

PRIVILEGED AND CONFIDENTIAL

**REPORT TO CONVOCATION
OF THE LAW SOCIETY OF ONTARIO**

THE HONOURABLE DENNIS O'CONNOR

FEBRUARY 28, 2025

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I. Overview

In March 2018, by agreement (**2018 Agreement**¹) approved by Convocation (**Convocation**) of the Law Society of Ontario (**LSO**), the LSO employed and appointed Diana Miles (**Ms. Miles**) as its Chief Executive Officer (**CEO**). In June 2024, the LSO's then-Treasurer, now Justice Jacqueline Horvat (referred to herein as **Ms. Horvat**), signed an agreement (**2024 Amending Agreement, the Amending Agreement, the Amendment**²), purportedly on behalf of LSO, amending the 2018 Agreement and increasing Ms. Miles' compensation. The Amending Agreement was not taken to Convocation for approval.

The LSO's current Treasurer, Peter Wardle, took steps upon learning of the 2024 Amending Agreement. Later, in November 2024, issues arose with respect to the authority of the Treasurer to enter into the Amending Agreement without Convocation approval.

In December 2024, I was retained by Convocation to investigate and provide certain opinions and recommendations relating to the circumstances that led to the amendment of the CEO's employment agreement in June 2024 by LSO's then-Treasurer, without the approval of Convocation.

The scope of the investigation was dictated by what information is necessary to provide the opinions and recommendations sought, namely:

- (a) Did the Treasurer have the authority to amend the CEO's contract without the approval of Convocation?
- (b) If not, is the contract enforceable?
- (c) What steps should the Law Society take with respect to the contract on a going forward basis?
- (d) Recommendations arising from the circumstances regarding the entry into the contract.

With assistance from colleagues, I undertook an investigation (including conducting interviews with 15 individuals and collecting and reviewing relevant documents) and the research and analysis necessary to provide the opinions.

I am not acting as an adjudicator or trier of fact; I am not in a position to make binding findings of fact or legal holdings.

¹ Privileged and Confidential Brief of Documents (**Brief**), Tab 1.

² Brief, Tab 2.

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My legal opinions can be summarized as follows:

- (a) The LSO's governing documents and past practices are clear: the Treasurer did not have the authority to amend the CEO's contract without Convocation approval.
- (b) There is a strong argument that the 2024 Amendment would be found to be unenforceable:
 - (i) An argument that the Amending Agreement is enforceable on the basis that the Treasurer had ostensible authority, or on the basis of the indoor management rule, would likely fail.
 - (ii) Further, an argument that the Amending Agreement has been ratified by LSO would likely fail.
- (c) Next steps are in the hands of Convocation, acting in the best interests of LSO:
 - (i) Regardless of my opinion, Convocation may choose to accept the Amending Agreement, or to reject it, on the basis of what is in the best interests of LSO in the circumstances.
 - (ii) Regardless of whether the Amending Agreement is enforceable (or enforced), the CEO's original employment agreement is enforceable. Convocation has the authority to consider next steps in regard to the CEO's employment in the usual course, again on the basis of LSO's best interests.
- (d) In my view, a number of steps can be taken in order to mitigate the risk of this or a similar circumstance occurring in the future.

II. Mandate

In a special meeting on December 5, 2024, Convocation approved the following mandate:

That Convocation approve the composition and mandate of a special committee as follows:

The mandate of the special committee is to instruct, supervise and support the work of outside counsel Dennis O'Connor with respect to his privileged and confidential investigation of the circumstances that led to the execution of the CEO's amended employment agreement in June, 2024 without the prior approval of Convocation up until November 28, 2024 for the purpose of providing legal advice and recommendations to the Treasurer and Convocation as to the enforceability of the agreement and what steps should be taken in connection with that agreement and the circumstances of the agreement.³

³ Brief, Tab 3.

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My scope of work as outlined by Convocation is reproduced in Borden Ladner Gervais LLP's (BLG) Engagement Confirmation with LSO, also dated December 5, 2024:

We are engaged to investigate the circumstances that led to the execution of the CEO's amended employment agreement in June, 2024 without the prior approval of

Convocation, for the purpose of providing legal advice and recommendations to the Treasurer and Convocation as to the enforceability of the agreement, and what steps should be taken in connection with that agreement and the circumstances of that agreement.⁴

As indicated in the Engagement Confirmation, I have had the assistance of a colleague from BLG, Heather Pessione, and we have been assisted by a BLG articling student, Grace Sarabia.

I interpret the mandate as requiring me to address the following issues:

1. Investigate and report on the circumstances that led up to the execution of the CEO's contract in June 2024 up to November 28, 2024 without the prior approval of Convocation.
2. Provide legal advice with respect to:
 - (a) Did the Treasurer have the authority to enter into the contract?
 - (b) If not, is the contract enforceable?
 - (c) What steps should LSO take with respect to the contract on a going forward basis?
3. Make recommendations arising from the circumstances regarding the entry into the contract.

I have therefore proceeded as follows:

1. I began by interpreting the mandate to require me to investigate as thoroughly as possible all of the circumstances leading up to and following the execution of the contract by the Treasurer and the CEO, in order to provide the opinions I have been asked to give. The scope of the investigation is therefore dictated by what information is necessary to provide the opinions sought in the mandate.
2. I also interpret my mandate to require that I conduct the investigation in a manner that is procedurally fair to those involved. I have attempted to do so and below set out the steps that we have taken in this regard.
3. For completeness, I point out what is not part of my mandate. I am not acting as an adjudicator or trier of fact. I have not made findings of fault with respect to any of

⁴ Brief, Tab 4.

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the individuals involved except as may be necessary to fulfill my mandate. I am not in a position to make binding findings of fact or legal holdings. The information I collected was not taken under subpoena or under oath, or subject to cross-examination.

4. However, to the extent that it is necessary to provide the opinions sought in the mandate, I have done so on the basis of what in my view a trier of fact is likely to find based on the information I have gathered.⁵

III. Process

A. **Special Committee**

As noted, Convocation established a Special Committee to instruct, supervise and support my work. Gerald Chan (**Mr. Chan**) and Will McDowell (**Mr. McDowell**) were appointed as Co-Chairs, and we have liaised with them with respect to day-to-day matters.

I met with the Special Committee on December 13, 2024, and January 30, 2025.

B. **Interviews**

Through Mr. Chan and Mr. McDowell, I have been given access to relevant documents and materials, and to Zelia Pereira, Executive Assistant to the Treasurer (**Ms. Pereira**). Ms. Pereira has assisted in scheduling interviews with relevant individuals, obtaining further relevant documents and materials, and coordinating logistics.

I identified 15 individuals to interview in connection with my mandate:

[REDACTED]

- Diana Miles, CEO (**Ms. Miles**)
- Dolores Barbini, Partner, Hicks Morley LLP (**Ms. Barbini**)
- [REDACTED]
- Genevieve Painchaud, Bencher (**Ms. Painchaud**)
- Justice Jacqueline Horvat, former Treasurer (referred to herein as **Ms. Horvat**)
- Jim Varro, former Corporate Secretary (**Mr. Varro**)
- [REDACTED]
- Megan Shortreed, Bencher (**Ms. Shortreed**)
- Michelle Lomazzo, Bencher (**Ms. Lomazzo**)
- [REDACTED]
- Justice Paul Schabas, former Treasurer (referred to herein as **Mr. Schabas**)
- Peter Wardle, Treasurer (**Mr. Wardle**)
- Sarah Letersky, Bencher (**Ms. Letersky**)
- Sid Troister, Bencher (**Mr. Troister**)

⁵ I explained this interpretation of my mandate to the Special Committee in a meeting on January 30, 2025.

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With Ms. Pereira's assistance, I reached out to the interviewees with a letter advising as follows:

LSO has retained Borden Ladner Gervais LLP to conduct a privileged and confidential investigation of the circumstances that led to the execution of the CEO's amended employment agreement in June of 2024, without the prior approval of Convocation.

The investigation will be conducted in December 2024 by Dennis O'Connor and Heather Pessione. We will be reporting our factual findings, conclusions and recommendations to the Treasurer and Convocation in early 2025.

You have been identified as someone who may have relevant information. Zelia Pereira will be reaching out to schedule an interview with you as soon as is practicable, preferably in person in Toronto.

We have been asked to keep our investigation confidential. We ask that you keep the discussions in our meeting confidential as well.

The information you disclose to us will not be recorded but will be documented by a student and synthesized in a written summary, a copy of which will be provided to you for your review and acknowledgement of its accuracy and completeness.

You may have another person, including a lawyer, attend at the meeting if you wish. Please let us know the name of such person when you confirm your attendance at the meeting.

Thank you and we look forward to meeting with you.

I followed up in advance of each interview by:

- Requesting that interviewees bring with them copies of any documents in their possession that they believed would be of assistance to them or to me;
- Providing copies of relevant documents we had at that time that they would have been entitled to access but no longer had access;
- Inviting them to advise us if there were other such documents that they would like us to try to locate and share in advance of the interview; and
- Providing a list of topics that we intended to cover.

Between December 5 and December 30, 2024, we scheduled and conducted 13 interviews with LSO staff, Benchers, and former Benchers. We interviewed Ms. Horvat on February 6, 2024, and Dolores Barbini on February 14, 2024. We conducted interviews in person at our offices in Toronto where practicable, and virtually where it was not possible for the interviewee to attend in person.

Each interviewee was provided with a detailed summary of their interview and with the opportunity

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to advise us of any corrections and additions. We conducted some follow-up inquiries with interviewees thereafter, where necessary.

Everyone has been very accommodating, cooperative and generous with their time, particularly over the holiday season.

C. Thoroughness

I have endeavoured to be as thorough as possible in the circumstances. The investigation has included:

- Review of materials provided by the Special Committee;
- Review of publicly available materials;
- Initial interviews with interviewees, with notes taken by Grace Sarabia;
- Review of documents provided by interviewees;
- Review and revision of interviewee statements; and
- Follow-up with interviewees.

I am satisfied that the facts set out herein present an accurate depiction of the relevant documents and the recollections of those involved as they recounted them to us. As is apparent, recollections differed in some instances, and, in those cases, I have reported accurately what we were told, making the differences clear, but have not gone on to make findings of credibility.

Copies of the documents referred to that are not hyperlinked are compiled in an accompanying privileged and confidential brief. Where there is no documentary source cited, the source is one or more interviews.

D. Fairness

As noted:

- I provided background and context to interviewees in advance of their interviews, and invited them to bring another person, including a lawyer, if they wished. Some interviewees did so.
- In advance of their interviews, where appropriate, I provided interviewees with relevant documents, invited them to request any further documents, and provided a list of topics that we intended to cover.
- Interviews were not recorded or under oath, although for my own purposes and to ensure accuracy of this report, we took detailed notes and prepared detailed summaries that interviewees were given the opportunity to review and revise.

E. Expedition

I was asked to conduct the investigation in December 2024 and to report my factual findings, conclusions and recommendations to the Treasurer and Convocation in early 2025.

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As noted, we acted expeditiously, including working over the holidays, and have attempted to balance being thorough with being proportional and timely.

F. Confidentiality

As noted, I advised interviewees of the need for confidentiality and the expectation of those who participated in the process that confidentiality would be maintained (subject of course to the requirements of my mandate in reporting to the Special Committee, Treasurer and Convocation (i.e., the Benchers), of which they were informed as noted).

My mandate is to report to the special committee, the Treasurer and Convocation, all of whom are Benchers and owe duties to LSO with respect to confidentiality. The report is privileged and confidential, and moreover it references and attaches LSO privileged and confidential material.

IV. Issues and Analysis

A. Investigation

My detailed report on the circumstances leading up to the 2024 Amendment of the CEO's contract is in Appendix "A", where I set out in detail the recollections of interviewees and our review of relevant documents with respect to what transpired during the relevant period. While there were some differences in recollection, what transpired may be briefly summarized as follows:

- LSO is a statutory not-for-profit corporation continued under of the *Law Society Act (Act)*.⁶ Corporations legislation does not apply to it.
- Section 43 of LSO's By-law 2 provides that "Convocation shall, on such terms as it considers appropriate, appoint a person as Chief Executive Officer of the Society."⁷ Section 43 of the *Act* provides that "The Chief Executive Officer shall, under the direction of Convocation, manage the affairs and functions of the Society."⁸ These are consistent with the 2007 mandate of the LSO's Compensation Committee (**Compensation Committee**), created by resolution of Convocation.
- Ms. Miles' 2018 Agreement was approved by Convocation. Once approved by Convocation, Mr. Schabas executed the agreement on behalf of LSO.
- The 2018 Agreement required that Convocation approve Ms. Miles' annual bonus, and that is what happened in the following years, including in February 2024. Each year the Compensation Committee provided a report to Convocation regarding Ms. Miles' bonus which we understand contained a partial description of the Committee mandate.

The February 2024 Report to Convocation requesting approval for Ms. Miles' bonus articulates

⁶ Act.

⁷ By-law 2.

⁸ Act.

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the Committee mandate (albeit incompletely) as follows:

The Committee's mandate is to:

- a. conduct the annual performance review of the Chief Executive Officer;
 - b. recommend the amount of the Chief Executive Officers incentive entitlement to Convocation annually; and
 - c. make recommendations to Convocation relating to the Chief Executive Officer's compensation (salary, bonus, benefits, pension and perquisites), if appropriate, in accordance with the Chief Executive Officer's contract.⁹
- Ms. Horvat amended the 2018 Agreement in June 2024, without approval by Convocation. She had input of the Compensation Committee on certain of the amendments, including the salary amount.
 - The members of the Compensation Committee relied on Ms. Horvat and [REDACTED] with respect to the Treasurer's authority to amend the CEO's agreement;
 - Certain members of the Compensation Committee did probe and make inquiries, but none of them reviewed the Act or By-laws, nor did they appear to turn their minds to the implications of the Committee mandate;
 - Their position is that Benchers rely on staff and on the Treasurer, and they did so here.
 - Ms. Horvat relied entirely on [REDACTED] with respect to [REDACTED] authority to amend the CEO's agreement (and to amend the Committee mandate);
 - Ms. Horvat did not recall advice of Hicks Morley that she had received in late 2022/early 2023 regarding the Treasurer's authority, nor did she recall that Convocation had approved Ms. Miles' contract in 2018 (or the fact that she was the mover of that motion)¹⁰;
 - Ms. Horvat did not make inquiries with respect to the source of her authority, nor did she review the Act or By-laws, or turn her mind to the implications of the Committee mandate or the 2018 Agreement, or the fact that Convocation was required to approve Ms. Miles' annual bonus;
 - Her position is that Benchers relied entirely on staff on matters such as this. She also advised us that she was busy with other things at the time.
 - [REDACTED] relied on [REDACTED] with respect to the Treasurer's authority to amend the CEO's

⁹ Brief, Tab 5. That same report indicates (correctly) that the CEO contract was approved by Convocation in March of 2018.

¹⁰ As outlined in Appendix "A", Mr. Wardle was the seconder.

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agreement (and to amend the Committee mandate);

- ██████ did not make inquiries with respect to the source of the authority, nor did ██████ review the Act or By-laws;
- ██████ also relied on the fact that Mr. Schabas signed Ms. Miles' 2018 Agreement (but did not consider its terms);
- ██████ (ultimately, erroneous) understanding (which ██████ shared with Ms. Horvat and the Committee) was that there were gaps in the records with respect to past practices;
- ██████ position is that ██████ would not have been definitive in relaying the information to Ms. Horvat or the Committee.
- ██████ relied on a number of things, summarized in Appendix "A";¹¹
 - ██████ did not consider s. 8 of the Act or s. 43 of By-law 2, nor did ██████ locate authority for ██████ conclusion;
 - ██████ conducted a keyword search within the ██████ records, but did not locate the materials relating to the February 2018 Convocation at which Ms. Miles' agreement was originally approved (until November 2024, when Mr. Wardle asked ██████ to search by date);
 - ██████ position is that ██████ was pressed for time on both occasions that ██████ asked ██████ for ██████ views in this respect.
- Ms. Miles relied on Ms. Horvat, who presented her with a proposed amended employment agreement and cover memorandum in June 2024;
 - She also relied on her (incorrect) understanding that ██████ had been ██████ without Convocation approval, and that her 2018 Agreement was executed by Mr. Schabas without Convocation approval;
 - Ms. Miles did not make inquiries with respect to the source of the Treasurer's authority, nor did she review the Act or By-laws, or turn her mind to the implications of the Committee mandate or the 2018 Agreement, or the fact that her annual bonus required Convocation approval.

¹¹ See p. 54 below.

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B. Opinions

I. Did the Treasurer Have Authority to Enter Into the 2024 Amending Agreement Without the Approval of Convocation?

In my opinion, Ms. Horvat as Treasurer did not have the authority to enter into the 2024 Amending Agreement on behalf of the LSO without Convocation's approval.

(i) Law

An agent or delegate must act within the scope of their authority, whether express, implied or apparent.¹²

At law, unless specific duties are delegated to an individual director, they have no authority to bind the corporation. "The courts have found that corporations are not bound by actions purportedly authorized by one or more directors rather than by the board, unless authority has been delegated to them".¹³ For example, at law, directors are not necessarily entitled to have bank signing authority in the absence of specific delegation.¹⁴

This is consistent with the statutory scheme establishing and governing the LSO, and the By-laws and policies made thereunder, the relevant portions of which are excerpted and summarized in Appendix "A".

Generally speaking, it is within the scope of the role and responsibilities of a board of directors to select, appoint, set the terms of employment (including compensation) and monitor and assess the performance of the Chief Executive Officer. This is consistent with the Act, By-laws and policies, again summarized in Appendix "A".

(ii) Analysis

An agent or delegate must act within the scope of their authority. There are some things that the Treasurer has been authorized to do on behalf of LSO (for example, to preside over Convocation under By-law 3, and to have the CEO report to her for administrative purposes under the 2018 Agreement, approved by Convocation).

However, I have not seen any Law Society documents to suggest that a Treasurer has the authority to enter into a contract with the CEO relating to their compensation, employment or remuneration

¹² Gerald Fridman, *Canadian Agency Law*, (Markham: LexisNexis Canada, 2017), s. 11.3.

¹³ Carol Hansell, *Directors and Officers in Canada: Law and Practice*, (Toronto: Thomson Reuters, accessed 2025), s. 1:15. In *Hamilton & Port Dover Railway v Gore Bank*, [1873] 20 Gr. 190 (Ont. Ch.), the court found that to bind a corporation to an engagement created in a letter assented to by only two directors would be "unprecedented and unsafe" because it is outside of all regular constituted authority. Similarly, in *First Natchez Bank v Coleman*, [1903] 2 OWR 358 (CA), the court found that although the board of directors were empowered to take the action at issue, there was no authority to suggest a smaller subset could carry out the action alone.

¹⁴ Carol Hansell, *Directors and Officers in Canada: Law and Practice*, s. 1:15. The same would apply to officers and other individuals in the same position.

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without Convocation's approval.¹⁵

In fact, there is a significant body of documents that indicate the opposite. In particular: s. 43 of By-law 2, the 2007 Mandate of the Compensation Committee, and sections 1.2, 1.3 and 14 of the 2018 Agreement, all strongly support the conclusion that Convocation must approve both the hiring of the CEO and the terms of the CEO's contract:

By-Law 2:

43. **Convocation shall, on such terms as it considers appropriate, appoint a person as Chief Executive Officer of the Society.**¹⁶

The 2007 Mandate:

The mandate of the Compensation Committee of the Law Society of Upper Canada is to,

- a. set the criteria, including performance goals and objective, by which the Chief Executive Officer's entitlement to a bonus will be determined annually;
 - b. conduct the annual performance review of the Chief Executive Officer;
 - c. recommend the amount of the Chief Executive Officer's bonus entitlement to Convocation annually;
 - d. **make recommendations to Convocation relating to the Chief Executive Officer's compensation (salary, bonus, benefits, pension and perquisites), if appropriate, in accordance with the Chief Executive Officer's contract;** and
 - e. review and approve, if appropriate, the Chief Executive Officer's recommendations with respect to the compensation of the other members of the Law Society's senior management team.¹⁷
-

The 2018 Agreement:

1.2 The position of the CEO is governed by section 8 of the *Law Society Act*, and all applicable By Laws. For administrative purposes, the Executive shall report to the Treasurer. The Executive shall also abide by the Business Conduct policy attached as Appendix "A" to this Agreement and all other applicable policies of the Law Society as may be in place from time to time, all of which may be amended

¹⁵ See the various policies at Tabs 6A-F of the Brief. In fact, the resolutions and policies suggest that the Treasurer does not have the authority to unilaterally contract on behalf of LSO.

¹⁶ By-law 2.

¹⁷ Brief, Tab 7.

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from time to time.

1.3 The Compensation Committee (or such other committee of Convocation and may be designated by the Treasurer) together with the Treasurer shall conduct the Executive's annual performance review which shall include a meeting with the Executive and enquiries of senior staff and stakeholders to solicit their views. **The conclusions of the Committee will be discussed with the CEO and a report will be made to Convocation by the Compensation Committee together with the recommendations as to the Executive's remuneration, bonus, performance plan and other terms and conditions of employment.** The Executive's base salary will not be reduced, and the terms and conditions of her employment will not be materially changed, without her prior written consent.

14. ENTIRE AGREEMENT

14.1 This Agreement constitutes the entire agreement between the parties and it is agreed that there is no term, condition, warranty, or representation, collateral or otherwise, that may govern or affect the relationship between the parties, other than those contained in this Agreement or the exceptions specified herein. **This Agreement may not be modified or amended except in writing by the parties in this Agreement.**¹⁸ [emphasis added]

As can be seen from the highlighted parts of the above documents, there is a repeated message that Convocation's approval is required for matters relating to the CEO's employment and compensation.¹⁹

My opinion is also supported by the past practices of the LSO relating to the CEO's compensation. Convocation approved Ms. Miles' 2018 Agreement appointing her as CEO and fixing the terms of her remuneration. The 2024 Amending Agreement then altered the agreement that had been approved by Convocation. It makes sense that, having approved the compensation package, Convocation would be required to approve any amendment.

Moreover, the 2018 Agreement required that Convocation approve Ms. Miles' annual bonus, and that is what happened in the following years,²⁰ including in 2024. The bonus was one facet of Ms. Miles' compensation. The base salary was another facet. It would be unusual that the parties would have agreed that Convocation must approve Ms. Miles' bonus but would not have intended that Convocation need also approve an amending agreement ending the bonus and replacing it with a significant increase of the CEO's base salary.

Furthermore, every year the Compensation Committee prepared a report for Convocation recommending a bonus for Ms. Miles. In those reports, the Committee set out its mandate.

¹⁸ Brief, Tab 1.

¹⁹ There is also no indication in the LSO's governing documents that the Compensation Committee's mandate can be amended unilaterally by the Treasurer, especially having been established by Convocation; nor would such an amendment supersede the relevant provisions of the Act and By-laws.

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Although the description of the mandate in the February 2024 Report to Convocation is incomplete, it does include the following:

- a. conduct the annual performance review of the Chief Executive Officer;
- b. recommend the amount of the Chief Executive Officer's incentive entitlement to Convocation annually; and
- c. **make recommendations to Convocation relating to the Chief Executive Officer's compensation (salary, bonus, benefits, pension and perquisites), if appropriate, in accordance with the Chief Executive Officer's contract.**²¹

The description strongly suggests that Convocation would approve any changes to Ms. Miles' compensation.

The opinion I have reached is also consistent with advice that Hicks Morley gave to Ms. Horvat in her capacity as LSO Treasurer in late 2022 and early 2023, as it is with the opinion of Mr. Varro, the LSO's long-standing Corporate Secretary who had retired at the end of 2023. Mr. Varro was and is very familiar with the LSO's governing documents and the practices at the LSO. He expressed his view to me that the Treasurer did not have the authority to enter into a contract with the CEO, such as the 2024 Amending Agreement, without Convocation's approval.

Further, at the February 2024 Convocation approving the CEO's bonus for 2023, the impression was left that any amendment to the CEO's compensation agreement would have to be approved by Convocation. None of the Benchers at that meeting of Convocation objected or expressed a contrary view.

As noted, s. 43 of By-law 2 provides: "Convocation should, on such terms as it considers appropriate, appoint a person as chief executive officer of the Society." Some have suggested that this language is not clear and leaves open the interpretation that it only applies with respect to appointing the CEO and the terms that it considers appropriate when making such appointment. On this interpretation, s. 43 would have applied to the appointment of Ms. Miles in 2018, but not to the amendment to the contract in June 2024. Thus, some argue that the authority under s. 43 should be interpreted so that the power to amend the terms under which the appointment was made is not included in the power given to Convocation under s. 43.

In my view, that interpretation leads to a most unusual result: that is, that Convocation has the authority to attach terms to a CEO's contract at the time of appointment, but that the Treasurer has the authority to amend those terms without Convocation's approval. Significantly, there is no other provision in the By-laws or elsewhere in the governing documents that I found delegating the authority to amend to anyone else, including the Treasurer. I see no reason to depart from a common sense approach in interpreting s. 43, which suggests that if the power to attach terms to the employment of a CEO is given to Convocation, Convocation would also have the power to amend those terms, unless Convocation delegated that authority to someone else, such as the

²¹ Brief, Tab 5.

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Treasurer. Convocation never delegated that authority.

Interestingly, in the years leading up to the spring of 2024, it appears that no one raised this possible interpretation of section 43. Indeed, to the extent that there was any consideration given to the issue, it seems to have been assumed that Convocation, which had the sole authority to attach terms to the appointment, would also have the authority to amend those terms if appropriate.

Finally, I note that Treasurers over time appear to have delayed the consideration of a review of Ms. Miles' compensation as she indicated been discussed with Mr. Schabas when he was Treasurer because of a concern that Convocation would not be open to such an increase.

Some members of the Compensation Committee and Ms. Miles, to varying degrees, expressed similar sentiments (with respect to concerns about Convocation not being open to a CEO salary increase). Although it may not be clear how carefully some of these individuals had considered this issue, this seems to reveal a general underlying assumption that Convocation's approval was required.

I recognize that some members of staff and a few Benchers may have had a different view than the one I express here about the Treasurer's authority at the time that Ms. Horvat entered into the 2024 Amending Agreement. There was some uncertainty at that time, but in the end the Treasurer proceeded on the basis that she had the authority, and others accepted her view. To the extent that individuals held a contrary view to the opinion I am expressing, I am satisfied that they reached their conclusions on the basis of incomplete information or an incomplete review of the relevant documents and the past practices of the LSO. As indicated above, despite those contrary views, it is my opinion that the Treasurer did not have the authority to enter into the Amending Agreement without the approval of Convocation.

II. Is the 2024 Amending Agreement Enforceable?

Generally, agreements that are entered into without proper authority – absent ostensible authority or ratification – are not enforceable.²²

Assuming a reviewing court were to find that the Treasurer did not have the authority to enter into the 2024 Amending Agreement, in my opinion, it would also most likely find that the 2024 Amending Agreement is unenforceable.

It is possible that Ms. Miles would argue that the amendment is enforceable. The two most likely bases on which such an argument might be made are that the Treasurer had ostensible authority to enter into the 2024 Amending Agreement, and/or that the Law Society has ratified the 2024 Amending Agreement.²³

²² Waddams, *The Law of Contracts* (Toronto: Thomson Reuters, 2022) at 270.

²³ To be clear, Ms. Miles has not taken this position or made these arguments, and indeed may choose not to. However, I consider it necessary in order to give my opinions to raise and address them. It is also possible that Ms. Miles could raise other issues, or that some of the information underlying my opinion is different from the evidence that is accepted at a trial.

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1. Ostensible Authority

(i) *Law*

a. Doctrine of Ostensible Authority

The doctrine of ostensible authority allows an agent to bind its principal to agreements made with third parties where the agent has no actual authority to do so.²⁴ It emerges from the manner in which a reasonable third party would understand conduct or statements made by the principal.²⁵ Ostensible authority can only be relied on by someone who is unaware that the agent has no actual authority.²⁶

The test of whether the principal's conduct amounts to a "**holding out**" of the agent as having the principal's authority **depends on the reasonableness of the third party's expectation taking account of all of the circumstances of the case.**²⁷

A third party, when dealing with an agent, "is bound to inspect the power and is held to understand its legal effect".²⁸ For example, in *Bowne of Canada Ltd v First Mutual Investments of Canada Ltd*, the court found that a third party was incorrect in assuming the agent they had been dealing with on an ongoing basis had authority to enter into a particular agreement, when the document "**cried out for inquiry to be made**".²⁹ The court cited Fridman's text to explain that if a third party has **actual or constructive** notice of a "want of authority," the principal will not be bound by the agreement entered into with the agent.³⁰ In determining this notice, the fact that the agent was **acting in their own interest, or acting contrary to the principal's interest**, "may be extremely relevant".³¹

The same result occurs if the **third party had the "opportunity" to discover that the agent did not have authority to contract, and should have "availed himself of such opportunity"** but failed to do so.³²

An agent is in fact permitted to act beyond the scope of their actual authority (but within the scope of their ostensible authority), so long as the fact that the agent is exceeding their authority is

²⁴ *Dorian v Manufacturers Life Insurance Co*, 2003 ABCA 336.

²⁵ *Canadian Encyclopedic Digest*, "Apparent or Ostensible Authority" (Scarborough: Carswell, accessed 2025).

²⁶ *Canadian Encyclopedic Digest*, "Apparent or Ostensible Authority".

²⁷ Waddams, *The Law of Contracts* at 262. [emphasis added]

²⁸ *National Bank of Canada v Anemi*, 1988 CarswellOnt 108 (District Ct), citing *Hayes v Standard Bank of Can*, [1928] 2 DLR 898.

²⁹ 1997 CarswellBC 2550 (CA) at para 8. [emphasis added]

³⁰ *Bowne of Canada Ltd v First Mutual Investments of Canada Ltd*, 1997 CarswellBC 2550 (CA) at para 8.

³¹ Fridman, *Canadian Agency Law* at 3:32. [emphasis added]

³² *Bowne of Canada Ltd v First Mutual Investments of Canada Ltd*, 1997 CarswellBC 2550 (CA) at paras 8-9. [emphasis added] See also Fridman, *Canadian Agency Law* at 3:29.

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unknown to the third party.³³

b. Indoor Management Rule

In the corporate context, the indoor management rule applies.³⁴ The rule was recently summarized as follows by the Ontario Superior Court:

The indoor management rule originated in the English case of *Royal British Bank v. Turquand* (1856), 119 E.R. 886 (Eng. Exch.). The principle is that if a corporation holds someone out as a director, officer or agent to third parties, the corporation cannot deny that the person is duly appointed or that he or she has the authority customary or usual for such a director, officer or agent. A person dealing in good faith with a corporation is entitled to assume that the corporation's internal procedures have been followed. The outsider is not required to conduct an inquiry into compliance with those procedures **unless that person has actual knowledge to the contrary or where the person ought to have had knowledge to that effect.**³⁵

However, a corporation is not liable for an act or representation in excess of an agent's authority **where the third party knows that the agent lacks that authority.**³⁶ Such knowledge can be **constructive**: "courts have applied the doctrine of constructive notice to charge third parties with knowledge of certain documents (such as a company's articles association) that are a matter of public record."³⁷

The position of the third party (here Ms. Miles) is important. For example: "**One obvious category of person whom courts have not permitted to rely on the indoor management rule is the directors and officers of a corporation**".³⁸

The LSO CEO is not a director of the board (Convocation). However, the CEO is an "officer" of Convocation under Part III of By-law 2. Furthermore, there is a strong argument that the principle underlying the rule outlined above would apply to Ms. Miles; that is, that she is within the class of people imputed with the knowledge of the internal requirements of the organization.

(ii) Analysis

In my opinion, a reviewing Court is unlikely to find that Ms. Miles is entitled to rely on the doctrine of ostensible authority, for two main reasons. First, a Court would likely find that Ms. Miles, being the CEO and an officer of the LSO, is within the class of people for whom knowledge of Ms.

³³ *Canadian Encyclopedic Digest*, "Apparent or Ostensible Authority".

³⁴ The indoor management rule has been codified in certain corporate legislation, but is not referenced in the Act. Regardless, the LSO is subject to the indoor management rule, as it applies equally at common law. Carol Hansell, *Directors and Officers in Canada: Law and Practice*, s. 2:50.

³⁵ *Midas Investment Corp. v. Bank of Montreal*, 2016 ONSC 3003 at para. 4. [emphasis added]

³⁶ *Canadian Encyclopedic Digest*, "Agency". [emphasis added]

³⁷ Carol Hansell, *Directors and Officers in Canada: Law and Practice*, s. 2:50, 2:55; 2:62-2:63.

³⁸ Carol Hansell, *Directors and Officers in Canada: Law and Practice*, s. 2:64. [emphasis added]

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Horvat's lack of authority should be imputed; second, in any event, in my view Ms. Miles had sufficient knowledge in the circumstances that should, at a minimum, have required her to make further inquiries about the Treasurer's authority to enter into the 2024 Amending Agreement without Convocation's approval.

As outlined above, the indoor management rule applies in this context. As can be seen from the case law, the circumstances giving rise to the finding of ostensible authority are important and may vary significantly from case to case, but the common theme is that the third party (here, Ms. Miles) must be unaware that the lack of authority of the agent (here, Ms. Horvat). However, where the third party is within a group of individuals with implied knowledge such as a director or officer, a Court may find constructive notice of the lack of authority. This approach is similar to the principles applicable in the context of ostensible authority in circumstances where the third party had an opportunity to discover the lack of authority, or where the third party ought to have knowledge of the lack of authority.

The context of the relationship between the third party and the principal is important, as is the reasonableness of the third party's expectations.

Ms. Miles is the CEO of the LSO, which is a statutory not-for-profit corporation. She is an officer of the LSO. While subject to the direction of Convocation, the CEO has the authority to manage the affairs and functions of LSO. Her duties are described in s. 45 of By-law 2 and include:

Duties of C.E.O.

45.(1) The Chief Executive Officer shall be responsible for the management and co-ordination of all phases of the operation, administration, finances, organization, supervision and maintenance of all activities of the Society.

Same

(2) In addition to the duties set out in subsection (1), the Chief Executive Officer shall perform all the functions and duties ordinarily associated with the office of chief executive officer including,

- (a) putting into effect all policies and procedures established by Convocation or a standing committee of Convocation;
- (b) counselling and assisting Convocation or any standing committee of Convocation in the development, adoption and implementation and advancement of the various functions of the Society; and
- (c) advising and assisting in the engaging of officers and employees of the Society and directing such personnel in the on-going administration of approved policies and programmes.³⁹

³⁹ By-law 2.

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The LSO CEO is not a director, but she is an officer, and her responsibilities are no different from those of other similarly situated CEOs, who are typically directors and/or officers.

There is a very good argument that Ms. Miles is within the group of people who are imputed to have knowledge of the internal requirements of the corporation under the indoor management rule. Moreover, a Court is likely to take a functional approach to applying the indoor management rule in the circumstances. It would make sense that the CEO, who is responsible for the management of the staff, including those who provide advice on governance matters, would have familiarity with those matters. Indeed, in this case, the staff providing advice to the Treasurer, [REDACTED] report to Ms. Miles. Although as a matter of course the staff members did not communicate with Miles on matters relating to her employment contract, there was nothing preventing Ms. Miles from enquiring about the authority of the Treasurer to enter into the amendment without the approval of Convocation and satisfying herself that there was authority or there was not authority.

In addition, I am satisfied that there were ample red flags for Ms. Miles that should have alerted her to the fact that Convocation's approval was necessary.

Ms. Miles was aware that it was necessary for Convocation to approve her bonus each year, a bonus that was authorized under her existing contract. Ms. Miles told me that she did not recall knowing her 2018 Agreement had been approved by Convocation. Mr. Schabas said that while he didn't specifically recall telling Ms. Miles that Convocation needed to approve or did approve the contract, he believes he would have done so. The 2018 Agreement was signed on the same day as the special meeting of Convocation approving it. Ms. Miles obviously had a keen interest in the issue, and it seems unlikely that she would not have known that Convocation approved the agreement, at least in 2018. A Court might very likely come to that conclusion.

There were also good reasons why Ms. Miles as CEO should have taken more care about the issue of the Treasurer's authority when entering into the Amending Agreement. She was aware that there could be difficulty with Convocation approving the 2024 Amending Agreement if it was required to do so. [REDACTED] advised me that she asked Diana in regard to moving forward with the Amending Agreement without Convocation's approval, "do you really want to do this?" Ms. Miles was candid in her meeting with me about her view, shared by others, that Convocation might have a serious concern with the proposed amendments and increased salary. As it turns out, she was correct about that concern.

In my view, Ms. Miles as CEO of LSO should have been alerted that it was necessary to take extra care in determining whether or not the 2024 Amendment (in which she had an obvious personal interest) could be approved by the Treasurer alone, without the approval of Convocation. In the end, Ms. Miles relied solely on the Treasurer's assurance that she had the authority to enter into the Amendment. Ms. Miles did not make the further enquiries referred to above in order to satisfy herself if that was the case. This failure to enquire and satisfy herself must be viewed in the context of the several warning signs that she did know about that would indicate the need for Convocation approval and with the fact that she could have ascertained if that was the case. A Court might find more was required of the CEO in these circumstances.

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In my view, a Court hearing a case about whether Ms. Miles would be entitled to rely on the doctrine of ostensible authority/indoor management rule would very likely conclude that she could not. I say this both because of the likelihood that she would be found to come within the group of people with imputed knowledge of the lack of authority under the indoor management rule, and because of her failure to make enquiries into what was likely to be a very contentious issue for the organization of which she was the CEO.

2. Ratification

(i) *Law*

Where an agent has exceeded their authority, their principal may choose to accept or reject the action the agent has taken.⁴⁰

If the agent did not have actual or apparent/ostensible authority when dealing with the third party, the principal may still be liable if the latter subsequently ratifies the transaction, by words or by conduct. In such a case, the principal's conduct amounts to a manifestation of assent to the transaction, and it seems consistent with the general theories of contract formation that the principal should be held liable.⁴¹

For ratification to occur, the following conditions must be met: the agent must have purported to act for the principal; at the time the act was done, the principal must have been competent and must be legally capable of doing the act themselves;⁴² and the principal was fully aware of the essential facts at the time of the ratification and intended to be bound by the agent's act.⁴³ In short, ratification allows for "antecedent authority" to be given to a concluded contract.⁴⁴

If there is no fixed time for an act to be ratified, it must occur "**within a reasonable time after acceptance of the contract by the unauthorized person** [...]"⁴⁵

Ratification can also occur **without a specific ratifying act**. For example:

- When the principal has received a benefit from its agent's conduct, a principal's **failure to repudiate** once they have learned of the unauthorized act can amount to ratification.⁴⁶ However, **this requires the principal to have "full knowledge of the agent's dealings with**

⁴⁰ *Russelsteel Ltd v Consolidated Northern Drilling & Exploration Ltd*, 1981 CarswellAlta 253 (QB) at para 8, citing *Abbot v McDougall & Cowans*, [1927] DLR 1031.

⁴¹ Waddams, *The Law of Contracts* at 264.

⁴² *John Ziner Lumber Ltd v Kotov*, [2000] OJ No 3797 (CA) at para 29, citing *Firth v Staines* (1897), 2 QB 70 at 75.

⁴³ Canadian Encyclopedic Digest, "Ratification".

⁴⁴ Canadian Encyclopedic Digest, "Ratification" at para 5.

⁴⁵ Fridman, *Canadian Agency Law* at 2:24, citing *Metropolitan Asylums Board v. Kingham & Sons* (1890), 6 T.L.R. 217 at 218, which also provides that a contract cannot be ratified by the principal after a date fixed for performance to commence.

⁴⁶ Fridman, *Canadian Agency Law* at 2:25.

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the third party".⁴⁷

- For **acquiescence** to amount to ratification requires **something more than silence**; however, "mere silence may be elevated to acquiescence by continued silence or by acts that are in keeping with ratification".⁴⁸
- Ratification can also be **implied by the principal's conduct**. The conduct must be "**clear and unequivocal**".⁴⁹ This is summarized in the following passage from *Hunt v TD Securities Inc*: "the essence of 'ratification' by the principal of the act of the agent is manifestation of mental determination by the principal to affirm the act, and this may be manifested by written word or by spoken word or by conduct, or may be inferred from known circumstances and principal's acts in relation thereto".⁵⁰

If the principal receives any of the benefits or otherwise profits from the agent's act, there is "strong evidence" that they have ratified the act.⁵¹

(ii) Analysis

In my opinion, there is a strong likelihood that the 2024 Amending Agreement would be found to be unenforceable, and that the LSO has not ratified it.

Assuming a Court were to find the Treasurer did not have the authority to amend the Amending Agreement, then it follows that only Convocation has the authority to ratify the amendment. As mentioned, ratification can take place by words or actions.

Convocation has not ratified by words. However, an argument may be made that by not taking any action for a period of approximately five months after the 2024 Amending Agreement was signed in June, the LSO's inaction constituted a ratification. Moreover, the parties have performed under the 2024 Amending Agreement. The LSO has paid Ms. Miles her increased salary, and also the amount of \$226,178.43 for the past pension shortfalls. Ms. Miles has continued to serve as

⁴⁷ *John Ziner Lumber Ltd v Kotov*, [2000] OJ No 3797 (CA) at para 33.

⁴⁸ *Community Savings Credit Union v United Assn of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 324*, 2002 BCCA 214 at para 42.

⁴⁹ *Community Savings Credit Union v United Assn of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 324*, 2002 BCCA 214 at para 31. For example, the principal ratifying a sale of goods contract by accepting delivery and making payments.

⁵⁰ [2003] OJ No 3245 (CA) at para 67, citing Black's Law Dictionary. *Gallagher v Waterloo Motors*, [1931] 2 DLR 310 involved the question of whether an employment contract is valid where the president may not have had the proper authorization to enter into it. The employee, Gallagher, worked for "practically one year" without any objections from the other directors, who had every opportunity to request to review the contract. The court found that "it is going a long way for [the president] now to come in and say that he had no authority to sign the contract". The evidence from the other directors was conflicting and there was "question as to whether or not the directors at a meeting confirmed the contract". The court concluded it was "rather late in the day" to deny the authority of the officer who contracted with the employee.

⁵¹ *National Bank of Canada v Anemi*, 1988 CarswellOnt 108 (District Ct), citing *Hayes v Standard Bank of Can*, [1928] 2 DLR 898.

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CEO from the end of June 2024 to the present.

There are two reasons why I think these arguments would be unlikely to succeed.

First, no one in the LSO, including its current Treasurer, understood that the former Treasurer lacked authority to enter into the Amending Agreement until November at the earliest. Moreover, there is nothing that we were told that suggests that there was anything nefarious about why the matter was not brought to Convocation before the end of November. The Amending Agreement was signed shortly before the end of June. Convocation does not usually meet on substantive matters in the summer.

The new Treasurer, Mr. Wardle, was informed in late June that the 2024 Amending Agreement had been executed, and accepted (at that time) that Convocation approval was not needed. In September 2024, he decided that the 2024 Amending Agreement should be put before Convocation for information purposes. He convened a meeting of the Compensation Committee in early September to address the matter.

The matter was ultimately put on the agenda for Convocation in November 2024. [REDACTED] and Ms. Miles therefore assisted Mr. Wardle in putting together a report. Ms. Shortreed, the employment lawyer on the Compensation Committee, was out of the country for several weeks in the fall, and reviewed the draft report as soon as she was able to.

Ms. Miles was involved in the issue of the matter going to Convocation [REDACTED] [REDACTED] In my view, if Ms. Miles were to raise a ratification argument, a court considering the issue might think it somewhat inconsistent that a person complaining about a delay in the principal rejecting the agreement to have been involved in the process leading to the delay, particularly as here when it was anticipated that the issue would become contentious at Convocation

As described above, concerns were first raised about the authority of the former Treasurer to enter into the amendment without Convocation approval following the circulation to Benchers in late November of the materials for the November 28, 2024 Convocation.⁵² Once this occurred, Convocation quickly put in place a process to fully investigate the actions giving rise to the execution of the 2024 Amending Agreement.

In my view, it would be reasonable for a Court addressing the ratification issue to take into consideration the context and governance structure of the LSO and view the failure to raise the concern about the authority of the former Treasurer until November in that context. The LSO is a quasi-political body not operated like most corporations with a top-down management style. There are 54 benchers in Convocation and there are well-established procedures for holding Convocations and making decisions. Necessarily, there is a much more elaborate process and sometimes increased delays in decision making than one finds in most corporations, even large corporations. Although there was some delay in bringing this matter to the attention of Convocation, there is nothing in the information that I received to suggest that this delay was caused by bad faith or some ulterior motive. Once the decision was made in early September to

⁵² Brief, Tab 8.

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put the 2024 Amending Agreement to Convocation, there was nothing to be gained by anyone in delaying when that would occur.

There is an additional period of time between when Convocation was notified at the end of November and the issuance of this report. That delay was understandable and entirely consistent with Convocation taking a responsible decision to proceed to address the difficulty in a thorough and fair manner. Ms. Miles was made aware of and participated cooperatively in the investigation. In my view, if there is any issue with respect to delay leading to ratification, the clock surely stopped when Convocation decided to investigate.

In summary, Convocation has not ratified the Amendment by words, and it is unlikely that a court would find that the delay in bringing the lack of authority to light in the circumstances here constitutes ratification.

There is a second difficulty with a ratification argument. This is not a situation, as is often the case where ratification arises, where the third party (Ms. Miles) has been prejudiced by the delay, at least in a monetary or commercial sense. If the 2024 Amending Agreement is found to be unenforceable, the 2018 Agreement will continue to apply. Under the terms of that agreement, Ms. Miles is entitled to receive her salary together with her annual bonus. Under the 2024 Amending Agreement, which at the time was understood by those involved to be enforceable, she was paid an amount well in excess of her previous salary and an adjustment attributed to pension shortfalls (but that arose under the terms of the 2018 Agreement). In addition, in terms of services provided to LSO, Ms. Miles has continued to be the CEO with the same duties as she had before the 2024 Amending Agreement.⁵³

In summary, while it is not entirely free from doubt, there is a strong likelihood that LSO has not ratified the 2024 Amending Agreement.

3. Conclusion

It is my opinion that there is a strong likelihood that a court would find that the 2024 Amending Agreement is not enforceable, on the basis that (a) Ms. Horvat did not have actual authority to enter into the Amendment without Convocation approval; and (b) a court is unlikely to find that the agreement is enforceable on the basis of ostensible authority or ratification.

III. Recommendations with Respect to What Steps the Law Society May Take with Regard to the CEO's Employment Contract

(i) 2024 Amending Agreement: Unenforceable (At the Option of Convocation)

As outlined above, I conclude that there is a strong likelihood that the 2024 Amending Agreement is not enforceable. **LSO may choose to accept it** (i.e., ratify, or take the position that the agreement is valid) **or reject it** (i.e., take the position that the agreement is void).

⁵³ I do not want to minimize the stress that this unfortunate situation has caused Ms. Miles (and others for that matter). The point I make is to this point Ms. Miles has not suffered financially.

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Convocation has the authority to make this determination. This authority flows from Convocation's authority to enter into contracts with the CEO. In considering whether to accept or reject the Amendment, Convocation may wish to obtain employment law advice, and Benchers should consider their fiduciary duties owed to LSO (in particular, the duty to act in the best interests of LSO, in all of the circumstances, taking into account, among other things, reputational, fiscal, stability, and public interest mandate considerations).

Considerations in this regard include:

- Notwithstanding my opinion, Ms. Miles may choose to bring an action and argue that Ms. Horvat did have the actual or ostensible authority to enter into the 2024 Amending Agreement on behalf of the LSO without Convocation's approval, and/or that LSO has ratified the agreement, and therefore that the 2024 Amending Agreement is in fact valid and enforceable.
- My opinion is not without some doubt, and it is possible that a reviewing court would conclude that the 2024 Amending Agreement is enforceable.
- The differences between the 2024 Amending Agreement and the 2018 Agreement, and whether in the circumstances it would or would not be in the best interests of LSO to ratify the 2024 Amending Agreement.
- Whether in the circumstances of LSO's employment of Ms. Miles, and taking into account her fiduciary duties, the results of my investigation, and the protection in s. 9 of the Act,⁵⁴ it would be feasible to seek any repayment, and on what terms (again, with the benefit of employment law advice).
- The costs, potential reputational damage, and internal turmoil that could result from any such litigation.

(ii) 2018 Agreement: Binding and Enforceable

In any event, regardless of the enforceability of the 2024 Amending Agreement, in my view, the 2018 Contract remains enforceable. There has been no suggestion that the 2018 Agreement is unenforceable. It was approved by Convocation before it was executed, and Ms. Miles has been performing under it for seven years.

(iii) Next Steps re: Ms. Miles

Regardless of whether Convocation decides to accept or reject the 2024 Amending Agreement,

⁵⁴ Section 9 of the Act provides a limitation of liability for any act done in good faith:

9. No action or other proceedings for damages shall be instituted against the Treasurer or any bencher, official of the Society or person appointed in Convocation for any act done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, a regulation, a by-law or a rule of practice and procedure, or for any neglect or default in the performance or exercise in good faith of any such duty or power.

It is worth noting that while styled as an indemnity, this protection is in fact in the nature of an immunity or limitation of liability. Benchers are also indemnified, pursuant to s. 53 of By-law 3.

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Convocation has the authority to consider next steps in regard to Ms. Miles's employment in the usual course (either under the terms of the 2018 Contract, or the terms of the 2024 Amending Agreement).⁵⁵

LSO may choose to continue employing Ms. Miles on the terms of whatever agreement it takes the position is in force, or to consider changing Ms. Miles's terms of employment, or to consider other options.

Again, in doing so, Convocation may wish to obtain employment law advice, and Benchers should consider their fiduciary duties owed to LSO (in particular, the duty to act in the best interests of LSO, in all of the circumstances, taking into account, among other things, reputational, fiscal, stability, and public interest mandate considerations).

Considerations in this regard include:

- The information uncovered during my investigation⁵⁶ (including Ms. Miles's December 10, 2024 offer⁵⁷).
- If Convocation determines it is necessary or desirable, employment law advice with respect to options such as dismissal for and without cause (and the various consequences associated therewith), including revisiting Ms. Miles's compensation and repayment of the difference between the 2018 Agreement and what has been paid under the 2024 Amending Agreement.
- Management of the organization in its best interests in the meantime.

(iv) *Other Matters*

For the reasons set out below, I have not considered what additional steps might be available to the LSO arising from the circumstances leading up to and following the execution of the Amending Agreement.

My mandate is focused on providing opinions about the Treasurer's authority to enter into the Amending Agreement and the enforceability of the Amendment. In addition, I am asked to make recommendations about what steps may be taken with respect to that Amendment in the circumstances.

I have set out my opinions on these matters above. In doing so I have commented on the actions of some individuals to the extent that was necessary.

My mandate also asked me to investigate and report on the circumstances that led up to the entry into the 2024 Amending Agreement. My mandate does not include opining on the conduct of

⁵⁵ While the 2024 Amending Agreement eliminates the bonus and approval thereof, there will still need to be a CEO performance assessment in due course, regardless of which agreement Convocation takes the position is in force. Historically this is done in February, but has not yet been done this year.

⁵⁶ Again, with the caveat that the information does not constitute legally binding factual or legal determinations.

⁵⁷ As set out in Appendix "A"; Brief, Tab 34A.

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individuals involved in the events leading up to and following the execution of the 2024 Amending Agreement, other than is necessary to provide the opinions sought. I have included a detailed report of the results of the investigation in Appendix “A”. Although some of the individuals interviewed have different recollections about some of what occurred, I am satisfied that Appendix “A” presents a very useful and detailed picture about what did happen. While I am comfortable to observe what I think is obvious (i.e., that had more care and diligence been taken, this unfortunate situation would have been avoided), I stop short however of ascribing blame or fault to individuals (except where necessary to give my opinions).

There are two reasons why I have adopted this approach. First, my mandate does not ask for my opinion on individual responsibility; it asks for the opinions mentioned above and a report on what happened.

Second, I would be uncomfortable expressing findings of fault not called for in the mandate given the process it was understood I would follow: i.e., interviews not under oath and not subject to cross-examination. Given that the consequences of me opining on fault could be significant, and is outside the scope of my mandate, I have not done so.

In my view, it is open to Convocation to pursue any other matters. In doing so, Convocation may wish to obtain further governance and employment advice, and Benchers should consider their fiduciary duties owed to LSO (in particular, the duty to act in the best interests of LSO, in all of the circumstances, taking into account, among other things, reputational, fiscal, stability, and public interest mandate considerations, and the fact of the limitation of liability in s. 9 of the Act⁵⁸). In making these comments I am not recommending any particular course of action.

C. Recommendations Arising from Circumstances Leading Up to the Contract

Consistent with best practices of not-for-profit governance, I recommend that the LSO:

- Ensure that all LSO committees, standing or otherwise, have accurate, easily accessible, and up to date Terms of Reference, including the committee mandate, responsibilities, and authorities; responsible Staff liaison(s) and their duties; etc. These should be contained in a manual along with all other policies of Convocation.
- Draft a document outlining the role, responsibilities and authorities of the LSO Treasurer for inclusion in the Convocation manual.
- Clarify ultimate internal responsibility for interpretation of LSO’s governing documents and governance matters, particularly in the circumstance where the issue relates to the authority of the Treasurer or CEO.
- Regularize and memorialize the process for retention and location of documents by the Corporate Secretary, Human Resources, the Treasurer and Archives, particularly in the circumstance where the issue relates to CEO compensation or other sensitive/confidential

⁵⁸ See fn. 54.

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matters.

- Consider whether it is appropriate for Benchers to have easy access to Convocation minutes, transcripts and materials dating back as far as is practicable.
- Regularize and memorialize the process for the rare circumstance where the LSO Treasurer needs to enter into an agreement (e.g., to retain external counsel).
- Regularize and memorialize LSO committee processes, including creation of an annual committee workplan and estimated number and timing of meetings, minute-keeping, circulation of agendas and materials, ability to access historical materials, etc.
- Ensure that Benchers and the Treasurer receive copies of relevant governance materials and annual governance training, including with respect to:
 - The appropriate oversight role of a Board of directors;
 - The appropriate role of a Board of directors in CEO performance management and compensation;
 - The process for identifying and dealing with actual, potential and perceived conflicts of interest;
 - The role of the Treasurer (Chair) and all Benchers (Directors) in ensuring adherence to fiduciary duties, including a culture of good governance.
 - Discharging fiduciary duties in the context of reliance on Staff.

Generally:

- Ensure that succession planning for key roles includes a robust transition plan and adequate support for individuals new to a role.
- Encourage staff to seek out internal assistance or external counsel when they are unsure of legal advice.

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Appendix “A”: Investigation and Report on Circumstances Leading Up to the June 2024 Amendment

As discussed in my report, I investigated the circumstances leading up to and following the execution of the contract by the Treasurer and the CEO, in order to provide the opinions I have been asked to give. The scope of the investigation is therefore dictated by what information is necessary to provide the opinions sought in the mandate.

Copies of the documents referred to below that are not hyperlinked are compiled in an accompanying privileged and confidential brief. Where there is no documentary source cited, the source is one or more interviews.

It is helpful to start with an outline of the relevant sections of the *Law Society Act*, the LSO By-laws, the LSO governance practices and policies, as well as a discussion of the mandate and practices of the Compensation Committee.

The Law Society of Ontario

The Law Society of Ontario is a statutory not-for-profit corporation that regulates Ontario’s lawyers and paralegals.

The *Law Society Act*, R.S.O. 1990, c. L.8 (as amended) (**Act**) continues the Law Society of Upper Canada under the name Law Society of Ontario (both referred to herein as **LSO**) as a corporation without share capital to which the *Not-for-Profit Corporations Act, 2010* does not apply.⁵⁹

Convocation and its Committees, the Treasurer, and the Chief Executive Officer

The LSO’s current Treasurer is Peter Wardle. The LSO’s current CEO is Diana Miles.

Pursuant to the Act:

7. The Treasurer is the president and head of the Society.
8. (1) The Chief Executive Officer shall, **under the direction of Convocation**, manage the affairs and functions of the Society. [...]
10. The benchers shall govern the affairs of the Society. [emphasis added]

Section 62 of the Act empowers Convocation to make by-laws, among other things:

- (0.1) 1. relating to the affairs of the Society; [...]
- (1) 8. providing for the appointment of and prescribing the duties of the Chief Executive Officer and such other officers as are considered appropriate. [...]
11. providing for the establishment, composition, jurisdiction and operation of

⁵⁹ Except as may be prescribed by regulation; there is currently no such regulation.

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standing and other committees, including standing committees responsible for discipline matters and for professional competence, and delegating to any committee such of the powers and duties of Convocation as may be considered expedient.

The LSO By-laws (**By-laws**), adopted by Convocation, provide, among other things⁶⁰:

By-law 2: Corporate Provisions

Appointment of C.E.O.

43. **Convocation shall, on such terms as it considers appropriate, appoint a person as Chief Executive Officer of the Society.**

By-law 3: Benchers, Convocation and Committees

Duties, powers of committees

107. (1) Unless expressly authorized to perform a duty or exercise a power, the performance of a duty or the exercise of a power by a standing⁶¹ committee is subject to the approval of Convocation. [emphasis added]

The LSO Governance Practices and Policies (**Governance Practices and Policies**), adopted by Convocation, provides, among other things:

43. Committees and task forces are to adhere to their mandates as established by Convocation and may vary same only with the approval of Convocation.

44. Committees and task forces are to identify all reasonable policy options and implications to inform Convocation's decisions. Committees and task forces do not establish policy but assist Convocation in doing so.

As noted, pursuant to s. 7 of the Act, "the Treasurer is the president and head of the Society." However, the authority of the Treasurer is not unlimited. The Treasurer has certain authority pursuant to the Act, and the authority of Convocation (memorialized in, e.g., the By-laws, Convocation policies, and ad hoc resolutions of Convocation). For example, the Treasurer generally has the authority to preside at meetings of Convocation,⁶² determine the business and order of business at Convocation,⁶³ and to preside over Convocation.⁶⁴ I have not located an authority of the Treasurer to unilaterally (i.e., without the express authorization of Convocation [or

⁶⁰ LSO By-Laws

⁶¹ See fn 70 below. Pursuant to s. 116.1(3) of By-law 3, s. 107 applies (with necessary modifications) to committees established by Convocation for the purposes of performing a specific task.

⁶² By-law 2, s. 10.

⁶³ By-law 3, s. 80.

⁶⁴ By-law 3, s. 86.

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committee⁷⁰ established by Convocation,⁷¹ not a standing committee of Convocation pursuant to the Act⁷² or the By-laws.⁷³ The composition and mandate of the Compensation Committee were established by resolution of Convocation on September 20, 2007, as follows:⁷⁴

Minutes of Convocation – September 20, 2007

Re: Compensation Committee Mandate

It was moved by Mr. Millar, seconded by Ms. Symes, that Convocation approve the following mandate for the Compensation Committee:

The mandate of the Compensation Committee of the Law Society of Upper Canada is to,

- a. set the criteria, including performance goals and objective, by which the Chief Executive Officer's entitlement to a bonus will be determined annually;
- b. conduct the annual performance review of the Chief Executive Officer;
- c. recommend the amount of the Chief Executive Officer's bonus entitlement to Convocation annually;
- d. **make recommendations to Convocation relating to the Chief Executive Officer's compensation (salary, bonus, benefits, pension and perquisites), if appropriate, in accordance with the Chief Executive Officer's contract;** and
- e. review and approve, if appropriate, the Chief Executive Officer's recommendations with respect to the compensation of the other members of the Law Society's senior management team.

Committee Composition:

The Committee shall consist of the Treasurer, the Chairs of the Finance Committee and the Audit Committee and a lay bencher appointed by Convocation on

⁷⁰ Or, technically speaking, a committee known as a "task force"; under By-law 3, s. 116.1(1): "Convocation may at any time establish a committee, to be known as a task force, **for the purposes of performing a specific task** or performing a task for a specific period of time." Pursuant to s. 116.2, ss. 109 and 110 in respect of committee composition, and s. 107 in respect of committee authority, apply (with necessary modifications) to such a committee.

⁷¹ The Governance Practices and Policies (Brief, Tab 9) notes as follows:

41. In addition to standing committees, other committees are established to support the work of Convocation, including the Compensation Committee.

⁷² The Act establishes the Paralegal Standing Committee (s. 25.1), and the Proceedings Authorization Committee (s. 49.20).

⁷³ By-law 3, s. 108.

⁷⁴ Brief, Tab 7. Taken from Mr. Varro's summary document, referenced below.

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recommendation of the Treasurer.

Quorum

Three members of the Committee constitute a quorum.

Carried

[emphasis added]

The composition of the Compensation Committee was amended by resolution of Convocation on August 21, 2012, as follows:

Minutes of Convocation August 21, 2012⁷⁵

TREASURER'S REPORT TO CONVOCATION

Re: Composition of the Compensation Committee

The Treasurer presented the report.

It was moved by Ms Doyle, seconded by Ms Murchie, that Convocation approve the following changes to the composition of the Compensation Committee:

- (a) replace the Chairs of the Audit Committee and the Finance Committee with the Chair or Co-Chairs of the Audit & Finance Committee; and
- (b) increase the size of the committee to five persons by adding an elected bencher or elected benchers as required.

Carried

I have been told that LSO does not maintain Terms of Reference for committees of Convocation. Committee members are not provided with the committee mandate as a matter of course.

The historical practice has been that the appointed members of the Compensation Committee are appointed by Convocation annually, at the July meeting and on the Treasurer's recommendation.⁷⁶ The practice has been to appoint the Treasurer (an ex officio member of the Committee) as the Chair of the Compensation Committee, and not to appoint a Vice Chair. As Chair, the Treasurer of the Committee has the following responsibilities, among others:

51. The Chair of a committee or task force is responsible for setting and managing the agenda for the meeting.

⁷⁵ Mr. Varro's summary document, referenced below and reproduced at Tab 7 of the Brief, indicates that this resolution was passed in 2021; this is a typo.

⁷⁶ By-law 3, ss. 116.1, 109(4).

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53. The Chair is required to manage the work of the committee or task force within the scope of its mandate

57. The Chair is responsible for ensuring that

- a. materials for committee deliberations are appropriate for their purpose and include an appropriate level of detail to permit informed discussion;
- b. reports to Convocation are provided at regular intervals;
- c. matters for Convocation's decision include a motion that is clear in its meaning and purpose;
- d. reports include an appropriate level of detail to permit informed decision-making; and
- e. reports include, where appropriate, a range of options for each matter recommended for approval together with the implications thereof.⁷⁷

It appears that Benchers, including members of the Compensation Committee, did not have a copy of the full Committee mandate during the relevant time, but we understand from interviewees that parts of the Committee mandate were reproduced in reports to Convocation. For example, one of the annual Compensation Committee reports to Convocation on CEO performance assessment and entitlement to bonus described the Committee mandate as follows:

The Committee's mandate is to:

- a. conduct the annual performance review of the Chief Executive Officer;
- b. **recommend the amount of the Chief Executive Officer's incentive entitlement to Convocation annually;** and
- c. **make recommendations to Convocation relating to the Chief Executive Officer's compensation (salary, bonus, benefits, pension and perquisites), if appropriate, in accordance with the Chief Executive Officer's contract.**⁷⁸

It is not clear where this description of the Committee mandate originated; it may have been cut and pasted over the years from report to report. It is notable that the description refers only to making recommendations to Convocation relating to, among other things, the CEO's salary as appropriate in accordance with the CEO's contract. There is no suggestion that a body or individual other than Convocation would have the authority to order or enter into an agreement effecting the change to the CEO's compensation.

The mandate of the Compensation Committee in its entirety is contained in the archived minutes

⁷⁷ Governance Practices and Policies; Brief, Tab 9.

⁷⁸ Brief, Tab 5.

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of the September 20, 2007 meeting of Convocation. Mr. Varro maintained a document in his files excerpting the text of the 2007 and 2012 resolutions of Convocation relating to the Compensation Committee composition and mandate.

The recollection of the 2023-2024 Compensation Committee members that I interviewed was that prior to the investigation, they had not seen Mr. Varro's document, or the September 2007 minutes, nor had they ever otherwise seen the Committee mandate in its entirety.⁷⁹ The Committee was focused on the aspects of their mandate that they were aware of; that is, the three items reproduced in the Committee report to Convocation. The Committee members that we interviewed did not consider item "e." of the mandate, relating to approval of the CEO's recommendations with respect to compensation of the other members of the senior management team, to be within their purview.⁸⁰ They reported having not been aware of item "d." of the mandate, relating to the CEO's compensation, although as noted it appeared in the February 2024 Report to Convocation.⁸¹

The general impression conveyed by the Compensation Committee members that I interviewed was the Committee was unstructured and disorganized, generally and in comparison with other LSO committees. The Committee did not have regular meetings or agendas. Like other LSO committees, minutes were not taken, and decisions were not recorded. Some (described as minimal) materials are posted to BoardBooks/Diligent Boards, but disappear after some period of time.

[REDACTED]

The general practice of the Committee in undertaking the CEO performance assessment and bonus entitlement aspects of its mandate appears to have been passed from Treasurer to Treasurer, but was again not memorialized in writing.

[REDACTED] the Compensation Committee would be appointed annually by Convocation in the July meeting, meet with the CEO to discuss their performance and bonus, reach out to a sampling of Benchers to get feedback on CEO performance, and oversee the drafting of a report on these issues to Convocation with a recommendation as to the CEO's bonus. The report would then be received and the bonus approved by Convocation, generally at a meeting in February of the following year.

The practice of Ms. Miles, the LSO CEO from 2017 to present, was to initiate this process late in the year by sending a report on her performance and the performance of senior management to the members of the Compensation Committee, and meeting with the Committee to discuss these reports before the end of the year. During Ms. Miles' tenure, the practice of the Compensation Committee eliciting feedback from a subset of Benchers continued. With the assistance of the Staff liaison, a

⁷⁹ This appears to be inconsistent with the recollection of some Committee members that we interviewed that there was discussion about the mandate being updated to reflect that they did not approve senior management compensation.

⁸⁰ Note, however, that item d. of the mandate contains the modifier "if appropriate".

⁸¹ [REDACTED]

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report with recommendations would be prepared and shared with Convocation in advance of its February meeting. At the February meeting, the report would be received, a motion in respect of the CEO bonus would be tabled, debate would ensue, and a resolution would be passed by Convocation in respect of the CEO's entitlement to bonus.

2017-2018 CEO Transition

[REDACTED]

[REDACTED]

[REDACTED]

Ms. Miles' Secondment and Appointment

Mr. Schabas then struck a CEO Transition and Search Committee. In the meantime, an interim CEO was required. At the time, Ms. Miles was LSO's head of Professional Development and Competence. Mr. Schabas offered Ms. Miles a temporary secondment to the CEO position on an interim basis. Ms. Miles agreed, on condition that she be paid [REDACTED] during the secondment. This was memorialized in a secondment agreement signed by Ms. Miles and Mr. Schabas and dated October 13, 2017.⁸⁶ Mr. Schabas believes he reported this to Convocation.

In addition to Mr. Schabas, members of the Transition Committee included Mr. Mercer, Teresa Donnelly (**Ms. Donnelly**), Jaqueline Horvat, and Peter Wardle, (**Mr. Wardle**), (who would all go on to become Treasurer). The committee retained Aon, which provided a recommendation on salary range based on market comparators. The committee also retained a search firm, Boyden, but by their meetings on February 16 and 20, 2018, it became clear that Ms. Miles was the strongest candidate.

Mr. Schabas convened Compensation Committee meetings on February 20 and 21, 2018, to discuss

[REDACTED]

84 [REDACTED]

[REDACTED]

⁸⁶ Brief, Tab 10.

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appropriate salary range and bonus. Mr. Wardle also sat on this Committee, as the then-Chair of Finance and Audit. The Committee reviewed the Aon report on comparators, as well as information about salary ranges for other provincial Law Society presidents and senior administrative positions in large law firms.

Ms. Miles presented to the Transition Committee on March 1, 2018, on her proposed plans for the organization. The recollection was that the committee was impressed. Mr. Schabas then met with Ms. Miles to advise her that the committee would be recommending her appointment as CEO to Convocation. During that meeting, Mr. Schabas recalls having had authorization from the Compensation Committee to offer her up to \$500,000 in salary, and a 20% bonus, subject to the fact that her appointment was subject to approval by Convocation. In fact, while he does not recall specifically, Mr. Schabas believes he would have told Ms. Miles that her appointment, salary, bonus, and any terms of employment were all subject to approval by Convocation.⁸⁷

Ms. Miles does not recall being told that at that meeting (or otherwise) that her appointment and terms were subject to approval by Convocation. She recalls being unhappy with the salary offer, and Mr. Schabas suggesting that she needed to “prove herself” in the role. Ms. Miles recalls suggesting that a remuneration review be done in a year, as the CEO salary had not been reviewed to comparators in many years and recalls Mr. Schabas having committed to this. Mr. Schabas does not recall making this commitment.⁸⁸ Ms. Miles did not ask Mr. Schabas to memorialize this commitment in her employment agreement, because, she indicated to us, she trusted him.

Ms. Miles recalls being provided with a draft agreement; in her view, base salary and bonus had been confirmed, and she retained a lawyer to review the balance of the agreement. Megan Shortreed (**Ms. Shortreed**) was retained to assist Ms. Miles with her contract (but not its financial terms) and interacted with Mr. Schabas in this regard.⁸⁹

Materials were prepared and circulated to Convocation to brief them on these developments. Those materials speak for themselves. They indicate that terms of Ms. Miles’ contract had been negotiated and approved by the Compensation Committee, subject to approval by Convocation.⁹⁰

In a special in camera meeting on March 8, 2018, Convocation approved Ms. Miles’ contract and terms. That same day, Ms. Miles and Mr. Schabas signed the agreement that had been approved by Convocation; the contract execution was witnessed by Terry Knott, then the LSO’s Executive Director. The March 8, 2018 employment agreement speaks for itself.⁹¹ In summary, it provides:

⁸⁷ This is consistent with the materials prepared for the March 8, 2018 Convocation at Tab 11 of the Brief, which state, among other things: “The Committee authorized the Treasurer to advise Ms. Miles of its decision and to negotiate contractual terms, in consultation with the Compensation Committee, and subject to the approval of Convocation.”

⁸⁸ Mr. Schabas did not remember any specific discussion with Ms. Miles about a salary increase (although he knew that the employment agreement contained a standard indexing provision). His recollection was that CEO compensation was reviewed annually by Convocation, so he could not have made such a promise.

⁸⁹ Ms. Shortreed advises that Ms. Miles has not waived privilege in this regard, but that the fact and general scope of her retainer is known to LSO by virtue of her interactions with Mr. Schabas at the time.

⁹⁰ Brief, Tab 11.

⁹¹ Brief, Tab 1.

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- Compensation consisting of a base salary, plus a performance recognition payment (**bonus**) of up to 20% of base salary annually based on performance as the CEO of the Law Society;
- CPI or 2% (whichever is higher) is to be applied annually to the base salary;
- Pension contribution of 12% of base salary, up to the CRA contribution maximum, paid by the Law Society into the organization's defined contribution pension plan;
- Vacation entitlement of 6 weeks annually; and
- Standard disability and health benefits, and a monthly travel allowance.

Among other things, the 2018 Agreement provides as follows, and contains an entire agreement provision:

1.2 The position of the CEO is governed by section 8 of the *Law Society Act*, and all applicable By Laws. For administrative purposes, the Executive shall report to the Treasurer. The Executive shall also abide by the Business Conduct policy attached as Appendix "A" to this Agreement and all other applicable policies of the Law Society as may be in place from time to time, all of which may be amended from time to time.

1.3 The Compensation Committee (or such other committee of Convocation and may be designated by the Treasurer) together with the Treasurer shall conduct the Executive's annual performance review which shall include a meeting with the Executive and enquiries of senior staff and stakeholders to solicit their views. **The conclusions of the Committee will be discussed with the CEO and a report will be made to Convocation by the Compensation Committee together with the recommendations as to the Executive's remuneration, bonus, performance plan and other terms and conditions of employment.** The Executive's base salary will not be reduced, and the terms and conditions of her employment will not be materially changed, without her prior written consent.⁹² [emphasis added]

The March 8, 2018, meeting of Convocation was hybrid, with a number of Benchers gathered together in person, including Mr. Schabas (the then-Treasurer), and Ms. Horvat and Mr. Wardle (at that time, both Benchers). There was discussion regarding the report of the Transition Committee and the proposed motion to appoint Ms. Miles as LSO's CEO immediately on the terms described. Ms. Horvat was the mover, and Mr. Wardle was the seconder. The motion was carried unanimously. The full transcript of the March 8, 2018, Convocation is available.⁹³

⁹² Brief, Tab 1.

⁹³ Brief, Tab 11B. The transcript of this meeting was not located until November 27, 2024.

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2019-2022 CEO Performance, Compensation and Bonus Approval

CEO Performance and Compensation

Ms. Miles reports that, upon being appointed as CEO, she was advised by the LSO's then-Executive Director, Terry Knott, that the Compensation Committee protocol was to meet with the CEO towards the end of the year (and, presumably, that the CEO's performance and bonus entitlement generally went to Convocation in February).

Ms. Miles recalls that in her first performance cycle, starting in late 2018, she asked that the Compensation Committee retain an external firm to conduct a market review of her compensation. Terry Knott engaged Mercer Canada Inc. to do a review of all LSO executive compensation, and deliver a report to LSO in 2019.⁹⁴ Ms. Miles inquired about the salary review she said she was expecting based on her meeting with Mr. Schabas in 2018.

There was a Bencher election anticipated for May 2019. It was anticipated it could be contentious. Ms. Miles reports that Malcolm Mercer, (**Mr. Mercer**), the then-Treasurer, advised her that he did not want to take anything forward regarding increasing her salary, because it would become an election issue; then a group of Benchers that interviewees often referred to as "the Slate" (**Slate**) was elected, and Ms. Miles reports "nothing regarding a CEO salary increase is going to go forward with that composition of Convocation".

Ms. Miles inquired again about a salary increase in late 2019, in particular whether Mr. Mercer would be taking a salary increase forward. She reports that he conveyed something to the effect of: "no way, the room is a disaster". At her usual meeting with the Compensation Committee around that time, she thinks she was probably told there was no hope to get her salary increase through.

Ms. Miles reported her focus in the 2020-2023 timeframe was on keeping the organization afloat, between the Slate and COVID.

CEO Bonus Approval

All the interviewees we interviewed with knowledge of this time period agreed that in or around February of 2019, 2020, 2021 and 2022, Ms. Miles' previous year's performance and bonus entitlement were reported to, and voted on, by Convocation.

Ms. Shortreed was first elected as a Bencher in 2019. In respect of conflicts of interest, among other things, the LSO's Bencher Code of Conduct encourages Benchers to discuss potential conflicts with the Ethics Lead (the Treasurer). Ms. Shortreed raised with then-Treasurer Mr. Mercer that she had been retained by Ms. Miles in 2018, and discussed whether it would be a conflict for her to vote as a Bencher on approving Ms. Miles' annual bonus. Ms. Shortreed advised us that Mr. Mercer indicated there was no conflict in the circumstances (as reported by Ms. Shortreed: her retainer was at an end, she had no continuing duty of loyalty or pecuniary interest, no relevant confidential information, and the subject of the vote did not relate to the scope of her

⁹⁴ Brief, Tab 12D.

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retainer). Ms. Shortreed did not report her retainer to Convocation. She voted annually in her capacity as Bencher on the matter of Ms. Miles' bonus.⁹⁵

2022 Treasurer Transition

Ms. Horvat was first elected a Bencher in 2011, and served as a Bencher through June of 2024. During her tenure as Bencher, Ms. Horvat served on most if not all LSO committees. In June of 2022, she became Treasurer.

Ms. Horvat did not generally keep notes during her tenure, and relied heavily on LSO Staff, as she understood was the general practice when receiving advice or information. She advised that she did not probe as to the source of the authority that Staff relied on, and she did not ever look at By-laws or other publicly available governance documents; however, in circumstances where she felt that Staff was unsure about something of any significance, she would retain external counsel to assist.

Ms. Horvat recalls having had several transition meetings with Ms. Donnelly, her predecessor, and others at LSO. Mr. Varro recalled organizing orientation for incoming Treasurers: advising of "need to know" things, describing the structure of the organization, and going through the By-laws (in particular, the governance matters in By-law 3). He recalled having such a session with Ms. Horvat. Ms. Horvat recalls having received a governance training manual for Benchers, but does not specifically recall a training session with Mr. Varro.

Ms. Horvat's view is that the Treasurer has authority to sign agreements purporting to bind LSO: it did not cross her mind that she would not have that authority. She provided the example of a couple of retainers with law firms that she entered into on behalf of LSO. She agreed, however, that the banking policies require two signatures, so the Treasurer does not have the authority to sign an LSO cheque unilaterally.

Ms. Horvat advised that one source of some tension at LSO had historically been a tendency for Benchers to "second guess" staff on issues where the Benchers would not have any particular expertise, and as Treasurer she made a point of trying to avoid this as it tended to undermine staff. She considered staff to be knowledgeable about the operation of the LSO and the legal framework related to governance and other matters. In her view, staff at LSO were experts in this area in particular and, in the absence of any expression of doubt by them, Ms. Horvat would accept their advice.

Ms. Shortreed made a similar comment: "As Benchers and volunteer board members, we don't have access to the archives, we don't do our own research, we rely on Staff to provide us with accurate information."

Ms. Horvat recalls being advised by Ms. Donnelly that there had been a commitment made and passed from Treasurer to Treasurer to conduct a CEO salary review. The plan had been to do this during Mr. Mercer's tenure, but the Benchers in that timeframe were difficult and he made the

⁹⁵ Ms. Shortreed believes she likely made the same disclosure in subsequent years to Ms. Donnelly, who was Treasurer between Mr. Mercer and Ms. Horvat.

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decision not to proceed at that time. Similarly, Ms. Donnelly planned to conduct a review during her tenure, but chose not to because of the tension around the table at Convocation. Ms. Horvat was not aware of this commitment having been reduced to writing.

As Treasurer, consistent with practice, Ms. Horvat was Chair of the Compensation Committee.

Everyone I interviewed agreed that Convocation has been tumultuous of late, dating back at least to 2017. Ms. Horvat described the mood around the table during her tenure as Treasurer as “difficult” and “really tense”. She reported having to eject a Bencher from Convocation, being served with a defamation suit during Convocation, and contentious litigation with Benchers and with Metrolinx. This was combined with the Treasurer’s usual duties and Ms. Horvat’s busy law practice. In particular, the CEO bonus approval debate every February was spirited and combative. Ms. Horvat reported that there were numerous other demands on her time and attention during her tenure.⁹⁶

2023 CEO Bonus Approval

In late fall of 2022, around the time that the CEO compensation process would historically kick off, Ms. Horvat began considering the possibility of delaying the Convocation to approve Ms. Miles’ bonus from February to June, after the upcoming Bencher election. As noted, the mood around the table was tense, and time had been taken to deal with various Bencher and Convocation issues that had arisen. Ms. Donnelly had provided transition information on the compensation process, but it slipped Ms. Horvat’s mind that fall, and she reported there was a bit of a panic. Ms. Horvat was concerned about the ability to complete the CEO compensation process in time and was concerned about the motion not being approved by Convocation. However, she did not want to expose LSO to undue risk – for example, risk of employment litigation by Ms. Miles – by making a unilateral decision to delay approval of Ms. Miles’ bonus.

Given that the matter related to his superior, Ms. Horvat decided not to consult Mr. Varro, but rather to retain outside employment counsel to advise on any risk associated with delaying Convocation’s consideration of Ms. Miles’ bonus. She retained Dolores Barbini, a partner at Hicks Morley, on behalf of LSO. The email correspondence between Ms. Horvat and Ms. Barbini is primarily concerned with scheduling meetings, which took place on December 23, 2022, and January 24, 2023.⁹⁷ Ms. Horvat sent Ms. Barbini copies of Ms. Miles’ 2018 Agreement, and the February 2022

⁹⁶ She reported, for example:

- Finalizing and presenting the National Requirement Review report for the Federation of Law Societies of Canada, as Chair of the Committee and heavily involved in the drafting.
- Working on a potential bylaw to address filling positions of elected benchers who had been appointed to the court.
- Working to focus the Governance Review Task Force on specific items for improvement relating to governance modernization (including clarifying the powers of the Treasurer), rather than just reducing the size of Convocation.
- Working with the Professional Regulation Committee on a controversial and time-consuming consultation regarding publishing criminal and other charges on the LSO directory website.
- Working to revive the Equity and Indigenous Affairs Committee.

⁹⁷ Brief, Tab 13A, B. There may have been another meeting on or around February 23, 2023, but neither Ms. Horvat nor Ms. Barbini had notes or any independent recollection of what may have been discussed at that time.

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report to Convocation, on December 23, 2022.⁹⁸

Ms. Horvat recalls a meeting with Ms. Barbini to discuss whether there was risk associated with moving the CEO performance review and bonus approval from February (when it had historically occurred) to June, after the next Bencher election. She recalls Ms. Barbini advising at that meeting that it was fine to delay taking the CEO bonus to Convocation from February to June, as long as Ms. Miles agreed.

Ms. Barbini's notes of this December 23, 2022, meeting speak for themselves.⁹⁹ They reflect that, among other things, Ms. Barbini raised the question of who has the authority to make a decision to defer the bonus approval, and Ms. Horvat indicated that the Treasurer has the authority to determine the agenda for Convocation. Ms. Barbini also noted:

Historical Practice

Her comp and bonus goes to Comp Committee and makes a recommendation – never controversial

Ms. Barbini consulted with a colleague at Hicks Morley, Paul Broad (**Mr. Broad**), and they exchanged internal email correspondence between January 22-24, 2023. Ms. Horvat was not copied. I was provided with copies.¹⁰⁰ The Hicks internal correspondence speaks for itself. In summary:

- Ms. Barbini was concerned about the Treasurer acting unilaterally and wanted to ensure she was acting within her authority.
- Ms. Barbini had raised this with Ms. Horvat, who indicated that Mr. Schabas signed the 2018 Agreement and the Treasurer has the authority to set the agenda for Convocation.
- The Treasurer had asked that Ms. Barbini prepare an addendum to the CEO's contract to defer the determination of her salary and bonus until after the election in April 2023.
- Mr. Broad indicated he had significant doubts that the Treasurer has the authority to amend the 2018 Agreement without Convocation endorsement, and observed:
 - The 2018 Agreement is between Ms. Miles and the LSO; while **Mr. Schabas** may have **signed it**, it would have been **on behalf of Convocation**, and this by itself does not give the Treasurer the authority to **amend** the agreement without Convocation oversight and approval.

⁹⁸ Brief, Tab 13B.

⁹⁹ Brief, Tab 13C.

¹⁰⁰ Brief, Tab 14A-C. Hicks' internal correspondence is LSO privileged. Ms. Horvat was not copied on it, and LSO has not waived privilege. We therefore did not share Hicks' internal correspondence with Ms. Horvat.

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- The 2018 Agreement says the CEO reports to the Treasurer only for “administrative purposes”.
- The 2018 Agreement says it is the Committee, not the Treasurer, who makes compensation recommendations.
- The 2018 Agreement says only “the parties” (i.e., LSO and Ms. Miles) who can modify the agreement, and therefore some validation by Convocation would presumably be required.
- Section 8 of the Act makes it clear that the CEO operates under the direction of Convocation.
- The By-laws do not support the view that the Treasurer can amend the CEO’s contract unilaterally.
- Therefore, the idea of drafting an Amending Agreement is problematic.
- The better approach would be for the Treasurer to delay consideration of the bonus without amending the 2018 Agreement.

Ms. Barbini then wrote to Ms. Horvat on January 23, 2023, as follows:

I am just having a colleague review my draft.¹⁰¹ In thinking more about this issue however, there does appear to be a potential issue regarding authority. In other words, I would not want any bencher to be able to argue that you were lacking authority to effect this change on your own. Is that something you would like us to consider? The LSO Act does not appear to address this issue, but perhaps there are relevant by-laws? Please let me know how you wish to proceed.

Ms. Horvat responded:

Good morning – yes, that is something that I would like you to consider. Let me know if you want to discuss or whether you need anything from me.

There is a “compensation committee” so one route that I considered was calling that group together to approve the decision.¹⁰²

Ms. Horvat and Ms. Barbini met to discuss this on January 24, 2023. Ms. Horvat recalls such a follow-up discussion, but can’t remember what was said. She does recall Ms. Barbini bringing to her attention sections 1.2, 1.3 and 14 of Ms. Miles’ 2018 Agreement, with respect to the role of

¹⁰¹ Ms. Horvat does not recall receiving advice in writing, nor does Ms. Barbini recall providing advice in writing. Ms. Barbini advised that she would have asked Ms. Horvat if she wanted the analysis they discussed on January 24, 2023 to be provided in writing. Ms. Barbini’s January 22, 2023 email to Mr. Broad explains that the Treasurer had asked that she prepare an addendum to the CEO’s contract to defer the determination of her salary and bonus until after the election in April 2023; this was ultimately not pursued.

¹⁰² Brief, Tab 13B.

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Convocation. She does not recall discussing the Act or By-laws with Ms. Barbini, apart from telling her that the By-laws were available online. She recalls coming out of this meeting that the advice remained: as long as Ms. Miles agrees, it is fine for the Treasurer to decide to delay Convocation consideration of the CEO bonus from February to June.

Ms. Barbini advises that she would have gone through Mr. Broad's analysis in his January 23 email in her meeting with Ms. Horvat. This is reinforced by Ms. Barbini's contemporaneous correspondence with Mr. Broad following her January 24 meeting with Ms. Horvat, which indicates:

I just spoke to the Treasurer and she completely understood my point and was grateful that I raised it. [redacted]. In this situation, I find it highly unlikely that all of the Benchers participated in the actual negotiation of her contract – I'm sure it was just the Treasurer negotiating the terms. But again, perhaps it was approved in its final form by the Benchers. She is going to check the [February 2018 Convocation] Minutes and also the By-laws.¹⁰³

Neither Ms. Horvat nor Ms. Barbini recall any further contact. Ms. Horvat does not recall checking the 2018 Convocation minutes or the By-laws.

Ms. Horvat ultimately made the decision to delay the CEO compensation process for 2022 (which was to occur in 2023). Ms. Miles agreed to the delay, reporting she was trying to do what was in the best interests of the organization.

Because of this decision, Ms. Horvat did not call meetings of the Compensation Committee during the usual timeframe, and did not put Ms. Miles' bonus on the agenda for the February 2023 Convocation.

As a result of the April 2023 Bencher election, there was a vacancy on the Compensation Committee that Ms. Horvat wished to fill on an interim basis: members of the Compensation Committee were historically appointed by Convocation in July, and as a result of Ms. Horvat's decision to delay the decision, the June 2023 meeting of Convocation would be considering approval of Ms. Miles' 2022 bonus. She identified Ms. Shortreed as a Bencher with relevant employment law experience who she felt would be an asset to the Committee, particularly given that employment law was not Ms. Horvat's area of practice.

Again, consistent with the LSO's Bencher Code of Conduct, Ms. Shortreed raised with Ms. Horvat that she had been retained by Ms. Miles in 2018, and raised whether there would be any actual or perceived conflict in her serving on the Compensation Committee. Ms. Shortreed advised us that they carefully reviewed the criteria for a conflict in the Code, and together determined that there was no actual or perceived conflict in the circumstances. Ms. Shortreed did not report her retainer

¹⁰³ Brief, Tab 14C.

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to the Compensation Committee.¹⁰⁴

Ms. Horvat felt enough time had passed and the issues were different enough that there wasn't an actual conflict; while there would be a perception of a conflict "of course", she felt Ms. Shortreed's knowledge in respect of the subject matter of the Committee was important, and she therefore wanted her to be on the Committee.

In early June 2023, Ms. Horvat appointed Ms. Shortreed to fill the interim vacancy on the Compensation Committee.¹⁰⁵

Ms. Horvat spoke individually with members of the Compensation Committee in early June 2023. The Committee met on June 8, 2023, to discuss Ms. Miles' 2022 performance and bonus entitlement, and the materials related thereto that Ms. Miles had provided. The 2022 CEO performance and bonus were brought to the June 28, 2023 meeting of Convocation.¹⁰⁶ The bonus was approved, and Ms. Horvat directed ██████████ to implement it.¹⁰⁷ However, at that meeting, some new Benchers were seeing information relating to Ms. Miles' compensation for the first time and some had a negative reaction (a minority of Benchers, but not just the Slate).

2023 – 2024 CEO Performance Appraisal and Compensation

Consistent with past practice, the members of the Committee were appointed by resolution of Convocation dated July 27, 2023,¹⁰⁸ on Ms. Horvat's recommendation, as follows:

- Jacqueline Horvat (Chair)
- Megan Shortreed (Bencher)
- Sid Troister (Chair of Finance and Audit)
- Michelle Lomazzo (Paralegal Bencher)
- Genevieve Painchaud (lay Bencher)

Mr. Troister had previous experience on the Committee. Ms. Horvat had joined when she became Treasurer; Michelle Lomazzo had joined in July 2022; and Ms. Shortreed had joined in June 2023. Ms. Painchaud was new to the Committee.

The annual CEO performance and compensation process was initiated by Ms. Miles circulating the following documents in late 2023:¹⁰⁹

¹⁰⁴ In text exchanges with Ms. Horvat on December 1 and 3, 2023, Ms. Painchaud indicated Ms. Shortreed had been involved in Diana's 2018 salary negotiations, and therefore should be removed from the Committee. See Brief of Documents, Tab 15.

¹⁰⁵ The By-laws are silent with respect to the Treasurer's authority to fill interim appointed committee member vacancies.

¹⁰⁶ Brief, Tab 16.

¹⁰⁷ Brief, Tab 17.

¹⁰⁸ Brief, Tab 18A.

¹⁰⁹ Brief, Tab 12-12E.

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- CEO Performance Objectives and Outcomes 2023 (dated December 2023);
- CEO Performance Objectives 2024 For Discussion (dated December 2023);
- Memo to Compensation Committee from Ms. Miles dated November 27, 2023 re: CEO Compensation Discussion; and
- Senior Management Executive Performance Objectives and Outcomes (dated December 2023)¹¹⁰

The documents speak for themselves. The Memorandum provides in part:

At this year's performance management meeting, I would appreciate the opportunity to speak with the Committee regarding my current compensation parameters. A review of executive compensation, including the CEO and SME roles, is scheduled to be completed in the first half of 2024. I anticipate that study will show, as a previous market study completed in 2019 showed, that CEO compensation at the LSO requires adjustment.

...

My original CEO compensation package (March 2018) base salary was set in the range of 50th percentile and the incentive performance payment (bonus) was set at the same percentage as all other LSO senior executives (20%).

Discussions with the Treasurer at the time suggested the attitude of board members towards compensation was inflexible, in the moment, and that it would have to be reviewed after more time in the role. As the organization was due for a compensation review for all executives including the CEO role in 2019, it was agreed that we would conduct the 2019 market analysis and bring forward a request for compensation reconsideration for the CEO.

Unfortunately, the bencher election in 2019 moved the organization from a steady state – having spent the first 18 months of my leadership achieving that steady state by rebalancing the enterprise following less than optimal prior leadership – to one where the organization was in governance turmoil. Proposing recommendations for changes to CEO compensation was not a viable option in the circumstances.

Ms. Miles reports that she raised her compensation review again given there was a new crop of Benchers as of May 2023 that were “a little more sane”.

December 2023 Meeting with Ms. Miles and Follow-Up

A meeting of the Compensation Committee was scheduled for December 4, 2023. In attendance were Mr. Troister, Ms. Shortreed, Ms. Horvat, Ms. Lomazzo, Ms. Painchaud, [REDACTED] and Ms.

¹¹⁰ The substance of this document is not relevant to my report and therefore is not included in the Brief.

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Miles. Copies of the materials listed above were posted for Committee members to access, along with a copy of a 2019 report by Mercer Canada on LSO Executive Compensation Review.

On December 3, 2024, Ms. Lomazzo emailed Ms. Horvat (with cc to Committee members) expressing concerns with respect to Ms. Miles' articulation of her accomplishments, and asking for further documents and information.¹¹¹

Ms. Miles attended the December 4, 2024 meeting and walked the Committee through the documents, including the request in her memo for an immediate compensation adjustment. In particular, Ms. Miles requested that the Committee consider a go-forward increase of her bonus from 20% to 40%, and a retroactive top-up for 2021 and 2022 of an additional 20% bonus (over and above the 20% bonus for those years that she had already received). The Committee's position was that they would retain an external consultant to update the 2019 salary review, and then get back to her.

In the meeting, Ms. Miles was asked if there was a retention risk (on which she advised along the lines of, "I won't walk but I can't stay long term if the level of stress continues unrecognized"), and was asked about succession planning (on which she advised she had two candidates).

The consensus amongst Committee members was that the retroactive top-up request would not be received favorably by Convocation.

Ms. Lomazzo and Ms. Painchaud raised a number of questions and concerns to Ms. Horvat in correspondence dated December 13, 2023 and January 16, 2024. The correspondence suggests (and Ms. Horvat agrees) that it seemed at that time that the issue of Ms. Miles' compensation review would go to Convocation.¹¹²

Ms. Lomazzo did not feel she received adequate answers, and expressed an intention to resign from the Committee. After the December 4, 2023 meeting, she did not attend meetings until the April and May 2024 meetings, discussed below. Ms. Horvat ultimately convinced Ms. Lomazzo to stay on.

For reasons not relevant to this investigation, Ms. Painchaud resigned from the Committee and was replaced by Sarah Letersky, (**Ms. Letersky**) by resolution of Convocation dated February 29, 2024. On January 5, 2024, Ms. Miles wrote to [REDACTED] and Mr. Varro, as follows:

Hi there, we have a need to replace one of the members of the Comp Committee. That is the committee that deals with my performance assessment. I recall that this is at the discretion of the Treasurer – does a change have to be approved by convocation or can she just select and continue? I would like the answer to be the latter, if at all possible.

Mr. Varro responded by attaching the Committee mandate document that he maintained, and

¹¹¹ Brief, Tab 19B.

¹¹² Brief, Tab 19-19D.

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providing his view as follows:

So attached is the mandate and composition of the committee approved by Convocation in 2007, and then modified by Convocation in 2021. It appears that the only member appointed by Convocation is the lay bencher as the others are in their positions. The modification in 2021 adds an elected bencher but does not specify that that person is to be approved by Convocation, although the practice has been as you know to have the whole list of the members of the committee in the committee appointments motion which is usually done in the summer. You will also note that the quorum is 3.¹¹³

In early 2024, Ms. Horvat considered retention of an external consultant to conduct a CEO salary review. Gallagher Benefits Services (Canada) Group Inc., Human Resources & Compensation Consulting practice (**Gallagher**), had already been retained to do the same review for LSO's senior management, so it knew the organization. Ms. Horvat had also heard favorable reviews of Gallagher in her practice. She therefore expanded Gallagher's LSO retainer to include a review of the CEO salary.¹¹⁴

January and February 2024 Committee Meetings

The Committee received materials on January 3, 2024, including a copy of Ms. Miles' 2018 Agreement.

The Committee met on January 16, 2024 to discuss plans for a "360"-type review of Ms. Miles' performance. Ms. Horvat, Mr. Troister and Ms. Shortreed were in attendance. Ms. Painchaud had resigned and had not yet been replaced, and Ms. Lomazzo was away on vacation. At the meeting, the Committee made plans to reach out to a subset of Benchers and stakeholders with respect to Ms. Miles' performance. These Benchers and stakeholders advised that their feedback would be confidential.

This Bencher consultation was undertaken by Committee members and Benchers' comments were discussed at a further meeting of Ms. Shortreed, Mr. Troister and Ms. Horvat on February 1, 2024. All three reported that while the feedback was largely positive, there were some concerning outlier responses that they described as being "gendered".¹¹⁵

A Committee report to Convocation was prepared on the matter of Ms. Miles' performance and

¹¹³ Brief, Tab 20.

¹¹⁴ Brief, Tab 21A.

¹¹⁵ This is reflected in the February 2024 Compensation Committee Report to Convocation, at Tab 5 of the Brief, as follows:

40. The Compensation Committee met on February 1, 2024 to review the feedback it received. To the extent that the committee received comments reflecting gendered and inappropriate feedback, it chose not to include such comments in this report or in its consideration of a recommendation to Convocation. [...]

It was also mentioned by Ms. Horvat at the February 29, 2024 Convocation (Brief, Tab 5A, at p. 37 of the transcript).

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bonus.¹¹⁶ In accordance with practice, it would have been drafted by [REDACTED], and reviewed by the Committee. Paragraph 24 of the report states: “The following are the basic financial terms of the CEO contract as approved by Convocation in March of 2018: [...]” The Committee mandate in the February 2024 Report to Convocation articulates the Compensation Committee mandate (incompletely) as follows:

The Committee’s mandate is to:

- a. conduct the annual performance review of the Chief Executive Officer;
- b. recommend the amount of the Chief Executive Officers incentive entitlement to Convocation annually; and
- c. **make recommendations to Convocation relating to the Chief Executive Officer’s compensation (salary, bonus, benefits, pension and perquisites), if appropriate, in accordance with the Chief Executive Officer’s contract.**¹¹⁷

The source of this iteration of the mandate is not clear, but while incomplete it is not inaccurate. The Committee members indicated to me that this iteration of the mandate (or any for that matter) was not in their minds as the next months unfolded.

Ms. Shortreed recalls that she and Mr. Troister reviewed the draft report and provided their comments to Ms. Horvat in their February 1 meeting.¹¹⁸ There was a further meeting of this same group on February 15, 2024 to finalize the report to Convocation.¹¹⁹

CEO Bonus Approval: February 29, 2024 Convocation

Convocation met on February 29, 2024 to receive the Compensation Committee’s report on CEO performance, and to consider a motion to approve Ms. Miles’ 20% bonus (moved by Mr. Troister and seconded by Ms. Shortreed). The transcript of the meeting speaks for itself. In summary:

- There was some discussion with respect to a future change to Ms. Miles’ compensation, and a compensation review in progress with the Compensation Committee and Gallagher.
- Ms. Lomazzo and Ms. Horvat both adverted to the possibility that issue could come back to Convocation in April or May.
- Ms. Horvat and others commented on keeping that issue separate from the one before

¹¹⁶ Brief, Tab 5.

¹¹⁷ Brief, Tab 5.

¹¹⁸ Ms. Shortreed advised that the report is longer than the typical report to Convocation regarding CEO performance appraisal and bonus recommendation, because she thought Benchers were entitled to know how thorough they had been in their performance review process.

¹¹⁹ And correspondence between Ms. Horvat, Ms. Painchaud and Ms. Shortreed thereafter; see Tab 19D of the Brief.

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Convocation: approval of Ms. Miles' 2023 bonus.

- After discussion, the motion carried: 38 “for”, seven “against”, four abstentions.

Ms. Lomazzo advised me that she left this meeting with the impression that any amendment to Ms. Miles' contract would come back to Convocation for approval. Ms. Horvat agreed that in February 2024, she was of the view that an amendment/salary increase for Ms. Miles would come back to May Convocation for approval, although she did not remember having made those statements to Convocation in February later that year when negotiating with Ms. Miles.¹²⁰

Ms. Horvat does not recall how the decision of Convocation to approve the CEO bonus would have been operationalized with the CFO/payroll.

CEO Compensation Adjustment: March – June, 2024

With Ms. Miles' bonus approved, the Compensation Committee turned to considering Ms. Miles' compensation adjustment requests. Gallagher met with Ms. Horvat and Ms. Miles, and conducted a market analysis, and on that basis prepared a draft report that was shared with the Compensation Committee in March.¹²¹

A Committee meeting was scheduled for March 22, 2024, but was postponed to April 3, 2024 due to a conflict with former Chief Justice Roy McMurry's funeral. Ms. Miles reports that she had access to the Compensation Committee materials and recalls seeing the Gallagher report.

As of January 2024, Mr. Troister and Mr. Wardle were the candidates for the April 2024 Treasurer election. For ease of transition, Ms. Horvat invited Mr. Wardle to attend Compensation Committee meetings, as a guest, starting with the March meeting that was postponed to April 3.

a. April 3, 2024 Compensation Committee Meeting

The Committee met with Domenic D'Alessandro, Gallagher's Managing Director, for approximately 1.5 hours on April 3, 2024 to discuss his March 20, 2024 report. Attendees included Mr. Wardle, Ms. Lomazzo, [REDACTED], Ms. Shortreed, Mr. Troister, and Ms. Letersky. Ms. Horvat attended but left early.

Gallagher reported Ms. Miles' 2023 “base salary” as \$640,000¹²² and “total cash” (including 20% bonus on 2022 salary) as \$752,300.

Gallagher concluded Ms. Miles' salary was under market, proposed a salary range based on comparators, and agreed that in the circumstances it would be appropriate for the performance incentive/bonus to be eliminated and folded into the base salary.

Gallagher also made recommendations in respect of Ms. Miles' pension benefit. In light of the fact

¹²⁰ This seems consistent with the correspondence from this timeframe between Ms. Horvat, Ms. Painchaud and Ms. Shortreed at Tab 19D of the Brief.

¹²¹ Brief, Tab 21B. This draft report (incorrectly styled as a “final” report) is dated March 20, 2024.

¹²² Including \$45,000 Ms. Miles receives annually from LAWPRO.

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that the CRA capped her contribution at around 4.5%, while the general entitlement at LSO was 12%, the recommendation was that a Supplementary Employment Retirement Plan (SERP) be introduced on a going-forward basis. There was no discussion about any retroactive payments (salary, bonus or pension).

Committee members asked questions about a number of matters, including:

- The definition of and criteria for a “transformational” CEO, and whether and how Ms. Miles qualified;
- The appropriate comparators in the circumstances (Dom reported that it was difficult to get data on CEO salaries in other regulated spaces);

All the Committee members agree that there was discussion around what would be palatable for Convocation, and how aspects of the report would be received and perceived. The Committee asked for revisions to the report and that the revised draft come back to the next Committee meeting. Ms. Horvat had to leave this meeting early, and ██████ took notes so ██████ could brief her on the balance of the meeting.¹²³

During the meeting, ██████ exchanged emails with Ms. Horvat, asking whether it was a “foregone conclusion” that the Gallagher report would go to Convocation. Ms. Horvat replied: “I think if any changes are proposed the entire report will have to go to the board.”¹²⁴ Committee members agreed that a concern they had was that Ms. Miles’ request for retroactive salary top-up would be shared with Convocation, and that this could be perceived as unreasonable and derail the discussion.

b. Treasurer’s Authority

Ms. Horvat recalls meeting with ██████ in person in the Treasurer’s office at some point after the February 29, 2024 Convocation to discuss the issue of the Treasurer’s authority to amend Ms. Miles’ agreement without Convocation approval. Ms. Horvat recalls ██████ telling ██████ that she had the authority to renegotiate and sign an amendment to Ms. Miles’ contract without the approval of Convocation or the Compensation Committee. Ms. Horvat did not inquire as to how ██████ had come to this conclusion or the authority for it (although she thinks ██████ would have checked in with Mr. Varro ██████). Ms. Horvat did not independently review the Act, By-laws, or any records or other documentation. She advised that she recalled ██████ being definitive and confident, and coming out of the meeting being comfortable that she had the authority to amend Ms. Miles’ contract unilaterally. She therefore relied on ██████.

██████ recalls this meeting, and believes it took place on April 10, 2024. ██████ understands why Ms. Horvat might have walked away from the meeting with the comfort that she had the authority to amend Ms. Miles’ agreement, but does not believe ██████ would have been emphatic or definitive, and would have advised Ms. Horvat that ██████ answers were based on ██████ understanding of past practices, and were not a legal opinion. ██████ recalls advising Ms. Horvat that ██████ had made inquiries

¹²³ Brief, Tab 22C, D.

¹²⁴ Brief, Tab 22A.

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of [REDACTED] and [REDACTED] had advised:

- There was nothing in the Act or By-laws about the authority to appoint the CEO, or agree to/amend the terms of the CEO's employment;
- There were gaps in the records, but it appeared the past practice was that Mr. Schabas had negotiated and executed Ms. Miles' contract without Convocation approval; and
- Despite having been established by Convocation in 2007, the Compensation Committee's mandate could be unilaterally amended by the Treasurer, because the Committee was an ad hoc as opposed to a standing committee of Convocation.¹²⁵

[REDACTED] asking [REDACTED] to discuss the mandate of the Compensation Committee. [REDACTED] met on Teams at 10am on April 8, 2024. [REDACTED] recalls discussing with [REDACTED] Ms. Miles' view that the agreement did not need Convocation approval, as, in her (ultimately mistaken) view, the 2018 Agreement was executed by Mr. Schabas without Convocation approval; and [REDACTED] view that the Compensation Committee mandate (which in [REDACTED] view suggests that Convocation must approve changes to CEO compensation) was within the authority of the Treasurer to amend.

[REDACTED] and [REDACTED] exchanged emails that same day, soon after their meeting. That correspondence speaks for itself; among other things, [REDACTED] advised that in [REDACTED] opinion, the Compensation Committee mandate does not need to be approved by Convocation.¹²⁶ [REDACTED] 10:51am email advised, in part:

Hi – so, from the attached it does look like the mandate of the Compensation Committee was approved by Convocation in 2007, but it doesn't look current now, for example as relates to (e) SME. It makes sense to update it. There is nothing in the by-laws to require Convocation approval, as note there is nothing in the by-laws about this committee.¹²⁷ In theory Convocation should approve a change to the mandate if Convocation approved it in the first place. **But the CEO is responsible to Convocation and the Treasurer is the Head of Convocation. The Treasurer is the one negotiating the contract and has to be able to make it work. I think you're right that it will be an issue now or an issue later.** Have a look at it and then we can talk if you want to. [...] [emphasis added]

[REDACTED] recalls that in their Teams meeting on April 8, [REDACTED] asked [REDACTED] about the mandate of the Compensation Committee. [REDACTED] does not recall specifically what [REDACTED] looked for that day, but advises [REDACTED] probably looked at the 2007 Compensation Committee mandate and the LSO By-laws (although [REDACTED] does not recall which specific provisions [REDACTED] considered at the time). [REDACTED] agrees that the reference in [REDACTED] April 8 email with respect to the Treasurer's authority would have been broader than just the Committee mandate, as [REDACTED] knew they were talking about amending

¹²⁵ Ultimately none of these points proved to be correct.

¹²⁶ Brief, Tab 23.

¹²⁷ [REDACTED] advises [REDACTED] meant that in [REDACTED] opinion, the mandate shouldn't be approved in the future.

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the CEO contract, and that there was a question as to whether Convocation was required to approve an amendment thereto.

██████████ advised that in ████████ view, the sources of the authority for the conclusions in ████████ April 8, 2024 email include:

- Section 7 of the Act;
- Sections 80 and 86 of By-law 3;
- The Governance Practices and Policies;
- The fact that the Committee is not a standing Committee so provisions relating to standing committees do not apply to it;
- The fact that the CEO and Treasurer deal with some things in practice because you can't bring everything to Convocation; "for example, an employment contract cannot be negotiated by 54 people";
- The fact that the Treasurer sets the agenda for Convocation; and
- If there was nothing express in the By-laws or Governance Practices and Policies, it was open to interpretation.

With respect to the mandate of the Compensation Committee, at various times different interviewees referenced changes potentially being made as follows (on the shared but mistaken understanding that the Treasurer could unilaterally amend the Compensation Committee mandate):

- To remove subsection "e.", relating to approval of the CEO's recommendations with respect to compensation of the other members of the senior management team; the Committee members we interviewed did not consider this to be within their purview, nor does it appear to have been the practice at LSO, and therefore there was a consensus that it should be removed;
- To remove subsection "c.", relating to bonus recommendations; Ms. Horvat and ████████ were of the view that this would need to be removed in order to align with Ms. Miles' amending agreement, which in increasing her base salary eliminated her bonus;
- To remove subsection "d.", relating to Convocation's role in CEO compensation; in the context of whether the Treasurer had the authority to amend the CEO's contract unilaterally, without Convocation approval.

The Compensation Committee mandate was never, in fact, amended.¹²⁸ Ms. Horvat advised that

¹²⁸ The November 28, 2024 Compensation Committee Report to Convocation, at Tab 8 of the Brief, proposed the following mandate going forward:

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██████████ was going to take care of this with the new Treasurer; a governance task force was (and remains) in the process of reviewing and modernizing LSO policies, so the Committee mandate amendment would be one of the things they would be looking at.

It does not appear that any of the interviewees we spoke with – including staff members, members of the Committee, the Treasurer, or Ms. Miles – turned their minds to ss. 7-8 of the Act; s. 43 of By-law 2; ss. 43-44 of the Governance Practices and Policies; the Compensation Committee mandate (which we understand was included in the Committee reports to Convocation, as outlined above); the fact that Ms. Miles’ 2018 Agreement had, in fact, been approved by Convocation; ss. 1.2 and 1.3 of Ms. Miles’ 2018 Agreement;¹²⁹ the approval of the CEO bonus by Convocation over the years; or the lack of unilateral contracting authority on the part of the Treasurer under LSO policies.

In contrast, Mr. Varro, who retired at the end of 2023, told us that, had he been asked, he would have advised that if there was a material change to the existing CEO’s compensation, Convocation would need to approve it; and that a change to the Compensation Committee’s mandate would also require Convocation approval.

When asked about s. 43 of By-law 2, Mr. Troister, Ms. Shortreed and Ms. Horvat all proposed to me there might be a difference between the initial appointment of a CEO and terms of their contract, which clearly required Convocation approval, and an amendment to existing terms of employment during the course of the CEO’s appointment; Mr. Troister’s view is that from a past practice perspective, this is the first time that the latter has been done.

Although Ms. Horvat was the mover and Mr. Wardle the seconder, and Mr. Troister was at that meeting, all of the interviewees agreed they did not appreciate that Convocation had approved Ms. Miles’ 2018 contract until the fall of 2024, when the transcript of the February 2018 meeting was located, despite the fact that there is reference to the terms of the contract and the fact that it was approved by Convocation in the Committee’s February 2024 report to Convocation.

██████████ advised that during this time period, Ms. Miles stated repeatedly that Mr. Schabas had negotiated her contract directly with her, Ms. Miles was firm that neither an amendment to her compensation nor the mandate of the Committee needed Convocation approval.¹³⁰ Ms. Miles recalls a brief conversation with ██████████ in this timeframe, where ██████████ indicated the Treasurer wanted to know the best way to move forward with respect to her salary, and that there was not anything in the record about past practices; Ms. Miles reports “I had to say I didn’t know” and she told ██████████ to “get the paper from the ██████████.” When I asked Ms. Miles of her view of the Treasurer’s authority to amend her contract without going to Convocation, she

The mandate of the Compensation Committee is to assist with the evaluation of the CEO on an annual basis and to make recommendations to the Board Chair of alterations to the CEO job description, salary and/or perquisites.

¹²⁹ Ms. Horvat at a minimum would have had a copy of Ms. Miles’ 2018 contract during this timeframe. Ms. Shortreed acted for Ms. Miles on the contract in 2018. The Committee received a copy in January 2024.

¹³⁰ Later in 2024, ██████████ told Mr. Wardle that Ms. Miles could not recall her contract going to Convocation in 2018.

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reported:

- She did not consult the Act or By-laws;
- The Treasurer and both candidates for her successor along with the rest of the Compensation Committee were capable of determining how to take it forward;
- Mr. Schabas [REDACTED] [REDACTED] without Convocation knowing;¹³¹
- The Treasurer is the President and Head of the organization;
- The Treasurer has signing authority for everything at LSO;¹³²
- It would be up to the Treasurer and the Committee to decide on authority, not her.

Ms. Miles would, however, have had access to her 2018 Agreement, in particular ss. 1.2 and 1.3.

In respect of the mandate of the Compensation Committee, she reported:

- The Compensation Committee is not a statutory committee, so it operates at the will of the Treasurer;
- The mandate is reproduced in the Committee materials to Convocation;
- In the past year she became aware of a “2007 policy” that went to Convocation;
- She thought the Committee was looking to change their mandate.

Generally speaking, Ms. Miles advised: “The Treasurer is my boss, I’m going to assume they are going to do their job”.

Ms. Horvat advised that, during this timeframe, she did not recall that Ms. Miles’ 2018 Agreement had been approved by Convocation, nor did she recall her conversations with Hicks Morley in 2022 and 2023 about the Treasurer’s authority with respect to CEO compensation (including with respect to ss. 1.2 and 1.3 of Ms. Miles’ 2018 Agreement). In addition to speaking with [REDACTED] she indicates she would have discussed the process and the Treasurer’s authority with Ms. Shortreed, who was an employment lawyer and a friend (but does not recall specifically having done so).

Ms. Lomazzo recalls a conversation with Ms. Horvat in this timeframe where she raised that her understanding after February Convocation was that the approval of an amendment to Ms. Miles’ contract would go to Convocation in May, and Ms. Horvat responded “no, I’ve checked, and I can approve it on my own.” Ms. Lomazzo recalls feeling surprised, and saying something to the following effect: “but she’s our [Convocation’s] employee, and we approve her bonus, why

¹³¹ As outlined above, this is not accurate; [REDACTED].

¹³² As outlined above, this is not accurate.

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wouldn't we approve her contract?" Ms. Horvat does not recall this conversation but agrees it would be consistent with her thinking after discussions with [REDACTED] and before the May Compensation Committee meeting.

c. May 28, 2024 Compensation Committee Meeting

The Compensation Committee met for approximately 30 minutes on May 28, 2024, (the **May Meeting**). In advance of the meeting, a revised Gallagher report was posted for the Committee members to review.¹³³ Attendees included Mr. Troister, Ms. Letersky, Ms. Lomazzo, Ms. Shortreed, Ms. Horvat [REDACTED]. Mr. Wardle joined the meeting late, [REDACTED].

Everyone who attended the meeting agrees that Ms. Horvat said, "I have the authority [to amend Ms. Miles' contract without Convocation approval]". Ms. Horvat agrees that she was at that time comfortable with that conclusion and may have said it. Ms. Lomazzo recalls no discussion following Ms. Horvat's statement, and assumed Ms. Horvat had had side conversations on the authority issue as she had with her. Ms. Letersky recalls asking for clarity on what was being asked of the Committee members at the meeting, and whether it was permission to move forward with a salary range; she recalls Ms. Horvat responding, "I am not looking for permission, I have the authority to do this [without the Compensation Committee, but] I wanted the Compensation Committee's view." Ms. Lomazzo recalls this statement as well. No one appeared to be surprised or disagree. As the newest Committee member, Ms. Letersky took her cue from the others.

Ms. Shortreed recalls asking probing questions on this issue and commenting that there must be documentation on it. Her recollection is that [REDACTED] advised there was nothing located in the Act, By-laws or Committee mandate that required Convocation approval, and there was nothing located in the records to indicate that past CEO agreements were approved by Convocation (but that record keeping had been spotty). There was also discussion at this meeting on Ms. Horvat's authority to amend the Committee mandate, a copy of which [REDACTED] recalls having screen shared with the meeting. In Ms. Shortreed's view: "Given that we were told the Act and By-laws were silent and the mandate was ambiguous, we ended up defaulting to past practice, 'what did Schabas do in 2018?'; we were told the contract was not approved by Convocation."

[REDACTED] recalls Ms. Shortreed mentioning that certain past Committee materials referenced CEO compensation being approved by Convocation, and agreeing that must have been an error given that at that time no records from 2018 had been located.¹³⁴ [REDACTED] recalls Ms. Shortreed mentioning that most boards would want to know about changes in compensation but here it was "impossible". [REDACTED] also recalls Mr. Troister musing that it made sense for this item not to go to Convocation if it had not in the past; and Ms. Horvat indicating that no one had objected to her moving the CEO's bonus approval from February to June in 2023.

The conversation at this meeting was focused mostly on the appropriate salary range. Ms. Shortreed asked questions about pension and benefits. Committee members wanted to ensure that

¹³³ Brief, Tab 24. This version of the report is dated April 19, 2024.

¹³⁴ Likely referencing the February 2024 Convocation package, at Tab 5 of the Brief.

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the offer accounted for Ms. Miles' LawPro compensation.¹³⁵ Everyone was convinced that Ms. Miles' salary was under market based on the Gallagher analysis.

The Compensation Committee members left the meeting with the impression that Ms. Horvat was going to check again with Staff and with Mr. Schabas as to what was done when Ms. Miles was appointed in 2018, and make a decision on her authority. Ms. Horvat does not recall this but does recall [REDACTED] saying at some point, "maybe you should call Mr. Schabas". Neither Mr. Schabas nor Ms. Horvat recall discussing this issue.

d. June 2024

Coming out of this meeting, Ms. Horvat's view of her "marching orders" from the Committee was that Ms. Miles' salary should end up near middle of the lower range for a transformational CEO in the Gallagher report.¹³⁶ She does not recall instructions from the Committee on the pension issue. She agrees that the pension payment discussed in Committee meetings was different than the pension payment that was ultimately offered to Ms. Miles. No one recalled a retroactive or catch-up pension payment being discussed at Committee meetings. At Committee meetings, the pension discussion was around Gallagher's SERP recommendation.

The Committee members, Ms. Horvat and [REDACTED] all agree that Ms. Horvat wanted to get Ms. Miles' compensation adjustment done before the end of her term (at the end of June). [REDACTED] sense was that none of the Committee members wanted to have to take it to Convocation for approval. Ms. Horvat recalled the Committee members were "almost relieved" when she reported at the May Meeting that she had the authority to amend Ms. Miles' contract without Convocation approval. Ms. Horvat also expressed the view that the amendment would have passed had it been taken to Convocation. Ms. Shortreed's view was that Convocation would not receive the Gallagher report well, but in the circumstances, the recommendation on salary range was a reasonable place to land. Ms. Shortreed recalls that one of the reasons they recommended a significant salary rise was that Ms. Miles was undercompensated on pension.

Ms. Miles recalls being advised by Ms. Horvat in one of their standing meetings in late May or early June that she was "ready to go" on a contract amendment. They negotiated on salary (within the range discussed at the Compensation Committee), landing on the bottom end of the mid-point of the Gallagher recommendation, and Ms. Horvat advised that they were going to remove the bonus and integrate that compensation into the base salary, given that "it was toxic every time it had to be approved by Convocation". Ms. Horvat told Ms. Miles that the retroactive bonus she requested was "not happening". She recalls Ms. Horvat advising that Gallagher had recommended a SERP to deal with the pension issue Ms. Miles raised, but "they weren't going to do that, it's too complicated, we can do it as a delta payment." Ms. Miles asked for a retroactive pension delta

¹³⁵ [REDACTED] the CEO's LAWPRO earnings are paid directly to the CEO. We understand they are likely in the range of \$45,000 annually, but that number is not shared with LSO. This accords with the information in the Gallagher report.

¹³⁶ For a "transformational CEO" in the aggregate market Gallagher recommended a minimum total cash compensation of between \$749,400 and \$817,500, a midpoint of between \$936,800 and \$1,021,900 and a maximum of between \$1,124,100 and \$1,226,300.

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Horvat; the contemporaneous correspondence indicates that Ms. Horvat reviewed it and made edits, and agreed with its contents before it was sent.¹⁴⁵ Among other things, the amending agreement proposed to delete section 1.3 from Ms. Miles' agreement.¹⁴⁶

██████████ recalls calling Ms. Miles in the middle of June and asking, "do you really want to do this" (i.e., go ahead without Convocation's approval). Ms. Miles went through her understanding of the history again, her view that the Treasurer had the authority to amend her contract unilaterally, said that the Compensation Committee was behind her, and not to worry about it.

On or around June 13, 2024, ██████████ recalls Ms. Horvat indicating changes to the Committee mandate would be for the new Treasurer to deal with.

Ms. Miles received a draft of the amending agreement and reviewed it with her counsel. She noted that the retroactive pension top-up she had requested was included, so she dropped the request for a retroactive bonus top-up. There were no discussions about any approvals Ms. Horvat might require to finalize the amendment (but Ms. Miles noted reference to the Compensation Committee in the June 20 cover memorandum).¹⁴⁷

The amending agreement was executed by Ms. Horvat and Ms. Miles on June 21, 2024.¹⁴⁸ Ms. Horvat wrote to Mr. Wardle (the new Treasurer) on June 27, 2024, attaching the amending agreement (along with Ms. Miles' 2018 Agreement and the June 20, 2024 cover note), and advising that ██████████ would be able to get him anything else he needed.¹⁴⁹

██████████ When ██████████ returned, ██████████ advised there was an increase being requested for Ms. Miles. ██████████ reached out to ██████████ to ask whether there was anything to support the increase having been given. ██████████ confirmed the amendment had been executed and provided a copy of Ms. Horvat's June 20, 2024 memorandum to Ms. Miles.¹⁵⁰ Typically, ██████████ requires a second confirmation of Convocation-approved spending from the Corporate Secretary; however, the Secretary is now excluded from CEO compensation-related matters in Convocation.

Ms. Horvat was appointed a Judge of the Superior Court of Justice of Ontario on or about July 24, 2024.¹⁵¹

July – December, 2024

Consistent with past practices, the members of the Compensation Committee were appointed by

¹⁴⁵ Brief, Tab 25A-U.

¹⁴⁶ In a June 13, 2024 email to Ms. Kuzz, at Tab 25G of the Brief, ██████████ writes: "I have added some details at the request of the Treasurer and made some amendments. She has requested a final review and clean versions. The section related to the compensation committee was removed, as the committee will be amending the mandate do not want to add this process point in the contract."

¹⁴⁷ See email exchange at Tab 25V and W of the Brief.

¹⁴⁸ Brief, Tab 25.

¹⁴⁹ Brief, Tab 25.

¹⁵⁰ Brief, Tab 29.

¹⁵¹ Announcement of Ms. Horvat's Appointment

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resolution of Convocation dated July 25, 2024, on Mr. Wardle’s recommendation, as follows:

- Peter Wardle (Chair)
- Megan Shortreed (Bencher)
- Sid Troister (Chair of Audit and Finance)
- Sarah Letersky (lay Bencher)
- Kevin Ross (paralegal Bencher)

The practice is that the July meeting of Convocation is brief and deals with committee appointments, and Convocation does not meet in August.

Mr. Wardle scheduled the first meeting of the new Compensation Committee for September 11, 2024, to consider next steps in terms of Ms. Miles’ compensation review.

Ms. Miles and Mr. Wardle had the following email exchange on September 9, 2024¹⁵²:

Ms. Miles to Mr. Wardle:

Hi Peter,

[REDACTED]

As we discussed, the plans for whatever you are going to wish to do about this matter should probably wait until after the end of October and the approval of the budget.

For now, if it is feasible for you to do so, perhaps you could determine how you want to approach it – and I can assist to gather documents or develop a report for you. I expect by the time you actually need a report or some sort of documentation,

[REDACTED]

Let me know if you want to chat before your meeting, or we can do so after your meeting to map out next steps.

Diana

Mr. Wardle to Ms. Miles:

Quick question - is there any formal obligation under the by-laws or in a policy to report to Convocation on your compensation? I appreciate that since you became CEO there have been annual camera [sic] discussions about the bonus component but that is no longer relevant. The Governance Practices and Procedures outline the

¹⁵² Brief, Tab 30.

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obligations for an annual performance review but i see nothing in there about reporting on your comp. It seems good governance to me to provide the board with some information but I'd like to know if there is anything that we have to follow.

Ms. Miles to Mr. Wardle:

Hi Peter.

No, **there are no by-laws or policies with respect to CEO performance management.**

There has been a mandate statement for the Compensation Committee which changed occasionally based on the Treasurer's preferences and was found in the various reports to convocation when compensation was on the agenda

As this is not a standing committee, it is a committee under the oversight of the Treasurer/Board Chair over which the Chair makes determinations, the mandate as it was last articulated is not formally binding in any way, as a result.

█ previously advised the Treasurer (JH) and Committee that they may want to change the mandate statement to reflect that things have now changed. It may be helpful to have a short list of what, exactly, the committee is expected to do — but then again, **the new objective is to annual review the CEOs performance, which would include receiving a self assessment from the CEO, gathering feedback if desired from board members, and providing input to the CEO.** Alternatively, general governance principles for providing oversight of CEO performance can also apply without having to articulate a specifically written mandate (i.e., its not rocket science).

That last iteration of the committee mandate is found in the comp committee materials that were presented in February of 2024 when convocation was asked to approve the incentive payment for 2023 — and I set it out here.

1. The Committee's mandate is to:
 - a. conduct the annual performance review of the Chief Executive Officer;
 - b. recommend the amount of the Chief Executive Officer's incentive entitlement to Convocation annually (this is now moot); and
 - c. make recommendations to Convocation relating to the Chief Executive Officer's compensation (salary, bonus, benefits, pension and perquisites), if appropriate, in accordance with the Chief Executive Officer's contract. (*emphasis added*) [sic]

Let me know if you would like to discuss.

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Diana [emphasis added]

Mr. Wardle and Ms. Shortreed also exchanged emails on September 9 on the issue of what to disclose to Convocation.¹⁵³

All agree that at the meeting on September 11, 2024, Mr. Wardle updated Committee members about his understanding of the developments since the May 28 meeting, including that Ms. Horvat had entered into the Amending Agreement with Ms. Miles. Ms. Shortreed assumed that Ms. Horvat had received advice on her authority and had proceeded on that advice. Ms. Letersky raised the idea of updating the Committee mandate so that the role of the Committee was clear going forward. Mr. Wardle felt he had an obligation to report the amending agreement to Convocation, and proposed that the Committee prepare a report on what had transpired and on the change required to the Committee mandate as a result of the removal of s. 1.3 from Ms. Miles' employment agreement (that is, the provision that spoke to Convocation's role in her annual performance evaluation) and the fact that the Committee would no longer have a role in respect of reviewing an annual bonus.¹⁵⁴

A report to Convocation was drafted,¹⁵⁵ with input by Ms. Miles,¹⁵⁶ and the Committee waited for it to be reviewed by Ms. Shortreed, who was the employment lawyer on the Committee and was out of the country for three weeks in October. Ms. Shortreed provided comments and revisions on or around November 19, 2024,¹⁵⁷ and the Committee met again on November 22, 2024 to discuss the revised draft report in advance of the Convocation scheduled for November 28. Mr. Wardle advised that he was not concerned about reporting on CEO compensation in November; at that point, he had no idea that it would be controversial. All of the Committee members (except Kevin Ross, who was new) had been advised by Ms. Horvat that she had the authority to amend Ms. Miles' contract.

The November 28, 2024 Report to Convocation¹⁵⁸ provides in part as follows in respect of the Mandate of the Compensation Committee:

The Committee is of the view that it is important to describe the role of the Committee going forward, including the process and outcomes.

Mandate

The mandate of the Compensation Committee is to assist with the evaluation of the CEO on an annual basis and to make recommendations to the Board Chair of

¹⁵³ Brief, Tab 35.

¹⁵⁴ When Mr. Wardle reviewed the amending agreement, he was unsure as to why this had been removed (it "struck [him] as a bit odd" and he was "concerned" about it). He reviewed the LSO's governing documents and satisfied himself that there would still be an annual CEO performance review regardless of the amending agreement and regardless of the Compensation Committee mandate.

¹⁵⁵ Brief, Tab 36A-F.

¹⁵⁶ Brief, Tab 33A, 36E; [REDACTED]

¹⁵⁷ Brief, Tab 36A.

¹⁵⁸ Brief, Tab 8.

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alterations to the CEO job description, salary and/or perquisites. [...]

The source of this (incorrect) articulation of the Committee mandate is not clear.

Once the report was posted in advance of the November 28 Convocation, Benchers started reaching out to Mr. Wardle on the issue of CEO compensation. At that time, Mr. Wardle started asking [REDACTED] some questions about the Committee mandate.¹⁵⁹ There is correspondence to this effect, which speaks for itself.

Mr. Wardle reported that at this time, LSO staff seemed to be unclear about what had happened when Ms. Miles was appointed in 2018; they advised Mr. Wardle that they had not found any documentation from when Ms. Miles was appointed, and the records from that time period did not seem to be clear, but that proved not to be accurate.¹⁶⁰

On November 26, Pam Hrick (a Bencher) called Mr. Wardle's attention to a reference in the February 2024 in camera Compensation Report to Convocation having approved the basic terms of the CEO's contract in March 2018.¹⁶¹ Mr. Wardle then asked [REDACTED] if [REDACTED] could locate the minutes from the meeting of Convocation in 2018 when Ms. Miles was appointed.¹⁶² [REDACTED] looked again at the [REDACTED] documents¹⁶³ and this time located the minutes from that meeting, which were in fact not "removed" or otherwise restricted from access;¹⁶⁴ then, soon after, [REDACTED] located the transcript and materials from that meeting. This would have been late the night before the November 28, 2024 Convocation. That same day, Mr. Wardle corresponded with members of the Compensation Committee.¹⁶⁵

Mr. Wardle spoke to the issue at the November 28 Convocation, on the basis of what he knew at that that time.¹⁶⁶ Those remarks speak for themselves.

A regular Compensation Committee meeting scheduled for November 29 was postponed indefinitely.

On December 5, 2024, Convocation passed a resolution establishing a special committee to instruct me on my mandate (as described above).¹⁶⁷

According to Ms. Miles' contemporaneous notes, Ms. Miles and Mr. Wardle spoke on November 28, December 2, December 6 and December 13.¹⁶⁸ On December 6, among other things, Mr. Wardle told Ms. Miles that while he did not want to give her any direction or instruction, she should consider whether she should voluntarily pause her compensation under the amendment agreement

¹⁵⁹ Brief, Tab 31A-E.

¹⁶⁰ Brief, Tab 31.

¹⁶¹ At para. 24 of the February 2024 Compensation Committee Report to Convocation; brief, Tab 5.

¹⁶² Brief, Tab 31E.

¹⁶³ As discussed above.

¹⁶⁴ As [REDACTED] advised, "finding the minutes by date [was] easy".

¹⁶⁵ Brief, Tab 36A-E.

¹⁶⁶ Brief, Tab 32.

¹⁶⁷ Brief, Tab 3.

¹⁶⁸ Brief, Tab 33B.

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until the BLG investigation concluded.

On December 10, 2024, Ms. Miles wrote to Mr. Wardle and the Compensation Committee, as follows:

Dear Treasurer and Compensation Committee:

I am writing further to recent developments regarding CEO Compensation. I have been advised by the Treasurer that Convocation will conduct a review of the process by which my new employment agreement was approved, and that Convocation also intends to undertake a new compensation review.

I would like to affirm my continuing commitment to the Law Society of Ontario and to the role of Chief Executive Officer. The previous compensation review was professionally and fairly completed. Those who were involved in the compensation review process at the time of the approval of the new employment agreement acted in good faith and should not be suffering the consequences of having that process challenged.

To move forward productively, and in the best interests of the organization, I am proposing that the Law Society agree that it will not engage in the review/investigation currently contemplated to be undertaken by the Honourable Dennis O'Connor. Instead, I suggest we proceed as follows:

1. I will agree to return to my employment agreement and compensation terms that were in place immediately prior to the execution of the new agreement, effective the next payroll cycle;
2. The Law Society agrees that I may retain all compensation paid to me to date under the new agreement, without requirement of repayment;
3. The Law Society will engage the services of a qualified Compensation Consultant to undertake a fresh compensation review with respect to my compensation as CEO, to be completed by no later than March 31, 2025;
4. The Law Society will review and approve my new CEO compensation by no later than April 30, 2025, retroactive to January 1, 2025;
5. The Law Society will reimburse my legal fees with respect to this matter.

I look forward to hearing from you.¹⁶⁹

Ms. Miles' offer was not accepted. Among other things, Benchers were concerned that the offer was predicated on the condition that my investigation not proceed. Mr. Wardle told her it would

¹⁶⁹ Brief, Tab 34.

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be “unproductive” to accept her offer.