

COURT OF APPEAL FOR ONTARIO

B E T W E E N :

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

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

NOTICE OF MOTION FOR LEAVE TO APPEAL

TAKE NOTICE THAT THE MOVING PARTY, the Laurentian University Faculty Association (“LUFA”), will make a motion to a panel of the Court of Appeal for Ontario, in writing or as otherwise determined by this Court, 36 days after service of the moving party's motion record and factum, or on the filing of CUPE’s reply factum, if any, whichever is earlier, unless otherwise fixed by the Court of Appeal, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5.

PROPOSED METHOD OF HEARING: To be determined by this Court.

THE MOTION IS FOR:

- a) an order granting LUFA leave to appeal the orders and endorsements of the Honourable Justice Morawetz dated February 12 and 26, 2021 with respect to the granting of the sealing order in favour of the Applicant;
- b) an order that this motion be heard on an expedited basis and waiving or abridging the time for notice, service and filing in connection with this motion;

- c) an order validating the manner of service of the notice of motion, if necessary;
- d) costs of this motion; and
- e) such further and other relief as this Honourable Court considers just.

THE GROUNDS FOR THE MOTION ARE:

- (a) On February 1, 2021, an Initial Order was granted under the *Companies' Creditors Arrangement Act* R.S.C. 1985, c. C-36, as amended (the "CCAA") pursuant to which Laurentian University ("Laurentian") obtained protection from its creditors.
- (b) LUFA represents Laurentian's 612 faculty members and is therefore a major stakeholder in these CCAA proceedings.
- (c) In its initial Application Record, the Applicant relied upon the affidavit of Dr. Robert Haché, the President of Laurentian University, in which he deposed to, amongst other things, the meetings and discussions which took place between the Applicant and the Ministry of Colleges and Universities ("MCU") in advance of the Applicant applying for CCAA protection.
- (d) At paragraph 289 and 290 of his affidavit, Haché deposed to the fact that Laurentian specifically informed the MCU that it would be applying for CCAA protection and that the parties exchanged two letters – a letter from MCU to Laurentian dated January 21, 2021 and a letter from Laurentian to MCU dated January 25, 2021 – in the ten days prior to filing.

- (e) On February 1, 2021, the Applicant sought, and was granted, a sealing order in respect of the above two letters between Laurentian and MCU, attached to Haché's affidavit as Exhibits "EEE" and "FFF", respectively. In its Factum filed on the Application, Laurentian argued that the two exhibits contained information which, if disclosed to the parties, "could jeopardize the Applicant's efforts to restructure".
- (f) On February 5, 2021, Chief Justice Morawetz granted an order appointing Justice Sean Dunphy as court-ordered mediator for the purpose of conducting a mediation between Laurentian and its various stakeholders, including LUFA. The mediation is ongoing.
- (g) On the comeback date on February 10, 2021, the Laurentian University Faculty Association ("LUFA") and a number of other parties opposed the granting of the sealing order in respect of the two exhibits. In an Endorsement released on February 12, 2021, Chief Justice Morawetz wrote that he required additional time to address the request for the sealing order in respect of these two documents and ordered that the sealing order granted on February 1, 2021 remain in place in the meantime.
- (h) On February 26, 2021, Chief Justice Morawetz released a Supplementary Endorsement in which he found that the Applicant had satisfied the test set forth in *Sierra Club of Canada v. Canada (Minister of Finance)* and ordered Exhibits "EEE" and "FFF" sealed. His Honour ruled that the disclosure of the two sealed documents "could be detrimental to any potential restructuring". He further noted that the "commercial" interest related to the sealed documents "transcends the

commercial interest” of Laurentian and includes that of various stakeholders, including LUFA’s (which opposed the granting of the sealing order). His Honour further ruled out any arrangement short of a complete sealing order as doing so could jeopardize the mediation being conducted by Justice Dunphy.

- (i) It is respectfully submitted that Chief Justice Morawetz erred in granting the sealing order as there was no evidentiary foundation upon which to grant such an order. There was no evidence before the Court with respect to a valid commercial interest that was in need of protection other than the Applicant’s bald statement in its Factum that the disclosure of these two letters could jeopardize the Applicant’s efforts to restructure.
- (j) The granting of the sealing order has resulted in a manifest unfairness to LUFA which is engaged in a court-ordered mediation with the Applicant at which the jobs and livelihoods of many of LUFA’s members are at stake, and LUFA is not aware of the contents of these two exhibits which could contain information relevant to its position and its members’ interests.
- (k) The argument that the unsealing of these two documents could jeopardize the Applicant’s ability to restructure is purely speculative. The granting of the sealing order could therefore set a dangerous precedent for CCAA proceedings going forward.
- (l) LUFA’s proposed appeal from the granting of the sealing order is: *prima facie* meritorious; of significance to the practice; and, of significance to the proceeding.

The hearing of this proposed appeal will not unduly hinder the progress of the proceedings.

- (m) Section 14 of the *CCAA*;
- (n) Rule 61.03.1 of the *Rules of Civil Procedure*; and
- (o) such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) Motion Record of the Applicant returnable February 10, 2021;
- (b) the Amended and Restated Order of Morawetz J. dated February 11, 2021;
- (c) the Appointment of Mediator Order dated February 5, 2021; and
- (d) such further and other material as counsel may advise and this Honourable Court permit.

March 4, 2021

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TO: SERVICE LIST