

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE CHIEF

)

MONDAY, THE 20TH

JUSTICE MORAWETZ

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DAY OF DECEMBER, 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

(Grievance Resolution Process)

THIS MOTION, brought by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order: (i) establishing a grievance resolution process, and (ii) appointing Ken Rosenberg of Paliare Roland Rosenberg Rothstein LLP as Grievance Resolution Officer (as defined below), proceeded on December 20, 2021 by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of Dr. Robert Haché sworn December 13, 2021 (the "**Haché Affidavit**") and the Exhibits thereto and the Ninth Report of Ernst & Young Inc. in its capacity as court-appointed Monitor (the "**Monitor**") and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, and those other parties listed on the Counsel Slip, no one else appearing although duly served with the Applicant's Motion Record as appears from the Affidavit of Service of Derek Harland sworn December 16, 2021,



SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that service of the Applicant's Notice of Motion and the Applicant's Motion Record is hereby validated, so that its Motion is properly returnable today.

2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Compensation Claims Process Order dated August 17, 2021 (as amended and restated from time to time, the "**Compensation Claims Process Order**") or the Grievance Resolution Process attached hereto at Schedule "A" (the "**Grievance Resolution Process**").

GRIEVANCE RESOLUTION PROCESS

3. **THIS COURT ORDERS** that the Grievance Resolution Process is hereby approved, and the Applicant and Laurentian University Faculty Association ("**LUFA**") are directed to comply with the Grievance Resolution Process as set out therein, with such minor amendments as the Applicant and LUFA may agree, with the consent of the Monitor.

CLASSIFICATION OF GRIEVANCES

4. **THIS COURT ORDERS** that if there is any dispute regarding the Monitor's classification of any grievance subject to the Grievance Resolution Process, the disputes shall be referred to the Court-Appointed Mediator (as defined in the Grievance Resolution Process) for mediation. If the parties are unable to agree to the classification of the disputed grievances, the Court-Appointed Mediator shall have the authority to make a determination solely in respect of that classification, and such decision shall be final and binding.

GRIEVANCE RESOLUTION OFFICER

5. **THIS COURT ORDERS** that Ken Rosenberg of Paliare Roland Rosenberg and Rothstein LLP (the "**Grievance Resolution Officer**") is hereby appointed to determine and resolve any disputed Compensation Claims as well as any and all issues arising with respect to Pre-Filing Grievances, Restructuring Grievances, and Material Post-Filing Grievances pursuant to section 27 of the Compensation Claims Process Order and section 37 of the Amended and Restated Claims Process Order dated June 9, 2021 (the "**Claims Process Order**").

6. **THIS COURT ORDERS** that the fees and expenses incurred by the Grievance Resolution Officer in undertaking the mandate pursuant to this Order, including any staff or other lawyers reasonably required by the Grievance Resolution Officer to assist with the mandate, at their standard hourly rates for similar matters as approved by the Monitor, shall be paid by the Applicant upon receiving a direction from the Monitor.

7. **THIS COURT ORDERS** that the Grievance Resolution Officer shall be at liberty, in consultation with the relevant parties and the Monitor, to case manage and determine the procedure for the adjudication of any issue related to the Grievance Resolution Process and any hearings shall be conducted as determined by the Grievance Resolution Officer, which may include a hearing by written submission only or video conference.

8. **THIS COURT ORDERS** that nothing in this Order shall derogate from paragraph 27 of the Compensation Claims Process Order or paragraphs 38 and 39 of the Claims Process Order. For greater certainty, except as set out in the Grievance Resolution Process, nothing in this Order shall derogate from the collective agreement between the Applicant and Laurentian University Faculty Association.

9. **THIS COURT ORDERS** that the Grievance Resolution Officer shall not incur any liability or obligation as a result of his appointment or the carrying out of the provisions of this Order or the Compensation Claims Process Order, and no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the Grievance Resolution Officer relating to his carrying out of the provisions of this Order or the Compensation Claims Process Order, and all rights and remedies of any person against or in respect of the Grievance Resolution Officer are hereby stayed and suspended, except with the written consent of the Grievance Resolution Officer or with leave of this Court on notice to the Grievance Resolution Officer and the Monitor. Notice of any such motion seeking leave of this Court shall be served upon the Grievance Resolution Officer and the Monitor at least seven (7) days prior to the return date of any such motion for leave.

GENERAL

10. **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.

11. **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, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.



Chief Justice G.B. Morawetz

Schedule “A”
Grievance Resolution Process

On August 17, 2021, the Ontario Superior Court of Justice (Commercial List) granted the Compensation Claims Process Order (the “**Compensation Claims Process Order**”). Capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Compensation Claims Process Order.

For greater certainty, “Employer” shall refer to Laurentian University of Sudbury and “Union” shall refer to Laurentian University Faculty Association.

The Compensation Claims Process Order applies to, among others, claims by any Employee or Union (whether on behalf of an Employee or otherwise) in respect of grievances under any collective agreement to which both the Employer and the Union is party, whether such grievance arose prior to or after the Filing Date and is in respect of any matter that were Grievance Claims as defined in the Compensation Claims Process Order, being grievances:

- (1) based in whole or in part on facts existing prior to the Filing Date, related to a time period prior to the Filing Date (“**Pre-Filing Grievances**”); or
- (2) arising as a result of the restructuring of the Applicant prior to the date of this Order, including for greater certainty any grievance related to the Union Restructuring Agreements (“**Restructuring Grievances**”).

Pursuant to the Compensation Claims Process Order, no Compensation Claimant filing a Notice of Dispute shall directly or indirectly assert, advance, re-assert or re-file any Compensation Claim that is not calculated in accordance with the Compensation Claims Methodology.

Pursuant to the Compensation Claims Process Order, any Compensation Claim that is directly or indirectly asserted, advanced, re-asserted or re-filed that is not calculated in accordance with the Compensation Claims Methodology shall be disallowed.

Pursuant to the Compensation Claims Process Order, if a Compensation Claimant disputes any of the Compensation Claim Information used to calculate its Compensation Claim, as set out in the Statement of Compensation Claim, the Compensation Claimant must file a Notice of Dispute with the Monitor on or before the Compensation Claims Bar Date (October 14, 2021).

Pursuant to the Compensation Claims Process Order, any Notice of Dispute with respect to an individual Employee or Retiree shall be filed by such individual Employee or Retiree, as applicable. For greater certainty, the Union shall not file a Notice of Dispute on behalf of their respective Employees or Retirees, as applicable.

In the case of Grievance Claims, the Notice of Dispute process contained in the Compensation Claims Order provided for the ability of additional Grievance Claims to be raised by the Union on or before the Compensation Claims Bar Date of October 14, 2021.

Any Compensation Claimant that does not file a Notice of Dispute as provided for in the Compensation Claims Process such that the Notice of Dispute is received by the Monitor on or before the Compensation Claims Bar Date: (a) shall be forever barred from asserting or

enforcing against the Employer any other Compensation Claim that is not set forth in the Statement of Compensation Claim, (b) shall not be entitled to vote at the applicable Creditors' Meeting in respect of the Plan or to receive any distribution thereunder with respect to any Compensation Claim, and (c) shall not be entitled to any further notice of, and shall not be entitled to participate as a Compensation Claimant in the CCAA proceedings with respect to any other Compensation Claim.

In the event that a Notice of Dispute is received or deemed to be received by the Monitor prior to the Compensation Claims Bar Date, the Monitor, in consultation with the Employer, shall attempt to resolve the dispute. If the dispute cannot be resolved within a reasonable period of time or in a manner satisfactory to the Employer, the Monitor, and the applicable Compensation Claimant, then paragraphs 35 to 39 of the Claims Process Order shall apply.

The Claims Process Order provides that any such disputes may be referred to: (i) a Claims Officer for determination, or (ii) on notice to the disputing Compensation Claimant, to the Court for determination.

Solely with respect to Pre-Filing Grievances, Restructuring Grievances, and Material Post-Filing Grievances (as defined herein), this Grievance Resolution Process shall modify and amend the process set out in paragraphs 35 to 39 of the Claims Process Order.

On or before October 14, 2021, LUFA filed an additional 36 grievances in respect of the Employer (collectively, the "**October 14 Grievances**"). The October 14 Grievances remain outstanding as of today's date. Neither LUFA nor the individual Employee or Retiree filed one or more Notices of Dispute with the Monitor with respect to the October 14 Grievances. For the purposes of this Grievance Resolution Process, the October 14 Grievances shall be treated as Grievance Claims as if filed by way of Notice of Dispute prior to the Compensation Claims Bar Date.

As a result of the ongoing restructuring of the Employer under the CCAA, it is necessary to classify and resolve the October 14 Grievances, including any additional grievances filed by the Union against the Employer after October 14, and prior to the completion of the restructuring as: (i) Pre-Filing Grievances, (ii) Restructuring Grievances, (iii) Material Post-Filing Grievances (as defined herein), or (iv) non-material post-filing grievances. In respect of any Material Post-Filing Grievances filed after October 14, 2021, the timeline to address particulars, classification and resolution shall be addressed on an individualized basis with the assistance of the Grievance Resolution Officer. Any Pre-Filing Grievances, Restructuring Grievances or Material Post-Filing Grievances must be determined before the Employer emerges from its CCAA proceeding.

Pre-Classification Process in Respect of the October 14 Grievances

Action Item	Description	Outside Date
Information Exchange for Classification Purposes	The Employer shall provide the Union with a list of all grievances that require additional particularization and, if possible, specific questions with respect to each grievance.	December 23, 2021
Additional Particulars	The Union shall provide the Employer with the material particulars that the Union intends to rely upon to substantiate each grievance claim, including the party/parties on whose behalf the Grievance has been filed. To the extent that the Employer has specific requests, the Employer shall provide same to the Union. The Union shall provide particulars for individuals grievances as they become available. At a minimum, the particulars must permit the Monitor to classify each of the grievances, as set out below.	January 21, 2022
No particulars	If the Union does not provide particulars or provides insufficient particulars for classification purposes on or before January 7, 2021, the Monitor, acting reasonably, shall classify each of the grievances as either Pre-Filing Grievances, Restructuring Grievances, or post-filing grievances. In the event that a grievance is classified as a Pre-Filing Grievance or a Restructuring Grievance, the Compensation Claims Process Order shall continue to apply to such grievance.	January 28, 2022
Classification with particulars	Following receipt of particulars, the Monitor, acting reasonably and in consultation with the Employer and the Union, shall classify each of the grievances as either: (i) Pre-Filing Grievance, (ii) Restructuring Grievance, (iii) non-material post-filing grievance, or (iv) a material post-filing grievance that may jeopardize the ordinary course operations of the Employer or may jeopardize the restructuring of the Employer in any way due to the nature of the post-filing grievance (a “Material Post-Filing Grievance”). The Monitor will notify the Union and the Employer with respect to the classification of each grievance. If either the	January 28, 2022

	Union or the Employer disputes such classification, the Monitor will canvass availability with Justice Dunphy (the “Court-Appointed Mediator”) for a mediation to determine the classification of each disputed grievance. If the parties are unable to agree to the classification of the disputed grievances, the Court-Appointed Mediator shall have the authority to make a determination solely in respect of that classification and such decision shall be final and binding.	
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Process for the Determination of Pre-Filing Grievances, Restructuring Grievances, and Material Post-Filing Grievances

Action Item	Description	Outside Date
Information Exchange	In the event that the Monitor requires further particulars in order to assist with the resolution of any disputed Pre-Filing Grievance, Restructuring Grievance, or Material Post-Filing Grievance, the Monitor shall be entitled to seek the additional information from the Employer or the Union, as applicable and such information shall be furnished to the Monitor. The Employer or the Union shall provide further particulars as requested by the Monitor as they become available.	February 11, 2022
Resolution of Grievance	Following classification of such grievances, the Monitor, in consultation with the Employer and the Union, shall attempt to resolve any disputed Pre-Filing Grievance, Restructuring Grievance, or Material Post-Filing Grievance. In the event that the Monitor determines, acting reasonably, that a Pre-Filing Grievance, Restructuring Grievance, or Material Post-Filing Grievance is unlikely to be resolved, the Monitor may refer such grievance directly to the Grievance Resolution Officer prior to the outside date for this step. Any and all resolutions shall be governed by the terms of the Compensation Claims Process Order and the Claims Process Order, as applicable.	February 25, 2022

Grievance Resolution Officer	If any of the Pre-Filing Grievances, Restructuring Grievances, or Material Post-Filing Grievances are not resolved by February 25, 2022, the Monitor, the Employer, and the Union will refer the dispute to the Grievance Resolution Officer for determination.	February 25, 2022
Determination of Grievance Resolution Officer	Subject to further order of the Court, the Grievance Resolution Officer shall determine the amount of each Pre-Filing Grievance, Restructuring Grievance, or Material Post-Filing Grievance in respect of which a dispute has been referred to the Grievance Resolution Officer. In doing so, the Grievance Resolution Officer shall be empowered to determine the process in which any evidence may be brought before the Grievance Resolution Officer as well as any other procedural matters that may arise.	March 31, 2022 (or such later date determined by the Grievance Resolution Officer)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

ORDER
(Grievance Resolution Process)

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