**CITATION:** Laurentian University of Sudbury, 2022 ONSC 4433
**COURT FILE NO.:** CV-21-00656040-00CL
**DATE:** 2022-08-03

**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 and Derek Harland*, for the Applicant

*Elizabeth Pillon, Maria Konyukhova and Ben Muller*, for the Court-appointed Monitor Ernst & Young Inc.

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

*Matthew Lerner and David Salter*, for the Board of Governors

*Natasha MacParland*, Lender Counsel for the Applicant

*Tracey Henry and Brendan Scott*, for Laurentian University Staff Union

*Charles Sinclair*, for Laurentian University Faculty Association

*Stuart Brotman and Dylan Chochla*, Toronto-Dominion Bank

*George Benchetrit*, for Bank of Montreal

*Demetrios Yiokaris*, for Thorneloe University

*Natalie Levine and Joseph Bellissimo*, for Huntington University

*André Claude*, for University of Sudbury

*Mark G. Baker and Andre Luzhetskyy*, for the Laurentian University Students' General Association

*Guneev Bhinder*, for Canada Foundation for Innovation

*Sarah Godwin*, for the Canadian Association of University Teachers

*David T. Ullmann*, for the Art Gallery of Sudbury

*Roderic McLauchlan and Fred Tayar*, for the Canadian Universities Reciprocal Insurance Exchange

**HEARD and DETERMINED:** July 28, 2022

**REASONS:** August 2, 2022

## ENDORSEMENT

[1] At the conclusion of the hearing on July 28, 2022, I granted the motion with written reasons to follow. These are the reasons.

[2] On February 1, 2021, Laurentian University of Sudbury ("LU") commenced proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA").

[3] During the CCAA proceedings, the Stay Period has been extended from time to time, most recently to September 30, 2022.

[4] Over the last several months, LU and the Monitor have been engaged in discussions and negotiations with certain key stakeholders of LU in respect of the development of terms of the Plan (as defined below).

[5] On May 6, 2022, in response to LU's request for additional financial support in order to present a Plan to its creditors, counsel for the Ministry of Colleges and Universities ("MCU") delivered a letter to LU's counsel and Monitor's counsel that outlined the terms of further financial support to be made available (the "Plan Support Letter").

[6] The terms of the Plan Support Letter have subsequently been reflected in the Plan that LU has developed.

[7] LU seeks an Order (the "Meeting Order"): (a) accepting the filing of its Plan of Compromise and Arrangement dated July 21, 2022 (as may be amended, the "Plan"); (b) authorizing one class of unsecured creditors for the purpose of considering and voting on the Plan; (c) authorizing LU to call, hold and conduct a virtual meeting of Affected Creditors (the "Meeting"); (d) establishing certain rules and procedures to be followed in connection with the Meeting; and (e) setting the date for the hearing of LU's motion seeking court approval of the Plan, if the Plan is approved.

[8] The Monitor supports the relief requested by LU and no party opposed the motion.

[9] The Meeting Order does not seek the Court's approval of the Plan. If the Plan is approved by creditors at the Meeting, Court approval of the Plan will be sought by LU at the Sanction Hearing – scheduled for October 5, 2022.

[10] The relevant facts with respect to this motion are summarized in the Affidavit of Dr. Robert Haché sworn July 21, 2022 (the "Haché Affidavit") and in the Fourteenth Report of the Monitor.

[11] All terms not otherwise defined herein have the meanings given to them in the Plan or the Meeting Order.

[12] The purpose of the Plan is to: (a) complete a restructuring of the Applicant to provide LU with an opportunity to continue to operate a bilingual and tri-cultural university in the City of Sudbury, (b) provide for the compromise of all Affected Claims by providing to Affected Creditors with Proven Claims a distribution in accordance with the terms of the Plan, (c) effect a release and discharge of all Affected Claims, Released Claims, and the Huntington Released Claims, (d) provide a basis whereby LU and its operations continue as a going concern after addressing the underlying issues leading to the CCAA filing, and (e) permit LU to exit the CCAA proceeding.

[13] The salient features of the Plan include:

(a) continuing obligations on LU after the Plan Implementation Date to:

    (i) take certain steps to address operational issues identified in the Nous Operational Report, in consultation with key university stakeholders, including the labour groups at LU;

    (ii) submit a request to MCU (jointly with LUFA and LUSU, to the extent applicable) to amend the *The Laurentian University of Sudbury Act, 1960* to provide representation for members of LUFA and LUSU on the Board of Governors;

    (iii) develop a new strategic plan for LU; and

    (iv) ensure there are internal financial controls and restrictions for the proper management of restricted funds that are received by LU;

(b) one class of Affected Creditors who will consider and vote on the Plan;

(c) not affecting certain types of claims against LU, including (among others):

    (i) CCAA Priority Claims;

    (ii) Vacation Pay Compensation Claims;

    (iii) Insured Claims;

    (iv) Excluded D&O Claims; and

    (v) Secured Claims;

(d) providing for the repayment in full upon implementation of the Plan of all amounts to holders of CCAA Priority Claims, Secured Claims, and Vacation Pay Compensation Claims;

(e) providing for a *pro rata* distribution of the Distribution Pool;

(f) a Guaranteed Minimum Plan Consideration Amount of $45.5 million, which will be realized through the sale of the Designated Real Estate Assets by LU to the Province within four (4) years of the Plan Implementation Date, failing which there will be a Plan Default;

(g) a broad and comprehensive release and injunction of claims that may be asserted against any of the Released Parties as of the Effective Date, save and except for a carve out of Non-Released Claims; and

(h) a limited third-party release in favour of Huntington University regarding any claims that may be made against Huntington in respect of the discontinuance of the RHBP or the discontinuance of any academic programs or courses by Huntington.

[14] The Plan is subject to certain conditions to implementation of the Plan. The following represent some conditions that are unique to LU's Plan:

(a) all Pre-Filing Grievances, Restructuring Grievances, and Material Post-Filing Grievances shall be fully resolved or withdrawn by the applicable union; and

(b) there will be a renewal of two senior management positions at LU prior to the Effective Time.

[15] LU is not presently seeking Court approval of the Plan. Rather, LU is seeking to file the Plan with the Court and to bring the Plan before the Affected Creditors to vote upon at the Meeting.

[16] The proposed Meeting Order provides that LU is authorized to file the Plan and to convene the Meeting of a single class of the Affected Creditors to consider and vote on the Plan Resolution.

[17] The Meeting has been scheduled to be held virtually on September 14, 2022, at 10:00 a.m. Eastern Time.

[18] The salient features of the proposed Meeting Order include:

(a) the form of the Meeting Materials are approved and the Monitor shall provide notice of the Meeting by posting copies of the Meeting Materials on the Monitor's Website in English and French, causing the Notice of Meeting to be published in national and local newspapers, sending the Meeting Materials to all Affected Creditors known to the Monitor as of the date of the Meeting Order in the same language used in the Proof of Claim filed by or sent to an Affected Creditor;

(b) a representative of the Monitor shall preside as the Chairperson of the Meeting and may appoint a Secretary and Scrutineers;

(c) the quorum for the Meeting is one Affected Creditor with a Proven Claim;

[19] As LU is a bilingual university, the Meeting Materials (including the Plan, the Information Circular and the creditor forms and notices) are available in English and French and will be available on the Monitor's Website. The English version of the Meeting Materials will be mailed to a Creditor unless their claim was filed in French, in which case the Meeting Materials will be sent to them in French.

[20] There are approximately 1,000 individual Compensation Claims pursuant to the Compensation Claims Process Order. The Monitor will be completing extensive information statements and delivering them to approximately 1,000 individual holders of Compensation Claims. These statements will outline the amount of the respective Creditor's claim, and the treatment of their claim (e.g., whether any portion will be paid in full on the Effective Time and whether any portion is unsecured).

[21] The sole issue on this motion is whether the Plan should be accepted for filing and the Meeting Order should be granted.

[22] Section 4 of the CCAA provides that the Court may order a meeting of creditors, or class of creditors, to vote on a compromise or an arrangement.

[23] The threshold for a Court issuing a meeting order is low. As the Court of Appeal for Ontario held in *Nova Metal Products Inc. v. Comiskey (Trustee of)* (1990), 41 OAC 282 (Ont. C.A.), the feasibility of a plan is a relevant factor to be considered in determining whether to order a meeting of creditors. However, the Court should not impose a heavy burden on a debtor company to establish the likelihood of ultimate success at the outset.

[24] Courts are not required to address the fairness and reasonableness of the Plan at this stage. Unless it is obvious that a plan cannot be approved by the affected creditors, a debtor company should be authorized to present its plan to its creditors at a meeting and issues of fairness are to be considered at the sanction hearing, if the plan is approved by the required majorities of creditors at the meetings.

[25] Counsel to LU submits that the Plan does not contain any provisions that would render it incapable of being approved by creditors and implemented, if approved by the Court.

[26] Counsel also submits that the Meeting Order is fair and reasonable in the circumstances and will allow Affected Creditors to fully consider the Plan and effectively participate in the Meeting.

[27] Section 22(1) of the CCAA provides that a debtor company may divide creditors into classes for the purpose of a meeting in respect of a plan of compromise or arrangement. Section 22(2) of the CCAA provides that creditors may be included in the same class if their interests are

sufficiently similar to give them a commonality of interest, taking into account (among other things) (a) the nature of debts, liabilities or obligations giving rise to their claims; (b) the nature of any security in respect of their claims; and (c) the extent to which those creditors would recover on their claims by exercising those remedies.

[28] In accordance with the Meeting Order, LU proposes that all Affected Claims will be grouped into a single class for the purposes of considering and voting on the Plan.

[29] In proposing a single class, LU and the Monitor submit that they have considered, among other things, the nature of the obligations giving rise to the Affected Claims, the nature and priority of the Affected Claims, and the legal entitlements and remedies available to creditors in the absence of the Plan.

[30] The Affected Creditors are all unsecured creditors of LU. The single classification is based on the rights and remedies of the class of these creditors against the debtor (*i.e.*, whether those creditors hold security for their claims). In this case, all Affected Creditors would receive a *pro rata* distribution from the Distribution Pool.

[31] LU has not proposed a separate class for Secured Claims. Pursuant to the Plan, if approved, Secured Claims will receive payment in full from the Distribution Pool on the Plan Implementation Date.

[32] The Monitor supports the approval of the classification of creditors set out in the Plan for the purposes of the Meeting and voting on the Plan.

[33] I am satisfied that the proposed classification is consistent with the objectives of the CCAA and the interests of its Creditors.

[34] Finally, the following two paragraphs have been included in this endorsement for the benefit of all parties and in particular, Affected Creditors.

[35] Creditors who have questions regarding the Plan, voting procedures or other matters may obtain further information in the following ways:

- Refer to the Frequently Asked Questions ("FAQs") provided at pages 12-16 of the Information Circular. If there are an updates to these FAQs, such updates will be posted on the Monitor's website at www.ey.com/ca/laurentian within the "Plan of Arrangement" folder.

- Contact the court-appointed Monitor by email at LaurentianUniversity.Monitor@ca.ey.com or by telephone at 416-943-3057 or 1-888-338-1766.

[36] In addition, there may be amendments to the Meeting Materials and/or the Plan in advance of the Meeting. Affected Creditors with Proven Claims and Affected Creditors with Unresolved

Claims, including Unresolved Secured Claims (together “Unresolved Claimants) are encouraged to continue visiting the Monitor’s website for updated information in this regard.

[37] I am satisfied that the Plan should be accepted for filing and the Meeting Order should be granted.

[38] The Meeting Order has been signed by me.

Chief Justice G.B. Morawetz

**Date:** August 3, 2022