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SENT VIA EMAIL to tnatyshak-qp@ndp.on.ca

Taras Natyshak, MPP
Chair, Standing Committee on Public Accounts
Legislative Building, Queen's Park
Toronto, ON
M7A 1A5

Dear Mr. Natyshak:

Re: Laurentian University of Sudbury – Standing Committee on Public Accounts

I am counsel for Laurentian University of Sudbury (the "**University**") in respect of this matter. My client has forwarded a letter from you which was delivered to my client on the evening of Friday, October 15, 2021. I also write on behalf of the Chair of the University's Board of Governors, to whom your letter was also addressed.

Your letter conveyed a request by the Standing Committee on Public Accounts (the "**Committee**"), of which you are Chair. It asked the University to produce a lengthy list of documents and information, some of which had previously been requested by the Auditor General in her value-for-money audit.

The University would like to discuss with the Committee how the University can produce documents to allow the Committee to perform its function while not compromising the University's ability to continue to operate. In that regard, there are several important circumstances of which the Committee should be aware.

Scope of documents requested and timelines

First, there is the scope of documents that the Committee has requested, and the timelines set out in the request. Appendix A to your letter sets out various dates by which the Committee requests production: October 22 (this Friday), October 29 (the following Friday), and November 5 (the Friday after that).

I understand the Committee's desire to obtain information quickly, but I must point out that the timelines requested would be impossible for the University. Before receiving your request, the University's resources were stretched thin. Staff have been working tirelessly to deal with four extremely pressing situations: (1) the beginning of the academic year and the return of students to campus; (2) the COVID-19 pandemic; (3) the *CCAA* restructuring; and (4) the Auditor General's audit. Staff have been working diligently to satisfy the Auditor General's documentary requests as quickly as possible.

The University has already produced a vast amount of documentation to the Auditor General. However, the requests in your letter are, in many cases, much broader than those made to date by the Auditor General. Some of the Committee's requests call for extremely voluminous production, such as the one for the last ten years of emails from 63 former or current members personnel, which in all likelihood would involve the production of tens of millions of records. In other cases, the requests require information to be gathered from the review of many different documents in many different areas. The University simply does not have the resources to fulfill these requests on anywhere close to the timeline requested by the Committee.

Documents pertaining to the *CCAA* negotiations

Second, the Committee has requested documents pertaining to the restructuring currently going on under the federal *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("***CCAA***"). The Committee will appreciate that the restructuring is necessary to the University's survival.

Since it sought *CCAA* protection in February 2021, the University has been negotiating with creditors, unions, federated universities, and other stakeholders to achieve a compromise that will allow the University to emerge as a financially viable and vibrant institution. At the heart of the *CCAA* negotiations is a confidential mediation facilitated by a judge of the Ontario Superior Court of Justice.

To date, the CCAA process has resulted in annual savings of approximately $40 million – a reduction of 25% in the University's annual expenses.

The negotiations, compromises and settlements that led to these savings depend on confidentiality and privilege being respected at all times, without exception. Parties would not be able to negotiate if they knew that communications could be disclosed in any setting to anyone outside of the immediate parties themselves. In particular, there is a court order requiring that all information and documents pertaining in any way to the mediation remain confidential. I enclose a copy. The mediation process, and the negotiations more broadly, are still going on.

Among the documents requested by the Committee are documents pertaining to the *CCAA* negotiations and the confidential mediation. Leaving aside the fact that producing documents relating to the mediation would violate a court order, the mere prospect of disclosure would seriously compromise the *CCAA* restructuring and therefore the University's ability to continue operating. Parties would not enter into in any further discussions or negotiations if there was any

prospect that the subject matter or content of those discussions would be disclosed to anyone. This would mean that the University could not exit the *CCAA* process through a plan of arrangement.

Privileged information

Third, your letter expressly requests privileged information. Solicitor-client privilege is a critically important right in our legal system. The Supreme Court of Canada has described it as "a principle of fundamental justice and civil right of supreme importance in Canadian law."[1]

Parliamentary bodies themselves recognize that they should not intrude on privilege, or other significant interests, unnecessarily. In requesting documents, legislatures should proceed in a way that allows them to carry out their important functions while also avoiding or minimizing the harm that unrestricted disclosure could inflict. Often it is advisable to engage in dialogue with a records holder to find a way forward. There is recent and compelling authority for this proposition. I refer to the ruling of the Honourable Peter Milliken, Speaker of the House of Commons, on April 27, 2010, starting on p. 98 (enclosed); and the ruling of Speaker Dave Levac of the Legislative Assembly, on September 13, 2012, starting on p. 3607 (enclosed).

The request as currently framed calls for the disclosure of the University's communications with its lawyers from 2010 to present, including those lawyers currently representing the University and Board in the *CCAA* restructuring process. The University's ability to communicate with those lawyers and to receive advice in connection with the restructuring would be undermined if their communications are subject to disclosure. A lawyer cannot represent a client adequately if the lawyer and client cannot be assured that their communications will remain confidential. If the University's relationships with its lawyers in ongoing litigation are undermined in this manner, it will compromise its ability to complete the rest of the restructuring and continue operating.

I know the Committee will bring careful consideration to the matters outlined above. If the University's restructuring fails and it is forced to close its doors, there would be serious harm to the University's students, faculty and staff, and more broadly to the Sudbury community and northeastern Ontario. It is unimaginable that the Committee intends that result.

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[1] *Lavallee, Rackel & Heintz v Canada (Attorney General)*, 2002 SCC 61 (CanLII), [2002] 3 SCR 209 at para 36.

Thank you for considering the contents of this letter. I will contact the Committee's Clerk, Mr. Tyrrell, to discuss next steps.

Yours truly,

Brian Gover
BG/

Enclosures: Ruling of Speaker Peter Milliken, April 27, 2010
Ruling of Speaker Dave Levac, September 13, 2012
Order re Appointment of Mediator of Chief Justice Morawetz, February 5, 2021
Notice of Application, September 28, 2021
Endorsement of Chief Justice Morawetz, September 27, 2021

c. Claude Lacroix, Chair, Board of Governors
Dr. Robert Haché, President and Vice-Chancellor
D. J. Miller, *Thornton Grout Finnigan LLP* (Insolvency counsel to the University)
Sharon Hamilton, *Ernst & Young Inc*. (Court-Appointed Monitor of the University)
Ashley Taylor, *Stikeman Elliott LLP* (Counsel to the Court-Appointed Monitor)
Peter Osborne, *Lenczner Slaght* (Counsel to the Board of Governors of the University)
Richard Dearden, *Gowling WLG (Canada) LLP* (Counsel to the Auditor General)