

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**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**

**FIRST REPORT OF THE MONITOR
February 7, 2021**

INTRODUCTION

1. On February 1, 2021, Laurentian University of Sudbury ("**LU**" or the "**Applicant**") brought an application (the "**CCAA Application**") before this Court seeking an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") to, among other things, obtain a stay of proceedings to allow the Applicant an opportunity to financially and operationally restructure itself.
2. On February 1, 2021, the Court granted an initial order (the "**Initial Order**") that, among other things, appointed Ernst & Young Inc. as monitor of the Applicant in these CCAA proceedings (in such capacity, the "**Monitor**"), and approved a stay of proceedings for the initial 10-day period (the "**Stay Period**") and certain Court ordered super-priority charges.
3. The Court scheduled a comeback motion for 9:00am on February 10, 2021 (the "**Comeback Motion**").

PURPOSE

4. The purpose of this First Report of the Monitor (the "**First Report**") is to provide information to the Court on:
 - a. the Applicant's operations since the granting of the Initial Order;
 - b. the Monitor's activities since its appointment;

- c. the Applicant's request for the appointment of a Court-appointed mediator;
- d. the Applicant's request for approval of an Amended and Restated Initial Order that, among other things, approves:
 - i. debtor-in-possession ("**DIP**") financing pursuant to the DIP Term Sheet (as defined below) between the Applicant and the DIP Lender (as defined below) and the grant of the DIP Lender's Charge (as defined below);
 - ii. an extension of the Stay Period to April 30, 2021;
 - iii. an increase in the Administration Charge from \$400,000 to \$1,250,000;
 - iv. an increase in the Directors' Charge from \$2,000,000 to \$5,000,000, in accordance with the priority set out in the Amended and Restated Initial Order; and
 - v. the granting of the Administration Charge, the Directors' Charge and the DIP Lender's Charge in priority to all other "secured creditors" as defined in the CCAA,in each case, substantially in the form included in the Applicant's Motion Record; and
- e. the Monitor's recommendations with respect to the above.

TERMS OF REFERENCE AND DISCLAIMER

- 5. In preparing this First Report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by the Applicant and discussions with senior management of the Applicant ("**Management**") (collectively, the "**Information**"). Except as described in this First Report in respect of the Applicant's Cash Flow Forecast:
 - a. the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information; and

- b. some of the information referred to in this First Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.
6. Future oriented financial information referred to in this First Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.
7. Unless otherwise indicated, the Monitor's understanding of factual matters expressed in this First Report concerning the Applicant and its business is based on the Information, and not independent factual determinations made by the Monitor.
8. This First Report does not take into account all future impacts of COVID-19 (SARSCoV-2) ("**COVID-19**" or the "**Pandemic**") on the forecasts or projections or other actions taken by the Applicant as a result of the Pandemic. Any references made to the impact of the Pandemic on the Applicant in this First Report are based on preliminary enquiries and are not to be interpreted as a complete commentary or as an accurate assessment of the full impact of the Pandemic. The full impact of the Pandemic is not capable of being qualitatively or quantitatively assessed at this time.
9. The Monitor also brings this Court's attention to paragraph 5 of the Affidavit of Dr. Robert Haché (the "**Haché Affidavit**") sworn January 30, 2020 (the "**Initial Order Affidavit**") in which Dr. Haché Notes that he has relied upon information provided by LU's Finance department which has experienced certain challenges as a result of its limited team and resources. As a result, the Monitor notes that the Information relied upon for purposes of this First Report may be limited by these challenges.
10. Capitalized terms not defined in this First Report are as defined in the Report of the Proposed Monitor dated January 30, 2021 (the "**Pre-Filing Report**") or in the Initial Order.
11. Unless otherwise stated all monetary amounts contained herein are expressed in Canadian dollars.

BACKGROUND

12. On March 28, 1960, LU was incorporated under An Act to Incorporate Laurentian University of Sudbury, S.O. 1960, c. 151 C. 154 (the "**Laurentian Act**"). A copy of the Laurentian Act is attached as Exhibit "A" to the Haché Affidavit.

13. LU is a publicly funded, bilingual and tricultural post-secondary institution. Its operations are located in the City of Greater Sudbury, Ontario. LU has consistently been one of the largest employers in Sudbury.
14. The objectives and purposes of LU are described in the Laurentian Act as:
 - a. the advancement of learning and the dissemination of knowledge; and
 - b. the intellectual, social, moral and physical development of its members and the betterment of society.
15. LU is a non-share capital corporation and a registered charity pursuant to the *Income Tax Act*, R.S.C. 1985, c.1 (the “**Income Tax Act**”). Pursuant to Section 149 of the *Income Tax Act*, LU is exempt from the payment of income tax because of its status as a registered charity. As a registered charity, LU also receives donations and issues tax receipts to donors.
16. Further background information with respect to the Applicant is described in the Pre-Filing Report.

UPDATE ON THE APPLICANT’S OPERATIONS

17. Since the date of the Initial Order, the Applicant has focused on maintaining normal course day-to-day operations. Student classes are continuing (virtually due to the Pandemic) with no disruption.
18. In addition, the Applicant has commenced communications with its various stakeholders, including its students, faculty and other employees, suppliers, research-granting agencies and donors. Letters were emailed to certain of these stakeholder groups informing them of the commencement of the CCAA proceedings. The Applicant also launched a website at www.laurentianu.info and www.ularentienne.info to provide further information to stakeholders, including a detailed list of frequently asked questions and answers, contact information for support services for students, faculty and staff and a method to contact LU by email for other information.
19. Finally, the Applicant has drafted and implemented new fiscal restraint policies to monitor and authorize only necessary expenses during the pendency of this CCAA proceeding.

MONITOR’S ACTIVITIES TO DATE

20. Since the granting of the Initial Order, among other things, the Monitor has:

- a. assisted the Applicant in its communications with stakeholders;
 - b. responded to calls and e-mails received from creditors and other parties with respect to these CCAA proceedings;
 - c. monitored LU's receipts and disbursements;
 - d. participated in discussions with Management with respect to the cash flow forecasts prepared by the Applicant;
 - e. participated in a call with the Applicant and the Ministry of Colleges and Universities ("**MCU**"); and
 - f. participated in a case conference with LU and LUFA (as defined below) related to the appointment of a Court-appointed mediator.
21. The Applicant's weekly cash flow forecast for the period from January 30, 2021 to April 30, 2021 (the "**Cash Flow Forecast**"), appended to the Pre-Filing Report, is attached as Appendix "**A**" to this First Report. Given the limited number of business days that have elapsed since the date of the Pre-Filing Report, the Applicant does not anticipate any material change in the weekly cash flow forecast. The Monitor will continue to work with the Applicant to review actual receipts and disbursements and any variances, if any, from the Cash Flow Forecast and provide an update to the Court in its next report.
22. The Monitor has established a case website at www.ey.com/ca/Laurentian (the "**Monitor's Website**"). All court documents and certain other relevant documents will be posted on the Monitor's Website. Further, the Monitor has arranged for a toll-free hotline phone number (1-855-338-1766) for calls related to this matter and an e-mail address (LaurentianUniversity.Monitor@ca.ey.com) for e-mail correspondence with the Applicant's creditors and other stakeholders.
23. Pursuant to the Initial Order, the following notices and documents have been posted on the Monitor's Website, and/or sent to the Applicant's stakeholders since the date of the Initial Order:
- a. On February 1, 2021, the Monitor posted a copy of the Application Record of the Applicant (the "**Application Record**"), the Factum of the Applicant, the Pre-Filing Report, the Initial Order and the Endorsement of Chief Justice Morawetz dated February 1, 2021, on the Monitor's Website;
 - b. On February 4, 2021, the Monitor sent a notice (the "**Notice to Creditors**"), which included information about the CCAA proceedings, the toll-free telephone number and the Monitor's email address to all known creditors who have a claim against the Applicant of more than \$1,000, based on the contact information of such known

creditors provided by the Applicant (the “**Known Creditors**”), by prepaid ordinary mail. A copy of the Notice to Creditors was also posted on the Monitor’s Website and is attached hereto as Appendix “**B**”;

- c. On February 4, 2021, the Monitor posted a list showing the names of the Known Creditors and amounts owing per the Applicant’s books and records on the Monitor’s Website and the service list for the CCAA proceedings (this service list will be updated regularly by the Monitor as additional Notices of Appearance are filed);
- d. On February 4, 2021, the Monitor published the Notice to Creditors in the Globe and Mail (National Edition) and the Sudbury Star;
- e. On February 5, 2021, the Monitor posted a copy of the Applicant’s Motion Record in respect of the Comeback Motion; and
- f. On February 5, 2021, the Monitor posted the Order re: Appointment of Mediator and related Endorsement of Chief Justice Morawetz to the Monitor’s Website

MEDIATION

- 24. In its’ Application Record, the Applicant sought an Order for the appointment of a mediator by the Court (the “**Court-Appointed Mediator**”) to oversee negotiations with respect to the various restructuring initiatives necessary for the Applicant to achieve financial sustainability, including but not limited to a restructuring of academic programs, reduction of employee headcount and a restructuring of its Federated Universities model.
- 25. In the Pre-Filing Report, the Monitor set out its view that the appointment of a Court-Appointed Mediator is critical to ensure that LU, the Laurentian University Faculty Association (“**LUFA**”) and LU’s other stakeholders have the best possible opportunity to succeed in effecting an operational restructuring that will permit LU to be sustainable in the long term. The Monitor also set out its view with respect to the ideal characteristics of a Court-Appointed Mediator being someone:
 - a. that is independent and objective;
 - b. with experience in both insolvency matters as well as collective agreements and labour negotiations;
 - c. who understands the urgency with which the mediation must be conducted;
 - d. has the time available to dedicate to the mediation; and

- e. preferably, who is bilingual.
- 26. Ultimately, the Monitor noted that it is imperative that the Court-Appointed Mediator be appointed by this Court on an urgent basis.
- 27. In this Court's endorsement issued in connection with the Initial Order, this Court invited LU, LUFA and the Monitor to schedule a case conference prior to the Comeback Motion, if necessary, to discuss the potential appointment of a Court-Appointed Mediator.
- 28. The Monitor, counsel to the Monitor, counsel to LU and counsel to LUFA attended before this Court at a case conference on February 5, 2021. During the case conference, this Court indicated that after considering the urgency with which negotiations need to take place, the importance of such negotiations being successful within this compressed time period and the proposed characteristics of a potential Mediator, the Court proposed to appoint the Honourable Justice Sean Dunphy of the Ontario Superior Court of Justice as the Court-Appointed Mediator. During his career, Justice Dunphy was a leading insolvency lawyer with extensive experience in CCAA restructurings, including complex labour negotiations, and is bilingual. All parties at the case conference confirmed that there were no objections to Justice Dunphy's appointment as mediator. Accordingly, the Court issued the order and endorsement attached to this Report as Appendices "C" and "D" respectively, confirming Justice Dunphy's appointment.

DIP AGREEMENT

- 29. As described in the Pre-Filing Report, the Applicant is in urgent need of funding in order to permit it to continue operations. As a result, and based on the Applicant's assets, LU, through its legal counsel, approached four external lenders that specialize in real estate and infrastructure based lending, including DIP financing.
- 30. Due to the extreme confidentiality in respect of this matter, each of the third parties was asked to sign a non-disclosure agreement ("**NDA**") prior to LU's identity being disclosed. Once executed, LU's identity was disclosed and a further form of NDA was obtained from each party, at which time the overall financial circumstances were shared with the prospective lenders and they were given access to a virtual data room of relevant information. The parties were invited to commence diligence on the information in the data room and ask additional questions which were responded to by LU, with the assistance of its advisors.
- 31. Discussions were held with certain of the Applicant's existing lenders regarding potential DIP financing including an invitation to review information in the data room.

32. These discussions resulted in the Applicant receiving non-binding draft term sheets from three potential lenders. The Applicant, along with its counsel and the proposed Monitor, reviewed the terms submitted by the prospective lenders factoring in, among other things, the maximum principal amount of the proposed DIP financing, fees and costs, and terms and conditions prescribed under the various term sheets and determined that of the three initial proposals, two were sufficiently preferable to merit narrowing ongoing negotiations to these two parties.
33. After further negotiations with these two parties, the Applicant executed a term sheet (the “**DIP Term Sheet**”) with Firm Capital Corporation. Subsequent to the execution of the DIP Term Sheet, Firm Capital Corporation assigned its interest to Firm Capital Mortgage Fund Inc. (the “**DIP Lender**”). The DIP Lender has requested a definitive agreement (the “**DIP Agreement**”) to formally document the terms and conditions set out in the DIP Term Sheet. The Applicant and the DIP Lender are in the process of negotiating and finalizing the DIP Agreement.
34. The following is a summary of the material terms of the DIP facility, which will be reflected in the DIP Agreement:
- a. the DIP facility is a secured non-revolving credit facility with monies to be advanced in accordance with the Cash Flow Forecast;
 - b. the maximum principal amount is \$25 million with a maturity date of May 1, 2021. The maturity date may be extended for an additional 90 days if LU achieves the following milestones, to the satisfaction of the DIP Lender in its sole and unfettered discretion:
 - i. LU reaches a consensus among all necessary stakeholders on an academic restructuring and reduction of LU’s program offerings;
 - ii. LU enters into a negotiated settlement with LUFA with respect to terminations to be effected, resolution of outstanding grievances, and the terms of a new collective agreement between LUFA and LU; and
 - iii. LU provides the DIP Lender with a revised cash flow forecast and a multi-year budget demonstrating to the DIP Lender, in its sole and unfettered discretion, that LU is financially sustainable.
 - c. the DIP facility contemplates two advances to be made as follows:
 - i. the initial advance is subject to the Court issuing the Amended and Restated Initial Order and granting the DIP Lender’s Charge and is expected to be made shortly thereafter; and

- ii. the second advance shall be made upon five calendar days' prior written request to the DIP Lender and approved by the Monitor.
 - d. advances shall be used to fund LU's working capital requirements for operations during the CCAA proceedings in accordance with the Cash Flow Forecast, or any revised versions of same, as approved by the DIP Lender;
 - e. interest shall be compounded and payable monthly in arrears in cash on the first day of each month, in arrears, at a rate that is the greater of 8.50% per annum or the TD Canada Trust Posted Bank Prime Rate of Interest from time to time plus 6.05% per annum; and
 - f. a commitment fee of \$500,000 shall be deemed to have been fully earned and payable to the DIP Lender on the date that the Court approves the Amended and Restated Initial Order approving the DIP financing.
35. As reflected by the Cash Flow Forecast, the Applicant has a critical and immediate need for DIP financing. Without access to DIP financing, the Applicant will be unable to maintain operations and address its operational and financial restructuring needs. In addition to addressing LU's short-term liquidity issues, approval of the DIP Term Sheet will provide assurance to LU's suppliers, employees, students and other stakeholders that LU has the necessary funds to continue operating until at least the end of the current semester (April 30, 2021), which will allow LU the opportunity to work with its stakeholders to effect the necessary academic and operational restructuring. Accordingly, the Monitor is of the view that the Applicant's request for approval of the DIP financing and the DIP Term Sheet is required and reasonable.
36. The Monitor notes that on February 4, 2021, counsel to the Applicant and counsel to the Monitor were contacted by a law firm indicating the firm had a client that was potentially interested in submitting a competing proposal for DIP financing. On February 5, 2021, the Monitor was contacted by another party expressing similar interest. After consideration, the Applicant determined that given the number of weeks it took other potential lenders to conduct their due diligence, as a result of the inherent complexity in the real estate assets, it was highly unlikely that a new party could negotiate and execute a non-disclosure agreement, conduct its due diligence and be in a position to submit a binding offer and complete all definitive documentation prior to the Comeback Motion. In addition, the Applicant had already executed the DIP Term Sheet, which is in the Applicant's Application Record, has been disclosed to the service list and put forward for this Court's approval. Accordingly, the Applicant declined the request from the law firm to proceed with any due diligence process and the Monitor communicated the same message to the other party.

STAY EXTENSION / AMENDED AND RESTATED INITIAL ORDER

37. The proposed Amended and Restated Initial Order proposes certain amendments to the Initial Order. All of the proposed amendments can be seen in Blackline of Amended and Restated Initial Order to Initial Order included at Tab 3 of the Applicant's Motion Record filed in connection with the Comeback Motion. Certain of the amendments are highlighted below.

Stay Extension

38. The Stay Period is currently set to expire on February 11, 2021. The Applicant requests an extension of the Stay Period up to and including April 30, 2021.
39. The Monitor is of the view that the requested extension of the Stay Period is appropriate for the following reasons:
- a. the extension of the Stay Period will provide comfort to LU's students that the Applicant will continue in the ordinary course for the duration of the winter semester;
 - b. the Applicant requires the extension in order to conduct a mediated negotiation with its stakeholders and effect an academic, operational and financial restructuring plan that will allow it to achieve long term financial sustainability; and
 - c. the Applicant continues to operate in good faith and with due diligence since the date of the Initial Order.
40. Based on the Cash Flow Forecast, and with the approval of the DIP Term Sheet and DIP Lender's Charge, as described below, the Monitor is of the view that the Applicant should have sufficient liquidity to fund its operations until April 30, 2021. If there are any material events to report upon in the interim period, the Applicant and the Monitor will return to the Court.
41. For the foregoing reasons, the Monitor supports the Applicant's request for an order extending the Stay Period to April 30, 2021.

Pension and Benefit Plans

42. As set out in the Pre-Filing Report, the Applicant administers three employee pension and benefit plans: (a) a registered defined benefit pension plan (the "**DB Pension Plan**"); (b) a supplementary unfunded retirement plan (the "**SuRP**") and (c) a retirement health benefits plan (the "**RHBP**").

43. As the SuRP and RHBP plans are unfunded contractual obligations to former or retired employees, the Initial Order provides for a stay of any amounts payable under these plans.
44. In respect of the DB Pension Plan, the most recent actuarial valuation was made as of January 1, 2020 (updated in December 2020). Pursuant to this actuarial valuation, the DB Pension Plan had a solvency ratio of 85.4%, representing a going concern deficiency of approximately \$4.5 million. This deficiency is required to be addressed over a period not exceeding ten years, beginning one year after the date of valuation (i.e. January 1, 2021).
45. The actuarial valuation provided that the DB Pension Plan current service contributions for the next three years would be set at \$16,188,000, annually, payable in monthly instalment of approximately \$1,349,000. In addition, to address the going concern deficiency, the actuary concluded that an annual special payment contribution of \$505,000 must be made, payable in monthly instalments of approximately \$42,083.
46. In light of LU's current financial situation, the proposed Amended and Restated Order requests relief from this Court to stay the payment of any pre-filing or post-filing special payments to the DB Pension Plan to assist LU with its current liquidity crisis and maximize the chance that LU can successfully restructure.
47. While the Applicant will have access to funding through the DIP Agreement, subject to this Court's approval, that funding is limited and is only projected to be sufficient to fund operations through to the end of the current academic term. Given the Applicant's overall liquidity constraints, the Monitor is of the view that permitting a stay of special payments to the DB Pension Plan during the Stay Period is appropriate and reasonable.

Freedom of Information and Protection of Privacy Act

48. The proposed Amended and Restated Order provides for relief from this Court to stay any existing, pending or future information requests to the Applicant pursuant to the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). As a publicly funded university, LU is subject to these requests in the normal course.
49. As a result of the CCAA proceedings and the anticipated mediation, the Applicant expects to receive a significantly increased volume of FIPPA information requests. The Applicant simply does not have the resources to deal with the increased volume. In order to successfully restructure by May 1, 2021, the Applicant must focus all its efforts on either serving the needs of students on a day to day basis or supporting the operational restructuring process.
50. The Monitor notes that it is also expected that there will continue to be substantial disclosure of information to all stakeholders through materials filed in the CCAA proceedings and made available on the Monitor's website as well as additional

communications from LU directly to stakeholders and posted on the website established by LU.

51. Given the distraction that would result in attempting to deal with these requests and the negative impact it could have on achieving a successful restructuring and the significant volume of information that has and will be made available in the CCAA proceedings, the Monitor is of the view that extending the stay to FIPPA requests is reasonable in the circumstances.

Super-Priority Charges

52. The proposed Amended and Restated Initial Order provides for the following super-priority charges (collectively, the “**Charges**”) on the current and future assets, undertakings and properties of the Applicant, wherever located, including all proceeds thereof that rank in the following order:
 - a. first, the Administration Charge (up to a maximum amount of \$1.25 million);
 - b. second, the Directors’ Charge (up to a maximum amount of \$2 million);
 - c. third, the DIP Lender’s Charge (up to a maximum of \$25 million); and
 - d. fourth, the Directors’ Charge (up to an additional \$3 million for a total maximum Directors’ Charge amount of \$5 million).
53. The quantum of these Charges has been determined based upon amounts necessary during the CCAA proceedings, as described in the Pre-Filing Report.
54. The Applicant’s secured creditors are primarily comprised of subcontractors who have registered construction liens against certain real property owned by the Applicant and limited equipment lessors. The Monitor understands that these parties have been served with notice of the Comeback Motion and the relief sought at the Comeback Motion will provide for the Charges to rank ahead of these potential claims.

Administration Charge

55. The proposed Amended and Restated Initial Order provides for a charge of up to \$1.25 million (the “**Administration Charge**”) in favour of counsel and advisors to the Applicant, the Monitor, the Monitor’s independent counsel and independent counsel to the Board as security for the professional fees and disbursements incurred prior to and after the commencement of the CCAA proceedings. Professional fee obligations secured by the Administration Charge will be paid in the ordinary course from funding provided by, among other things, the DIP financing.

56. The Monitor is of the view that the proposed Administration Charge is reasonable and appropriate in the circumstances, having regard to, among other things, the complexity of the proceedings, potential work expected to be required, and the size of charges approved in comparable proceedings. Accordingly, the Monitor is of the view that the Administration Charge is required and reasonable in the circumstances.

DIP Lender's Charge

57. As set out in the Pre-Filing Report, in order to provide the required liquidity needed to fund the operations of LU during the CCAA proceedings, the Applicant is seeking approval of the DIP Term Sheet, pursuant to which the DIP Lender agreed to provide the DIP financing required in the Cash Flow Forecast, subject to the terms and conditions of the DIP Term Sheet and any other definitive documentation. In addition to the approval of the DIP Term Sheet, the proposed Amended and Restated Initial Order provides for the creation of a super-priority charge in the amount of \$25 million (the “**DIP Lender's Charge**”) to match the maximum allowable borrowing amount proposed in the DIP Term Sheet.
58. The DIP Lender's Charge will be secured by all Property (as defined in the Amended and Restated Initial Order) of the Applicant.
59. The DIP Lender's Charge is a condition of the DIP financing as set out above. Also, as set out above, the Applicant is in urgent need of the financing to fund operations for the balance of the academic term so as to complete an operational restructuring. Accordingly, the Monitor is of the view that the DIP Lender's Charge is appropriate and reasonable.

Directors' Charge

60. The proposed Amended and Restated Initial Order provides for a charge in an amount not to exceed \$5 million (the “**Directors' Charge**”) to secure the indemnity in favour of the current and future directors and officers of the Applicant (the “**Directors and Officers**”) against obligations and liabilities that they may incur as directors and officers of the Applicant for actions taken after the commencement of these CCAA proceedings, except to the extent that the obligation or liability is incurred as a result of such director's or officer's gross negligence or willful misconduct.
61. The Directors and Officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any director's and officer's insurance policy, to the extent such coverage is insufficient to pay an indemnified amount as described above, or to the extent that such coverage is denied by the insurance provider.
62. The DIP Term Sheet provides that any Directors' Charge may only rank ahead of the DIP Lender's Charge to the maximum amount of \$2 million. Accordingly, it is proposed that \$2 million of the Directors' Charge rank behind the Administration Charge and ahead of

the DIP Lender's Charge, with the balance of \$3 million ranking behind the DIP Lender's Charge.

63. The Monitor reviewed the calculation of the Directors' Charge that was prepared by the Applicant taking into consideration the amount of LU's payroll, current service pension contributions and vacation pay and notes that the Director's Charge is less than the quantum of such amounts that will accrue during these CCAA proceedings. For illustration, the majority of the Applicant's employees are paid once per month and aggregate monthly payroll is approximately \$11 million, monthly DB Pension Plan contributions are approximately \$1.2 million and vacation pay accrued on a monthly basis is approximately \$800,000.
64. The Monitor is of the view that the Directors' Charge is required and is reasonable under the circumstances.

CONCLUSIONS AND RECOMMENDATIONS

65. For the reasons stated herein, the Monitor supports the relief sought by the Applicant in the proposed Amended and Restated Initial Order, including but not limited to the extension of the Stay Period, the extension of the stay to FIPPA information requests, the stay of special payments to the DB Pension Plan and the approval of the DIP Term Sheet and DIP Lender's Charge, and the elevation of the Court-ordered Charges, and recommends that the Court grant the proposed Amended and Restated Initial Order.
66. The Monitor notes that the appointment of the Court-Appointed Mediator is a critical and important step to moving forward in effecting an operational restructuring. The Monitor will work closely with the Court-Appointed Mediator to support this process so that it may be carried out in an efficient and effective manner.

All of which is respectfully submitted this 7th day of February, 2021.

**ERNST & YOUNG INC., in its capacity as
Monitor of the Applicant, and not in
its corporate or personal capacity**

Per:



**Sharon S. Hamilton, CPA, CA, CIRP, LIT
Senior Vice President**

APPENDIX “A”
CASH FLOW FORECAST

(in 000s CAD\$)	Week:	1	2	3	4	5	6	7	8	9	10	11	12	13	Total
	Notes	30-Jan-2021 05-Feb-2021	06-Feb-2021 12-Feb-2021	13-Feb-2021 19-Feb-2021	20-Feb-2021 26-Feb-2021	27-Feb-2021 05-Mar-2021	06-Mar-2021 12-Mar-2021	13-Mar-2021 19-Mar-2021	20-Mar-2021 26-Mar-2021	27-Mar-2021 02-Apr-2021	03-Apr-2021 09-Apr-2021	10-Apr-2021 16-Apr-2021	17-Apr-2021 23-Apr-2021	24-Apr-2021 30-Apr-2021	30-Jan-2021 30-Apr-2021
Receipts															
Operating Grants	1	\$ -	\$ 3,752	\$ -	\$ 3,713	\$ -	\$ -	\$ 2,868	\$ 481	\$ 3,454	\$ -	\$ 2,868	\$ -	\$ 4,269	\$ 21,406
Research Grants	2	-	-	-	-	-	331	-	1,660	546	546	546	546	546	4,722
Student Fees	3	-	110	110	110	195	195	195	195	103	69	69	69	946	2,367
Reimbursements	4	-	-	-	789	1,111	-	-	113	1,105	-	-	101	1,119	4,339
Donations	5	13	13	13	13	13	13	13	13	10	10	10	10	10	150
Other Receipts	6	-	-	-	192	-	-	-	-	297	-	-	-	913	1,402
Less Restricted Receipts	21	(13)	(13)	(13)	(13)	(13)	(344)	(13)	(1,672)	(556)	(556)	(556)	(556)	(556)	(4,872)
Total Receipts		-	3,862	110	4,805	1,305	195	3,063	789	4,959	69	2,937	170	7,248	29,514
Operating Disbursements															
Payroll & Benefits	7	(2,869)	(1,008)	(1,319)	(5,050)	(2,881)	(1,008)	(1,149)	(5,129)	(2,363)	(1,526)	(778)	(1,469)	(4,763)	(31,310)
Pension	8	-	-	(1,215)	-	-	-	(1,894)	-	-	-	(1,214)	-	-	(4,322)
Occupancy Costs	9	(452)	(402)	(486)	(338)	(284)	(134)	(167)	(483)	(90)	(262)	(189)	(777)	-	(4,065)
Other Operating Costs	10	(521)	(380)	(307)	(286)	(77)	(277)	(277)	(634)	(311)	(499)	(499)	(694)	(357)	(5,120)
Information Technology	11	(185)	(181)	(181)	(181)	(53)	(87)	(87)	(87)	(66)	(81)	(81)	(81)	(66)	(1,417)
Professional Fees	12	(369)	(266)	(116)	(116)	(200)	(33)	(33)	(33)	(60)	(60)	(60)	(60)	(60)	(1,466)
Student Refunds	13	(320)	(320)	(320)	(320)	(320)	(155)	(155)	(155)	(155)	(155)	(88)	(88)	(88)	(2,637)
Transferred Research Grants	14	-	-	-	-	-	-	-	-	(1,188)	-	-	(39)	-	(1,226)
Transfers to Federated Universities	15	-	-	(1,064)	-	(94)	-	(94)	-	(94)	-	(94)	-	(497)	(1,937)
Transfers to NOSM	16	-	-	-	-	-	-	-	(200)	-	-	-	-	-	(200)
Transfers to the Students' Associations	17	-	-	-	(1,145)	-	-	-	(491)	-	-	-	-	-	(1,636)
Transfers from / (to) Segregated Accounts	23	-	-	(28)	55	-	-	(28)	52	1,188	-	(28)	39	83	1,332
Total Operating Disbursements		(4,716)	(2,556)	(5,035)	(7,381)	(3,909)	(1,693)	(3,883)	(7,160)	(3,139)	(2,582)	(3,030)	(3,170)	(5,749)	(54,004)
Net Operating Cash Flow		(4,716)	1,306	(4,925)	(2,576)	(2,603)	(1,499)	(819)	(6,371)	1,821	(2,514)	(93)	(2,999)	1,499	(24,490)
Non operating Receipts/ (Disbursements)															
Capital Project Grants	18	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Capital Projects	18	(75)	(75)	(75)	(52)	(21)	(21)	(21)	(21)	(21)	(142)	(92)	(92)	(92)	(799)
Debt Service	19	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Restructuring Costs	22	(313)	(313)	(313)	(313)	(250)	(250)	(250)	(250)	(250)	(313)	(313)	(313)	(313)	(3,750)
Total Non-Operating Disbursements		(388)	(388)	(388)	(364)	(271)	(271)	(271)	(271)	(271)	(454)	(404)	(404)	(404)	(4,549)
Total Disbursements		(5,104)	(2,944)	(5,423)	(7,745)	(4,180)	(1,965)	(4,154)	(7,431)	(3,410)	(3,037)	(3,435)	(3,574)	(6,153)	(58,553)
Net Cash Receipts/(Disbursements)		\$ (5,104)	\$ 918	\$ (5,312)	\$ (2,940)	\$ (2,874)	\$ (1,770)	\$ (1,090)	\$ (6,642)	\$ 1,550	\$ (2,968)	\$ (497)	\$ (3,404)	\$ 1,094	\$ (29,039)
Cash Balance															
Beginning cash balance		\$ 13,291	\$ 8,187	\$ 18,606	\$ 13,293	\$ 10,282	\$ 7,408	\$ 5,638	\$ 19,548	\$ 12,729	\$ 14,278	\$ 11,311	\$ 10,813	\$ 7,410	\$ 13,291
Adjustment to Actual, fx adjustment		-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cash Receipts/(Disbursements)		(5,104)	918	(5,312)	(2,940)	(2,874)	(1,770)	(1,090)	(6,642)	1,550	(2,968)	(497)	(3,404)	1,094	(29,039)
DIP Financing Draw/(Payback)		-	9,500	-	(71)	-	-	15,000	(177)	-	-	-	-	(177)	24,076
Ending cash balance		\$ 8,187	\$ 18,606	\$ 13,293	\$ 10,282	\$ 7,408	\$ 5,638	\$ 19,548	\$ 12,729	\$ 14,278	\$ 11,311	\$ 10,813	\$ 7,410	\$ 8,328	\$ 8,328
DIP Financing															
Opening Balance		\$ -	\$ -	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	-
Draw/(Payback)	23	-	9,500	-	(71)	-	-	15,000	(177)	-	-	-	-	(177)	24,076
Interest and Other Fees		-	500	-	71	-	-	-	177	-	-	-	-	177	924
Ending Balance		-	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000
Available Liquidity		\$ 33,187	\$ 33,606	\$ 28,293	\$ 25,282	\$ 22,408	\$ 20,638	\$ 19,548	\$ 12,729	\$ 14,278	\$ 11,311	\$ 10,813	\$ 7,410	\$ 8,328	\$ 8,328
Endowment Fund															
Beginning balance		\$ 55,736	\$ 55,736	\$ 55,736	\$ 55,736	\$ 55,736	\$ 55,736	\$ 55,736	\$ 55,736	\$ 55,736	\$ 55,736	\$ 55,736	\$ 55,736	\$ 55,736	\$ 55,736
Transfers in/(out)	20	-	-	-	-	-	-	-	-	-	-	-	-	(860)	(860)
Change in Market Value		-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending Balance		\$ 55,736	\$ 55,736	\$ 55,736	\$ 55,736	\$ 55,736	\$ 55,736	\$ 55,736	\$ 55,736	\$ 55,736	\$ 55,736	\$ 55,736	\$ 55,736	\$ 54,876	\$ 54,876
Segregated Accounts															
Beginning balance		\$ 3,287	\$ 3,300	\$ 3,312	\$ 3,353	\$ 3,311	\$ 3,323	\$ 3,667	\$ 3,708	\$ 5,328	\$ 4,696	\$ 5,252	\$ 5,837	\$ 6,354	\$ 3,287
Restricted Receipts	21	13	13	13	13	13	344	13	1,672	556	556	556	556	556	4,872
Transfers from / (to) Operating Account		-	-	28	(55)	-	-	28	(52)	(1,188)	-	28	(39)	(94)	(1,343)
Ending Balance		\$ 3,300	\$ 3,312	\$ 3,353	\$ 3,311	\$ 3,323	\$ 3,667	\$ 3,708	\$ 5,328	\$ 4,696	\$ 5,252	\$ 5,837	\$ 6,354	\$ 6,817	\$ 6,817

In the Matter of the CCAA of Laurentian University of Sudbury

Notes to the Unaudited Cash Flow Forecast of the Applicant

This Cash Flow Forecast has been prepared by the Applicant, with the assistance of the Proposed Monitor, for the purpose of the CCAA Application, using the following probable and hypothetical assumptions. The defined terms used in this Cash Flow Forecast are defined in the Monitor's Pre-filing Report.

The following provides a description of revenue and expense items and assumptions used in preparing the forecast:

General assumptions

- Receipts and disbursements denominated in US currency have been converted into Canadian dollars using an exchange rate of CDN\$1.30 = US\$1.00.
- Cash Flow Forecast includes estimates and assumptions concerning the impact of COVID-19 on the Applicant's operations
- Cash Flow Forecast assumes the necessary availability of financing under the DIP Term Sheet
- Unless otherwise indicated pre-filing amounts owing to third party suppliers and service providers are stayed. Post-filing goods and services from suppliers and service providers will be settled in the normal course.

Receipts

1. Operating Grants:

- Operating grants are primarily forecast based on the grant funding framework determined by the Province of Ontario and are expected to continue to be funded on a semi-monthly basis.

2. Research Grants:

- Research grants are based on revenue forecast by the Applicant's Research group and past funding experience.

3. Student Fees:

- Tuition, ancillary fees, and other student fees are billed to students upon registration for each academic semester and are collected on a seasonal basis. Student Fees are projected based on forecast student billings and collection experience.

4. Reimbursements:

- Receipts for the reimbursement of costs funded by the Applicant on behalf of certain associated organizations, including, but not limited to SNOLab, CEMI, and MIRARCO, have been forecast based upon the anticipated timing of incurring the costs and the subsequent billing and collection experience of the re-imbursement.

5. Donations:

- Donation receipts for operations, restricted use, research projects and capital projects are forecast based on historical experience. Endowment fund contributions are accounted for separately in the Cash Flow Forecast.

6. Other Receipts:

- Miscellaneous receipts are forecast based on expected revenues and collection experience, including amounts related to ancillary services, including, parking, copier & printer, campus services, Ontario Universities' Application Centre fees, HST refunds and other miscellaneous receipts.

Disbursements

7. Payroll & Benefits:

- All outstanding and future wages, salaries, employee and retiree benefits (including, without limitation, employee medical, dental, vision, insurance and similar benefit plans or arrangements), ordinary course pension benefits or contributions, vacation pay, expenses and any director fees and expenses, payable on or after the date of this Order, in each case for costs incurred in the ordinary course of business and consistent with existing practices, compensation policies and arrangements for current and future employees (but not including any payments to former employees or retirees in respect of the SuRP, the RHBP or termination or severance payments, which are hereby stayed), and all other payroll processing and servicing expenses will be paid in the ordinary course.
- All statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province or other taxing authority that are required to be deducted from employee wages including, in respect of employee insurance, Canada Pension Plan, Quebec Pension Plan and income taxes will be remitted

8. Pension:

- DB Pension Plan in respect of required employee contributions, including pre-filing amounts, and the employer current service payments made in ordinary course.
- Payments to former employees or retirees in respect of the SuRP are stayed.

9. Occupancy Costs:

- Costs of operating and maintaining the Applicant's facilities and rental properties are forecast based on historical run rates.

10. Other Operating Costs:

- Other Operating Costs including equipment purchases, library subscription fees, travel costs, food service costs, and other operating costs are forecast based on historical run rates.

11. Information Technology:

- Information Technology costs including licensing fees and purchasing of new hardware are forecast based on historical run rates.

12. Professional Fees:

- Professional Fees include fees related to auditors, actuaries and other professionals assisting with research or other university operating projects, as well as the cost of Assistants up to the CCAA Filing Date, are forecast based on historical run rates.

13. Student Refunds:

- Amounts owing to students for the current 2020-21 academic year and future amounts owing in respect of rebates, refunds or other similar amounts will be paid in the ordinary course.
- Amounts owing in respect of the current 2020-21 academic year and future amounts payable to students in respect of student scholarship, bursary or grants will be paid in the ordinary course.

14. Transferred Research Grants:

- Research grants transferred to other researchers or research partners are forecast based on the forecast availability of segregated research grants.

15. Transfers to Federated Universities:

- Transfers to Federated Universities are forecast based on LU's post-filing obligations with respect to its Federated Funding Formula to the Federated Universities.

16. Transfers to NOSM:

- Transfers to NOSM for Student Fees collected on behalf of NOSM are forecast based on post-filing collection of NOSM Student Fees.
- Student fees collected pre-filing are stayed.

17. Transfers to Students' Associations:

- Transfers of Student Fees collected on behalf of its Students' Associations are forecast based on the forecast billing and collection of Student Fees.

18. Capital projects:

- Capital Project disbursements are projected based on budgeted capital projects. Due to cash conservation measures taken, certain capital projects have been deferred and are not included in the forecast.

19. Debt Service:

- Debt service costs including, interest and principal repayments, are stayed as of the CCAA Filing Date.

20. Endowment Fund:

- Endowment Funds include funds for LU scholarships or other purposes as well as for NOSM scholarships.
- The funds are invested in an investment account however, no change in market value has been forecasted.

21. Restricted Receipts:

- Restricted receipts include restricted donations and research grants, which are held in segregated accounts and are only available for their restricted use.

22. Restructuring costs:

- Restructuring Costs have been forecast based on anticipated run rates. All outstanding fees and disbursements of Assistants retained or employed by the Applicant will be paid.

23. DIP Financing:

- The proposed facility is assumed to be advanced in two tranches in accordance with the terms of the DIP Term Sheet.

APPENDIX “B”
NOTICE TO CREDITORS

IN THE ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c.C-36, AS AMENDED (the "CCAA")**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LAURENTIAN UNIVERSITY OF SUDBURY (herein referred to as the "Applicant" or
"Laurentian University")**

PLEASE TAKE NOTICE that on February 1, 2021, the Applicant commenced court-supervised restructuring proceedings (the "**CCAA Proceedings**") under the CCAA. Ernst & Young Inc. was appointed as monitor of the Applicant ("**Monitor**") pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 1, 2021 (the "**Initial Order**").

Copies of the Initial Order and other related documents in connection with these CCAA proceedings have been posted on the Monitor's website at: www.ey.com/ca/Laurentian.

The Initial Order grants, among other things, a stay of proceedings up to and including February 11, 2021 (the "**Stay Period**") which Stay Period may be extended by further order of the Court from time-to-time.

During the Stay Period, all persons are prohibited from commencing or continuing any legal proceedings against or in respect of Laurentian University, and all rights and remedies of all persons against or in respect of Laurentian University, its assets, business or current officers and directors are stayed and suspended, except with the written consent of the Applicant and the Monitor or with leave of the Court.

Except as permitted in the Initial Order, the Initial Order directs Laurentian University to make no payments of principal, interest or otherwise on account of amounts owing by the Applicant to its creditors as of February 1, 2021.

No claims procedure has yet been submitted to or approved by the Court and creditors are therefore not required to file proofs of claim at this time.

All parties requiring further information should refer to Laurentian University's website available at <https://Laurentianu.info>. This website includes information for students, faculty and employees and other stakeholders.

The Monitor's contact details for information specific to the CCAA Proceedings and not found on the Monitor's website are:

Ernst & Young Inc. - The Court Appointed Monitor of Laurentian University of Sudbury

100 Adelaide Street West, P.O. Box 1

Toronto, ON, M5H 0B3

Canada

Telephone: 1-888-338-1766 / 1-416-943-3057

Email: LaurentianUniversity.monitor@ca.ey.com

COUR SUPÉRIEURE DE JUSTICE DE L'ONTARIO (RÔLE COMMERCIAL)

**DANS L'AFFAIRE DE LA LOI SUR LES ARRANGEMENTS
AVEC LES CRÉANCIERS DES COMPAGNIES,
L.R.C. (1985), ch. C-36, DANS SA VERSION MODIFIÉE (la « LACC »)**

**ET DANS L'AFFAIRE D'UN PLAN DE TRANSACTION OU D'ARRANGEMENT DE
L'UNIVERSITÉ LAURENTIENNE DE SUDBURY
(ci-après désignée la « Demanderesse » ou l'« Université Laurentienne »)**

AVIS EST PAR LA PRÉSENTE DONNÉ que le 1^{er} février 2021, la Demanderesse a amorcé une procédure de restructuration sous supervision judiciaire en vertu de la LACC (la « **Procédure en vertu de la LACC** »). Ernst & Young Inc. a été nommée contrôleur de la Demanderesse (le « **Contrôleur** ») aux termes de l'ordonnance prononcée par la Cour supérieure de justice de l'Ontario (rôle commercial) (le « **Tribunal** ») le 1^{er} février 2021 (l'« **Ordonnance Initiale** »).

Une copie de l'Ordonnance Initiale et des autres documents relatifs à ladite Procédure en vertu de la LACC est publiée sur le site Web du Contrôleur à l'adresse www.ey.com/ca/Laurentian.

L'Ordonnance Initiale accorde notamment une suspension des procédures jusqu'au 11 février 2021 inclusivement (la « **Période de suspension** »), la Période de suspension pouvant être prorogée sur ordonnance ultérieure du Tribunal.

Au cours de la Période de suspension, personne n'a le droit d'intenter ou de continuer une procédure judiciaire contre l'Université Laurentienne ou à son égard, et l'ensemble des droits et recours de toute personne à l'égard de l'Université Laurentienne, de ses actifs, de son entreprise ou de ses dirigeants et administrateurs sont suspendus, sauf sur autorisation écrite de la Demanderesse et du Contrôleur ou sur permission du Tribunal.

Sauf de la manière permise dans l'Ordonnance Initiale, celle-ci interdit à l'Université Laurentienne d'effectuer quelque paiement que ce soit au titre du capital, des intérêts ou à quelque autre titre relativement aux sommes dues à ses créanciers en date du 1^{er} février 2021.

Aucune procédure de réclamation n'ayant encore été soumise au Tribunal ni approuvée par ce dernier, les créanciers ne sont pas tenus de déposer de preuves de réclamation pour le moment.

Pour en savoir davantage, les parties devraient consulter le site Web de l'Université Laurentienne à l'adresse <https://Ulaurentienne.info>, où se trouvent des renseignements à l'intention des étudiants, du corps professoral, des employés et des autres parties prenantes.

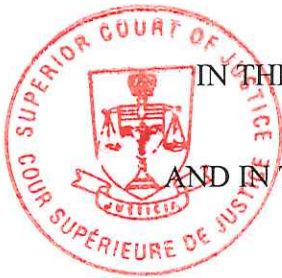
Voici les coordonnées du Contrôleur pour obtenir des renseignements concernant la Procédure en vertu de la LACC qui ne sont pas publiés sur son site Web :

Ernst & Young Inc. – Contrôleur nommé par le Tribunal de l'Université Laurentienne de Sudbury
100 Adelaide Street West, P.O. Box 1
Toronto, ON, M5H 0B3
Canada
Téléphone : 1 888 338 1766 / 1 416 943 3057
Courriel : LaurentianUniversity.monitor@ca.ey.com

APPENDIX “C”
ORDER APPOINTING MEDIATOR

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE CHIEF	)	FRIDAY, THE 5TH
	)	
JUSTICE MORAWETZ	)	DAY OF FEBRUARY, 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
(Re: Appointment of Mediator)

THIS APPLICATION, made by Laurentian University of Sudbury (the "**Applicant**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order appointing a mediator as an officer of the Court to act as a neutral third party, was heard this day by videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Notice of Application of the Applicant dated February 1, 2021, the affidavit of Dr. Robert Haché sworn January 30, 2021 and the Exhibits thereto (the "**Haché Initial Affidavit**") and the Report of Ernst & Young Inc. (the "**Monitor**") dated January 30, 2021 and on hearing the submissions of counsel for the Applicant, counsel for the Monitor and counsel for the Laurentian University Faculty Association ("**LUFA**").

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Notice of Case Conference is hereby abridged and validated so that this case conference is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Haché Initial Affidavit.

COURT-APPOINTED MEDIATOR

3. **THIS COURT ORDERS** that Justice Sean Dunphy is hereby appointed, as an officer of the Court and shall act as a neutral third party (the “**Court-Appointed Mediator**”) to assist the Applicant and its relevant stakeholders with the mediation of the following issues:

- (a) the review and restructuring of the Applicant’s existing academic programs;
- (b) the review and restructuring of the faculty necessary to deliver the Applicant’s restructured academic programs;
- (c) a new collective agreement between the Applicant and LUFA, including resolving all outstanding grievances;
- (d) the review and restructuring of the Applicant’s Federated Universities’ model;
- (e) the framework for the Applicant’s restructuring and future operations; and
- (f) any other matters that are referred to the Court-Appointed Mediator by the Applicant, the Monitor, the relevant stakeholders or this Court;

(together, the “**Mediation Objectives**”).

4. **THIS COURT ORDERS** that in carrying out his mandate, the Court-Appointed Mediator may, among other things:

- (a) adopt processes, procedures, and timelines which, in his discretion, he considers appropriate to facilitate an effective and efficient negotiation of the Mediation Objectives (the “**Mediation Process**”); and
- (b) consult with any appointed representative(s) of the parties relevant to the Mediation Objectives, the Monitor, the Applicant, and such creditors, stakeholders of the Applicant, and other persons the Court-Appointed Mediator considers appropriate.

5. **THIS COURT ORDERS** that the Monitor shall provide the Court-Appointed Mediator with such assistance as the Court-Appointed Mediator shall reasonably request.

6. **THIS COURT ORDERS** that the Mediation Confidentiality Protocol (the “**Protocol**”) attached hereto as Schedule “A” is hereby approved and that the entirety of the Mediation Process or anything reasonably incidental to the Mediation Process shall be subject to the Protocol.

7. **THIS COURT ORDERS** that the Court-Appointed Mediator is authorized to take all steps and to do all acts reasonably necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

8. **THIS COURT ORDERS** that, in addition to the rights and protections afforded as an officer of this Court, the Court-Appointed Mediator shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order. Nothing in this Order shall derogate from the protections afforded to a person pursuant to Section 142 of the *Courts of Justice Act* (Ontario).

9. **THIS COURT ORDERS** that the Court and the Court-Appointed Mediator may communicate between one another directly to discuss, on an ongoing basis, the conduct of the Mediation Process and the manner in which it will be coordinated with the CCAA proceedings, including but not limited to individual matters referred specifically by the Court to the Court-Appointed Mediator for resolution.

10. **THIS COURT ORDERS** that the Court shall not disclose to the Court-Appointed Mediator how the Court will decide any matter which may come before the Court for determination

and the Court-Appointed Mediator will not disclose to the Court the negotiating positions or confidential information of any of the parties in the Mediation Process.

GENERAL

11. **THIS COURT ORDERS** that the Applicant and the Monitor may apply to this Court from time to time for directions from this Court with respect to this Order, or for such further order or orders as any of them may consider necessary or desirable to amend, supplement or clarify the terms of this Order.

12. **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.

13. **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.

14. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order, and is enforceable without any need for entry and filing.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

FEB 05:2021

PER / PAR:



CHIEF JUSTICE G.B. MORAWETZ

SCHEDULE "A" to Proposed Form of Mediator Appointment Order

Court File No.: 21-CV-00656040-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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**

MEDIATION CONFIDENTIALITY PROTOCOL

1. THE PROCESS:

Pursuant to the Court's Order (the "**Mediation Order**"), Justice Sean Dunphy was appointed as an officer of the Court and to act as a neutral third party (the "**Court-Appointed Mediator**") to assist the Applicant and stakeholders with a mediation of various issues in the Applicant's CCAA proceeding. The Mediation Order authorizes the Court-Appointed Mediator to adopt processes, procedures, and timelines that, in his discretion, are considered appropriate to facilitate an effective and efficient mediation. Further to that authority, this Mediation Confidentiality Protocol shall apply to all written and oral communications related to or arising out of the mediation undertaken pursuant to the Mediation Order (the "**Mediation**").

2. PARTY AND MONITOR CONFIDENTIALITY:

All written and oral communication at the Mediation shall be deemed to be without prejudice settlement discussions. For the purposes of this section, a Mediation communication shall also include all conduct, statements, discussion, promises, offers, views, opinions, admissions and communications for purposes of conducting, considering, initiating, continuing, or reconvening the Mediation together with the delivery and exchange of any documents in the course of the Mediation made by any party, their agents, employees, representatives, or other invitees, and by the Court-Appointed Mediator.

The parties and the Monitor acknowledge and agree that:

- a) the Mediation is a settlement negotiation;
- b) the Mediation is confidential and no stenographic, visual, or audio recordings shall be made;

- c) no Mediation communication shall be discoverable, admissible or referred to in Court for any purpose, including impeachment in the action or in any other proceeding or to establish the meaning and/or validity of any settlement or alleged settlement arising from the Mediation, and shall not be discussed with anyone, provided that communications otherwise admissible or subject to discovery do not become inadmissible or protected from discovery or admission by reason of their use in Mediation;
- d) any notes, records, statements made, discussions had, and recollections of the Court-Appointed Mediator in conducting the Mediation shall be confidential and without prejudice and protected from disclosure for all purposes; and
- e) except as permitted by law, the parties will not subpoena or otherwise require the Court-Appointed Mediator to testify or produce the records or notes in an action or in any other proceeding.

3. MEDIATOR CONFIDENTIALITY:

During the Mediation process, the Court-Appointed Mediator may disclose to either party any information provided by either party, unless the disclosing party has specifically requested the Court-Appointed Mediator to keep the information confidential, in which case the Court-Appointed Mediator will attempt to keep that information in confidence.

The Court-Appointed Mediator will not disclose to anyone who is not a party to the Mediation anything said, or any materials submitted to the Court-Appointed Mediator, except:

- a) where applicable, to the lawyers or other professionals retained on behalf of the parties or to non-parties consented to in writing by the parties, as deemed appropriate or necessary by the Court-Appointed Mediator;
- b) to the Court, to the extent specifically permitted in the Mediation Order; or
- c) where otherwise ordered to do so by a judicial authority or where required to do so by law.

Except as noted above, the notes, records, statements made, and recollections of the Court-Appointed Mediator shall be confidential and protected from disclosure for all purposes.

4. CONSENT TO THIS AGREEMENT:

Each party present during all or any part of the Mediation shall review this Mediation Confidentiality Protocol and agrees to proceed with the Mediation on the terms herein contained.

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**

Court File No. CV-21-00656040-00CL

ONTARIO
**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**ORDER
(Appointment of Mediator)**

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APPENDIX “D”

ENDORSEMENT RE: APPOINTMENT OF MEDIATOR

CITATION: Laurentian University of Sudbury, 2021 ONSC 951
COURT FILE NO.: CV-21-656040-00CL
DATE: 2021-02-05

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*, for the Applicant

Michael Kennedy, Labour Counsel for the Applicant

Charles Sinclair, Susan Philpott and David Wright, for Laurentian University
Faculty Association ("LUFA")

Ashley Taylor and Ben Muller, for the Monitor

Sharon Hamilton, Ernst & Young Inc., the Court-appointed Monitor

HEARD: February 5, 2021

ENDORSEMENT

[1] In my Endorsement of February 1, 2021, at paragraphs 72 to 79, I addressed the possible appointment of a Court-Appointed Mediator to oversee negotiations with respect to the various restructuring initiatives necessary for the Applicant to achieve a successful restructuring.

[2] In recognition of the compressed timeline in these proceedings, I indicated that if the Applicant, LUFA and the Monitor wished to address this matter prior to the Comeback Hearing on February 10, 2021, a case conference could be scheduled through the Commercial List Office. A case conference was held this morning to consider this issue.

[3] The parties in attendance all support the immediate appointment of a mediator and are agreeable to the appointment of the Honourable Justice Sean F. Dunphy as Court-Appointed Mediator.

[4] The parties are also in agreement with the draft form of order presented by the Applicant (the "Mediator Appointment Order"), which I have signed.

[5] The Mediator Appointment Order sets out the Mediation Objectives and the Mediation Process.

[6] Justice Dunphy can consult with such parties as he considers appropriate, including the Senate of Laurentian University.

[7] I express my appreciation to the parties in arriving at a consensual resolution of the issues addressed today.



CHIEF JUSTICE G.B. MORAWETZ

Date: February 5, 2021