

Brian Gover

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November 10, 2021

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 writing to reply to your letter dated November 3, 2021 to Dr Robert Haché and Mr Claude Lacroix.

I can respond to the points in your letter as follows:

1. I recognize that parliamentary committees do on occasion request documents that are subject to solicitor-client privilege. I do not necessarily accept that a committee has a right to *compel* the production of such documents, in particular from an entity that is not part of government. As I said in my October 19 letter, solicitor-client privilege is a constitutional right under the *Charter of Rights and Freedoms*. Express language is required to abrogate it, and there is none in s. 35 of the *Legislative Assembly Act*, RSO 1990, c L.10, which you cited in your October 15 letter. Even if such language did exist, it would be subject to strict constitutional scrutiny.

That said, I remain hopeful that it will be unnecessary to deal with the legalities if we continue the discussion that I proposed in that letter. Your letter of November 3 is encouraging in that regard.

2. I have **enclosed** a copy of the Order of the Honourable Chief Justice Geoffrey Morawetz of the Superior Court of Justice dated February 5, 2021 (the “**Mediation Order**”). It instituted a mediation process in the CCAA restructuring proceeding, appointed the Honourable Sean Dunphy as judicial mediator, and imposed confidentiality protections on

information, documents and communication in respect of, or exchanged in, the mediation. At the outset of the mediation, Justice Dunphy also imposed terms of confidentiality as a pre-condition to ensure the free flow of communications and information by all participants.

Many of the Committee's requests call for the production of documents that contain information about the CCAA mediation. The University is therefore not able to produce them to the Committee without violating a court order.

3. Delivering documents that disclose confidential or privileged information about the CCAA process would prejudice the University and the other parties to that process. The CCAA proceeding involves continual negotiations and discussions amongst the University and its stakeholders. The ultimate aim of all these discussions is to develop and put forward a plan of arrangement, which is the ultimate settlement between the University and its creditors. These discussions need to be held confidentially if they are to occur at all, and they are a requirement for a successful restructuring.

Delivering documents that disclose communications between the University and its lawyers would also prejudice the University. Such disclosure could undermine the University's position in ongoing litigation, including the CCAA proceeding and the separate court application brought by the Auditor General, which is to be heard by Chief Justice Morawetz on December 6. It would also have a chilling effect on the University's ability to receive candid and effective legal advice and representation, hampering its ability to restructure.

Finally, disclosing documents over which a third party held a privilege (for instance, settlement privilege) could prejudice that third party.

The chart enclosed with this letter indicates, in relation to each request of the Committee, whether production of the documents for that request would disclose confidential or privileged information about the CCAA process, or other privileged information.

4. While the Committee has indicated that any documents it receives from the University will not be publicly exhibited, there is still the risk that the Committee's meetings, discussions, or report would reveal privileged information. Indeed, even having the Committee members review the University's privileged documents would infringe the privilege. I would appreciate hearing from you about what confidentiality measures the Committee would propose to mitigate the risks of disclosure.
5. The University will work as fast as it can to satisfy the Committee's requests. You will appreciate that the Committee's requests cover a very broad range of the University's operations over a more than ten year period. University staff are also occupied with fulfilling the requests of the Auditor General. While I cannot give a single answer for how long it will take to produce documents, I can report the following:

- a. As I said in my October 22 letter, the University consents to the Auditor General providing those documents directly to the Committee, as long as the Committee will not disclose or permit the disclosure of any of the documents or their contents. I look forward to receiving that confirmation.
- b. The University has already provided to the Auditor General the following categories of documents of information that correspond to the Committee's requests:
 - i. All non-privileged information in meeting materials of the Board of Governors (including committees thereof).
 - ii. A list of restricted research funding received from 2010 to present.
 - iii. A list of restricted donations from 2010 to present.

The University has also provided the Auditor General with full access to Laurentian's internal financial system and enrollment system.

- c. Some of the Committee's requests implicate a large volume of hard-copy files (e.g. personnel files, recruitment files). Others implicate documents that are not stored in one place or within a single department. The University does not have the staff to locate, retrieve, and scan these files. The University will bring in external support, but this will obviously come at a cost, and there are limits to how much external personnel can help.
- d. Where the University can gather documents and they do not implicate one of the issues outlined above, they will be provided to the Committee as soon as possible.

You will appreciate that the requests made by the Committee are extraordinarily broad. If the Committee could narrow them in any way, to what it felt it truly needed for its inquiry, it would both reduce the issue about production of privileged information, and allow the University to accomplish production more quickly.

I hope the above is satisfactory to the Committee and I look forward to your response.

Yours truly,



Brian Gover
BG/

Enclosures: Mediation Order, February 5, 2021
Chart of Committee requests

- 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)
Fredrick Schumann, *Stockwoods LLP*
Celeste Boyer, *Laurentian University*

List B – Request of Oct 22 2021

	Request	Confidential and privileged information about CCAA process	Other privileged information
1.	All Board of Governors and Board of Governors Committee and Ad-hoc Committees public and in-camera materials and minutes from January 1, 2010 to present in their entirety	Yes (for period March 21, 2020 to present)	Yes
2.	All Senate and Senate Committee, Subcommittee and Ad-hoc Committees public and in camera materials (including all communications of financial information on programs viability and/or Laurentian's overall finances) and minutes from January 1, 2010 to present in their entirety*	Yes, but only as it relates to Senate Subcommittee on Academic Restructuring for the period February 5, 2021 to present	No
3.	The complete emails (including all archives and migrated emails from the legacy mail system to Google Mail), as of either August 12, August 13, or August 16, 2021 for the following individuals and domain names: Carol McAulay	No	Yes
4.	Emails Chris Mercer	No	Yes
5.	Emails Dominic Giroux	No	Yes
6.	Emails Isabelle Bourgeault-Tasse	Yes, for the period March 21, 2020	Yes
7.	Emails Julie Lacroix	Yes, for the period March 21, 2020 to present	Yes

	Request	Confidential and privileged information about CCAA process	Other privileged information
8.	Emails Lorella Hayes	Yes, for the period March 21, 2020 to present	Yes
9.	Emails Normand Lavallée	Yes, for the period March 21, 2020 to present	Yes
10.	Emails Dr. Pierre Zundel	No	Yes
11.	Emails Sara Kunto	Yes, for the period March 21, 2020 to present	Yes
12.	Emails Dr. Serge Demers	Yes, for the period March 21, 2020 to present	Yes
13.	Emails Shawn Frappier	Yes, for the period March 21, 2020 to present	Yes
14.	Emails Tracy MacLeod	Yes, for the period March 21, 2020 to present	Yes
15.	Emails Dr. Robert Haché • rhache@laurentian.ca • rhpsc@laurentian.ca • president@laurentian.ca	Yes, for the period March 21, 2020 to present	Yes
16.	Emails pvpa@laurentian.ca (Provost's general email account)	Yes, for the period March 21, 2020 to present	Yes

	Request	Confidential and privileged information about CCAA process	Other privileged information
17.	Emails vpadmin@laurentian.ca	Yes, for the period March 21, 2020 to present	Yes
18.	Any and all email communications, (including all archives and migrated emails from the legacy mail system to Google Mail), as of either August 12, August 13, or August 16, 2021 with the following domains: ☐ kpmg.ca ☐ sudburylaw.com	KPMG: no Sudburylaw.com: yes	KPMG: No Sudburylaw.com: Yes
19.	Extract of all folders, including subfolders and contents, from Laurentian University's T drive as of August 16, 2021 contained in the folders identified below: Finance	Yes, for the period March 21, 2020 to present	Yes
20.	T drive Human Resources and Organizational Development	Yes, for the period March 21, 2020 to present	Yes
21.	T drive Legal	Yes, for the period March 21, 2020 to present	Yes
22.	T drive Physical Plant Capital	No	Yes
23.	T drive Risk and Insurance	Yes, for the period February 1, 2021 to present	Yes

	Request	Confidential and privileged information about CCAA process	Other privileged information
24.	T drive Secretariat	Yes, for the period March 21, 2020 to present	Yes
25.	KPMG audit planning reports for the following fiscal periods: ☐ year ending April 30, 2019 (presented to the Audit Committee during its meeting on March 25, 2019) ☐ year ending April 30, 2020 (presented to the Audit Committee during its meeting on March 23, 2020) ☐ year ending April 30, 2021 (presented to the Audit Committee at an unknown date)	No	No
26.	KPMG audit findings reports for the following fiscal periods: ☐ year ending April 30, 2010 (presented to the Finance Committee during its meeting on October 4, 2010) ☐ year ending April 30, 2021 (presented to the Audit Committee at an unknown date)	No	No
27.	All documentation relating to the appointment and retention of the external auditor (including but not limited to internal correspondence, request for proposals, vendor-submitted proposals, evaluation of submissions, minutes of any discussions or decision-making, and signed Board or Audit	Only as it relates to the fiscal year ending April 30, 2021	No

	Request	Confidential and privileged information about CCAA process	Other privileged information
	Committee resolutions) for the fiscal years ending April 30, 2019, April 30, 2020, April 30, 2021		
28.	All draft and final budgets and supporting analysis for Laurentian University's budgets from 2010 to present	No	No

LIST A - Request of October 15, 2021

	Request	Confidential and privileged information about CCAA process	Other privileged information
29.	All Board of Governors and Board of Governors Committee and Ad-hoc Committees public and in-camera materials and minutes from January 1, 2010 to present in their entirety	See List B	See List B
30.	All Senate and Senate Committee, Subcommittee and Ad-hoc Committees public and in camera materials (including all communications of financial information on programs viability and/or Laurentian's overall finances) and minutes from January 1, 2010 to present in their entirety	See List B	See List B
31.	The complete emails, including archives, from January 1, 2010 to present (October 15, 2021) Joel Dickinson	Yes, for the period January 1, 2021, to present	Yes
32.	Emails Jay Patel	Yes, for the period February 5, 2021 to present	No
33.	Emails Jennifer Straub	Yes, for the period February 5, 2021 to present	No
34.	Emails Joseph Burke	Yes, for the period March 21, 2020 to present	Yes
35.	Emails Julie Birnie	Yes, for the period March 21, 2020 to present	Yes
36.	Emails Julie Lacroix	See List B	See List B
37.	Emails Justin Lemieux	No	No
38.	Emails Lace Marie Brodgen	Yes, for the period February 1, 2021 to present	Yes

	Request	Confidential and privileged information about CCAA process	Other privileged information
39.	Emails Lorella Hayes	See List B	See List B
40.	Emails Lindsey Melanson	Yes, for the period February 1, 2021 to present	Yes
41.	Emails Dr. Marie Josée-Berger	Yes, for the period August 1, 2020 (date of hire) to present	Yes
42.	Emails Martin Bayer	Yes, for the period March 21, 2020 to present	Yes
43.	Emails Maxim Jean-Louis	Yes, for the period March 21, 2020 to present	Yes
44.	Emails Malek Abou-rabia	Yes, for the period February 5, 2021 to present	No
45.	Emails Marie-France Girard	Yes, for the period February 1, 2021 to present	Yes
46.	Emails Melanie Boulianne	Yes, for the period February 1, 2021 to present	Yes
47.	Emails Michel Delorme	Yes, for the period February 1, 2021 to present	Yes
48.	Emails Michel Seguin	No	Yes
49.	Emails Normand Lavallee	See List B	See List B
50.	Emails Dr. Osman Abou-Rabia	No	Yes
51.	Emails Dr. Pierre Zundel	See List B	See List B
52.	Emails Dr. Patrice Sawyer	No	Yes
53.	Emails Richard Therrien	No	No

	Request	Confidential and privileged information about CCAA process	Other privileged information
54.	Emails Roxane Marois	Yes, for the period February 1, 2021 to present	Yes
55.	Emails Robert Bourgeois	No	Yes
56.	Emails Sara Kunto	See List B	See List B
57.	Emails Dr. Serge Demers	See List B	See List B
58.	Emails Silvie Allard	No	Yes
59.	Emails Shauna Lehtimäki	Yes, for the period February 1, 2021 to present	Yes
60.	Emails Stan Pawlowicz (former Board member)	No	Yes
61.	Emails Shawn Frappier	See List B	See List B
62.	Emails Therese Klotz	No	Yes
63.	Emails Tom Fenske	Yes, for the period February 1, 2021 to present, with union's own counsel	Yes (third party)
64.	Emails Fabrice Colin	Yes, for the period February 1, 2021 to present, with union's own counsel	Yes (third party)
65.	Emails Tracy MacLeod	See List B	See List B
66.	Emails Dr. Robert Haché	See List B	See List B
67.	Emails Dr. Robert Kerr	No	Yes
68.	Emails Rui Wang	No	Yes

	Request	Confidential and privileged information about CCAA process	Other privileged information
69.	Emails Alex Freedman	No	Yes
70.	Emails Amanda Schweinbenz	Yes, for the period February 5, 2021 to present	No
71.	Emails Annette Cacciotti	No	Yes
72.	Emails Bernadette Schell	No	Yes
73.	Emails Brad Parkes	No	Yes
74.	Emails Blaine Nicholls (former Board member)	No	Yes
75.	Emails Brent Roe	Yes, for the period February 5, 2021 to present	No
76.	Emails Carol McAulay	See List B	See List B
77.	Emails Céleste Boyer	Yes, for the period March 21, 2020 to present	Yes
78.	Emails Céline Larivière	Yes, for the period February 1, 2021 to present	Yes
79.	Emails Chris Mercer	See List B	See List B
80.	Emails Chantal Beuparlant	Yes , for the period February 1, 2021 to present	Yes
81.	Emails Cindy Cacciotti	Yes, for the period March 21, 2020 to present	Yes
82.	Emails Claude Lacroix	Yes, for the period March 21, 2020 to present	Yes
83.	Emails Collette Rainville	No	No

	Request	Confidential and privileged information about CCAA process	Other privileged information
84.	Emails Craig Fowler	No	Yes
85.	Emails Darquise Lauzon	No	Yes
86.	Emails Diane Massicotte	No	Yes
87.	Emails Dr. David Lesbarrères	No	Yes
88.	Emails Dean Millar	Yes, for the period February 1, 2021 to present	Only from date of installment as Interim Dean in 2020
89.	Emails Dominic Giroux	See List B	See List B
90.	Emails Eric Chappell	Yes, for the period March 21, 2020 to present	Yes
91.	Emails Eric Gauthier	Yes, for the period February 5, 2021 (date of Mediation Order) to present	No
92.	Emails Heather McPherson	Yes, for the period March 21, 2020 to present	Yes
93.	Emails Isabelle Bourgeault Tasse	See List B	See List B
94.	Any and all email communications, (including all archives and migrated emails from the legacy mail system to Google Mail), as of either August 12, August 13, or August 16, 2021 with the following domains**: • kpmg.ca • sudburylaw.com	See #18 on List B.	See #18 on List B.

	Request	Confidential and privileged information about CCAA process	Other privileged information
95.	Extract of all folders and contents from Laurentian University's T-drive, Google Drive, and any other drive or network share containing documents related to the administrative function of the University as of October 15, 2021	Yes, for the period March 21, 2020 to present, but require clarification on the request	Yes, but require clarification on the request
96.	KPMG audit planning reports for the following fiscal periods: ☐ year ending April 30, 2019 (presented to the Audit Committee during its meeting on March 25, 2019) ☐ year ending April 30, 2020 (presented to the Audit Committee during its meeting on March 23, 2020) ☐ year ending April 30, 2021 (presented to the Audit Committee at an unknown date)	See List B	See List B
97.	KPMG audit findings reports for the following fiscal periods: ☐ year ending April 30, 2010 (presented to the Finance Committee during its meeting on October 4, 2010) ☐ year ending April 30, 2021 (presented to the Audit Committee at an unknown date)	See List B	See List B

	Request	Confidential and privileged information about CCAA process	Other privileged information
98.	All documentation relating to the appointment and retention of the external auditor (including but not limited to internal correspondence, request for proposals, vendor-submitted proposals, evaluation of submissions, minutes of any discussions or decision-making, and signed Board or Audit Committee resolutions) for the fiscal years ending April 30, 2019, April 30, 2020, April 30, 2021	See List B	See List B
99.	All contracts, reports, and correspondence with KPMG regarding nonassurance services (e.g. consulting services, accounting advisory services, tax, financial compilation, loan staff, internal audit services, etc.) for the period of January 1, 2010 to present	No	No
100.	Documentation and correspondence related to all Laurentian University land purchases, sales and other transactions from January 1, 2010 to present	No	No
101.	All documentation related to “Laurentian 2.0” prepared for or by the In Camera Ad Hoc Committee on Contingency Planning and the Contingency Planning and Sustainability Measures Report	Yes	Yes
102.	All draft and final budgets and supporting analysis for Laurentian University’s budgets from 2010 to present	See List B	See List B

	Request	Confidential and privileged information about CCAA process	Other privileged information
103.	All student registration data from January 1, 2010 to present	No	No
104.	All internal analysis of revenue and expenses by programs and courses prepared by faculty and administration from January 1, 2010 to present	Yes, for the period March 21, 2020 to present	No
105.	All reconciliation of student enrollment submitted to the Province of Ontario, with Laurentian's budgets presented to the Board of Governors and actual student enrollment for January 1, 2010 to present	No	No
106.	Materials produced by faculty deans on their analysis of programs' viability and student enrolment from January 1, 2010 to present	Yes, for the period February 1, 2021 to present	No
107.	All internal correspondence regarding the preparation of enrollment data submitted to the province of Ontario for funding purposes from January 1, 2010 to present	No	No
108.	All documentation, including supporting analysis and decisions made in relation to program/course cancellations, staff and faculty cuts and restructuring prepared up to January 31, 2021 including, but not limited to: ☐ All analysis and supporting documentation used in the analysis	Yes, for the period March 21, 2020 to present	Yes

	Request	Confidential and privileged information about CCAA process	Other privileged information
	☐ Methodology of analysis ☐ Listing of all staff/faculty and departments that contributed to the analysis ☐ Results of the analysis All material that was provided to senior management, and Senate or Board or Committees related to this matter.		
109.	All current and former Laurentian University Directors and Officers (D&O) Liability Insurance Policy(s) (including Carriers and Reinsurers agreements and policies) from January 1, 2010 to present	No	No, but the insurer may take the position that it must consent before the policy can be produced
110.	All personnel files, including but not limited to employment and benefits contracts, performance reviews, annual merit pay and compensation reviews, and resumes, for Chiefs of Staff, Special Advisors, University Secretary and General Counsel, Chief Advancement Officer, and Assistant/Associate Vice Presidents and higher including Interim and Acting appointments (current and former) from January 1, 2010 to present	No	No
111.	All recruitment files, including but not limited to recruitment postings, applications and resumes received, and documentation of the selection	No	No

	Request	Confidential and privileged information about CCAA process	Other privileged information
	process steps and decisions making for all Chiefs of Staff, Special Advisors and Assistant/Associate Vice Presidents Administration (nonacademic) appointments from January 1, 2010 to present		
112.	All business case, justification or other analysis used to inform the creation of new senior administrator positions (Assistant/Associate Vice Presidents and higher) from January 1, 2010 to present	No	No
113.	All legal engagement letters and invoices from January 1, 2010 to present	Yes, for the period March 21, 2020 to present	Yes
114.	Any and all correspondence with Lenczner Slaght LLP, Stockwoods LLP Barristers, Thornton Grout Finnigan LLP and related personnel (including but not limited to all documents, engagement letters, retainer agreements, terms and conditions, invoices, recordings, reports, legal opinions) from January 1, 2010 to present	TGF: Yes, for the period March 21, 2020 to present in the case of TGF Lenczner Slaght: Yes, for the period January 2021 to present Stockwoods: Yes, for the period January 2021 to present	Yes
115.	All documentation and correspondence relating to the property encroachment on 2115 South Bay Rd from January 1, 2010 to present	Yes, for the period February 1, 2021	Yes
116.	All documents, including contracts and other information, related to third-party partnership agreements from January 2010 to present	Request is unclear	Request is unclear

	Request	Confidential and privileged information about CCAA process	Other privileged information
117.	All correspondence with the City of Sudbury regarding the School of Architecture property from January 1, 2010 to present	No	No
118.	All information and internal communications regarding actual or potential conflict of interest situations between January 1, 2010 and present	Request is unclear	Request is unclear
119.	All communications and correspondence with Desjardins between January 1, 2010 to January 31, 2021	Yes, for the period December 1, 2020 to January 31, 2021. (During this period, nothing was owing on the Desjardins line of credit.)	No
120.	A listing of restricted donations received from January 1, 2010 to present	No	No
121.	A listing of restricted research funding received from January 1, 2010 to present	No	No
122.	All documentation pertaining to current and past litigation from January 1, 2010 to present	Yes, for the period March 21, 2020 to present	Yes
123.	All documentation provided by Laurentian University to Ernst & Young (EY) as financial advisor and subsequently monitor, and documentation provided by E&Y to Laurentian University from January 1, 2010 to present, not limited to: ☐ Letters(s) of engagement, statements of work, and terms of reference ☐ Documentation and correspondence for the period of engagement prior to the date of the CCAA filing and after the CCAA filing	Yes, for the period August 1, 2020 to present	Yes, for the period August 1, 2020 to present

	Request	Confidential and privileged information about CCAA process	Other privileged information
	☐ Reports and draft reports ☐ Meeting minutes		
124.	All documentation pertaining to union grievances from January 1, 2010 to present	Yes, for the period February 1, 2021 to present. Union grievances were addressed in the CCAA mediation.	Yes
125.	All complaints filed by Laurentian University's employees from January 1, 2010 to present and accompanying documentation of the resolutions of those complaints	No	Yes
126.	All correspondence, materials and minutes, from meetings between LUAPS Executive, the Board and/or Laurentian University from 2010 to present	No	No
127.	Contracts with all international student recruiters and foreign governments from January 1, 2010 to present	No	No
128.	All internal and external communications regarding the compliance with the Midwifery program funding agreements from January 1, 2010 to present	No	No
129.	All internal and external communications regarding Laurentian's compliance with (<i>An Act to Incorporate Laurentian University of Sudbury, Broader Public Sector Accountability Act, Broader Public Sector Executive Compensation Act, French Language Services Act, Protecting a Sustainable Public Sector for Future Generations Act, 2019</i>) from January 1, 2010 to present	Request is unclear	Request is unclear
130.	All current and former Board of Governors and Senate expenses from January 1, 2010 to present	No	No

	Request	Confidential and privileged information about CCAA process	Other privileged information
131.	All information on Board of Governor nominations and appointments from January 1, 2010 to present	No	No
132.	All financial statements for the Laurentian University pension plan as well as plan text, plan amendments, actuarial valuations (funding and accountings), fund manager investment reports, and all documentation regarding the conversion of the pension plan from defined contribution to defined benefits for period of 2010 to present	No	No
133.	The bids and submissions received for the operational and governance review that the university is currently undertaking, and any evaluations of the proponents	No	No

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

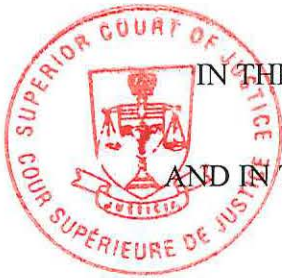
THE HONOURABLE CHIEF

JUSTICE MORAWETZ

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FRIDAY, THE 5TH

DAY OF FEBRUARY, 2021



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LAURENTIAN UNIVERSITY OF SUDBURY

Applicant

ORDER

(Re: Appointment of Mediator)

THIS APPLICATION, made by Laurentian University of Sudbury (the "**Applicant**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order appointing a mediator as an officer of the Court to act as a neutral third party, was heard this day by videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Notice of Application of the Applicant dated February 1, 2021, the affidavit of Dr. Robert Haché sworn January 30, 2021 and the Exhibits thereto (the "**Haché Initial Affidavit**") and the Report of Ernst & Young Inc. (the "**Monitor**") dated January 30, 2021 and on hearing the submissions of counsel for the Applicant, counsel for the Monitor and counsel for the Laurentian University Faculty Association ("**LUFA**").

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Notice of Case Conference is hereby abridged and validated so that this case conference is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Haché Initial Affidavit.

COURT-APPOINTED MEDIATOR

3. **THIS COURT ORDERS** that Justice Sean Dunphy is hereby appointed, as an officer of the Court and shall act as a neutral third party (the “**Court-Appointed Mediator**”) to assist the Applicant and its relevant stakeholders with the mediation of the following issues:

- (a) the review and restructuring of the Applicant’s existing academic programs;
- (b) the review and restructuring of the faculty necessary to deliver the Applicant’s restructured academic programs;
- (c) a new collective agreement between the Applicant and LUFA, including resolving all outstanding grievances;
- (d) the review and restructuring of the Applicant’s Federated Universities’ model;
- (e) the framework for the Applicant’s restructuring and future operations; and
- (f) any other matters that are referred to the Court-Appointed Mediator by the Applicant, the Monitor, the relevant stakeholders or this Court;

(together, the “**Mediation Objectives**”).

4. **THIS COURT ORDERS** that in carrying out his mandate, the Court-Appointed Mediator may, among other things:

- (a) adopt processes, procedures, and timelines which, in his discretion, he considers appropriate to facilitate an effective and efficient negotiation of the Mediation Objectives (the “**Mediation Process**”); and
- (b) consult with any appointed representative(s) of the parties relevant to the Mediation Objectives, the Monitor, the Applicant, and such creditors, stakeholders of the Applicant, and other persons the Court-Appointed Mediator considers appropriate.

5. **THIS COURT ORDERS** that the Monitor shall provide the Court-Appointed Mediator with such assistance as the Court-Appointed Mediator shall reasonably request.

6. **THIS COURT ORDERS** that the Mediation Confidentiality Protocol (the “**Protocol**”) attached hereto as Schedule “A” is hereby approved and that the entirety of the Mediation Process or anything reasonably incidental to the Mediation Process shall be subject to the Protocol.

7. **THIS COURT ORDERS** that the Court-Appointed Mediator is authorized to take all steps and to do all acts reasonably necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

8. **THIS COURT ORDERS** that, in addition to the rights and protections afforded as an officer of this Court, the Court-Appointed Mediator shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order. Nothing in this Order shall derogate from the protections afforded to a person pursuant to Section 142 of the *Courts of Justice Act* (Ontario).

9. **THIS COURT ORDERS** that the Court and the Court-Appointed Mediator may communicate between one another directly to discuss, on an ongoing basis, the conduct of the Mediation Process and the manner in which it will be coordinated with the CCAA proceedings, including but not limited to individual matters referred specifically by the Court to the Court-Appointed Mediator for resolution.

10. **THIS COURT ORDERS** that the Court shall not disclose to the Court-Appointed Mediator how the Court will decide any matter which may come before the Court for determination

and the Court-Appointed Mediator will not disclose to the Court the negotiating positions or confidential information of any of the parties in the Mediation Process.

GENERAL

11. **THIS COURT ORDERS** that the Applicant and the Monitor may apply to this Court from time to time for directions from this Court with respect to this Order, or for such further order or orders as any of them may consider necessary or desirable to amend, supplement or clarify the terms of this Order.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

13. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order, and is enforceable without any need for entry and filing.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

FEB 05:2021

PER / PAR:



CHIEF JUSTICE G.B. MORAWETZ

SCHEDULE "A" to Proposed Form of Mediator Appointment Order

Court File No.: 21-CV-00656040-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **LAURENTIAN UNIVERSITY OF SUDBURY**

MEDIATION CONFIDENTIALITY PROTOCOL

1. THE PROCESS:

Pursuant to the Court's Order (the "**Mediation Order**"), Justice Sean Dunphy was appointed as an officer of the Court and to act as a neutral third party (the "**Court-Appointed Mediator**") to assist the Applicant and stakeholders with a mediation of various issues in the Applicant's CCAA proceeding. The Mediation Order authorizes the Court-Appointed Mediator to adopt processes, procedures, and timelines that, in his discretion, are considered appropriate to facilitate an effective and efficient mediation. Further to that authority, this Mediation Confidentiality Protocol shall apply to all written and oral communications related to or arising out of the mediation undertaken pursuant to the Mediation Order (the "**Mediation**").

2. PARTY AND MONITOR CONFIDENTIALITY:

All written and oral communication at the Mediation shall be deemed to be without prejudice settlement discussions. For the purposes of this section, a Mediation communication shall also include all conduct, statements, discussion, promises, offers, views, opinions, admissions and communications for purposes of conducting, considering, initiating, continuing, or reconvening the Mediation together with the delivery and exchange of any documents in the course of the Mediation made by any party, their agents, employees, representatives, or other invitees, and by the Court-Appointed Mediator.

The parties and the Monitor acknowledge and agree that:

- a) the Mediation is a settlement negotiation;
- b) the Mediation is confidential and no stenographic, visual, or audio recordings shall be made;

- c) no Mediation communication shall be discoverable, admissible or referred to in Court for any purpose, including impeachment in the action or in any other proceeding or to establish the meaning and/or validity of any settlement or alleged settlement arising from the Mediation, and shall not be discussed with anyone, provided that communications otherwise admissible or subject to discovery do not become inadmissible or protected from discovery or admission by reason of their use in Mediation;
- d) any notes, records, statements made, discussions had, and recollections of the Court-Appointed Mediator in conducting the Mediation shall be confidential and without prejudice and protected from disclosure for all purposes; and
- e) except as permitted by law, the parties will not subpoena or otherwise require the Court-Appointed Mediator to testify or produce the records or notes in an action or in any other proceeding.

3. MEDIATOR CONFIDENTIALITY:

During the Mediation process, the Court-Appointed Mediator may disclose to either party any information provided by either party, unless the disclosing party has specifically requested the Court-Appointed Mediator to keep the information confidential, in which case the Court-Appointed Mediator will attempt to keep that information in confidence.

The Court-Appointed Mediator will not disclose to anyone who is not a party to the Mediation anything said, or any materials submitted to the Court-Appointed Mediator, except:

- a) where applicable, to the lawyers or other professionals retained on behalf of the parties or to non-parties consented to in writing by the parties, as deemed appropriate or necessary by the Court-Appointed Mediator;
- b) to the Court, to the extent specifically permitted in the Mediation Order; or
- c) where otherwise ordered to do so by a judicial authority or where required to do so by law.

Except as noted above, the notes, records, statements made, and recollections of the Court-Appointed Mediator shall be confidential and protected from disclosure for all purposes.

4. CONSENT TO THIS AGREEMENT:

Each party present during all or any part of the Mediation shall review this Mediation Confidentiality Protocol and agrees to proceed with the Mediation on the terms herein contained.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **LAURENTIAN UNIVERSITY OF SUDBURY**

Court File No. CV-21-00656040-00CL

ONTARIO
**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**ORDER
(Appointment of Mediator)**

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