the ultimate remuneration of the Chair, it would be premature for the Committee to provide exact cost figures at this time. Having said that, it considers that the main categories of costs will be those associated with,
- a. the Chair's remuneration and the support of his or her office;
 - b. ongoing adjudicator education; and
 - c. the development of an evaluation system (a one-time cost).
98. As mentioned above, the Law Society will undertake a recruitment process, as it does for other senior positions, to find an appropriate Chair. That recruitment process will include the benchmarking of remuneration within the Law Society and externally to consider positions in administrative tribunals and government of a comparable nature. There will be a one-time expense for setting up the Chair's office, such as for providing equipment and furniture, and ongoing expenses for the Chair's administrative support, office space and remuneration. In the Committee's view, a reasonable estimate for annual costs, including the Chair's remuneration, will be in the area of \$500,000.
99. The Committee has discussed the importance of ongoing adjudicator training as an essential component of the new model. Convocation has already approved enhanced adjudicator training. The 2012 adjudicator education training budget is \$55,000. The Committee estimates that to ensure the continuation of adjudicator training that is effective and stimulating, and keeping in mind the need to train new benchers who do not have previous adjudicator experience and per diem costs for attending training, an ongoing annual cost of \$100,000 should be anticipated.
100. The model anticipates regular and meaningful evaluation of adjudicators with the Chair developing a proposed approach for an evaluation system within the first six months of his or her appointment. Without anticipating what the Chair might develop, the Committee is of the view that it would be prudent to assume that there will be one time developmental costs for such a scheme and some modest ongoing expense, although it is

not in a position to speculate on what those costs might be. The Chair's evaluation proposal and its proposed budget will be provided to Convocation for approval.

101. While the new model will have cost implications, in the Committee's view some of the challenges of the current approach result in costs being incurred that the recommended reforms are designed to reduce. It is difficult to quantify cost savings of a yet to be introduced system, but the Committee believes that the proposals it has put forward will in the long run result in a number of cost reductions, including,
 - a. adjudicator cost savings as hearings are more expeditiously scheduled and completed, resulting in fewer adjudicative hours and fewer hearings that must be drawn out over many months;
 - b. as the Chair will sit on hearings, the remuneration and expenses of another adjudicator will be saved;
 - c. the development of enhanced training in decision-writing that will reduce the time spent on writing reasons; and
 - d. through training, more efficient hearing processes that reduce the time needed for hearings.

102. The Committee also notes the unique role of the Appeal Tribunal in the Law Society model. In most administrative tribunals appeals are taken to the Divisional Court. The Appeal Panel was introduced when the Law Society moved from using Discipline Convocation as part of its adjudicative model and at a time when there was virtually no Law Society jurisprudence governing the adjudicative model.

103. The Committee has not considered in depth whether under the enhanced and modernized system it is recommending the Appeal Panel will still be necessary, but it suggests that this is something that the Chair and Convocation might well consider in the future. If the Appeal Panel were phased out, this could result in further savings to the Tribunal system. Even if the Appeal Panel continues, the enhanced adjudicative model is likely to result in fewer successful appeals, thereby reducing costs. For example, a Hearing Panel matter that involves 15 days divided into 5 sets of hearing dates with two non-Toronto

adjudicators that does not have to be reheard will result in cost saving in remuneration and expenses alone of approximately \$50,000.

104. The Committee also notes the potential for the Chair to consider recommendations for increasing the number of single adjudicator hearings, which would have the potential to expedite hearings and also include cost savings.
105. Finally, the Committee notes that if Convocation approves the proposed model, it is likely that costs will not be incurred before 2013 and for some aspects of the model not before later in that year.

REVIEW OF THE NEW MODEL

106. The new model will include a review process. The purpose of the review will be to consider,
 - a. whether and how the new model is addressing the goals and criteria set out in paragraphs 13 and 14;
 - b. its impact on the Tribunals processes; and
 - c. its cost effectiveness.
107. It is important that the review take place only after there has been sufficient opportunity for the model and its new processes to be implemented. This includes the appointment of the new Chair and Vice-Chairs, the development and implementation of an adjudicator appointment and adjudicator evaluation system and enhanced adjudicator training, and the appointment of additional non-bencher adjudicators.
108. The Chair will provide annual reports to Convocation. In the Committee's view, the first formal review of the model should take place in the third year of the Chair's first term. Within one year of the Chair's appointment, the Tribunals Committee in conjunction with the Chair, the Vice-Chairs, the CEO and the Director of Policy and Tribunals will develop the framework for the model's review, to be approved by Convocation. The

framework will include any general Law Society program review criteria that Convocation has approved and are in place at that time.

CONCLUSION

109. In establishing its priorities for the 2011-2015 bench term, Convocation recognized the importance of an effective Law Society hearings process to its overall mandate and committed itself to addressing this priority.

110. The Committee's proposed model is designed to provide a framework whose component parts will contribute to the fulfillment of Convocation's priority. The model is focused on leadership, transparency, quality adjudication and availability, objective criteria for appointment and evaluation and cost effectiveness. It will enhance the Law Society's commitment to a hearings process that is transparent, fair and effective both for the public and for the affected licensees who are subject to the proceedings. This is central to the Law Society's proper discharge of its adjudicative responsibility.

CHAIR POSITION DESCRIPTION

PURPOSE

The Chair is responsible for the overall implementation of the strategic direction and performance of the Tribunal, including its Hearing and Appeal Panels, subject to the provisions of the *Law Society Act* and Convocation's policies. The Chair shall be accountable to Convocation to provide leadership to the Tribunal to ensure that it operates fairly, efficiently and effectively within its mandate.

KEY RESPONSIBILITIES

Law and Procedure

- Establishes and monitors adjudicative processes, including the efficient assignment of cases and effective case management practices and the streamlining of adjudicator involvement in proceedings management.
- Assists Convocation in the development of Tribunal policies and procedures and provides oversight to the implementation of those policies to ensure efficiency, quality and timeliness in the resolution of proceedings and rendering of decisions, orders and reasons.
- In conjunction with the Tribunals Committee and in keeping with the Law Society's mandate to regulate the profession in the public interest, develops recommendations for Convocation's consideration and approval respecting the Tribunal's goals and policies, effective processes, and quality and performance of adjudicators.
- Supervises the Tribunal's adjudicative decision-making process to ensure consistent quality and cogent decision-making.
- Arranges and chairs meetings of the Vice-Chairs and adjudicators to discuss emerging issues, jurisprudence, policy and process change (in consultation with the Tribunals Committee and Convocation), engages in professional development, and promotes clarity and predictability in the exercise of independent decision-making.
- Participates in the hearing and appeal process as an adjudicator, particularly in matters involving complex or novel issues of law and procedure.
- Is responsible for the evaluation of adjudicators and provides recommendations on the appointment and re-appointment of adjudicators to ensure consistent quality of adjudication including the maintenance of high standards in,
 - conducting hearings pre-hearings and case management functions;
 - delivering reasons;

- chairing hearing panels;
 - timeliness of hearings and decisions; and
 - training and education.
- Ensures effective implementation of policy and procedures and operation of the Tribunal through a dynamic and collaborative interaction with the Tribunals Office.

Leadership

- Mentors and develops Vice-Chairs and adjudicators by,
 - providing oversight and advice;
 - discussing and implementing the professional development requirement among appointees; and
 - managing the adjudicator evaluation system in a professional, effective and objective manner to ensure that issues respecting quality of adjudicators and timeliness of reasons are managed in the best interest of the Tribunal and the public interest.
- Subject to the Treasurer's and, on operational issues, the CEO's direction, represents the Tribunal as the liaison and spokesperson on Tribunal processes and procedures, including seeking input where the Tribunals Committee or Convocation seeks to consult with stakeholders.
- Ensures independence in adjudicative functions by developing recommended standards of interaction with the public, stakeholders and government.
- Remains current in developments in administrative law and related matters in Ontario, Canada and other jurisdictions.
- Provides direction to the Senior Counsel & Manager of the Tribunals Office on hearing and other adjudicative matters.
- Maintains open, effective and regular communication with the Treasurer, CEO, the Tribunals Committee, the Tribunals Office and Convocation so that plans and initiatives are appropriately developed and implemented.
- Fosters and facilitates the effective use of technology in the hearing process.
- Develops and maintains an effective scheduling system that reflects the goals of the Tribunal and takes into account adjudicator competence and quality, availability both to sit on hearings and produce written reasons expeditiously, conflict issues, French language requirements, lengthy hearings, experiential requirements, diversity,

representativeness across practice structures and challenges of operating a Tribunal with part-time membership. In furtherance of this, considers and recommends innovative approaches to scheduling and case resolution through alternative dispute resolution techniques, case management, and agreements on factual and legal issues.

- Develops standards for timing of delivery and quality of reasons and effectively manages compliance.
- Acts with integrity and honesty, with actions guided by the Law Society's mandate to regulate the profession in the public interest.

Governance

- Liaises and advises the Tribunals Committee and Convocation on issues affecting the Tribunal to advance sound Tribunal processes.
- Establishes the Tribunal's operational policies and procedures within the Law Society's mandate to regulate the profession in the public interest.
- Notifies the Tribunals Committee and Convocation of adjudicator vacancies and makes recommendations for appointments or re-appointments that promote and respect principles of high quality adjudication, including considerations of equity, diversity, experience, training, availability and regional representation.
- Provides an annual report to the Tribunals Committee and Convocation on the operations of the Tribunal.
- Keeps the Tribunals Committee and Convocation informed in a timely fashion on issues affecting the Tribunal.
- Oversees and reviews preparation of Tribunal budget and allocation of resources as part of the Law Society budget process, reporting to the CEO.
- Ensures adjudicators act in accordance with the Adjudicator Code of Conduct.

QUALIFICATIONS

- An experienced leader with ability to set strategic direction, articulate and work toward goals, oversee implementation of plans and strategies to deliver efficient, effective and high quality services.
- A law degree and membership in a law society in a Canadian common law jurisdiction.
- A proven ability in results management.

- Thorough understanding of the administrative justice system, including the relevant legal principles of administrative law and practice.
- Strong background and experience in adjudication and alternative dispute resolution.
- Comprehensive knowledge of the *Law Society Act* and Reg. 167/07, the *Statutory Powers and Procedures Act* and related laws and legal processes or the ability to acquire such understanding.
- In-depth understanding of the professional, institutional, policy and community context in which the Tribunal operates, or the ability to acquire such understanding.
- Understanding of the Tribunal's Rules of Practice and Procedure and Appeal Rules and supporting procedures.
- Superior dispute resolution and analytical skills to resolve complex matters involving multiple interests, under public scrutiny.
- Effective communication and interpersonal skills to positively influence and communicate with staff, stakeholders and the public.
- Understanding of the legal profession's values and a commitment to working within Law Society's accountability structure.
- Understanding of sound financial and operational business processes and practices.
- Commitment to the protection of the public interest, within the Law Society's mandate.
- Commitment to respect diversity and to maintain fair, transparent processes that meet the highest professional standards.
- Knowledge of and commitment to sound governance practices.
- Availability to devote full-time to the appointment.

VICE-CHAIR POSITION DESCRIPTION

PURPOSE

To provide support and assistance to the Chair related to the functioning and responsibility of the Hearing Panel and the Appeal Panel and act as substitute Chair in the absence of the Chair or as requested by the Chair.

KEY RESPONSIBILITIES

- At the Chair's direction, assists with the functioning and responsibilities of the Hearing/ Appeal Panels related to,
 - scheduling;
 - training adjudicators;
 - Adjudicator Code of Conduct issues; and
 - provision of advice and assistance to adjudicators.
- Participates as a member of the Tribunals Committee, liaising with the Chair of the Tribunal, Tribunals Office and Convocation.
- At the Chair's direction, and on an "as needed basis" consults with and advises the Tribunals Office regarding interpretation of legislation and rules.
- In the case of the Chair's conflict on a matter, acts in place of the Chair.
- In the Chair's absence or at the Chair's direction, performs such of the Chair's functions as required.
- Collaborates with the Chair to develop and implement processes and practices that support the Tribunal's operations to enhance effectiveness and efficiency.
- At the Chair's direction, takes on cases or assignments that may have a higher profile, are more complex and may involve multiple parties or stakeholders.
- At the Chair's direction, mentors new appointees and provides oversight and advice to ensure quality and clarity.
- Participates in professional development opportunities.
- Prepares head-notes of Hearing Panel/ Appeal Panel decisions and reasons.

QUALIFICATIONS

- In-depth understanding of the professional, institutional, policy and community context in which the Tribunal operates.
- Understanding of the Tribunal's Rules of Practice and Procedure for Hearing and Appeal Panels, supporting procedures and jurisprudence.
- Effective communication and interpersonal skills.
- Commitment to respect diversity and to maintain fair, transparent processes that meet high professional standards and comply with the Adjudicator Code of Conduct.
- Commitment to the protection of the public interest within the Law Society's mandate.
- Ability to work collaboratively and under direction of the Chair.

Law Society Act

ONTARIO REGULATION 167/07

HEARINGS BEFORE THE HEARING AND APPEAL PANELS

Consolidation Period: From March 15, 2010 to the e-Laws currency date.

Last amendment: O. Reg. 68/10.

This is the English version of a bilingual regulation.

HEARINGS BEFORE THE HEARING PANEL

Proceedings to be heard by three members

1. (1) The chair or, in the absence of the chair, the vice-chair shall assign three members of the Hearing Panel to a hearing to determine the merits of any proceeding other than an application listed in subsection 2 (1). O. Reg. 167/07, s. 1 (1).

(2) If the person who is the subject of the proceeding is a person licensed or applying to be licensed to practise law in Ontario as a barrister and solicitor,

(a) at least one of the members assigned under subsection (1) shall be an elected bencher licensed to practise law in Ontario as a barrister and solicitor; and

(b) at least one of the members assigned under subsection (1) shall be,

(i) a lay bencher, or

(ii) a person approved by the Attorney General for Ontario under clause 49.21 (3) (c) of the Act. O. Reg. 167/07, s. 1 (2).

(3) If the person who is the subject of the proceeding is a person licensed or applying to be licensed to provide legal services in Ontario,

(a) one of the members assigned under subsection (1) shall be,

(i) until the first election of benchers under subsection 16 (1) of the Act takes place, one of the two persons referred to in subsection 16 (6) of the Act,

(ii) a person appointed by the Attorney General for Ontario under clause 25.2 (2) (a) of the Act and approved by him or her under clause 49.21 (3) (c) of the Act, or

(iii) a person licensed to provide legal services in Ontario;

(b) one of the members assigned under subsection (1) shall be a person licensed to practise law in Ontario as a barrister and solicitor; and

(c) one of the members assigned under subsection (1) shall be,

(i) a lay bencher, or

(ii) a person approved by the Attorney General for Ontario under clause 49.21 (3) (c) of the Act. O. Reg. 167/07, s. 1 (3).

(4) If the chair or, in the absence of the chair, the vice-chair is of the opinion that compliance with subsection (2) or (3), as the case may be, would unduly delay a hearing, the subsection does not apply. O. Reg. 167/07, s. 1 (4).

(5) The chair or the vice-chair shall not assign more than one life bencher to a hearing to determine the merits of a proceeding. O. Reg. 167/07, s. 1 (5).

(6) The chair or the vice-chair shall not assign more than one benchler who holds office under section 14 of the Act to a hearing to determine the merits of a proceeding. O. Reg. 167/07, s. 1 (6).

Proceedings to be heard by one member

2. (1) Subject to subsection (2), the chair or, in the absence of the chair, the vice-chair, shall assign either one member or three members of the Hearing Panel to a hearing to determine the merits of any of the following applications:

1. An application under subsection 34 (1) of the Act for a determination of whether a licensee has contravened section 33 of the Act by one or more of the following means (but not by other means):
 - i. Practising law in Ontario, or holding himself or herself out as, or representing himself or herself to be, a person who may practise law in Ontario while his or her license is suspended.
 - ii. Providing legal services in Ontario, or holding himself or herself out as, or representing himself or herself to be, a person who may provide legal services in Ontario while his or her license is suspended.
 - iii. Breaching an undertaking to the Society.
 - iv. Failing to honour a financial obligation to the Society.
 - v. Failing to maintain an investment authority or a report on an investment as required by the by-laws.
 - vi. Failing to maintain financial records as required by the by-laws.
 - vi.1 Failing to register an address with the Society or to notify the Society of any changes in the address, as required by the by-laws.
 - vi.2 Failing to provide the Society with information or to file certificates, reports or other documents with the Society, as required by the by-laws.
 - vii. Failing to respond to inquiries from the Society.
 - viii. Failing to co-operate with a person conducting an audit, investigation, review, search or seizure under Part II of the Act.
 - ix. Failing to pay costs awarded to the Society by the Hearing Panel or the Appeal Panel.
 - x. In the case of a person licensed to practise law in Ontario as a barrister and solicitor, failing to report a claim, or the circumstances of an error, omission or negligent act that a reasonable person would expect to give rise to a claim, to an insurer through which indemnity for professional liability is provided under section 61 of the Act, as required under a policy for indemnity for professional liability.
 - xi. In the case of a person licensed to provide legal services in Ontario, failing to report a claim, or the circumstances of an error, omission or negligent act that a reasonable person would expect to give rise to a claim, to an insurer, as required under a policy for indemnity for professional liability.
2. An application under subsection 34 (1) of the Act, if the parties to the application consent, in accordance with the rules of practice and procedure, to the application being heard by one member of the Hearing Panel.
3. An application under subsection 45 (1) of the Act.
4. An application under subsection 49.42 (1) of the Act, if the order giving rise to the application was made by one member of the Hearing Panel.
5. An application under subsection 49.42 (3) of the Act.
6. An application under subsection 49.43 (1) of the Act. O. Reg. 167/07, s. 2 (1); O. Reg. 68/10, s. 1.

(2) If one member of the Hearing Panel is assigned to a hearing under subsection (1), the member assigned to the hearing may, on motion by a party to the application or on his or her own motion, transfer the hearing to three members assigned by the chair or, in the absence of the chair, the vice-chair, and subsections 1 (2) to (6) apply for that purpose. O. Reg. 167/07, s. 2 (2).

(3) If a hearing of a proceeding is transferred under subsection (2) to three members of the Hearing Panel, the hearing shall begin anew. O. Reg. 167/07, s. 2 (3).

Motions in proceedings to be heard by three members

3. (1) This section applies to the hearing of motions in a proceeding in which the chair or the vice-chair assigns three members of the Hearing Panel to the hearing to determine the merits of the proceeding. O. Reg. 167/07, s. 3 (1).

(2) If the motion relates to any of the following matters, the chair or, in the absence of the chair, the vice-chair shall assign the same three members of the Hearing Panel who are to determine the merits of the proceeding to the hearing of the motion:

1. The jurisdiction of the Hearing Panel to hear and determine the proceeding.
2. The jurisdiction of the Society to initiate the proceeding.
3. The exclusion of the public from all or part of a hearing.
4. A stay of the proceeding.
5. The exclusion of witnesses from all or part of a hearing.
6. A constitutional issue. O. Reg. 167/07, s. 3 (2).

(3) If the motion is for an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services, the chair or, in the absence of the chair, the vice-chair shall assign three members of the Hearing Panel to the hearing of the motion, and is not required to assign any of the members who are to determine the merits of the proceeding. O. Reg. 167/07, s. 3 (3).

(4) If the motion is not described in subsection (2) or (3), the chair or, in the absence of the chair, the vice-chair shall assign either one member or three members of the Hearing Panel to the hearing of the motion, and is not required to assign any of the members who are to determine the merits of the proceeding. O. Reg. 167/07, s. 3 (4).

(5) If three members of the Hearing Panel other than the three members who are to determine the merits of the proceeding are assigned under subsection (3) or (4) to the hearing of a motion, the members assigned to the hearing of the motion may, on motion by a party to the motion or on their own motion, transfer the hearing of the motion to the three members who are to determine the merits of the proceeding. O. Reg. 167/07, s. 3 (5).

(6) If one member of the Hearing Panel is assigned to the hearing of a motion, the member may, on motion by a party to the motion or on his or her own motion, transfer the hearing,

- (a) to the three members of the Hearing Panel who are to determine the merits of the proceeding; or
- (b) to three other members of the Hearing Panel assigned by the chair or, in the absence of the chair, the vice-chair. O. Reg. 167/07, s. 3 (6).

(7) If a hearing of a motion is transferred under subsection (5) or (6), the hearing shall begin anew. O. Reg. 167/07, s. 3 (7).

(8) If three members of the Hearing Panel are assigned to the hearing of a motion under this section, the chair or the vice-chair shall not assign to the hearing,

- (a) more than one life bencher; or
- (b) more than one bencher who holds office under section 14 of the Act. O. Reg. 167/07, s. 3 (8).

Motions in proceedings to be heard by one member

4. (1) This section applies to the hearing of motions in a proceeding in which the chair or the vice-chair assigns one member of the Hearing Panel to the hearing to determine the merits of the proceeding. O. Reg. 167/07, s. 4 (1).

(2) If the motion relates to any of the following matters, the chair or, in the absence of the chair, the vice-chair shall assign the same member of the Hearing Panel who is to determine the merits of the proceeding to the hearing of the motion:

1. The jurisdiction of the Hearing Panel to hear and determine the proceeding.
2. The jurisdiction of the Society to initiate the proceeding.
3. The exclusion of the public from all or part of a hearing.
4. A stay of the proceeding.
5. The exclusion of witnesses from all or part of a hearing.
6. A constitutional issue. O. Reg. 167/07, s. 4 (2).

(3) If the motion is for an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services, the chair or, in the absence of the chair, the vice-chair shall assign three members of the Hearing Panel to the hearing of the motion, and is not required to assign the member who is to determine the merits of the proceeding. O. Reg. 167/07, s. 4 (3).

(4) If the motion is not described in subsection (2) or (3), the chair or, in the absence of the chair, the vice-chair shall assign one member of the Hearing Panel to the hearing of the motion, and is not required to assign the member who is to determine the merits of the proceeding. O. Reg. 167/07, s. 4 (4).

(5) If a member of the Hearing Panel other than the member who is to determine the merits of the proceeding is assigned under subsection (4) to the hearing of a motion, the member assigned to the hearing of the motion may, on motion by a party to the motion or on his or her own motion, transfer the hearing of the motion to the member who is to determine the merits of the proceeding. O. Reg. 167/07, s. 4 (5).

(6) If a hearing of a motion is transferred under subsection (5), the hearing shall begin anew. O. Reg. 167/07, s. 4 (6).

HEARINGS BEFORE THE APPEAL PANEL

Appeals to be heard by five members

5. (1) The chair or, in the absence of the chair, the vice-chair shall assign five members of the Appeal Panel to a hearing of an appeal if the appeal is from any of the following:

1. A final decision or order made in a proceeding before the Hearing Panel to which three members were assigned to determine the merits of the proceeding.

2. A costs order made in a proceeding before the Hearing Panel to which three members were assigned to determine the merits of the proceeding.
3. An interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services. O. Reg. 167/07, s. 5 (1).
 - (2) If a party to the appeal is a person who is or was licensed to practise law in Ontario as a barrister and solicitor, or a person applying to be so licensed,
 - (a) at least three of the members assigned under subsection (1) shall be elected benchers licensed to practise law in Ontario as barristers and solicitors; and
 - (b) at least one of the members assigned under subsection (1) shall be,
 - (i) a lay bencher, or
 - (ii) a person approved by the Attorney General for Ontario under clause 49.29 (3) (c) of the Act. O. Reg. 167/07, s. 5 (2).
 - (3) If a party to the appeal is a person who is or was licensed to provide legal services in Ontario, or a person applying to be so licensed,
 - (a) two of the members assigned under subsection (1) shall each be,
 - (i) until the first election of benchers under subsection 16 (1) of the Act takes place, one of the two persons referred to in subsection 16 (6) of the Act,
 - (ii) a person appointed by the Attorney General for Ontario under clause 25.2 (2) (a) of the Act and approved by him or her under clause 49.29 (3) (c) of the Act, or
 - (iii) a person licensed to provide legal services in Ontario;
 - (b) two of the members assigned under subsection (1) shall be persons licensed to practise law in Ontario as barristers and solicitors; and
 - (c) one of the members assigned under subsection (1) shall be,
 - (i) a lay bencher, or
 - (ii) a person approved by the Attorney General for Ontario under clause 49.29 (3) (c) of the Act. O. Reg. 167/07, s. 5 (3).

Appeals to be heard by three members

6. (1) The chair or, in the absence of the chair, the vice-chair shall assign three members of the Appeal Panel to a hearing of an appeal if the appeal is from any of the following:

1. A final decision or order made in a proceeding before the Hearing Panel to which one member was assigned to determine the merits of the proceeding.
2. A costs order made in a proceeding before the Hearing Panel to which one member was assigned to determine the merits of the proceeding.
3. An order made under section 46, 47, 47.1, 48 or 49 of the Act. O. Reg. 167/07, s. 6 (1).
 - (2) If a party to the appeal is a person who is or was licensed to practise law in Ontario as a barrister and solicitor, or a person applying to be so licensed,
 - (a) at least one of the members assigned under subsection (1) shall be an elected bencher licensed to practise law in Ontario as a barrister and solicitor; and
 - (b) at least one of the members assigned under subsection (1) shall be,
 - (i) a lay bencher, or
 - (ii) a person approved by the Attorney General for Ontario under clause 49.29 (3) (c) of the Act. O. Reg. 167/07, s. 6 (2).

(3) If a party to the appeal is a person who is or was licensed to provide legal services in Ontario, or a person applying to be so licensed,

- (a) one of the members assigned under subsection (1) shall be,
 - (i) until the first election of benchers under subsection 16 (1) of the Act takes place, one of the two persons referred to in subsection 16 (6) of the Act,
 - (ii) a person appointed by the Attorney General for Ontario under clause 25.2 (2) (a) of the Act and approved by him or her under clause 49.29 (3) (c) of the Act, or
 - (iii) a person licensed to provide legal services in Ontario;
 - (b) one of the members assigned under subsection (1) shall be a person licensed to practise law in Ontario as a barrister and solicitor;
 - (c) one of the members assigned under subsection (1) shall be,
 - (i) a lay bencher, or
 - (ii) a person approved by the Attorney General for Ontario under clause 49.29 (3) (c) of the Act. O. Reg. 167/07, s. 6 (3).

7. OMITTED (REVOKES OTHER REGULATIONS). O. Reg. 167/07, s. 7.

8. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 167/07, s. 8.

**CRITERIA FOR NON-BENCHER LAWYER ADJUDICATORS
(2008 AND 2011 APPOINTMENTS)**

Consideration will be given to the following qualifications:

- Adjudicative experience and legal expertise.
- Commitment to the public interest.
- Understanding of the role of an adjudicator.
- Familiarity with administrative tribunals.
- Open-mindedness, empathy and the ability to consider persuasive argument.
- Commitment to preparing timely and reasoned decisions.
- Willingness to be trained as an adjudicator and to attend mandatory training sessions.
- Commitment to tribunal standards of procedure, consistency, quality and performance.
- Good oral and written communication skills.

In 2011 the O.R. Notice advertising for adjudicators also noted: “Preference will be given to applicants who are able to conduct hearings in English and French.”

TRIBUNAL COMMITTEE REPORT (EXCERPT)

(Approved at Convocation January 2015)

FOR DECISION

PROPOSAL FOR THREE-YEAR REVIEW OF TRIBUNAL MODEL

Motion

2. That Convocation approve the proposal set out in this report respecting the three-year review of the Tribunal model required in the 2012 Tribunal Report to Convocation.

Issue for Consideration

3. The June 2012 Tribunal Committee Report (the “2012 Report”) to Convocation, recommending a new model for the Tribunal, included a provision for it to be reviewed in the third year of the Chair’s first term. The Report required the Tribunal Committee, in conjunction with the Chair, the Vice-Chairs, the CEO and the Director of Policy to develop the framework for the model’s review, to be approved by Convocation.
4. The review proposal is set out in this report.

Rationale

5. By considering and approving the proposal at this time Convocation will provide the Committee with sufficient time to complete the review within the required period.

Key issues and Considerations

6. This proposal reflects the stated purpose of the review set out in the 2012 Report as follows:
 - ...to consider,
 - i. whether and how the new model is addressing the goals and criteria set out in paragraphs 13 and 14; (See **TAB 2.1.1: Paragraphs 13 and 14**);
 - ii. its impact on the Tribunals processes; and
 - iii. its cost effectiveness.
7. This proposal addresses,

- a. the timing of the review;
- b. the nature and focus of the review;
- c. the conduct of the review; and
- d. steps within the review process.

Discussion

8. Most reports that propose new Law Society initiatives include review provisions. By including a review component in the 2012 Report, the Tribunal Committee provided for monitoring of the model's implementation in accordance with stated goals. This was important as the model, although building on Tribunal improvements, also represented a new direction.
 - a. Timing of the Review
9. In accordance with the 2012 Report to Convocation, the three-year review should take place, "in the third year of the Chair's first term."¹ This begins September 3, 2015 and ends September 2, 2016.
10. The Committee recommends that to be most useful the review should also be situated within the context of the Tribunal Chair's four-year term, which ends September 2, 2017, and the requirements for consideration of his reappointment.
11. The review of the model should not be confused with the renewal process for the Tribunal Chair. The three-year review should focus on the model itself, in keeping with the 2012 Report. To ensure that the two processes remain separate, the three-year review should be completed by the time that the Chair's renewal process begins. The 2012 Report states that the process to determine the Chair's renewal is to begin at least one year before the end of the Chair's term (no later than September 2, 2016) and must be completed no less than six months (March 2017) before the conclusion of that term.
12. In addition, to allow time for implementation of any enhancements and changes to the model that may arise from the review so that the Chair's renewal process reflects this, it would be preferable for the three-year review to be completed by early spring 2016 at the latest.
 - b. Nature and Focus of the Review
13. Since the review of the model was directed to take place while implementation was likely to be ongoing, the review could best be characterized as a progress report focusing on whether and how the model is addressing its goals and providing guidance on next steps and improvements to the model, if any.

¹ June 2012 Report, p.40.

14. The language in the 2012 Report supports this approach by requiring the review to consider whether and how the new model is addressing the goals and criteria set out in paragraphs 13 and 14 of the Report. The review is not intended to address substantive hearing issues.
15. In essence, the goals set out in paragraph 13 of the 2012 Report, can be summarized as follows:
 - a. The model will reflect some of the main philosophical and practical enhancements undertaken prior to the 2012 report. The new model will build on these and advance Tribunal reform. Transparency, fairness, cost effectiveness, separation from the discipline stream, continuation of the role of benchers in the adjudication process as part of an integrated regulatory model and the bencher policy making role in the adjudicative process are all specific components of the pre-2012 approach that are to be part of and enhanced components of the new model.
 - b. The model will deliver high quality administrative law decisions measured by how they withstand the close scrutiny that Law Society decisions receive from courts, the public and the profession.
 - c. The model will foster high quality adjudication, including a commitment to ongoing adjudicator education and training.
 - d. The model will develop a system that fosters and facilitates the effective use of technology in the hearing process.
- c. Conduct of the Review
16. In developing the original recommendations for the Tribunal model in the 2012 Report the Tribunal Committee established a working group to undertake the initial fact gathering and analysis. The work of the group assisted the full Committee discussions and focused the development of the recommendations Convocation approved in 2012. This proved an effective use of the Committee's time and development of the recommended approach.
17. In the years since the approval of the 2012 Report the Committee has continued to provide advice and input to the Tribunal Chair on implementation issues, to monitor progress and to provide Convocation with relevant policy considerations on matters affecting the Tribunal.
18. The Committee proposes establishing a working group to undertake the fact gathering component of the review process, with particular focus on the goals and criteria in the 2012 Report. The Committee will provide a report to Convocation within the timeline approved.

19. To support the review process, the Tribunal Chair will prepare a background report for the review process providing factual information and data addressing the goals and criteria set out in the 2012 Report and providing such other relevant information as he considers useful to inform the review process. This will enable the working group and Committee to flesh out the framework and process for the review and the ultimate report to Convocation.
20. The Tribunal Office, which provides quarterly reports respecting Tribunal data, will provide information to the working group and the Committee to further inform the review.
21. The working group and the Committee will develop an approach for obtaining focused input and comment in keeping with the purpose, nature and scope of the review. Without limiting the sources for input, these may include,
 - a. the Tribunal Chair's Practice Roundtable;²
 - b. Tribunal members;
 - c. representatives who appear regularly before the Tribunal on behalf of lawyers and paralegals; and
 - d. relevant Law Society Divisions and Committees, including Professional Regulation, Equity and Access to Justice.
22. Policy staff will support the process. Tribunal staff will assist with data collection and other information requested. The Tribunal Chair and the Registrar will act as resources to the Working Group and the Committee as needed.

d. Steps within the Review Process

23. If Convocation approves the proposal in this report the following steps and approximate timeline will frame the approach:
 - a. The Committee will establish the review working group by April 2015.
 - b. The Committee, the Tribunal Chair and staff will develop questions that will underlie the Tribunal Chair's report and the topic headings for the review report.
 - c. The Committee and working group will undertake the review work and the input process between May 2015 and January 2016.
 - d. The Committee and working group will develop a draft report for Convocation's ultimate consideration.
 - e. The Committee will provide its report to Convocation in February or April 2016.

² The mandate of the Law Society Tribunal Chair's Practice Roundtable is to function as a forum for the Tribunal to consult with and obtain feedback from those who practice before the Tribunal regarding its policies, processes, practices, Rules of Practice and Procedure, and practice directions. For further information see the Tribunal webpage at <http://lawsocietytribunal.ca/> and click on Chair's Practice Roundtable.

TAB 2.1.1 (original Report)

Paragraphs 13 and 14 of 2012 Report

13. The Committee has determined the goals of an enhanced Law Society adjudicative model to be as follows:
- a. To reflect the Law Society’s commitment to regulatory processes that are transparent, fair, and cost effective.
 - b. To reflect the separation of the Tribunal from the disciplinary stream of the Law Society and an awareness of the adjudicative and policy-making functions of the Law Society.
 - c. To support and complement the current Tribunals operational structure.
 - d. To reflect the Law Society’s integrated regulatory model.
 - e. To recognize, continue and support the benchers’ role as adjudicators as part of the profession’s responsibility to regulate itself in the public interest.
 - f. To retain and enhance the positive features of the current adjudicative approach.
 - g. To deliver high quality administrative law decisions that withstand the close scrutiny that Law Society decisions receive from courts, the public and the profession.
 - h. To foster high quality adjudication, including a commitment to ongoing adjudicator education and training.
 - i. To develop a system that fosters and facilitates the effective use of technology in the hearing process.
 - j. To make more effective and efficient use of Law Society resources through an enhanced adjudicative structure.

14. The Committee has concluded that the following criteria are essential to an enhanced Tribunal adjudicative model:

Process

- a. The process is independent, transparent and accountable. Accountability in the adjudicative structure encompasses among other factors,
 - i. the avoidance of bias, whether perceived or real;
 - ii. the opportunity for parties to participate in the hearing and be heard;
 - iii. adherence to the principle that those who hear the matter decide it;
 - iv. access to an appellate process; and
 - v. processes to address quality of adjudication.
- b. The organization and administration are effective. This includes, among other components,
 - i. leadership;
 - ii. a transparent and consistent structure for recruitment or appointment and evaluation of adjudicators; and
 - iii. an efficient and effective Tribunals Office with enhanced duties related to non-adjudicative matters.

Adjudicators

- c. Adjudicators,
 - i. are open-minded and vigilant to conflicts and bias, whether perceived or real;

- ii. are committed to developing and maintaining knowledge, skill and expertise; and
- iii. display the appropriate skills, expertise and temperament required for sound adjudication.
- d. There is a requirement for ongoing education and professional development for adjudicators.
- e. Adjudicators adhere to the Adjudicator Code of Conduct.
- f. Within the pool of available adjudicators there is a range of expertise, including features such as content expertise, representation of different practice structures, and litigators and solicitors.
- g. Adjudicators make a time commitment to participate in the range of activities of an adjudicator within an effective administrative tribunal.
- h. Adjudicators are committed to timely adjudication, which includes being available to preside at hearings and write decisions in a timely manner and adhering strictly to any guidelines and benchmarks for writing reasons.
- i. The pool of adjudicators includes,
 - i. bencher lawyers and paralegals;
 - ii. non-bencher lawyers and paralegals;
 - iii. lay representatives;
 - iv. lay, lawyer and paralegal adjudicators qualified to hear cases in the French language; and
 - v. adjudicators reflecting the diversity of the population and the profession.

Quality of Decision Making

- j. Adjudicators are proficient in the Rules of Practice and Procedure and relevant legislation.
- k. There is consistency and coherence in both procedure and substantive decision-making, while ensuring that discretion is not fettered and natural justice is observed.
- l. Adjudicators are trained in conducting a hearing and in effective decision writing.
- m. There is an evaluative process to ensure quality of adjudication and decision writing.



Tribunal Committee
Tribunal Model Three-Year Review

Tribunal Chair's Background Report

September 2015

I. INTRODUCTION AND OVERVIEW

1. The June 2012 Hearings Process Report (the “June 2012 Report”)¹ recommending a new Tribunal model² concluded as follows:

In establishing its priorities for the 2011-2015 bencher term, Convocation recognized the importance of an effective Law Society hearings process to its overall mandate and committed itself to addressing this priority.

The Committee’s proposed model is designed to provide a framework whose component parts will contribute to the fulfillment of Convocation’s priority. The model is focused on leadership, transparency, quality adjudication and availability, objective criteria for appointment and evaluation and cost effectiveness. It will enhance the Law Society’s commitment to a hearings process that is transparent, fair and effective both for the public and affected licensees who are subject to the proceedings. This is central to the Law Society’s proper discharge of its adjudicative responsibility.

2. The June 2012 Report provided a detailed blueprint for the new model, including,
 - a. articulating its goals;
 - b. establishing criteria that are essential to the model respecting process, adjudicators and quality decision making;
 - c. focusing on effective leadership through the appointment of an independent non-bencher Tribunal Chair, bencher Vice-Chairs and the continuation of the Tribunal Committee; and
 - d. emphasizing effective adjudication through the adjudicator appointment process, panel appointments, timeliness of adjudication and education.
3. The goals and criteria are set out in paragraphs 13 and 14 of the June 2012 Report, excerpted here at **TAB .3.1: Paragraphs 13 and 14.**
4. The Tribunal Chair was appointed in June 2013 and began work in September 2013. The formal start-up of the Law Society Tribunal was March 2014.
5. The June 2012 Report provided that the first review of the model is to occur in “the third year of the Chair’s first term.” Its purpose is to consider,
 - a. whether and how the new model is addressing the goals and criteria set out in paragraphs 13 and 14;

¹ The Report may be referenced at

https://lawsocietytribunal.ca/Document%20Resources/June_2012_Convocation_Report.pdf

² Convocation approved the Report on June 28, 2012.

- b. its impact on the Tribunals processes; and
 - c. its cost effectiveness.
6. The Three-Year Review is to be provided to Convocation in February or April 2016.
7. In keeping with Convocation's approval of the Three-Year Review process, the purpose of this Tribunal Chair's Report is to provide the Working Group and the Committee with "a background report providing factual information and data addressing the goals and criteria set out in the 2012 Report and providing such other relevant information as he considers useful to inform the process."

II. REPORT FOCUS

8. The overarching approach to the model's implementation has been a commitment to carrying out the Tribunal's statutory mandate in accordance with the core values of fairness, quality, transparency and timeliness. This approach flows from both the June 2012 Report and from the Tribunal's early development of a mission statement and four core values.
9. This Report provides information on the activities that have been undertaken, to date, as part of the model's implementation. It will also address how these activities link directly to the goals and criteria set out in paragraphs 13 and 14 of the June 2012 Report.
10. The activities have been grouped into three categories for discussion, with a note on which core values they address:
- a. Those directed at reflecting the Tribunal's separation from the investigative and disciplinary side of the Law Society's regulatory functions, and its independence. These activities address both fairness and transparency.
 - b. Those directed at adjudicative excellence. These activities address quality and timeliness.
 - c. Those directed at enhanced Tribunal processes, including those directed at user accessibility. These activities address all four core values.

III. ACTIVITIES REFLECTING LAW SOCIETY TRIBUNAL SEPARATION FROM INVESTIGATIVE AND DISCIPLINARY FUNCTIONS

11. A key component of enhancing the Tribunal's independence from the investigative and disciplinary sides of the Law Society has been the enhancement of a distinct identity for the Tribunal. Paragraph 13b of the June 2012 Report specifically identifies as one of the goals of an enhanced adjudicative model, "to reflect the separation of the Tribunal from the disciplinary stream of the Law Society..."

12. The paragraph 13 goals relevant to this area of activities also include,
- c. supporting and complementing the “current Tribunals operational structure” (as it was in 2012); and
 - ...
 - f. retaining and enhancing the “positive features of the current adjudicative approach” (as it was in 2012).
13. By 2012 the Law Society had undertaken a number of steps to separate the adjudicative functions from the regulatory. The June 2012 Report outlines a number of these steps, including,
- a. the establishment of the Tribunals Office with dedicated, neutral staff to manage the filing and hearings process, and an office separate from those of investigative and prosecutorial staff; and
 - b. initiating processes aimed at transparency including, posting information on hearings on the Law Society website and reasons on CanLII, and gathering data on the operations.

Activities

14. Since September 2013, a number of activities have been undertaken to build upon and highlight the separation of the Tribunal from disciplinary functions, through the establishment of the Law Society Tribunal as an independent adjudicative tribunal within the Law Society of Upper Canada. These have included,
- a. the articulation of the Law Society Tribunal as a distinct entity and the roles of an independent Chair and benchers vice-chairs within the *Law Society Act*, Ont. Regulation 167/07, by-laws and Adjudicator Code of Conduct, reflecting the legislative commitment to the new Tribunal model;
 - b. the development of the Tribunal mission statement and core values, based on a facilitated session with all Tribunal members and staff, held on November 21, 2013;³
 - c. the creation of a Tribunal brand, including a logo and letterhead distinct from the Law Society’s logo and letterhead;
 - d. the launch of a separate English and French Law Society Tribunal website that includes information on the Tribunal, guides and resources and enhanced access to Tribunal Orders with links to Reasons in one central location. This makes information about the hearing process more accessible to licensees and the

³ The Mission Statement is as follows: The Law Society Tribunal processes, hears and decides regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just and in the public interest. The core values are Fairness, Quality, Transparency and Timeliness.

public. This is an ongoing process, which will continue to evolve as implementation continues;⁴

- e. the evolution of the Tribunal Office Manager and Senior Counsel role to that of Tribunal Registrar and Senior Counsel, more in keeping with an administrative tribunal or court office and reflecting the evolving nature of the position's duties, responsibilities and reporting structure;⁵
- f. consolidation of Reasons on CanLII under one Tribunal database instead of separate databases for each Tribunal Division;
- g. the relocation of the Tribunal premises, in the fall of 2015, off-site from the Law Society, that will,
 - i. provide more appropriate hearing rooms, waiting areas, meeting rooms, technological capabilities and efficiencies;
 - ii. more effectively separate the Tribunal from proximity to regulatory staff and other Law Society operations;
 - iii. provide equivalent access to the Tribunal Office to licensees and their representatives, Law Society representatives and the public; and
 - iv. provide greater process transparency for licensees and the public;
- h. the production of the Law Society Tribunal's first Annual Report, in accordance with the requirements of the June 2012 Report, illustrating the Tribunal's unique role;⁶ and
- i. ongoing development of external awareness of the Tribunal within the regulatory and administrative justice community, through the Tribunal Chair speaking at conferences and events, including, programs of the Canadian Institute for the Administration of Justice, the Federation of Law Societies of Canada, the Society of Ontario Adjudicators and Regulators, l'Association des juristes d'expression française de l'Ontario, the Canadian Association for Legal Ethics, the International Legal Ethics Conference, the Canadian Network of National Associations of Regulators, the Association of Law Officers of the Crown, the University of Toronto Centre for the Legal Profession, the Ontario Paralegal Association, Osgoode Professional Development and the Manitoba Council of Administrative Tribunals. He has also written a blog entry for the Advocates'

⁴See: www.lawsocietytribunal.ca and www.tribunaldubarreau.ca.

⁵ The position of Tribunal Office Manager and Senior Counsel reported to the Director of Policy and Tribunals before the approval of the June 2012 Report. The position of Registrar and Senior Counsel, to whom all Tribunal Office staff report, now reports to the Tribunal Chair.

⁶ <https://lawsocietytribunal.ca/Document%20Resources/2014%20LST%20Annual%20Report%20EN.pdf>.

Society. In 2015, the Tribunal Chair was elected as a member of the Board of Directors of the Council of Canadian Administrative Tribunals.

15. The key components of establishing the Law Society Tribunal as an independent adjudicative tribunal within the Law Society of Upper Canada are now in place. These activities have been carefully coordinated to provide the new Tribunal with a framework that supports the commitment to a hearing process that is transparent, fair and effective both for the public and licensees who are subject to the proceedings. At the same time, the Tribunal is situated within the Law Society's legislative regulatory framework, making it an integral part of the Law Society's mandate to regulate in the public interest.

IV. ADJUDICATIVE EXCELLENCE

16. The June 2012 Report places central importance on adjudicative excellence as a cornerstone of the new model, noting,

...to carry out its commitment to an adjudicative system that is as effective and transparent as possible, and to continue the ongoing process of reform that the Law Society has followed over the last decade, it is essential for the Law Society to develop a more systematic and effective structure as well as greater quality assurance measures for its adjudicative functions.

17. Adjudicative excellence speaks to the quality, skill and availability of adjudicators, their ongoing training and evaluation and their appointment and re-appointment. It also speaks to the quality of the hearings the Tribunal conducts, the decisions it produces, its commitment to timeliness of hearings and release of decisions and reasons and the development and use of Tribunal jurisprudence to ensure coherent procedure and substantive results.
18. The Law Society Tribunal's approximately 92 adjudicators are part-time appointments, with the exception of the Tribunal Chair. This structure presents a unique challenge that the new model seeks to address as part of its commitment to quality. Adjudicators are drawn from benchers, licensees and public appointees. Due to bencher elections, government appointment of lay benchers and appointment terms there is a degree of regular turnover. It becomes essential to address the implications of constant renewal through education and facilitating skills development. At the same time, the assignment of panels must ensure timeliness, experience, skill in chairing and reason writing, the requirements of Ontario Regulation 167/07 respecting panel composition, equity and diversity considerations, avoidance of conflicts of interest, bilingual requirements, where applicable, and use of the full roster of appointees are taken into account.

19. The June 2012 Report noted,

to the extent that the Tribunal adjudication model continues to be premised on the use of part-time adjudicators, the challenge for the enhanced approach is to ensure that within a framework of part-time adjudication the Law Society's responsibility for an effective, timely and competent adjudicative process is achieved.

20. The implementation of this priority of the model will be ongoing. The periodic and regular renewal of membership on the Tribunal makes a systematic and dynamic approach to quality assurance essential.

21. This is particularly important as the matters before the Tribunal have become increasingly complex in nature. A commitment to quality assurance is essential to ensure appropriate adjudicative skill in hearings and case management, subtle and detailed understanding of administrative law and the Rules of Practice and Procedure, familiarity with the Tribunal's jurisprudence and understanding of the breadth and depth of issues before panels.

22. To date, in furtherance of adjudicative excellence, a number of initiatives have been undertaken or expanded, including,

- a. development of a Member Position Description to better define and guide the adjudicative role;⁷
- b. the initiation of a performance development process to foster self-reflection and enhanced adjudicative skills. The June 2012 Report spoke to establishing a rigorous evaluation process to ensure quality adjudication. It also put forward some suggestions for the essential competencies on which adjudicator reappointment could be based and evaluated. In its current form, the process is not designed as an objective quality assurance performance-assessment system, but as an introduction to reflective practice. This was thought to be an essential way to introduce the process, since none had existed previously. This enables adjudicators to become familiar with a performance assessment process that will continue to develop and evolve with the ongoing implementation of the Tribunal model;
- c. adjudicator education and training including,
 - i. multi-day orientation and training for new Tribunal members. This has become more focused, in-depth and tailored to reflect whether or not new benchers adjudicators⁸ have previous adjudicative experience. New

⁷ Benchers were afforded an opportunity for input into the content of the description.

⁸ This training is specific to benchers only since appointee adjudicators must have adjudicative experience to be eligible for appointment.

adjudicators with adjudicative experience take a two-day program focused on the Tribunal process and jurisprudence. New bench members, without adjudicative experience, take a four-day program that builds on the two-day program with the central components of the Society of Ontario Adjudicators and Regulators (SOAR) Certificate in Adjudication program added;

- ii. ongoing mandatory substantive and skills training twice a year for all Tribunal members. The focus is on both substantive content and practice skills. Program topics have included, Navigating Challenging Interactions in Tribunal Processes, Identifying and Addressing Mental Health Issues, Reason Writing, Evidence and Hearings Management;⁹ and
- iii. regular adjudicator updates, focusing primarily on jurisprudential developments;
- d. establishment of a colleague review practice to enhance quality and consistency of reason writing. Receiving feedback on draft reasons from colleagues brings a fresh perspective from someone who was not at the hearing and has not been involved in the deliberations. That person can point out issues such as reasoning that seems unclear or unconvincing, gaps in logic, what may appear to be inconsistencies with other decisions, case law the parties may not have brought to the panel's attention or better ways to organize the decision. The panel retains complete discretion on whether to accept the comments;
- e. the Tribunal Chair's appointment of chairs for each panel, balancing adjudicator experience, specialized knowledge, case management and reason-writing expertise and experience;
- f. ongoing development of jurisprudence to provide coherence and precedent within the Tribunal process and guidance to those who use it;
- g. appointment of adjudicators with specialized substantive knowledge in areas arising frequently in Tribunal matters; and
- h. efficient and rapid communication of new jurisprudence and significant issues to Tribunal members to enhance their reason writing and adjudicative approaches. Jurisprudential developments are also analysed to be incorporated in adjudicator training.

⁹ In 2014 education focused on evidence, the role of the adjudicator and reason writing.

23. To ensure meaningful discussion and input around issues of quality, members of the Tribunal Chair's Practice Roundtable (discussed below) and Tribunal members provide regular comments and input to the Tribunal Chair.
24. These activities are also directed at the criteria for adjudicator excellence and quality of decision-making set out at paragraph 14(c) to (m) of the June 2012 Report.

V. ENHANCED TRIBUNAL PROCESSES

25. The June 2012 Report listed the initiatives undertaken between 1999 and 2012 to implement a number of important operational and adjudicative enhancements to the adjudicative process. The Report went on to note,

These steps have made important incremental improvements to the quality and consistency of adjudicators' decisions. However, to carry out its commitment to an adjudicative system that is as effective and transparent as possible, and to continue the ongoing process of reform that the Law Society has followed over the last decade, it is essential for the Law Society to develop a more systematic and effective structure...

26. Enhanced Tribunal processes benefit the public, licensees who are subject to the process, lawyers and paralegals who represent licensees, and adjudicators. They also address another of the June 2012 Report's goals "to make more effective and efficient use of Law Society resources through an enhanced adjudicative structure." This latter goal has both a human resource component and a financial one.
27. Enhancing Tribunal processes is ongoing, but to date a number of activities have been undertaken, including,
 - a. establishment of the Tribunal Chair's Practice Roundtable as a forum for the Tribunal to consult with and obtain feedback regarding its policies, processes, practices, Rules of Practice and Procedure and practice directions from those who practise before it. The Roundtable provides an effective and regular channel for the Tribunal to share and receive comment on development and proposals about its processes;¹⁰
 - b. the establishment of a Tribunal stakeholder list to provide email updates and consultation documents from the Tribunal for those lawyers, paralegals and

¹⁰ Information about the Roundtable and its members can be seen at <https://lawsocietytribunal.ca/Pages/Mainpage.aspx#115>.

members of the public who have indicated an interest in being on the list of recipients. This is a new feature, which will be more actively promoted to encourage participation. As implementation continues, initiatives such as this are part of ongoing efforts to enhance transparency and accessibility of the Tribunal processes;

- c. the introduction of Frequently Asked Questions (FAQs) and Guides to regulatory proceedings to assist licensees and the public;
- d. ongoing assessment, amendment and enhancement of the Rules of Practice and Procedure to improve processes;¹¹
- e. focus on enhanced case management and mediation. This is part of an overall priority to manage each proceeding more effectively with a view to narrowing issues, ensuring all necessary steps have been taken to be ready for the hearing date, encouraging the use of Agreed Statements of Facts and joint submissions, where appropriate, interacting with self-represented licensees at an earlier point; identifying any complicating factors (e.g. mental health or other issues) and providing directions to the parties with respect to the conduct of the proceeding. Early signs suggest that increasingly effective use of these processes should reduce adjournments, the length and complexity of hearings and to some degree the cost of hearings. In particular, fewer proceedings management conferences (PMC) are being scheduled for each proceeding, with pre-hearing conferences (PHC) being used increasingly to define and narrow issues, schedule hearing dates and in a number of cases shorten the process. Endorsements coming out of the PMCs and PHCs are more detailed and clear for the assistance of the panel hearing the merits of a matter.¹²
- f. introduction of a new scheduling system with increased and more flexible hearing date availability. It also provides parties with exact hearing dates as opposed to a range of dates as was the previous practice, which eliminates the need for “reserve adjudicators” to hold time each week in case of conflict;
- g. ongoing development of an electronic case management system that will facilitate the filing of documents, enable statistics about the Tribunal’s work to be more easily generated, allow adjudicators electronic access to certain documents in the file, and enable electronic signatures and streamline Tribunal work. It is anticipated that a first phase, for the use of adjudicators and Tribunal staff will be ready for use in early 2016, with ongoing development continuing to enable use by parties. Adjudicators will also be able to access educational materials and access videos respecting jurisprudential updates (formerly done in Convocation);
- h. addressing accessibility issues in the new Tribunal premises, including a built-in assistive listening-device system to assist those with hearing impairment;

¹¹ A longer term project may involve a review of the Rules overall. This would be the first review since major changes were introduced in 2009.

¹² Between 2011 and 2014 PHCs went from 104 to 215. In 2014 alone there was an 82% increase in PHCs from the previous year.

- i. reconsideration of the type of statistical information that should be gathered, going forward, to best support implementation and evaluation of the Tribunal model. The data currently being collected reflects older considerations of the type of information that would be useful; and
- j. assigning adjudicators with knowledge of and experience with mental health issues and other specialized substantive law knowledge to cases where such expertise would enhance the process.

VI. COST- EFFECTIVENESS / IMPACT ON TRIBUNAL PROCESSES

28. The June 2012 Report provided that the review was to include consideration of the impact of the model on Tribunal processes and its cost-effectiveness. The ongoing implementation of the model is having an impact on the Tribunal process in the three areas discussed here (independence, quality adjudication and enhanced processes). Concerted efforts are also ongoing to make the Tribunal process more accessible to licensees, particularly those who are self-represented. This includes the activities mentioned above (e.g. website FAQs and guides) and the introduction of the Tribunal Book of Authorities,¹³ more active case management that enables earlier contact with licensees, discussions with the Advocates' Society respecting the duty counsel program and ongoing consideration of a more efficient process for commencing proceedings and communicating information to assist parties, particularly the self-represented and those with mental health issues.

29. In discussing cost-effectiveness, the June 2012 Report considered where the new model might result in efficiencies as follows:

It is difficult to quantify cost savings of a yet to be introduced system, but the Committee believes that the proposals it has put forward will in the long run result in a number of cost reductions, including,

- a. adjudicator cost savings as hearings are more expeditiously scheduled and completed, resulting in fewer adjudicative hours and fewer hearings that must be drawn out over many months;
- b. as the Chair will sit on hearings, the remuneration and expenses of another adjudicator will be saved;¹⁴

¹³ Policy approved for implementation in September 2015 to create a Tribunal Book of Authorities for the most frequently cited cases, which will obviate the need for parties to individually provide copies of those cases.

¹⁴ As the June 2012 Report anticipated, the Tribunal Chair sits regularly on panels and chairs, as well as conducting pre-hearing conferences.

- c. the development of enhanced training in decision-writing that will reduce the time spent on writing reasons; and
- d. through training, more efficient hearing processes that reduce the time needed for hearings.

30. All of these anticipated features have, in fact, become part of the model's ongoing implementation, as can be seen in the previous sections of this Report. It may be too early in the implementation process to be able to isolate and link all of these activities to financial implications, but some available information suggests that as these processes are becoming embedded they are having an effect, not just on the cost of the Tribunal itself, but on costs incurred by the parties, licensees, witnesses, and Law Society counsel's time.¹⁵ As discussed above, this is related to, among other things,

- a. a new scheduling system that is more tailored and requires parties to attend only on actual hearing dates, rather than a range of dates, all of which permits more efficient use of Tribunal time and especially assists in the attendance of witnesses.
- b. using Tribunal staff expertise to develop the new scheduling system, rather than retaining outside consultants;
- c. significantly improved and increasingly focused use of case management through PMCs and PHCs as discussed above (paragraph 27(e)) which can reduce the length of a hearing and resolve issues;
- d. the Tribunal Chair's adjudicative role that provides useful continuity and hands-on observation of the Tribunal process to consider cost-savings procedures and allows for some savings of part-time adjudicator remuneration;
- e. activities now undertaken by the Tribunal Chair that would have previously been done by others, resulting in greater continuity and efficiencies;
- f. reduction in the number of "older" Tribunal cases as a result of better time and case management;¹⁶ and
- g. the introduction of a Tribunal Book of Authorities that may be relied upon to reduce parties' photocopying costs and reduce paper usage.

¹⁵ There is some preliminary information suggesting that the cost of adjudicator remuneration was lower in 2014 than in previous years, although more time will be needed to assess the full meaning of this information.

¹⁶ The Federation of Law Societies of Canada National Discipline Standards, whose goal is to develop a set of standards against which each Law Society's performance in the areas of discipline and tribunal processes may be assessed, sets service standards for timeliness. These benchmarks also contribute to efficiencies.

VII. ONGOING INTERACTION WITH TRIBUNAL COMMITTEE, THE BENCHER VICE-CHAIRS OF THE HEARING AND APPEAL DIVISIONS, THE TRIBUNAL IMPLEMENTATION WORKING GROUP AND CONVOCAATION

31. The Tribunal Committee (the “Committee”) and Convocation remain an integral part of the Tribunal model. By-Law 3 states that the Tribunal Committee’s mandate is,

(1) to develop, in conjunction with the Chair of the Law Society Tribunal, for Convocation’s approval policy options on all matters relating to the Law Society Tribunal, including the development or preparation of practice directions, an adjudicator code of conduct, publication protocols for tribunal decisions and adjudicator professional development.

(2) Subject to the approval of Convocation, in conjunction with the Chair of the Law Society Tribunal, the Tribunal Committee may prepare rules of practice and procedure.

32. The Committee’s role is evolving to reflect the Tribunal Chair’s leadership, as defined in the June 2012 Report, but within the implementation process and new model its continued importance includes,

- a. ensuring that a committee of benchers remains actively involved and engaged in Tribunal policy issues, in particular those that require Convocation approval;
- b. providing reflection and input into the ongoing reforms;
- c. providing feedback to the Tribunal Chair;
- d. in circumstances where there may be disagreement on whether an issue is more regulatory or Tribunal-related, providing the Tribunal’s perspective on issues in Convocation; and
- e. supporting a growing commitment to the new model, in which benchers are responsible for the governance overall, but are at the same time fostering an independent Tribunal, in furtherance of the best possible model of self-regulation.

33. As the June 2012 Report intended, the Hearing and Appeal Division Vice-Chairs are elected benchers. Their purpose is “to provide support and assistance to the Chair related to the functioning and responsibility of the Hearing [Division] and the Appeal [Division] and act as a substitute Chair in the absence of the Chair or as requested by the Chair.” Both Vice-Chairs sit as members of the Tribunal Committee and the Tribunal Implementation Working Group. As benchers they also bring an important perspective to the model’s implementation to assist the Tribunal Chair, who is not a bencher.

34. To further ensure links between the Tribunal Chair, the bencher Vice-Chairs and the Committee, a Tribunal Reform Implementation Working Group was established, whose members are the Tribunal Chair, the Tribunal Committee Chair and Vice-Chair and the Vice-Chairs of the Hearing and Appeal Divisions. The Tribunal Registrar is also a participant. The Working Group meets to discuss implementation-related issues, which then inform discussions at Committee.
35. Convocation retains its integral role in the Tribunal through both legislative requirements that mandate it to make certain decisions and through its decision-making authority over certain Tribunal policy matters. In the context of the model, Convocation exercises its authority in keeping with the Tribunal Chair's role as set out in the position description:
- The Chair is responsible for the overall implementation of the strategic direction and performance of the Tribunal, including its Hearing and Appeal [Divisions], subject to the provisions of the *Law Society Act* and Convocation's policies. The Chair will be accountable to Convocation to provide leadership to the Tribunal to ensure that it operates fairly, efficiently and effectively within its mandate.
36. This integrated approach to the model, in which the Tribunal Chair, the Tribunal Committee, Tribunal Vice-Chairs and Convocation interact to advance the mandate, is in keeping with the June 2012 Report.

VIII. ONGOING TRIBUNAL IMPLEMENTATION – CHALLENGES AND OPPORTUNITIES

37. Each component of the model's implementation, as described above, sets the stage for further developments that drive the core values of fairness, quality, transparency and timeliness. The foundational steps implementing the model are now largely in place and the securing of dedicated Tribunal premises will further facilitate implementation.
38. With a significant number of new bencher appointees to the Tribunal and ongoing assessment of educational and training needs of adjudicators, the Tribunal will continue to consider the most effective ways to support and enhance quality assurance, effective reason writing and use of adjudicators. The large size of the Tribunal and the part-time nature of the appointments require special attention to issues such as,
- a. effective panel composition;

- b. the potential effect of process efficiencies on the number of hearing days required per year and the consequential effect of that on scheduling panelists; and
 - c. the evolution of merit-based performance assessment.
39. As part of the ongoing implementation of the model, the Tribunal will continue to work on issues related to,
- a. electronic and other technological processes;
 - b. development of revised Rules of Practice and Procedure with a more uniform and modern organization and drafting style that includes the definition of values such as proportionality, accessibility and overall fairness and allows for greater use of written processes, active adjudication and technology;
 - c. ongoing development of process efficiencies within the Tribunal's control. The Tribunal is involved once an application or notice of referral for hearing is issued. It has no involvement prior to that juncture;¹⁷
 - d. accessibility for licensees and the public;
 - e. improved collection of statistics to further enhance monitoring and evaluation of the model's implementation;
 - f. considering further enhancements to the duty counsel program, such as representatives at PHCs;
 - g. greater use of Practice Directions;
 - h. greater attention and training related to mental health issues;
 - i. more quality improvement and assurance measures for adjudicators, including even more emphasis on skills building and further development of the performance assessment system;
 - j. outreach to the administrative justice community; and
 - k. ongoing implementation of cost efficiencies.
40. The June 2012 Report continues to guide the model's framework and implementation in a dynamic and flexible way that enables the Tribunal to evolve with a changing landscape. As implementation continues there will be further room for advancements,

¹⁷ The Tribunal controls the process from the point at which a proceeding is commenced. It does not control the regulatory process/timing before that point in time. Similarly, to the extent it wishes to introduce policy changes that come within Convocation's authority it must dovetail with Convocation's priorities and timeline.

increased quality assurance and continued commitment to the values of fairness, quality, transparency and timeliness that underpin the Tribunal's mandate.



Law Society Tribunal
Tribunal du Barreau

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ANNUAL REPORT

2014

Message from the Chair

I am pleased to present the first Annual Report of the Law Society Tribunal, which was formally established in March 2014. This report describes the many initiatives we undertook throughout 2014 in support of the establishment of an independent administrative tribunal within The Law Society of Upper Canada. These initiatives are designed to enhance the quality of the Tribunal's work in fairly and impartially processing, hearing and deciding the cases that come before us.

Tribunal members include benchers, who also have a role in governance of the Law Society, and other appointees to the Tribunal who are lawyers, paralegals and members of the public. Each panel is assigned by the Chair; important considerations in composing panels include ensuring bencher and lay representation and diversity in expertise and experience.



David A. Wright
Chair, Law Society Tribunal

Several types of cases are worth highlighting. Decisions on allegations of professional misconduct connected to mortgage fraud were prominent. Also significant were issues relating to mental health. Decisions addressed incapacity, health as a mitigating factor in penalty and requests to order an independent medical examination. Finally, the Tribunal's single-adjudicator summary hearing process dealt with many cases alleging failure to respond to the Law Society or violations of rules relating to financial records.

We continue to develop our jurisprudence. Significant 2014 Appeal Division decisions provided guidance on transparency of hearings (*Law Society of Upper Canada v. Xynnis, 2014 ONLSAP 9*); ungovernability and the application of progressive discipline (*Law Society of Upper Canada v. Shifman, 2014 ONLSTA 21*); and standards in criminal law practice (*Law Society of Upper Canada v. Besant, 2014 ONLSTA 50*).

We are committed to enhancing case management and alternative dispute resolution in the pre-hearing process, thereby reducing hearing time and adjournments. A small group of Tribunal members presides at pre-hearing conferences, and meets regularly to discuss common issues and promote consistency in approach.

This year, our staff's reporting relationships changed: the Registrar and Senior Counsel, who manages the Tribunal Office, now reports to the Chair. Staff have embraced the Tribunal's identity and put in extra effort in a year filled with changes to their work and a busy caseload.

I have learned a great deal from the Tribunal's stakeholders, members and staff in my first full year as Chair. I look forward to continued input and feedback from them, the Tribunal Committee, Convocation and the public as we continue the process of building an independent tribunal within self-governance of the legal and paralegal professions.

Tribunal Evolution

A Distinct Identity

MISSION STATEMENT AND CORE VALUES

The Law Society Tribunal is an independent adjudicative tribunal within The Law Society of Upper Canada. The Tribunal was formally established on March 12, 2014, through implementation of the *Modernizing Regulation of the Legal Profession Act, 2013*.

In recognition of the Tribunal's distinct identity and commitment to an enhanced tribunal process, a *mission statement and core values* were created and implemented through a process of consultation with stakeholders and members.

The Law Society Tribunal processes, hears and decides regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just and in the public interest. The work of Tribunal members and staff is informed and governed by this mission statement and the core values of fairness, quality, transparency and timeliness.

TRIBUNAL TEAM

The Tribunal is made up of members and staff. Tribunal members are the adjudicators who hear and decide cases. All are part-time, with the exception of the Chair. There are 13 full-time staff, including the Chair, and one part-time staff member.

Members

The Tribunal consists of a Hearing and Appeal Division. The Chair of the Tribunal is Chair of both the Hearing and Appeal Divisions, and each Division has a Vice-Chair. Pursuant to the *Law Society Act*, the Chair must be a lawyer who is not a benchner and the Vice-Chairs must be elected benchers.

Other tribunal members include elected and other lawyer and paralegal benchers, lay (public) benchers appointed by the Lieutenant Governor in Council and lawyers, paralegals and lay (public) Tribunal members appointed by Convocation on recommendation of the Chair. Public members must also be approved by the Attorney General for Ontario. Currently, there are 81 members of the Tribunal in addition to the Chair and Vice-Chairs. All Tribunal members are members of the Hearing Division. Twenty Tribunal members are also members of the Appeal Division. The Chair is appointed for a four-year term, and Vice-Chairs and members are appointed for terms of up to two years.

Members sit in panels of one, three or five to hear and decide cases. Panels are composed by the Chair in accordance with the requirements set out in *Ontario Regulation 167/07*.

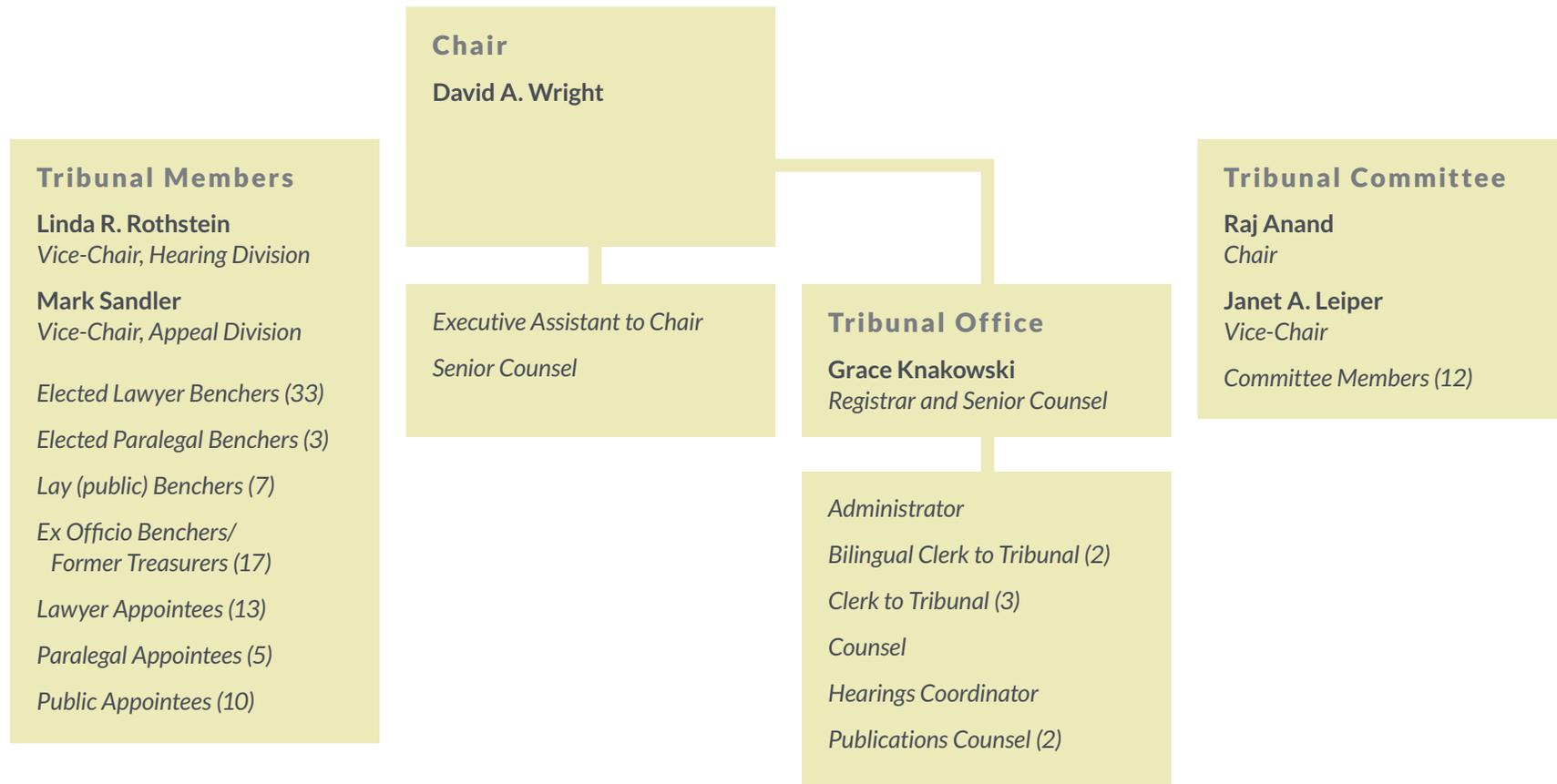
Tribunal Office

The Tribunal Office is led by the Registrar and Senior Counsel, who reports to the Chair. Tribunal Office staff support the adjudicative work of the Tribunal by coordinating file management, scheduling hearings, releasing orders and reasons and providing support at hearings.

Tribunal Committee

The Tribunal Committee is a standing committee of Convocation. Its mandate is to develop for Convocation's approval, in conjunction with the Chair, policy options on all matters relating to the Tribunal, including practice directions, the Adjudicator Code of Conduct, publication protocols for tribunal decisions, Tribunal member professional development and rules of practice and procedure.

TRIBUNAL STRUCTURE



Tribunal Advancement

The Law Society Tribunal is committed to continuous improvement and advancement. As part of this commitment, a detailed Tribunal *member position description* and formal performance development process for members have been approved by Convocation and implemented.

APPOINTMENT AND REAPPOINTMENT PROCESS

Members are appointed and reappointed to the Tribunal by Convocation on recommendation of the Chair. Benchers are eligible to be appointed to an initial term by virtue of their position. Other members are appointed following a competitive process and must have adjudicative experience. Tribunal members must adhere to the Law Society Tribunal Adjudicator Code of Conduct and demonstrate many aptitudes, including:

- Knowledge of administrative law, legislation and rules
- Commitment to procedurally fair and transparent hearings
- Production of quality jurisprudence
- Collegiality and self-reflection
- Continuous development through education of adjudicative skills and knowledge of issues before the Tribunal

RECRUITMENT

In 2014, the Law Society Tribunal initiated two separate competitive processes to recruit public and lawyer appointee members. As a result of these competitions, five public and four lawyer appointees were added to the Tribunal. The addition of these members strengthens the Tribunal's ability to conduct French language hearings and increases the diversity of expertise and experience among Tribunal members.

ORIENTATION AND EDUCATION

All new Tribunal members attend a multi-day orientation. Continuing education is offered to members and staff throughout the year, and attendance at two half-day sessions is mandatory for all members. This year's sessions focused on evidence, the role of the adjudicator and reason writing.

Outreach

STAKEHOLDER INPUT

The new *Chair's Practice Roundtable* has given Tribunal stakeholders a collegial forum in which to comment on the work of the Tribunal. The Chair's Practice Roundtable is comprised of duty counsel who regularly assist lawyers and paralegals at the Tribunal and individuals who regularly represent lawyers and paralegals or The Law Society of Upper Canada before the Tribunal.

The Chair's Practice Roundtable also provides an effective channel for the Tribunal to share and receive comment on developments and proposals about its processes.

Lawyers, paralegals and members of the public can receive email updates and consultation documents from the Tribunal by asking to be included on the Tribunal's *Stakeholder's List*.

REGULATORY AND ADMINISTRATIVE JUSTICE COMMUNITY

The Law Society Tribunal continues to establish its new identity within the regulatory and administrative justice community through the Chair's speaking engagements at conferences and events, including:

- Canadian Institute for the Administration of Justice Conference – Advanced Judicial Seminar on Administrative Law
- Federation of Law Societies of Canada – The Law Society of Upper Canada's Independent Tribunal Model
- The Society of Ontario Adjudicators and Regulators and Osgoode Professional Development – Ethics of Alternative Dispute Resolution in Administrative Justice

Tribunal Operations

Core Values

FAIRNESS

Fairness – Legislative Amendments

To create the Law Society Tribunal, the *Law Society Act*, *By-Law 3*, *Ontario Regulation 167/07* and the *Rules of Practice and Procedure* were amended.

More recently, the *Rules of Practice and Procedure* were amended to require a lawyer, paralegal or lawyer or paralegal applicant involved in a Tribunal proceeding to prepare a pre-hearing conference (PHC) memorandum. Previously, only the Law Society was required to do so. Requiring both parties to prepare a PHC memorandum gives equal opportunity to state a position and promotes more detailed discussions at the PHC.



We will be fair and impartial in our processes and proceedings, treating all with respect, courtesy and dignity.

QUALITY

Quality - Case Management System

Work is underway, together with the Law Society's Project Management Office, to create a new electronic case management system to facilitate the filing of documents and the work of Tribunal members and staff, and to easily generate statistics about the Tribunal's work. The Tribunal's new case management system is being built within SharePoint to capitalize on The Law Society of Upper Canada's decision to move to this platform across the organization.

We strive for excellence, acting with dedication and professionalism. We aim for continuous improvement, valuing diverse perspectives. We commit to an atmosphere that enables all to perform at their best.

TRANSPARENCY

Transparency – Website and Law Society Tribunal Identity

The *Law Society Tribunal website* was created and launched on March 12, 2014. Internet presence through an independent website has dramatically increased the profile and transparency of the Tribunal. It allows for ease of access to Tribunal information by the public, media and parties. The website contains a wealth of information about the Tribunal and its activities.

A unique Law Society Tribunal identity was enhanced with the design of a logo and stationery allowing lawyers, paralegals, the public and the media to visualize the Tribunal's independence within The Law Society of Upper Canada. This has assisted in educating parties and stakeholders about the distinction between the Law Society Tribunal and The Law Society of Upper Canada's Professional Regulation Division while emphasizing the Tribunal's independence and neutrality.

We will act in a manner that bears the closest scrutiny. Our decisions, rules, processes and policies will be available to licensees and the public, accessible and easily understandable.

TIMELINESS

Timeliness – New Scheduling Process

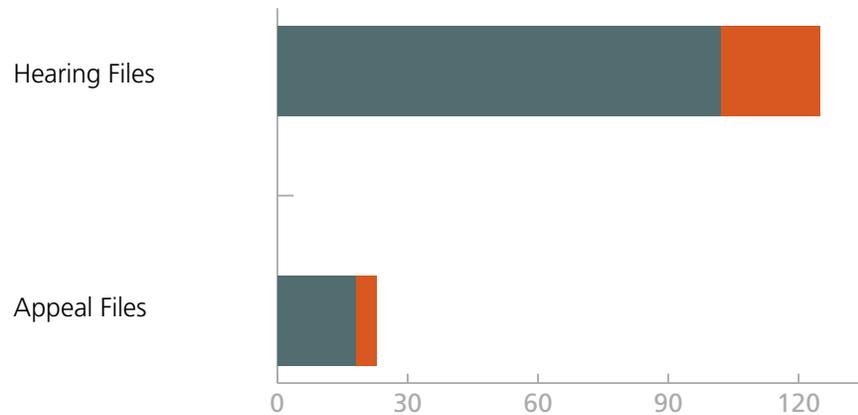
On May 2, 2014, the Law Society Tribunal initiated a new *scheduling process*. The new scheduling process maximizes hearing date options and provides parties with exact hearing dates, as opposed to a range of dates as was the former practice. Certainty of hearing dates promotes timely scheduling and translates into cost savings for parties as representatives are only required to attend on actual hearing dates.

We are guided by the importance of timely resolution of all matters. We will schedule hearing and continuation dates expeditiously and complete written reasons promptly.

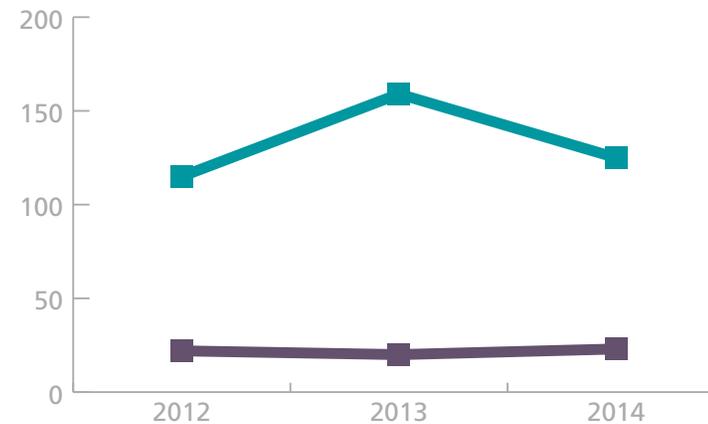
Tribunal Metrics

The Law Society Tribunal's 2014 statistics may be [found here](#).

HEARING AND APPEAL FILES OPENED IN 2014



HEARING AND APPEAL FILES OPENED BY YEAR



Statistical Highlights and Trends

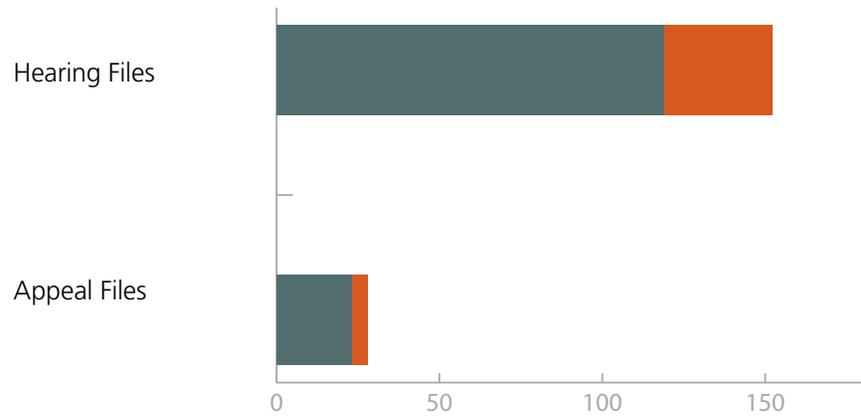
FILES OPENED

The Law Society Tribunal continued to administer a very busy caseload in 2014. While fewer originating processes were filed with the Tribunal than the year before, the overall work of the Tribunal remained steady as more files were closed by the Tribunal than in 2013. The Tribunal Office received 125 notices of application or referral for hearing and motions for interlocutory suspension or practice restriction to be considered by the Hearing Division, compared to 159 filings in 2013, a 21% decrease. The Tribunal Office also received 23 notices of appeal to be considered by the Appeal Division compared to 20 filings in 2013, a 15% increase. The total number of filings in 2014 is similar to that of 2012 filings.

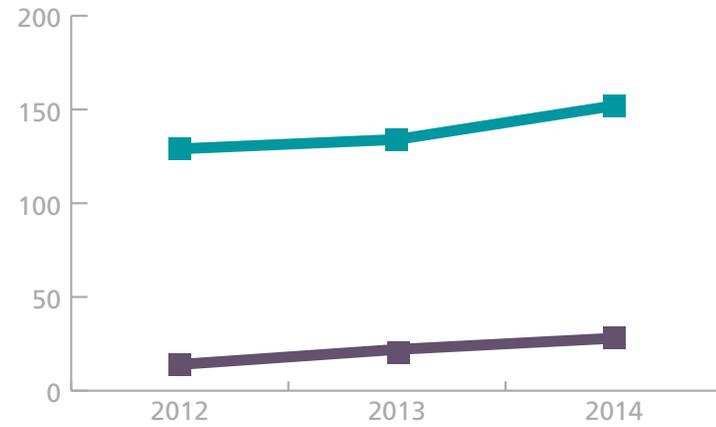
Tribunal Metrics

The Law Society Tribunal's 2014 statistics may be [found here](#).

HEARING AND APPEAL FILES CLOSED IN 2014



HEARING AND APPEAL FILES CLOSED BY YEAR



FILES CLOSED

In 2014, the Tribunal closed 152 files that were before the Hearing Division compared to 134 closed files in 2013, a 13% increase. The Tribunal also closed 28 files that were before the Appeal Division compared to 22 closed files in 2013, a 27% increase.

OPEN FILES BY AGE

At year-end 2014, the Tribunal's open or active file inventory of 152 files may be sorted by age as:

0 to 6 months - 64 files (42%), 7 to 18 months - 60 files (40%), 19 to 24 months - 17 files (11%) and over 24 months - 11 files (7%).

Almost half of the Tribunal's open or active inventory at 2014 year-end is less than six months old and 82% of the Tribunal's open or active inventory is less than 18 months old. These figures are identical to year-end 2013 figures and improve on 2012 percentages of 33% and 76%, respectively. At 2014 year-end, only 7% of open or active files were over 24 months old, compared to 13% in 2013 and 16% in 2012.

NUMBER OF FILES AND FREQUENCY BEFORE THE TRIBUNAL

Case management and adjudication activity before the Tribunal remained high in 2014. The proceeding management conference considered 144 files and the Hearing Division considered 190 files in 2014. The appeal management conference considered 15 files and the Appeal Division considered 26 files.

TOTAL HEARINGS SCHEDULED AND VACATED

In 2014, hearings were scheduled on 96% of all available calendar days. A total of 450 single-day or multiple day hearing blocks were scheduled before the Hearing and Appeal Divisions. Of these, 407 were for Hearing Division hearings and 43 were for Appeal Division hearings. Of the 407 Hearing Division blocks scheduled, 17% were vacated which is an improvement from the 23% and 22% of vacated hearings in 2013 and 2012, respectively. The Appeal Division experienced the same improvement as only 12% of blocks scheduled were vacated, compared to 16% in 2013 and 13% in 2012. The decrease in adjournments is likely due to an emphasis on more active pre-hearing case management and more consistent application and awareness of the Tribunal's practice direction for adjournment requests.

TRIBUNAL REASONS PRODUCED AND PUBLISHED

In 2014, 183 written reasons were produced, an increase of 29% from 2013 and 27% from 2012. Tribunal written and oral reasons continue to be published on The Canadian Legal Information Institute website to ensure that Law Society Tribunal jurisprudence is available to licensees and the public in an accessible format that may be researched.

Tribunal Model Three Year Review

Input Summaries

Meeting with Tribunal Chair's Roundtable: September 22, 2015

Roundtable Participants:

Blair Bowen, Grace Knakowski, Nadia Liva, Leslie Maunder, Deborah McPhadden, Marcy Segal, Danielle Smith, Ian R. Smith, Glenn M. Stuart, William Trudell, David Wright

Working Group Members: Raj Anand, Marion Boyd, Cathy Corsetti, Barb Murchie

Staff: Sophia Sperdakos

- Consider an increase in educational opportunities to educate the profession on what the Tribunal does – piggy back onto other events e.g. Advocates Society dinners, OBA, CLA: take 10 or 15 minutes to talk about the Tribunal – commitment to transparency, fairness. Currently counsel has to explain the process, structure, etc. to clients who don't understand; consider interview with David Wright for newspapers (e.g. Toronto Star) so more than just discipline side being reported in media
- Potential for CPD program on becoming a Duty Counsel (DC) for the Law Society Tribunal (this would need to be coordinated with a greater interest in expanding the DC program.)
- There was an extensive discussion about the DC issue:
 - Is the DC program within Tribunal mandate – consensus that the DC issues contributes to the perception of fairness – access to DC earlier particularly important given the increasing importance put on proceeding management conferences (PMC) and pre-hearing conferences (PHC).
 - There seems to be a logjam around enlarging the program – need to better involve the Advocates' Society and other groups perhaps; need advertising for volunteers, followed by training; better call back to those who wish to volunteer through Advocates' Society.
 - It was noted that David Wright has worked very hard to try to expand – Tribunal should not be tarred with brush of any criticism but the Law Society as a whole may need to deal with issue.
 - Other perspective expressed was that for complainants and the public at large who can't afford counsel, does pushing increase to DC program for licensees appear to be a conflict?
 - There was mention of a "public defender" system.
 - There was mention that Law Society discipline counsel go out of their way to assist DC and un-represented.
 - Need for amicus on occasion – is there a way to address?
 - Protecting the public doesn't just mean punishing lawyers. Need to address mental health issues in multiple ways to protect the system.

- Other points made respecting continuing improvements to the model's implementation:
 - Add more information, easily accessible on the website respecting the process and specifics aspects for use of complainants, licensees etc. (e.g. how is privilege protected in the process?).
 - Provide a list of adjudicators with one paragraph biography on website.
 - Provide a list of lawyers prepared to speak to an unrepresented licensee for ½ hour for discipline counsel to be able to call if feel licensee could benefit.
 - Continue to clarify difference between what Tribunal does and what regulatory does.
 - Consider recommending exit survey of licensees and complainants.
 - Suggestions were made for enhanced training of adjudicators:
 - Evidentiary issues
 - Controlling the hearing process
 - Active adjudication
 - Specific focus for solicitor benchers.
 - There was discussion of the issue of having counsel to the Tribunal.
 - There was discussion of the importance of panelists visibly including lay adjudicators in any panel deliberation in front of the parties; counsel have observed lawyer/paralegal panelists not consulting the lay member. Train adjudicators on that point.
 - Security for costs issue was discussed.
 - There was support among the counsel for developments at PHC – more active adjudication there:
 - Important be consistent.
 - Important to have an adjudicator willing to “roll up sleeves” and work with the parties.
 - Essential to have DC present.
 - Write the endorsement in the room with parties there so clear everyone agrees.
 - If active PHC process then workable to adjourn for additional material and have a second appearance; as long as process is meaningful multiple sessions not a problem.
 - There is incentive to bring clients to the conference, if a meaningful process.
 - Consider discussing costs issues at PHC.
 - There was discussion about whether and how to consult with affected licensees on the Review:
 - Expressed concern about viability of direct survey or questioning.
 - Suggest do through counsel.
 - This way licensee not identified.
 - Ask duty counsel too.
 - e.g. re: questions
 - something on duty counsel
 - Was the tribunal helpful?
 - Did the Tribunal/adjudicators hear you?
 - Non-bencher adjudicators are generally excellent.
 - Some concern about inherent conflict between benchers as policy makers and adjudicators.

- Some comment about whether appropriate that adjudicators sit on both Hearing Division and Appeal Division, but most thought it was fine.
- The process at Tribunal is night and day different from criminal courts – transparent, authentic, professional and understanding.
- What is being done here is unbelievable. There is respect for licensees and for counsel.
- New premises excellent – access to counter for licensees; licensees happy not to have to go into Osgoode.
- Overall consensus model is a significant improvement; David Wright doing excellent job.

Meeting with Treasurer’s Liaison Group: November 2, 2015

The Treasurer’s Liaison Group was provided with a memorandum from the Chair of the Three-Year Review Working Group setting out the purpose and nature of the review and the areas on which their input is being sought.

Approximately 19 legal organizations were represented at the meeting.

The Working Group Chair gave a brief overview to the establishment of the Tribunal and the nature of the review and the input it is seeking.

There was a brief discussion, with few comments. The representatives were offered the opportunity to provide written comments if they wish to do so. The comments were requested for early December but in any event by the end of December 2015. More specifically, it was suggested that if the representatives’ constituencies have any input on the new model or changes that have been observed since the model has been in place, this would be helpful.

The Chair of the Tribunal, David Wright, was asked to describe the new Tribunal premises and some of the advantages.

There was also some brief discussion about the role for duty counsel and the importance of more people participating.

There was a brief mention of where the Law Society’s work on mental health and on racialized licensees may intersect with Tribunal issues.

Meetings with Committees: November 2015

Paralegal Standing Committee (PSC)

- The PSC Chair commented on the benefits of the new Tribunal offices – functional, separation from discipline, ongoing use of technology, independence noted.
- There was a comment about the division of appointment to panels between benches and appointed adjudicators – if there are benches who can be used is that not more financially appropriate given the 26 free days benches contribute – are we maximizing our resources effectively?

It was noted in response that the Tribunal is very large (92 people) with more active benchers than previously and the workload is somewhat less than it has been in the past. In fact the majority of hearings days are still done by benchers who bring the perspective of their policy awareness to the adjudication issues. The appointed adjudicators also bring expertise in certain areas. New benchers have now completed their training and are being scheduled to sit on hearings. The issue of not being scheduled enough is raised equally by bencher and appointed adjudicators. For all it is important to note that the Tribunal is structured as a part-time adjudicator model.

- There was one comment about the new scheduling system and whether it works for those in litigation practices.
- There was a question about what prevents paralegals sitting on lawyer hearings. This is not an issue within the mandate of the three year review, but it was noted that paralegals can and have sat on such hearings and that O. Regulation 167/07 allows for this. This is part of the overall scheduling process that the Tribunal Chair is responsible for.
- There was one comment about whether there is an inherent conflict in the Tribunal Chair sitting on a hearing and then choosing those who would sit on the Appeal. It was pointed out that this does not happen. In the case of the Chair having a conflict because of having sat on a hearing, the Vice-Chair of the Appeal Division (who is a bencher) would assign the Appeal panel. It was noted that it is important for the Tribunal Chair to sit on hearings to be able to consider first hand Tribunal work, processes, technology, quality, etc. The Tribunal Chair also has availability to sit on longer hearings.

Audit and Finance

- The Committee discussed how the issue of the model's cost-effectiveness might be addressed for the progress report. There was discussion about issues raised in the June 2012 Report, such as the possible eventual elimination of the Appeal Division, reduced time for writing reasons as training improved and more efficient and shorter hearings.
- It was noted that the issue of data and statistics is a complex one because raw numbers do not take account of,
 - different calculations for bencher and appointed adjudicators and whether this makes sense (26 days);
 - the protocol, which has been introduced as part of the goal for enhanced quality, that there be written reasons in most cases;
 - the introduction of colleague/peer review;
 - more PHCs;
 - the policy decision that balances bencher/appointed adjudicators and Toronto/rest of the province appointments;
 - the June 2012 report emphasis that savings might be longer term (e.g. elimination of Appeal Division) – too soon to evaluate; and

- the difficulty the Tribunal Chair has in assessing overall costs of the Tribunal because he is not responsible for bencher remuneration/expenses. His budget includes only appointed adjudicators.
- Moreover data is not currently collected in a way that allows for effective calculation.
- A committee member pointed out that the main reason for the 2012 Report was quality and training. The financial information is relevant but should not guide the review, which is to consider qualitative issues.
- A question was asked whether the Tribunal premises move came in on budget – cost benefit analysis of move. This is not something the working group would know. This is within the Audit and Finance Committee’s mandate.
- The Committee was advised of the positive feedback from the Tribunal Chair’s Practice Roundtable on the move.

Professional Regulation Committee (PRC)

- There was some discussion of whether there was data around the improvement of hearing results that might make the Appeal Division unnecessary. There was discussion that it is too early to be able to properly assess this, given that the model is only 18 months into implementation. It was also discussed that there may be other reasons why the Appeal Division remains important. One committee member suggested it assists in the development of jurisprudence.
- One member noted the value of the peer review process for reasons and the positive impact on quality.
- There was some discussion about the size of the Tribunal and that there are too many people. One PRC member said this means benchers won’t get experience. There were some comments that the Chair picks panels differently than was done in the past when benchers used to schedule themselves. A question was raised whether there is the intention to ultimately eliminate benchers from the Tribunal.
- It was made clear that there is no such intention and that the ratio of bencher to appointed adjudicators reflects that. The scheduling approach currently in place reflects the June 2012 report philosophy that the Tribunal Chair would assign panels with a view to balancing a variety of factors, including the requirements of O. Reg 167/07, benchers/appointed adjudicators, substantive expertise, in and out of Toronto. The old scheduling system did not serve the goals/purpose of the June 2012 Report.
- A comment was made that the appointment of lay members who are professional adjudicators affects the nature of the “lay” bencher perspective. Further on this, another

comment suggested that the lay panelist is the voice of the complainant and trained adjudicators may not provide this. It is not important for lay panelist to weigh evidence as those legally trained can do that. There was disagreement on this point, it being felt that it is very important for the lay panelist to also weigh evidence. The view was expressed that lay people bring a healthy dose of common sense and we need to be careful not to lose that. Another view was expressed that the lay appointee is not there for the individual complainant but rather for the public interest whether lay benchers or lay appointees. It was also noted that every adjudicator has the same job description. A comment was made that perhaps the description should be different.

- A question was asked about how input from counsel appearing before the Tribunal as representatives was being obtained. The committee was advised of the Practice Roundtable and the letter to counsel seeking input from those who have acted or appeared on two or more matters in that last 18 months and requesting any comments they might obtain from their clients, as well.
- There were comments in favour of the Tribunal new premises, adjudicator training and peer review in reason writing.
- There was one comment about the role of the Tribunal Chair. It was expressed that he is doing an excellent job, but is there a check and balance for the position to ensure the process is fair? The response was to remember that in terms of adjudication the Chair is independent and intended to be so. There was one comment that there should be term limits on the Chair's position.

Equity and Aboriginal Issues Committee

- One Committee member commented that those who work with the model feel it is good – quality and consistency and education all good.

Equity Advisory Group

- There was a comment about whether the scope of review was to take into account equity and diversity issues, including on composition of panels and handling of cases.

Summary of Comments from Two Adjudicators: November 2015

Adjudicator 1

1. Rules of Practice and procedure should not be influenced by the Tribunal - Convocation should approve.
2. Mental Health Issues – Too many people are using mental health as an excuse; discipline counsel are too lenient on return to practice element – becomes joint

submission – if it has affected the practice it is going to take more than 3 or 4 months to recover from that.

3. Lay adjudicators should represent the broader spectrum of the public. They don't require adjudicative experience – don't need definite experience on tribunals; should be intelligent, interested people.
4. Self-represented licensees should be accompanied by duty counsel. It would help to have a more extensive roster of names so there would be sufficient people to go to when needed.
5. The Tribunal Chair should not be overtaxed by having to sit on too many hearings in order to save money. The position has many responsibilities and that should be kept in mind if in fact finances is one of the reasons for him to sit.
6. It should perhaps be suggested to the Ministry of the Attorney General that when setting out the experience factors to be taken into account when appointing lay benchers, adjudicative experience should be listed.
7. There needs to be better guidance for panels on assessing whether a person is a qualified "expert." The panel does not have the wherewithal to make that determination based on a resume. Could there not be a panel of names of those that have received the "seal of approval" to appear as a witness?
8. Too great a tendency to use joint submissions – not preferred over submissions to the panel. Joint submissions are more prominent than ever.
9. It would be helpful to have more information on panel members with whom one is sitting than their name and email address.

Adjudicator 2

Appointed members seem to be more concerned than they ought to be with writing reasons that are appeal-proof rather than figuring out what is right. Their previous experience on other Boards is thus not helpful.

Summary of Input from one Legal Representative

- The new model represents a significant improvement from the old in respect of presenting a Tribunal that is independent and separate from the Law Society. Many unrepresented licensees have commented that they perceived the relationship between the Tribunal and the discipline stream of the Law Society to be too close. Such perception negatively affects the ability of the Tribunal to conduct its work in a fair and unbiased manner. The fact that the Tribunal now has its own website, an independent

Chair and a new location for hearings importantly gives the appearance of independence and impartiality.

- The ability to conduct a PMC and a hearing by teleconference is effectively utilizing available technology. It also recognizes the financial and time constraints on some licensees who would otherwise be unable to travel to Toronto to participate in such procedures.
- As for the model's use of processes that are transparent, frankly haven't notice a material difference since prior to the implementation of the new Tribunal model.

TAB 6



Report to Convocation January 28, 2016

Equity and Aboriginal Issues Committee/ Comité sur l'équité et les affaires autochtones

Committee Members
Julian Falconer, Co-Chair
Janet Leiper, Co-Chair
Dianne Corbiere, Vice-Chair
Sandra Nishikawa, Vice-Chair
Raj Anand
Fred Bickford
Suzanne Clément
Teresa Donnelly
Robert Evans
Avvy Go
Howard Goldblatt
Marian Lippa
Isfahan Merali
Barbara Murchie
Gina Papageorgiou
Susan Richer
Raj Sharda

Purpose of Report: Information

Prepared by the Equity Initiatives Department

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Access to Justice in French Update

Facilitating International Access to Justice Through Intervention Report

Equity Legal Education and Rule of Law Calendar 2016

COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the "Committee") met on January 14, 2016. Treasurer Minor, Committee members, benchers Janet Leiper, Chair, Dianne Corbiere, Vice-Chair, Raj Anand, Fred Bickford, Suzanne Clément, Teresa Donnelly, Robert Evans, Avvy Go, Howard Goldblatt, Marian Lippa, Isfahan Merali, Barbara Murchie and Susan Richer attended. The Honourable Julie Thornburn, Superior Court of Justice, Andrée-Anne Martel, Executive Director of the Association des juristes d'expression française de l'Ontario ("AJEFO"), Julie Lasonde, Louise Hurteau, Law Society of Upper Canada representative on the AJEFO Board, Kathleen Lickers, representative of the Indigenous Advisory Group, and Paul Saguil, Chair of the Equity Advisory Group ("EAG"), also participated. Staff members Robert Lapper, Grant Wedge, Julia Bass, Sophia Sperdakos, Juda Strawczynski, Sabreena Delhon, Orli Giroux Namain, Susan Tonkin, Geneviève Proulx, and Hyacinth Khin also attended.

FOR DECISION

HUMAN RIGHTS MONITORING GROUP REQUEST FOR INTERVENTIONS

2. That Convocation approve the letters and public statements in the following cases:
 - a. Lawyer Pu Zhiqiang – China – letter of intervention and public statement presented at [TAB 6.1.1](#).
 - b. Lawyers Shalini Gera and Isha Khandelwal – India – letter of intervention and public statement presented at [TAB 6.1.2](#).
 - c. Lawyer Khin Khin Kyaw– Myanmar/Burma– letter of intervention and public statement presented at [TAB 6.1.3](#).
 - d. Lawyer Khalil Ma'touq – Syria – letter of intervention and public statement presented at [TAB 6.1.4](#).
 - e. Lawyer Razan Zaitouneh – Syria – letter of intervention and public statement presented at [TAB 6.1.5](#).
 - f. Lawyers Tran Thu Nam and Le Luan– Vietnam – letter of intervention and public statement presented at [TAB 6.1.6](#).
 - g. Lawyer Nguyen Van Dai- Vietnam – letter of intervention and public statement presented at [TAB 6.1.7](#).
 - h. Lawyer Buzurgmehr Yorov – Tajikistan – letter of intervention and public statement presented at [TAB 6.1.8](#).

Rationale

3. 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

4. The Monitoring Group considered the following factors when making a decision about the conviction of human rights lawyer Pu Zhiqiang:
 - a. there are no concerns about the quality of sources used for this report;

- b. the Law Society of Upper Canada intervened in this case in September 2014 and has intervened several times in the cases of lawyers in China, most recently in July 2015;
 - c. the conviction of human rights lawyer Pu Zhiqiang falls within the mandate of the Monitoring Group.
5. The Monitoring Group considered the following factors when making a decision about the harassment against human rights lawyers Shalini Gera and Isha Khandelwal:
 - a. there are no concerns about the quality of sources used for this report;
 - b. the harassment against human rights lawyers Shalini Gera and Isha Khandelwal falls within the mandate of the Monitoring Group.
6. The Monitoring Group considered the following factors when making a decision about the persecution of human rights lawyer Khin Khin Kyaw:
 - a. there are no concerns about the quality of sources used for this report;
 - b. the persecution of human rights lawyer Khin Khin Kyaw falls within the mandate of the Monitoring Group.
7. The Monitoring Group considered the following factors when making a decision about the disappearance of human rights lawyer Khalil Ma'touq:
 - a. there are no concerns about the quality of sources used for this report;
 - b. the Law Society of Upper Canada intervened in this case in October 2012 and July 2013 and has intervened a number of times in respect of human rights issues in Syria;
 - c. the disappearance of lawyer Khalil Ma'touq falls within the mandate of the Monitoring Group.
8. The Monitoring Group considered the following factors when making a decision about the abduction of human rights lawyer Razan Zaitouneh:
 - a. although there is only one source for this report, the report has been signed by nine human rights organizations. There are no concerns about the quality of the source used for this report;
 - b. the Law Society of Upper Canada intervened in this case in February 2014 and has intervened several times in respect of human rights issues in Syria;
 - c. the abduction of human rights lawyer Razan Zaitouneh falls within the mandate of the Monitoring Group.

9. The Monitoring Group considered the following factors when making a decision about the attack on human rights lawyers Tran Thu Nam and Le Luan:
 - a. there are no concerns about the quality of sources used for this report;
 - b. the attack on human rights lawyers Tran Thu Nam and Le Luan falls within the mandate of the Monitoring Group.
10. The Monitoring Group considered the following factors when making a decision about the attack, arrest and arbitrary detention of human rights lawyer Nguyen Van Dai:
 - a. there are no concerns about the quality of sources used for this report;
 - b. the Law Society of Upper Canada intervened in a case related to the arrest, detention and harsh sentence of lawyers Nguyen Van Dai and Le Thi Cong Nhan in August 2007.
 - c. the arrest and arbitrary detention of human rights lawyer Nguyen Van Dai falls within the mandate of the Monitoring Group.
11. The Monitoring Group considered the following factors when making a decision about the detention of human rights lawyer Buzurgmehr Yorov:
 - a. there are no concerns about the quality of sources used for this report;
 - b. the detention of human rights lawyer Buzurgmehr Yorov falls within the mandate of the Monitoring Group.

KEY BACKGROUND

CHINA – CONVICTION OF HUMAN RIGHTS LAWYER PU ZHIQIANG

Sources of Information

12. The background information for this report was taken from the following sources:
 - a. BBC;
 - b. CNN;
 - c. Foreign Commonwealth Office, United Kingdom;
 - d. Human Rights Watch;
 - e. Lawyers for Lawyers;
 - f. The Guardian;
 - g. The New York Times; and
 - h. U.S. Department of State

Background

13. The following report served as the basis for the Human Rights Monitoring Group's intervention in the case of Pu Zhiqiang in September 2014.
14. Pu Zhiqiang is a prominent civil rights lawyer in Beijing, lawyer to Ai Weiwei, and advocate for abolishing the administrative detention system known as "Re-education Through Labor."¹ Pu Zhiqiang was detained by police on May 6th, 2014, after attending a seminar that discussed the 1989 Tiananmen Massacre.²
15. CHRLCG [China Human Rights Lawyers Concern Group] notes that, although the seminar concerned a sensitive topic, Pu Zhiqiang was exercising his Article 35 Chinese constitutional rights, guaranteeing freedom of speech, of the press, of assembly, of association, of procession and of demonstration.³
16. On June 13th, 2014, police formally arrested Pu Zhiqiang for the crimes of "creating a disturbance" and "illegally obtaining personal information."⁴ His niece, Qu Zhenong, also a lawyer, accompanied him to the seminar and is also reported to have been arrested.⁵
17. Pu Zhiqiang was allegedly not given appropriate access to legal representation. His lawyer, Zhang Sizhi, was unable to visit him in custody until a month had passed.⁶ According to his lawyer, Pu Zhiqiang now faces "many and broad" allegations.⁷
18. Reports indicate that Pu Zhiqiang continues to be detained without trial and suffers ill-treatment due to a lack of sufficient accommodation of his diabetic condition. He has reportedly been given access to insulin, but suffers swollen legs due to prolonged interrogations lasting up to ten hours nearly every day.⁸ Applications for Pu Zhiqiang's release on medical grounds have been denied.⁹
19. Pu Zhiqiang's continued detention and ill-treatment evidences mounting government pressure against Chinese rights lawyers. Amnesty International, The Law Society of

¹ "China: Free Lawyer, Drop Charges", *Human Rights Watch*, online:

<http://www.hrw.org/news/2014/06/14/china-free-lawyer-drop-charges> [*Human Rights Watch*].

² "China: End persecution of prominent human rights lawyer", *Amnesty International*, online:

<http://www.amnesty.org/en/for-media/press-releases/china-end-persecution-prominent-human-rights-lawyer-2014-06-13>.

³ "China Human Rights Lawyers Concern Group condemns Haiding District Public Security Bureau for abusing public authority and suppressing civil rights, and demands immediate release of Pu Zhiqiang" *China Human Rights Lawyers Concern Group* online: <http://www.chrlawyers.hk/en/content/20140507>.

⁴ *Human Rights Watch*.

⁵ "President of Law Society expresses concern regarding two lawyers in China", *The Law Society of England and Wales*, online: <http://international.lawsociety.org.uk/node/14008> [*Law Society*].

⁶ Tania Branigan, "Chinese rights lawyers warn of crackdown after arrest of Pu Zhiqiang", *The Guardian* (17 June 2014), online: <http://www.theguardian.com/world/2014/jun/17/chinese-rights-lawyers-crackdown-arrest-pu-zhiqiang-ai-weiwei>.

⁷ *Ibid.*

⁸ *Human Rights Watch*.

⁹ *Ibid.*

England and Wales, and other organizations listed in this report believe that authorities continue to detain Pu Zhiqiang in an attempt to silence lawyers who work on sensitive civil rights issues.¹⁰ On June 27, 2014, The Law Society of England and Wales intervened by issuing a formal letter addressed to Chinese Prime Minister Li Keqiang. The Law Society of England and Wales noted that “the arrest appears to be part of government suppression of Human Rights lawyers and activists which has involved a large number of detentions recently.”¹¹ The Law Society of England and Wales also reminded the Prime Minister of China’s obligations under international law. These groups are calling for his immediate release.

Update

20. According to the U.S. Department of State, on 22 December 2015, “Mr. Pu was convicted and given a three-year suspended sentence, following 19 months of detention, on vague charges of ‘inciting ethnic hatred’ and ‘picking quarrels and provoking trouble.’”¹² The charges are related to social media posts questioning government policy, which were posted online between July 2011 and May 2014.¹³
21. Reports indicate that although Pu Zhiqiang has been released, the verdict will prevent him from ever practising law again.¹⁴ Pu Zhiqiang could also face further harassment from authorities.
22. Pu Zhiqiang’s case draws attention to the plight of human rights defenders in China. In July 2015, the government detained more than 300 lawyers and legal assistants.¹⁵

INDIA – HARASSMENT AGAINST HUMAN RIGHTS LAWYERS SHALINI GERA AND ISHA KHANDELWAL

Sources of Information

23. The background information for this report was taken from the following sources:
 - a. Front Line Defenders;
 - b. Lawyers for Lawyers; and
 - c. The Law Society of England and Wales

¹⁰ *Law Society.*

¹¹ *Ibid.*

¹² <http://www.state.gov/r/pa/prs/ps/2015/12/250836.htm>

¹³ <https://www.hrw.org/news/2015/12/13/china-free-prominent-lawyer-pu-zhiqiang>

¹⁴ http://www.nytimes.com/2015/12/23/world/asia/conviction-of-pu-zhiqiang-affirms-chinas-determination-to-muzzle-rights-lawyers.html?_r=0

<http://www.cnn.com/2015/12/21/asia/china-lawyer-pu-zhiqiang-verdict/>

¹⁵ *Ibid.*

Background

24. Shalini Gera and Isha Khandelwal are human rights lawyers and the founders of the Jagdalpur Legal Aid Group (JagLAG), an organization that provides free legal aid to Adivasi people in Bastar, Dantewada, Kanker, Sukma and Bijapur.¹⁶ According to Front Line Defenders, “A number of Adivasi’s have been harassed and accused of having connections to the violent movement linked to the Communist party known as Maoists or Naxals”.¹⁷ JagLAG has also worked on cases involving human rights abuses by police.¹⁸
25. Reports indicate that on 6 October 2015, the Bastar Bar Association passed a resolution prohibiting any lawyer who is not registered with the local Bar Council from practising in the Jagdalpur courts. The resolution prevents Shalini Gera and Isha Khandelwal, both registered with the Delhi State Bar Council, from representing clients in Jagdalpur.¹⁹ According to Lawyers for Lawyers:

All lawyers practising in India are registered with the regional Bar Council, which is a statutory body with legal authority to set its own rules regarding the criteria to practice law in that region. The Bar Council of the Chhattisgarh region, which includes Bastar, allows outside lawyers to practise in the region under the condition that their legal credentials are countersigned by a local lawyer. A local Bar Association, such as the Bastar Bar Association, has no authority to overrule the regional Bar Council regulations and to prevent a lawyer from practising in any court in the country under the Section 30 of the Advocates Act of India. The recent resolution of the Bastar Bar Association thus appears to be unlawful.²⁰

26. Human rights organizations believe that the resolution is intended to inhibit Shalini Gera and Isha Khandelwal’s work as lawyers for JagLAG. Both lawyers have faced repeated harassment as a result of their work in the region.²¹ In a letter to the Prime Minister of India, the Law Society of England & Wales notes, “The personal threats and lodging of anonymous complaints appear to be further attempts to intimidate and harass these human rights defenders.”²²

MYANMAR/BURMA – PERSECUTION OF HUMAN RIGHTS LAWYER KHIN KHIN KYAW

Sources of Information

27. The background information for this report was taken from the following sources:

a. Council of Bar and Law Societies of Europe;

¹⁶ <https://www.frontlinedefenders.org/node/29909>

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ <http://www.advocatenvooradvocaten.nl/fr/11240/india-harassment-against-human-rights-lawyers/>

²⁰ *Ibid.*

²¹ <http://communities.lawsociety.org.uk/download?ac=15401>

²² *Ibid.*

- b. Front Line Defenders; and
- c. Lawyers for Lawyers.

Background

28. The following information has been reported about human rights lawyer Khin Khin Kyaw.
29. Khin Khin Kyaw is a member of a legal team that is representing more than 50 students who participated in the March 2015 protests to oppose Myanmar's National Education Law. The students have been detained and "face charges related to unlawful assembly, rioting, harming public servants, and public mischief."²³
30. Reports indicate that following the March 2015 protests, Khin Khin Kyaw filed a motion seeking to hold high-ranking police officials responsible for excessive use of force. According to information gathered by The Council of Bar and Law Societies of Europe:

...while Khin Khin Kyaw was representing her clients in court on 1 September 2015, the judge arbitrarily refused to accept a minor amendment to the legal motion submitted by the lawyer. In response, the individuals in the courtroom loudly accused the judge of being biased. On 15 September 2015, Khin Khin Kyaw was charged with 'disrupting the court', and her trial began on 14 October 2015. We understand that she is now facing up to six months in prison and the revocation of her license to practice law.²⁴

31. Human rights organizations believe that the trial against Khin Khin Kyaw is an attempt to prevent her from representing the student protestors.

SYRIA– DISAPPEARANCE OF HUMAN RIGHTS LAWYER KHALIL MA'TOUQ

Sources of Information

32. The background information for this report was taken from the following sources:
- a. Al Jazeera;
 - b. Council of Bar and Law Societies of Europe;
 - c. Human Rights Watch (joint statement with other organizations); and
 - d. The Law Society of England and Wales.

Background

33. The following report served as the basis for the Human Rights Monitoring Group's intervention in the case of Khalil Ma'touq in July 2013:

²³ <https://www.frontlinedefenders.org/node/29942>

²⁴ http://ccbe.eu/fileadmin/user_upload/NTCdocument/HR_Letter_Myanmar_Kh1_1449219194.pdf

34. Khalil Ma'touq is a long time and prominent human rights lawyer in Syria, and is also the director of the Syrian Centre for Legal Studies and Research. Khalil Ma'touq is known for providing legal assistance to victims of human rights violations in Syria, including the defense of hundreds of political prisoners, prisoners of conscience and journalists.
35. On October 2, 2012, Khalil Ma'touq and his friend and assistant Mohammed Thatha left Khalil Ma'touq's home in a suburb of Damascus, for work in the city. However the two men did not arrive at the office and it is believed that they were detained at a government controlled checkpoint en route to work. It is believed that Khalil Ma'touq was arrested as a direct result of his human rights work. Shortly before his arrest, Khalil Ma'touq had travelled to France to receive medical treatment, which may also have roused the suspicions of Syrian authorities.
36. Since their disappearance, the families of Khalil Ma'touq and Mohammed Thatha have been unable to discern their whereabouts. Their phones remain turned off, and despite repeated requests for information, Syrian authorities continue to deny that they two men are in custody. This ongoing denial heightens worries that the men are being subjected to torture and ill treatment in detention, which is reportedly rife in Syrian prisons.
37. Khalil Ma'touq has been in detention for more than 243 days, despite the fact that Syrian law only allows detention for the purposes of investigation for a maximum of sixty days. Following the expiration of the sixty day detention period in February 2013, a group of Syrian lawyers contacted the Attorney General in Damascus to demand the release of Khalil Ma'touq. The Attorney General replied that Khalil Ma'touq was not being held in detention. However recently released detainees confirmed that they had seen Khalil Ma'touq in State Security Branch 285 while they themselves were in detention. In April 2013, Khalil Ma'touq's lawyer was reportedly informed by a Syrian State Security officer that his client had been transferred to an Air Force Intelligence branch in late March. These developments continue to raise serious and pressing questions about Khalil Ma'touq's health and safety.
38. In late May 2013, people close to Khalil Ma'touq and Mohammed Thatha received a tip-off indicating that Khalil Ma'touq was indeed in detention and that his health was severely deteriorating. The situation is especially troubling as Khalil Ma'touq suffers from severe lung disease, which requires regular medication and constant monitoring. It is unknown whether Khalil Ma'touq is able to receive any medical care for his serious condition.
39. This is not the first time that Khalil Ma'touq has been sanctioned for his human rights work. He had previously summoned for interrogation by authorities, and was also banned from travelling between 2005-2011 as a result of his work at the Syrian Centre for Legal Studies.
40. The arbitrary arrest and detention of Khalil Ma'touq is part of a widespread pattern of enforced disappearance and repression of lawyers in Syria. It is estimated that at least 37 lawyers are currently detained in Syria. Since anti-government protests erupted in

March 2011, upwards of 1,300 individuals have reportedly died in custody, and many more have been subjected to torture and ill-treatment in Syrian detention centres and prisons. Several human rights organizations have condemned Syria's ongoing persecution, harassment and imprisonment of human rights lawyers during the discharge of their legitimate, peaceful legal duties and human rights work.

Update

41. The whereabouts of Khalil Ma'touq are still unknown. The state continues to deny that he was arrested.
42. October 2015 marked the third anniversary of his disappearance.²⁵ Human Rights Watch notes that Khalil Ma'touq continues to be held "...despite calls by the international community to end the practices of enforced disappearances and torture and other ill-treatment in detention facilities in Syria. UN Security Council Resolution 2139 of February 2014 demanded the release of all those arbitrarily detained, a call reiterated by a UN Security Council Presidential Statement issued on 17 August 2015."²⁶
43. According to reports, since Syria's civil war broke out in 2011, the government has forcibly disappeared more than 65,000 people.²⁷ In October 2015, more than 50 human rights organizations, including Amnesty International, Human Rights Watch and Lawyers for Lawyers, signed a joint statement calling for the release of Khalil Ma'touq.²⁸

SYRIA– ABUDCTION OF HUMAN RIGHTS LAWYER RAZAN ZAITOUNEH

Sources of Information

44. The background information for this report was taken from the following sources:
 - a. Lawyers Rights Watch Canada (joint statement with other organizations)

Background

45. The following report served as the basis for the Human Rights Monitoring Group's intervention in the case of Razan Zaitouneh in February 2014:
46. On December 9, 2013, award-winning human rights lawyer and writer, Razan Zaitouneh, along with her husband, Wa'el Hamada, and two colleagues, Nazem Hamadi and Samira Khalil, were abducted by unknown individuals from a joint office of the Violations Documentation Centre (VDC) and the Local Development and Small Projects Support

²⁵ <https://www.hrw.org/news/2015/10/06/syria-joint-statement-urging-release-human-rights-lawyer-khalil-matouq>

²⁶ *Ibid.*

²⁷ <http://www.aljazeera.com/news/2015/11/tens-thousands-syrians-disappeared-151103151934501.html>

²⁸ *Supra* note 25.

(LDSPS) in the Damascus suburb of Douma.²⁹ The VDC is an independent non-governmental organization that documents human rights abuses committed by the Syrian government. The LDSPS provides humanitarian assistance.

47. Razan Zaitouneh has won several awards for her human rights work, including the 2013 International Women of Courage Award and the 2011 Sakhorov Prize for Freedom of Thought. She largely defends political prisoners. Razan Zaitouneh is a co-founder of both the VDC and the LDSPS.
48. According to reports, in 2011, Razan Zaitouneh was forced into hiding after receiving threats from the Syrian authorities. In recent months, she has received threats from at least one armed opposition group in Eastern Ghouta. Reports indicate that the abduction of Razan Zaitouneh and her colleagues is linked to their human rights work.

Update

49. Razan Zaitouneh's whereabouts are still known. December 2015 marked the second anniversary of her abduction.³⁰
50. Razan Zaitouneh's family, including her parents and her sister, arrived in Canada from Syria in 2014. The family, given the recent arrival of many Syrian refugees to Canada, has attempted to draw attention to Razan Zaitouneh's case. A number of human rights organizations, including Amnesty International, Canadian Journalists for Free Expression, Human Rights Watch, Lawyers Rights Watch Canada and PEN Canada, have released a statement asking the Canadian government to be involved in this case by taking all steps to ensure the Razan Zaitouneh, her husband and her two colleagues are located and released immediately.

VIETNAM– ATTACK ON HUMAN RIGHTS LAWYERS TRAN THU NAM AND LE LUAN

Sources of Information

51. The background information for this report was taken from the following sources:
 - a. Front Line Defenders;
 - b. Lawyers for Lawyers; and
 - c. Radio Free Asia

Background

52. The following information has been reported about the attack on human rights lawyers Tran Thu Nam and Le Luan.

²⁹ Douma is located in Eastern Ghouta, an area under the control of a number of armed opposition groups that is being besieged by government forces.

³⁰ <http://www.lrwc.org/syria-canadian-government-asked-for-support-to-help-free-syrian-human-rights-defender-razan-zaitouneh-on-two-year-anniversary-of-abduction-joint-statement/>

53. According to Lawyers for Lawyers:

Tran Thu Nam and Le Luan are Hanoi-based human rights lawyers providing legal support to the victims of alleged police brutality and other human rights abuses by the authorities. Currently they are supporting the family of Do Dang Du, who died on 10 October 2015, in police custody after being held there for two months on a charge of theft. The lawyers questioned the validity of the autopsy carried out on Do Dang Du's body as it failed to include an examination of internal organs, which could prove that he died as a result of injuries sustained in a beating."³¹

54. On 3 November 2015, Tran Thu Nam and Le Luan were attacked and beaten by eight masked men. Front Line Defenders notes that the two lawyers recognized one of their attackers as a local police officer. Tran Thu Nam and Le Luan sustained a number of injuries for which they received medical treatment. The attack took place following a meeting between Tran Thu Nam, Le Luan and the family of Do Dang Du to discuss the steps in the legal proceedings regarding Do Dang Du's death. Do Dang Du's mother, Do Thi Mai, witnessed the attack.³²

55. Human rights organizations believe that Tran Thu Nam and Le Luan were targeted as a result of their human rights work.

VIETNAM– ATTACK, ARREST AND ARBITRARY DETENTION OF HUMAN RIGHTS LAWYER NGUYEN VAN DAI

Sources of Information

56. The background information for this report was taken from the following sources:
- a. Lawyers for Lawyers;
 - b. Lawyers Rights Watch Canada;
 - c. The Observatory for the Protection of Human Rights Defenders;
 - d. The United Nations News Centre; and
 - e. U.S. Department of State – Daily Press Briefing

Background

57. The following information has been reported about the arrest and arbitrary detention of human rights lawyer Nguyen Van Dai.

58. Nguyen Van Dai is a human rights lawyer and a well-known defender of religious freedom. He is the co-founder of the Vietnam Human Rights Centre.³³

³¹ <http://www.advocatenvooradvocaten.nl/fr/11293/vietnam-human-rights-lawyers-tran-thu-nam-and-le-luan-attacked/>

³² <https://www.frontlinedefenders.org/node/30085/action>

³³ <https://www.fidh.org/en/issues/human-rights-defenders/arrest-and-arbitrary-detention-of-mr-nguyen-van->

59. According to Lawyers for Lawyers and Lawyers Rights Watch Canada:

...on 6 December 2015, Nguyen Van Dai and human rights activists Ly Quang Son, Vu Van Minh and Le Manh Thang were attacked and severely beaten by an estimated 20 masked men, travelling in two cars without registration plates and five motorbikes. The attackers robbed all four men's mobile phones, wallets and other items.³⁴

60. Reports indicate that Nguyen Van Dai and his three associates were returning to Hanoi from a human rights workshop they had conducted for residents of Nghe An Province.³⁵

61. On 15 December 2015, 25 police officers arrested Nguyen Van Dai at his home in Hanoi. The officers searched his home and confiscated a number of items, including laptops, computers, USB sticks, cameras, camcorders, books on human rights, envelopes containing money used to support relatives of prisoners of conscience and Nguyen Van Dai's savings account bank book. The arrest took place as Nguyen Van Dai was preparing to meet with European Union delegates in Hanoi for the EU-Vietnam human rights dialogue scheduled for that day.³⁶

62. Nguyen Van Dai has been charged with "spreading propaganda against the Socialist Republic of Vietnam" under Article 88 of the Criminal Code. This charges appear to relate to his organization of meetings to discuss the 2013 Vietnamese Constitution.³⁷ Nguyen Van Dai has been informed that he will be temporarily jailed for four months, pending trial. Should he be convicted, he will face three to 20 years in prison.³⁸

63. Human rights organizations believe that the attack, arrest and arbitrary detention of Nguyen Van Dai are as a result of his human rights work. This is not the first time Nguyen Van Dai has been persecuted due to the legitimate exercise of his duties. In 2007, Nguyen Van Dai as sentenced to five years' imprisonment and four years' of house arrest under Article 88 of the Criminal Code. His sentenced was reduced to four years' imprisonment and four years' house arrest. He was released in 2011 and resumed his human rights work.³⁹

TAJIKISTAN – DETENTION OF HUMAN RIGHTS LAWYER BUZURGMEHR YOROV

Sources of Information

64. The background information for this report was taken from the following sources:
a. Human Rights Watch;

dai-a-human-rights

³⁴ <http://www.lrwc.org/viet-nam-physical-attack-on-and-arrest-of-lawyer-nguyen-van-dai-joint-letter/>

³⁵ *Supra* note 33.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

- b. International Commission of Jurists;
- c. Lawyers for Lawyers;
- d. The Law Society of England and Wales; and
- e. The United Nations News Centre

Background

65. The following information has been reported about detention of human rights lawyer Buzurgmehr Yorov.
66. Buzurgmehr Yorov is a civil and criminal lawyer and the Chairman of the Bar Association of Dushanbe.⁴⁰
67. According to Lawyers for Lawyers:
- Atty. Yorov was arrested and detained on 28 September 2015. The authorities charged him with fraud related charges. An Internal Affairs Ministry spokesperson said the alleged fraud occurred in July 2010, when Yorov and purportedly received US \$4000 from a resident of the city of Istaravshan.⁴¹
68. Reports indicate that Buzurgmehr Yorov had just begun representing thirteen members of the Islamic Renaissance Party of Tajikistan (IRPT) at the time of his arrest. The IRPT members had been arrested and charged by authorities on 16 September 2015.⁴² On 29 September 2015, the Supreme Court of Tajikistan banned the IRPT and declared it a terrorist organization. Prior to that date, the IRPT was the only Islamic political party legally registered in Central Asia.⁴³
69. Human Rights Watch notes that Buzurgmehr Yorov's arrest occurs in the context of a worsening government crackdown on lawyers who take on politically sensitive cases.⁴⁴ Human Rights organizations believe that his arrest and detention are a direct result of his representation of members of the IRPT.

⁴⁰ <http://communities.lawsociety.org.uk/human-rights/interventions/2015/tajikistan-mr-buzurgmehr-yorov-lawyer-at-risk/5052100.fullarticle>

⁴¹ <http://www.advocatenvooradvocaten.nl/fr/11212/tajikistan-human-rights-lawyer-arrested/>

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ <https://www.hrw.org/news/2015/10/07/tajikistan-human-rights-lawyer-detained>

TAB 6.1.1

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

PU ZHIQIANG

His Excellency Mr. Xi Jinping, The President
The State Council General Office
2 Fuyoujie
Xichengqu
Beijingshi 100017
People's Republic of China

Your Excellency:

Re: Conviction of human rights lawyer Pu Zhiqiang

I write on behalf of the Law Society of Upper Canada* further to our letter of 5 September 2014, to voice our grave concerns over the conviction of human rights lawyer Pu Zhiqiang. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Pu Zhiqiang is a prominent human rights lawyer in Beijing. He often defends clients who are involved in politically sensitive cases.

In our letter dated 5 September 2014, the Law Society expressed concern about the arrest, continued detention and ill-treatment of Pu Zhiqiang.

The Law Society again writes to voice its continued deep concern as a result of reports that on 22 December 2015, Pu Zhiqiang was convicted and given a three-year suspended sentence, following 19 months of detention on charges of "inciting ethnic hatred" and "picking quarrels and provoking trouble".

Reports indicate that although Pu Zhiqiang has been released, the verdict will prevent him from ever practising law again. A number of organizations have reported on the arrest and detention of human rights lawyers in China. The Law Society is concerned that the arrest and detention of these lawyers is directed at preventing them from carrying out peaceful human rights activities.

The Law Society of Upper Canada urges Your Excellency to comply with Articles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 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.

Moreover, Article 23 states:

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

The Law Society urges the government of the People's Republic of China to:

- a. vacate Pu Zhiqiang's conviction immediately and unconditionally;
- b. put an end to all acts of harassment against Pu Zhiqiang as well as other human rights lawyers and defenders in China;
- c. guarantee in all circumstances the physical and psychological safety and integrity of Pu Zhiqiang;
- d. guarantee all the procedural rights that should be accorded to Pu Zhiqiang; and
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor
Treasurer

**The Law Society of Upper Canada is the governing body for more than 49,000 lawyers and 7,400 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:

His Excellency Mr. Guo Shengkun
Minister of Public Security
No.14, Donchang'anjie,
Dongchengqu, Beijing 100741
People's Republic of China
Email: gabzfwz@mps.gov.cn

Ambassador Luo Zhaohui
Embassy of the People's Republic of China in Canada
515 St. Patrick St.
Ottawa, ON
Canada K1N 5H3

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Wang Junfeng, All China Lawyers Association

Adrie van de Streek, Executive Director, Lawyers for Lawyers

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

Yves Berthelot, 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

Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

Proposed Letter to Lawyers' Associations

Dear [Name],

Re: Conviction of human rights lawyer Pu Zhiqiang

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 His Excellency Mr. Xi Jinping, President of the People's Republic of China, expressing our deep concerns over reports of the conviction of human rights lawyer Pu Zhiqiang.

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

Please forward any further correspondence to the attention of Ekua Quansah, Associate Counsel, Equity, 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,

Paul Schabas
Chair, Human Rights Monitoring Group

* The Law Society of Upper Canada is the governing body for more than 49,000 lawyers and 7,400 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
- Mary Lawlor, Executive Director, Front Line Defenders
- Vincent Forest, Head of European Union Office, Front Line Defenders

- Kenneth Roth, Executive Director, Human Rights Watch
- Wang Junfeng, All China Lawyers Association
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers' Rights Watch Canada
- Yves Berthelot, 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
- Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

PROPOSED PUBLIC STATEMENT

The Law Society of Upper Canada expresses grave concerns about the conviction of human rights lawyer Pu Zhiqiang in China

TORONTO, ON — The Law Society of Upper Canada expresses grave concerns about the conviction of human rights lawyer Pu Zhiqiang in China.

Pu Zhiqiang is a prominent human rights lawyer in Beijing and lawyer to artist Ai Weiwei. He often defends clients who are involved in politically sensitive cases.

Pu Zhiqiang was arrested on 6 May 2014, after attending a seminar that included discussion about the 1989 Tiananmen Massacre.

It has come to our attention that on 22 December 2015, Pu Zhiqiang was convicted and given a three-year suspended sentence, following 19 months of detention on charges of “inciting ethnic hatred” and “picking quarrels and provoking trouble”. The charges are related to social media posts questioning government policy, which were posted online between July 2011 and May 2014

Reports indicate that although Pu Zhiqiang has been released, the verdict will prevent him from ever practising law again. A number of organizations have reported on the arrest and detention of human rights lawyers in China. The Law Society is concerned that the arrest and detention of these lawyers is directed at preventing them from carrying out peaceful human rights activities.

The Law Society of Upper Canada urges the government of the People’s Republic of China to comply with Articles 16 and 23 of the United Nations’ *Basic Principles on the Role of Lawyers*.

Article 16 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.

Moreover, Article 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights 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 the People's Republic of China to:

- a. vacate Pu Zhiqiang's conviction immediately and unconditionally;
- b. put an end to all acts of harassment against Pu Zhiqiang as well as other human rights lawyers and defenders in China;
- c. guarantee in all circumstances the physical and psychological safety and integrity of Pu Zhiqiang;
- d. guarantee all the procedural rights that should be accorded to Pu Zhiqiang; and
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 6.1.2

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

SHALINI GERA AND ISHA KHANDELWAL

Mr. Shri Narendra Damodardas Modi
Prime Minister's Office
Room number 152
South Block
New Delhi
India

Dear Prime Minister:

Re: Harassment against human rights lawyers Shalini Gera and Isha Khandelwal

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the harassment of human rights lawyers Shalini Gera and Isha Khandelwal. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Shalini Gera and Isha Khandelwal are human rights lawyers and the founders of the Jagdalpur Legal Aid Group (JagLAG), an organization that provides free legal aid to Adivasi people in Bastar, Dantewada, Kanker, Sukma and Bijapur. JagLAG has also worked on cases involving alleged human rights abuses by police.

It has come to our attention that on 6 October 2015, the Bastar Bar Association passed a resolution prohibiting any lawyer who is not registered with the local Bar Council from practising in the Jagdalpur courts. The resolution prevents Shalini Gera and Isha Khandelwal, both registered with the Delhi State Bar Council, from representing clients in Jagdalpur. It is our understanding that a local bar association has no authority to overrule Bar Council regulations and prevent a lawyer from practising in any court in the country under Section 30 of the *Advocates Act of India*.

Human rights organizations believe that the resolution is intended to inhibit the work of Shalini Gera and Isha Khandelwal as lawyers for JagLAG. Reports indicate that both lawyers have faced repeated harassment as a result of their work in the region.

The Law Society of Upper Canada urges Your Excellency to consider Articles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 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.

Moreover, Article 23 states:

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

The Law Society urges the government of India to:

- a. put an end to all acts of harassment against Shalini Gera and Isha Khandelwal, as well as other human rights lawyers and defenders in India;
- b. guarantee in all circumstances the physical and psychological integrity of Shalini Gera and Isha Khandelwal;
- c. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor
Treasurer

**The Law Society of Upper Canada is the governing body for more than 49,000 lawyers and 7,400 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:

Mr. Vishnu Prakash
High Commission of India
10, Springfield Road
Ottawa, Ontario, Canada
K1M 1C9

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Chairman, The Bar Council of India

Adrie van de Streek, Executive Director, Lawyers for Lawyers

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

Yves Berthelot, 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

Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

Proposed Letter to Lawyers' Associations

Dear [Name],

Re: Harassment against human rights lawyers Shalini Gera and Isha Khandelwal

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 Mr. Shri Narendra Damodardas Modi, Prime Minister of India, expressing our deep concerns over reports of the harassment of human rights lawyers Shalini Gera and Isha Khandelwal.

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

Please forward any further correspondence to the attention of Ekua Quansah, Associate Counsel, Equity, 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,

Paul Schabas
Chair, Human Rights Monitoring Group

* The Law Society of Upper Canada is the governing body for more than 49,000 lawyers and 7,400 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
- Mary Lawlor, Executive Director, Front Line Defenders
- Vincent Forest, Head of European Union Office, Front Line Defenders

- Kenneth Roth, Executive Director, Human Rights Watch
- Chairman, The Bar Council of India
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers' Rights Watch Canada
- Yves Berthelot, 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
- Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

PROPOSED PUBLIC STATEMENT

The Law Society of Upper Canada expresses grave concerns about the harassment against human rights lawyers Shalini Gera and Isha Khandelwal in India

TORONTO, ON — The Law Society of Upper Canada expresses grave concerns about the harassment against human rights lawyers Shalini Gera and Isha Khandelwal in India.

Shalini Gera and Isha Khandelwal are human rights lawyers and the founders of the Jagdalpur Legal Aid Group (JagLAG), an organization that provides free legal aid to Adivasi people in Bastar, Dantewada, Kanker, Sukma and Bijapur. JagLAG has also worked on cases involving alleged human rights abuses by police.

It has come to our attention that on 6 October 2015, the Bastar Bar Association passed a resolution prohibiting any lawyer who is not registered with the local Bar Council from practising in the Jagdalpur courts. The resolution prevents Shalini Gera and Isha Khandelwal, both registered with the Delhi State Bar Council, from representing clients in Jagdalpur. It is our understanding that a local bar association has no authority to overrule Bar Council regulations and prevent a lawyer from practising in any court in the country under Section 30 of the *Advocates Act of India*.

Human rights organizations believe that the resolution is intended to inhibit the work of Shalini Gera and Isha Khandelwal work as lawyers for JagLAG. Reports indicate that both lawyers have faced repeated harassment as a result of their work in the region.

The Law Society of Upper Canada urges the government of India to consider Articles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 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.

Moreover, Article 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights 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 India to:

- a. put an end to all acts of harassment against Shalini Gera and Isha Khandelwal as well as other human rights lawyers and defenders in India;
- b. guarantee in all circumstances the physical and psychological integrity of Shalini Gera and Isha Khandelwal;
- c. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 6.1.3

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

KHIN KHIN KYAW

President Thein Sein
President's Office
Nay Pyi Taw
Myanmar

Your Excellency:

Re: Persecution of human rights lawyer Khin Khin Kyaw

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the persecution of human rights lawyer Khin Khin Kyaw. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Khin Khin Kyaw is a member of a legal team that is representing more than 50 students who participated in the March 2015 protests to oppose Myanmar's National Education Law. The students have been detained and face charges related to unlawful assembly, rioting, harming public servants, and public mischief.

Reports indicate that while Khin Khin Kyaw was representing her clients in court on 1 September 2015, the judge refused to accept a minor amendment to the legal motion Khin Khin Kyaw submitted. Individuals in the courtroom loudly accused the judge of being biased. On 15 September 2015, Khin Khin Kyaw was charged with 'disrupting the court', and her trial began on 14 October 2015. It is our understanding that she is now facing up to six months in prison and the revocation of her licence to practice law.

Human rights organizations believe that the trial against Khin Khin Kyaw is an attempt to prevent her from representing the student protestors.

The Law Society of Upper Canada urges Your Excellency to consider Articles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 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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The Law Society urges the government of Myanmar to:

- a. drop the charges against Khin Khin Kyaw;
- b. put an end to all acts of harassment against Khin Khin Kyaw as well as other human rights lawyers and defenders in Myanmar;
- c. guarantee all the procedural rights that should be accorded to Khin Khin Kyaw;
- d. guarantee in all circumstances the physical and psychological integrity of Khin Khin Kyaw;
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor
Treasurer

**The Law Society of Upper Canada is the governing body for more than 49,000 lawyers and 7,400 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. U Hau Do Suan
Ambassador
Embassy of the Republic of the Union of Myanmar
336 Island Park Drive

Ottawa, ON K1Y 0A7
Canada

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

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

Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

Proposed Letter to Lawyers' Associations

Dear [Name],

Re: Persecution of human rights lawyer Khin Khin Kyaw

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 Thein Sein, President of Myanmar, expressing our deep concerns over reports of the persecution of human rights lawyer Khin Khin Kyaw.

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

Please forward any further correspondence to the attention of Ekua Quansah, Associate Counsel, Equity, 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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- Mary Lawlor, Executive Director, Front Line Defenders
- Vincent Forest, Head of European Union Office, Front Line Defenders

- Kenneth Roth, Executive Director, Human Rights Watch
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- Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

PROPOSED PUBLIC STATEMENT

The Law Society of Upper Canada expresses grave concerns about the persecution of human rights lawyer Khin Khin Kyaw in Myanmar

TORONTO, ON — The Law Society of Upper Canada expresses grave concerns about the persecution of human rights lawyer Khin Khin Kyaw in Myanmar.

Khin Khin Kyaw is a member of a legal team that is representing more than 50 students who participated in the March 2015 protests to oppose Myanmar's National Education Law. The students have been detained and face charges related to unlawful assembly, rioting, harming public servants, and public mischief.

Reports indicate that while Khin Khin Kyaw was representing her clients in court on 1 September 2015, the judge refused to accept a minor amendment to the legal motion Khin Khin Kyaw submitted. Individuals in the courtroom loudly accused the judge of being biased. On 15 September 2015, Khin Khin Kyaw was charged with 'disrupting the court', and her trial began on 14 October 2015. It is our understanding that she is now facing up to six months in prison and the revocation of her licence to practice law.

Human rights organizations believe that the trial against Khin Khin Kyaw is an attempt to prevent her from representing the student protestors.

The Law Society of Upper Canada urges the government of Myanmar to consider Articles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 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.

Moreover, Article 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights 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 Myanmar to:

- a. drop the charges against Khin Khin Kyaw;
- b. put an end to all acts of harassment against Khin Khin Kyaw as well as other human rights lawyers and defenders in Myanmar;
- c. guarantee all the procedural rights that should be accorded to Khin Khin Kyaw;
- d. guarantee in all circumstances the physical and psychological integrity of Khin Khin Kyaw;
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 6.1.4

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

KHALIL MA'TOUQ

Minister of Justice of the Syrian Arab Republic
Mr. Najm Hamad al-Ahmad
Al-Nasr Street
Damascus
Syrian Arab Republic

DELIVERED BY EMAIL TO: moj@net.sy

Dear Minister:

Re: Persecution of human rights lawyer Khalil Ma'Touq

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the persecution of human rights lawyer Khalil Ma'Touq. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Khalil Ma'touq is a longtime and prominent human rights lawyer in Syria, and is also the director of the Syrian Centre for Legal Studies and Research. Khalil Ma'touq is known for providing legal assistance to victims of human rights violations in Syria, including the defense of hundreds of political prisoners, prisoners of conscience and journalists.

On 2 October 2012, Khalil Ma'touq and his friend and assistant Mohammed Thatha left Khalil Ma'touq's home in a suburb of Damascus, for work in the city. However, the two men did not arrive at the office and it is believed that they were detained at a government controlled checkpoint en route to work. It is believed that Khalil Ma'touq was arrested as a direct result of his human rights work.

The whereabouts of Khalil Ma'touq are still unknown. The state continues to deny that he was arrested. Khalil Ma'touq suffers from severe lung disease, which requires regular medication and constant monitoring. It is unknown whether Khalil Ma'touq is able to receive any medical care for his serious condition.

October 2015 marked the third anniversary of his disappearance. Human Rights Watch notes that Ma'touq continues to be held "...despite calls by the international community to end the practices of enforced disappearances and torture and other ill-treatment in detention facilities in Syria. UN Security Council Resolution 2139 of February 2014 demanded the release of all those

arbitrarily detained, a call reiterated by a UN Security Council Presidential Statement issued on 17 August 2015.”

According to reports, since Syria’s civil war broke out in 2011, the government has forcibly disappeared more than 65,000 people. In October 2015, more than 50 human rights organizations, including Amnesty International, Human Rights Watch and Lawyers for Lawyers, signed a joint statement calling for the release of Khalil Ma’touq.

The Law Society of Upper Canada urges the government of Syria to comply with Articles 16 and 23 of the United Nations’ *Basic Principles on the Role of Lawyers*.

Article 16 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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The Law Society urges the government of Syria to:

- a. Immediately and unconditionally release Khalil Ma’touq;
- b. put an end to all acts of harassment and intimidation against human rights lawyers and defenders in Syria;
- c. guarantee in all circumstances the physical and psychological safety and integrity of Khalil Ma’touq;
- d. provide Khalil Ma’touq with regular access to his lawyer, family, his physician and adequate medical care;
- e. guarantee all the procedural rights that should be accorded to Khalil Ma’touq;
- f. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor
Treasurer

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cc:

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Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

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Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

Proposed Letter to Lawyers' Associations

Dear [Name],

Re: Persecution of human rights lawyer Khalil Ma'Touq

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 by email, and through social media channels (given that mail delivery to Syria is suspended) to Mr. Najm Hamad al-Ahmad, Minister of Justice of the Syrian Arab Republic, expressing our deep concerns over reports of the persecution of human rights lawyer Khalil Ma'Touq.

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

Please forward any further correspondence to the attention of Ekuia Quansah, Associate Counsel, Equity, 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,

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- Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

PROPOSED PUBLIC STATEMENT

KHALIL MA'TOUQ

The Law Society of Upper Canada expresses grave concerns about the disappearance of human rights lawyer Khalil Ma'touq in Syria

TORONTO, ON — The Law Society of Upper Canada expresses grave concerns about the disappearance of human rights lawyer Khalil Ma'touq in Syria.

Khalil Ma'touq is a longtime and prominent human rights lawyer in Syria, and is also the director of the Syrian Centre for Legal Studies and Research. Khalil Ma'touq is known for providing legal assistance to victims of human rights violations in Syria, including the defense of hundreds of political prisoners, prisoners of conscience and journalists.

On 2 October 2012, Khalil Ma'touq and his friend and assistant Mohammed Thatha left Khalil Ma'touq's home in a suburb of Damascus, for work in the city. However the two men did not arrive at the office and it is believed that they were detained at a government controlled checkpoint en route to work. It is believed that Khalil Ma'touq was arrested as a direct result of his human rights work.

The whereabouts of Khalil Ma'touq are still unknown. The state continues to deny that he was arrested. Khalil Ma'touq suffers from severe lung disease, which requires regular medication and constant monitoring. It is unknown whether Khalil Ma'touq is able to receive any medical care for his serious condition.

October 2015 marked the third anniversary of his disappearance. Human Rights Watch notes that Ma'touq continues to be held "...despite calls by the international community to end the practices of enforced disappearances and torture and other ill-treatment in detention facilities in Syria. UN Security Council Resolution 2139 of February 2014 demanded the release of all those arbitrarily detained, a call reiterated by a UN Security Council Presidential Statement issued on 17 August 2015."

According to reports, since Syria's civil war broke out in 2011, the government has forcibly disappeared more than 65,000 people. In October 2015, more than 50 human rights organizations, including Amnesty International, Human Rights Watch and Lawyers for Lawyers, signed a joint statement calling for the release of Khalil Ma'touq.

The Law Society of Upper Canada urges the government of Syria to comply with Articles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 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.

Moreover, Article 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights 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 Syria to:

- a. Immediately and unconditionally release Khalil Ma'touq;
- b. put an end to all acts of harassment and intimidation against human rights lawyers and defenders in Syria;
- c. guarantee in all circumstances the physical and psychological safety and integrity of Khalil Ma'touq;
- d. provide Khalil Ma'touq with regular access to his lawyer, family, his physician and adequate medical care;
- e. guarantee all the procedural rights that should be accorded to Khalil Ma'touq;
- f. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 6.1.5

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

RAZAN ZAITOUNEH

Minister of Justice of the Syrian Arab Republic
Mr. Najm Hamad al-Ahmad
Al-Nasr Street
Damascus
Syrian Arab Republic

DELIVERED BY EMAIL TO: moj@net.sy

Dear Minister:

Re: Persecution of human rights lawyer Razan Zaitouneh

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the persecution of human rights lawyer Razan Zaitouneh. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Razan Zaitouneh is a prominent human rights lawyer who has won several awards for her human rights work, including the 2013 International Women of Courage Award and the 2011 Sakharov Prize for Freedom of Thought. She largely defends political prisoners. Razan Zaitouneh is a co-founder of both the Violations Documentation Centre (VDC) and the Local Development and Small Projects Support (LDSPS).

On 9 December 2013, Razan Zaitouneh, along with her husband, Wa'el Hamada, and two colleagues, Nazem Hamadi and Samira Khalil, were abducted by unknown individuals from a joint office of the VDC and the LDSPS in the Damascus suburb of Douma. In the months prior to her abduction, Razan Zaitouneh had received threats from at least one armed opposition group in Eastern Ghouta. Reports indicate that the abduction of Razan Zaitouneh and her colleagues is linked to their human rights work.

Razan Zaitouneh's whereabouts are still unknown. December 2015 marked the second anniversary of her abduction.

The Law Society of Upper Canada urges the government of Syria to comply with Articles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 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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The Law Society urges the government of Syria to:

- a. locate Razan Zaitouneh and ensure that she is released immediately;
- b. put an end to all acts of harassment and intimidation against human rights lawyers and defenders in Syria;
- c. guarantee in all circumstances the physical and psychological safety and integrity of Razan Zaitouneh;
- d. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor
Treasurer

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Proposed Letter to Lawyers' Associations

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I thank you for your time and consideration.

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- Kenneth Roth, Executive Director, Human Rights Watch
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- 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
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- Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

PROPOSED PUBLIC STATEMENT

RAZAN ZAITOUNEH

The Law Society of Upper Canada expresses grave concerns about the abduction of human rights lawyer Razan Zaitouneh in Syria

TORONTO, ON — The Law Society of Upper Canada expresses grave concerns about the abduction of human rights lawyer Razan Zaitouneh in Syria.

Razan Zaitouneh is a prominent human rights lawyer who has won several awards for her human rights work, including the 2013 International Women of Courage Award and the 2011 Sakharov Prize for Freedom of Thought. She largely defends political prisoners. Razan Zaitouneh is a co-founder of both the Violations Documentation Centre (VDC) and the Local Development and Small Projects Support (LDSPS).

On 9 December 2013, Razan Zaitouneh, along with her husband, Wa'el Hamada, and two colleagues, Nazem Hamadi and Samira Khalil, were abducted by unknown individuals from a joint office of the VDC and the LDSPS in the Damascus suburb of Douma. In the months prior to her abduction, Razan Zaitouneh had received threats from at least one armed opposition group in Eastern Ghouta. Reports indicate that the abduction of Razan Zaitouneh and her colleagues is linked to their human rights work.

Razan Zaitouneh's whereabouts are still unknown. December 2015 marked the second anniversary of her abduction. A number of human rights organizations, including Amnesty International, Canadian Journalists for Free Expression, Human Rights Watch, Lawyers' Rights Watch Canada and PEN Canada, have released a statement asking the Canadian government to be involved in this case by taking all steps to ensure the Razan Zaitouneh, her husband and her two colleagues are located and released immediately.

The Law Society of Upper Canada urges the government of Syria to comply with Articles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 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.

Moreover, Article 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights 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 Syria to:

- a. locate Razan Zaitouneh and ensure that she is released immediately;
- b. put an end to all acts of harassment and intimidation against human rights lawyers and defenders in Syria;
- c. guarantee in all circumstances the physical and psychological safety and integrity of Razan Zaitouneh;
- d. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 6.1.6

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

TRAN THU NAM AND LE LUAN

H.E. Mr. Truong Tan Sang
President of the Socialist Republic of Viet Nam
02 Hung Vuong Street, Ba Dinh District
Ha Noi, Viet Nam

Your Excellency:

Re: Attack on human rights lawyers Tran Thu Nam and Le Luan

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the attack on human rights lawyers Tran Thu Nam and Le Luan. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Tran Thu Nam and Le Luan are human rights lawyers who provide legal support to the victims of alleged police brutality and other human rights abuses by the authorities. They are currently supporting the family of Do Dang Du, who died on 10 October 2015, in police custody after being held there for two months on a charge of theft. It is our understanding that Tran Thu Nam and Le Luan questioned the validity of the autopsy carried out on Do Dang Du's body as it did not include an examination of internal organs, which could prove that he died as a result of injuries sustained in a beating.

Reports indicate that on 3 November 2015, Tran Thu Nam and Le Luan were attacked and beaten by eight masked men. Front Line Defenders notes that the two lawyers recognized one of their attackers as a local police officer. Tran Thu Nam and Le Luan sustained a number of injuries for which they received medical treatment. The attack took place following a meeting between Tran Thu Nam, Le Luan and the family of Do Dang Du to discuss the steps in the legal proceedings regarding Do Dang Du's death. Do Dang Du's mother, Do Thi Mai, witnessed the attack.

Human rights organizations believe that Tran Thu Nam and Le Luan were targeted as a result of their human rights work.

The Law Society of Upper Canada urges Your Excellency to consider Articles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 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.

Moreover, Article 23 states:

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

The Law Society urges the government of Vietnam to:

- a. conduct a fair, impartial and independent investigation into the attack on Tran Thu Nam and Le Luan 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 Tran Thu Nam and Le Luan, as well as other human rights lawyers and defenders in Vietnam;
- c. guarantee in all circumstances the physical and psychological integrity of Tran Thu Nam and Le Luan; and
- d. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor
Treasurer

**The Law Society of Upper Canada is the governing body for more than 49,000 lawyers and 7,400 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:

Mr. To Anh Dung
Ambassador
Embassy of the Socialist Republic of Vietnam in Canada
55 MacKay Street
Ottawa, Ontario, Canada
K1M 2B2

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Vietnam Bar Federation

Adrie van de Streek, Executive Director, Lawyers for Lawyers

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

Yves Berthelot, 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

Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

Proposed Letter to Lawyers' Associations

Dear [Name],

Re: Attack on human rights lawyers Tran Thu Nam and Le Luan

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 H.E. Mr. Truong Tan Sang, President of the Socialist Republic of Vietnam, expressing our deep concerns over reports of the attack on human rights lawyers Tran Thu Nam and Le Luan.

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

Please forward any further correspondence to the attention of Ekua Quansah, Associate Counsel, Equity, 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,

Paul Schabas
Chair, Human Rights Monitoring Group

* The Law Society of Upper Canada is the governing body for more than 49,000 lawyers and 7,400 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
- Mary Lawlor, Executive Director, Front Line Defenders
- Vincent Forest, Head of European Union Office, Front Line Defenders

- Kenneth Roth, Executive Director, Human Rights Watch
- Vietnam Bar Federation
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
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- Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

PROPOSED PUBLIC STATEMENT

The Law Society of Upper Canada expresses grave concerns about the attack on human rights lawyers Tran Thu Nam and Le Luan in Vietnam

TORONTO, ON — The Law Society of Upper Canada expresses grave concerns about the attack on human rights lawyers Tran Thu Nam and Le Luan in Vietnam.

Tran Thu Nam and Le Luan human rights lawyers who provide legal support to the victims of alleged police brutality and other human rights abuses by the authorities. They are currently supporting the family of Do Dang Du, who died on 10 October 2015, in police custody after being held there for two months on a charge of theft. It is our understanding that Tran Thu Nam and Le Luan questioned the validity of the autopsy carried out on Do Dang Du's body as it did not include an examination of internal organs, which could prove that he died as a result of injuries sustained in a beating.

It has come to our attention that on 3 November 2015, Tran Thu Nam and Le Luan were attacked and beaten by eight masked men. Front Line Defenders notes that the two lawyers recognized one of their attackers as a local police officer. Tran Thu Nam and Le Luan sustained a number of injuries for which they received medical treatment. The attack took place following a meeting between Tran Thu Nam, Le Luan and the family of Do Dang Du to discuss the steps in the legal proceedings regarding Do Dang Du's death. Do Dang Du's mother, Do Thi Mai, witnessed the attack.

Human rights organizations believe that Tran Thu Nam and Le Luan were targeted as a result of their human rights work.

The Law Society of Upper Canada urges the government of Vietnam to consider Articles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 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.

Moreover, Article 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights 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 Vietnam to:

- a. conduct a fair, impartial and independent investigation into the attack on Tran Thu Nam and Le Luan 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 Tran Thu Nam and Le Luan, as well as other human rights lawyers and defenders in Vietnam;
- c. guarantee in all circumstances the physical and psychological integrity of Tran Thu Nam and Le Luan; and
- d. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 6.1.7

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

NGUYEN VAN DAI

H.E. Mr. Truong Tan Sang
President of the Socialist Republic of Viet Nam
02 Hung Vuong Street, Ba Dinh District
Ha Noi, Viet Nam

Your Excellency:

Re: Attack, arrest and arbitrary detention of human rights lawyer Nguyen Van Dai

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the attack, arrest and arbitrary detention of human rights lawyer Nguyen Van Dai. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Nguyen Van Dai is a human rights lawyer and a well-known defender of religious freedom. He is the co-founder of the Vietnam Human Rights Centre.

It is our understanding that on 6 December 2015, Nguyen Van Dai and three human rights activists were attacked and severely beaten by an estimated 20 masked men, travelling in two cars without registration plates and five motorbikes. The attackers took mobile phones, wallets and other items of Nguyen Van Dai and his three associates. Reports indicate that Nguyen Van Dai and his three associates were returning to Hanoi from a human rights workshop they had conducted for residents of Nghệ An Province.

On 15 December 2015, 25 police officers arrested Nguyen Van Dai at his home in Hanoi. The officers searched his home and confiscated a number of items, including laptops, computers, USB sticks, cameras, camcorders, books on human rights, envelopes containing money used to support relatives of prisoners of conscience and Nguyen Van Dai's savings account bank book. The arrest took place as Nguyen Van Dai was preparing to meet with European Union delegates in Hanoi for the EU-Vietnam human rights dialogue scheduled for that day.

Nguyen Van Dai has been charged with "spreading propaganda against the Socialist Republic of Vietnam" under Article 88 of the Criminal Code. This charge appears to relate to his organization of meetings to discuss the 2013 Vietnamese Constitution. Nguyen Van Dai has been informed that he will be temporarily jailed for four months, pending trial. Should he be convicted, he will face three to 20 years in prison.

Human rights organizations believe that the attack, arrest and arbitrary detention of Nguyen Van Dai are as a result of his human rights work. This is not the first time Nguyen Van Dai has been persecuted due to the legitimate exercise of his duties. In 2007, Nguyen Van Dai was sentenced to five years' imprisonment and four years of house arrest under Article 88 of the Criminal Code. His sentence was reduced to four years' imprisonment and four years' house arrest. He was released in 2011 and resumed his human rights work.

The Law Society of Upper Canada urges Your Excellency to consider Articles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 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.

Moreover, Article 23 states:

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

The Law Society urges the government of Vietnam to:

- a. release Nguyen Van Dai immediately;
- b. provide Nguyen Van Dai with regular access to his lawyer, family, physician and medical care;
- c. guarantee all the procedural rights that should be accorded to Nguyen Van Dai and other human rights lawyers and defenders in Vietnam;
- d. conduct a fair, impartial and independent investigation into the attack on Nguyen Van Dai in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- e. put an end to all acts of harassment against Nguyen Van Dai, as well as other human rights lawyers and defenders in Vietnam;
- f. guarantee in all circumstances the physical and psychological integrity of Nguyen Van Dai; and
- g. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor
Treasurer

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Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

Proposed Letter to Lawyers' Associations

Dear [Name],

Re: Attack, arrest and arbitrary detention of human rights lawyer Nguyen Van Dai

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

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I thank you for your time and consideration.

Sincerely,

Paul Schabas
Chair, Human Rights Monitoring Group

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- Mary Lawlor, Executive Director, Front Line Defenders
- Vincent Forest, Head of European Union Office, Front Line Defenders

- Kenneth Roth, Executive Director, Human Rights Watch
- Vietnam Bar Federation
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers' Rights Watch Canada
- Yves Berthelot, 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
- Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

PROPOSED PUBLIC STATEMENT

The Law Society of Upper Canada expresses grave concerns about the attack, arrest and arbitrary detention of human rights lawyer Nguyen Van Dai in Vietnam

TORONTO, ON — The Law Society of Upper Canada expresses grave concerns about the attack, arrest and arbitrary detention of human rights lawyer Nguyen Van Dai in Vietnam.

Nguyen Van Dai is a human rights lawyer and a well-known defender of religious freedom. He is the co-founder of the Vietnam Human Rights Centre.

It is our understanding that on 6 December 2015, Nguyen Van Dai and three human rights activists were attacked and severely beaten by an estimated 20 masked men, travelling in two cars without registration plates and five motorbikes. The attackers took the mobile phones, wallets and other items of Nguyen Van Dai and his three associates. Reports indicate that Nguyen Van Dai and his three associates were returning to Hanoi from a human rights workshop they had conducted for residents of Nghệ An Province.

On 15 December 2015, 25 police officers arrested Nguyen Van Dai at his home in Hanoi. The officers searched his home and confiscated a number of items, including laptops, computers, USB sticks, cameras, camcorders, books on human rights, envelopes containing money used to support relatives of prisoners of conscience and Nguyen Van Dai's savings account bank book. The arrest took place as Nguyen Van Dai was preparing to meet with European Union delegates in Hanoi for the EU-Vietnam human rights dialogue scheduled for that day.

Nguyen Van Dai has been charged with "spreading propaganda against the Socialist Republic of Vietnam" under Article 88 of the Criminal Code. This charge appears to relate to his organization of meetings to discuss the 2013 Vietnamese Constitution. Nguyen Van Dai has been informed that he will be temporarily jailed for four months, pending trial. Should he be convicted, he will face three to 20 years in prison.

Human rights organizations believe that the attack, arrest and arbitrary detention of Nguyen Van Dai are as a result of his human rights work. This is not the first time Nguyen Van Dai has been persecuted due to the legitimate exercise of his duties. In 2007, Nguyen Van Dai was sentenced to five years' imprisonment and four years of house arrest under Article 88 of the Criminal Code. His sentence was reduced to four years' imprisonment and four years' house arrest. He was released in 2011 and resumed his human rights work.

The Law Society of Upper Canada urges the government of Vietnam to consider Articles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 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.

Moreover, Article 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights 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 Vietnam to:

- a. release Nguyen Van Dai immediately;
- b. provide Nguyen Van Dai with regular access to his lawyer, family, physician and medical care;
- c. guarantee all the procedural rights that should be accorded to Nguyen Van Dai and other human rights lawyers and defenders in Vietnam;
- d. conduct a fair, impartial and independent investigation into the attack on Nguyen Van Dai in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- e. put an end to all acts of harassment against Nguyen Van Dai, as well as other human rights lawyers and defenders in Vietnam;
- f. guarantee in all circumstances the physical and psychological integrity of Nguyen Van Dai; and
- g. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 6.1.8

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

BUZURGMEHR YOROV

His Excellency Mr. Emomali Rahmon
President of the Republic of Tajikistan
Rudaki Avenue, 80
Dushanbe 734023
Republic of Tajikistan

Your Excellency

Re: Detention of human rights lawyer Buzurgmehr Yorov

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the detention of human rights lawyer Buzurgmehr Yorov in Tajikistan. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Buzurgmehr Yorov is a civil and criminal lawyer and the chairman of the Bar Association of Dushanbe. It is our understanding that Buzurgmehr Yorov was arrested and detained on 28 September 2015. The authorities charged him with fraud-related charges, related to an incident which allegedly occurred in July 2010, when Yorov had purportedly received US\$4,000 from a resident of the city of Istaravshan.

Reports indicate that Buzurgmehr Yorov had just begun representing 13 members of the Islamic Renaissance Party of Tajikistan (IRPT) at the time of his arrest. The IRPT members had been arrested and charged by authorities on 16 September 2015. On 29 September 2015, the Supreme Court of Tajikistan banned the IRPT and declared it a terrorist organization. Prior to that date, the IRPT was the only Islamic political party legally registered in Central Asia.

Human Rights Watch notes that Buzurgmehr Yorov's arrest occurs in the context of a worsening government crackdown on lawyers who take on politically sensitive cases. Human Rights organizations believe that his arrest and detention are a direct result of his representation of members of the IRPT.

The Law Society of Upper Canada urges Your Excellency to consider Articles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 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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The Law Society urges the government of Tajikistan to:

- a. release Buzurgmehr Yorov immediately;
- b. provide Buzurgmehr Yorov with regular access to his lawyer, family, physician and medical care;
- c. guarantee all the procedural rights that should be accorded to Buzurgmehr Yorov and other human rights lawyers and defenders in Tajikistan;
- d. put an end to all acts of harassment against Buzurgmehr Yorov as well as other human rights lawyers and defenders in Tajikistan;
- e. guarantee in all circumstances the physical and psychological integrity of Buzurgmehr Yorov;
- f. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor
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:

Mr. Shomurod Rustam
Minister of Justice of the Republic of Tajikistan
Shotemur Street, 27
Dushanbe 734025
Republic of Tajikistan

Mr. Aslov Sirojiddin Muhridinovich
Minister of Foreign Affairs of the Republic of Tajikistan
Sheroz Street, 33
Dushanbe 734001
Republic of Tajikistan

H.E. Mr. Mahmamin Mahmaminov
Permanent Representative of Tajikistan to the United Nations
216 East 49th Street, 4th Floor
New York, NY 10017
USA

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

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Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

Proposed Letter to Lawyers' Associations

Dear [Name],

Re: Detention of human rights lawyer Buzurgmehr Yorov

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 His Excellency Mr. Emomali Rahmon, President of the Republic of Tajikistan, expressing our deep concerns over reports of the detention on human rights lawyer Buzurgmehr Yorov.

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

Please forward any further correspondence to the attention of Ekuu Quansah, Associate Counsel, Equity, 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,

Paul Schabas
Chair, Human Rights Monitoring Group

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PROPOSED PUBLIC STATEMENT

The Law Society of Upper Canada expresses grave concerns about the detention of human rights lawyer Buzurgmehr Yorov in Tajikistan

TORONTO, ON — The Law Society of Upper Canada expresses grave concerns about the detention of human rights lawyer Buzurgmehr Yorov in Tajikistan.

It is our understanding that Buzurgmehr Yorov was arrested and detained on 28 September 2015. The authorities charged him with fraud-related charges, related to an incident which allegedly occurred in July 2010, when Yorov had purportedly received US\$4,000 from a resident of the city of Istaravshan.

Reports indicate that Buzurgmehr Yorov had just begun representing 13 members of the Islamic Renaissance Party of Tajikistan (IRPT) at the time of his arrest. The IRPT members had been arrested and charged by authorities on 16 September 2015. On 29 September 2015, the Supreme Court of Tajikistan banned the IRPT and declared it a terrorist organization. Prior to that date, the IRPT was the only Islamic political party legally registered in Central Asia.

Human Rights Watch notes that Buzurgmehr Yorov's arrest occurs in the context of a worsening government crackdown on lawyers who take on politically sensitive cases. Human Rights organizations believe that his arrest and detention are a direct result of his representation of members of the IRPT.

The Law Society of Upper Canada urges the government of Tajikistan to consider Articles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 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.

Moreover, Article 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights 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. release Buzurgmehr Yorov immediately;
- b. provide Buzurgmehr Yorov with regular access to his lawyer, family, physician and medical care;
- c. guarantee all the procedural rights that should be accorded to Buzurgmehr Yorov and other human rights lawyers and defenders in Tajikistan;
- d. put an end to all acts of harassment against Buzurgmehr Yorov as well as other human rights lawyers and defenders in Tajikistan;
- e. guarantee in all circumstances the physical and psychological integrity of Buzurgmehr Yorov;
- f. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 6.2

FOR INFORMATION

ACCESS TO JUSTICE IN FRENCH UPDATE

70. The Access to Justice in French Update is presented at [TAB 6.2.1](#).

**FACILITATING INTERNATIONAL ACCESS TO JUSTICE
THROUGH INTERVENTION REPORT**

71. The Human Rights Monitoring Group Facilitating International Access to Justice Through Intervention report is presented at [TAB 6.2.2](#). The report, first presented to Convocation in June 2014, provides an overview of the Human Rights Monitoring Group's work from an access to justice perspective, by outlining the types of clients that those lawyers serve. Lawyers who are persecuted by authorities are often advocates for human rights. They also represent vulnerable clients who have no other access to legal services. Judges are also included in this report. Most often presiding judges who are persecuted in the course of their duties focus on facilitating access to justice by advocating for an independent judiciary and promoting the rule of law.

**EQUITY LEGAL EDUCATION AND RULE OF LAW SERIES
CALENDAR 2016**

72. The Equity Legal Education and Rule of Law Series calendar is presented at [TAB 6.2.3](#).

FOR INFORMATION

ACCESS TO JUSTICE IN FRENCH UPDATE

Background

73. At its January 14, 2016 Committee meeting, the Committee received presentations from the Honourable Julie Thornburn, Superior Court of Justice, and Andrée-Anne Martel, Executive Director of the Association des juristes d'expression française de l'Ontario ("AJEFO") about recent initiatives to facilitate access to justice in French in Ontario. Julie Lassonde also facilitated a lively discussion following the presentations.
74. Justice Thorburn presented an update on the implementation of recommendations to facilitate access to justice in French based on the September 2015 [Enhancing Access to Justice in French: A Response to the Access to Justice in French Report](#). She provided an overview of the current rights to French language services in Ontario, and noted that in order to make these rights meaningful there is both a service component and the need for the "active offer" of French language services to ensure that the right is made available to service users.
75. Justice Thorburn highlighted how efforts are underway to (1) increase awareness of rights; (2) make sure there are adequate staff service delivery levels; and (3) harmonize / coordinate the delivery of language rights. She described various initiatives to facilitate access to justice in French, including the judiciary's efforts to enhance language resources for Ontario judges and the Ottawa courthouse pilot project where a range of low-cost tools are being used to actively offer French language services.
76. Justice Thorburn described the Law Society as a "leader" and expressed support for the numerous Law Society initiatives promoting access to Justice in French.
77. Andrée-Anne Martel presented highlights of AJEFO's current initiatives, and featured Jurisource, the Centre d'information juridique d'Ottawa and Cliquezjustice.ca. [Jurisource](#) provides a free library of legal resources to facilitate the delivery of legal services in French. The [Centre d'information juridique d'Ottawa](#), a Department of Justice Canada funded initiative, provides users up to thirty minutes to meet with a lawyer in order to receive legal information (not advice) in French or English. Of note, 30% of the clinic's users are French speaking, and 93% of users are self-represented. [Cliquezjustice.ca](#) is a website providing plain language legal information in French to francophone Canadians. The site had 58,000 separate visitors last year.
78. The Law Society looks forward to continuing to work with justice stakeholders including the judiciary and AJEFO to facilitate access to justice in French.

TAB 6.2.2



**FACILITATING INTERNATIONAL ACCESS TO JUSTICE THROUGH
INTERVENTION**

Human Rights Monitoring Group

Monitoring Group Members
Paul Schabas (Chair)
Paul Copeland
Julian Falconer
Judith Potter
Heather Ross

October 2014

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BACKGROUND

“Nothing is more important than justice and the just society. It is essential to flourishing of men, women and children and to maintaining social stability and security. You need only open your newspaper to the international section to read about countries where the rule of law does not prevail, where the justice system is failing or non-existent.”¹

— Right Honourable Beverley McLachlin, P.C.
Chief Justice Supreme Court of Canada

1. Basic human rights cannot be guaranteed by law in the absence of the rule of law. They are interdependent and bound together by justice. Safeguarding these rights requires vigilant advocates both at home and abroad. Only through an independent legal profession where lawyers and judges perform their legitimate professional duties without undue or illegal interference can human rights and the rule of law prevail.
2. Unfortunately, lawyers and judges around the world working to uphold the rule of law and defend human rights work under threat of not only professional sanctions, but also threats to personal safety. Yet, they continue their work to ensure that their communities can access justice, advance their legal rights and that right might prevail.
3. The Law Society has a duty to maintain and advance the cause of justice and the rule of law. Central to advancing both the cause of justice and the rule of law is ensuring access to justice for all.
4. While the *Law Society Act*² provides that the Law Society facilitate access to justice for Ontarians, the Law Society's commitment to access to justice issues not only focuses on a provincial level, but extends to the international community.

¹ Right Honourable Beverley McLachlin, P.C., “The Challenges We Face” (Speech delivered at the Empire Club of Canada, Toronto, 8 March 2007), online: <<http://www.scc-csc.gc.ca/court-cour/judges-juges/spe-dis/bm-2007-03-08-eng.aspx>>.

² *Law Society Act*, RSO 1990, c L8

5. This report provides an overview of the Human Rights Monitoring Group (the “Monitoring Group”) work over the years, from an access to justice perspective, by outlining the types of clients that those lawyers serve. Lawyers who are persecuted by authorities are often advocates for human rights. They also represent vulnerable clients who have no other access to legal services. Judges are also included this report. Most often presiding judges who are persecuted in the course of their duties focus on facilitating access to justice by advocating for an independent judiciary and promoting the rule of law.
6. This report is divided as follows:
 - a. Mandate of the Monitoring Group;
 - b. United Nations’ focus on access to justice;
 - c. An overview of access to justice trends internationally in relation to the Law Society’s interventions;
 - d. International human rights advocates expanding access to justice; and,
 - e. Response to our interventions.

MANDATE OF THE MONITORING GROUP

7. In light of the Law Society’s mandate to uphold the rule of law and facilitate access to justice, Convocation approved in March 2006, a policy “to systematically respond to the human rights violations that target members of the legal profession and judiciary in retribution for the discharge of their legitimate professional duties, and; that a group of benchers be charged with monitoring human rights violations that target members of the legal profession and judiciary in retribution for the discharge of their legitimate professional duties.”³ The policy was based on a report of a working group chaired by bencher Paul Copeland and the initiative was championed by bencher Heather Ross through the Emerging Issues Committee.

³ Emerging Issues Committee, Law Society of Upper Canada, *Report to Convocation* (Toronto: Law Society of Upper Canada, 23 March 2006) online: < http://www.lsuc.on.ca/media/convmar06_emerging_issues.pdf > at 4.

8. The mandate of the Monitoring Group approved by Convocation is 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.

9. The Monitoring Group is also mandated to explore the possibility of developing a network of organizations, and work collaboratively with them, to address human rights violations against judges and lawyers.

UNITED NATIONS' FOCUS ON ACCESS TO JUSTICE

10. The United Nations Development Program ("UNDP") has stated that "[i]n the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable."⁴

11. Globally, there is an increasing focus on access to justice issues. Without access to justice the larger movement towards eradicating poverty, promoting equality, increasing educational outcomes, ensuring environmental sustainability, improving health by combating HIV/AIDS, malaria and other diseases suffer. These are just a few of the United Nations Millennium Development Goals. International human rights standards are integral in protecting vulnerable populations such as women, persons with disabilities and minorities.⁵

12. Although the UNDP's report, *Strengthening Judicial Integrity through Enhanced Access to Justice*, focused on access to justice issues for women, persons with

⁴ UNDP, *Fast Facts: Justice and Security*, UN Doc, July 2011, online: http://www.undp.org/content/undp/en/home/librarypage/results/fast_facts/fast_facts_justiceandsecurity/.

⁵ UNDP, *Strengthening Judicial Integrity through Enhanced Access to Justice*, UN Doc, 2013 at 8 – 9.

disabilities and minorities, they observed a number of factors barred vulnerable persons and groups from accessing justice. These factors ranged from “discrimination, poverty, low institutional trust or confidence in the process, lack of capacity, language barriers, weak access to information, or living in remote areas with a lack of judicial facilities.”⁶

OVERVIEW OF ACCESS TO JUSTICE TRENDS – INTERNATIONALLY

13. We reviewed the Law Society’s more than 75 interventions on behalf of members of the legal profession and the judiciary from September 2007 to June 2014. Our findings show a trend – clients of persecuted lawyers are most often vulnerable with very limited access to legal representation and cases involving judges often challenge corruption or advocate for the rule of law.

14. Most lawyers in the more than 70 cases that involved the profession were persecuted, harassed, imprisoned and in some cases killed for their work in the following areas:
 - a. representing clients from religious and ethnic minority communities or vulnerable clients due to their socioeconomic, gender or ethnic situation;
 - b. challenging government actions on behalf of groups or human rights organizations;
 - c. defending clients involved in politically charged cases; and,
 - d. advocating for prisoners of conscience who were imprisoned for exercising their democratic rights.

15. In the few cases involving judges, the judges were,
 - a. advocating for judicial independence;
 - b. promoting the rule of law; and,
 - c. challenging corruption.

⁶ *Supra* note 5.

16. We have categorized the cases as best we could, even though some cases would fall under more than one rubric. The following outlines the cases based on the categories listed above.

Representing Clients from Religious and Ethnic Minority Communities and Vulnerable Clients Due to their Socioeconomic, Gender or Ethnic Status

17. There are numerous examples of lawyers, for whom the Law Society has intervened, who represented clients who are vulnerable because of their socioeconomic, gender or ethnic status. In some cases, clients from minority religious or ethnic communities are unable to secure legal representation.

China

18. The Law Society has intervened on numerous occasions in cases where lawyers are being persecuted while carrying out their legal duties in China. A number of these cases involved clients who, because of their poverty, ethnic or religious status, would not be represented.

Gao Zhisheng

19. In 2006, 2007 and 2014, the Law Society has intervened on behalf of Gao Zhisheng who is known for many things, but primarily for defending activists, religious minorities and documenting human rights abuses in China. For example, Gao Zhisheng has provided legal help for Falun Gong practitioners, including Huang Wei, who was illegally sentenced to three years of re-education through labor in Shijiazhuang. He has also provided legal help for an illegal Chinese house church pastor, Cai Zhuohua, who was sentenced to three years in prison for printing and distributing copies of the Bible.⁷

⁷ Law Society of Upper Canada, "Zhisheng Letters of Intervention and Public Statements" (October 2006, May 2007 and April 2014).

20. In addition, Gao Zhisheng has, over the years, focused his legal practice on advocating for the most vulnerable. He has advocated for fair compensation for a client whose home was expropriated for a building project connected to the Summer 2008 Olympics. He took on a land dispute case against Taishi village officials and also a class-action lawsuit against local authorities over coercion in implementation of China's family planning policies. He won a case for six factory workers from Guangdong province who were detained for protesting exploitation by their employer. He also worked to defend the right to free expression by appealing the sentence of Zheng Yichun, a journalist and former professor who was sentenced to seven years imprisonment in September for his on-line writings.⁸
21. Gao Zhisheng was imprisoned in the Shaya County Prison in a remote part of the Xinjiang Uyghur Autonomous Region in northwestern China. His brother asked for permission to visit him, but was denied by officials after traveling to the prison on January 10, 2012. Gao Zhisheng's wife, Geng He, was told by officials that he was undergoing a "three month period of education". On March 2012, his brother and father-in-law were permitted to visit and confirmed he was being held in the Shaya County Prison. Ten months later, on January 12, 2013, unidentified family members were permitted to visit Gao Zhisheng for a second time.
22. Gao Zhisheng was scheduled for release on August 22, 2013, but has again disappeared. In February 2014, his wife, Geng He, who lives with their children in the United States, testified in front of the United Nations Working Group on Enforced and Involuntary Disappearance. Her submissions highlighted that they do not know if Gao Zhisheng is alive.

Chen Guangcheng

23. In 2006, the Law Society intervened on behalf of Chen Guangchen, a human rights lawyer who is known for advocating for women's rights, land rights and the welfare of the poor. Chen Guangcheng is one of China's most prominent human

⁸ *Supra* note 7.

rights defenders. He organized a landmark class action suit against authorities in Linyi, Shangdong province for the excessive enforcement of the one-child policy.⁹

Ni Yulan

24. In 2013, the Law Society intervened on behalf of Ni Yulan, an outspoken human rights lawyer and activist. For many in China, the preparation for the 2008 Olympic Games brought about mass evictions and illegal demolitions. Since 2001, much of Ni Yulan's legal practice centered on defending persons who were forcibly evicted from their homes by housing developers across China.¹⁰ Ni Yulan has been beaten, imprisoned, harassed and threatened.

25. Many not only lost their homes through illegal expropriations or demolitions, but were never compensated.¹¹ Her advocacy gave voice to those people unable to challenge developers and authorities.

Lawyers Providing Legal Aid

26. Finally, in 2008 the Law Society intervened in favour of Chinese lawyers providing voluntary legal aid to the victims of contaminated milk powder products. On September 11, 2008, the first toxic milk powder case became public. Contaminated milk powder products placed over 50,000 infants at risk of contracting kidney stones and four children died. The powdered milk was tainted with melamine, a chemical used in making plastics.¹²

27. By September 24, 2008, about 124 lawyers offered pro bono legal services to the victims. Lawyers and law firms providing legal aid were intimidated and warned by Chinese authorities to not take these cases. At least two dozen lawyers

⁹ Law Society of Upper Canada, "Guangcheng Letter of Intervention and Public Statements" (October 2006).

¹⁰ Law Society of Upper Canada, "Ni Yulan Letter of Intervention and Public Statements" (September 2013).

¹¹ Lawyers for Lawyers (L4L), "China: Lawyer acting against illegal expropriation of homes severely mistreated and arrested and detained several times" (2013), online: <<http://www.advocatenvooradvocaten.nl/lawyers/ni-yulan>>.

¹² Austin Ramzay and Lin Yang, "Tainted-Baby-Milk Scandal in China" *Time.com* (16 September 2008), online: <<http://content.time.com/time/world/article/0,8599,1841535,00.html>>.

withdrew their services following governmental pressure. Without legal representation many victims would be unable to seek justice for their children.¹³

Honduras

28. The Law Society has intervened in Honduras in cases where lawyers were harassed, intimidated or murdered while representing their clients' interests. One of the vulnerable client groups involved are disadvantaged labourers.

Dionisio Diaz Garcia

29. In 2007, the Law Society expressed its concern over the assassination of labour and human rights lawyer, Dionisio Diaz Garcia. He worked as the lead labour lawyer for the Association for a More Just Society ("AMJS"). While working for the AMJS's Labour Rights for Vulnerable Populations program, Dionisio Diaz Garcia discovered routine labour violations in areas where security guards were employed by private security firms. In December 2006, two men pulled up alongside him as he walked to court and shot him.¹⁴ His assassination followed a two-year public trial.¹⁵

Iran

30. The Law Society has intervened in Iran in numerous cases where the lawyers representing clients who are journalists, human rights activists or women were imprisoned or harassed for providing legal services.

Farshid Yadoollahi and Imprisoned Human Rights Lawyers

31. Farshid Yadoollahi is a human rights lawyer who is known for representing dervishes and is also a member of the administration of the Majzooban.org, a community news website for Gonabadi Sufis. His arrest, in late 2011, is related to his successful representation of dervishes, who are Sufi Muslims and choose to live in poverty. They are a religious minority in Iran. He is currently serving seven and a half years in prison based on his representation of religious minorities.

¹³Law Society of Upper Canada, *Report to Convocation*, by Equity and Aboriginal Issues Committee (Toronto: Law Society of Upper Canada, 30 October 2008) at 6 – 7.

¹⁴ Frontline Defenders, "Honduras: Dionisio Diaz Garcia" online: <<http://www.frontlinedefenders.net/node/1701>>.

¹⁵ Law Society of Upper Canada, *Report to Convocation*, by Equity and Aboriginal Issues Committee (Toronto: Law Society of Upper Canada, 27 January 2011) at 19 – 20.

32. Farshid Yadollahi along with four other lawyers and over 60 Sufis were arrested en mass. His arrest is seen as part of an ongoing campaign by Iranian authorities to harass lawyers representing dervishes.
33. Until recently, Farshid Yadollahi was serving his sentence in Iran's Evin prison. In March 2014, he was illegally transferred from the Evin prison to the Rajai-Shahr prison, west of Tehran. This transfer is considered to be an additional punishment. Prisoners in Rajai-Shahr prison have reported heavy-handed harassment. The illegal transfer of Farshid Yadollahi and the lack of medical treatment for imprisoned human rights lawyers, like him, along with other prisoners of conscience, have prompted protests.
34. In early March, Iranian protestors marched and called for access to medical treatment for imprisoned human rights defenders. Over Gonabadi 300 male and 26 female dervishes, who protested, were beaten, arrested on March 8th and 9th and later released.
35. The lack of medical treatment for imprisoned human rights lawyers is receiving increased attention in Iran. Several prisoners of conscience detained in Evin prison wrote an open letter to the head of the Iranian Judiciary to draw attention to the lack of medical treatment and facilities for sick prisoners. In the letter, the prisoners state that politically motivated judicial interference by Judge Salavati was responsible for the lack of access to medical treatment.
36. In July 2013, Judge Salavati ordered that Farshid Yadollahi not be transported outside the Evin Prison for much needed dental treatment. The judge also placed a condition on dervish community members being transferred outside of the prison for medical treatment which includes that they wear their prisoner uniforms and remain shackled.¹⁶

¹⁶ Law Society of Upper Canada, *Report to Convocation*, by Equity and Aboriginal Issues Committee (Toronto: Law Society of Upper Canada, 24 April 2014).

Houtan Kian

37. In 2010, the Law Society intervened on behalf of Houtan Kian, a human rights lawyer. He represented Sakineh Mohammadi Ashtiani, a 43 year old Iranian woman who was charged and convicted of adultery. She was sentenced to death by stoning. After international pressure, her death sentence was commuted to hanging. Sakineh Mohammadi Ashtiani's first lawyer, who represented her pro bono, was intimidated and exiled leaving her without legal representation.¹⁷ Afterwards, Houtan Kian took her case and ensured she had legal representation.
38. On October 10, 2010, Houtan Kian and two journalists who were looking to interview Sakineh Mohammadi Ashtiani's son were arrested. Houtan Kian was detained by Iranian officials on the suspicion of having involvement with anti-revolutionary groups abroad and forging/duplicating identity cards. His arrest and detention were an attempt to keep him from fulfilling his duties as Sakineh Mohammadi Ashtiani's defence council.¹⁸

Iran's Endangered Lawyers

39. At the end of 2010, The Law Society received nine separate requests to intervene on behalf of Iranian lawyers who were harassed, arrested and imprisoned. Both the intervention requests and reports pointed to a change in Iran's treatment of lawyers after the June 2009 presidential election. The cases showed signs of a systemic approach by the government towards singling out and persecuting lawyers based on their advocacy in helping their clients access the judicial system.
40. The lawyers' client cases ranged from defending women sentenced to death to representing journalists and women's rights activists. More than 90 lawyers have

¹⁷ Saeed Kamali Dehghan, "Iranian facing stoning speaks: 'It's because I'm a woman'" *The Guardian* (6 August 2010) online: <<http://www.theguardian.com/world/2010/aug/06/sakineh-mohammadi-ashtiani-iran-interview>>.

¹⁸ Law Society of Upper Canada, "Kian Letter of Intervention and Public Statement" (29 November 2010).

been sentenced to prison terms ranging from six months to 15 years or death as a result of performing their professional duties.

Maryam Karbasi, Maryam Kianersi and Sara (Hajar) Sabaghian

41. On November 12, 2010, three women human rights lawyers, Maryam Karbasi, Maryam Kianersi and Sara (Hajar) Sabaghian, were arrested at the Tehran airport. These three lawyers were known for defending journalists, bloggers and youths. They were also known for defending women who were sentenced to death. The arrest of all three women followed the publication of an open letter they signed calling for the release of fellow lawyer Nasrin Sotoudeh from prison.¹⁹

Shadi Sadr

42. Shadi Sadr is a prominent Iranian lawyer who has a long history of being intimidated by Iranian authorities for her advocacy on behalf of women. She co-founded a women's rights organization called *Zanan-e Iran* (Women of Iran) and launched several campaigns, including the "Stop Stoning Forever" campaign.
43. Shadi Sadr has been arrested twice for her advocacy on behalf of women and women's rights. She represented a number of women's rights activists and a journalist who were given death sentences. She also represented Shiva Nazar Ahari a human rights defender and member of the Committee of Human Rights Reporters. In July 2009, she was detained for 11 days by Iranian authorities. After her release, she fled Iran. Shadi Sadr was tried in absentia and sentenced to 6 years imprisonment and 74 lashes. Today, she still lives in exile.²⁰

Nasrin Sotoudeh

44. Nasrin Sotoudeh was sentenced to a total of 11 years in prison and banned from both practicing law and leaving Iran for 20 years. She was given three concurrent sentences. Five years imprisonment for "acting against national security",

¹⁹ Law Society of Upper Canada, *Report to Convocation*, by Equity and Aboriginal Issues Committee (Toronto: Law Society of Upper Canada, 27 January 2011) at 16 – 18.

²⁰ *Ibid.*

another five years for “not wearing a hijab during a videotaped message” and another year for “propaganda against the regime.”²¹

Malaysia

Hindraf Lawyers

45. In June 2008, the Law Society intervened in Malaysia on behalf of lawyers whose clients were part of the Indian minority. Malaysian lawyers P. Uthayakumar, M. Manoharan, R. Kenghadharan and V. Ganabati Rao provide legal counsel for the Hindu Rights Action Force (“Hindraf”). Hindraf is a coalition of various Hindu non-governmental organizations committed to preserving and defending the rights of Malaysia’s Hindu community. Hindraf emerged in response to the encroachment of Sharia based laws, demolition of Hindu temples and shrines and the alienation of the Hindu community in Malaysia.²²
46. Hindraf’s lawyers’ advocacy on behalf of the Indian community resulted in harassment, arrest and detention. M. Manoharan was elected to the Selangor State Assembly, but Malaysian authorities barred him from taking his seat. On October 30, 2007, P. Uthayakumar and V. Ganabati Rao were arrested and detained for organizing and participating in demonstrations against the demolition of a Hindu shrine in Kuala Lumpur. They were charged with sedition and incitement, but were released due to a lack of evidence. After organizing further peaceful demonstrations, P. Uthayakumar and V. Ganabati Rao were once again arrested on November 23, 2007 and charged under the *Sedition Act*.²³
47. On December 11, 2007, they were eventually released since the prosecutors could not prove that they had indeed incited racial hatred. The next day, the Malaysian Prime Minister, Abdullah Ahmad Badawi, signed detention letters allowing Malaysian authorities to detain all four of the Hindraf lawyers under the

²¹ *Supra* note 19.

²² Law Society of Upper Canada, *Report to Convocation, by Equity and Aboriginal Issues Committee* (Toronto, Law Society of Upper Canada, 26 June 2008) at 13 – 16.

²³ *Ibid.*

provisions of the *Internal Security Act*. This allowed the government to detain individuals without trial on national security grounds for up to 2 years, after which the government may extend the detention for a further two years. This process can be repeated indefinitely.²⁴

48. Following the Prime Minister's authorization, P. Uthayakumar, M. Manoharan, R. Kenghadharan, V. Ganabati Rao and T. Vasanthakumar were arrested in Kuala Lumpur by the Special Branch police officers. Their arrests were grounded in their advocacy work on behalf of minority groups.²⁵

Nigeria

Lawyers Providing Legal Services to LGBTI clients

49. In February 2014, the Law Society intervened on behalf of lawyers providing legal services to Nigeria's lesbian, gay, bisexual, transgender and intersex ("LGBTI") communities. Lawyers serving LGBTI clients and organizations face stigmatization which is creating a chilling effect as fewer lawyers are willing to represent LGBTI persons, who are often marginalized and impoverished.
50. Lawyers working with Nigeria's LGBTI community or representing persons charged under the *Same Sex Marriage (Prohibition) Act* also may face harassment and arrest. Enacted on January 7, 2014, the *Act's* provisions prohibit any person or group from providing services to anyone perceived to be homosexual as well as supporting the registration, operation and support of gay clubs, societies, organizations, processions or meetings in Nigeria.
51. From the wording of the *Act* it appears that Nigerian and international human rights lawyers advocating for Nigeria's LGBTI community, non-governmental organizations and persons who are charged under the *Act* may also be charged and convicted for providing legal services. The *Act* limits the LGBTI community's access to justice as increasingly lawyers are frightened that they will be charged

²⁴ *Supra* note 22.

²⁵ *Supra* note 22.

under the *Act* or found guilty by association. By intervening on behalf of lawyers providing legal services to Nigeria's LGBTI communities, the Law Society is lending its voice in support of lawyers helping this vulnerable population access justice.²⁶

Saudi Arabia

Abdul Rahaman al-Lahem

52. The Law Society intervened on behalf of Abdul Rahaman al-Lahem in January 2008 after his licence to practice law was confiscated for representing a sexual assault victim.
53. In 2006, a 19 year-old woman, known as "al-Qatif Girl", and her male companion were convicted of "being alone in private with a member of the opposite sex who is not an immediate family member." They were each sentenced to six months in prison and 90 lashes.²⁷
54. In mid-2006, the young woman and her male companion were kidnapped. She was gang-raped by seven men. While the men who raped her were convicted of both kidnapping and rape in November 2006, Abdul Rahaman al-Lahem's client and her male companion were also arrested, prosecuted and convicted. The case was appealed. Abdul Rahaman al-Lahem represented her at the court of appeals. The "al-Qatif Girl" garnered national and international media attention and scrutiny.²⁸
55. At court, Abdul Rahaman al-Lahem successfully challenged the previous ruling and his client received a revised sentence. However, he was removed from the case and his license was revoked. He also faced a disciplinary hearing on

²⁶Law Society of Upper Canada, "Abdul Rahaman al-Lahem Letters of Intervention and Public Statement" (February 2014).

²⁷ Ebtihal Mubarak, "Abullah Pardons 'Qatif Girl'" Arab News (18 December 2007) online: <<http://www.arabnews.com/node/306849>>; Law Society of Upper Canada, "Abdul Rahman al-Lehem Letter of Intervention and Public Statement" (Toronto: Law Society of Upper Canada, 29 January 2008).

²⁸ *Ibid.*

charges he allegedly advertised his services in violation of Saudi regulations. The charges apparently flowed from appearing in the media.²⁹

Turkey

Filiz Kalayci

56. In February 2010, the Law Society intervened in Turkey where the lawyers' clients were Turkish prisoners. The lawyers were associated with the *Insan Haklari Derneği* ("IHD"), a human rights association.
57. The lawyers who are associated with IHD were working on rights violations in prisons and improving prison conditions. They travelled to almost every prison in Turkey and listened to prisoners' complaints. On February 6, 2009, the IHD released its report on the human rights violations in Turkish prisons.³⁰
58. Filiz Kalayci, a lawyer and Executive Committee member of the IHD was arrested on May 12, 2009 along with three other human rights lawyers, Hasan Anlar, Halil Ibrahim Vargün and Murat Vargün. All three lawyers are associated with IHD, an organization that denounces human rights violations occurring while individuals are in detention. Two days later, all four lawyers were released. However, the Public Prosecutor appealed the decisions to release the lawyers. On May 25, 2009, a warrant was re-issued for Filiz Kalayci's arrest. She was arrested on May 28, 2009 for "aiding illegal organizations". The other three lawyers were not arrested.³¹
59. The purpose of Filiz Kalayci's of arrest, detention and prosecution was to prevent and punish her lawful and professional advocacy for prisoners' rights.

²⁹ *Supra* note 27.

³⁰ Law Society of Upper Canada, *Report to Convocation*, by Equity and Aboriginal Issues Committee (Toronto: Law Society of Upper Canada, 28 January 2010) at 25 – 26.

³¹ *Ibid.*

Vietnam

Bui Thi Kim Thanh

60. In February 2007, the Law Society intervened on behalf of lawyer Bui Thi Kim Thanh, who is known as an outspoken critic of Vietnam's land confiscation policies. Bui Thi Kim Thanh's clients included farmers whose land was expropriated. She also represented the Democratic Party of Vietnam as well as providing pro-bono defence work for low-income and impoverished people.³²
61. On November 2, 2006, police officials took Bui Thi Kim Thanh to a local psychiatric hospital where two doctors assessed her and found no evidence of mental illness. She was then taken to the Central Psychiatric Hospital in Bien Hoa, Saigon, where she was committed and forcibly confined, after being interrogated by the police. She has also been injected with unknown drugs although there is no medical basis for these injections. The result of the enforced drug treatment is that she cannot speak.³³
62. Bui Thi Kim Thanh has not been charged with an offence. The authorities offered to release her if she agreed not to talk about her treatment. She refused. As a result she is not allowed to receive visitors.³⁴

Challenging Government Actions on Behalf of Groups or Human Rights Organizations

63. Internationally, barriers to access to justice are sometimes the result of government actions, legislation or historical abuses. Many people seeking to access justice look to lawyers or advocacy groups to make their voices heard and seek redress.

³² Law Society of Upper Canada, "Bui Thin Him Thanh Letter of Intervention and Public Statement" (February 2007).

³³ *Ibid.*

³⁴ *Supra* note 32.

Algeria

Amine Sidhoum Abderramane and Hassiba Boumerdesi

64. Accessing legal services in cases involving disappeared persons is difficult as open talk about Algeria's disappeared is heavily discouraged. However, human rights lawyers Amine Sidhoum Abderramane and Hassiba Boumerdesi, working with the SOS Disappeared, took on cases. In February 2007, the Law Society intervened on behalf of these lawyers.
65. Amine Sidhoum Abderramane and Hassiba Boumerdesi represented the families through their work with SOS Disappeared, an Algerian group that represents more than 7,000 people who disappeared during the 1990s in the armed struggle between the government and Islamic groups in Algeria. Disappeared persons often were placed in facilities such as the special interrogation and rape center at the Chateaneuf barracks. In addition to journalists, judges and political opponents, the persons who were disappeared often came from marginalized groups such as religious minorities, women and LGBT persons.³⁵
66. Like those who disappeared, the families are a cross section of Algerian society and are often harassed by authorities. According to reports, hundreds of family members line up at the SOS Disappeared office and wait in long lines with pictures of their missing relatives.³⁶

China

Xu Zhiyong

67. Xu Zhiyong is a prominent legal scholar and human rights lawyer who was arrested and tried on criminal charges of "gathering crowds to disrupt public order". He was sentenced to four years in prison. The charges relate to a small scale peaceful street

³⁵ "The tragedy of Algeria's 'disappeared'", *The Independent* (20 December 2010) online: <<http://www.independent.co.uk/news/world/africa/the-tragedy-of-algerias-disappeared-2164859.html>>; "Families of Algeria's 'Disappeared' Search for Truth" *The Washington Post* (31 December 2004) online: <http://www.washingtonpost.com/wp-dyn/articles/A39033-2004Dec31_2.html>; Law Society of Upper Canada, "Abderramane and Boumerdesi Letter of Intervention and Public Statement" (February 2, 2007).

³⁶ *Ibid.*

protest by members of the New Citizens' Movement who were calling for educational equality and for government officials to declare their assets.

68. During Xu Zhiyong's trial, the court denied his defence counsel the right to call witnesses. The court also refused to summon prosecution witnesses to prevent Xu Zhiyong's defence counsel and the presiding judges from questioning them. Additionally, Xu Zhiyong was tried separately from his colleagues who were being prosecuted for the same offence. This contravened the Chinese *Criminal Procedure Law* requirement that persons charged with the same offence be tried jointly. These irregularities during Xu Zhiyong's trial raise questions regarding the fairness and due process of his trial.³⁷

Honduras

69. The numbers of lawyers killed for performing their legal duties prompted the Law Society to intervene in Honduras a number of times. According to the United Nations Office of the High Commissioner for Human Rights, between 2009 and 2012, 74 lawyers were killed.³⁸

Lawyers at Association for a More Just Society ("AMSJ")

70. The Law Society intervened in January 2011 on behalf of the Association for a More Just Society ("AMSJ"). This Honduras based organization is focused on improving access to justice for all sectors of society and working to promote human rights. In 2004, AMSJ began by investigating violations of labour rights by private security firms. Over the years AMSJ's work has expanded to include peace and public security, land rights, labour rights, anti-corruption, youth and family issues.³⁹
71. AMSJ Lawyers work under constant threats and intimidation. For example, in December 2006, Dionisio Diaz Garcia, a lawyer with AMSJ, was assassinated. On

³⁷ Law Society of Upper Canada, "*Xu Zhiyong Letters of Intervention and Public Statement* (February 2014).

³⁸ Law Society of Upper Canada, *Report to Convocation, by Equity and Aboriginal Issues Committee* (Toronto: Law Society of Upper Canada, 22 November 2012) at 80.

³⁹ Law Society of Upper Canada, *Report to Convocation, by Equity and Aboriginal Issues Committee*, (Toronto: Law Society of Upper Canada, 27 January 2011) at 19 – 20.

December 7, 2006, Carlos Hernández, AMSJ President, received a text message threatening his life. That same day, he was pursued by a man on a motorcycle. The constant threats to AMSJ lawyers prompted the Inter-American Commission on Human Rights, in 2006, to request the Honduran government take measures to protect AMSJ lawyers such as providing police protection for AMSJ members.⁴⁰

72. On September 21, 2010, a woman who is both a lawyer and AMSJ member (her name was withheld) was in the offices of the Secretary of Labour to look at documents on labour laws that protect cleaners and security guards. She was approached by three different employees who advised her to drop the investigation into security companies due to the existing personal security risk.
73. A month later, on October 19, 2010, the same woman was abducted. Two men forced her into a taxi and barred her from leaving. They questioned her about her work and told her that they were paid to execute her. She was eventually released.
74. Then on November 3, 2010, two armed men on a motorcycle threatened another AMSJ lawyer, advising that the lawyer "Be careful with AMSJ and Transformemos Honduras [a Christian movement that AMSJ supports]." The ongoing harassment and intimidation of AMSJ lawyers is the result of their legal work, investigations of security companies and promotion of labour rights.⁴¹

Antonio Trejo Cabrera

75. Antonio Trejo Cabrera was a well respected lawyer and pastor. His legal work centered on representing a number of Honduran agrarian groups in disputes with large landowners. For years he had been subject to death threats related to his defense of the land rights of four campesino cooperatives over four farms, San Isidro, San Esteban, La Trinidad, and El Despertar which together form the Authentic Revindicative Campesino Movement of the Aguan (Authentic Peasant Reclamation Movement of Aguan), which is called MARCA.⁴²

⁴⁰ *Ibid.*

⁴¹ *Supra* note 39.

⁴² Law Society of Upper Canada, *Report to Convocation*, by Equity and Aboriginal Issues Committee (Toronto: Law Society of Upper Canada, 22 November 2012) at 76 – 80.

76. On June 29, 2012, Antonio Trejo Cabrera's legal work resulted in the cooperative farmers recovering possession of three of the four farms from African palm oil corporations. He constantly faced harassment and death threats because of his work. Antonio Trejo Cabrera was murdered on September 22, 2012. He was officiating at a couple's marriage. When he left to retrieve the marriage certificate, he was shot five times. He died in hospital.⁴³

India

Leitanthem Umakanta Meitei

77. The Law Society intervened in November 2006 on behalf of Leitanthem Umakanta Meitei, a human rights lawyer working in India. Leitanthem Umakanta Meitei is also the Secretary General of the Threatened Indigenous Peoples' Society ("TIPS"). In 2006, he was arrested without a warrant at his home. The police officers seized CDs, books and information on TIPS and the International Labour Organization. He was detained at the Imphal Police Station where he was interrogated and tortured. Throughout his detention, he was denied a lawyer.⁴⁴
78. His arrest stemmed from his involvement in a protest against a bomb attack on a Hindu temple that killed five Hindus and injured over 40 people. Leitanthem Umakanta Meitei was charged with being a member of, and supporting terrorist organisations and accused of maintaining links with the illegal group "Organisation to Save the Revolutionary Movement in Manipur". On August 29, 2005, the Chief Judicial Magistrate ordered his release on bail due to lack of evidence. Charges were eventually dropped. The charges were fabricated. It appears that his torture and detention were linked to his legal work.

⁴³ *Supra* note 42.

⁴⁴ Law Society of Upper Canada, "Umakanta Meitei Letter of Intervention and Public Statement "(November 2007).

Nepal

Jitman Basnet

79. The Law Society intervened in October 2007 on behalf of Jitman Basnet, a lawyer and journalist. He is an advocate for victims of Nepal's armed conflict and has filed cases on behalf of the victims before Nepal's Supreme Court and the United Nations Human Rights Committee. He is also Secretary General of the Lawyer's Forum on Human Rights ("LAFHUR"), a pro-bono lawyers' network that works on transitional justice and human rights in Nepal.⁴⁵
80. In March 2007, Jitman Basnet published a book entitled *258 Dark Days*. The book recounted his experiences while he was detained in army custody. After his release he received threats from members of the military. In the book, he named government soldiers he claimed raped, tortured or unlawfully killed people during Nepal's armed conflict. Starting in August 2007, Jitman Basnet began receiving harassing telephone calls.⁴⁶ The callers threatened to kill both him and his wife. The ongoing harassment related to his advocacy and exposure of human rights abuses during Nepal's armed conflict.

Malaysia

Karpal Singh

81. Karpal Singh, a 73 year old human rights lawyer, remarked that the removal of Mohammad Nizar and the Sultan of Perak's appointment of Datuk Seir Dr Zambry Abdul Kadir as the new Menteri Besar, chief executive of Perak's state government, could be questioned in court. The Sultan's appointment was related to the 2009 Constitutional Crisis, which occurred after three Patyakhn Rakyat party members crossed the floor to sit as pro-Barisan Nasional independents. Karpal Singh was responding to media questions about the constitutional crisis during a press conference at his law firm on February 6, 2009. However, his comment

⁴⁵Law Society of Upper Canada, *Report to Convocation*, by Equity and Aboriginal Issues Committee (Toronto: Law Society of Upper Canada, 25 October 2007) at 6 –7.

⁴⁶ *Ibid.*

was considered seditious and he was charged under Section 4 (1) (b) of the *Sedition Act*, 1948.

82. On June 2012, the High Court acquitted and discharged Karpal Singh. The prosecution appealed his acquittal. The Court of Appeal granted the appeal on January 20, 2012 and ordered a new trial. The High Court found Karpal Singh guilty of sedition on February 21, 2014. He was then sentenced on March 11, 2014 to pay a fine of RM 4,000. The effect of this sentence meant that Karpal Singh could be disqualified and removed as a member of parliament for answering media questions.⁴⁷

Myanmar

83. Over the years, the Law Society has intervened on behalf of a number of lawyers in Myanmar who have represented individuals and groups in human rights challenges against government actions.

Nyi Niy Htwe and Saw Kyaw Kyaw Min,

84. Human rights lawyers Nyi Niy Htwe and Saw Kyaw Kyaw Min defended 11 young National League for Democracy protesters who were arrested in September 2008 for peacefully marching while wearing t-shirts depicting Daw Aung Sung Suu Kyi to mark her birthday.
85. On October 29, 2008, Nyi Niy Htwe was arrested by the police for his role in defending the 11 youth protesters. The next day, he was sentenced to six months in prison by the Rangoon Northern District Court for "interruption and insulting [a] judiciary proceeding".
86. A warrant for Saw Kyaw Kyaw Min's arrest was issued. However, he failed to appear at the police station on October 30, 2008. Fearing arrest and detention for political reasons, Saw Kyaw Kyaw Min fled Myanmar. However, he was found

⁴⁷ Law Society of Upper Canada, "Karpal Singh Letters of Intervention and Public Statement" (April 2014).

guilty in absentia for "interruption and insulting [a] judiciary proceeding" and sentenced to six months imprisonment. Saw Kyaw Kyaw Min's license to practice law was revoked due to this criminal conviction.

87. In 2012, Saw Kyaw Kyaw Min sought to have his license reinstated. He was one of 32 lawyers who had their licenses to practice law revoked.

U Aung Thein and U Khin Maung Shein

88. U Aung Thein and U Khin Maung Shein were also arrested following the submission of a written statement of their clients' desire to relinquish their power of attorney. The defendants stated that they no longer had "faith in the judicial processes," and therefore wished to dismiss their lawyers.

89. The court claimed that the lawyers' defendants did not state this and that this was their opinion as lawyers. However, reports showed that the defendants had expressed these wishes orally at the previous hearing, and that the court had then requested it from the lawyers in writing.

90. Both U Aung Thein and U Khin Maung Shein were convicted without a trial, and therefore, were not given the opportunity to defend the charges brought against them.⁴⁸

Lawyers Disbarred

91. In April 2012, the Law Society intervened on behalf of 32 lawyers who have had their licenses revoked following criminal convictions and were seeking to have their licenses reinstated. The use of criminal sanctions and subsequent disbarment of some or all of these lawyers is a tactic used to punish these lawyers for their political activities.⁴⁹ Eventually, 11 of the 32 lawyers who were disbarred had their licenses reinstated. The remaining lawyers who had their licenses revoked can apply to be considered for reinstatement.

⁴⁸ Law Society of Upper Canada, "U Aung Thein and U Khin Maung Shein Letters of Intervention and Public Statement" (January 2009, September 2012).

⁴⁹ Law Society of Upper Canada, "Lawyers Disbarred Letters of Intervention and Public Statement" (April 2012).

Sri Lanka

Dr. Nimalka Fernando

92. Dr. Nimalka Fernando is a 59 year old woman, a prominent human rights lawyer and activist. She is the president of the International Movement Against All Forms of Discrimination and Racism ("IMADR"). She has also actively participated in and contributed to the human rights work of the United Nations, including participating in treaty body committee meetings (committees of independent experts to monitor the implementation of treaties) and sessions of the Human Rights Council for over three decades.
93. During a November 4, 2013 radio program titled "The Way the Country is Moving (Rat Yana Atha)", death threats and derogatory comments were directed by callers toward Dr. Nimalka Fernando. The subtitle of the program was "Stoning the Sinner Woman". Most of the callers were men and some identified themselves as retired members of the armed forces.
94. The day before the radio show aired, Dr. Nimalka Fernando had given a television interview. Her interview was related to a larger public debate that was prompted by Dr. Nimalka Fernando calling for the abolition of Sri Lanka's abortion laws, the promotion of safer sex and a more protective reproductive health approach. She had also stated that she objected to the use of the word "prostitution". Her statements were broadcast on the radio program "The Way the Country is Moving (Rat Yana Atha)".
95. Dr. Nimalka Fernando lodged a complaint with the Human Rights Commission of Sri Lanka and the Inspector General of Police. However, this is not the first time she has faced harassment as a result of her human rights work.
96. In March 2012, Dr. Nimalka Fernando, along with three other human rights defenders, was accused of being a traitor and working against the interests of the

country to obtain “dollars”. Additionally, the Minister of Public Relations threatened to “break the limbs” of Dr. Nimalka Fernando and three other human rights defenders.⁵⁰

Turkey

Lawyers Protesting

97. On January 2013, 15 human rights lawyers were arrested. Nine of the lawyers are members of the Progressive Lawyers' Association (“ÇHD”), which is affiliated to the European Association of Lawyers for Democracy and World Human Rights (“ELDH”). The lawyers who were arrested are known for their work in representing persons accused of crimes against the state and terrorism and members of minority groups.
98. Some of the lawyers were released, however nine lawyers were imprisoned and awaiting trial: Güçlü Sevimli (member of the Istanbul Branch - Istanbul Bar Association), Barkın Timtik (member of Istanbul Bar Association), Şükriye Erden (member of Istanbul Bar Association), Naciye Demir (member of Istanbul Bar Association), Nazan Betül Vangölü Kozağaçlı (member of the Ankara Branch - Ankara Bar Association), Taylan Tanay (President of the Istanbul Branch - Istanbul Bar Association), Ebru Timtik (member of Istanbul Bar Association), Günay Dağ (member of Istanbul Bar Association) and Selçuk Kozağaçlı (National President of ÇHD - Ankara Bar Association).
99. The nine imprisoned lawyers were particularly active in working on human rights cases, especially in representing victims of police violence. The lawyers who were arrested were targeted for their human rights work.⁵¹

⁵⁰ Law Society of Upper Canada, “Dr. Nimalka Fernando Letters of Intervention and Public Statement” (February 2014).

⁵¹ Law Society of Upper Canada, “Turkey Lawyers Letters of Intervention and Public Statement” (February 2013).

Ramazan Demir

100. Ramazan Demir was arrested and charged with “insulting or (...) offending the dignity of a public authority in the performance of his duties” under section 125 of Turkey’s *Criminal Code*. If convicted, Ramazan Demir could face up to two years in prison. The charges and his arrest stem from his defence of journalists during the Koma Civakên Kurdistan (“KCK”) trials.
101. In 2012, 44 journalists were arrested on terrorist charges and accused of backing the illegal pan-Kurdish umbrella group KCK. Human rights groups consider the prosecution of these journalists to be part of the government’s efforts to curb free speech in Turkey. Ramazan Demir was representing some of the journalists and lawyers arrested and involved in the KCK trials.
102. During his clients’ hearing in Silivri on November 16, 2012, Ramazan Demir rebutted the prosecutor’s allegation that the journalists on trial were not independent journalists. He challenged the capacity of the prosecutor to determine that the journalists were conducting activities that were not “normal” or “independent” journalistic activities and requested the court to call and hear expert testimony on the subject. Six months later, on May 13, 2012, the Special Prosecutor of the 15th Serious Crimes Court filed a complaint against Ramazan Demir regarding his submissions. On September 9, 2013, the Special Prosecutor was authorized by the Ministry of Justice to file an indictment against Ramazan Demir under s. 125 of Turkey’s *Criminal Code*.
103. In addition to defending journalists, Ramazan Demir is known for mobilizing support in favour of lawyers prosecuted in two mass anti-terrorism trials. Human rights groups view Ramazan Demir’s case as an example of ongoing judicial harassment of lawyers. They anticipate that similar charges and arrests against other defence lawyers involved in the KCK trials will be forthcoming.⁵²

⁵² Law Society of Upper Canada, *Report to Convocation*, by Equity and Aboriginal Issues Committee (Toronto: Law Society of Upper Canada, 24 April 2014).

Uganda

Lawyers Challenging the Uganda's *Anti-Homosexuality Bill*

104. Lawyers and paralegals working with Uganda's lesbian, gay, bisexual, transgender and intersex ("LGBTI") community are stigmatized. As a result of the government's *Anti-Homosexuality Bill* there is a chilling effect as lawyers are refusing to represent LGBTI clients because of the fear of persecution.
105. Lawyers working with Uganda's LGBTI community and non-governmental organizations are looking to challenge the constitutionality of the *Bill*. Recently, a law firm retained by Fox Odoi, West Budama North Member of Parliament, and the Civil Liberties Organisation-Chapter Four, to provide a legal opinion on the constitutionality of the *Bill*. However, the law firm declined to be named.
106. While the *Bill's* provisions criminalize homosexuality, it also prohibits Uganda's Parliament from ratifying any international treaties, conventions, protocols, agreements and declarations that are contrary or inconsistent with the provisions of the *Bill*. This means that the international safeguards currently protecting lawyers may not shield those working on this issue from prosecution and harassment.⁵³

Defending Clients Involved in Politically Charged Cases

107. The political climate, negative perceptions or a client's past all play a role in barring clients from receiving adequate legal representation. The more unpopular the client, the harder it is for them to get a fair trial. Lawyers who represent unpopular clients are often targeted for their work.

⁵³ Law Society of Upper Canada, "Letters of Intervention and Public Statement" (February 2014).

Bahrain

Mohamed Issa Al Tajer

108. Mohamed Issa Al Tajer provided legal aid to protestors during the Arab Spring. The Law Society first intervened on behalf of Mohamed Issa Al Tajer in May 2011, and then again in September 2012, after learning he was targeted by authorities based on his legal work.
109. Bahrainian authorities are attempting to put pressure on those who provide legal and medical assistance to protesters. Further, the information received suggests that about 600 people, including human rights defenders, political leaders, trade unionists, doctors and paramedics and clerics have been arrested since February 2011.
110. On April 15, 2011, a group of more than 20 masked and armed plain-clothes men, belonging to security forces, burst into Mohamed Issa Al Tajer`s home. After searching his house and office, they took computers and mobile phones. He was arrested and taken to an unknown destination.⁵⁴
111. In September 2012, the Law Society intervened again to voice its continued concern over the arbitrary detention of Mohamed Issa Al Tajer from April 14, 2011 to August 6, 2011. During his detention, he was subject to acts of torture and ill-treatment.
112. Mohamed Issa Al Tajer is closely monitored by Bahrain`s National Security Intelligence and his clients have been pressured. He continues to be harassed and has received blackmail threats since January 2011.
113. In May 2012, he attended the United Nations Human Rights Council Universal Periodic Review ("UPR") of Bahrain. Following his participation in the UPR process, a video of Mohamed Issa Al Tajer being intimate with his wife was

⁵⁴ Law Society of Upper Canada, "Mohamed Issa Al Tajer Letters of Intervention and Public Statement" (27 May 2011).

released to the public. Mohamed Issa Al Tajer continues to be targeted because of his representation of the Arab Spring protestors and legal work.⁵⁵

Belarus

Emanuel Zeltser

114. In the late 1990s, Emanuel Zeltser, a U.S. national, represented a former Kremlin official, Pavel Borodin, who was charged by a Swiss court with money laundering. In addition to being a lawyer, Emanuel Zeltser is also a specialist on money laundering and organized crime. The Law Society intervened on behalf of Emanuel Zeltser in June 2008 after he was detained in Belarus in March 2008.

115. On March 12, 2008, Emanuel Zeltser was held in a state security services detention facility in Minsk, where he was interrogated, beaten and denied the medicine to treat his diabetes and arthritis. On March 21, 2008, he was charged with "use of forged documents." The U.S. Embassy was only allowed to visit him twice, on March 27 and April 25, 2008. After the second visit, the U.S. Consul reported that Emanuel Zeltser's health was failing. He had lost weight, was very weak and had difficulty walking and talking. He also reported he had been beaten two or three times while in custody.

116. In addition to representing, Pavel Borodin, a former Kremlin official, Emanuel Zeltser's work included testifying about a money laundering scheme at the Bank of New York Mellon. He also sued the bank for \$2 billion on behalf of depositors who had lost money in an affiliate.⁵⁶

China

117. Over the years, the Law Society has intervened on behalf of a number of lawyers in China who have provided legal services to protestors or politically unpopular clients.

⁵⁵ Law Society of Upper Canada, "Mohamed Issa Al Tajer Letters of Intervention and Public Statement" (27 September 2012).

⁵⁶ Law Society of Upper Canada, "Emanuel Zeltser Letter of Intervention and Public Statement" (27 June 2008).

Human Rights Violations against Lawyers

118. On October 31, 2007, the Law Society first intervened on behalf of human rights lawyers working in China. Increasingly, lawyers were being harassed and persecuted for merely performing their legitimate professional duties. Some of the lawyers harassed were Gao Zhisheng, Director of the Beijing-based Shengzhi Law office, who was again subjected to ill treatment. He went missing after ten plainclothes State Security Protection officers took him away on September 22, 2007. Another lawyer, Li Heping was abducted in the parking lot of his law office by a dozen plainclothes men. Finally, the Shandong Provincial Bureau of Judicial Affairs refused to renew Li Jianqiang's licence to practice law.⁵⁷ Revoking or refusing to renew the licence of lawyers representing unpopular clients is a common form of harassment.
119. Again, in April 2008, the Law Society intervened on behalf of lawyers in China. Human rights lawyers were subjected to an escalating pattern of persecution and harassment by authorities. Hundreds of Tibetans were arrested in connection with the March 14, 2008 unrest in Tibet and the violent crackdown on the protests by Chinese security forces. As a result, on April 2, 2008, 18 Chinese lawyers publically offered to provide legal assistance to the detained Tibetans.
120. Chinese authorities told the lawyers that they should not involve themselves in the "Tibet incident". Authorities questioned lawyers involved in providing legal representation to the Tibetan protestors and placed them under surveillance and tapped their phones.⁵⁸ The Law Society has consistently condemned the persecution and ill-treatment of lawyers in China.

Guo Feixiong (aka Yang Maodong)

121. The Law Society also intervened in China on behalf of Guo Feixiong (also known as Yang Maodong) in April 2007, January 2008 and again in January 2009. Guo

⁵⁷ Law Society of Upper Canada, "Violations Against Lawyers Letter of Intervention and Public Statement" (31 October 2007).

⁵⁸ Law Society of Upper Canada, "Violations Against Lawyers Letter of Intervention and Public Statement" (16 April 2008).

Feixiong is currently serving a five year sentence in Meizhou Prison, Guangdong Province.

122. Guo Feixiong is a self-taught legal defender based in Guangzhou and adviser with Gao Zhisheng's Beijing-based Shengzhi law firm. Guo's human rights work began in 2005, when he helped organize villagers in Taishi, Guangzhou protest against official corruption and land seizures. In 2006, Guo campaigned alongside prominent human rights lawyer, Gao Zhisheng, against a government crackdown on human rights activists. He was formally arrested in late 2006 on charges of "illegal business activity," based on a book he wrote about a political scandal in Liaoning Province. He was sentenced to five years in prison, where he was tortured.
123. Guo Feixiong's current detention followed his release in September 2011 from a five-year prison term for his earlier activism. According to police, Guo is now facing prosecution for the following acts: delivering a speech promoting press freedom during a protest in January 2013 by supporters of *Southern Weekly* journalists on strike, organizing campaigns in April 2013 calling for disclosure of officials' wealth, and urging the government to ratify the International Covenant on Civil and Political Rights, which China signed in 1998.
124. He was arrested again in August 2013 for his involvement in campaigns promoting press freedom, political rights, and transparency. On December 10, 2013, police from the Guangzhou Municipal Public Security Bureau concluded their investigation and submitted an "Indictment Opinion" to the District People's Procuratorate. They recommended that Guo Feixiong be indicted for "disrupting public order," a charge increasingly used against Chinese rights activists and which carries a maximum sentence of five years in prison. Chinese law requires that prosecutors decide within 30 days whether to issue an indictment. Although the 30-day limit passed, no announcement was made.

125. Authorities denied numerous requests from Guo Feixiong's lawyers to meet with him, permitting the first such meeting to occur in November, more than three months after he was taken into custody.

Colombia

126. Over the years, the Law Society has intervened on behalf of a number of lawyers and human rights organizations in Columbia who have represented political prisoners and groups. The Law Society is concerned about situations where lawyers who work to defend the rights of others are themselves targeted for exercising their freedoms and rights under the law.

William Cristancho Duarte

127. In January 2011, the Law Society intervened on behalf of William Cristancho Duarte, who is working on cases involving the extrajudicial executions of civilians murdered by military groups.
128. During Colombia's armed conflict, which has lasted over four decades, extrajudicial executions were carried out by the security forces in a widespread and systematic manner. These executions are part of the terror tactics used by the security forces as part of their counter-insurgency strategy. Columbia's Attorney General's Office is investigating more than 2,000 cases of extrajudicial executions.
129. William Cristancho Duarte's has received death threats, including an assassination attempt as a result of his work. In December 2010, shots were fired at his car. Repeatedly, lawyers like William Cristancho Duarte who campaign for justice for victims of extrajudicial executions have been threatened or killed by members of the security forces or paramilitaries working with security forces.⁵⁹

⁵⁹ Law Society of Upper Canada, "William Cristancho Duarte Letter of Intervention and Public Statement" (4 February 2011).

José Humberto Torres

130. After receiving reports of the bounty offered by paramilitary groups for the assassination of lawyer, José Humberto Torres, the Law Society intervened on his behalf in May 2012.
131. José Humberto Torres, a distinguished Colombian human rights defender, is known for defending political prisoners and fellow human rights defenders on behalf of the Fundación Comité de Solidaridad con los Presos Políticos (Political Prisoners Solidarity Committee). He was involved in a case against Jorge Noguera, former director of the Colombian Intelligence Agency, for his involvement in the assassination of professor Alfredo Correa de Andreis. He called for criminal investigation into the links between members of Congress and paramilitary groups and their alleged involvement in various crimes. He also participated in various cases against army leaders for alleged human rights violations.
132. An outspoken advocate for victims of extrajudicial killings, paramilitary groups have called for José Humberto Torres' assassination. These groups have publicized that they will pay a bounty equivalent to US \$120,000 to anyone who assassinates José Humberto Torres.⁶⁰

Congo

133. The Law Society has intervened on behalf of a number of lawyers and human rights organizations in the Congo who have represented former political leaders, persons considered undesirable or prisoners unable to get representation.

Marie-Thérèse Nlandu Mpolo-Nene

134. In February 2007, the Law Society intervened on behalf of Marie-Thérèse Nlandu Mpolo-Nene regarding her arrest and detention.

⁶⁰ Law Society of Upper Canada, "José Humberto Torres Letter of Intervention and Public Statement" (28 May 2012).

135. The highly charged political climate in the Congo made retaining legal representation difficult. Marie-Thérèse Nlandu Mpolo-Nene, a human rights lawyer, agreed to represent Jean-Pierre Bemba, the former Vice-President of Congo, in his appeal to the Supreme Court of Justice against the results of the second round of presidential elections in 2007.
136. On November 21, 2006, members of the Special Services police arrested Marie-Thérèse Nlandu Mpolo-Nene, at the Kin-Mazière police station, the Special Services police headquarters, where she went to visit six of her colleagues who were arrested the day before. She was charged with “organizing an insurrectionary movement” and with “illegal possession of firearms.”
137. The charge for organizing an insurrection movement related to a speech she made to supporters of Jean-Pierre Bemba outside the Supreme Court on November 20, 2006, in which she asked them to exercise their right to protest “in a disciplined way.” Marie-Thérèse Nlandu Mpolo-Nene is also the leader of the political party for peace. Her arrest and detention are a result of her representation of Jean-Pierre Bemba.⁶¹

Jean-Claude Mubalama and Charles Cubaka

138. Charles Cubaka and Jean-Claude Mubalama are Congolese lawyers who were involved in a high profile appeal of four civilian men who were appearing before a military court. They were sentenced to death in August 2007 for the murder of a radio journalist, Serge Maheshe. The investigators failed to pursue allegations of possible military involvement in their investigation of Serge Maheshe’s murder.
139. Charles Cubaka and Jean-Claude Mubalama both received a series of anonymous threats warning them to stop criticizing the conduct of the appeal

⁶¹Law Society of Upper Canada, “Marie-Thérèse Nlandu Mpolo-Nene Letter of Intervention and Public Statement” (2 February 2007).

hearing, to stop implicating the military in the murder, and to stop "tarnishing the image of the country".⁶²

Haiti

Mario Joseph, Newton St-Juste and André Michel

140. The Law Society intervened in both 2012 and 2013 on behalf of Mario Joseph, Newton St-Juste and André Michel.
141. Newton St-Juste and André Michel filed claims against both the wife and son of the President of the Republic of Haiti for corruption and embezzlement of public funds. Mario Joseph, a prominent human rights lawyer and head of the International Lawyers Office (Bureau des Avocats Internationaux), was involved in a number of political cases such as proceedings against former dictator Jean-Claude Duvalier. Another case was against the United Nations for their alleged involvement in spreading the cholera epidemic in Haiti as well as a case dealing with the forced evictions of people made homeless after the earthquake.
142. On September 28, 2012, the former Chief Prosecutor of Port-au-Prince, Jean Renel Sénatus, claimed that he had been dismissed by the Ministry of Justice because he refused to implement an order to arrest 36 people. On the list were lawyers Newton St-Juste and André Michel.
143. Mario Joseph, Newton St-Juste and André Michel have reported receiving anonymous telephone death threats in recent months. In addition, they have reported other acts of intimidation, including hostile graffiti painted on walls and police vigilance in proximity of their offices and homes. It is believed that the three lawyers are being targeted for their activism and criticisms against the Haitian government.⁶³

⁶² Law Society of Upper Canada, "Charles Cubaka and Jean-Claude Mubalama Letter of Intervention and Public Statement" (27 June 2008).

⁶³ Law Society of Upper Canada, "Mario Joseph, Newton St-Juste and André Michel Letters of Intervention and Public Statement s" (27 June 2008).

144. In November 2013, the Law Society intervened again on behalf of André Michel. On October 22, 2013, human rights lawyer André Michel was arbitrarily held for one night in police custody. While on his way home, André Michel's car was stopped by police officers who attempted to carry out a search of his vehicle. He refused to get out. He said he would only accept the search if a justice of the peace was called, a request which is in accordance with Haitian law. The search was eventually carried out in the presence of justice of the peace and no evidence of wrongdoing was found. However, he was held overnight in custody for the obstruction of justice.
145. In 2013, André Michel was still involved in legal proceedings against the wife and eldest son of Haiti's president. Since the beginning of this case, he stated that he has faced intimidation and has received threats. Shortly after André Michel's release on October 23, 2013, a member of the Office of the Prosecutor declared to the press that the July 2013 arrest warrant, which had never been executed, would be carried out. He continues to work under the risk of being arrested.
146. In July 2013, an arrest warrant was issued against André Michel for his alleged involvement in a murder. His client, the complainant in the corruption case, was arrested on the same charge and remains in detention.⁶⁴

India

Noor Mohammad, Muhammad Shoaib, Zayfarayab Jilani and A M Faridi

147. In November 2008, the Law Society intervened on behalf of four lawyers, Noor Mohammad, Muhammad Shoaib, Zayfarayab Jilani and A M Faridi, who were being harassed, intimidated and assaulted. The police were complicit in the attacks against lawyers. The lawyers defended Muslim clients accused of

⁶⁴ Law Society of Upper Canada, *Report to Convocation*, by Equity and Aboriginal Issues Committee (Toronto: Law Society of Upper Canada, 21 November 2013) at 143 – 147.

terrorist acts, despite the fact that some of India's bar associations implemented bans preventing lawyers from representing these clients.

148. These bans are contrary to the fundamental right to be considered innocent until proven guilty. Lawyers should not be intimidated by their colleagues in the course of the legitimate discharge of their professional duties.⁶⁵

Iran

149. Over the years, the Law Society has intervened on behalf of a number of lawyers and human rights organizations in Iran who have represented political prisoners and groups. In particular, the Law Society continues to intervene and monitor Nasrin Sotoudeh's case.

Nasrin Sotoudeh

150. In both September 2010 and October 2013, the Law Society intervened on behalf of Nasrin Sotoudeh.
151. On September 4, 2010, Nasrin Sotoudeh, a prominent human rights lawyer, was arrested. She is known for defending juveniles facing the death penalty, prisoners of conscience and children victims of abuse. Nasrin Sotoudeh also represented several political activists and protesters who were arrested in the aftermath of the disputed presidential election in Iran in 2009. She is also a member of the Iranian Women's Rights Movement "One Million Signature Campaign" which collects signatures from Iranians opposed to the country's discriminatory laws against women.
152. She chose to represent clients who many lawyers were afraid to defend. She represented several political activists and protesters who were arrested in the aftermath of the disputed presidential election in Iran in 2009. Her clients included journalist Isa Saharkhiz, Nobel Peace Prize laureate Shirin Ebadi, and

⁶⁵ Law Society of Upper Canada, "Letter of Intervention and Public Statement" (November 2008).

Heshmat Tabarzadi, head of the banned opposition group Democratic Front of Iran.

153. Nasrin Sotoudeh was sent to the Evin prison court, where she had been summoned by the Revolutionary Prosecutor's Office on charges of "propaganda against the State" and "collusion and gathering with the aim of acting against national security, and membership in the Centre for Human Rights Defenders". After her questioning by a magistrate, she was arrested. Her lawyer was not permitted to be present during the questioning.
154. In January 2011, she was sentenced to 11 years in prison, and given a 20 year ban on practicing law as well as a 20 year ban on foreign travel. An appeals court later reduced her sentence to 6 years.
155. A few days prior to her arrest, she had reported to the International Campaign for Human Rights in Iran that the Iranian authorities were using tax harassment against human rights lawyers in order to limit their working conditions. She gave the example of lawyer Shirin Ebadi, who was subjected to the payment of taxes of hundreds of thousands of dollars on the money she had been granted for her Nobel Peace Prize.⁶⁶

Kenya

Haroun Ndubi

156. The Law Society intervened on behalf of Haroun Ndubi after he received a death threat as a result of his criticism of the elections and his public interest work regarding the election's irregularities in Kenya.
157. On February 6, 2008, Haroun Ndubi lawyer and member of the Kenya Domestic Observers Forum received a death threat along with Muthoni Wanyeki, Executive Director of the Kenya Human Rights Commission ("KHRC"), Gladwell Otieno,

⁶⁶Law Society of Upper Canada, "Nasrin Sotoudeh Letters of Intervention and Public Statement" (September 2010, 30 October 2013).

Director of the Africa Centre for Open Government, Njeri Kabeberi, Executive Director of the Centre for Multi-Party Democracy/ the death threat was also directed at Maina Kiai, the former Chairman of KHRC and Chair of the Kenya National Commission on Human Rights, Ndung'u Wainaina, member of the National Convention Executive Council, James Maina, member of Bunge La Mwananchi (the People's Parliament), and David Ndi, co-founder and Director of the Kenya Leadership Institute, a non-profit organization that seeks to raise-awareness on public policy issues, and author of a report on the last elections' irregularities.

158. Haroun Ndubi received anonymous calls threatening to cut off his head if he did not stop talking about the results of the Kenyan general election, which was held on December 27, 2007. In addition to commenting on election irregularities, Haroun Ndubi also drew attention to the human rights abuses that occurred during the violence that followed the elections.⁶⁷

Peru

Francisco Soberon

159. The Law Society intervened on behalf of Francisco Soberon, a Peruvian human rights lawyer and recipient of the French National Order of Merit Award. He also established the Asociación Pro Derechos Humanos ("APRODEH"). The purpose of the APRODEH is to combat the continued human rights abuses, including routine beatings, torture, "disappearances" and arbitrary detentions, prevalent in Peru.
160. Francisco Soberon was involved in prosecuting former Peruvian President Fujimori for ordering two massacres that killed 25 people in the 1990s. Senior government officials threatened him and made derogatory remarks about him and the APRODEH. He was subjected to harassment. The Peruvian government

⁶⁷ Law Society of Upper Canada, *Report to Convocation*, by Equity and Aboriginal Issues Committee (Toronto: Law Society of Upper Canada, 27 March 2008) at 12–14.

attempted to have the APRODEH classified as a terrorist organization but the European Parliament refused the request.⁶⁸

Russia

Sapiyat Magomedova

161. The Law Society has intervened on behalf of Sapiyat Magomedova, a criminal and human rights lawyer, in November 2010, April 2012 and July 2013. Her law firm is known for taking on cases relating to abductions, torture and extrajudicial executions in the Northern Caucasus region of Dagestan in Russia.
162. Sapiyat Magomedova represents victims in highly sensitive cases. She has defended individuals suspected of involvement with the insurgency in Dagestan and who have been tortured by the police. As a result of discharging her professional duties, Sapiyat Magomedova has experienced a continued pattern of harassment and intimidation.
163. Sapiyat Magomedova was assaulted by police inside Khasavyurt town police station on June 17th, 2010. She traveled there to visit a client but was denied access. She was subsequently taken to a security checkpoint by four police officers from the special intervention unit. They then beat her until she was unconscious. As a result, Sapiyat Magomedova was hospitalized for several weeks.
164. In October 2010, Sapiyat Magomedova challenged the legality of the prosecutor's decision to open a criminal case against her. Reports indicated several procedural violations occurred during court hearings. For instance, the hearing of her application began later than is legally mandated and only after a lawyer representing Sapiyat Magomedova contacted the court about it. The first hearing on November 1, 2010 was adjourned and has since been delayed twice.

⁶⁸ Law Society of Upper Canada, *Report to Convocation*, by Equity and Aboriginal Issues Committee (Toronto: Law Society of Upper Canada 26 June 2008) at 18 –19.

165. On March 14, 2012, she learned that the criminal investigations against both her and the officers had been closed several months prior. However, she had not been notified. At that time, Sapiyat Magomedova and her colleague Musa Suslanov were working on a high profile criminal case, representing the families of five men who were killed. On May 19, 2013, Musa Suslanov received a text message from an unknown mobile phone number, telling him and his colleague to withdraw from the case if they wished to stay alive.⁶⁹

Sudan

166. The Law Society intervened in Sudan in October 2006 and November 2013. In both cases, the lawyers were working to defend their clients while they were harassed and, in some cases, detained.

Mossaad Mohamed Ali, Rasha Souraj, Ebtisam Alsemani, Najat Dafaalla and Mohamed Badawi

167. Mossaad Mohamed Ali, Rasha Souraj, Ebtisam Alsemani, Najat Dafaalla and Mohamed Badawi are lawyers and members of the Amel Centre for the Treatment and Rehabilitation of Victims of Torture. This organization provides legal aid to victims of torture and sexual violence. Mossaad Mohamed Ali, Rasha Souraj, Ebtisam Alsemani, Najat Dafaalla and Mohamed Badawi have all been harassed, threatened and summoned to security offices and detained. Sometimes the detentions lasted hours, days and were also detentions incommunicado.
168. In May 2006, officers from the National Security Bureau (“NSB”) in Nyala, Southern Darfur, summoned Mossaad Mohamed Ali for questioning. He was detained and remained in detention until May 20, 2006. He was denied access to his family and to legal counsel. Security officers denied the United Nations Mission in Sudan (“UNMIS”) an opportunity to meet with him. No reason was

⁶⁹ Law Society of Upper Canada, “Sapiyat Magomedova Letters of Intervention and Public Statements” (November 2010, April 2012, July 2013).

given as to why Mossaad Mohamed Ali was summoned, arrested and held incommunicado.

169. On July 27, 2006, Mossaad Mohamed Ali and volunteer lawyers at the Amel Centre, Rasha Souraj and Ebtisam Alsemani were accused of sending false reports and of disclosing information of a military nature. They were then warned that their case had been given to the police and that they would likely be arrested following a police investigation.
170. On August 1, 2006, Mossaad Mohamed Ali and Najat Dafa Alla were accused of spreading false information and of being a threat to public security. It is believed that they were being investigated for their work in defending the rights of five individuals from the Otash camp, who were detained after participating in a demonstration against the Darfur Peace Agreement, on May 30 and 31, 2006.⁷⁰

Adam Sharief

171. Adam Sharief is a lawyer and the coordinator of the Darfur Bar Association in South Darfur. According to reports, he was arrested on September 26, 2013 and held without charge. Adam Sharief has not been granted access to a lawyer.
172. Six days before his arrest, Adam Sharief participated in an interview with independent radio station, Radio Dabanga. During this interview, he criticized the Governor of South Darfur for the lack of security in Nyala, the capital of South Darfur. His criticism was linked to the protests that broke out in Nyala on September 18, 2013, after Ismail Ibrahim Wadi, a prominent local businessman and the president of the local football team, his son and nephew were killed. Protestors said the militia employed by the local authorities were responsible for the killings. Adam Sharief also criticized the use of live ammunition by security

⁷⁰ Law Society of Upper Canada, *Report to Convocation*, by Equity and Aboriginal Issues Committee (Toronto: Law Society of Upper Canada, 26 October 2006) at 21– 24; Law Society of Upper Canada, "Letters of Intervention and Public Statement" (October 2006).

forces on September 19, 2013, to disperse demonstrators that gathered around the South Darfur government offices to call for the Governor to resign.

173. Adam Sharief's detention is linked to his advocacy on behalf of those at the protest and for exercising his right to freedom of expression.⁷¹

Syria

174. In both February 2010 and January 2011, the Law Society intervened in Syria on behalf of lawyers, who were providing legal services and challenging the government on its human rights record. In both cases, the lawyers were working to defend their clients while they were harassed and, in some cases, detained.

Haytham al-Maleh

175. Haytham al-Maleh is a 78 year old Syrian human rights lawyer who has been imprisoned by Syrian authorities for "weakening national sentiment", "spreading false information" and insulting the President and the judiciary. At the time of his arrest, Haytham al-Maleh was defending Muhannad al-Hassani, another human rights lawyer and President of the Syrian Human Rights Organization ("SHRO"), who was being tried on charges related to his work defending the rights of political prisoners.
176. On October 13, 2009, an officer from the Political Security, Syria's Intelligence Services, contacted Haytham al-Maleh, and told him to report to the Political Security's branch in Damascus. He refused to go. The next day he disappeared. Initially, Haytham al-Maleh's whereabouts were unknown, but on October 18, 2009 the Syrian authorities acknowledged they are holding him.
177. Haytham al-Maleh has been imprisoned and harassed by the Syrian authorities for his human rights work before. He was imprisoned from 1980-1986 for his

⁷¹ Law Society of Upper Canada, *Report to Convocation*, by Equity and Aboriginal Issues Committee (Toronto: Law Society of Upper Canada 21 November 2013) at 148.

work for the Freedom and Human Rights Committee of the Syrian Lawyers Union.⁷²

Radeef Moustafa

178. Radeef Moustafa is the president of the Kurdish Committee for Human Rights and coordinator of the Syria Coalition against Capital Punishment. He provides pro bono legal services to human rights defenders in Syria, such as Muhannad Al-Hassani.
179. In response to Radeef Moustafa's activities in support of human rights defenders and the Kurdish minority in Syria, he has experienced ongoing harassment from Syrian authorities. He has been subjected to travel restrictions and most recently was summoned for a disciplinary hearing on December 19th 2010 with the Syrian Bar Association. The grounds for referral include membership in a non-licensed organization, incitement against Syrian authorities through his writing and harming national unity by publishing unfounded news. He is also accused of committing crimes against state security.
180. Muhannad Al-Hassani was the target of similarly disputed procedures by the Syrian Bar Association. He was eventually disbarred and imprisoned. This disciplinary action against Radeef Moustafa is similarly viewed as an act of harassment by the Syrian Bar Association.⁷³

Tunisia

181. The Law Society intervened on behalf of a Tunisian lawyer who was exercising his right to freedom of expression.

Mohammed Abbou

182. Mohammed Abbou, a lawyer and member of the National Council for Civil Liberties in Tunisia, was arrested in March 2005 as a result of an article he

⁷² Law Society of Upper Canada, *Report to Convocation*, by Equity and Aboriginal Issues Committee, (Toronto: Law Society of Upper Canada, 28 January 2010) at 20 – 21.

⁷³ Law Society of Upper Canada, *Report to Convocation*, by Equity and Aboriginal Issues Committee (Toronto: Law Society of Upper Canada, 27 January 2011) at 22 – 23.

published online. In November 2005, the United Nations Working Group on Arbitrary Detention concluded that Mohammed Abbou's detention was arbitrary and in violation of international law.

183. In April 2006, Mohammed Abbou was sentenced to three years and six months in prison. While in detention, he undertook several hunger strikes in protest at the conditions of his detention. He continues to face harassment and ill treatment by the prison administration.⁷⁴

Thailand

184. The Law Society has previously intervened on behalf of human rights defenders in Thailand and is always concerned when lawyers face reprisals for representing clients in politically sensitive cases.

Robert Amsterdam

185. Robert Amsterdam has acted for many clients involved in politically sensitive circumstances. He was legal counsel to former Prime Minister of Thailand Thaksin Shinawatra, political prisoners like Eligio Cedeno of Venezuela and Singapore's Dr. Chee Soon Juan.
186. As a result of his work, Robert Amsterdam has been intimidated and harassed. He has threatened with legal action for representing former Prime Minister of Thailand Thaksin Shinawatra. Despite the outcome of the July 2011 general election in Thailand, there are still concerns for his personal safety.⁷⁵

Turkey

187. In both October 2012 and June 2013, the Law Society intervened on behalf of lawyers in Turkey who were facing reprisals for providing advice to their clients.

⁷⁴ Law Society of Upper Canada, "Mohammed Abbou Letter of Intervention and Public Statement" (October 2006).

⁷⁵ Law Society of Upper Canada, "Robert Amsterdam Letter of Intervention and Public Statement" (16 August 2011).

Lawyers Defending Kurdish Minority

188. Turkish lawyers who defend their client's civil and political rights in politically sensitive cases are subjected to judicial harassment. Defence lawyers representing imprisoned Kurdistan Workers Party ("PKK") leader, Abdullah Öcalan, have been particularly at risk. At least 68 lawyers have been the subject of more than one hundred criminal cases since 2005 that accuse them of violating Article 314 of the Turkish Penal Code ("TPC") and Articles 6 and 7 of the Anti- Terrorism Law ("ATL"), and of "complicity with a terrorist organisation."
189. In November and December 2011, a police operation aiming to dismantle an alleged terrorist network known as the Kurdish Communities Union started. The police operation targeted lawyers involved or believed to be providing legal services to Abdullah Öcalan. A total of 41 lawyers were arrested and subsequently charged as part of this police operation. Three persons employed by the accused lawyers were also arrested. The law offices and houses of the lawyers were searched. Confidential files were consulted by the police and some were sealed.
190. A total of 46 lawyers, including the lawyers previously detained, along with three legal workers and one journalist have been collectively charged and are being tried together. All the parties charged are either of Kurdish origin or represent clients in cases related to the Kurdish issue, and the accusations and charges are all founded on the legal representation of Abdullah Öcalan.
191. On November 26, 2011, the lawyers were brought before the court. Thirty-three of the detained lawyers were refused a provisional release. The others were released. However, the public prosecutor objected to the provisional release of lawyers, Mehmet Ayata and Mahmut Alinak. The court issued detention orders and these lawyers were re-arrested on December 8, 2011. Mehmet Sabir Tas, who was abroad when the arrests occurred, was arrested and detained when he

went to the public prosecutor to give his statement on November 30, 2011. On December 8, 201, 36 lawyers and one journalist were still in custody.⁷⁶

Lawyers Denouncing Repression

192. More than 50 lawyers were arrested on June 11, 2013 for protesting at Caglayan Justice Palace to denounce the repression of the Occupy Gezi protestors. Reportedly, many of the lawyers were beaten and kicked on the ground by police and their clothes were torn.⁷⁷ Increasingly, lawyers in Turkey are being harassed for their advocacy and exercising their right to freedom of expression.

United Arab Emirates

193. The Law Society intervened in September 2012 and July 2013 on behalf of lawyers working in the United Arab Emirates (“UAE”).

Mohamed 'Abdullah al-Roken, Dr. Mohamed al-Mansoori and Salem al-Shehi

194. Dr. Mohamed 'Abdullah al-Roken acted as defence counsel for five UAE residents who were arrested in April 2011 for posting articles on an online forum that were critical of the UAE government and called for political reform. In retaliation, he was prevented from lecturing at University of Al Ain. On July 17, 2012, as Dr. al-Roken was driving to the police station in Dubai to tell the police that his son and brother-in law were missing, he was arrested by authorities. He learned that both his son and brother-in-law had also been detained.
195. Dr. Mohamed al-Mansoori is the former head of the UAE Jurists' Association. He was fired from his position as legal advisor to the government of Ras Al Khaimah in January 2012 after he criticized restrictions on freedom of speech in the UAE during a television interview. He has been barred from traveling since October 2007 and the government has refused to renew his passport. On July 16, 2012,

⁷⁶ Law Society of Upper Canada, *Report to Convocation*, Equity and Aboriginal Issues Committee (Toronto: Law Society of Upper Canada, 25 October 2012) at 196 – 198.

⁷⁷ Law Society of Upper Canada, “Turkey: Lawyers Letters of Intervention and Public Statement” (June 2013).

Dr. al-Mansoori left the house to run an errand when he was approached by plainclothes officers and taken into custody. Afterwards, 25 to 28 officers searched his house and seized laptops, an iPad and papers.

196. Salem al-Shehhi, a lawyer, was arrested on July 18, 2012, when he went to the State Security Prosecutor's office to ask about his clients, Dr. al-Mansoori and Dr. al-Roken.⁷⁸

Human Rights Lawyers Speaking Out

197. The Law Society intervened on behalf of 94 lawyers, activists and human rights defenders. Since March 4, 2013, 94 government critics, many of them lawyers, have been on trial for violating the Penal Code provision which prohibits founding, organizing, or operating a group that aims to overthrow the country's political system. Approximately 60 of those arrested are connected to the Reform and Social Guidance Association (al-Islah), a peaceful group that advocates for greater adherence to Islamic precepts. At least 64 of the defendants were arrested and held in undisclosed locations for up to a year prior to the trial, some in extended periods of solitary confinement. Reports indicate that at least some of them had also been subjected to torture and ill-treatment while in custody. Many of the defendants were also denied legal assistance for several months, and when they eventually did see a lawyer, it was done so in the presence of a representative of the State Security Prosecutor, contrary to Emirati law and international fair trial standards.
198. Independent observers and international media were barred from attending the trial, which has been plagued by allegations of unfairness and a lack of due process. The lawyers for the defendants further identified that their case files had

⁷⁸ Law Society of Upper Canada, "United Arab Emirates Letters of Intervention and Public Statement" (September 2012).

been tampered with. Relatives of the defendants were also barred from attending the trial. If convicted, the defendants could face up to 15 years imprisonment.⁷⁹

Vietnam

Nguyen Van Dai and Le Thi Cong Nhan

199. The Law Society intervened on the behalf of Nguyen Van Dai and Le Thi Cong Nhan in August 2007. Both these lawyers were known for defending protestors. On November 13, 2006, Nguyen Van Dai, reported that he had been interrogated by police for days in the run up to the Asia Pacific Economic Cooperation Leaders' Summit which was held in Hanoi, Vietnam, in November 2006. The next day, ten security police officers surrounded Nguyen Van Dai's home and posted signs marked 'No Foreigners.' He was prohibited from having visitors until the last day of the Summit.
200. Prior to his arrest in March 2007, Nguyen Van Dai started the blog "the Reporters without Borders Blog" where he posted his essay on political parties. On March 6, 2007, security forces raided his home and arrested him for "conducting propaganda against the Socialist Republic of Vietnam".⁸⁰
201. On May 11, 2007, Nguyen Van Dai and Le Thi Cong Nhan, a lawyer and spokesperson for the Progression Party, were sentenced in the Ha Noi People's Court. Nguyen Van Dai was sentenced to 5 years in prison and 4 years house arrest. Le Thi Cong Nhan was sentenced to 4 years in prison and 3 years house arrest, for "spreading propaganda against the State".

Zimbabwe

202. The Law Society intervened to promote the rule of law in Zimbabwe on July 26, 2001. The intervention was made shortly following the release of the *International*

⁷⁹ Law Society of Upper Canada, *Report to Convocation*, by Equity and Aboriginal Issues Committee (Toronto: Law Society of Upper Canada, 27 June 2013).

⁸⁰ Law Society of Upper Canada, "Nguyen Van Dai and Le Thi Cong Nhan Letters of Intervention and Public Statement" (7 August 2007).

Bar Association Report on Zimbabwe – 2001, which outlined the results of a fact finding mission organized by the Human Rights Institute of the International Bar Association. Since then, the Law Society has intervened on behalf of Beatrice Mtetwa and Arnold Tsunga.

Beatrice Mtetwa

203. Beatrice Mtetwa is a human rights lawyer and the former president of the Law Society of Zimbabwe. She also represented Prime Minister Morgan Tsvangirai, Zimbabwean President Mugabe's main political rival.
204. On March 17, 2013, Beatrice Mtetwa was arrested while attempting to assist her clients. The arrest took place on the day following Zimbabwe's constitutional referendum. The new constitution would curb the powers of the president and limit presidential power to two five-year terms. Both Zimbabwean President Robert Mugabe and his rivals were in favour of the new constitution.
205. The day after the referendum, police arrested four senior aides of President Mugabe's main political rival, Prime Minister Morgan Tsvangirai. When Beatrice Mtetwa was called to the home of Prime Minister Tsvangirai's chief legal advisor, where police were conducting a search, she was arrested and charged with "obstructing or defeating the course of justice". Beatrice Mtetwa asked the police officers to produce a search warrant and an inventory list of items that had been removed by the police. Officers accused her of trying to photograph security officers. She was handcuffed and forced into a police vehicle. Reports also state that police confiscated her mobile phone, which contains privileged solicitor-client information.
206. On March 25, 2013, a high court judge finally decided to grant bail to Beatrice Mtetwa under three conditions: that she post a \$500 bail, that she reside at a given address and that she not interfere with the ongoing investigations.

According to reports, at 1:40 p.m. on March 25, 2013, Beatrice Mtetwa was finally released from prison.⁸¹

Arnold Tsunga

207. The Law Society has followed Arnold Tsunga's career. He is the recipient of the Human Rights Watch award in 2006. In March 2007, the Law Society invited Arnold Tsunga, then Executive Director of the Zimbabwe Lawyers for Human Rights and Acting Executive Secretary of the Law Society of Zimbabwe, to make a presentation at the Law Society on the rule of law in Zimbabwe.
208. Arnold Tsunga met with the directors of the Law Society. The Law Society agreed to collaborate with the Law Society of Zimbabwe to assist it in strengthening its self-regulation capabilities and the independence of the legal profession in Zimbabwe.
209. As a human rights lawyer, Arnold Tsunga helped document human rights abuses in Zimbabwe and has brought them to the attention of the international community. He worked for the International Commission of Jurists and was elected a member of the Zimbabwean parliament in 2013.
210. Zimbabwean police arrested Arnold Tsunga around July 20, 2013. He was running for the Movement for Democratic Change of Prime Minister Morgan Tsvangirai in the eastern city of Mutare. He was detained at Dangamvura police station along with his campaign team for allegedly holding an unauthorised rally. Police have stated their intention to transfer Arnold Tsunga and his colleagues to Mutare Central Police Station. The Law Society of Zimbabwe has also indicated that another Movement for Democratic Change activist and lawyer, Jacob Mafume, was barred from holding a campaign rally in a Harare suburb.⁸²

⁸¹ Law Society of Upper Canada, *Report to Convocation*, by Equity and Aboriginal Issues Committee (Toronto: Law Society of Upper Canada, 25 April 2013) at 390 – 392.

⁸² Law Society of Upper Canada, "Arnold Tsunga Letters of Intervention and Public Statement" (July 2013).

Advocating For Prisoners of Conscience

211. Prisoners of conscience are confronted by systemic barriers to accessing justice. These individuals are imprisoned because of the non-violent expression of their consciously held beliefs. Other times they are imprisoned because of their race, sexual orientation, religion or political views.

Equatorial Guinea

Fabián Nsue Nguema

212. In November 22, 2012, the Law Society intervened on behalf of Fabián Nsue Nguema, a prominent lawyer and human rights defender. He has acted as defense counsel for a number of political opponents and prisoners of conscious. He is also a leading member of Unión Popular (“UP”), a political party that monitors and exposes human rights violations.⁸³
213. In March 2004, he represented a group of people accused of attempting a coup. He also represented Simon Mann, a British citizen who was jailed in 2008 for plotting to overthrow the President. He was defence counsel for four UP members who were accused of having attacked the Presidential Palace in February 2009.
214. Throughout his representation of prisoners of conscience, Fabián Nsue Nguema has been harassed, detained and arrested. In April 2002, he was arrested on his way to defend a group of political prisoners. A few months later, he was arrested and tried for defaming the President and given a one year prison sentence. In June 2005, the Bar Association in Equatorial Guinea arbitrarily suspended his license alleged misconduct. The International Bar Association issued a statement in July 2005 stating they believed Fabián Nsue Nguema’s disbarment was politically motivated.⁸⁴

⁸³ Law Society of Upper Canada, *Report to Convocation*, by Equity and Aboriginal Issues Committee (Toronto: Law Society of Upper Canada, 22 November 2012) at 74 – 76.

⁸⁴ *Ibid.*

215. On October 22, 2012, Fabián Nsue Nguema received a call from the Inspector general of National Security notifying him he could visit an imprisoned client, Augustin Nzogo, who was connected to a non-governmental organization called Transparency International France. While at the prison, he disappeared. Later authorities confirmed he was in prison. Fabián Nsue Nguema has not been charged. He has no access to his lawyer or his family.⁸⁵

Iran

Saleh Kamrani

216. The Law Society intervened in February 2007 on behalf of Saleh Kamarani, an Iranian Azerbaijani lawyer who was harassed, arrested and imprisoned by Iranian authorities. Saleh Kamrani represented a number of Iranian Azerbaijanis who have been detained in connection with their political or cultural activities and has defended members of other ethnic groups. He defended high profile prisoners of conscience such as Iranian Arab writer Yusuf Azizi Bani Torof and Persian human rights defender Mohsen Sazegara.
217. Iranian security forces have continually harassed Saleh Kamrani. He has been threatened with arrest. His telephone conversations, correspondence and contacts were monitored. He was interrogated and threatened by security officials whenever he left or returned to Iran, was been prevented from leaving Iran on several occasions, and has also been detained.
218. On June 14, 2006, as Saleh Kamrani left his office to give an interview, he was accosted by three plain-clothes men. They handcuffed him and forced him into their car. He was then taken to Evin prison and neither his family nor his lawyer was notified. Four days later, the Ministry of Intelligence acknowledged Saleh Kamrani 's detention.

⁸⁵ *Supra* note 83.

219. While in prison, he was held in solitary confinement and subjected to psychological torture. He spent 97 days in solitary confinement. He went on a hunger strike for seven days.⁸⁶

Nasser Zarafshan

220. Lawyer Nasser Zarafshan's ongoing detention prompted the Law Society to intervene on his behalf in February 2007. He was imprisoned in Evin prison since August 2002 and released in March 2007.

221. Nasser Zarafshan is a human rights lawyer, an author and a translator. He is a distinguished member of the Iranian Writers' Association, Kanoon, a member of the Committee on Serial Killings in Iran and a member of the Iranian Bar Association. He represented families of two Iranian writers who were assassinated in November 1998. Nasser Zarafshan was charged with publishing information about the assassinations in December 2000 and was imprisoned. In February of 2002, he was tried in a closed door military court. While in prison he was severely beaten.⁸⁷

Abdolfattah Soltani

222. Abdolfattah Soltani is a well-known Iranian human rights lawyer. He represents the family of Zahra Kazemi, an Iranian-Canadian photojournalist murdered in Iran. In October 2003, the Iranian Parliament released its inquiry into the death of Zahra Kazemi and concluded that Saeed Mortazavi, Prosecutor General of Tehran, and other members of the judiciary were directly involved in her death.
223. On July 27, 2005, two warrants were issued for his arrest. Abdolfattah Soltani was charged with releasing "secret and classified national intelligence information" in connection with his work defending an espionage case. He was arrested on July 30, 2005 when he took part in a sit-in protest at the Bar of

⁸⁶ Law Society of Upper Canada, "Saleh Kamrani Letter of Intervention and Public Statement" (February 2007).

⁸⁷ Law Society of Upper Canada, "Nasser Zarafshan Letter of Intervention and Public Statement" (February 2007).

Tehran. When he was imprisoned, he was held in solitary confinement for three months.

224. After seven months in prison, Abdolfattah Soltani was released temporarily following a bail hearing. His bail had originally been set at 8 billion Rials (about \$870,000 US), an amount that far exceeded normal bail requirements, but it was later reduced to 1 billion Rials (about \$109,504 US) due to pressure from his lawyers. On April 5, 2006, Abdolfattah Soltani appeared in court for the first time. Leading up to his trial, his lawyers were barred from accessing his case file. In addition to the charge of espionage, he was also charged with 'insulting the regime', "propaganda against the regime", and 'acting against national security'.
225. On July 16, 2006, Iran's Revolutionary Court acquitted him of espionage but convicted him of "disclosing confidential documents" and sentenced him to four years in prison. He was also convicted of 'propaganda against the system' and given an additional one year prison sentence.
226. As a human rights lawyer, Abdolfattah Soltani represented Akbar Ganji, during the journalist's imprisonment and long hunger strike. He also represented the imprisoned Iranian-American academic Haleh Esfandiari.⁸⁸

Shirin Ebadi

227. In June 2008, the Law Society intervened on behalf of Shirin Ebadi, who was awarded the 2003 Nobel Peace Prize for her work promoting women's rights, children's rights and refugee rights.
228. In April 2008, Shirin Ebadi received death threats aimed at curtailing her human rights work. As a renowned human rights lawyer, she advocated on behalf of dissidents of the Iranian regime, and religious minorities such as the Baha'is. She

⁸⁸ Law Society of Upper Canada, "Abdolfattah Solanti Letter of Intervention and Public Statement" (February 2007).

was defence counsel in various child abuse cases and provided legal representation in censorship.

229. She often represented prisoners of conscience and their families. She represented the family of Dariush Forouhar, a dissident intellectual and politician who was found stabbed to death at his home. She also represented the family of Ezzat Ebrahim-Nejad, who was killed in the Iranian student protests in July 1999. Finally, Shirin Ebadi also represented the family of murdered Canadian-Iranian photojournalist, Zahra Kazemi.⁸⁹

Kyrgyzstan

Tahir Asanov

230. The Law Society intervened in November 2010 on behalf of Tahir Asanov, who was defending an Uzbek man charged with killing the driver of a murdered police chief in June 2010. Violence erupted between Uzbek and ethnic Kyrgyz people which lead to the displacement of about 400,000 people in June 2010.
231. During a trial hearing on September 30, 2010, Tahir Asanov called for an inquiry into allegations that his client, along with others, was assaulted while in custody. After the hearing, Tahir Asanov was beaten outside the courthouse. Although police were present at the scene, they failed to intervene. Moreover, the Prosecutor General's Office claims that all necessary security measures were taken to protect Tahir Asanov.⁹⁰

Syria

Anwar al-Bunni

232. The Law Society intervened several times on behalf of Anwar al-Bunni, who is a lawyer and founding member of the Syrian Human Rights Association. He is also the head of the Committee for the Defence of Prisoners of Conscience.

⁸⁹ Law Society of Upper Canada, "Shirin Ebadi Letter of Intervention and Public Statement" (27 June 2008).

⁹⁰ Law Society of Upper Canada, "Tahir Asanov Letter of Intervention and Public Statement" (29 November 2010).

233. In 2006, the Law Society first intervened when Anwar al-Bunni was arrested after signing the *Beirut-Damascus Declaration*. This petition, drawn up by 274 Syrian and Lebanese human rights activists, asked Syria to improve its diplomatic relations with Lebanon by respecting Lebanon's independence and sovereignty. He was charged with “undermining national pride”, “incitement to racial and sectarian hatred”, and “slander of public administrative and governmental bodies”⁹¹
234. In 2008, the Law Society intervened again over the treatment of Anwar al-Bunni while in detention and the lack of due process at his trial. He was prevented from talking to his lawyer. He was targeted in prison and was not allowed to receive food, clothes or books, and refused access to the prison library.⁹²
235. Anwar al-Bunni represented many Syrian prisoners of conscience including: Riad al-Turk, Riad Seif, the owner of the independent newspaper *The Lamplighter*, Kurdish protestors and Damascus Spring activist Aref Dalila.

Muhannad al-Hassani

236. In February 2010, the Law Society intervened on behalf of Syrian lawyer Muhannad al-Hassani. His work centered on defending Syrian political prisoners and exposing abuses in the Supreme State Security Court (“SSSC”), a special tribunal that handles politically sensitive cases and is not bound by a code of procedure. Although Muhannad al-Hassani was not representing a specific client at the proceedings, he attended and documented the SSSC proceedings. He was then charged with “weakening national sentiment” and “spreading false information” and arrested. Muhannad al-Hassani was both imprisoned and disbarred.⁹³

⁹¹ Law Society of Upper Canada, “Anwar Al-Bunni Letter of Intervention and Public Statement” (27 November 2006).

⁹² Law Society of Upper Canada, “Anwar Al-Bunni Letter of Intervention and Public Statement” (29 March 2008).

⁹³ Law Society of Upper Canada, “Muhannad al-Hassani Letter of Intervention and Public Statement” (2 February 2010).

Khalil Ma'touq

237. In July 2013, Khalil Ma'touq's ongoing imprisonment prompted the Law Society to intervene on his behalf. Khalil Ma'touq is a prominent human rights lawyer in Syria and Executive Director of the Syrian Centre for Legal Studies and Research. He provided legal services to victims of human rights violations in Syria, including the defense of hundreds of political prisoners, prisoners of conscience and journalists.
238. On October 2, 2012, Khalil Ma'touq, his assistant Mohammed Thatha and a friend left his home to go work. Khalil Ma'touq and Mohammed Thatha did not arrive for work. They disappeared. Since then, their families have been unable to obtain any information about their whereabouts. Although Syrian law only allows detention for the purposes of investigation for a maximum period of sixty days, Khalil Ma'touq has been in detention for more than 240 days. The ongoing silence of Syrian authorities heightens worries that the men are being subjected to torture. In late May 2013, people close to Khalil Ma'touq and Mohammed Thatha received a tip indicating that Khalil Ma'touq was indeed in detention and that his health was deteriorating. It is unknown whether Khalil Ma'touq is receiving any medical care for his lung condition.
239. The arbitrary arrest and detention of Khalil Ma'touq is part of a widespread pattern of enforced disappearance and repression of lawyers in Syria. It is estimated that at least 37 lawyers are currently detained in Syria. Since anti-government protests erupted in March 2011, upwards of 1,300 individuals have reportedly died in custody, and many more have been subjected to torture and ill-treatment in Syrian detention centres and prisons. Several human rights organizations have condemned Syria's ongoing persecution, harassment and imprisonment of human rights lawyers who are engaged in legitimate, peaceful legal duties and human rights work.⁹⁴

⁹⁴ Law Society of Upper Canada, "Khalil Ma'touq Letter of Intervention and Public Statement" (9 July 2013).

Razan Zaitouneh

240. Razan Zaitouneh is an award-winning human rights lawyer and writer who was abducted along with her husband, Wa'el Hamada, and two colleagues, Nazem Hamadi and Samira Khalil, by unknown individuals from a joint office of the Violations Documentation Centre ("VDC") and the Local Development and Small Projects Support ("LDSPS") in the Damascus suburb of Douma. (Douma is located in Eastern Ghouta, an area under the control of a number of armed opposition groups that is being besieged by government forces.) The VDC is an independent non-governmental organization that documents human rights abuses committed by the Syrian government. The LDSPS provides humanitarian assistance.

241. In 2011, Razan Zaitouneh was forced into hiding after receiving threats from the Syrian authorities. In recent months, she has received threats from at least one armed opposition group in Eastern Ghouta had.

242. Razan Zaitouneh has won several awards for her human rights work, including the 2013 International Women of Courage Award and the 2011 Sakharov Prize for Freedom of Thought. She largely defends political prisoners. Razan Zaitouneh is a co-founder of both the VDC and the LDSPS.⁹⁵

Vietnam

Le Quoc Quan

243. The Law Society intervened on behalf of Le Quoc Quan in February 2013, after learning he was subjected to arbitrary arrests, ongoing surveillance and harassment as a result of his human rights work. Le Quoc Quan writes a popular blog about human rights abuses. In 2007, Le Quoc Quan was disbarred following his return to Vietnam from the United States.

⁹⁵ Law Society of Upper Canada, "Razan Zaitouneh Public Statement" (February 2014).

244. On December 27, 2012, Le Quoc Quan was arrested while dropping his daughter off at school. The police advised his family that he would be charged under Article 161 of the Criminal Code, which relates to tax evasion.
245. On August 2012, Le Quoc Quan was beaten by two unidentified men with iron bars outside his home in Hanoi. In October 2012, security police and plain-clothed militia forced entry into the office of a firm that belongs to Le Quoc Quan and his two brothers. Police allegedly seized files and documents belonging to the firm, assaulted the staff and detained the brothers for interrogation. They returned at a later date and arrested Le Quoc Quan's brother, Le Dinh Quan, who is currently detained in Hoa Lo Prison No. 3.
246. On October 2, 2013, Le Quoc Quan was convicted. The entire trial took one day. He was sentenced to 30 months in prison and fined 1.2 billion dong (approximately \$59,000 USD), which was levied against the company where he is a director. The Hanoi Appeal Court upheld his conviction on February 18, 2014. Le Quoc Quan's conviction is believed to be politically motivated and intended to prevent him from continuing his legitimate human rights work.

Venezuela

Daniel Wilkinson

247. The Law Society intervened on November 7, 2008, after learning of the apprehension and deportation of lawyer Daniel Wilkinson, an American national and Managing Director of the Americas division at Human Rights Watch.
248. Daniel Wilkinson's deportation from Venezuela followed the release of a report by Human Rights Watch, entitled *A Decade under Chavez, Political Intolerance and Lost Opportunities for Advancing Human Rights in Venezuela*. He co-authored the report along with José Miguel Vivanco. Daniel Wilkinson's deportation is considered as

"evidence of the Venezuelan authorities' lack of tolerance for all forms of dissenting voices" and is linked to his work as a human rights lawyer.⁹⁶

Judges

Advocating For Judicial Independence

249. The judicial system cannot be subject to political pressures or influence. Citizens looking to the courts for remedies and justice must be confident the judiciary is free and independent.

Egypt

Hisham Bastawissi and Ashraf El-Baroudi

250. Human rights violations against judges in Egypt are not uncommon. In March 2008, the Law Society intervened on behalf of Justice Hisham Bastawissi and Justice Ashraf El-Baroudi, On February 7, 2008, reports indicated that restrictions had been placed on the freedom of movement of judges Hisham Bastawissi and Ashraf El-Baroudi. They were invited to attend a meeting on the independence of the judiciary organised by the Euro-Mediterranean Human Rights Network in Brussels from February 9 to 11, 2008. This event included a public seminar to be held at the European Parliament where both judges were expected to attend and speak. However, Egyptian authorities prohibited them from traveling.⁹⁷

Nauru

Magistrates

251. On January 19, 2014, Peter Law's, the Chief Magistrate and Supreme Court Register of Nauru, employment was terminated. The police then took him into custody and to the airport where he was deported. The Chief Justice of Nauru,

⁹⁶ Law Society of Upper Canada, "Daniel Wilkinson Letter of Intervention and Public Statement" (7 November 2008).

⁹⁷ Law Society of Upper Canada, "Hisham Bastawissi and Ashraf El-Baroudi Letter of Intervention and Public Statement" (March 2008).

Geoffrey Eames, issued an injunction preventing the removal of Peter Law from his position as Chief Magistrate and Supreme Court Register of Nauru. In response, Nauru's government revoked the visa of the Chief Justice and barred him from entering Nauru.

252. Both the removal and deportation of Peter Law and the revocation of the visa of the Chief Justice are linked to their administration and adjudication of asylum seeker cases. Prior to his removal and deportation, Peter Law was scheduled to hear the direction hearings of about 40 to 60 asylum seekers charged with rioting in 2013. As well, the revocation of the visa of Chief Justice Eames follows his issuance of an injunction stopping the Nauru government from removing and deporting Peter Law.⁹⁸

Spain

Justice Baltasar Garzón

253. The Law Society intervened on behalf of Justice Baltasar Garzón in April 2012. He was convicted of abuse of power on February 9, 2012 as a result of his involvement in a high-profile corruption case. Justice Garzón ordered that the monitoring of the conversations between detainees and their lawyers should be an exception to the rule protecting attorney-client privilege.
254. This is not the first time that Justice Garzón has been the subject of a criminal prosecution as a result of discharging his duties as a judge. Justice Garzón was recently acquitted of abuse of power for ordering an investigation of Franco-era human rights abuses.⁹⁹

⁹⁸Law Society of Upper Canada, "Nauru Letter of Intervention and Public Statement" (February 2014).

⁹⁹Law Society of Upper Canada, "Justice Baltasar Garzón Letter of Intervention and Public Statement" (30 April 2012).

Sri Lanka

Madam Justice Shirani Bandaranayake

255. In January 2013, the Law Society intervened on behalf of Madam Justice Shirani Bandaranayake, former Chief Justice of Sri Lanka. Justice Bandaranayake, the first female Chief Justice of Sri Lanka, was appointed on May 18, 2011. In October 2012, a parliamentary motion to impeach her was submitted.
256. President Mahinda Rajapaksa's United People's Freedom Alliance party had enough seats for the impeachment to succeed. The government declined to give full details of why it was moving against Justice Bandaranayake, but government spokesman Keheliya Rambukwella said Chief Justice Bandaranayake 's behaviour and conduct in the past year had "affected the sovereignty of the people", without giving further details. Critics say the move is evidence of the ruling party's attempt to stifle the courts' independence.
257. A large crowd gathered outside the Supreme Court in November 2012 denouncing what they see as President Rajapakasa's intention to cut the judiciary down. In October 2012, a judge was assaulted by a gang in Colombo after publicly saying that the government was putting direct pressure on the judiciary. Chief Justice Bandaranayake came under fire after delaying passage of a key bill, which would place previously devolved development funds under the minister of economic development, who is also one of the president's brothers. In December, a Parliamentary Select Committee found Chief Justice Bandaranayake guilty of professional misconduct, unexplained wealth and misuse of power.
258. Reports indicate that the case against Chief Justice Bandaranayake is part of a pattern of attacks and threats against members of the judiciary and lawyers and interference in their work. The steps that were taken towards impeaching the

Chief Justice appear to be the culminating point of a series of attacks against the judiciary for asserting its independence.¹⁰⁰

Venezuela

Justice Maria Lourdes Afiuni

259. The Law Society has intervened on behalf of Justice Maria Lourdes Afiuni in June 2010, January 2012 and July 2013. Justice Afiuni's case first gained international attention when she was arrested by Venezuelan intelligence officers, on December 9, 2009, after ordering the conditional release pending trial of Eligio Cedeño. Cedeño's detention was declared arbitrary in September 2009 by the United Nations Working Group on Arbitrary Detention, which cited violations of his right to a fair trial.¹⁰¹
260. Justice Afiuni released Cedeño because he had been in pre-trial detention for nearly three years, which was in violation of a two-year limit prescribed by Venezuelan law. As a result, Justice Afiuni was charged with corruption, being an accessory to escape, criminal conspiracy and abuse of power. In addition to these charges, she has been denied a public defender. Appearing before Government officials and broadcast on national television and radio, Venezuelan President, Hugo Chávez, demanded that Justice Afiuni be sentenced to a 30-year prison term, even if new legislation was required to achieve that result. He also suggested that he had instructed the Attorney General and the President of the Supreme Court to punish Justice Afiuni as severely as possible to prevent similar actions by other judges.¹⁰²
261. Justice Afiuni was imprisoned. She was given a conditional release by the Tribunal 17 de Juicio de Caracas on June 14, 2013. Reports indicate that her

¹⁰⁰ Law Society of Upper Canada, *Report to Convocation* (January 24, 2013) by Equity and Aboriginal Issues Committee (Toronto: Law Society of Upper Canada, 24 January 2013) at 324 – 26.

¹⁰¹ Law Society of Upper Canada, "Justice Afiuni Letters of Intervention and Public Statements" (June 2010, January 2012 and July 2013).

¹⁰² *Ibid.*

conditional release was granted on health grounds, following a request from the Attorney General.

Promoting the Rule of Law

262. The rule of law is fundamental to creating an environment for peace, liberty and freedom. It is the foundation upon which the judicial system is built.

Colombia

Judge Diego Fernando Escobar Munera

263. The growing violence against judges prompted the Law Society to intervene on behalf of Justice Diego Fernando Escobar Munera who was murdered in broad day light in the city of Medellin while waiting for a taxi. Justice Munera spent 19 years in the judiciary. He was known for his transparency, honesty and dedication to justice. His death was linked to the systematic targeting of judges.¹⁰³

Pakistan

Asma Jahangir

264. On July 3, 2012, the Law Society intervened on behalf of Asma Jahangir, a prominent human rights lawyer. Persons within Pakistan's military and intelligence agencies plotted to kill her. As an advocate of the Supreme Court of Pakistan and President of Supreme Court Bar Association of Pakistan, Asma Jahangir tirelessly promotes the rule of law. She established an independent Human Rights Commission of Pakistan and AGHS Legal Aid, the first free legal aid centre in Pakistan.

265. In addition, she was the United Nations Special Rapporteur on Extrajudicial, Arbitrary and Summary Executions from 1998 to 2004 and the United Nations Special Rapporteur on Freedom of Religion or Belief from 2004 to 2010. Asma Jahangir acted as a defence lawyer for Husain Haqqani, Pakistan's ambassador

¹⁰³ Law Society of Upper Canada, "Justice Munera Letters of Intervention and Public Statement" (3 June 2010).

to the United States who was forced to resign by the Pakistani military. She was targeted because of her human rights work and dedication to promoting the rule of law in Pakistan.¹⁰⁴

Challenging Corruption

266. When judges challenge corruption, they are working to ensure the efficacy and integrity of the judicial system. There can be no access to justice if the judicial system is corrupt.

Brazil

Threats against Brazilian Judges

267. In November 2011, the Law Society intervened on behalf of Brazilian judges who face threats of violence, attempted assassinations, disappearances and assassination. Many of Brazil's judges are working under a climate of intimidation and insecurity. Justice Patricia Aicoli was murdered by masked assailants. She was shot 21 times in front of her home in Niteroi, Rio de Janeiro. Her murder is reported to be in retaliation for her adjudication in the trials and convictions of members of the "Milicias" and in particular the murder investigation of an 18 year-old man that involved several police officers. Justice Aicoli was known for her tough stance against police corruption.¹⁰⁵

Pakistan

Chaudhry Zulfiqar Ali

268. In July 2013, the Law Society sent a letter of intervention regarding the death of Chaudhry Zulfiqar Ali, Chief Prosecutor and former Deputy Director of the Federal Investigation Agency ("FIA"). He was shot in his car by unidentified assailants, near his home in Islamabad.¹⁰⁶

¹⁰⁴ Law Society of Upper Canada, "Asma Jahangir Letters of Intervention and Public Statement" (3 July 2012).

¹⁰⁵ Law Society of Upper Canada, "Judge Patricia Aicoli Letter of Intervention and Public Statement" (9 November 2011).

¹⁰⁶ Law Society of Upper Canada, *Report to Convocation*, by Equity and Aboriginal Issues Committee (Toronto: Law Society of Upper Canada, 27 June 2013) at 5 – 7.

269. Chaudhry Zulfiqar Ali had a reputation for determinedly pursuing cases against suspects with powerful and sometimes militant connections, despite receiving repeated death threats. In his roles both as deputy director and chief prosecutor at the FIA, he was heavily involved with several high profile and dangerous prosecutions. He acted as the government's lead prosecutor in the 2008 terrorist attack in Mumbai, India, which killed 166 people. The investigation into this case involved a probe into several members of the Lashkar-e-Taiba militant group, which was ongoing at the time of his murder.
270. He was also leading the prosecution against suspects in the 2007 assassination of former Pakistani Prime Minister, Benazir Bhutto. In connection with this case, the prosecutor was pursuing charges against several suspected Taliban militants, and had also recently ordered the arrest of former military ruler Pervez Musharraf. It is speculated in various news outlets that Chaudhry Zulfiqar Ali's killing may be connected to his involvement in these two particularly high profile cases.¹⁰⁷

¹⁰⁷ *Ibid.*

International Human Rights Advocates Expanding Access to Justice

271. Expanding access to justice is precarious work for many lawyers and judges in their countries. Tracking the whereabouts of human rights advocates and judges is difficult. Often these individuals go into hiding or have been disappeared. However, sometimes news reports or letters from the lawyers or judges families provide information into where the lawyers or judges are and how they are continuing their work of expanding access to justice.

China

Chen Guangcheng

272. In 2006, the Law Society intervened on behalf of Chen Guangchen, the human rights lawyer who is blind, who is known for advocating for women's rights, land rights and the welfare of the poor. Today, he is living outside of China. After escaping China to the American Embassy in Beijing, Chen Guangchen has been living in the United States where he has been granted asylum. For one year, he was a fellow at New York University and is now a visiting fellow at the Catholic University of America.¹⁰⁸ He continues to lecture and speak out on human rights issues and the need for legal reform in support of China's vulnerable populations.

Iran

Nasarin Sotoudeh

273. On January 13, 2013, Nasrin Sotoudeh, who was sentenced to a total of 11 years in prison and banned from both practicing law and leaving Iran for 20 years, was temporarily freed after spending more than two years in jail. She was reunited with her husband and two young children.¹⁰⁹ Nasarin Sotoudeh was among 11 political prisoners freed by the Iranian government. The year before,

¹⁰⁸ "Chen Guangcheng, Famed Activist, Says Shen Yun is Inspiring" *Epoch Times* (14 April 2014), online: <<http://www.theepochtimes.com/n3/620930-chen-guangcheng-famed-activist-says-shen-yun-is-inspiring/>>.

¹⁰⁹ "Iran: Nasrin Sotoudeh 'among freed political prisoners'", *The BBC* (18 September 2013), online: <<http://www.bbc.com/news/world-middle-east-24151298>>.

she was awarded the European Parliament's 2012 Sakharov Prize for Freedom of Thought.

274. On April 2, 2014, Iran's Intelligence Ministry summoned her in for questioning. This came days after a video of her voicing support for what she called "prisoners of conscience" was posted online. Nasarin Sotoudeh considers the summons to be illegal and has chosen not to comply at this time.¹¹⁰

Shirin Ebadi

275. In June 2008, the Law Society intervened on behalf of Shirin Ebadi. Four years later, she was awarded a degree of Doctor of Laws, *honoris causa* (LLD) by the Law Society during the June 15, 2012 Call to the Bar ceremony. Shirin Ebadi continues to speak out in defence of human rights and democracy.

Zimbabwe

Beatrice Mtetwa

276. In April 2013, The Law Society intervened on Beatrice Mtetwa's behalf. Beatrice Mtetwa, a prominent human rights lawyer and the former president of the Law Society of Zimbabwe, was arrested while attempting to assist her clients on March 17, 2013. She was released from prison on March 25, 2013.
277. In June 2013, she was tried for obstructing justice and being unruly to the police. Zimbabwe's prosecutors alleged that her shouting "'at the top of her voice,' saying what the police were doing was 'unconstitutional, illegal and unlawful,'" was preventing the police from doing their job. On November 26, 2013, the court dismissed the charges and stated that her presence did not prevent the police from doing their job.¹¹¹

¹¹⁰ "Iranian rights lawyer summoned by ministry", *Saudi Gazette* (2 April 2014), online: <<http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentid=20140402200547>>.

¹¹¹ "Beatrice Mtetwa: Zimbabwe lawyer acquitted", *BBC News* (26 November 2013), online: <<http://www.bbc.com/news/world-africa-25105987>>.

Responses to the Law Society's Interventions

278. From time to time, the Law Society receives responses to its intervention efforts.¹¹² Numerous lawyers from foreign countries have noted that public interventions from organizations such as the Law Society are helpful in informing the community that human rights violations of lawyers and judges do not go unnoticed.
279. The Law Society intervened in Justice Afiuni's case and received acknowledgements of the intervention. On December 9, 2009, Judge Maria Lourdes Afiuni was arrested by intelligence officers in Venezuela after ordering the conditional release pending trial of Eligion Cedeño. She was eventually committed to house arrest. The Law Society intervened in the case in May 2010 through a letter of intervention and a public statement. On December 13, 2011, a judge extended the measure of house arrest against Judge Afiuni by two years. The Law Society intervened again through a letter of intervention. There was a strong response to the Law Society's intervention. The public statement was released in newspapers in Venezuela and read on television. Justice Afiuni was also informed of the public statement and she expressed her gratitude for the Law Society intervention.
280. In 2012, the Law Society intervened in the case of lawyers in Myanmar who were disbarred as a result of their legitimate political and professional activities. These lawyers, who were reinstated to the practice of law, thanked the international community and the Law Society for their effort to assist them.

¹¹² To date, the Law Society has received four responses from foreign authorities to its letters of intervention. The Law Society sent an intervention letter dated November 27, 2006, to the government of the Philippines expressing concern over reports of attacks and killings of lawyers in the Philippines. The Law Society received a reply dated February 14, 2007, from the National President of the Integrated Bar of the Philippines, acknowledging receipt of the letter and thanking the Law Society for its concern. In February 2007, the Law Society sent a letter of intervention to the Georgian authorities in support of a lawyer who had been accused of corruption while he himself was investigating allegations of corruption in a prison. The Law Society received a reply dated March 28, 2007 from the Office of the Prosecutor General of Georgia assuring the Law Society that all necessary measures were being taken to ensure the interests of justice in this case. In 2011, the Law Society sent a letter of intervention to the President of the Republic of Colombia and received a letter indicating that the letter was sent to the Ministry of Foreign Affairs for their consideration. In July 2013, the Law Society intervened in the case of two lawyers in Russia and received a response from the General Investigative Directorate of the Investigative Committee of the Russian Federation for the North Caucasus Federal District indicating that they were considering the matter.

281. The Law Society has intervened a number of times in the cases of human rights lawyers in Iran who are facing harassment, arrest and imprisonment as a result of their work. When Dr. Shirin Ebadi was at the Law Society, she indicated to then Treasurer Pawlitza the importance of the Law Society intervening in support of lawyers in Iran.
282. More recently, the Law Society interventions in support of Madam Justice Bandaranayake in Sri Lanka received considerable media attention and were positively received.
283. The Law Society also received a response from the Law Society of England and Wales regarding its intervention in 2014 in the cases of lawyers who represent the LGBTI community in Uganda and Nigeria. The Law Society of England and Wales indicates its concern over the matter and has stated that it will monitor the situation. The Law Society has also been thanked by lawyers for its intervention in the case.

TAB 6.2.3

FOR INFORMATION

EQUITY LEGAL EDUCATION AND RULE OF LAW SERIES CALENDAR Winter 2016 - Summer 2016

BLACK HISTORY MONTH EVENT

Date: February 9, 2016

Time and Location:

Presentations: 5:30 to 7:15 p.m. in the Lamont Learning Centre*

Reception: 7:15 p.m. to 8:30 p.m. in Convocation Hall

*This program is also available via simultaneous webcast

Description: The Law Society of Upper Canada and the Canadian Association of Black Lawyers (CABL) will be hosting their annual celebration in honour of Black History Month. Additional details will follow closer to the event date.

Additional information about this event will be posted here shortly:

www.lawsocietygazette.ca/events/

INTERNATIONAL WOMEN'S DAY EVENT

Date: March 8, 2016

Time and Location:

Panel Discussions: 4:00 to 6:00* p.m. in the Lamont Learning Centre

Reception: 6:00 to 8:00* p.m. in Convocation Hall

*exact time to TBC

Description: The Law Society of Upper Canada, The Barbara Schlifer Clinic, The Women's Law Association of Ontario, The Women Lawyers' Forum of the Ontario Bar Association and the Women's Legal Education and Action Fund will be hosting their annual event in honour of International Women's Day. Additional details will follow closer to the event date.

JOURNÉE INTERNATIONALE DE LA FRANCOPHONIE

Date: March 22, 2016

Time and Location: 5:00-7:00* p.m. in Convocation Hall

*exact time to TBC

Description: The Law Society of Upper Canada, the Ontario Bar Association and the Association of French Speaking Jurists of Ontario (AJEFO) will be hosting their annual event celebrating the International Day of the Francophonie. Additional details will follow closer to the event date.

DIVERSE CAREERS FOR WOMEN IN LAW EVENT

Date: April 19, 2016

Time and Location: 4:00-8:00* p.m. Panel discussion and reception in Convocation Hall

*exact time TBC

Description: The Women's Law Association of Ontario and the Law Society of Upper Canada will present their annual panel discussion and reception to promote diverse careers for women in the legal profession. Additional details will follow closer to the event date.

MENTAL HEALTH AWARENESS EVENT

Date: May 3, 2016

Time and Location:

Panel Discussion: 4:00 – 6:00* p.m. in the Lamont Learning Centre

Reception: 6:00 – 8:00* p.m. in Convocation Hall

*exact time to TBC

Description: In honour of Mental Health Week, the Law Society will be hosting a panel discussion and reception focused on mental health and fostering wellness in the legal profession. Additional details will follow closer to the event date.

HOLOCAUST REMEMBRANCE DAY EVENT

Date: May 5, 2016

Time and Location:

Panel Discussion: 4:00 – 6:00* p.m. in the Lamont Learning Centre

Reception: 6:00 – 8:00* p.m. in Convocation Hall

*exact time to TBC

Description: The Law Society, the Human Rights League of B'nai Brith and the Canadian Race Relations Foundation will be hosting their annual event to commemorate Yom HaShoa, or Holocaust Remembrance Day. Additional details will follow closer to the event date.

ASIAN AND SOUTH ASIAN HERITAGE MONTH EVENT

Date: May 17 or 19, 2016 (TBC)

Time and Location:

Panel Discussion: 4:00 – 6:00* p.m. in the Lamont Learning Centre

Reception: 6:00 – 8:00* p.m. in Convocation Hall

*exact time to TBC

Description: The Law Society, the Canadian Association of South Asian Lawyers, the Federation of Asian Canadian Lawyers and the South Asian Bar Association of Toronto will be hosting their annual event in celebration of Asian and South Asian Heritage Month. Additional details will follow closer to the event date.

ACCESS AWARENESS EVENT

Date: May 31, 2016

Time and Location:

4:00 – 8:00* p.m. Panel discussion and reception in the Lamont Learning Centre

*exact time to TBC

Description: The Law Society and the ARCH Disability Law Centre will be hosting their annual event in honour of Access Awareness Week. Additional details will follow closer to the event date.

ABORIGINAL HISTORY MONTH EVENT

Date: June 23, 2016 (TBC)

Time and Location:

Panel Discussion: 4:00 – 6:00* p.m. in the Lamont Learning Centre

Reception: 6:00 – 8:00* p.m. in Upper and Lower Barristers Lounges

*exact time to TBC

Description: The Law Society will be hosting its annual event in honour of National Aboriginal History Month. Additional details will follow closer to the event date.

PRIDE WEEK EVENT

Date: June 28, 29, or 30, 2016 (TBC)

Time and Location:

Panel Discussion: 4:00 – 6:00* p.m. in the Lamont Learning Centre

Reception: 6:00 – 8:00* p.m. in Convocation Hall

*exact time to TBC

Description: The Law Society and the Sexual Orientation and Gender Identity Section (SOGIC) of the Ontario Bar Association will be hosting their annual Pride Week discussion and reception. Additional details will follow closer to the event date.

NOTE: A number of the above events will also be available via simultaneous webcast. Additional information will be sent to benchers within 1-2 months of the event date, and will be posted here: <http://www.lawsocietygazette.ca/events/>



TAB 7

**Report to Convocation
January 28, 2016**

Audit & Finance Committee

Committee Members

Christopher Bredt (Co-Chair)

Peter Wardle (Co-Chair)

Michelle Haigh (Vice-Chair)

John Callaghan

Suzanne Clément

Paul Cooper

Teresa Donnelly

Seymour Epstein

Rocco Galati

Vern Krishna

Janet Leiper

Catherine Strosberg

Purpose of Report: Decision and Information

**Prepared by the Finance Department
Wendy Tysall, Chief Financial Officer, 416-947-3322 or wtysall@lsuc.on.ca**

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LibraryCo Inc. Financial Statements for the nine months ended
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COMMITTEE PROCESS

1. The Audit & Finance Committee (“the Committee”) met on January 13, 2016. Committee members in attendance were Christopher Bredt (Co-Chair), Peter Wardle (Co-Chair), Michelle Haigh (Vice-Chair), John Callaghan, Suzanne Clément, Paul Cooper, Teresa Donnelly (phone), Seymour Epstein, Vern Krishna, Janet Leiper and Catherine Strosberg (phone)
2. Other Benchers in attendance: Derry Millar.
3. Law Society staff in attendance: Robert Lapper, Wendy Tysall, Diana Miles, Brenda Albuquerque-Boutilier, Sophia Sperdakos (phone) and Andrew Cawse.
4. Also in attendance: Kathleen Waters and Steve Jorgensen (LAWPRO).

FOR DECISION

LAW SOCIETY FUNDING OF COORDINATOR FOR LAWYERS FEED THE HUNGRY PROGRAMS

MOTION

5. That Convocation approve the funding for two years of a new Law Society fundraising and stakeholder management coordinator dedicated to support the Lawyers Feed the Hungry programs in all Ontario centres and assist the Toronto program in moving toward a self-sustaining model over two years. The estimated cost of \$100,000 per annum will be funded from the Law Society's contingency in 2016 and the operating budget in 2017.

Introduction

Law Society Foundation

6. The Law Society Foundation ("Foundation") is a registered Canadian charity administered by The Law Society of Upper Canada. Funding for the Foundation's programs is totally dependent on donations from the legal and broader community, and as such, fundraising is critical to its sustainability. The Foundation receives only in-kind support from the Law Society.
7. The Foundation was originally established to manage funds raised from the legal profession to provide financial assistance to law students. Since then, the Foundation's mandate has expanded to promoting legal education in Ontario; to preserving objects of historic significance to Canada's legal heritage; and, of direct relevance to this material, providing hunger relief to those in need through the Lawyers Feed the Hungry Program ("LFTH"). Bursaries and grants now only comprise 8% of the Foundation's expenses with virtually all other expenses devoted to hunger relief services.
8. At the end of 2015, the Foundation's fund balances were made up of approximately \$2.08 million in endowment funds, \$825,000 in restricted funds and \$468,000 in collections.
9. The five LFTH programs are all considered restricted funds, with the funds available at the end of 2015 for the operation of all the hunger relief programs at approximately \$770,000 and the cost of running the programs being about \$525,000. Of these balances, the Toronto program has an available fund balance of approximately \$600,000 and an annual cost of about \$415,000.

10. Trustees of the Foundation are Ian Hull (Chair), Michael Lerner (bencher), Derry Millar (bencher), Catherine Strosberg (bencher) and Sidney Troister (bencher).

Lawyers Feed the Hungry

11. To assist in understanding how the request for additional resources has been arrived at a short chronology of the Foundation's hunger relief program is set out below.

1998	The Toronto Lawyers Feed the Hungry Program is started, serving a meal to 100 people once a week. There is an implicit understanding that no Law Society resources will be devoted to the program. It is run by a small core group, with the Foundation issuing tax receipts.
1998 - 2015	The program expands to currently serving about 60,000 meals a year. Meals are served in the Law Society's cafeteria on Wednesday nights, Thursday mornings, Friday nights and Sunday mornings and there is a lunch program at the Jarvis Street courthouse. A full-time coordinator, primarily arranging food, and a part-time cook supports the program, paid by the Foundation.
1998 - 2015	The program expands to London, Ottawa, Windsor and Barrie
2009	A cy près award of \$1 million is received, providing a substantial financial buffer. These awards are now typically directed to the Law Foundation of Ontario.
2013	<ul style="list-style-type: none"> • the cy près funds are fully expended • the program founder decides to play a less active role • the lead Toronto Program volunteer coordinators start playing an active role in fundraising requiring more support • the program reduces services such as eliminating the provision of bagged lunches
2014	A fundraising committee ¹ is established whose initiatives require support.

Rationale

12. This request was initiated by the trustees of the Foundation as the LFTH programs have reached a sufficient size and maturity to conclude that they need appropriate administration to properly support fundraising and stakeholder management. In particular, fundraising has become a critical part of the Toronto program and is complicated by the proliferation of stakeholders. It is intended that the coordinator would be employed by the Law Society and provide services to all the LFTH programs, similar in the manner to which, other, in kind support is provided. The coordinator will be managed by the Law Society.

¹ comprising the Foundation's Chair, two Toronto Program lead volunteers, a representative from the Toronto Lawyers Association's Board and the Law Society's Senior Manager, Accounting

13. The administrative infrastructure and support needed to operate the Foundation is provided by the Law Society, in-kind, through services delivered by Accounting, Payroll, Accounts Payable and Purchasing in the Finance department; the CFO's Office; Catering; Communications & Marketing; Security; Human Resources; Office of General Counsel; and Equity.
14. The Ottawa LFTH partners with the Ottawa Mission to serve meals at the Ottawa Mission, providing more than 5,000 meals a year,
15. The London LFTH has provided more than \$25,000 annually to most of London's "soup kitchens" and meal programs over the past decade. A Sunday night soup kitchen is also led and staffed once per month by volunteers and funding is also provided for various meal programs, community gardens and nutrition classes.
16. The Windsor LFTH serves an average of 200 guests per meal, twice a month at the Downtown Mission and provides weekly food supplements for needy children.
17. A fifth LFTH is launching in Barrie and another in Hamilton is being assessed.
18. The requested new resources will primarily, but not exclusively, be directed at the Toronto LFTH because its scale is so much greater than the other hunger relief programs. Revenues and expenses for the 2014 financial year for the Toronto LFTH program are summarized:

Fundraising Revenues	\$313,000
Other Donations	115,000
Other Income	4,000
TOTAL REVENUES	<u>\$432,000</u>
Program Operations	\$356,000
Fundraising Costs	56,000
Other	7,000
TOTAL EXPENSES	<u>\$419,000</u>

19. The numbers do not present a complete picture of the cost of operating each program as they are largely dependent on volunteers and in-kind support. It is difficult to maintain the hunger relief programs at break even. Significant fundraising efforts are required and have been carried out primarily by volunteers with support by Law Society staff.

Key Issues and Considerations

20. As a result of the increase in fundraising efforts, the level of support from the Law Society has approximately doubled since 2013 and anticipated needs and initiatives are expected to continue to increase. There are currently numerous innovative but disparate fundraising efforts for all the hunger relief programs and the Law Society, with its current staff complement and abilities is not able to provide the level of fundraising and stakeholder management support now needed by the Foundation.
21. Apart from the day-to-day administration, without the appropriate support in place to coordinate and manage fundraising and volunteer efforts, the concerns are that there may be:
 - Missed fundraising opportunities affecting the sustainability of the Programs,
 - An inability to manage fundraising efforts and,
 - Risk to continued volunteer and partner engagement.

Options

22. Some options considered by the Foundation's board to address the LFTH Programs' resource requirements related to fundraising and stakeholder management are:
 - a) The current request, that is for the Law Society to retain the resources needed to handle fundraising and stakeholder management funded by the Law Society.
 - b) Retain the resources needed to handle fundraising and stakeholder management funded by the Foundation. This option runs the risk of depleting the Foundation's resources at a faster rate.
 - c) Move the Toronto Program to a delivery model similar to that of the Ottawa, Windsor or London Programs, which are based on partnering with local missions to deliver meals or providing grants to agencies involved in hunger relief. This may dilute program engagement and services to the Toronto program guests but would reduce overall program costs and support from the Law Society for administration, facilities, etc. Payments to outside agencies would be limited to the funds available.

Financial Impact

23. The costs of the new resource are estimated at approximately \$100,000 per annum comprising remuneration and support services. An example of support services are the posters and publicity requirements associated with the program.

24. It will be difficult to identify the incremental funds raised by the new resource, but it does ensure that fundraising efforts and opportunities will be optimized, with the goal to move to a self-sustaining model over two years. The impact of these new resources will not just be measured in additional fundraising but also in more effective and committed volunteers and better use of resources provided by other stakeholders.
25. Supervision of the coordinator will fall to Law Society management as part of the in-kind contribution to the program.
26. If the hiring is approved for 2016, the proposal is to fund the expense from the contingency which was budgeted at \$1 million. The motion limits the support to two years so it would be included in the operating budget for 2017 and re-assessed prior to the 2018 budget.

Summary

27. The LFTH has become an integral part of the Law Society's reputation and culture. The requested resources would provide the best result for the volunteers, many of whom are members of the Law Society and the judiciary and the guests of the program who have come to rely on the meals provided. The LFTH program is a relatively large, relatively high profile philanthropic project in Toronto and Ontario. This funding proposal is an appropriate step to assist in fulfilling the objectives of the program.

TAB 7.2

REPORTS FOR INFORMATION

TAB 7.3

FOR INFORMATION

**LAWYERS PROFESSIONAL INDEMNITY COMPANY
FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2015**

- 28. Convocation is requested to receive the 2015 third quarter financial statements for LAWPRO for information.**

Rationale

29. The statements as approved by the LAWPRO board follow on the next page.



***Report to the Audit and Finance
Committee of the Law Society of
Upper Canada***

January 13, 2016



Report to the Audit and Finance Committee – Law Society

January 13, 2016

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Key Point Summary

- *LAWPRO has sufficient assets to discharge its claims and other liabilities.*
- *At September 30, 2015, LAWPRO held investment assets totaling \$646.2 million, inclusive of cash and cash equivalents and investment income due and accrued. These funds have been invested in accordance with the Company's investment policy. LAWPRO was in compliance with its policy during the nine months ended September 30, 2015 (see pages 11 and 12).*
- *LAWPRO's net income for the nine months ended September 30, 2015 was \$23.9 million compared to a budgeted income of \$2.3 million and a net income of \$14.1 million for the same period in 2014. During the nine months ended September 30, 2015 LAWPRO experienced a total comprehensive income of \$22.3 million, which reflects a decrease in unrealized gains of \$1.6 million on its surplus investments, compared to a budgeted income of \$1.5 million and an income of \$0.8 million for the same period in 2014.*
- *Overall, earned premiums on the mandatory program were substantially at expected levels. Investment income of \$14.7 million for the nine months of 2015 was higher than budgeted levels by \$0.8 million, but lower than the results for the same period in 2014 by \$6.5 million, the key difference being a \$3.0 million decrease in unrealized gains in the matched portfolio in the current year compared to \$1.6 million increase in the same period in 2014.*
- *Claims and adjustment expenses for the nine months ended September 30, 2015 were \$27.8 million lower than budget due to favourable development in prior Fund Years in the E&O program, as well as appreciable discount income due to the recent rising market interest yields. General expenses for the nine months ended September 30, 2015 were \$0.5 million higher than the same period in 2014, though \$0.4 million lower than budget.*
- *LAWPRO is in compliance with all regulatory requirements regarding solvency and filing of financial information. A summary of LAWPRO'S position with respect to standard insurance ratios as at September 30 is included on page 10.*

**LAWYERS' PROFESSIONAL INDEMNITY COMPANY
REPORT TO AUDIT AND FINANCE COMMITTEE - LAW SOCIETY OF UPPER
CANADA
MANDATORY E&O INSURANCE PROGRAM
NINE MONTHS ENDED SEPTEMBER 30, 2015**

PREMIUMS

- The 2015 Ontario mandatory professional liability program performed as expected. Overall, written premiums were slightly below expected levels. At September 30, 2015, there were 25,480 full-time equivalent practitioners, a level which is on target to meet the budgeted amount of 25,563 as new calls come into the program later in the year.
- For 2015, transaction levies were \$0.4 million above budget, and \$0.9 million above the results for the same period in 2014.

CLAIMS & ADJUSTMENT EXPENSES

- During the year, there were 1,503 new 2015 fund year claim files reported, compared with 1,491 new 2014 fund year claim files reported during the same prior year period.
- The number of files remaining open for all fund years at September 30, 2015 was 3,731, which is lower than the 3,781 files that remained open at September 30, 2014.
- For all fund years, 1,957 files were activated through September 30, 2015 (including 124 which were reopened) and 2,039 closed. The comparable figures for the nine months ended September 30, 2014 were 1,987 claims files activated (including 127 which were reopened) and 1,795 closed.

On an aggregate basis, for the first nine months of 2015 there has been a significant net favorable development on claims of prior years (in particular fund years 2008, 2010, 2011, 2013 and 2014, offset slightly by an appreciable unfavourable development for fund years 2004 and 2009). Regarding prior year development, in the same period in 2014, there was a significant net favourable development on claims of prior years (in particular fund years 2009, 2011 and 2013 offset somewhat by a large unfavourable development for the fund year 2010).

Lawyers' Professional Indemnity Company**STATEMENT OF FINANCIAL POSITION**

Stated in thousands of Canadian dollars

UNAUDITED

	As at September 30 2015	As at December 31 2014
Assets		
Cash and cash equivalents	16,283	17,328
Investments	625,638	597,280
Investment income due and accrued	4,297	2,012
Due from reinsurers	667	726
Due from insureds	2,660	1,909
Due from the Law Society of Upper Canada	21,836	6,623
Reinsurers' share of provisions for:		
Unpaid claims and adjustment expenses	43,405	44,900
Unearned premiums	1,782	
Deferred policy acquisition expenses	892	
Other receivables	1,704	1,404
Other assets	1,737	1,984
Property and equipment	1,620	1,658
Intangible assets	1,152	1,028
Deferred income tax asset	4,980	5,057
Total assets	728,653	681,909
Liabilities		
Provision for unpaid claims and adjustment expenses	458,383	468,493
Unearned premiums	30,623	769
Unearned reinsurance commissions	381	-
Due to reinsurers	1,679	612
Due to insureds	189	265
Expenses due and accrued	1,540	1,635
Income taxes due and accrued	4,583	1,054
Other taxes due and accrued	367	456
	497,745	473,284
Equity		
Capital stock	5,000	5,000
Contributed surplus	30,645	30,645
Retained earnings	169,499	145,566
Accumulated other comprehensive income	25,764	27,414
	230,908	208,625
Total liabilities and equity	728,653	681,909

Lawyers' Professional Indemnity Company**STATEMENT OF PROFIT OR LOSS**

Stated in thousands of Canadian dollars

UNAUDITED**For nine months ended September 30**

	2015	2014
Revenue		
Gross written premiums	119,324	120,810
Premiums ceded to reinsurers	(7,061)	(7,213)
Net written premiums	112,263	113,597
(Increase) decrease in unearned premiums	(28,072)	(28,063)
Net premiums earned	84,191	85,534
Net investment income	14,684	21,208
Ceded commissions	1,394	1,357
	100,269	108,099
Expenses		
Gross claims and adjustment expenses	51,221	77,530
Reinsurers' share of claims and adjustment expenses	1,106	(3,489)
Net claims and adjustment expenses	52,327	74,041
Operating expenses	12,856	12,359
Premium taxes	2,689	2,730
	67,872	89,130
Profit (loss) before income taxes	32,397	18,969
Income tax expense (recovery)		
- current	8,387	5,109
- deferred	77	(220)
	8,464	4,889
Profit (loss)	23,933	14,080

Lawyers' Professional Indemnity Company**STATEMENT OF COMPREHENSIVE INCOME**

Stated in thousands of Canadian dollars

UNAUDITED**For nine months ended September 30**

	2015	2014
Profit (loss)	23,933	14,080
Other comprehensive income, net of income tax:		
<u>Items that will not be reclassified subsequently to profit or loss:</u>		
Remeasurements of defined benefit plans, net of income tax expense (recovery) of \$0 (2014: \$0)	-	-
<u>Items that may be reclassified subsequently to profit or loss:</u>		
<i>Available-for-sale assets</i>		
Net changes unrealized gains (losses), net of income tax expense (recovery)		
of (\$43) (2014: \$2,023)	(117)	5,613
Reclassification adjustment for (gains) losses recognized in profit or loss, net of		
income tax (expense) recovery of (\$1,216) [2014: (\$1,887)]	(3,374)	(5,232)
Reclassification adjustment for impairments, recognized in profit or loss, net of		
income tax expense of \$663 (2014: \$175)	1,841	484
Other comprehensive income	(1,650)	865
Comprehensive income	22,283	14,945

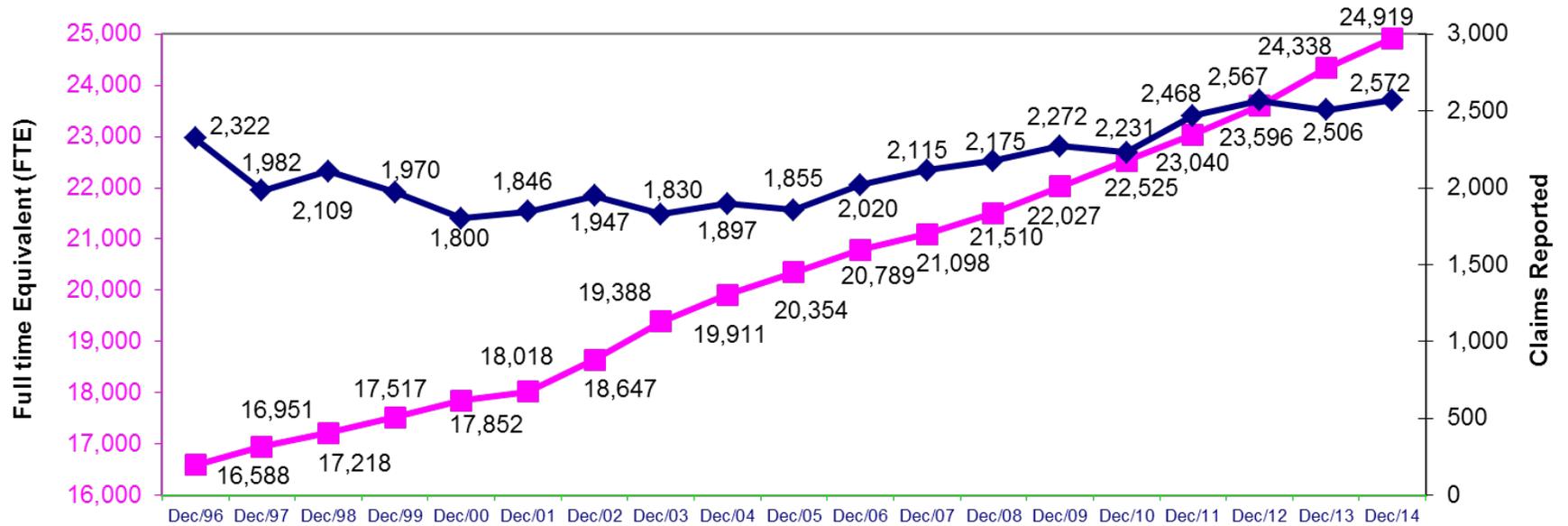
**Lawyers' Professional Indemnity
Company**

STATEMENT OF CHANGES IN EQUITY

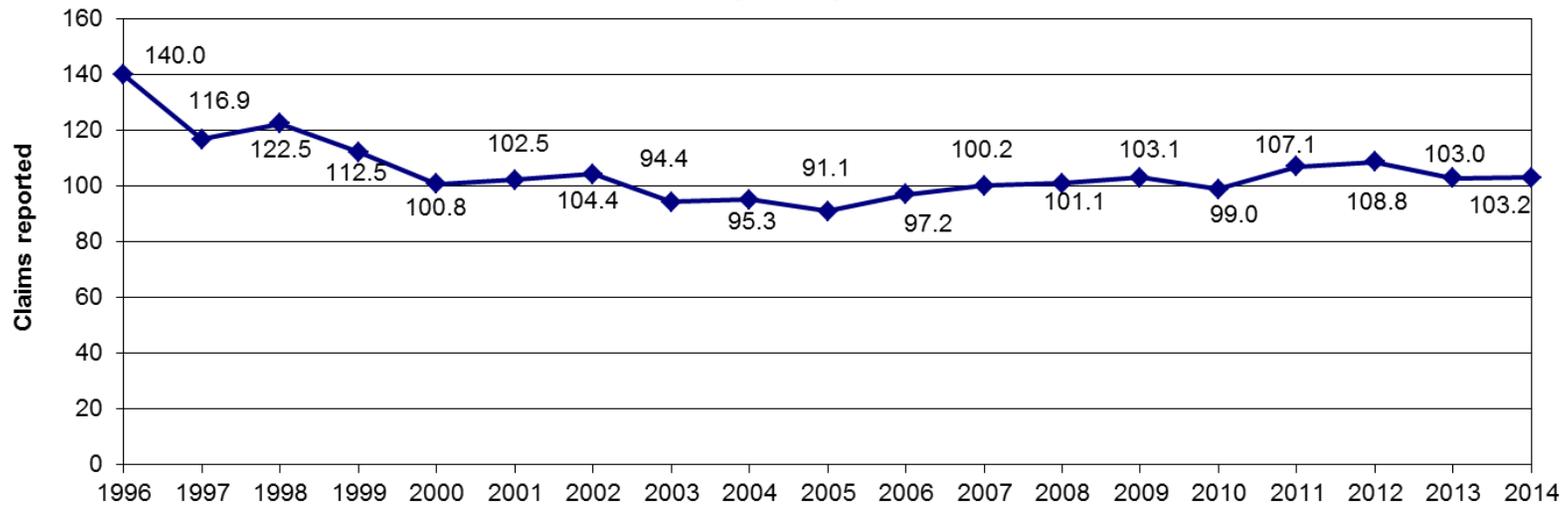
Stated in thousands of Canadian dollars

	Capital stock	Contributed surplus	Retained earnings	Accumulated other comprehensive income	Equity
Balance at December 31, 2013	5,000	30,645	129,076	25,154	189,875
Total comprehensive income for the year			17,060	1,690	18,750
Transfer of defined benefit remeasurements from OCI to retained earnings			(570)	570	
Balance at December 31, 2014	5,000	30,645	145,566	27,414	208,625
Total comprehensive income for the year	-	-	23,933	(1,650)	22,283
Transfer of defined benefit remeasurements from OCI to retained earnings			-	-	
Balance at September 30, 2015	5,000	30,645	169,499	25,764	230,908

New Claims Reported & Full Time Equivalents by Fund Year



Claims reported per 1,000 FTE



Open Claims (for fund years 1995 and forward)

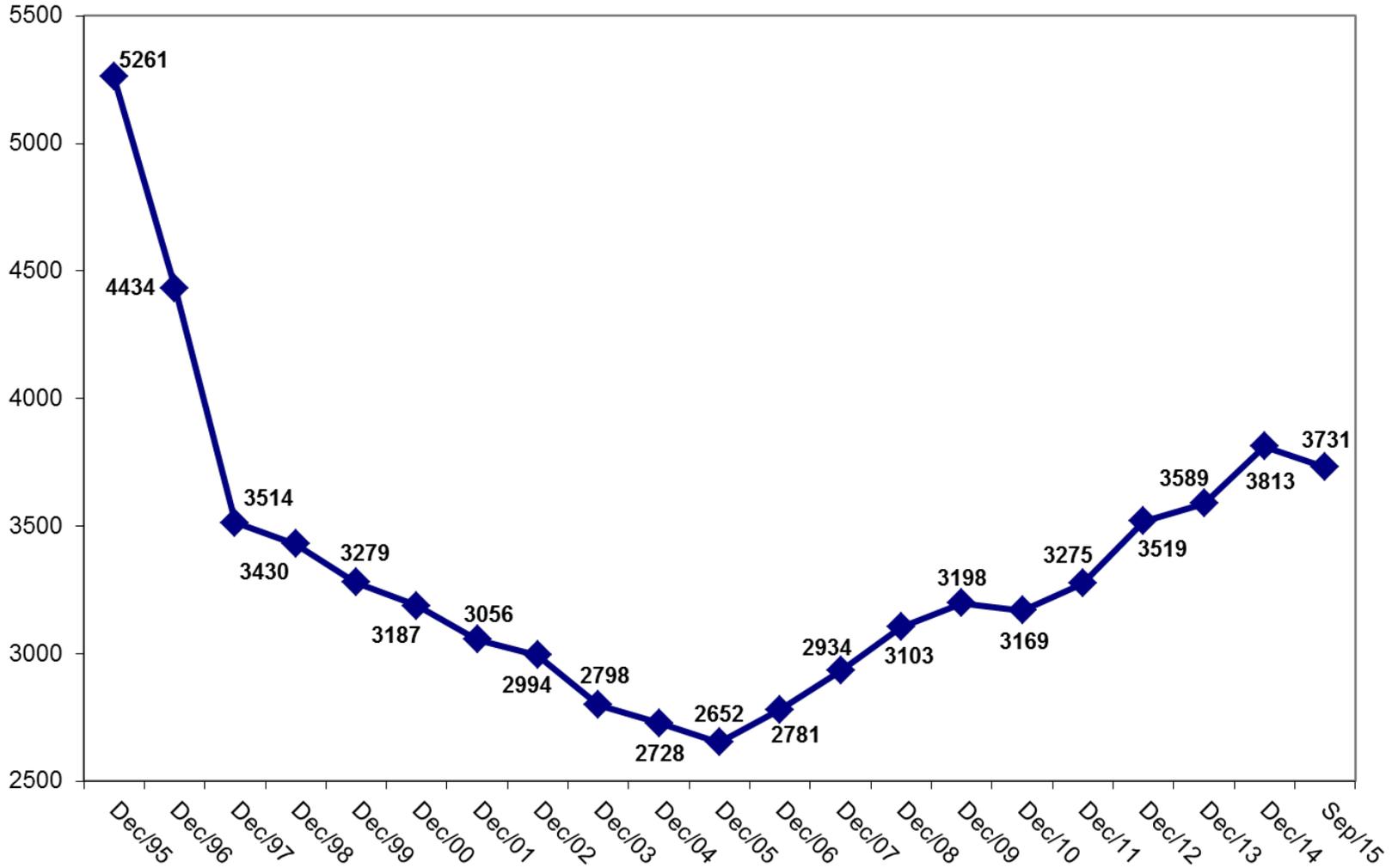


Exhibit 12 – INSURANCE RATIOS¹

TEST	RECOMMENDED RANGE	SEP 2015	DEC 2014	SEP 2014	DEC 2013
I. Solvency Ratios					
1. Minimum Capital Test					
<i>(Measures the excess of capital available to capital required based on a risk-based capital adequacy framework and is used to determine capital adequacy of a company.)</i>	Preferred: 220-230% Minimum: 180%	265%	251%	248%	233%
2. Loss reserves to equity					
<i>(Measures unpaid claim and adjustment reserves as a percentage of surplus and provides a simple test of the leveraged position of the company.)</i>	Preferred: < 225% Maximum: 250%	180%	203%	205%	215%
II. Other Select Ratios					
1. Liabilities as a % of liquid assets					
<i>(Liabilities as a percentage of Cash and other liquid assets-measures company's ability to meet its financial demands.)</i>	Preferred: < 80% Maximum: 105%	71%	70%	74%	70%
2. Net premiums written as a % of surplus					
<i>(Net risk ratio measures the company's ability to absorb financial shocks. The higher the ratio of premiums to surplus, the greater is the potential risk borne by the company in relation to the surplus available to absorb loss variations.)</i>	Preferred: < 80% Maximum: 100%	49%	55%	55%	56%
3. Return on equity					
<i>(Measures an insurer's net income as a percentage of equity.</i> <i>The higher the ratio, the greater the return to shareholders per unit of invested capital. Sustainability of earnings is more important than periods of high returns followed by periods of low returns or losses.)</i>	Greater than 0% ¹ , Net income Comprehensive Income	15%	9%	10%	3%
4. General expense ratio					
<i>(Measures an insurer's general expenses, excluding commissions, as a percentage of net earned premiums.). This ratio should be maintained at lower than or equal to comparable small insurance companies.</i>	Up to small insurance company benchmark (28% as at Dec 2014)	18%	18%	18%	19%
5. Optional business segment					
<i>(Excess program and TitlePLUS title insurance) is planned to operate on a break-even or better basis.</i>	Greater than \$0 (stated in '\$'000s)	123	2,049	1,451	993

Note:

1. Sufficient to maintain/grow MCT.

Better Than Range
Within Range
Outside of Range



CIBC Asset Management Inc.
18 York Street, Suite 1400
Toronto ON M5J 2T8
Tel: 416-364-5620
Fax: 416-364-3286

Confidential

November 3, 2015

Subject: Quarterly Compliance Report as at September 30, 2015
for Lawyers' Professional Indemnity Company

As of and for the quarter ending September 30, 2015, we hereby certify that to the best of our knowledge the investments in the Lawyers' Professional Indemnity Company portfolio were in compliance, based on our records which are issued on a trade date basis, in accordance with the Investment Policy Statement dated January 1, 2015.

Yours truly,

A handwritten signature in black ink, appearing to read "Deborah Lewis", written in a cursive style.

Deborah Lewis, CFA
First Vice President



GESTION DE PLACEMENTS GLOBALE
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October 30th, 2015

Lawyer's Professional Indemnity Company
C/O Ms Kathleen A. Waters, President & CEO
250 Yonge Street, Suite 3101
P.O. Box 3
Toronto, Ontario
M5B 2L7

SUBJECT: COMPLIANCE CERTIFICATE

Dear Ms. Waters,

This is to confirm that, at the end of each month of the quarter ending September 30th, 2015, Letko Brosseau was in compliance with the requirements of the Statement of Investment Policies and Procedures, effective January 1st, 2015. To the best of our knowledge, we have no reason to believe that we were not in compliance with all such requirements at any other time during such period.

Should you require additional information, please do not hesitate to contact us at your convenience.

Regards,

Original letter signed by Peter Letko

Peter Letko
Letko Brosseau & Associates Inc.
PL/mn

TAB 7.4

FOR INFORMATION

**LIBRARYCO INC.
FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2015**

- 30. Convocation is requested to receive the 2015 third quarter financial statements for LibraryCo for information.**

Rationale

31. The statements as approved by the LibraryCo board follow on the next page.



LIBRARYCO INC.
FINANCIAL REPORT

For the nine months ended September 30, 2015

KEY POINT SUMMARY

Overall Results

32. Results for the third quarter identify a surplus of \$95,066 compared to a budgeted deficit of \$45,995 for the 9 months or \$100,000 deficit for the year. The positive variance from budget of \$141,063 comprises relatively small variances spread across most expense categories and larger variances related to contingency, consulting fees, the group benefit plan and the bursaries, capital and special needs grants expense categories.

Revenues

33. The Law Society grant (line 1) is the transfer to LibraryCo. This transfer includes amounts for central administration and quarterly transfers to the 48 libraries. The actual grant from the Law Society was nearly \$5.8 million and matched budgeted amounts for the period.
34. A Law Foundation of Ontario grant (line 2) was not provided to LibraryCo for 2015. In 2014, this grant was used to subsidize the purchase of electronic resources.
35. Other Income (line 3) consists of investment income on LibraryCo's cash and short term investments.

Expenses

36. Total expenses (line 18) were \$5,681,634 compared to a budgeted total of \$5,817,996.
37. Salaries and benefits (line 5) were nil compared to 2014 as LibraryCo no longer has any staff.
38. Administration expenses (line 6) of \$322,500 represents the service fee paid to the Law Society and equals budget. The fee was reduced from 2014.
39. Professional fees (line 7) include audit expenses and consulting fees. The consulting fee budget remains unspent which has resulted in a positive variance of \$15,972.
40. Contingency (line 8) was created during the budget reallocation approved by the Board in March. The \$85,541 budget was allocated to the remaining three quarters of 2015 and remains unused at the end of the third quarter.

41. Other head-office expenses (line 9) include LibraryCo publications (such as the production of the Annual Report), head office courier/postage costs, LibraryCo's Directors and Officers (D&O) insurance, bank charges, web initiatives and website maintenance costs, the cost of providing most libraries with a toll free telephone number, miscellaneous expenses and meeting expenses (including travel and accommodation) related to board meetings, audit and finance committee and transition committee meetings. Totalling \$26,188, other head-office expenses are lower than budget for the period by approximately \$15,024 primarily as a result of underspending for publication expenses within LibraryCo, 1-800 line charges, board of directors' meetings, web initiatives and miscellaneous expenses.
42. Electronic product expenses of \$254,250 (line 11) are in line with the agreement with LexisNexis and budget.
43. Group benefits and insurance (line 12) of \$225,953 consist of the Group Benefits for enrolled library staff and library D&O and property insurance. Group benefits and insurance are lower than budget by about \$26,647 as group benefits premiums are negotiated after the budget and these are budgeted conservatively.
44. Other centralized expenses (line 13) of \$59,514 includes continuing education bursaries for library staff, library courier costs for inter-library loans of materials, publications provided by the Law Society to each of the 48 law libraries, the Conference for Ontario Associations' Libraries (COLAL) meeting expenses (yearly meeting held in October/November – covers meeting costs including travel and accommodation for library staff), and the County & District Law Presidents' Association (CDLPA) meeting expenses for the Library Committee. Other centralized expenses are lower than budget by \$7,716 due to underspending in continuing education bursaries, publications and courier costs.
45. County and District law libraries grants (line 15) are in line with budget at \$4,757,804.
46. Bursaries, capital and special needs grants (line 16) consist of pre-approved computer refreshment grants, special needs grants and conference bursaries for library staff.

Balance Sheet

47. Cash and short-term investments (line 1) of \$714,068 consists of cash and a one year GIC.
48. Accounts receivable (line 2) are related to long term disability benefits premiums paid by LibraryCo on the libraries' behalf for the past quarter. These receivables are usually repaid early in the next quarter.

49. Prepaid expenses (line 3) primarily represents the property and D&O insurance policies for LibraryCo and the libraries which were renewed at the end of April.
50. Accounts payable and accrued liabilities (line 5) are about \$23,500 lower than 2014. The monthly electronic products expense is now being paid in the current month in which it is billed. In the prior year, the monthly electronic products expense was paid in the month following receipt of the invoice.
51. The General Fund has increased by \$95,066 in 2015 to \$236,422. The 2015 budget forecast a decrease of \$100,000 during the year primarily if the contingency is used. The Reserve Fund has a balance at the end of June of \$500,000 comprising a general component of \$200,000, a capital and special needs component of \$150,000, and a staffing and severance component of \$150,000 in accordance with Board policy.

LIBRARYCO INC.**Schedule of Actual and Budgeted Revenues and Expenses****Stated in Dollars***For the nine months ended September 30***Unaudited**

	2015	YTD		Annual	2014
	Actual	Budget	Variance	Budget	Actual
REVENUES					
1 Law Society of Upper Canada grant	5,772,001	5,772,001	-	7,696,000	5,623,890
2 Law Foundation of Ontario grant	-	-	-	-	542,000
3 Other Income	4,699	-	4,699	-	6,242
4 Total revenues	5,776,700	5,772,001	4,699	7,696,000	6,172,132
EXPENSES					
Head office/administration					
5 Salaries and benefits	-	-	-	-	106,840
6 Administration	322,500	322,500	-	430,000	395,775
7 Professional fees	11,028	27,000	15,972	36,000	16,468
8 Contingency	-	57,000	57,000	85,541	-
9 Other	26,188	41,212	15,024	53,325	38,304
10 Total Head office/administration expenses	359,716	447,712	87,996	604,866	557,387
Law Libraries - centralized purchases					
11 Electronic products and services	254,250	254,250	-	339,000	739,332
12 Group benefits and insurance	225,953	252,600	26,647	337,345	232,871
13 Other	59,514	67,230	7,716	126,650	74,577
14 Total Law Libraries - centralized purchases	539,717	574,080	34,364	802,995	1,046,780
15 County and District law libraries - grants	4,757,804	4,757,804	-	6,343,739	4,710,697
16 Bursaries, capital and special needs grants	24,397	38,400	14,003	44,400	35,701
17 Total County and District Law Libraries Expenses	4,782,201	4,796,204	14,003	6,388,139	4,746,398
18 Total expenses	5,681,634	5,817,996	136,364	7,796,000	6,350,565
19 Surplus (Deficit)	95,066	(45,995)	141,063	(100,000)	(178,433)

This statement includes the revenues and expenses of the LibraryCo entity only.

LIBRARYCO INC.
Balance Sheet
Stated in Dollars
As at September 30
Unaudited

	2015	2014
Assets		
Current Assets		
1 Cash and short-term investments	714,068	707,798
2 Accounts receivable	19,980	20,188
3 Prepaid expenses	54,079	51,755
4 Total Assets	788,127	779,741
Liabilities, Share Capital and Fund Balances		
Liabilities		
5 Accounts payable and accrued liabilities	51,505	75,038
6 Total Liabilities	51,505	75,038
Share Capital and Fund Balances		
7 Share capital	200	200
8 General fund	236,422	204,503
9 Reserve fund	500,000	500,000
10 Total Share Capital and Fund Balances	736,622	704,703
11 Total Liabilities, Share Capital and Fund Balances	788,127	779,741

This Balance Sheet includes the financial resources of the LibraryCo entity only.

LIBRARYCO INC.
Statement of Changes in Fund Balances
Stated in Dollars
For the nine months ended September 30

	2015		2014	
	General Fund	Reserve Fund	Total	Total
1 Balance, beginning of year	141,356	500,000	641,356	882,936
2 Surplus (Deficit)	95,066	-	95,066	(178,433)
3 Balance, end of period	236,422	500,000	736,422	704,503

This statement includes the fund balances of the LibraryCo entity only.



RECENT ACTIVITIES

Abacus Data Study

TAG will be working with Abacus Data to generate findings that public legal education and information providers can use to better enhance the development and delivery of their materials. The research design is currently in progress however emphasis will be placed on collecting cultural and linguistic data. Findings from this study will inform the work of TAG clusters and will be available to advance the Law Society's strategic priorities.

Maytree Foundation Connecting for Change Conference

On December 10th Sabreena Delhon facilitated a session on the Digital Divide at the Maytree Foundation's Connecting for Change Conference. Held on International Human Rights Day, the event included 350 policy-makers, academics, journalists and representatives from non-governmental organizations. The aim was to create new connections and explore ways to develop innovative anti-poverty solutions. Links made on this day will inform the work of TAG's Inclusive Technology cluster which is looking at ways that technology can be used to enhance access to justice for marginalized populations.

CLUSTERS

Libraries and Justice: Innovative Access for Rural and Remote Communities

Building on the success of the Libraries and Justice: Innovative Access for Rural and Remote Communities event that was held in the fall, TAG will be working with the Southern Ontario Library Service (SOLS) to collect data about the needs of library staff and patrons. Over the next few weeks, library staff will be surveyed about the access to justice needs of their patrons. SOLS will assist with extending the survey to its northern equivalent, Ontario Library Service – North. SOLS recently reported that its blog post about the fall libraries and justice event had nearly 800 readers which makes it their most popular post in 2015. See links to that post along with others about the event from the PLE Learning Exchange below:

- *Libraries and Justice*
<http://www.sols.org/index.php/blog/entry/libraries-and-justice>
- *Establish, Enhance, Engage: Reflections on a libraries and justice partnerships event*
<http://www.plelearningexchange.ca/establish-enhance-engage-reflections-on-a-libraries-and-justice-partnerships-event>

- *Build on This and Take It Deeper: Reflections on a libraries and justice partnership event*
<http://www.plelearningexchange.ca/build-on-this-and-take-it-deeper-reflections-on-a-libraries-and-justice-partnership-event/>

Public Legal Information (PLEI)

This cluster held its second meeting on December 10th and discussed the different purposes and audiences that motivate the production of PLEI materials. This cluster is looking at ways to reduce duplication and improve links among PLEI providers. The ultimate aim is to find a collaborative way to ensure a level of reliability in the way that these materials are produced and circulated.

Family Law Online - Shared Steps

A pilot version of Steps to Justice was released in early December. The content which is currently available on the CLEO website includes common questions about family, employment and housing law. This is considered a soft launch to capture feedback about format, navigation and structure. A formal launch of the broader vision where content is presented on multiple legal and community websites is scheduled for the coming months. Learn more about Steps to Justice here: <http://www.cleo.on.ca/en/projects/steps-justice-collaborative-online-project>