

## MINUTES OF CONVOCATION

Thursday, 27<sup>th</sup> February, 2003  
8:30 a.m.

## PRESENT:

The Treasurer (Vern Krishna, Q.C., FCGA), Aaron, Arnup, Banack, Bindman, Boyd, Braithwaite, Campion, Carey, Carpenter-Gunn, Cass, Chahbar, Cherniak, Coffey, Ducharme, Epstein, Feinstein, Finlayson, Furlong, Go, Gottlieb, Hunter, Laskin, MacKenzie, Manes, Marrocco, Minor, Mulligan, Murray, Ortved, Porter, Potter, Puccini, Robins, Ross, St. Lewis, Simpson, Swaye, Topp, Wardlaw, White, Wilson and Wright.

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The reporter was sworn.

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## IN PUBLIC

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TREASURER'S REMARKS

The Treasurer advised that the launch of the recent Interactive Learning Network was a great success. There were 500 participants and the response from the membership was very supportive.

The Peterborough Law Association will be holding a retirement party for Gordon Farquharson, Q.C., LSM on March 7<sup>th</sup>. Benchers were asked to contact Deidre Rowe Brown for further details if they wished to attend.

The Treasurer announced the names of the scrutineers for the 2003 Benchers Election. They are: A. Larry Birnbaum, Nathalie Boutet, M. Larry Calzavara, Marvin, Huberman, Kathleen N. Lickers, Alison MacKay, Louis Radomsky, Roger Rowe and Elizabeth Anne Silcox.

The stand-by staff scrutineers are Julia Bass, Dulce Mitchell, Elliot Spears, Sophia Spurdakos and James Varro.

MOTION – APPOINTMENT TO TORONTO ELECTION FINANCE REVIEW TASK FORCE

It was moved by Mr. Wright, seconded by Mr. Feinstein that Avvy Go be appointed to the Toronto Election Finance Review Task Force.

Carried

MOTION – MINUTES OF CONVOCATION

It was moved by Mr. Wright, seconded by Mr. Bindman that the Draft Minutes of Convocation of January 23 and February 13, 2003 and the September and October 2002 Special Calls to the Bar be confirmed.

Carried

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT & COMPETENCETO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADAIN CONVOCATION ASSEMBLED

The Director of Professional Development and Competence asks leave to report:

B.

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ADMINISTRATION

B.1.           APPLICATION TO BE LICENSED AS A FOREIGN LEGAL CONSULTANT

B.1.1.           The following apply to be certified as supervised foreign legal consultants in Ontario:

Carole M. Dagher	State of New York Shearman & Sterling
Marc Samuel Kestenberg	State of New York Shearman & Sterling
Brent Michael Westrop	State of New York Shearman & Sterling

B.1.2.           Their applications are complete and they have filed all necessary undertakings.

ALL OF WHICH is respectfully submitted

DATED this the 27<sup>th</sup> day of February, 2003

Re: Foreign Legal Consultant Applications

It was moved by Mr. Wright, seconded by Mr. Hunter that the Report of the Director of Professional Development & Competence re: applications for foreign legal consultants, be adopted.

Carried

ROSS/ST. LEWIS MOTIONS

Ms. Ross presented the following motions:

It was moved by Heather Ross, seconded by Joanne St. Lewis THAT a Task Force be struck to gather all outstanding policies passed by Convocation since March 17, 1989 that are currently in force, and present those policies to Convocation in a manner that is comprehensive and easily referenced and that the Task Force report to Convocation within four months of the appointment of its members.

Not Put

It was moved by Heather Ross, seconded by Joanne St. Lewis THAT a Task Force be struck to codify the policies and procedures governing Convocation's proceedings and that the Task Force provide the codified policies and procedures to Convocation for its consideration and approval within two months of the appointment of its members.

Not Put

Mr. Heins and the staff will undertake these projects and work with Mr. MacKenzie.

#### AARON/GO MOTION

Mr. Aaron presented the following motion:

It was moved by Mr. Aaron, seconded by Ms. Go THAT no candidate for the office of benchner shall spend or permit to be spent on his or her behalf more than \$50,000.00 in the 2003 benchner election campaign.

Mr. Aaron and Ms. Go requested that their motion be amended by changing the limit from \$50,000.00 to \$5,000.00.

The Treasurer initially ruled against the amendment.

After further debate the Treasurer accepted the amendment and requested that the word "prospectively" be added. Mr. Aaron and Ms. Go accepted the Treasurer's ruling.

The debate continued.

The motion was withdrawn by the mover and seconder.

#### PROFESSIONAL DEVELOPMENT, COMPETENCE & ADMISSIONS COMMITTEE REPORT

Mr. Cherniak presented the Report of the Professional Development, Competence & Admissions Committee for approval by Convocation.

Professional Development, Competence & Admissions Committee  
February 27, 2003

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Report to Convocation

Purpose of Report:      Decision

Prepared by the Policy Secretariat  
(Julia Bass 416-947-5228  
Sophia Sperdakos 416-947-5209)

#### OVERVIEW OF POLICY ISSUES

##### DISCONTINUANCE OF THE MATCHING PROGRAM

Request to Convocation

1. That Convocation approve

- a. the discontinuance of the “matching program” currently used in the recruitment of articling students; and
  - b. the draft Articling Recruitment Procedures set out in Appendix 2.
2. That Convocation authorize staff to publish the procedures annually without Convocation’s approval, unless there is a substantive change to the procedures, in which case Convocation’s approval will be sought.

#### Summary of the Issue

3. The matching program is operated by a private organization called National Matching Services, Inc., which provides matching services for a number of professions in the United States and Canada.
4. The service, which is paid for entirely by the firms that use it, has been used primarily in the City of Toronto to recruit articling students. Neither the Law Society nor students pays for any portion of the matching service.
5. There has been a substantial decline in firm use of the match program such that it no longer plays a useful role in the recruitment process.
6. If the matching program is discontinued, as requested, the Law Society will continue to set rules governing the recruitment of students as it is agreed that having order to the process is important for all parties. Appendix 2 contains the draft recruitment procedures for 2004-2005.
7. Typically, the content of such notices does not change from year to year, except with respect to dates. The Committee recommends that staff be authorized to publish the procedures annually without Convocation’s approval, unless there is a substantive change to the procedures, in which case Convocation’s approval will be sought.

### THE REPORT

#### Terms Of Reference/Committee Process

8. Because of special Convocation on February 13, 2003 the Committee did not meet in February, but all members were provided with material on the “match” issue and given the opportunity to vote. Five members of the Committee voted in favour of the recommendation: (Earl Cherniak (Chair), Kim Carpenter-Gunn (Vice-Chair), Todd Ducharme, Barbara Laskin, and Greg Mulligan. There were no votes against the recommendation.
9. The Committee is reporting on the following matters:

#### Policy – For Decision

- Discontinuance of the Matching Program

### DISCONTINUANCE OF THE MATCHING PROGRAM

#### Background

10. The matching program is operated by a private organization called *National Matching Services, Inc.* that provides matching services for a number of professions (including medicine, law, dentistry, accounting and pharmacy) in the United States and Canada. In Ontario the program is used in the articling recruitment process.

11. The service is paid for by the firms using the service in proportion to the number of places they list, at no cost to students and the Law Society. It was introduced as a pilot project in 1985. Convocation adopted a report on the program in March 1986 and it came into widespread use soon thereafter, but geographically its use has been primarily limited to Toronto.
12. The service works by asking both the students and the law firms to provide ranked lists of their preferences, after the interview process is completed. (This takes place during the second year of law school to arrange articles for the following year). The service matches the students and firms in order of preference. The theory of the service is that it removes time pressures from law firms and students while helping students to obtain their preferred articling position.

#### Discussion

13. The success of the matching program depends on a sufficient number of firms taking part. At its peak in 1991, 102 firms participated, including most of the large Toronto law firms, listing 556 positions. By 2002, the number of firms had dwindled to 29 and the number of positions listed to 95 (see chart attached at Appendix 1).
14. The decline in the use of the service by the large firms coincided with the rise of the practice of hiring summer students in second year law school. These students then become the pool from which the firm selects articling students. Efforts by the Law Society to limit the proportion of articling positions that could be filled by summer students have proved unworkable.
15. The number of firms taking part in the program has declined to the point where the program is no longer useful to the students and is not profitable for the operator.
16. Law Society staff has consulted law students, law schools, small and large firms within and outside Toronto. The feedback has revealed widespread discontent with the program. One firm reported that it decided to discontinue its participation after having registered and paid a fee per position in order to hire back its own summer students. The vast majority is in favour of discontinuing the program.
17. The absence of the matching program will not mean that there are no procedures for governing the recruitment process. The Law Society will continue to set rules governing the recruitment of students. There continues to be a consensus among those who have an interest in the issue that the Law Society should supervise the market for articling and summer student positions and that mandatory dates are acceptable as a means of bringing order. The proposed "Articling Recruitment Procedures 2004-2005", which assumes the absence of the matching program, is attached at Appendix 2.
18. These procedures set out an orderly approach to recruitment and are unlikely to change substantially from year to year except with respect to dates. The Committee is of the view that staff should not be required to seek Convocation's annual approval of these procedures, unless a substantive change to their content is proposed.

## MATCH RESULTS 1991 - 2002

Match Data	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Firms in Match	102	89	77	68	68	62	58	61	58	58	55	29
Positions Offered	556	499	474	452	439	431	453	482	479	557	437	95
Students in Match	691	641	688	637	711	678	667	689	702	591	541	221
Matched Students	526	464	453	446	421	405	424	428	430	472	407	91
% of matched students	76	72	66	70	59	60	64	62	61	80	75	41
Unmatched Students	165	177	230	191	290	273	243	261	272	119	134	130
Match Positions to be filled after the Match <sup>1</sup>	30	17	21	11	5	10	5	9	13	5	2	4
Insufficiency of positions in the Match	135	160	209	180	285	263	238	252	259	114	132	126

Note:

2001: Restricted positions accounted for 21 of the 30 unfilled positions; 2000: Restricted positions accounted for 60 of the 85 unfilled positions; 1999: Restricted positions accounted for 36 of the 49 unfilled positions; 1998: Restricted positions accounted for 45 of the 54 unfilled positions.

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<sup>1</sup> In practice, firms have often chosen not to fill these positions.

APPENDIX 2  
DRAFT  
THE LAW SOCIETY OF UPPER CANADA  
ARTICLING & PLACEMENT OFFICE  
Articling Recruitment Procedures  
2004-2005 Articling Term

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PREAMBLE

This document contains the new procedures governing the recruitment of students for the 2004-2005 articling term. In response to feedback from students and Members, the Law Society has discontinued the voluntary Articling Student Matching Program. The Procedures Governing the Recruitment of Articling Students remain in effect and are binding on all students and Members participating in the articling recruitment program in Ontario. The Law Society, however, continues to receive reports that some participants in the articling student recruitment program are not complying with the Procedures.

Members are reminded that compliance with the Procedures is required under Rule 5.02(1) of the Law Society's *Rules of Professional Conduct*. Deliberate circumvention of the Procedures may result in a charge of Professional Misconduct against the lawyer who participates in or authorizes the circumvention. Pressuring students to commit themselves in the period during which offers shall remain open violates the Procedures and may result in a complaint that would be investigated by the Law Society.

Deliberate circumvention of the Procedures or breach of the Agreement by students may result in an Admissions Hearing to determine if the student meets the Good Character requirement of call to the bar and admission as a member of the Law Society. Participating in interviews after a position has been accepted, violates the Procedures and may result in a complaint that would be investigated by the Law Society.

The Procedures are to be followed in spirit as well as in letter. Circumvention of the Procedures is to be reported to the Associate Registrar, Education Support Services for the Law Society, in writing. It is the responsibility of all participants in the articling recruitment program to ensure its integrity through compliance with the Procedures.

Articling & Placement  
Education Support Services  
The Law Society of Upper Canada  
Osgoode Hall, 130 Queen Street West  
Toronto, Ontario, M5H 2N6  
Fax (416) 947-3403 Email [articling@lsuc.on.ca](mailto:articling@lsuc.on.ca)  
\_Phone (416) 644-4888 Toll Free 1-800-668-7380 Ext 4888  
[www.lsuc.on.ca/articling](http://www.lsuc.on.ca/articling)

THE LAW SOCIETY OF UPPER CANADA  
PROCEDURES GOVERNING THE RECRUITMENT OF  
ARTICLING STUDENTS FOR THE 2004-2005 ARTICLING TERM

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- § All Members and Students involved in the articling recruitment process are required to comply with these procedures.
- § The Law Society expects its Members and the Student Participants in the articling recruitment process to follow these procedures in spirit as well as in letter.
- § Deliberate circumvention of the restrictions set out in these procedures may constitute Professional Misconduct on the part of those who participate in or authorize the circumvention.
- § Those with knowledge of any circumvention of these procedures shall report same to the Associate Registrar, Education Support Services for the Law Society.

- § Firms must not participate in the recruitment of students unless they are confident that they will be able to offer a position to a qualified student.
- § Definitions appear in Section D. of these Procedures.

These articling recruitment procedures are organized as follows:

- A. Firms located:
  - § in Toronto
- B. Firms located outside of Toronto:
  - § B5 includes additional procedures for firms located in the Regional Municipality of Ottawa-Carleton
  - § B6 includes additional procedures for firms located in the County of Middlesex
  - § B7 includes additional procedures for firms located in the City of Hamilton.
- C. Firms located both within and outside of Toronto.
- D. Definitions

A. SECTION A. GOVERNS ARTICLING RECRUITMENT BY FIRMS LOCATED  
§ IN TORONTO

1.

Commentary: The general recruitment procedures outlined at Section C are also applicable to those firms in Toronto.

A.1. Employers shall not set application deadlines earlier than Friday, July 18, 2003.

Commentary: In considering whether or not an interview will be granted and the time and date of such interview, the date of receipt of an application shall not be a factor if the application is received by July 18, 2003.

A.2. The time and date of interviews shall not be communicated in any way until 8:00 a.m. on Thursday, July 31, 2003.

Commentary: The fact that a firm will or will not be interviewing a student and the fact that the interviewing will take place in accordance with these procedures may be communicated at any time but the firm shall not suggest the specific date or time of the expected interview prior to 8:00 a.m. on Thursday, July 31, 2003, nor may students participate in the making of such appointments before that hour on that day. Further, firms shall not communicate their intention to interview a student and subsequently not do so.

A.3. Interviews shall not be conducted prior to 8:00 a.m. on Monday, August 11, 2003.

Exception: In exceptional circumstances, the Law Society will grant to students who are unable to attend for interviews during the week of August 11, 2003, permission to attend interviews prior to the established time for interviewing. However, in no case may offers be made to any such students prior to the time set out in these procedures. Applications for exemption shall be made in writing to the Associate Registrar, Education Support Services for the Law Society.

A.4. In scheduling their interviews, students are to allow at least one hour-and-a-half on the premises of the interviewing firm.

A.5. No communication of offers of employment shall be made prior to 5:00 p.m. on Wednesday, August 13, 2003. All offers made on or after 5:00pm Wednesday, August 13, 2003 shall remain open until noon on Thursday, August 14, 2003, subject to the exception in A6 regarding summer students and subject to A7.



Commentary: This procedure applies to all participating firms covered by Section A of these procedures whether they employ summer students or not.

A.6. Exception: Firms may communicate their intentions to make offers in accordance with these procedures to summer students employed with their firm in the summer months of 2003 prior to 5:00pm Wednesday, August 13, 2003. Students receiving such communications may voluntarily communicate their own intentions.

A.7. Any offers made on or after 12:00 noon on Thursday, August 14, 2003 shall be left open for a reasonable period of time.

Commentary: Offers may only be made to students who do not have a prior commitment.

## B. SECTION B. GOVERNS ARTICLING RECRUITMENT BY FIRMS LOCATED OUTSIDE OF TORONTO.

Commentary: The general recruitment procedures outlined at Section C are also applicable to those firms covered by Section B.

B.1. Employers shall not set application deadlines earlier than Friday May 9, 2003.

Commentary: In considering whether or not an interview will be granted and the time and date of such interview, the date of receipt of an application shall not be a factor if the application is received by May 9, 2003.

B.2. Interviews shall not take place until after the student has completed all requirements of second year law school.

Commentary: Students may not interview for articling positions before writing their last examination of second year law school.

B.3. Offers shall not be made until the later of Friday, May 9, 2003 or other offer date stipulated in Section B of these procedures.

Commentary: Offers shall not be made until the student has completed all requirements of second year law school. Firms may communicate their intentions to make offers in accordance with these procedures to summer students employed with their firm in the summer months of 2003 prior to the later of this date or other offer date stipulated in Section B of these Procedures. Students receiving such communications may voluntarily communicate their own intentions.

B.4. In scheduling their interviews, students are to allow at least an hour-and-a-half on the premises of the interviewing firm.

## B.5. ADDITIONAL PROCEDURES GOVERNING ALL ARTICLING RECRUITMENT BY FIRMS LOCATED IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON

Commentary: The following procedures, for firms located in the Regional Municipality of Ottawa-Carleton, are in addition to B.1, B.2, B.3, and B.4. and the general procedures in Section C.

B.5.1 No communication of offers of employment shall be made before 8:00 a.m. on Monday, June 16, 2003.

B.5.2 All offers made Monday, June 16, 2003 shall be left open until noon on Tuesday, June 17, 2003.

B.5.3 All offers made between 12:00 midnight Monday, June 16, 2003 and 5:00 p.m. Thursday, June 19, 2003 shall be left open for 24 hours.

B.5.4 Any offer made after Thursday, June 19, 2003 shall be left open for a reasonable period of time.

**B.6. ADDITIONAL PROCEDURES GOVERNING ALL ARTICLING RECRUITMENT BY FIRMS LOCATED IN THE COUNTY OF MIDDLESEX**

Commentary: The following procedures, for firms located in the County of Middlesex, are in addition to B.1, B.2, B.3, and B.4. and the general procedures in Section C.

B.6.1 Employers shall not set application deadlines earlier than Friday May 9, 2003.

Commentary: In considering whether or not an interview will be granted and the time and date of such interview, the date of receipt of an application shall not be a factor if the application is received by May 9, 2003.

B.6.2 Interviews for 2004-2005 articling positions shall be held the week of May 26, 2003.

B.6.3 No communication of offers of employment shall be made by firms prior to 8:00 a.m. Monday, June 2, 2003.

B.6.4 Out of province candidates may be interviewed prior to the week of May 26, 2003; however, no offer may be extended to them prior to 8:00 am. Monday, June 2, 2003.

B.6.5 All offers made on Monday, June 2, 2003 shall remain open until 9:00 a.m. on Tuesday, June 3, 2003.

B.6.6 All offers made on Tuesday, June 3, 2003 through Thursday, June 5, 2003, inclusive, shall remain open for a period of 24 hours.

B.6.7 All offers made after Thursday, June 5, 2003 shall be left open for a reasonable period of time.

B.6.8 Students shall deal with offers received as expeditiously as possible regardless of the stipulated time that an offer shall remain open.

B.6.9 Students who accept an offer shall immediately notify firms from whom they have an outstanding offer or with whom they have scheduled interviews.

B.6.10 Firms extending offers and students who are in receipt of offers may agree to extend any of the times upon mutual consent.

**B.7. ADDITIONAL PROCEDURES GOVERNING ALL ARTICLING RECRUITMENT BY FIRMS LOCATED IN THE CITY OF HAMILTON**

Commentary: The following procedures, for firms located in the City of Hamilton, are in addition to B.1, B.2, B.3, and B.4. and the general procedures in Section C.

B.7.1 Employers shall not set application deadlines earlier than Friday May 9, 2003.

Commentary: In considering whether or not an interview will be granted and the time and date of such interview, the date of receipt of an application shall not be a factor if the application is received by May 9, 2003.

B.7.2 Interviews for 2003/2004 positions shall be held the week of May 26, 2003.

B.7.3 No communication of offers of employment shall be made by firms prior to 2:00 p.m. Friday, May 30, 2003.

B.7.4 Out of province candidates may be interviewed prior to the week of May 26, 2003; however, no offer may be extended to them prior to 2:00 p.m. Friday, May 30, 2003.

B.7.5 All offers made from 2:00 p.m. on Friday, May 30, 2003 through Sunday, June 1, 2003, inclusive, shall remain open until 9:00 a.m. on Monday, June 2, 2003.

B.7.6 All offers made on Monday, June 2, 2003 through Wednesday, June 4, 2003, inclusive, shall remain open for a period of 24 hours.

B.7.7 All offers made after Wednesday, June 4, 2003 shall be left open for a reasonable period of time.

B.7.8 Students shall deal with offers received as expeditiously as possible regardless of the stipulated time that an offer shall remain open.

B.7.9 Students who accept an offer shall immediately notify firms from whom they have an outstanding offer or with whom they have scheduled interviews.

B.7.10 Firms extending offers and students who are in receipt of offers may agree to extend any of the times upon mutual consent.

#### C. SECTION C. GOVERNS ARTICLING RECRUITMENT PROCEDURES CONDUCTED BY FIRMS LOCATED BOTH WITHIN AND OUTSIDE OF TORONTO

Commentary: The following procedures are in addition to those in Sections A and B.

C.1. Offers of employment shall not be made at any time on terms or in circumstances which do not give students a proper opportunity to consider the offer before deciding.

Commentary: Offers shall not be made which are conditional upon the position still being open when the acceptance is received.

C.2. Students shall deal with offers received as expeditiously as possible regardless of the stipulated time that offer shall remain open.

Commentary: Failure to communicate a rejection of an offer as soon as the decision to reject is made prejudices not only the offering firm but also fellow students to whom the offer may next be made when the decision not to accept is known.

C.3. Students who accept an offer shall immediately notify firms from whom they have an outstanding offer or with whom they have scheduled interviews.

C.4. Students who accept an offer shall honour the undertaking thus given, regardless of what offers are subsequently received and shall not thereafter take interviews with other firms.

C.5. Employers shall not make offers to students who have already accepted a position.

Commentary to C.4 and C.5: The offer and acceptance of an articling position constitutes a binding contract between the principal and the student which carries professional obligations over and above the normal contractual obligations. Principals and students shall refer to the Articling Information web page for further information.

#### D. DEFINITIONS

The following definitions are provided for clarity:

"firm(s)" means an employer of articling students such as a law firm, company legal department, government body or clinic and does not include the Supreme Court of Canada, the Tax Court of Canada, the Federal Court, the Court of Appeal for Ontario, and the Superior Court of Justice of Ontario. Students appointed to serve the Judges of these courts are not required to be recruited for such clerkships in accordance with these Procedures.

"Middlesex County" is composed of the following: the City of London, the Municipalities of North Middlesex, Southwest Middlesex and Thames Centre, the Townships of Adelaide Metcalfe, Lucan Bidulph, Middlesex Centre and Strathroy - Caradoc, and the Village of Newbury.

"recruitment activity" includes but is not limited to the arranging of interviews, the conducting of interviews, and the making of offers of employment.

"Regional Municipality of Ottawa-Carleton" is composed of the following eleven municipalities: Cumberland, Gloucester, Goulbourn, Kanata, Nepean, Osgoode, Ottawa, Rideau, Rockcliffe Park, Vanier and West Carleton.

"summer student" means any student employed by a firm for the summer months of 2003, following enrolment in any year of an approved LL.B. or J.D. program, who will be eligible to article in 2004.

"summer months" means the months of May, June, July and August.

"out of province candidates" means those students attending Law School outside the province of Ontario.

"time" means Eastern Standard Time.

"Toronto" means the City of Toronto.

These procedures will be reviewed at the end of this recruitment cycle. Submissions for consideration shall be sent to the Associate Registrar, Education Support Services for the Law Society.

January 2003

Re: Discontinuance of the "Matching Program" for Recruitment of Articling Students

It was moved by Mr. Cherniak, seconded by Mr. Mulligan that Convocation approve a) discontinuance of the "matching program" currently used in the recruitment of articling students; and b) the draft Articling Recruitment Procedures set out in Appendix 2 of the Report.

Carried

It was moved by Mr. Cherniak, seconded by Mr. Mulligan that Convocation authorize staff to publish the procedures annually without Convocation's approval, unless there is a substantive change to the procedures, in which case Convocation's approval will be sought.

Carried

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CONVOCATION ROSE AT 10:15 A.M.

Confirmed in Convocation this 27<sup>th</sup> day of March, 2003

Treasurer