

**Governance Crisis at the Law Society of Ontario:  
A Cautionary Tale for Boards of Directors**

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## TABLE OF CONTENTS

<b>INTRODUCTION.....</b>	<b>3</b>
<b>PART I - WHAT HAPPENED .....</b>	<b>5</b>
1. CEO's Compensation Increased Without Convocation's Approval.....	5
2. Convocation's Response .....	6
3. Compensation Committee Composition.....	7
4. Compensation Committee Meetings.....	8
<b>PART II - ISSUES AND ANALYSIS .....</b>	<b>11</b>
1. The Lawyers in the Room.....	11
2. Issues with the Compensation Committee.....	13
3. Absence of a Governance Professional.....	15
4. No Recourse for Those who Disagree .....	16
5. Frequent Changes of Outside Advisors .....	17
6. The Impact of Board Culture .....	19
7. Special Committee Process.....	20
<b>PART III - CONCLUDING THOUGHTS.....</b>	<b>21</b>

## INTRODUCTION

Convocation<sup>1</sup> learned in November 2024 that the Chief Executive Officer of the Law Society of Ontario had been awarded a significant increase in her compensation five months earlier. This increase brought the CEO's total compensation to almost \$1 million.<sup>2</sup> Treasurer Jacqueline Horvat approved the increase just as her term was ending in June 2024, without seeking the approval of the Compensation Committee or Convocation and without telling them what she had done.<sup>3</sup> She gave a copy of the CEO's amended employment agreement to her successor, Peter Wardle, on the last full day of her tenure as LSO Treasurer. Several weeks later, she was appointed as a Judge of the Superior Court of Justice of Ontario.<sup>4</sup>

Treasurer Wardle was aware that Treasurer Horvat had acted on her own (unfounded) authority and accepted that the approval of Convocation was not needed.<sup>5</sup> Expecting no controversy at Convocation, he simply provided the amended employment contract to Convocation as an information item for its November meeting (the fourth meeting of Convocation after Treasurer Wardle became aware of the matter).<sup>6</sup>

Convocation reacted to this information forcefully retaining The Honourable Mr. Justice Dennis O'Connor<sup>7</sup> to investigate.<sup>8</sup> Justice O'Connor concluded that Treasurer Horvat did not have the authority to amend the CEO's contract.<sup>9</sup> He reviewed in detail the actions taken by a number of people involved in the decision, including Treasurer Horvat, CEO Diana Miles and several other senior Benchers in leadership positions. He noted that "had more care and diligence been taken,

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<sup>1</sup> Governance terms at the LSO are different than those used in other corporations, but the governance model is the same. "Convocation" is the board of directors of the LSO. The chair of Convocation is the "Treasurer". The members of Convocation are "Benchers". There are eight lay Benchers, 40 lawyer Benchers (20 from inside Toronto and 20 from outside Toronto), five paralegal Benchers and several ex-officio Benchers. Every four years, the lawyer and paralegal Benchers are elected by Ontario's lawyers and paralegals, respectively. The eight lay Benchers are (who are not lawyers or paralegals) are appointed by the Lieutenant Governor-in-Council.

<sup>2</sup> Betsy Powell (Toronto Star), [\*Law Society of Ontario benchers call for release of retired judge's report on ex-CEO's near-\\$1M contract\*](#) (Updated March 27, 2025).

<sup>3</sup> The Honourable Dennis O'Connor, [\*Report to Convocation of the Law Society of Ontario\*](#) (February 28, 2025) at 4 and 52.

<sup>4</sup> O'Connor Report at 61.

<sup>5</sup> O'Connor Report at 24.

<sup>6</sup> O'Connor Report at 24 and 64-65.

<sup>7</sup> The Honourable Dennis O'Connor served on the Court of Appeal for Ontario from 1998 to 2012, including as Associate Chief Justice from 2001 until his retirement in late 2012. He also held the position of deputy judge of the Yukon Supreme Court. Justice O'Connor has conducted two notable public inquiries: the Walkerton Inquiry (2000-2002) and the Maher Arar Inquiry (2004-2006).

<sup>8</sup> O'Connor Report at 5 and 65.

<sup>9</sup> O'Connor Report at 5.

this unfortunate situation would have been avoided."<sup>10</sup> The O'Connor Report is a compelling read. This matter has also been well reported in the press.<sup>11</sup>

We have reviewed the O'Connor Report in detail<sup>12</sup> and have a number of observations on what the report tells us about governance at the LSO. In our view, an independent review of the governance structure of the LSO is imperative. This review should be overseen by someone other than the LSO and a report on the review should be made available to the legal community.

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<sup>10</sup> O'Connor Report at 28.

<sup>11</sup> See a list of articles referring to this LSO matter in [Schedule 1](#).

<sup>12</sup> Justice O'Connor describes the interviews he conducted and provides detailed references to the documents he reviewed. Some of this material is publicly available, but much of it is not. We have relied on the facts as set out in the O'Connor Report.

## PART I - WHAT HAPPENED

There are a number of facts to unwind to understand what happened here.

### 1. CEO's Compensation Increased Without Convocation's Approval

In 2017, Diana Miles became acting CEO of the LSO.<sup>13</sup> When she was appointed permanent CEO in March 2018, her compensation package included a \$500,000 base salary and a bonus of up to 20% of her base salary.<sup>14</sup> The bonus was at the discretion of Convocation, but Convocation approved the full 20% every year.<sup>15</sup> CEO Miles was unhappy with her compensation from the start and asked for a compensation review many times.<sup>16</sup> Successive Treasurers declined her request because none of them felt that Convocation would be open to the discussion. The issue was passed from one Treasurer to the next.<sup>17</sup> CEO Miles raised her compensation review again at the end of 2023 because in her view, the 2023 election resulted in a group of Benchers who were "a little more sane."<sup>18</sup>

Treasurer Horvat had decided that she would get the review of the CEO's compensation done before the end of her term<sup>19</sup> (which ran from June 2023 to June 2024).<sup>20</sup> By May 2024, the Compensation Committee (chaired by Treasurer Horvat) had considered the issue, reviewed the report of a compensation consultant and agreed that the CEO's compensation was below market. Nevertheless, Treasurer Horvat concluded that she did not need permission or approval from the Compensation Committee or Convocation.<sup>21</sup> She simply negotiated and signed an amendment to CEO Miles' contract on her own. She did not advise the Compensation Committee or Convocation that she had done so.<sup>22</sup> As noted above, one day before the new Treasurer, Treasurer Wardle, took office, Treasurer Horvat gave the amended agreement to him,<sup>23</sup> which he passed on to Convocation as an information item in November 2024.<sup>24</sup>

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<sup>13</sup> O'Connor Report at 36.

<sup>14</sup> O'Connor Report at 38.

<sup>15</sup> O'Connor Report at 10, 15 and 38-39.

<sup>16</sup> O'Connor Report at 38 and 40.

<sup>17</sup> O'Connor Report at 40-42.

<sup>18</sup> O'Connor Report at 47.

<sup>19</sup> O'Connor Report at 58.

<sup>20</sup> Law Society of Ontario, *Jacqueline Horvat elected as Treasurer of the Law Society of Ontario* (May 26, 2023). Law Society of Ontario, *Candidates for the Office of Treasurer* (May 9, 2024). O'Connor Report at 58.

<sup>21</sup> O'Connor Report at 52.

<sup>22</sup> O'Connor Report at 4 and 52.

<sup>23</sup> O'Connor Report at 61.

<sup>24</sup> O'Connor Report at 24 and 64-65.

## 2. Convocation's Response

Convocation became aware of the amendments to CEO Miles' contract when materials were circulated in advance of its November 2024 meeting.<sup>25</sup> At the December 2024 meeting, it resolved to retain a third party (ultimately, Justice O'Connor) to investigate the circumstances that led to the execution of the amended agreement without the approval of Convocation.<sup>26</sup> CEO Miles offered to revert back to her previous employment arrangement if Convocation agreed not to move forward with the investigation. Her proposal included a number of other conditions, including that she would keep the compensation paid to her to date under the amended agreement and that Convocation would review and approve her new compensation by April 30, 2025 (having retained a compensation consultant). Convocation rejected this proposal, and Justice O'Connor began his work.<sup>27</sup> On March 5, 2025, Convocation met to review his report. At the end of the meeting, the LSO announced that CEO Miles was no longer employed by the LSO.<sup>28</sup>

Convocation did not advise the legal profession of the investigation, but was compelled to release a statement when the information about it leaked to the press.<sup>29</sup> The day after the LSO announced that CEO Miles was no longer employed by the LSO, it released a further update advising that it did not intend to release the O'Connor Report.<sup>30</sup> This resulted in widespread protest. More than two weeks later (on March 20), Treasurer Wardle sent an email stating that Convocation had received "several public requests" to release the O'Connor Report, but that Convocation had still not decided whether to do so. He said, "[w]e will come to a decision on whether or not to release the opinion and that decision will be communicated publicly once reached."<sup>31</sup> Protest mounted and a full week later (on March 27) the O'Connor Report was released.<sup>32</sup>

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<sup>25</sup> O'Connor Report at 24.

<sup>26</sup> O'Connor Report at 5 and 65.

<sup>27</sup> O'Connor Report at 66.

<sup>28</sup> Law Society of Ontario, [Changes to Law Society's Leadership](#) (March 5, 2025). Law Society of Ontario, [Update on Changes to the Law Society's Leadership and Independent Review](#) (March 6, 2025).

<sup>29</sup> Law Society of Ontario, [Law Society statement on independent review](#) (February 17, 2025).

<sup>30</sup> Law Society of Ontario, [Update on Changes to the Law Society's Leadership and Independent Review](#) (March 6, 2025).

<sup>31</sup> Law Society of Ontario, [Message from Treasurer Peter Wardle: Strengthening governance and accountability at the Law Society of Ontario](#) (March 20, 2025).

<sup>32</sup> Betsy Powell (Toronto Star), [Law Society of Ontario benchers call for release of retired judge's report on ex-CEO's near-\\$1M contract](#) (Updated March 27, 2025); Law Society of Ontario, [Update: Convocation's Decision to Release the O'Connor Report and Legal Opinion](#) (March 27, 2025).

### 3. Compensation Committee Composition

The decision-making process leading up to Treasurer Horvat's approval of the amended agreement began in December 2023.<sup>33</sup> At that time, there were five Benchers on the Compensation Committee:<sup>34</sup>

- Jacqueline Horvat, *ex officio* as Treasurer (who was also the Committee Chair);
- Sid Troister, *ex officio* as Chair of the Finance and Audit Committee;
- Megan Shortreed, a Bencher who had originally been appointed by Treasurer Horvat to fill a vacancy (more on this below);
- Michelle Lomazzo, a Paralegal Bencher; and
- Geneviève Painchaud, a Lay Bencher.

Then Bencher Peter Wardle attended the meetings of the Compensation Committee beginning in April 2024 because both he and Bencher Troister were running for Treasurer.<sup>35</sup> All of the elected lawyer Benchers on the Compensation Committee (as well as then Bencher Wardle) were from Toronto.

Two vacancies arose on the Compensation Committee during Treasurer Horvat's tenure. After a lawyer Bencher position became available on the Compensation Committee in April 2023, Treasurer Horvat appointed Bencher Shortreed to fill the vacancy in early June of that year (and put her name forward to Convocation with the other committee members in July).<sup>36</sup> Bencher Shortreed was therefore in place when the Committee considered its recommendation for CEO Miles' bonus in June (delayed from February 2023).<sup>37</sup> She was appointed by Convocation in July 2023.<sup>38</sup> Another vacancy arose in January 2024 when Bencher Painchaud (the Lay Bencher) resigned from the Committee (Justice O'Connor says for reasons unrelated to the investigation).<sup>39</sup> Treasurer Horvat did not fill the vacancy on an interim basis but waited for Convocation to appoint Bencher Letersky at the end of February 2024.<sup>40</sup> Accordingly, no Lay Bencher was in place when the Committee considered its recommendation on CEO Miles' bonus in February 2024. Bencher Lomazzo was on vacation and so the recommendation was determined by Treasurer Horvat together with Benchers Shortreed and Troister.<sup>41</sup>

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<sup>33</sup> O'Connor Report at 47-48.

<sup>34</sup> O'Connor Report at 46-47.

<sup>35</sup> O'Connor Report at 51.

<sup>36</sup> O'Connor Report at 45-46.

<sup>37</sup> O'Connor Report at 46.

<sup>38</sup> O'Connor Report at 46.

<sup>39</sup> O'Connor Report at 48-49.

<sup>40</sup> O'Connor Report at 48.

<sup>41</sup> O'Connor Report at 49-51.

#### 4. Compensation Committee Meetings

There were five meetings of the Compensation Committee between December 2023 to May 2024. They are described below.

##### (a) December 4, 2023 Meeting

CEO Miles began her review process by sending materials to the Compensation Committee including a memo on her 2023 performance objectives and outcomes.<sup>42</sup> Bencher Lomazzo emailed Treasurer Horvat (copying the Committee members) expressing concerns about how CEO Miles had articulated her accomplishments and asked for further documents and information.<sup>43</sup>

All members of the Compensation Committee were present for the December 4 meeting.<sup>44</sup> CEO Miles presented her request for 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 (on top of the 20% bonus she had already received for those years). Committee members agreed that Convocation would not receive the retroactive top-up request favourably.<sup>45</sup>

Bencher Lomazzo and Painchaud continued to raise questions with Treasurer Horvat following the December 4 meeting. Bencher Lomazzo was sufficiently concerned about the responses she was receiving that she advised Treasurer Horvat that she intended to resign from the Compensation Committee (Treasurer Horvat ultimately convinced her not to do so). Bencher Lomazzo did not attend the meetings of the Compensation Committee in January and February 2024 at which the Committee formulated its recommendation for CEO Miles' bonus.<sup>46</sup>

##### (b) January 16, 2024, and February 15, 2024, Meetings

The Compensation Committee met on January 16 and February 15 to consider performance and bonus recommendations for CEO Miles to be brought forward to Convocation.<sup>47</sup> As noted above, only Treasurer Horvat and Bencher Troister and Shortreed attended those meetings.<sup>48</sup> The CEO bonus recommendation moved forward to Convocation and was approved.<sup>49</sup>

In February 2024, Treasurer Horvat was of the view that an amendment to the CEO's employment agreement required Convocation's approval.<sup>50</sup>

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<sup>42</sup> O'Connor Report at 46-47.

<sup>43</sup> O'Connor Report at 48.

<sup>44</sup> O'Connor Report at 47.

<sup>45</sup> O'Connor Report at 48.

<sup>46</sup> O'Connor Report at 48.

<sup>47</sup> O'Connor Report at 49-50.

<sup>48</sup> O'Connor Report at 49-50.

<sup>49</sup> O'Connor Report at 50-51.

<sup>50</sup> O'Connor Report at 51-52.



## (c) April 3, 2024 Meeting

All members of the Compensation Committee were present for the April 3 meeting at which compensation consultant Gallagher Benefits Services (Canada) Group Inc. reviewed its report with the Committee.<sup>51</sup> This was the first meeting that then Bencher Wardle also attended (because he was a candidate for Treasurer).<sup>52</sup>

Gallagher concluded that CEO 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 CEO Miles' base salary.<sup>53</sup> According to press reports, the Gallagher Report "relied on data from all industries with revenue between \$400 million and \$1 billion, public sector organizations and nonprofits", even though the LSO's revenue was approximately \$100 million in 2023 (well below the revenues of comparators used by Gallagher in its analysis).<sup>54</sup> When Committee members asked about appropriate comparators in the circumstances, the Gallagher representative reported that it was difficult to get data on CEO salaries in other regulated spaces.<sup>55</sup>

Gallagher provided alternative compensation ranges for CEO Miles by using the market data described above and applying 10% to 20% premium increases for being a "transformational CEO".<sup>56</sup> Committee members asked questions about the definition and criteria for a "transformational" CEO and whether and how CEO Miles qualified.<sup>57</sup>

During the meeting, Treasurer Horvat noted that, if any changes to CEO Miles' compensation were proposed, the entire Gallagher Report would be shared with Convocation.<sup>58</sup>

## (d) May 28, 2024, Meeting

The Compensation Committee met for 30 minutes on May 28. Again, then Bencher Wardle attended. The Committee discussed salary range at this meeting, and everyone was convinced that CEO Miles' salary was under market based on the analysis in the Gallagher Report.<sup>59</sup>

It was at this meeting that Treasurer Horvat advised the Committee that she had the authority to amend the contract without Convocation's approval and that she was not seeking approval of the

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<sup>51</sup> O'Connor Report at 51.

<sup>52</sup> O'Connor Report at 51.

<sup>53</sup> O'Connor Report at 51.

<sup>54</sup> Jessica Mach (Law Times), *Report commissioned by LSO treasurer says CEO pay hike 'unusual' for 'senior executive role'* (February 19, 2025).

<sup>55</sup> O'Connor Report at 52.

<sup>56</sup> Jessica Mach (Law Times), *Report commissioned by LSO treasurer says CEO pay hike 'unusual' for 'senior executive role'* (February 19, 2025).

<sup>57</sup> O'Connor Report at 52.

<sup>58</sup> O'Connor Report at 52.

<sup>59</sup> O'Connor Report at 57 and 58.

Compensation Committee either. According to Justice O'Connor, "[n]o one appeared to be surprised or disagree."<sup>60</sup>

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<sup>60</sup> O'Connor Report at 57.

## PART II - ISSUES AND ANALYSIS

### 1. The Lawyers in the Room

How could the LSO find itself in a position that a Treasurer could act without authority on a matter that was well known to be sensitive? Most of the central players including Treasurer Horvat, CEO Miles and then Benchers Shortreed, Troister and Wardle are lawyers. It is important to understand the steps that these lawyers took to discharge their obligations to the LSO.

#### (a) Legal Analysis

The legal issue in this matter is one of very basic corporate law: who has the authority to determine the CEO's compensation? There would be very few board members (and still fewer CEOs) in Canada who would not be able to respond to that question quickly and correctly. The authority to set CEO compensation rests with the board of directors, unless the board has delegated that authority to a committee or to an individual director (such as the chair). The answer is no different in the case of the LSO.

The basic corporate law analysis is that the authority to set CEO compensation rests with Convocation unless Convocation has delegated that authority to a committee or an individual Bencher (such as the Treasurer). It is clear from the O'Connor Report that Convocation had not delegated that authority to the Treasurer.<sup>61</sup> Justice O'Connor said that he had not seen any LSO documents to suggest that a Treasurer has the authority to enter into a contract with the CEO relating to his or her compensation, employment or remuneration without Convocation's approval. In fact, he said, there is a significant body of documents that indicate the opposite.<sup>62</sup> Convocation never delegated authority to the Treasurer, according to Justice O'Connor.<sup>63</sup>

All of the lawyers involved in this process looked past the basic legal analysis in this instance. None of the Compensation Committee members or Bencher Wardle turned their minds to any of the relevant provisions of the *Law Society Act*<sup>64</sup> or the LSO by-laws or to the relevant provisions of the LSO's own governance documents.<sup>65</sup> They simply relied on the Treasurer's claims.<sup>66</sup>

#### (b) Review of Materials

The LSO's Governance Practices and Policies states that Benchers must "be familiar with Law Society structure, mandate and governance policies and relevant legislation and jurisprudence."<sup>67</sup> As noted above, none of the members of the Compensation Committee reviewed the *Act* or the by-

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<sup>61</sup> O'Connor Report at 17.

<sup>62</sup> O'Connor Report at 13-14.

<sup>63</sup> O'Connor Report at 17.

<sup>64</sup> R.S.O. 1990, c. L.8.

<sup>65</sup> O'Connor Report at 55.

<sup>66</sup> O'Connor Report at 11.

<sup>67</sup> Law Society of Ontario, "[Governance Practices and Policies](#)" (April 25, 2024) at s. 38(a).

laws. None of them turned their minds to the implications of the mandate of the Compensation Committee (which referred to Convocation's approval of CEO compensation).<sup>68</sup> Furthermore:

- Treasurer Horvat said that she considered LSO staff to be knowledgeable about the operation of the LSO and the legal framework related to governance and other matters: "[i]n 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."<sup>69</sup>
- Bencher Shortreed said: "[a]s 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."<sup>70</sup>

Bencher Shortreed told Justice O'Connor, "[g]iven that we were told the Act and By-laws were silent and the mandate was ambiguous, we ended up defaulting to past practice ..."<sup>71</sup> As the O'Connor Report points out, there was no past practice to which the Committee could default.<sup>72</sup> CEO Miles' original employment agreement had been approved by Convocation.<sup>73</sup> In respect of an amendment to the CEO's employment agreement, there was no past practice (according to Bencher Troister) because the LSO had never amended a CEO employment agreement before.<sup>74</sup>

Others involved in this matter also had very poor recall on their involvement in meetings and discussions relevant to this issue:

- Hicks Morley Hamilton Stewart Storie LLP had cautioned Treasurer Horvat about the scope of her authority to amend the employment agreement (as discussed below), but in her interview with Justice O'Connor, Treasurer Horvat did not recall having received that advice.<sup>75</sup>
- Jim Varro (the now retired LSO Corporate Secretary) recalled meeting with Treasurer Horvat to go through the LSO by-laws (in particular, the governance matters in By-law 3), but Treasurer Horvat did not recall this training session.<sup>76</sup>
- In their interviews with Justice O'Connor, neither Treasurer Horvat, Treasurer Wardle nor Bencher Troister could recall that Convocation had approved CEO Miles' 2018 employment agreement. They had all served on the CEO Transition and Search Committee that recommended CEO Miles' appointment. Then Bencher Wardle was also Chair of the Finance and Audit Committee at that time and, accordingly, served *ex officio* on the Compensation Committee when it considered appropriate compensation for CEO Miles.

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<sup>68</sup> O'Connor Report at 11.

<sup>69</sup> O'Connor Report at 41.

<sup>70</sup> O'Connor Report at 41.

<sup>71</sup> O'Connor Report at 57.

<sup>72</sup> O'Connor Report at 5 and 55.

<sup>73</sup> O'Connor Report at 15.

<sup>74</sup> O'Connor Report at 55.

<sup>75</sup> O'Connor Report at 11.

<sup>76</sup> O'Connor Report at 41.

At the March 8, 2018, *in camera* meeting, Convocation approved the employment contract with CEO Miles, through a resolution moved by then Bencher Horvat and seconded by then Bencher Wardle. Bencher Troister was also at the meeting.<sup>77</sup>

(c) It all Rolled Down to one Staffer

Treasurer Horvat says she relied on a member of LSO staff. She said she was relying on advice from an LSO staff member provided to her sometime after the February 2024 meeting of the Compensation Committee. That staff member told Justice O'Connor that the views expressed were based on an understanding of past practices and were not "a legal opinion".<sup>78</sup>

The members of the Compensation Committee all relied on Treasurer Horvat.<sup>79</sup>

CEO Miles also said that she relied on Treasurer Horvat. Justice O'Connor said that there were ample red flags for CEO Miles that should have alerted her to the fact that Convocation's approval was necessary.<sup>80</sup>

## 2. Issues with the Compensation Committee

Treasurer Horvat advised the Compensation Committee at the May 2024 Committee meeting, that she had the authority to approve the amended employment agreement without the Committee.<sup>81</sup> When that meeting ended, no one on the Compensation Committee played any further role in the negotiations of CEO Miles' employment agreement amendments,<sup>82</sup> although Treasurer Horvat was keeping Bencher Troister and Bencher Wardle informed (given one of them would become Treasurer).<sup>83</sup>

Until that time, however, the Compensation Committee was operating in the belief that it was responsible for recommending to Convocation any changes to the CEO's compensation<sup>84</sup> and so it is important to understand how that Committee functioned.

(a) Compensation Committee Unstructured and Disorganized

Justice O'Connor discusses the dysfunction of the Compensation Committee in detail. He said his impression was that the Committee was "unstructured" and "disorganized".<sup>85</sup> It did not have

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<sup>77</sup> O'Connor Report at 38-39.

<sup>78</sup> O'Connor Report at 52.

<sup>79</sup> O'Connor Report at 11.

<sup>80</sup> O'Connor Report at 21.

<sup>81</sup> O'Connor Report at 57.

<sup>82</sup> O'Connor Report at 58-60.

<sup>83</sup> O'Connor Report at 59.

<sup>84</sup> For example, O'Connor Report at 48 and 51.

<sup>85</sup> O'Connor Report at 36.

regular meetings or agendas. It did not keep minutes of its meetings or record its decisions. The materials made available to Committee members were described to him as "minimal".<sup>86</sup>

The Compensation Committee's mandate had been in place since 2007.<sup>87</sup> None of the Committee members had ever seen (or apparently asked for) a copy of the mandate in its entirety. Portions of the mandate were included in various reports by staff.<sup>88</sup>

There was a position description for the Compensation Committee Chair set out in the LSO's Governance Practices and Policies,<sup>89</sup> which Treasurer Horvat apparently did not follow. Treasurer Horvat was first elected as a Bencher in 2011 and had served on most, if not all, LSO committees.<sup>90</sup> Treasurer Wardle and the Compensation Committee members had held leadership positions on committees of Convocation and so must have been familiar with how committees should operate. The Compensation Committee was supported by LSO staff.<sup>91</sup>

Responsibility for the Committee dysfunction described in the O'Connor Report lies primarily with the Committee Chair but is also shared by everyone else who played a role in the work and decisions of the Committee.

(b) Conflicts of Interest on the Compensation Committee

One of the members of the Compensation Committee (Bencher Shortreed) had acted for CEO Miles during her 2018 employment agreement negotiations with the LSO.<sup>92</sup> Bencher Shortreed became a Bencher in 2019<sup>93</sup> and disclosed her past retainer to then Treasurer Malcolm Mercer (who she says did not think the past retainer should prevent her from voting on CEO compensation issues as a member of Convocation).<sup>94</sup>

Bencher Shortreed also disclosed her past retainer to the Chair of the Compensation Committee (Treasurer Horvat) when she was asked to join that Committee in 2023.<sup>95</sup> She recalled that she and Treasurer Horvat decided together that there was no actual or perceived conflict of interest in the circumstances.<sup>96</sup> Although, Justice O'Connor notes that Treasurer Horvat acknowledged to him

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<sup>86</sup> O'Connor Report at 36.

<sup>87</sup> O'Connor Report at 35-36.

<sup>88</sup> O'Connor Report at 36,

<sup>89</sup> Law Society of Ontario, *Governance Practices and Policies*, (April 25, 2024) at ss. 51-57.

<sup>90</sup> O'Connor Report at 41.

<sup>91</sup> O'Connor Report at 41 and 58.

<sup>92</sup> O'Connor Report at 38.

<sup>93</sup> O'Connor Report at 40.

<sup>94</sup> O'Connor Report at 40-41.

<sup>95</sup> O'Connor Report at 45-46.

<sup>96</sup> O'Connor Report at 45.

that there would be a perception of a conflict "of course".<sup>97</sup> Justice O'Connor noted in his report, Treasurer Horvat's observation to him that she and Bencher Shortreed were friends.<sup>98</sup>

Bencher Shortreed did not disclose to Convocation or to the Compensation Committee that she had acted for CEO Miles during CEO Miles' 2018 employment negotiations with the LSO.<sup>99</sup> When this prior retainer became known to Bencher Painchaud (the Lay Bencher on the Compensation Committee), Bencher Painchaud sent a text to Treasurer Horvat saying that Bencher Shortreed should be removed from the Committee.<sup>100</sup> Bencher Shortreed remained on the Committee notwithstanding Bencher Painchaud's objections.<sup>101</sup>

These facts give rise to the following questions:

- Given the size of Convocation (54 Benchers), why would Treasurer Horvat appoint to the Compensation Committee, the one Bencher who had previously represented the CEO? The biographies of the other Benchers suggest that Bencher Shortreed was not the only member of Convocation with employment law experience.
- Why did Bencher Shortreed not disclose her prior engagement by CEO Miles to Convocation or to the other members of the Compensation Committee?
- When one of the other Compensation Committee members objected to Bencher Shortreed serving on the Committee, why did neither Treasurer Horvat nor Bencher Shortreed discuss this with the Committee?

Parsing through the technicalities of conflicts of interest is not an answer if the independence of a decision maker is subject to question by an organization's stakeholders. That is why many conflicts of interest policies deal not only with actual conflicts of interest, but also with perceived conflicts of interest.

### **3. Absence of a Governance Professional**

It is apparent from the O'Connor Report, that there was no knowledgeable governance professional in place at the LSO in 2024. There was no one providing proactive governance advice as this matter was unfolding or responding with authority when questions were asked.

Some think that appropriate governance practices should be obvious or, as CEO Miles said, "not rocket science."<sup>102</sup> The governance failures at the LSO illustrate the risks to an organization if governance is not well understood and managed.

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<sup>97</sup> O'Connor Report at 46.

<sup>98</sup> O'Connor Report at 56.

<sup>99</sup> O'Connor Report at 41 and 45-46.

<sup>100</sup> While a member of the Compensation Committee acknowledged the issue and addressed it with Treasurer Horvat, the O'Connor Report does not detail the result of their discussion. See O'Connor Report at 46, fn 104.

<sup>101</sup> O'Connor Report at 46.

<sup>102</sup> O'Connor Report at 63.

Among other things, in our view:

- An organization of the size and with the mandate of the LSO must have someone in place who is responsible for governance. This could be a senior executive or an outside advisor. That person must have command of the organization's governance framework, practices and procedures and must have the authority to guide, but also to intervene as necessary. If the individual is not a lawyer, then he or she needs regular access to experienced outside governance counsel.
- There must be continuity in the governance advice being provided to management and to Convocation whether through the in-house governance function or the outside governance counsel (or both).
- Relying on past practice cannot supersede familiarity and compliance with legal and governance requirements or good judgement.

The absence of a governance professional does not absolve the Benchers (in particular, the lawyers). Directors should also not defer their judgement on important decision items to other staff members without conducting their own reasonable investigation. At the LSO, Benchers relied on staff and on the Treasurer.<sup>103</sup> It seems implausible that neither of the Treasurer, the CEO nor any of the elected lawyer Benchers involved, knew that boards of directors and their committees typically operate with agendas and terms of reference, and maintain records of their decisions, including the deliberations leading to any decision.<sup>104</sup>

Small or closely held organizations may not always have the resources to engage full time governance advice but it is reasonable for LSO stakeholders to expect that the governing body of the legal profession in Ontario would operate in accordance with the highest standards of governance. In fact, the LSO's Governance Practices and Policies provides that among the principles that are the foundation for the governance of the LSO, "Convocation is to apply best practices for its governance."<sup>105</sup>

#### **4. No Recourse for Those who Disagree**

Dissenting voices are often not heard or if heard, are often dismissed. Some type of upward reporting (or whistleblowing) is a well recognized risk management tool. In this case, two members of the Compensation Committee voiced concerns and even opposition on certain matters, but the process moved on. Members of LSO staff also expressed concerns.

##### **(a) Non-Lawyer Benchers**

Benchers Lomazzo and Painchaud took actions in the face of reporting that they felt was inadequate.<sup>106</sup> The difficult situation they faced may be familiar to directors in other organizations who serve on board committees and do not feel that their concerns are being heard. On some

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<sup>103</sup> O'Connor Report at 11-12.

<sup>104</sup> O'Connor Report at 36.

<sup>105</sup> Law Society of Ontario, *Governance Practices and Policies*, (April 25, 2024) at s. 6(e).

<sup>106</sup> O'Connor Report at 48.



boards, a committee may advance recommendations to the board even when some committee members are not satisfied with the committee discussions or with the recommendation. In this case, Treasurer Horvat went around both the Compensation Committee and Convocation.

If committee members in this situation cannot resolve the problem with the committee chair, one option is to elevate the issue to the board chair. In this case, of course, that would not have been helpful, since the Chair of the Compensation Committee was also the Treasurer. A second port of call on many boards might have been the chair of the audit committee, but in this case, that person was also a member of the Compensation Committee.<sup>107</sup>

All of this highlights the issue of board members needing a mechanism to escalate their concerns to a disinterested authority figure. At the LSO, the governance structure puts the same people in many positions and so it will require some careful thought to develop a process that would allow Benchers to report concerns to someone other than the Treasurer or committee chairs, where the individuals in these positions are implicated.

(b) Members of LSO Staff

LSO staff members were concerned about Treasurer Horvat circumventing Convocation. A LSO staff member<sup>108</sup> asked CEO Miles if the amended employment agreement should move forward without Convocation's approval,<sup>109</sup> but was rebuffed. What could this staffer have done? There was no anonymous whistleblower policy that would have allowed a whistleblower to alert someone on Convocation who was not otherwise involved in the decision making.

The Bencher Code of Conduct is lacking in this respect. It states that "[a] person who has information suggesting that a bencher has not complied or is not complying with the Code may refer the information in writing to the Treasurer."<sup>110</sup> This is of no assistance to an employee who believes the Treasurer herself is acting without authority.

## 5. Frequent Changes of Outside Advisors

When an organization changes its professional advisors frequently, this can be a red flag. There is often good reason to change advisors, of course, but if the change is being made to avoid dealing with real issues flagged by existing advisors, this creates risk for the organization. A board should understand what is behind a change in professional advice, particularly if there are frequent or sudden changes in the advice being sought.

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<sup>107</sup> O'Connor Report at 46.

<sup>108</sup> The individual's name was redacted from the O'Connor Report but for the purposes of this we assume this discussion involved an LSO staff member given the nature of the conversation.

<sup>109</sup> O'Connor Report at 61.

<sup>110</sup> Law Society of Ontario, *Governance Practices and Policies*, in Appendix A: Bencher Code of Conduct (April 25, 2024) at s. 50. Section 19 of the Bencher Code of Conduct further states that "Benchers should encourage disclosure of wrongdoing at the Law Society to ensure that the Law Society abides by its Business Conduct Policy."<sup>110</sup> The "Business Conduct Policy" is not accessible on the LSO website.

## (a) Employment Law Counsel Consulted by Treasurer Horvat

Treasurer Horvat consulted two different law firms for advice on amendments to CEO Miles' employment agreement. In late 2022 and early 2023,<sup>111</sup> she spoke with Hicks Morley, who cautioned her about her authority to amend CEO Miles' employment agreement without approval by Convocation.<sup>112</sup> Treasurer Horvat assured Hicks Morley that she would consult the by-laws to confirm her authority.<sup>113</sup> She did not do this.<sup>114</sup> In 2024, when Treasurer Horvat was again considering an amendment to the LSO's employment agreement with CEO Miles, she did not seek advice from Hicks Morley, but instead engaged other counsel.<sup>115</sup> The O'Connor Report does not recount any discussion by Treasurer Horvat with this counsel about her authority. Treasurer Horvat then moved forward to approve the amendment on her own, relying on "past practice".<sup>116</sup>

## (b) Compensation Consultants

It is also noteworthy that three different compensation consultants were retained over the course of CEO Miles' tenure.

Aon was retained to make a recommendation on salary range when CEO Miles was appointed in 2018.<sup>117</sup> CEO Miles was unhappy with her compensation. Mercer Canada Inc. was engaged by the LSO's then Executive Director to do a review of all LSO executive compensation and deliver a report to the LSO in the following year.<sup>118</sup> According to CEO Miles, this review showed that her compensation required adjustment.<sup>119</sup>

In December 2023, CEO Miles advised the Compensation Committee that a review of executive compensation, including the CEO and SME roles was scheduled to be completed in the first half of 2024. She told the Compensation Committee that the study would show that CEO compensation required adjustment.<sup>120</sup>

In 2024, Gallagher Benefits Services (Canada) Group Inc. was retained by the LSO to conduct another review of LSO executive compensation. This time, Treasurer Horvat expanded Gallagher's

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<sup>111</sup> O'Connor Report at 16.

<sup>112</sup> O'Connor Report at 42-45.

<sup>113</sup> O'Connor Report at 45.

<sup>114</sup> O'Connor Report at 11 and 45.

<sup>115</sup> O'Connor Report at 59.

<sup>116</sup> As the O'Connor Report notes, there was no "past practice" of amendments to the CEO employment agreement at all and the contract itself, which included the compensation package, had been approved by Convocation, such that it would make sense that Convocation would be required to approve any amendment. O'Connor Report at 15, 52-53, 55 and 57.

<sup>117</sup> O'Connor Report at 37.

<sup>118</sup> O'Connor Report at 40.

<sup>119</sup> O'Connor Report at 47.

<sup>120</sup> O'Connor Report at 47.

retainer to review CEO Miles' salary.<sup>121</sup> In other words, Treasurer Horvat and the Compensation Committee were relying on the advice of a compensation consultant that had been retained by LSO management (and who was, therefore, not independent of management). Gallagher concluded that CEO Miles' salary was below market and advised that it would be appropriate to eliminate her bonus and fold it into her base salary,<sup>122</sup> which would result in the elimination of Convocation's discretion over her bonus.

## 6. The Impact of Board Culture

The culture of the LSO is an undercurrent in the O'Connor Report. Justice O'Connor was told by everyone he interviewed that Convocation had been "tumultuous", dating back to at least 2017.<sup>123</sup>

Successive Treasurers resisted raising with Convocation, CEO Miles' requests for a compensation review.<sup>124</sup> First, in 2019, then Treasurer Mercer declined to bring the matter forward because a Bencher election was imminent, and he did not want CEO compensation to be an issue in what was anticipated to be a contentious election. When the election was over, then Treasurer Mercer felt that the new Convocation would not be receptive to a discussion on CEO compensation and so did not bring it forward.<sup>125</sup> The next Treasurer, Theresa Donnelly declined to bring a review of CEO compensation to Convocation for similar reasons.<sup>126</sup> Treasurer Horvat was also not prepared to bring the issue forward to Convocation. In 2023, Treasurer Horvat delayed Convocation's consideration of the bonus because the mood around the table at Convocation was tense.<sup>127</sup> In late 2023, CEO Miles raised her compensation review with the Compensation Committee noting that the Benchers elected as of May 2023 were "a little more sane".<sup>128</sup>

Although Convocation was never asked to look at the overall compensation package for CEO Miles after she was hired, her bonus did come before Convocation every year. The bonus was typically on the February Convocation meeting agenda. Justice O'Connor noted that the debate over the CEO bonus every February was "spirited and combative".<sup>129</sup> The Bencher election took place in April, and Treasurer Horvat put the matter on Convocation's agenda in June 2023. CEO Miles' bonus was approved at that meeting, however some Benchers reacted negatively to what they heard.<sup>130</sup>

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<sup>121</sup> O'Connor Report at 49.

<sup>122</sup> O'Connor Report at 51.

<sup>123</sup> O'Connor Report at 42.

<sup>124</sup> O'Connor Report at 17.

<sup>125</sup> O'Connor Report at 40.

<sup>126</sup> O'Connor Report at 41-42.

<sup>127</sup> O'Connor Report at 42.

<sup>128</sup> O'Connor Report at 47.

<sup>129</sup> O'Connor Report at 42.

<sup>130</sup> O'Connor Report at 45-46.

Anticipating what a board would find acceptable can be an important discipline on management. However, if there is a difficult relationship between the board and management, some members of management may look for ways to circumvent the board approval process. The board may have no way of knowing.

An effective whistleblower policy (discussed above) can allow issues to come to the attention of people with no conflict who have the authority to act.

Touchpoints between directors and senior members of management can also provide an environment in which individual members of management may alert a director to governance or compliance issues.

*In camera* sessions with individual members of management and with external advisors can also provide an opportunity for the board to hear things that they may not hear from the CEO.

## 7. Special Committee Process

The legal profession in Ontario should expect that our governing body should adhere to practices that we would advise our clients to adopt.

When a special committee is struck to oversee an investigation into the way in which a decision was made, typically those who were involved in the decision being investigated play no role in the investigation or in other aspects of the board's consideration of the issue.

In this case, a special committee comprised of two Benchers<sup>131</sup> was established. However, Justice O'Connor's mandate required him to provide recommendations "to the Treasurer and Convocation."<sup>132</sup> Treasurer Wardle had attended the Compensation Committee meetings dealing with CEO Miles' compensation increase.<sup>133</sup> He was aware that Treasurer Horvat intended to make the compensation decision without Convocation approval, and he was aware that she had done so. As Justice O'Connor notes, the Benchers, which would include then Bencher Wardle, relied on Treasurer Horvat and on staff.<sup>134</sup> He did not recognize that there was an issue until November 2024.<sup>135</sup>

Treasurer Horvat is no longer a Bencher. The fact that she is now on the Bench may protect her from criticism, because lawyers who engage with the courts may be reluctant to antagonize someone before whom they may be required to appear in the future. CEO Miles is no longer employed by the LSO. To this point, there is no indication that the three lawyer Benchers who were on or attended meetings of the Compensation Committee have accepted any accountability.

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<sup>131</sup> The special committee was comprised of Mr. Gerald Chan and Mr. Will McDowell.

<sup>132</sup> O'Connor Report at 5.

<sup>133</sup> O'Connor Report at 51 and 57.

<sup>134</sup> O'Connor Report at 11.

<sup>135</sup> O'Connor Report at 24, 64 and 65.

### PART III - CONCLUDING THOUGHTS

This article highlights certain of the governance failures at the LSO. The O'Connor Report makes a number of recommendations for governance reform and Convocation has committed to advancing and implementing those recommendations promptly.<sup>136</sup> The LSO was already reviewing its governance when the compensation scandal broke.<sup>137</sup> The reforms it proposed as part of that review relate primarily to the size and composition of Convocation and to electoral reform.<sup>138</sup> They do not address the issues raised in the O'Connor Report or discussed in this article. How Convocation will deal with the crisis in the confidence that now exists about the governance of the LSO remains to be seen. In the meantime, the governance failures that contributed to this crisis may provide useful insights to other organizations – and hopefully to the LSO.

From a broader perspective, there are a number of important issues for the legal profession to consider. Here are just a few:

- Are the governance failures evidenced in the O'Connor Report episodic and confined to the specific circumstances and individuals involved, or do they reflect a more endemic problem?
- Is the legal profession entitled to accountability from Convocation comparable to the accountability that shareholders of a public company expect from the board of directors they elect? How could Convocation be held accountable in any event? The next Benchers election is not until 2027. Should any of the current Benchers who were involved in this matter step off – at least from the Compensation Committee?
- Convocation's transparency has been an issue, since the O'Connor investigation first leaked in February this year. Should we be hearing from the Special Committee or a different special committee comprised of Benchers who did not participate in this process?

Most importantly, how will we move forward as a profession? Have we completely lost track of the importance of public confidence in the legal profession? Are we sufficiently apathetic about the LSO that we will lose interest in this issue? Or are we too paralyzed by fear of criticizing our regulator to speak out?

It is clear that the governance of the LSO needs to be deconstructed so that a more sustainable model can be developed. The current leadership of the LSO participated in the events that led us into this crisis. How then can they oversee the path forward? We all need to give some thought to the organizations that could step into this leadership void and propose a governance structure for the LSO that will be more resistant to the carelessness of those in authority, more resilient in the face of challenge and more responsive to its stakeholders.

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<sup>136</sup> Law Society of Ontario, [\*Update: Convocation's Decision to Release the O'Connor Report and Legal Opinion\*](#) (March 27, 2025).

<sup>137</sup> Law Society of Ontario, [\*Towards Effective Governance — Governance & Electoral Reforms at the Law Society of Ontario\*](#) (October 31, 2024) at 3.

<sup>138</sup> Law Society of Ontario, [\*Call for Comment: Towards More Effective Governance — Governance & Electoral Reforms at the Law Society of Ontario\*](#) (Accessed March 31, 2025).

## SCHEDULE 1

The following list sets out articles that discuss this matter.

- Betsy Powell (Toronto Star), [Law Society of Ontario hires retired senior judge to investigate CEO's new, near-\\$1-million contract](#) (Updated February 18, 2025);
- Jessica Mach (Law Times), [Report commissioned by LSO treasurer says CEO pay hike 'unusual' for 'senior executive role'](#) (February 19, 2025);
- Betsy Powell (Toronto Star), [Law Society of Ontario CEO 'no longer employed' amid fallout from 50 per cent pay hike](#) (Updated March 6, 2025);
- Jessica Mach (Law Times), [Diana Miles out as LSO CEO hours after benchers given access to report about her pay increase](#) (March 6, 2025);
- Robyn Doolittle (The Globe and Mail), [Ontario law society CEO departs amid independent review of her salary increase](#) (Updated March 7, 2025);
- Robyn Doolittle (The Globe and Mail), [Law Society of Ontario faces calls to release report into recently ousted CEO's pay increase](#) (March 10, 2025);
- Robyn Doolittle (The Globe and Mail), [Law Society benchers meeting to decide how to handle report on ex-CEO's pay raise](#) (Updated March 20, 2025);
- Ian Burns (Law360 Canada), [Ontario law society treasurer pledges change in light of CEO pay controversy](#) (March 21, 2025);
- Jessica Mach (Law Times), [Law Society benchers says 'serious unfinished business' remains after meeting on CEO pay hike report](#) (March 21, 2025);
- Betsy Powell (Toronto Star), [Law Society of Ontario benchers call for release of retired judge's report on ex-CEO's near-\\$1M contract](#) (Updated March 27, 2025);
- Jessica Mach (Law Times), [LSO to hold special meeting as benchers, legal orgs mount pressure to release CEO pay report](#) (March 27, 2025);
- Jessica Mach (Law Times), [LSO benchers vote to release report on CEO pay increase](#) (March 27, 2025);
- Betsy Powell (Toronto Star), [Amid mounting pressure from legal community, Law Society of Ontario releases report on ex-CEO's near-\\$1M contract](#) (Updated March 28, 2025);
- Ian Burns (Law360 Canada), [Ontario Law Society releases report on CEO pay controversy](#) (March 28, 2025);
- Robyn Doolittle (The Globe and Mail), [Law Society of Ontario releases investigation into ousted CEO's pay raise](#) (Updated March 29, 2025); and
- Robyn Doolittle (The Globe and Mail), [Inside the Law Society of Ontario's decision to release report on ousted CEO's pay rise](#) (Updated March 30, 2025).