MEMORANDUM

DATE: 2021-09-27

TO: Chief Justice Morawetz

FROM: Laurentian University (Brian Gover and Fredrick Schumann, Stockwoods LLP);

Auditor General of Ontario (Rick Dearden, Heather Fisher, Sarah Boucaud (Gowling WLG)

RE: Laurentian University/Auditor General of Ontario - procedural understanding

Chief Justice,

The parties agree that the issue of whether s. 10 of the *Auditor General Act* (a) requires an auditee to give privileged information to the Auditor General, and (b) provides the Auditor General a right of access to an auditee's privileged information may be heard by you as an application. They propose the following procedure for the resolution of that issue:

1. The Auditor General may commence an Application for an interpretation of s. 10 of the *Auditor General Act*. The Application would be under paragraphs 14.05(3)(d) (interpretation of a statute) and 14.05(3)(h) (any matter where it is unlikely that there will be material facts in dispute requiring a trial) of the *Rules of Civil Procedure*. The Application will be filed as a Civil List or Commercial List proceeding and not within the *CCAA* proceeding.

2. The only issue that will be raised in the Application is the statutory interpretation of s. 10 of the *Auditor General Act*. In particular, the parties agree that the University reserves all its rights to seek, after the Application is decided, any relief in relation to a request by the Auditor General for privileged documents or regarding other aspects of the audit.

3. Accordingly, no issues will be raised under the *CCAA* in the Auditor General's Application for an interpretation of section 10 of the *Auditor General Act*. For instance, Laurentian University will not assert in that Application that the *CCAA* stay prevents the Application from being commenced, or that the Auditor General is not a "regulatory body" within the meaning of the *CCAA*, or that an order should be made under s. 11 of the *CCAA* to address the unique situation of an applicant in an ongoing CCAA restructuring. Neither will the University assert estoppel in the Auditor General's Application based on her letter dated August 15, 2021 stating that she would not seek privileged documents in the audit. Those issues, if raised, will be brought by way of motion within the *CCAA* proceeding.

4. Laurentian University has not seen the Auditor General's Application Record, and reserves its rights to object or seek other relief once that material has been served.

5. Based on the above understanding, the parties propose the following timetable for the Application:

   a. Auditor General to serve her Application Record on or before September 30, 2021;

   b. Laurentian University to serve a Responding Application Record on or before October 15, 2021;

   c. Cross-examinations, if any, to be completed on or before October 29, 2021;

   d. Auditor General to serve her factum on or before November 12, 2021;

   e. Laurentian University to serve its factum on or before November 26; 2021; and

   f. Hearing date – subject to the availability of the Chief Justice, counsel are available any day during the weeks of December 6 and 13 except for Tuesday, December 14.

6. The parties may vary the timetable on consent, or return to court if one wishes to seek a variation and the other does not consent.

Sept 27, 2021

The Application of the Auditor General is to be issued in the Commercial List.

The Schedule is acceptable to the Court.

The Application is to be heard by me on Monday December 6, 2021 or date that is acceptable to all parties.

1/2 Day to be set aside.

Morawetz C.J.