

CITATION: Laurentian University of Sudbury, 2022 ONSC 2927
COURT FILE NO.: CV-21-656040-00CL
DATE: 2022-05-18

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: *Ashley Taylor, Elizabeth Pillon and Ben Muller*, for the Monitor

D.J. Miller and Andrew Hanrahan, for Laurentian University of Sudbury

David T. Ullmann, for The Art Gallery of Sudbury

André Claude, for University of Sudbury

Dylan Chochla, for Toronto-Dominion Bank

Pamela L.J. Huff, for Royal Bank of Canada

Andrew J. Hatnay, for Thorneloe University

Danielle Stampley, for Laurentian University Staff Union

Charlotte Chien, for Northern Ontario School of Medicine

Mark Mandelker, for Canadian Universities Reciprocal Insurance Exchange

Heather Fisher, for the Auditor General of Ontario

HEARD AND

DETERMINED: May 11, 2022

REASONS: May 18, 2022

ENDORSEMENT

[1] Ernst & Young Inc., the Monitor (the “Monitor”) of Laurentian University of Sudbury (“LU”), brought this motion for approval of: (a) the Monitor’s First through Ninth Reports and the Supplementary Fifth Report (“the Reports”) and the Twelfth Report, and the activities of the

Monitor described therein; and (b) the fees and disbursements of (i) the Monitor; (ii) Ernst & Young LLP (“EY FAAS”); and (iii) Stikeman Elliot LLP (“Stikeman”) for the period from February 1, 2021 to December 31, 2021.

[2] The motion was not opposed.

[3] The Monitor submits that as a result of the complexity of the issues involved and the lack of internal resources at LU, the Monitor was required to engage in far more aspects of the restructuring than in most CCAA proceedings. As described in the Twelfth Report, the activities of the Monitor and its counsel during this proceeding included participating in a multi-party mediation process to implement certain critical restructuring actions, significant claims administration, assisting and supporting LU in connection with a real estate review, operational and governance review and various extensive regulatory investigations.

[4] As referenced in the factum, the work performed by the Monitor and its counsel has been reported to the Court and stakeholders in numerous reports filed over the course of the CCAA proceedings.

[5] Affidavits have been filed by lead professionals of the Monitor and Stikeman and provide a comprehensive listing of the accounts sought to be approved, including summaries of each account, individual professionals who have worked on the matter, each of their positions, average hourly billing rates, total number of hours worked and total associated professional fees. Stikeman’s accounts have been redacted to remove privileged, confidential, and sensitive information.

[6] The Monitor, EY FAAS and Stikeman state that the accounts have been billed at each firm’s standard/regular hourly rates, which they submit are consistent with the hourly rates charged by other firms in the Toronto market for the provision of similar services.

[7] Counsel to the Monitor made specific reference to the accounts submitted by EY FAAS and noted that due to the limited resources within LU’s finance team and numerous competing demands, LU requested EY FAAS’s assistance with the preparation of LU’s annual financial statements. In my view, the engagement of EY FAAS was reasonable in the circumstances.

[8] Counsel to the Monitor submits that it is not necessary or desirable for the Court to engage in a review of each individual entry in the accounts, as there has been considerable disclosure of the activities of the Monitor and Stikeman in the Reports and the Twelfth Report and through the proceedings that took place before the Court.

[9] The role of the Court on a motion to pass accounts is to evaluate them based on the “overriding principle of reasonableness”. The overall value contributed by the Monitor and its counsel is the predominant consideration in assessing the reasonableness of the accounts. (See *Nortel Networks Corp. (Re)*, 2017 ONSC 673 (“*Nortel*”). The Court does not engage in a docket-by-docket or line-by-line assessment of the accounts as minute details of each element of a professional services may not be instructive when looked at in isolation. As the Court of Appeal has stated: “The focus of the fair and reasonable assessment should be on what was accomplished,

and not on how much time it took”. (See *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at paragraph 45).

[10] The following factors set out in *Confectionately Yours Inc., Re* 2002 CanLII 45059 and referenced in *Nortel* at paragraph [14] provide guidance as to how to evaluate the quantum of requested fees:

- (a) the nature, extent and value of the assets being handled;
- (b) the complications and difficulties encountered;
- (c) the degree of assistance provided by the company, its officers or its employees;
- (d) the time spent;
- (e) the Monitor’s knowledge, experience and skill;
- (f) the diligence and thoroughness displayed;
- (g) the responsibilities assumed;
- (h) the results achieved; and
- (i) the cost of comparable services when performed in a prudent and economical manner.

[11] Commencing at paragraph 30 of the Monitor’s factum and continuing through to paragraph 47, a comprehensive summary of this CCAA proceeding is provided with respect to the foregoing nine factors.

[12] Having reviewed the Reports, including the accounts, I am satisfied that the remuneration sought by the Monitor, EY FAAS and Stikeman is fair and reasonable. In arriving at this conclusion, I have taken into account that no party has opposed the requested relief.

[13] With respect to the request to approve the Reports and the activities of the Monitor, I repeat what I stated in *Re Target Canada Co.*, 2015 ONSC 7574, at para. 2 (“*Target*”), that a request to approve a Monitor’s report “is not unusual” and that:

“there are good policy and practical reasons for the court to approve of Monitor’s activities and providing a level of protection for Monitors during the CCAA process...”

[14] Specifically, Court approval:

- (a) allows the Monitor to move forward with next steps in the CCAA proceeding;
- (b) brings the Monitor’s activities before the Court;

- (c) allows an opportunity for the concerns of stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the Monitor's activities have been conducted in a prudent and diligent manner;
- (e) provides protection for the Monitor not otherwise provided by the CCAA;
- (f) protects the creditors from the delay and distribution that would be caused by:
 - i. re-litigation of steps taken to date, and
 - ii. potential indemnity claims by the Monitor.

(See *Target* at para 22).

[15] The Monitor submits that the Reports and the activities of the Monitor described therein should be approved. The Monitor further submits that it has acted responsibly and carried out its activities in a manner consistent with the provisions of the CCAA and in compliance with the Initial Order and no party has put forward evidence to the contrary.

[16] In the circumstances and again noting there is no opposition to the requested relief, I am satisfied that (a) the Reports and the Twelfth Report, and the activities of the Monitor described therein, and (b) the fees and disbursements incurred during the period February 1, 2021 through to and including December 31, 2021, being:

- (a) for the Monitor, \$4,917,795.07 and disbursements of \$54,754.33 (plus applicable taxes);
- (b) for EY FAAS, \$947,000 and disbursements of \$119.89 (plus applicable taxes);
and
- (c) for Stikeman, \$2,762,526.55 and disbursements of \$12,425.19 (plus applicable taxes).

should be approved.

[17] The motion is granted and an Order reflecting the foregoing has been signed.



Chief Justice G.B. Morawetz

Date: May 18, 2022