STOCKWOODS
barristers

Fredrick Schumann
Direct Line: 416-593-2490
Direct Fax: 416-593-9345
fredricks@stockwoods.ca

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BY EMAIL

Richard G. Dearden
Gowling WLG
Suite 2600, 160 Elgin Street
Ottawa, Ontario K1P 1C3
richard.dearden@gowlingwlg.com

Christopher Tyrell
Clerk, Standing Committee on Public Accounts
Legislative Building, Queen's Park
Toronto, ON
M7A 1A5
comm-publicaccounts@ola.org

Dear Mr. Dearden and Mr. Tyrell:

Re: *Auditor General of Ontario v Laurentian University* (Toronto CV-21-00669471-00CL)

I write on behalf of Laurentian University to relay the terms of an offer to resolve the outstanding issues relating to the Auditor General's and the Standing Committee's requests for production of privileged and confidential information and documents.

On November 17, 2021, the University received a memorandum from Shelley Tapp, the Deputy Minister of the Ontario Ministry of Colleges and Universities. The memorandum encouraged the University try to find a solution to the issue with the Auditor General regarding the production of privileged information to her for her audit.

On November 22, 2021, the University's President replied to Deputy Minister Tapp, saying that "[t]he University has always been, and remains, willing to consider any potential solution that will allow the Auditor General access to the information she feels is necessary for her work, while protecting the University's vital interests."

On November 23, 2021, counsel to the University contacted Mr. Dearden, counsel to the Auditor General, and spoke with him about potential resolution. Since then, counsel to the Auditor General has not made further contact with counsel to the University. Nevertheless, the University is committed to making all efforts to find a mutually agreeable resolution and, therefore, is prepared to make this offer even in the absence of further engagement by the Auditor General.

Accordingly, we propose the following to resolve this matter on the following basis: the University would provide the Auditor General and Standing Committee with: (i) *all* documents (including those subject to privilege) created before the University began to consult with external insolvency counsel in March 2020; and (ii) many non-*CCAA* privileged documents created after that date (as explained in more detail below) (collectively, the "**Proposed Production**").

I note that the time period for the value for money audit that the Standing Committee established is 2010 to 2020. Production of information and documents that relate to the restructuring commenced pursuant to the *CCAA* would be highly problematic, given the importance of the restructuring to the University and its other stakeholders, and the outstanding court orders prohibiting disclosure of documents and information pertaining to the court-ordered mediation.

For the proposal to be accepted, it would have to constitute a full and final resolution of both the request for documents by the Standing Committee, and the privilege issue that has arisen with respect to the Auditor General's value for money audit. Our intention is to make a proposal that will put this matter behind us.

If the proposal is accepted, it will not be practically possible or financially feasible to manually review all of the documents and information requested by the Auditor General (let alone those requested by the Standing Committee) to determine whether each one relates to the *CCAA* restructuring. As you know, the requests implicate tens of millions of emails, among a great many other documents.

Accordingly, if the offer made by the University above is accepted, the University would have to apply cut-off dates for each information source within the Proposed Production, to ensure that no information is produced that relates to the *CCAA* restructuring. So, for example, where the request is for the email account of a certain person, the University would identify that person's role, and whether they were involved in the preparation for the *CCAA* restructuring, or only became involved upon the commencement of the *CCAA* proceeding on February 1, 2021. If so, the University would identify the earliest date on which they would have participated in those discussions, and the Proposed Production would only include emails or documents created before that date. I understand that much of the work of identifying cut-off dates has already been done by the University and its advisors.

Such a resolution would also require:

- Confirmations from the Standing Committee and the Auditor General that they: (i) will not continue to seek additional privileged information relating to the University's restructuring under the *CCAA*; (ii) will not publicly disclose the content of privileged documents and information that may form part of the Proposed Production; and, (iii) will agree that disclosure by the University is not a waiver of privilege;

- A court order to be sought from Chief Justice Morawetz reflecting the terms of this settlement and authorizing and directing the University to produce privileged information (other than as relates to *CCAA* matters) to protect the University from potential liability to those third parties, since the Proposed Production may infringe the privilege of third parties. I would propose that such a court order be requested on a consent basis so that same can be obtained the date currently set aside for the hearing of the Auditor General's application, December 6, 2021; and

- Flexibility and accommodation around the timing of the Proposed Production, given the voluminous nature of the requests and the multiple other pressing demands on the University's staff.

The University is making this offer because it wants to resolve this situation and believes that its terms will satisfy the interests of the Auditor General and the Standing Committee, while protecting the University's vital interests to allow the University to move forward as it restructures as a viable and vibrant post-secondary institution. The University remains confident in the strength of its legal arguments that, if no resolution on the above terms is reached, it will present to the court on December 6. It makes this offer without prejudice to those arguments, but it may refer to this offer, and any response or lack thereof, in court or otherwise.

Tomorrow, at their appearance at the closed session of the Standing Committee on Public Accounts, Dr. Haché and Mr. Lacroix will be happy to answer any questions the Committee may have about this proposal.

Yours truly,

Fredrick Schumann

c. Shelley Tapp, Deputy Minister, Ontario Ministry of Colleges and Universities
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)
Brian Gover, *Stockwoods LLP*
Celeste Boyer, *Laurentian University*