

CITATION: Laurentian University of Sudbury, 2022 ONSC 619
COURT FILE NO.: CV-21-00656040-00CL
DATE: 2022-01-28

SUPERIOR COURT OF JUSTICE - ONTARIO

**RE: 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**

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *D.J. Miller, Mitchell W. Grossell, Andrew Hanrahan and Derek Harland*, Insolvency
Counsel for Laurentian University of Sudbury

Ashley Taylor, Elizabeth Pillon and Ben Muller, for the Monitor Ernst & Young
Inc.

Bradley Wiffen, for Her Majesty the Queen in Right of Ontario as represented by
the Minister of Colleges and Universities

Vern W. DaRe, for the Existing DIP Lender

Aryo Shalviri and Cristina Cataldo, for the Royal Bank of Canada

Stuart Brotman, for the Toronto-Dominion Bank

Peter J. Osborne, for the Board of Governors

Natasha MacParland, Lender Counsel for the Applicant

Charles Sinclair, for the Laurentian University Faculty Association

Danielle Stampley and Brendan Scott, for Laurentian University Staff Union

George Benchetrit, for the Bank of Montreal

Andrew J. Hatnay, for Thorneloe University

Natalie Levine, for Huntington University

André Claude, for University of Sudbury

Barry Stork, for CURIE

William Wong, for the Legislative Assembly of Ontario

Immanuel Lanzaderas, for Canadian Association for University Teachers

Linda Chen, for the Information and Privacy Commissioner of Ontario

HEARD and

DETERMINED: January 27, 2022

REASONS: January 28, 2022

ENDORSEMENT

[1] Laurentian University of Sudbury (“LU”) brings this motion for an Order (the “Stay Extension Order”) that extends the Stay Period up to and including May 31, 2022, and authorizes the Monitor and the Chief Redevelopment Officer (the “CRO”) to identify a third-party consultant to assist LU with the development of a strategic plan; and an order (the “DIP Approval Order”) that approves the refinancing of the DIP Facility and the MCU DIP Loan Agreement between LU, as borrower, and Her Majesty the Queen in right of Ontario, as represented by the Minister of Colleges and Universities (“MCU”), as the lender.

[2] The motion proceeded on unopposed basis, with the exception of certain limited and specific submissions made on behalf of the Information and Privacy Commissioner of Ontario, the Laurentian University Faculty Association (“LUFA”), the Laurentian University Staff Union (“LUSU”) and the Canadian Association for University Teachers (“CAUT”).

[3] The evidence in support of the motion is set out in the affidavit of Dr. Robert Haché sworn January 20, 2022 and in the 10th Report of Ernst and Young Inc., in its capacity as Monitor of LU.

[4] The evidentiary record establishes that since the commencement of the CCAA proceedings, LU has undertaken significant aspects of its overall restructuring. LU has undertaken a full academic restructuring, made changes to its faculties and departments to improve efficiencies, reached agreements with LUFA and LUSU, and effected a termination of its agreements with the Former Federated Universities.

[5] The record also establishes that LU has worked with the Monitor and has commenced and implemented two claims processes, undertaken a full real estate review, undertaken and completed a comprehensive governance review with respect to each of the Board and Senate, and undertaken a full operational review of LU.

[6] However, the restructuring is not yet complete and LU has requested an extension of the Stay Period in order to enable it to continue operating in the ordinary course while continuing to implement a restructuring leading to a Plan of Arrangement.

[7] The required Cash Flow Forecast prepared by LU with the assistance of the Monitor has been filed. It shows that LU will have sufficient liquidity to operate its business and meet its obligations during the proposed extension of the Stay Period up to and including May 31, 2022.

[8] LU also seeks an order authorizing it to obtain and borrow under a DIP facility from MCU (in such capacity, the “Replacement DIP Lender”) in the maximum principal amount of \$35 million (the “Replacement DIP Facility”). The Replacement DIP Facility will be used by LU to repay the Existing DIP Lender and refinance the Existing DIP Facility.

[9] The record establishes that in December 2021, the Province of Ontario announced it would provide LU with a support package. As part of the support package, MCU agreed to refinance the Existing DIP Facility, and expressed the intention of converting the Replacement DIP Facility to a long-term loan agreement upon LU’s emergence from the CCAA proceeding, on terms to be agreed.

[10] On January 19, 2022, LU and MCU executed a DIP Loan Agreement (the “MCU DIP Loan Agreement”) to refinance the Existing DIP Facility.

[11] It is noted that the interest rate on the Replacement DIP Facility will be based on the MCU one-year cost of funds at the time of the advance. As of January 12, 2022, this rate was 1.052%, which is significantly less when compared to the 8.5% interest rate of the Existing DIP Facility.

[12] The proposed DIP Approval Order extends similar protections and rights to the Replacement DIP Lender as those provided to the Existing DIP Lender pursuant to the Amended and Restated Initial Order.

[13] As part of the support package, the Province requires that LU develop a long-term strategic plan with the assistance of an external third party.

[14] LU seeks approval for the Monitor and the CRO to develop a process for the engagement with independent, prospective third parties who may be qualified to assist LU with the development of a strategic plan. LU is of the view that the identification of qualified third parties by the Monitor and the CRO will assist in ensuring that the process of developing a long-term strategic plan can proceed effectively and expeditiously, to the benefit of LU and its stakeholders. In my view, this requested approval is reasonable in the circumstances.

[15] I am satisfied that the LU has acted and continues to act in good faith and with due diligence such that the request to extend the Stay Period to May 31, 2022 is reasonable and appropriate in the circumstances.

[16] The Cash Flow Forecast indicates that LU will have sufficient liquidity to operate during the stay period and thus address any potential prejudice to existing creditors.

[17] The Monitor supports the positions put forth by LU.

[18] I am satisfied that it is appropriate to grant the Stay Extension Order.

[19] I am also satisfied that it is appropriate to grant the DIP Approval Order.

[20] The Privacy Commissioner, LUFA, LUSU and CAUT expressed concern with respect to the continuation of the stay affecting the Privacy Commissioner. No materials were filed with respect to the position being put forward by these parties. It is open for any of these parties to bring

a motion to address this issue on notice to the Service List. The Monitor should coordinate the timing of any such motion.

[21] In addition, the CAUT and LUFA expressed concern with respect to the fees and disbursements of professionals engaged in the CCAA restructuring and specifically, that there should be more information provided with respect to fees and disbursements. This issue is not before the court at this time. These parties can request such information directly from the Monitor.

[22] With respect to this Court's oversight with respect to professional fees, it would be helpful if the Monitor could bring forth any required court motions to approve fees, on a periodic basis, as opposed to waiting to the conclusion of the CCAA proceedings.

[23] In the result, I am satisfied that the relief requested today is appropriate in the circumstances. The motion is granted and the Orders have been signed in the form presented.



Chief Justice G.B. Morawetz

Date: January 28, 2022