



2017-18  
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## Memo

**To:** Law Association Presidents

**From:** Jaye Hooper, Chair

**cc:** FOLA Executive

**Date:** June 27, 2017

**Subject:** Status of negotiations with the Law Society with respect to the future of LibraryCo and the County Law Library System

Dear Presidents,

Further to our memorandum of June 1, we wish to bring you up to date on some developments over the past few weeks and to brief you on the current status, the risks we are facing and our strategy.

*As this memo outlines negotiating strategy with the Law Society, we ask that you keep the contents confidential to the members of FOLA.*

This is a lengthy memo and package of information, but it is critical information and we ask that you pay close attention to its contents.

We welcome your feedback, questions and comments. Please do not hesitate to call me or any member of the Board at any time.

### Timeline and Report on Current Status:

(For a review of the timelines and actions prior to this date, please see Appendix A)

<p>May 29<sup>th</sup>, 2017</p>	<p>In the midst of the post-plenary consultations with FOLA members, the Shareholders (including the Law Society) received a letter from two FOLA members expressing opposition to the LIRN proposal, and in particular the components around staffing.</p> <p>The letter went on to question the authority of FOLA to negotiate on their behalf.</p> <p>That letter was circulated widely among Law Society Benchers as well as library staff across Ontario.</p>
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	<p>In response to this letter, the Law Society ceased all further negotiation until the authority of FOLA’s negotiating position could be confirmed.</p>
June 1, 2017	<p>FOLA sent a memo to all Presidents with a summary of the consultations and an assurance that FOLA would be taking an absolute stance against the staffing proposal, among other matters. (<u>See Appendix B – Memo to Presidents on LIRN 6.1.17</u>)</p>
June 6 and June 20, 2017	<p>FOLA met the Presidents and other representatives of the two Associations who wrote, in two separate meetings to extensively brief them on the status of discussions, to listen carefully to their concerns and provide assurance that those concerns will be conveyed to the Law Society.</p>
June 21	<p>Subsequent to the meeting on June 20 with both Associations, a memo was sent to confirm the outcome of the discussions. Our memo stated that:</p> <ol style="list-style-type: none"><li>1. The Associations will meet and confirm the authority of FOLA to negotiate with the LSUC. If the Associations agree to allow FOLA to continue to negotiate, the Associations will write the shareholders confirming this authority.</li><li>2. FOLA will advise of future meeting dates of the shareholders in advance and will provide a summary of the discussions following those meetings.</li><li>3. FOLA confirms that a base position presented to the other shareholders will be insistence that staffing cannot be transferred from the associations to LIRN. FOLA will also insist on financial accountability and transparency from LSUC relative to how fees paid by lawyers are being paid out for library services currently.</li><li>4. FOLA confirms that its negotiating team will remain Jaye Hooper and Eldon Horner with support from Michael Ras. FOLA will add resources as required.</li><li>5. FOLA will provide copies of the earlier LIRN proposals.</li></ol> <p>This commitment is being made to all Associations, not just the two Associations who wrote. The FOLA Executive is attempting to be as transparent as possible while</p>



	recognizing that we are volunteers and have spent (and are willing to spend) considerable time on this issue.
June 29 <sup>th</sup>	Convocation of the Law Society meets for the last time until September 22, 2017. While not a formal agenda item, it is expected that Benchers will ask Law Society staff for an update on the status. We fear that this report could be negative.

### Where we stand today:

This is an extremely complex matter, made more complex by the nature of our own governance structure, the governance structure of LibraryCo, the politics of the Law Society and the very real desire by all participants to work past their differences in order to build a better system to serve all lawyers.

Because the letter sent by the two Associations paused the process through June, the Law Society staff and Benchers involved (in particular the Audit & Finance Committee) are extremely frustrated and they have expressed impatience. We are concerned that the Law Society could soon take steps toward unilateral action which, we believe, will have deleterious long-term effect on the system.

The Law Society position is that they are acting in the best interests of the 47,000 + members of the Law Society and they have a fiduciary responsibility to all of them. Their belief is that the majority of those 47,000 members would raise uncomfortable questions on the value of LibraryCo and the operations of the current system if given an opportunity. We are confident that we could defend that value, based on solid “access to justice” and “competence” based arguments, but believe it would also be a protracted, expensive and bruising effort to hold on to the status quo, and the status quo is simply unsustainable.

### Explanation of our current shareholder structure of LibraryCo:

LibraryCo’s current governance is structured as such:

**100 Common Shares**, held by the Law Society of Upper Canada.

- The Law Society is also the primary funder – through a levy they charge to all lawyer licensees. This “library levy” is set by Convocation who has the sole authority to determine the appropriate level of this “tax”.
- Another \$500,000/annum is available to the library system through the Law Foundation, which is also controlled by the Law Society. These funds have been held in reserve by the Law Foundation for the past two years awaiting confirmation of a “viable reform plan”.

**75 Special Shares**, held by FOLA

**25 Special Shares**, held by the TLA



- No funding is provided by FOLA or TLA, though many local law associations designate a portion of their member dues to “library” operations. Those funds are not acknowledged by the USA, but FOLA does regularly remind the other shareholder of this fact.

The Board is comprised of four representatives of the Law Society (typically Benchers); three representatives of FOLA and one representative of the TLA. The Chair is rotated every two years and is currently Dirk Derstine, representing the TLA.

The articles of the corporation state that on major issues, the corporation shall act on consensus and there are provisions that give some protection to the rights of the Special Shareholders. Section 8.1 of the USA, however, states that:

*8.1 Term of Agreement.*

*This agreement shall take effect on the date hereof and shall remain in full force and effect until such dates as may be designated by LSUC.*

This provision, coupled with the fact that the Law Society holds the funding authority gives them tremendous leverage in these negotiations.

A full copy of the USA is attached as Appendix C – Unanimous Shareholder Agreement for your reference.

## Risks:

Some corporate lawyers who have examined the Unanimous Shareholder Agreement of LibraryCo have expressed the opinion that we have certain legal rights to protect our interests and that the corporation could not be wound down without FOLA and TLA consenting. The Law Society has expressed an opinion to FOLA and TLA during our discussions that they have an internal legal opinion that states they can act unilaterally to end LibraryCo (referring to Section 8.1, the fact that they are the sole holder of Common Shares and that they are the funding agent).

With that in mind, we believe that unless we can demonstrate progress over the coming few months, two significant, but related risks must be addressed:

- 1) This Fall, the Audit & Finance Committee could reject the LibraryCo proposed budget for 2018 and send it back as either a budget freeze or a cut.
  - Treasurer Schabas has already indicated in his letter of October 4, 2016 that this is likely to happen unless progress is shown toward a reform/revitalization plan. (See Annex 1 – Treasurer’s Letter to LibraryCo Shareholders – Oct42016 and our response, Annex 2 – Response to Treasurer Schabas – 10.12.16)
  - Another budget freeze or cut would continue a trend of over 10 years of steady decline in the finances available to the county law library system and could be devastating to it. The system has been stalled for over 10 years, and on an inflation adjusted basis, has seen a significant erosion. This is untenable for much longer.



- Please note the budget process for 2018 has LibraryCo submitting its budget request by this summer, Audit & Finance considering it in September and Convocation approving it in October/November. This timeline is part of the reason why we cannot slow down activity over the summer.
  - There also appears to be a misconception that the request for funding to the county libraries from LibraryCo. is indicative that funding will be forthcoming or that this request is “from the Law Society”. That is simply not the case. LibraryCo. is requesting your funding applications so that it can prepare a budget for Audit & Finance. Whether Audit & Finance approves that budget is a very separate matter.
- 2) We fear that The Law Society could also trigger 8.1 in the Unanimous Shareholder Agreement and take immediate steps to terminate the LibraryCo Corporation and begin moving operations of LibraryCo “in-house”. In other words, they would likely enact the provisions of their first LIRN proposal. (See Appendix A – Annex 4: LIRN Proposal 1 – March 2017)

We are not in the heads of the Law Society and do not know this with any certainty, but our estimate is that in this scenario, the Law Society will be in a position to determine the level of funding for each Library and will dictate staffing and programming. There would be no guarantee that the Law Society will take the opinions of local Associations or of FOLA into account as they make these decisions.

The Law Society would likely also, in this scenario, develop their own “rational funding formula” based on their own criteria and may, or may not, consult with bodies like FOLA and the local associations. The Law Society has stated, both publicly and privately, that they have no intent of closing locations or “cutting funding”, but that does not preclude location-by-location funding decisions, imposition of their view of ideal staffing levels or programming. They might also impose things like a transfer of employees to the Law Society as a condition of funding. (We are only guessing and this has never been stated by the Law Society, but given the LIRN proposals that have been put forward, it is an educated guess as to the Law Society’s next steps.)

Furthermore, our fear is that unilateral action by the Law Society to “rationalize” the funding formula contains significant risk to many FOLA members. Our position is that it would be much better to grow funding for the entire system than to risk allowing the Law Society to impose their idea of a rational funding formula based on the current envelope. The only viable way to grow funding is to convince the Law Society to raise the “library or competence” levy and the only way to convince Convocation to do this is to meet some of their demands around accountability which are contained in the LIRN proposal.

This is why we believe that many elements of the LIRN proposal put forward by the Law Society are worth consideration and that continuing to negotiate to improve it is our best path forward. We agree with everyone who has stated that the employee transition is unworkable and believe we have alternative solutions that could work much better. But to



meet the demands of the Law Society to increase accountability, improve governance and to invest to modernize, we must be united in our position and work out a deal at the negotiating table.

## Our Commitment to You:

- 1) We will always act in a way that reflects the wishes of our members and act in a way that, we believe, reflects the best interests of our members.

Please keep in mind the FOLA executive are volunteers who are giving up significant time and professional energy to fight for the best interests of the practising bar. Our intent is always to reflect the best interests of members across the Province.

- 2) We are taking steps to increase transparency and inform you of the status of all discussions, at all times. This memo is a big part of that and we hope that you recognize after careful consideration of its content the position we are in and the work that has gone into this matter over the years.

As I am sure you can appreciate, it is extremely challenging to negotiate with 47 chairs at the table, but we are committed to doing our best to keep you informed and reflect your opinions back to the negotiating table.

- 3) We will work with the PRC Committee and conduct regular consultations with both ad hoc groups and the Presidents on a regional basis to ensure that your best ideas for reform are reflected in the final outcome. That said, we need to be nimble and move quickly over the coming months. This is why we have always operated from a set of core principles in our negotiation that were derived from Plenary motions. In future, we will be bringing more voices into the discussion to ensure a broad consensus.

The PRC Committee is meeting June 29<sup>th</sup> and we are looking to strike an ad hoc advisory group with a representative of the Regional, Area and Local libraries. Watch for a separate e-mail on that in the coming days.

As always, if you have any comments, questions or concerns, do not hesitate to raise them with your Regional Representative, with Mike Ras, our Executive Director, or me directly.

***Jaye Hooper***

Chair, Federation of Ontario Law Associations



Attachments:

- Appendix A – Timeline & History of Negotiation
- Appendix B – Memo to Presidents on LIRN – 6.1.17
- Appendix C – Unanimous Shareholder Agreement
- Annex 1 – Treasurer's Letter to Shareholders – Oct.4.2016
- Annex 2 – Response to Treasurer Schabas – Oct.12.2016
- Annex 3 – Resolutions of Plenary
- Annex 4 – LIRN Proposal 1 – March 2017
- Annex 5 – Talking Points for FOLA Executive – March 2017
- Annex 6 – LIRN Proposal 2 – April 2017