

**UNOFFICIAL COURTESY TRANSLATION OF THE
NOTICE OF MOTION**

COURT FILE NO.: CV-21-656040-00CL

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LAURENTIAN UNIVERSITY OF SUDBURY

NOTICE OF MOTION

(s. 11, 23 of the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C -36)
(Returnable April 8, 2021)

The Assemblée de la francophonie de l'Ontario will make a motion to Chief Justice Morawetz on April 8, 2021, at 10:00 a.m., or as soon as possible.

PROPOSED METHOD OF HEARING: We propose that the motion be heard by video conference via Zoom or another video conferencing platform approved by the Court.

THE MOTION IS FOR:

- 1) If necessary, an order abridging the time for service of this Notice of Motion and Responding Motion Record to the Notice of Motion;
- 2) An order, pursuant to section 11 of the *Companies' Creditors Arrangement Act*, (the "CCAA") that:
 - i. Laurentian University ("LU") immediately initiate consultations with the Assemblée de la francophonie de l'Ontario (the "AFO") as representative of the Franco-Ontarian community regarding any restructuring plan or financial sustainability initiatives that may impact the status or use of French, including:
 - a. services offered in French or that must be offered in French;
 - b. programs offered partially or entirely in French;
 - c. courses offered in French;
 - d. persons employed by LU to teach courses, or offer programs or services in French;
 - e. French-language academic research and publications;
 - f. enrolment levels of French-speaking students, including quotas thereof;

**UNOFFICIAL COURTESY TRANSLATION OF THE
NOTICE OF MOTION**

- g. governance and administration, including the structure and sustainability of LU's relationships with its three federated universities;
 - h. community use of LU facilities and services; and
 - i. funding allocations with respect to all of the above;
 - ii. LU immediately enter into joint negotiations with the AFO and the University of Sudbury ("US") to evaluate any financial or structural proposal that may impact the restructuring in accordance with the objectives of the CCAA and the rights of the Franco-Ontarian community, including those arising from LU's designation as a "public service agency" within the meaning of the *French Language Services Act*, RSO 1990, c F.32, section 23 of the *Canadian Charter of Rights and Freedoms* (the "**Charter**") and Part VII of the *Official Languages Act*, RSC 1985, c 31 (4th suppl.) (the "**OLA**");
 - iii. the monitor and the mediator shall facilitate and oversee the consultations (at 2.i.) and negotiations (at 2.ii.); and
 - iv. the monitor shall advise the Court regarding any financial or structural proposal that may impact the above-mentioned items (at 2.i.) and evaluate its impact on:
 - a. the rate of recovery of creditor claims;
 - b. the restructuring plan and measures that may impact the status or use of French; and
 - c. the language and constitutional rights of the Franco-Ontarian community;
- 3) An order, pursuant to sections 11 and 23 of the CCAA, directing the monitor to advise the Court on the reasonableness and fairness of any restructuring plan and any compromise or arrangement with creditors with regards to the status and use of French at LU;
- 4) Any other order that the Court may deem just and appropriate.

THE GROUNDS FOR THE MOTION ARE:

I. The procedural context

- 1. LU is insolvent and has obtained CCAA protection.
- 2. On February 1, 2021, an initial Order for protection was granted to LU (2021 ONSC 659). The initial Order was amended and extended on February 11 until April 30, 2021 (2021 ONSC 1098).
- 3. The Court granted a stay of proceedings pursuant to s. 11.02(1) of the CCAA prohibiting the commencement of any proceeding against LU regarding *inter alia* violations of section 5 of the *French Language Services Act* and section 23 of the *Charter*.

**UNOFFICIAL COURTESY TRANSLATION OF THE
NOTICE OF MOTION**

4. LU is negotiating with stakeholders to implement long-term measures aimed at achieving financial sustainability and the restructuring of its program offering. LU is also evaluating the structure and sustainability of its ongoing relationships with its three federated universities, one of which is also designated as a “public service agency” within the meaning of the *French Language Services Act* (i.e. US).
5. Ernst and Young is the monitor and shall, *inter alia*:
 - i. advise the Court on the reasonableness and fairness of any compromise or arrangement that is proposed between LU and its creditors (para. 23(1)i) of the CCAA); and
 - ii. carry out any other functions in relation to LU that the court may direct (para. 23(1)k) of the CCAA).
6. The Court appointed Justice Dunphy as mediator to address, *inter alia*, (i) the review and restructuring of LU’s existing academic programs; (ii) the review and restructuring of the faculty required to deliver LU’s restructured academic programs, and (iii) the review and restructuring of the model of LU’s federated universities.
7. The mediator was ordered to assist LU on any matters that are referred to him by LU, the monitor, stakeholders or this Court (Order dated February 5, 2021, at paras. 3 and 5). The Court has granted the mediator the discretionary power to consult any parties.
8. On March 11, 2021, the Board of Regents of US unanimously passed a resolution mandating the President and Vice-Chancellor of US, John Meehan, to:

undertake all necessary steps to ensure that the University of Sudbury becomes, as soon as possible, a university administered and governed by and for the Ontario Francophone community:

 - a) whose programming and services are offered in French;
 - b) whose working language is French;
 - c) who assumes all responsibilities arising from the partial designation of the University of Sudbury under the *French Language Services Act* and who will seek full designation under said Act;
 - d) ensure one of its objectives is the training of professionals required to implement section 23 of the *Canadian Charter of Rights and Freedoms* in Ontario; and
 - e) to explore whether it is desirable to develop partnerships with other post-secondary institutions.

(Affidavit of P. Riopel at para. 3)

**UNOFFICIAL COURTESY TRANSLATION OF THE
NOTICE OF MOTION**

9. On March 15, 2021, the AFO asked the Senate and the Board of Governors of LU to agree to discuss a “transfer” of the programs, courses and services in French and the associated facilities and resources to US (Affidavit of C. Jolin at para. 13).
10. On March 19, 2021, President Haché responded to the AFO, stating that due to the proceedings that had been commenced under the CCAA, LU “cannot comment on developments in this process nor engage in discussions outside this process regarding its academic programs or its relationship with its federated partners” [emphasis added] (Affidavit of C. Jolin at para. 14).
11. The AFO has exhausted all possible avenues to participate in the proceeding to assert the constitutional and quasi-constitutional rights of the Franco-Ontarian community through the monitor, the mediator and LU.
12. The AFO is turning to this honourable Court as a last resort.

II. The CCAA allows for the participation of stakeholders and requires that interests other than those of the debtor and the creditors be taken into account

13. The exclusion of the representative of the Franco-Ontarian community by LU, the monitor and the mediator is fundamentally inconsistent with the objectives of the CCAA, including that of protecting the public interest (2020 SCC 10, para. 40). The consideration of the public interest is especially important in this case because the proceeding has been brought by a publicly funded post-secondary institution that provides the Franco-Ontarian community with services, courses and programs that are protected under the *Charter* and the *French Language Services Act*.
14. The CCAA gives the Court broad discretion to make appropriate orders consistent with the objectives of the Act. The purpose of the orders sought in this Notice of Motion is to ensure that the constitutional and quasi-constitutional rights of the Franco-Ontarian community are upheld.
15. The CCAA allows stakeholders recognized as “social stakeholders” to participate in proceedings brought under the Act. The interests at stake in a restructuring are not limited to the interests of the debtor and the creditors.
16. A variety of interests by which the Court must be guided have been identified by the case law, for example those of travellers ([2003] OJ No. 4822 (SC), para. 13), television viewers (2010 ONSC 4209, para. 26), blood donation recipients ([1998] OJ No. 3306 (SC), para. 50), *Blue Jays* fans ([1998] OJ No. 6547 (SC), para. 7), and the interest of preserving sites of ecological, heritage and cultural significance (2015 BCSC 656, para. 66). The interest of protecting the constitutional and quasi-constitutional rights of the Franco-Ontarian community must therefore be among the interests by which the Court must be guided.
17. The public interest must be considered by the Court at every stage of these proceedings. The Supreme Court of Canada has recognized that “on occasion the

**UNOFFICIAL COURTESY TRANSLATION OF THE
NOTICE OF MOTION**

broader public interest will be engaged by aspects of the reorganization and may be a factor against which the decision of whether to allow a particular action will be weighed” ([2010] 3 SCR 379, para. 60).

18. The Court must also balance the various interests at stake when assessing the fairness and reasonableness of the proposed compromise or plan of arrangement. This requires a comparison of all alternatives to the proposed restructuring plan.

III. The AFO has the standing to act as representative of the Franco-Ontarian community

19. The AFO is the umbrella organization and political voice of the Franco-Ontarian community. Its mandate is to consult with and speak on behalf of the Franco-Ontarian community (Affidavit of C. Jolin at para. 3). The Franco-Ontarian community supports the AFO’s participation in the proceedings (Affidavit of T. Bissonnette at para. 10, Affidavit of C. Jolin, Exhibit CJ-1).
20. The members of the AFO and the community it represents have interests in the CCAA proceedings, including as students or faculty of LU, and as parents who are rights holders under section 23 of the *Charter* (Affidavit of C. Jolin at para. 3).
21. For example, the Regroupement des professeures et professeurs francophones de l’Université Laurentienne (the “**RPF**”) has shared its concerns with the AFO regarding the potential impacts of the restructuring of programs and has asked the AFO to become involved as its union refused to address the status and use of French at LU by asserting the rights of Francophone faculty (Affidavit of T. Bissonnette at para. 10).
22. The Franco-Ontarian community, represented by the AFO, is more than a social stakeholder; its interest arises out of the constitutional and quasi-constitutional rights of the community it represents and its members (2015 QCCS 1920, paras. 64-65 and 87-89). The protection afforded by the CCAA does not allow these rights to be “suspended” and they cannot be ignored, much less flouted, in the restructuring plan and the plan of arrangement to be determined under the CCAA.
23. The AFO’s participation is not intended to short-circuit the restructuring process or take over the role of the creditors. On the contrary, the AFO wants to ensure that LU and this Court explore and consider structural and financial alternatives that would protect rather than violate the constitutional and quasi-constitutional rights of the Franco-Ontarian community. These structural and financial alternatives could even be favourable to the creditors. The AFO is not asking to have a say in what share of the recovery each creditor will receive (i.e., its “share of the pie”) under the plan of arrangement. The AFO’s participation in the proceedings is limited to matters relating to the status and use of French at LU and the defence of the constitutional and quasi-constitutional rights of the Franco-Ontarian community.

**UNOFFICIAL COURTESY TRANSLATION OF THE
NOTICE OF MOTION**

IV. The constitutional and quasi-constitutional rights the AFO wishes to defend through its participation in the LU restructuring process

24. The AFO's standing arises, on the one hand, from the Franco-Ontarian community's right to be consulted and, on the other hand, from its financial interest as a holder of constitutional and quasi-constitutional rights that give rise to a corresponding funding obligation on the part of the provincial and federal governments.
25. LU and one of its federated universities, US, are designated as "public service agencies" within the meaning of the *French Language Services Act*. Consequently, members of the public have a quasi-constitutional right ((2001) 56 O.R. (3d) 577 (CA)) to communicate with LU and US, and to receive services from them in French. The province must provide the necessary funding to ensure that these public service agencies meet their legal obligations.
26. Specifically, under subsection 2(1) of the *Designation of Public Service Agencies Regulation* made under the *French Language Services Act*, LU is required to provide, and the province is required to fund, the following programs and services:
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| <p>1. The provision of programs leading to the following degrees:</p> <ul style="list-style-type: none">i. Bachelor of Commerce (B.Comm.).ii. Bachelor of Education (B.Ed.).iii. Bachelor of Physical and Health Education (B.P.H.E.).iv. Bachelor of Science (B.Sc.).v. Bachelor of Science in Nursing (B.Sc.N.).
vi. Bachelor of Social Work (B.S.W.).vii. Bachelor of Arts (B.A.).viii. Bachelor of Health Sciences (B.H.Sc.).
ix. Doctor of Philosophy (Ph.D.) in Human Studies.x. Master of Human Kinetics (M.H.K.).xi. Master of Social Work (M.S.W.).xii. Master of Arts (M.A.).xiii. Master of Health Sciences (M.H.Sc.). <p>2. Academic support services provided to students and prospective students by the schools or departments of the University that offer the degrees listed in paragraph 1.</p> <p>3. Non-academic services provided to students by the University.</p> | <p>1. La prestation de programmes menant aux grades suivants :</p> <ul style="list-style-type: none">i. Baccalauréat en commerce (B.Com.).ii. Baccalauréat en éducation (B.Éd.).iii. Baccalauréat en éducation physique et santé (B.É.P.S.).iv. Baccalauréat ès sciences (B.Sc.).v. Baccalauréat en sciences infirmières (B.S.I.).vi. Baccalauréat en service social (B.S.S.).vii. Baccalauréat ès arts (B.A.).viii. Baccalauréat ès sciences de la santé (B.Sc.S.).ix. Doctorat en philosophie (Ph.D.) en sciences humaines.x. Maîtrise en activité physique (M.A.P.).xi. Maîtrise en service social (M.S.S.).xii. Maîtrise ès arts (M.A.).xiii. Maîtrise ès sciences de la santé (M.Sc.S.). <p>2. Les services de soutien aux études qui sont fournis aux étudiants et aux éventuels étudiants par les écoles ou départements de l'Université qui offrent les grades mentionnés à la disposition 1.</p> <p>3. Les services non liés aux études qui sont fournis aux étudiants par l'Université.</p> |
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**UNOFFICIAL COURTESY TRANSLATION OF THE
NOTICE OF MOTION**

27. Similarly, under subsection 3.2(1) of the *Designation of Public Service Agencies Regulation* made under the *French Language Services Act*, US is required to provide, and the province is required to fund, the following programs and services:
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| 1. The provision of French-language and bilingual undergraduate programs leading to a Bachelor of Arts degree, with the exception of the Indigenous studies program, including academic support services for those programs. | 1. La prestation de programmes de premier cycle en français et bilingues menant à un baccalauréat ès arts, à l'exception du programme d'études autochtones, y compris les services de soutien aux études liés à ces programmes. |
| 2. Reception services, the sale of course materials, the provision of parking passes, the distribution of internal mail, library services and the provision of housing in university residences. | 2. Les services de réception, la vente de matériel de cours, la fourniture de permis de stationnement, la distribution du courrier interne, les services de bibliothèque et la fourniture de logements dans les résidences universitaires. |
28. For example, subsection 2(1) of the *Designation of Public Service Agencies Regulation* protects the provision of programs leading to a “Bachelor of Education (B.Ed.).” There is a significant shortage of Francophone teachers in Ontario, and as a result, Francophone school boards in Ontario and most Anglophone school boards offering French immersion or other French-language programs are under-staffed and rely on under-qualified staff (Affidavit of D. Chartrand at para. 7, Exhibit DC-1).
29. Under section 23 of the *Charter*, the province has a positive obligation to implement institutional measures to give effect to the Franco-Ontarian community’s right to receive an educational experience in French that is substantively equivalent to the educational experience of the Anglophone majority, and this requires the allocation of resources to finance education with public funds. This positive obligation includes the obligation to provide sufficient operational funding to post-secondary institutions, including LU and US, to train a sufficient number of teachers and other staff to enable Ontario’s twelve Francophone school boards to achieve substantive equivalence.
30. In this regard, the Supreme Court of Canada recently explained that “a school whose teachers are not properly trained cannot provide [the] substantively equivalent educational experience” to which Francophone communities are entitled under section 23 of the *Charter* (2020 SCC 13, para. 115).
31. LU applies a specific provincial policy on the training of teachers and staff in order to fulfill the obligations arising out of section 23 of the *Charter*.
32. Taking into account the particular needs of the Franco-Ontarian community requires meaningful consultation (2009 SCC 8, paras. 51-53). Moreover, LU receives federal funding under the *Protocol for Agreements for Minority-Language Education and Second-Language Instruction 2013-2014 to 2017-2018*, in part due to its “bilingual” mandate, and this protocol requires, at a minimum, effective, meaningful consultation with the Franco-Ontarian community, the ultimate beneficiary of this funding in the province (Affidavit D. Hurtubise at para. 28, Exhibit DH-5 at p. 16).

**UNOFFICIAL COURTESY TRANSLATION OF THE
NOTICE OF MOTION**

33. Government decisions on post-secondary education and the decisions of LU have a major impact on French-language schools. Accordingly, when exercising its discretion over its programs and structures, LU must take into account the particular needs of the Franco-Ontarian community, even in CCAA proceedings (2015 QCCS 1920, para. 74; 2020 BCSC 1586, paras. 128-129).
34. Under section 41 of the *OLA*, the federal government has a positive obligation to implement its commitment to “[enhance] the vitality of the English and French linguistic minority communities and [support] and [assist] their development,” and to “[foster] the full recognition and use of both English and French in Canadian society.”
35. The Court should also take into account the fact that since it was founded, LU has had a well-established practice of consulting and involving the Franco-Ontarian community before implementing major reforms (Affidavit of S. Dupuis at paras. 6, 9, 31, 48-49). This practice of LU now has a constitutional and quasi-constitutional basis under the *Charter* and the *French Language Services Act*.
36. Under section 43 of the *OLA*, the Minister of Canadian Heritage “shall take such measures as that Minister considers appropriate to advance the equality of status and use of English and French in Canadian society” and may take measures to:

enhance the vitality of the English and French linguistic minority communities in Canada and support and assist their development (s. 43(1)(a) of the *OLA*)

favoriser l'épanouissement des minorités francophones et anglophones du Canada et à appuyer leur développement (art. 43(1)(a) de la *LLO*)

encourage and support the learning of English and French in Canada (s. 43(1)(b) of the *OLA*)

encourager et appuyer l'apprentissage du français et de l'anglais (art. 43(1)(b) de la *LLO*)

encourage and assist provincial governments to support the development of English and French linguistic minority communities generally and, in particular, to offer provincial and municipal services in both English and French and to provide opportunities for members of English or French linguistic minority communities to be educated in their own language (s. 43(1)(d) of the *OLA*)

encourager et aider les gouvernements provinciaux à favoriser le développement des minorités francophones et anglophones, et notamment à leur offrir des services provinciaux et municipaux en français et en anglais et à leur permettre de recevoir leur instruction dans leur propre langue (art. 43(1)(d) de la *LLO*)

encourage and assist provincial governments to provide opportunities for everyone in Canada to learn both English and French (s. 43(1)(e) of the *OLA*).

encourager et aider ces gouvernements à donner à tous la possibilité d'apprendre le français et l'anglais (art. 43(1)(e) de la *LLO*)

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V. The constitutional and quasi-constitutional rights of the Franco-Ontarian community are being ignored by LU

37. The Franco-Ontarian community is concerned about LU's disregard for French, and even more so since the university applied for protection under the CCAA (Affidavit of D. Hurtubise at para. 31, Exhibit DH-7; Affidavit of T. Bissonnette at paras. 18-20, Exhibits TB-4, TB-5; Affidavit of A. Lacassagne at para. 19, Exhibit AL-5).
38. In the absence of a Court order, the constitutional and quasi-constitutional rights of the Franco-Ontarian community will be ignored in the restructuring proceedings.

A. The CCAA proceeding does not take into account the status and use of French

39. President Haché's affidavit of January 30, 2021 in support of LU's application to commence CCAA proceeding does not address the status and use of French (Affidavit of D. Hurtubise at para. 32). Moreover, President Haché's affidavit ignores LU's designation under the *French Language Services Act*, the constitutional and quasi-constitutional rights of the Franco-Ontarian community, and their effects on French-language programs, courses and services at LU (Affidavit of D. Hurtubise at para. 32).
40. No details are provided on the websites of either the monitor or LU as to how the status and use of French will be affected (Affidavit of C. Jolin at para. 10). The monitor refuses to share anything about LU's proposed restructuring with the AFO that LU has not decided to disclose (Affidavit of C. Servant-L'Heureux at para. 3).
41. This proceeding is being conducted in English and the documentation available is almost entirely in English, even in the French version of the monitor's website (Affidavit of C. Jolin at para. 10).
42. As part of its restructuring plan, LU will identify savings relating to its least profitable programs, courses and services (Affidavit of President Haché in support of LU's application at paras. 12, 302; Affidavit of T. Bissonnette at para. 12, Exhibit TB-12). These changes will have a disproportionate impact on the smallest programs, courses and services offered in French (Affidavits of T. Bissonnette at para. 19; Affidavit of D. Hurtubise at para. 20) and will be implemented by individuals or entities that do not have a full understanding or appreciation of the right to receive funding under the *French Language Services Act*, other language rights, and the corresponding provincial and federal obligations to provide funding (Affidavit of A. Lacassagne at para. 17, Exhibit AL-4; Affidavit of D. Hurtubise, at para. 25).
43. The restructuring of LU is already affecting French Ontario and causing disproportionate harm to numerous members of the Franco-Ontarian community (Affidavit of C. Jolin at para. 5).

**UNOFFICIAL COURTESY TRANSLATION OF THE
NOTICE OF MOTION**

44. On March 8, 16 and 17, 2021, the President published open letters addressed to the community (Affidavit of T. Bissonnette at paras. 21, 25, Exhibits TB-6, TB-9, TB-13, TB-15). President Haché states that “[LU’s] commitment to Ontario’s Francophone community is a primary goal at Laurentian University” (Affidavit of T. Bissonnette at para. 25, Exhibit TB-9) and indicates that LU will propose “a new Laurentian that celebrates and preserves much of the culture that has defined us: [...] where Francophone programming is valued and where our bilingual character is celebrated” (Affidavit of A. Lacassagne at para. 8; affidavit of T. Bissonnette at para. 30, Exhibit TB-13).
45. As with earlier commitments made by LU with respect to French, no measures to deliver on this commitment have been announced, and Francophone faculty are skeptical (Affidavit of A. Lacassagne at paras. 5-8; Affidavit of T. Bissonnette at paras. 25-27, 29-31, Exhibit TB-10, TB-11, TB-13).

B. LU has been neglecting the status and use of French for decades

46. The Franco-Ontarian community’s concerns about the status and use of French in the CCAA proceeding stem in large part from LU’s failure in the past to honour its commitments to French and French-language courses, programs and services. LU’s charter states that it is a “bilingual” institution, yet French-language programs, courses and services are not managed or controlled by the Franco-Ontarian community (Affidavit of D. Hurtubise at paras. 3-5). LU neglects the status and use of French. English predominates at LU in the provision of courses and services as well as in governance, despite the fact that the university has been informed of numerous deficiencies and dissatisfaction among its Francophone faculty (Affidavits of D. Hurtubise at paras. 6-23; affidavit of T. Bissonnette at paras. 12-13 and Affidavit of A. Lacassagne at para. 3).
47. The Supreme Court of Canada has explained on numerous occasions that the Francophone minority cannot always be certain that the majority will take into account all its linguistic and cultural concerns, and that this failure is not necessarily intentional: the majority cannot be expected to understand and appreciate the various ways in which decisions may affect the language and culture of the minority ([1990] 1 SCR 342, p. 372; 2000 SCC 1, para. 43; 2020 SCC 13, para. 86).
- a. *LU is not fulfilling its obligations arising out of its designation under the French Language Services Act*
48. LU demonstrates a lack of understanding – and publicly expresses its misconception – of the effect and scope of the designation under the *French Language Services Act* (Affidavit of A. Lacassagne, at para. 17, Exhibit AL-4). This designation protects the services that were offered by LU when LU was designated under the *French Language Services Act* in 2014 and guarantees the offering of those services in French ((2001) 56 O.R. (3d) 577 (CA), para. 160).

**UNOFFICIAL COURTESY TRANSLATION OF THE
NOTICE OF MOTION**

49. Some of the degree programs designated under the *French Language Services Act* regulation that are protected under the *French Language Services Act* are no longer offered (Affidavit of D. Hurtubise at para. 25). The full range of programs, courses and services offered by LU on April 30, 2014, when the regulation designating LU under the *French Language Services Act* was made, is not known to the AFO (Affidavit of D. Hurtubise at para. 24).
50. LU has touted its designation as a concrete commitment on its part (Affidavit of A. Lacassagne at para. 17). Yet the offering of programs, courses and services in French has not increased since April 30, 2014 – on the contrary (Affidavit de D. Hurtubise at para. 24; Affidavit of A. Lacassagne at para. 17).
51. Despite its designation under the *French Language Services Act*, no program in French leading to a Master of Human Kinetics (M.H.K.) appears on the LU website (Affidavit of D. Hurtubise at para. 24). The Bachelor of Commerce (B.Comm.) in French, also designated under the Act, does not appear on the LU website either (Affidavit of D. Hurtubise at para. 24). Admissions to French-language programs in Mathematics, Environmental and Sustainability Studies, Drama, Anthropology, Archeology, Music, Outdoor Adventure Leadership and Geography, eight French-language programs leading either to a Bachelor of Science (B.Sc.) or Bachelor of Arts (B.A.), both designated under the *French Language Services Act*, were also suspended in the summer of 2020 (Affidavit of D. Hurtubise at para. 24).
- b. LU does not value access to programs and courses in French*
52. A gap has developed between enrolments in French and English language programs, primarily as a result of the large amount of money LU has invested in creating new programs in English (between 2000 and 2012) (Affidavit of D. Hurtubise at paras. 8, 15, 18, 21, Exhibits DH-3 and DH-4). Also, LU has invested less in creating courses and programs in French (even for some programs LU had publicly committed to investing in and promoting in its strategic plan (2012-2017)) (Affidavit of D. Hurtubise at para. 21, Exhibit DH-3; Affidavit of A. Lacassagne, Exhibit AL-1)). Also, from 2000 to 2017, LU chose to focus on promoting its English-language programs abroad (Affidavit of D. Hurtubise at para. 16, Exhibits DH-3 and DH-4), neglecting the recruitment of Francophone students (Affidavit of D. Hurtubise at para. 15; Affidavit of A. Lacassagne at para. 3).
53. The offering of courses and programs in French has also decreased at LU, and this has contributed to the decline in enrolment in French-language programs. The reduction in faculty has led to a decrease in the offering of courses and programs in French (Affidavit of A. Lacassagne at paras. 10-11).

**UNOFFICIAL COURTESY TRANSLATION OF THE
NOTICE OF MOTION**

- c. *Members of the Franco-Ontarian community occupy a secondary place in LU governance and bodies*
54. Decisions affecting the status and use of French at LU, including the creation of programs in French, are the responsibility of the President and Vice-President, Academic, and not of Francophone bodies (Affidavit of D. Hurtubise at paras. 3-4).
55. In late 2013 or early 2014, the powers of the only person within the university's governance structure whose mandate is to defend and promote French at LU, the Associate Vice-President, Academic (Francophone Affairs) ("**AVPAFA**"), were significantly curtailed (Affidavit of D. Hurtubise at paras. 7-8). Since the Vice-President has become only an associate, he is no longer a member of the President's executive committee and no longer has a budget to implement initiatives (only a modest budget for office supplies) (Affidavit of D. Hurtubise at para. 8).
56. Moreover, the President and Vice-President, Academic, of LU, to whom the AVPAFA reports, oversee and limit in various ways the actual ability of the AVPAFA to exclusively and effectively defend and promote French. For example, a former Vice-President blocked an initiative to offer preferential tuition fees to international students who wanted to study in French at LU – despite the fact that this is a common practice in Ontario – on the sole ground that students enrolled in English-language courses would not benefit from it (Affidavit of D. Hurtubise at para. 8).
57. LU also limits the effectiveness of the person holding the position of AVPAFA by requiring that they perform duties other than those relating to Francophone education and affairs (Affidavit of D. Hurtubise at para. 9; Affidavit of T. Bissonnette at para. 17).
58. The Board of Governors and Senate Joint Committee on Bilingualism lacks commitment, openness and sensitivity to Francophone faculty and French-language programs, courses and services (Affidavit of T. Bissonnette at para. 14). Contrary to the Senate's bylaws, its members do not meet often enough (no meetings have been held since March 2020) (Affidavit of T. Bissonnette at para. 14, Exhibit TB-2). The AVPAFA is a non-voting member (Affidavit of T. Bissonnette at para. 14, Exhibit TB-3).
- d. *The use of English predominates at LU*
59. LU's bilingualism policy is not adhered to. For example, a large portion of LU faculty does not understand French (Affidavit of A. Lacassagne at para. 18) and a number of executives have been hired who were not able to express themselves in French either orally or in writing (Affidavit of D. Hurtubise at para. 13). As a result, meetings of LU's governing bodies take place primarily in English (Affidavit of D. Hurtubise at para. 11). LU frequently uses only English or poor-quality French in its signage and communications (Affidavit of D. Hurtubise at para. 19). The French

**UNOFFICIAL COURTESY TRANSLATION OF THE
NOTICE OF MOTION**

version of LU's signage and communications does not always appear as prominently as the English version (Affidavit of D. Hurtubise at para. 19).

60. LU's Centre for Academic Excellence offers some of its services in English only, such as the university preparation program, and offers English courses but not French courses (Affidavit of D. Hurtubise at para. 18).
61. LU ignores and violates the constitutional and quasi-constitutional rights of the Franco-Ontarian community, and the record in this case demonstrates that LU does not intend to fulfill its obligations and uphold the rights of the Franco-Ontarian community in its restructuring of programs, courses and services. The position adopted by President Haché is rooted in the logic of preserving the "bilingual" institution rather than listening to the Franco-Ontarian community that created it, and that LU claims it wants to serve.

VI. The solution chosen by the AFO and the Franco-Ontarian community to rectify LU's deficiencies with regard to the status and use of French is an institution "by" and "for" Francophones

62. For several years, the Franco-Ontarian community has been expressing its desire and need for a university "by" and "for" Francophones in mid-northern and northern Ontario (Affidavit of A. Lacassagne at paras. 12, 15-16, Exhibits AL-2 and AL-3; Affidavit of S. Dupuis at para. 100) and it is currently reiterating this position (Affidavit of T. Bissonnette at paras. 23-24, 31, Exhibits TB-7, TB-8, TB-14).
63. Institutions "by" and "for" the community enhance the vitality of official language minority communities such as the Franco-Ontarian community. These communities need institutions that operate in their language and that provide services only in that language (in other words, homogeneous institutions), rather than "bilingual" institutions in which the majority language is the dominant language (Affidavit of R. Léger). The Franco-Ontarian community is not thriving in a "bilingual" LU.
64. The Provincial Forum on Post-Secondary Education in French Ontario revealed a consensus within the Franco-Ontarian community to strengthen access to French-language programs and to obtain university governance "by" and "for" Francophones extending to administration, finance, student life, university activities, research and physical infrastructure, including mid-northern and northern Ontario (Affidavit of A. Lacassagne at paras. 12, 15-16, Exhibits AL-2 at p. 3, AL-3 at pp. 4-5).
65. For example, as early as 2013, the Franco-Ontarian community was considering the possibility of splitting LU to create a French-language university (Affidavit of A. Lacassagne at para. 16, Exhibit AL-3 at p.20).
66. On March 12, 2021, the AFO organized a northern round table that brought together some sixty stakeholders and organizations representing the Franco-Ontarian communities of Sudbury and northern Ontario. They reiterated the community's

**UNOFFICIAL COURTESY TRANSLATION OF THE
NOTICE OF MOTION**

preference for a university “by” and “for” Francophones (Affidavit of C. Jolin at para. 11, Exhibit CJ-2).

67. That same day, US, one of LU’s federated universities, announced at a joint press conference with the AFO that US had decided, by a resolution of its Board of Regents passed unanimously on March 11, 2021, to become a university managed and controlled “by” and “for” the Franco-Ontarian community (Affidavit of P. Riopel at para. 3).
68. Key ministers in the Ontario and federal governments have expressed their interest in this project (Affidavit of P. Riopel at paras. 5-6, Exhibits PR-4, PR-5). Moreover, the federal government’s recent commitment to reform the official languages regime includes measures to address the shortage of teachers able to teach in French (Affidavit of D. Chartrand at para. 8, Exhibit DC-2).
69. The option put on the table by US appears to be a financially viable alternative (Affidavit of P. Riopel at para. 12).
70. The government of Ontario provides operational grants to LU, one of which is based on its “bilingual” mandate (Affidavit of D. Hurtubise at paras. 27-28). LU also receives additional federal funding which it is supposed to use to support French-language education (Affidavit of D. Hurtubise at para. 28). French-language programs, courses and services at LU should be financially viable (Affidavit of D. Hurtubise, at para. 29).
71. LU is not transparent regarding its allocation of the government funding it is supposed to use to support French-language education, and provides no information on the allocation of the money it receives (Affidavit of D. Hurtubise at para. 30). There is no accountability mechanism for the allocation of the funding received by LU for bilingualism and French. If it is the case, as the monitor and LU claim, that revenue from English-language programs and courses help “subsidize” French-language programs and courses (Affidavit of C. Servant-L’Heureux at para. 6), LU has failed to uphold the constitutional and quasi-constitutional obligations of government, as well as its own, to fund French-language programs, courses and services under s. 23 of the *Charter* and the *French Language Services Act*.
72. Conversely, if there are no deficits in French-language programs, courses and services, there is no need to cut any of them as part of the restructuring. Because of the lack of transparency and the exclusion of the AFO from the CCAA process, it is impossible to know what the actual situation is.
73. On March 19, 2021, sixty members of the RPF unanimously passed a resolution calling on LU to commit to allowing Francophones to manage and control French-language programs and the funding dedicated to those programs, establishing governance “by” and “for” Francophones (affidavit T. Bissonnette at para. 31, Exhibit TB-14).

**UNOFFICIAL COURTESY TRANSLATION OF THE
NOTICE OF MOTION**

74. LU has shown no intention of changing its structures and practices with respect to the Franco-Ontarian community; on the contrary, in an open letter, President Haché issued a message that flies in the face of the RPF resolution (affidavit T. Bissonnette at para. 33, Exhibits TB-15, TB-16).
75. LU's senior management says that it wants to preserve the university's unpopular "bilingual" structure, which does not have the support and confidence of the Franco-Ontarian community. LU is preparing to make what it considers to be "necessary" cuts to its Francophone component, but refuses to discuss its future with the representative of the Franco-Ontarian community. The exclusion of the AFO from the CCAA restructuring process is not in the best interest of LU, since even if it is able to regain its financial footing at the end of the process, it will have done so at the expense of, and without regard for, the Franco-Ontarian community to which it owes its very existence (Affidavit of S. Dupuis at paras. 19, 25, 27).
76. In the absence of a willingness on the part of LU to take concrete steps to understand and uphold the rights of the Franco-Ontarian community, the absence of a Francophone voice in the CCAA proceedings, as is generally the case at LU, will have the effect of undermining the status and use of French.
77. A meaningful consultation process with the spokesperson of the Franco-Ontarian community is needed, particularly in view of the confidential nature of the proceeding. The Court must intervene to craft an appropriate, properly-adapted role for the AFO at all stages of the CCAA proceeding to ensure that its process does not result in a restructuring plan and a plan of arrangement that exacerbate or lead to further violations of the rights of the Franco-Ontarian community.

LANGUAGE OF PROCEEDINGS:

78. Section 125 of the *Courts of Justice Act* provides that "[t]he official languages of the courts of Ontario are English and French." Section 126 provides that "[a] party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding." The AFO operates in French (Affidavit of C. Jolin at para. 4).

OTHER GROUNDS:

79. The *Amended and restated initial order* of February 11, 2021;
80. Sections 11 and 23 of the CCAA;
81. Sections 1 and 5 of the *French Language Services Act*, SRO 1990, c F.32;
82. *Designation of Public Service Agencies Regulation*, O. Reg. 398/93;
83. Section 23 of the *Canadian Charter of Rights and Freedoms*;
84. Sections 41 and 43 of the *Official Languages Act*, RSC 1985, c 31 (4th Supp.);

**UNOFFICIAL COURTESY TRANSLATION OF THE
NOTICE OF MOTION**

85. Sections 125 and 126 of the *Courts of Justice Act*, SRO 1990, c C.43;
86. The *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
87. The inherent and equitable jurisdiction of this Honourable Court;
88. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this motion:

1. the Affidavit of Carol Jolin;
2. the Affidavit of Pierre Riopel;
3. the Affidavit of Denis Hurtubise;
4. the Affidavit of Thierry Bissonnette;
5. the Affidavit of Aurélie Lacassagne;
6. the Affidavit of Rémi Léger;
7. the Affidavit of Serge Dupuis;
8. the Affidavit of Denis Chartrand;
9. the Affidavit of Charlotte Servant-L'Heureux; and
10. such further and other evidence as counsel may advise and this Court may permit.

March 31, 2021

Power Law



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TO: SEE ATTACHED SERVICE LIST