

1 do per capita and their legal services costs are out of  
2 sight. Too many lawyers is as much against the public  
3 interest as too few and we should bear that in mind  
4 today. Thank you.

5 TREASURER CONWAY: Thank you,  
6 Mr. Wright. Mr. Falconer.

7 Before Mr. Falconer starts, would the  
8 people on the line, on the telephone, please check to  
9 see that they're on mute. At least one person is not  
10 muted. So if you could just take a moment and press  
11 star 6 and determine whether you are muted or not and  
12 stay muted unless you want to be added to the speakers'  
13 list and you can raise your verbal hand at the  
14 appropriate moment. So would everyone on the phone  
15 please try star 6. Thank you. Mr. Falconer.

16 MR. FALCONER: Treasurer, colleagues,  
17 both colleagues here as fellow Benchers and colleagues  
18 who have tuned in via the different forms of electronic  
19 access, I welcome people's participation and I say that  
20 from the point of view of the Law Society of  
21 Upper Canada, it should be proud that we have reached  
22 the stage where transparency is becoming a principle  
23 that is repeated amongst my colleagues. The access  
24 that people have to this debate today is proof positive  
25 that we are capable of not just joining the

1 20th century, but we can even flirt with the  
2 21st century.

3 Mr. Treasurer, colleagues, I say this  
4 from the outset so it is clear where I stand on this  
5 debate. I do not support the abolition of articling.  
6 That, for me, makes the decision tree a little clearer  
7 in terms of what I need to do next in order to, as you  
8 put it, Treasurer, advance the public interest.

9 My first job, in my mind, is to assess  
10 my perception of the public interest. Too many times,  
11 Treasurer, these words are bandied about to defend a  
12 chosen position in a self-serving way. We all have a  
13 version of what the public interest is. It begs the  
14 question, who is the public we are seeking to serve?

15 That's where I, respectfully, have to  
16 disagree, Treasurer, with the notion that the  
17 constituencies who put us in place are not an important  
18 piece to that. I don't say, Treasurer, that you  
19 suggested otherwise, but I do say that I do consider  
20 those who elected me to be an important part of the  
21 public for whom I must advance the public interest.

22 I also consider those outside of the  
23 legal profession, ask myself an important question, who  
24 are they as members of the public?

25 And it doesn't matter if you conduct an

1 analysis that, in effect, looks at the broader public  
2 or the profession. There is something that we  
3 experience on a regular basis within the legal  
4 profession and outside, and it's called discrimination.  
5 And that discrimination and the potential danger of  
6 reinforcing discrimination always causes us to pause  
7 when we handle these difficult issues.

8           Let me cut to the chase on why I think  
9 this feeds into the debate we're having today. We know  
10 that the reality is that as matters currently stand,  
11 the status quo has left a group of people unprotected  
12 in terms of their professional aspirations. Mr. Mercer  
13 broke those numbers down last day and I appreciate that  
14 the, quote unquote, NCAs, the National Committee for  
15 Accreditation candidates, would appear to exist as a  
16 result of their, quote unquote, NCA status. But, to  
17 me, that's like saying that the individuals who get  
18 disproportionately pulled over have more tracksuits and  
19 running shoes and SUVs than the other people.

20           I'm more concerned on who they are.  
21 What I know in my heart and in my experience is they  
22 are not people that are white, that are summering at  
23 Bay Street firms. They are different.

24           So we ask ourselves, as people are left  
25 out, as they are on the outside of the bubble in terms

1 of employment and candidacy, how do we ameliorate it,  
2 how do we address it? How do we address the  
3 disadvantaged? And I can't help it, I'm a lawyer so  
4 I'm stuck using law. Any cursory review of section 15  
5 of the Charter tells you there's two sections, two  
6 subsections to it, Treasurer. There's section 15.1  
7 that provides for equality before and under the law,  
8 regardless of race, national or ethnic origin, colour,  
9 religion, sex, age, mental or physical disability.  
10 But 15.2 of the Charter, 15.2 of the Charter actually  
11 provides for the recognition that nothing about our  
12 equality provisions excludes affirmative actions or  
13 programs aimed at ameliorating disadvantaged  
14 situations.

15 Why do I raise this? Because the number  
16 one criticism, Treasurer, the number one criticism of  
17 the decision to act, which is really what the task  
18 force, majority task force report calls us to do, to  
19 act, the fact of creating two streams actually creates  
20 a discrimination. What we're really struggling with is  
21 we already have two streams. We already have the  
22 discrimination going on and we ask ourselves, how do we  
23 now move in order to ameliorate it?

24 Well, the answer is we can't create one  
25 stream overnight. Yes, the abolition of articling, on

1 its surface, is attractive because, obviously, there is  
2 a mechanism by which some are getting the articles and  
3 some are not. But I don't believe that that is the  
4 only solution. I believe you do have ameliorative  
5 programs, you do have programs aimed at the  
6 disadvantaged, and that the Articling Task Force  
7 majority report is prescribing a process where there is  
8 an opportunity to start addressing and redressing the  
9 wrongs.

10 Do I recognize the reality that taking  
11 the course versus articling will create or feed on the  
12 bias? Yes. And I think those of us who try to debate  
13 this on the basis that there is no actual difference in  
14 quality are missing the point. We are going to be  
15 faced with a bias. There will be people, employers,  
16 important employers, that prefer those who articulated  
17 over those in courses. That is the truth. There is  
18 simply no point in trying to duck that.

19 On the other hand, we are capable, as  
20 the governors of this fine profession, of addressing  
21 that bias head on. Of actually re-educating people, of  
22 actually talking out in the open about it. Of  
23 educating, of discouraging, of potentially  
24 disciplining, if necessary.

25 I don't throw out the baby with the

1 bathwater because it's going to be a tough row to hoe.  
2 I say I have candidates who don't have jobs today and I  
3 want to get them jobs and the only way I know of  
4 getting them jobs is to get them licences.

5 I don't want to throw away all of our  
6 standards of competency on this issue of candidacy and  
7 licensing, so I see the only solution before me, there  
8 is no other motion before Convocation, the only  
9 solution before me as the majority report. I don't  
10 have time to wait anymore. I can't spend more time  
11 debating this. We have to actually move forward. We  
12 have that responsibility.

13 The Equity Committee that I have the  
14 honour of being vice-chair, with Mr. Goldblatt as chair  
15 and Ms. Hare as vice-chair, is -- its entire sine qua  
16 non is to monitor the impacts of Law Society programs  
17 on its profession. We have an obligation to rigorously  
18 monitor the implementation of this pilot program. We  
19 have an obligation to make sure we are not making it  
20 worse and that we are making it better. But that's a  
21 challenge and we have to show up.

22 Finally, I have been worried from day  
23 one that we are going to saddle our fledgling lawyers  
24 with ridiculous financial burdens in an effort to,  
25 quote unquote, save articling. This struck me as

1 wholly unfair. For that purpose -- and I am closing,  
2 Treasurer, because I have been a while -- to that end,  
3 we have proposed a motion that's at tab 9 of Board  
4 Books, page 382. The motion doesn't have a fee per  
5 member, as I'd originally proposed it.

6 I have been persuaded, and I agree with  
7 the thinking, that because we haven't created numbers  
8 for the motion, as in numbers for the pilot project,  
9 creating a number for the contribution is problematic.  
10 But anyone looking at the funding motion will know that  
11 myself and Mr. Goldblatt, who is seconding the motion,  
12 are extremely concerned that we commit today to helping  
13 to shoulder the burden. We are not going to remove the  
14 financial burden. We are going to help shoulder it.

15 If we do that, if we monitor the impacts  
16 on equity, if we take into account and tell the truth  
17 about the biases that are out there and re-educate, I  
18 believe that the majority report approach, it being the  
19 only one before us, is the only way to act at this time  
20 and I thank you for your patience, Treasurer.

21 TREASURER CONWAY: Thank you,  
22 Mr. Falconer. Mr. Sandler.

23 MR. SANDLER: Thank you, Treasurer. I  
24 support the majority report. I find it to propose an  
25 imperfect solution, but the least imperfect of the