Court of Appeal File No. M52287
Court File No. CV-21-656040-00CL

COURT OF APPEAL FOR ONTARIO

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

MOTION RECORD

(Motion for Leave to Appeal)

March 15, 2021

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I N D E X

TAB 1

Court File No. CV-21-656040-00CL

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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**

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TAB 2

Court of Appeal File No. M52287
Court File No. CV-21-656040-00CL

COURT OF APPEAL FOR ONTARIO

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

FRESH AS AMENDED NOTICE OF MOTION FOR LEAVE TO APPEAL

The Moving Party, the Ontario Confederation of University Faculty Associations ("OCUFA") will make a motion to the Court on a date fixed by the Registrar to be heard, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5.

PROPOSED METHOD OF HEARING: The motion is to be heard in writing or as otherwise determined by this Court.

THE MOTION IS FOR:

1. An order granting OCUFA leave to appeal to the Court of Appeal for Ontario from the decision of Chief Justice Morawetz (the "Motion Judge") dated February 26, 2021, which indefinitely maintained the Sealing Order originally granted on an interim basis on February 1st, 2021 and February 12th, 2021;

2. An order validating the manner of service of the notice of motion and motion materials herein, if necessary;

3. An order abridging the time for the hearing of this motion;

4. If leave to appeal is granted, an order expediting the hearing of this appeal;

5. Costs of this motion, to be fixed by the court; and

6. Such further and other relief as this Honourable Court deems fit.

THE GROUNDS FOR THIS MOTION ARE:

1. This case raises important issues with respect to open court processes and the necessity of full and frank disclosure of information by public institutions that seek to utilize the provisions of the *Companies Creditors Arrangement Act.* The proposed appeal raises serious and arguable grounds with respect to the use of sealing orders and engages issues of that are important to the parties and to these CCAA proceedings, but are also significant to the public and the practice of insolvency law in general.

Background to the Sealing Order

2. On February 1, 2021, Laurentian University of Sudbury ("Laurentian" or "the Applicant") applied for and was granted protection under the CCAA from the Ontario Superior Court of Justice (Commercial List).

3. When seeking the initial order in this proceeding, Laurentian sought to seal certain letters that it was relying on for the purposes of establishing its

entitlement to access the CCAA. These letters, exhibits "EEE" and "FFF" to the Affidavit of Robert Haché, were exchanged between the Ministry of Colleges and Universities and Laurentian on January 21, 2021 and January 25, 2021 (the "Sealed Documents").

4. In its factum in support of the Initial Order, Laurentian described the Sealed Documents as containing "information with respect to the Applicant and certain stakeholders of the Applicant, including various rights or positions that stakeholders of the Applicant may take either inside or outside of a CCAA proceeding" and argued that if the letters were not sealed, "stakeholders may react in such a way that jeopardizes the viability of the Applicant's restructuring".[1]

5. On February 1, 2021, the Motion Judge, as part of the Initial Order, sealed exhibits "EEE" and "FFF".

6. As is the norm in CCAA proceedings, the Initial Order was granted on an ex parte basis.

7. Prior to the comeback hearing, Laurentian returned to court on February 5, 2021 and obtained an order appointing Justice Sean Dunphy for the purposes of conducting a mediation between Laurentian's stakeholders. This mediation is ongoing, and in accordance with the order appointing the mediator, is intended to deal with the following issues:

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[1] See paras. 112 and 113 of the Applicant's Factum, dated January 30, 2021, filed in support of the Initial Order.

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.

8. On February 10, 2021, at the comeback hearing, the Ontario Confederation of University Faculty Associations and several other parties challenged the sealing order made in respect of the Sealed Documents.

9. By an endorsement dated February 12, 2021, the Motion Judge upheld the Sealing Order on an interim basis and informed the parties that he needed more time to prepare reasons on the issue.

10. On February 26, 2021, the Motion Judge released a supplementary endorsement addressing the issue of the maintenance of the Sealing Order. The Motion Judge upheld the Sealing Order, finding that the disclosure of the Sealed Documents

"could be detrimental to any potential restructuring".

11. He also noted that the "commercial" interest related to the Sealed Documents "transcends the direct commercial interest" of Laurentian and includes that of various stakeholders – some of whom have objected to the Sealing Order – including "faculty, students, employees, third-party suppliers, and the City of Greater Sudbury".

12. Finally, the Motion Judge determined that it would not be appropriate "at this time", to implement some type of alternative arrangement to the Sealing Order, as such an alternative "could negatively impact the mediation efforts being conducted by Justice Dunphy". No evidence has been filed with respect to this issue.

The proposed appeal

13. If leave is granted, this court would be asked to answer the following questions:

a. Did the Motion Judge err in focusing solely on the Applicant's assertion of an important commercial interest without balancing the various competing interests applicable to such order pursuant to the relevant jurisprudence?

b. Did the Motion Judge err in allowing the Sealing Order without a sufficient evidentiary foundation?

c. Did the Motion Judge err in concluding that the Sealing Order was justified as a result of speculative concerns about the impact the Sealed Documents might have on the outcome of the CCAA restructuring process?

The factors relevant to granting leave to appeal favour leave being granted

14. The issue of the propriety of the use of the Sealing Order is of significance to the practice, given the unprecedented use of the CCAA proceeding by a publicly-funded institution, and the importance of all parties to such a proceeding having a full understanding of the interactions between a public institution of this nature and the relevant governmental body that funds and supports it.

15. The basic rationale underlying the Motion Judge's reasons – the idea that the Sealed Documents, if unsealed, might cause parties to react and change their positions – comes close to describing the very basis for most disclosure in court proceedings: *relevance*.

16. If a document might have an impact on the positions of the parties on the issues in a proceeding, it is relevant and, generally speaking, if it is not privileged, needs to be disclosed. The Motion Judge's reliance on the *relevance* of the Sealed Documents as a basis for denying their disclosure is a surprising result, and one that if left undisturbed, may have a significant impact on the frequency with which sealing orders are sought in restructuring proceedings. For this reason, it is of significance to the practice.

17. This issue is also significant to this proceeding, as the mediation and restructuring proceeding is continuing with one party, the Applicant, having a full record, while other parties, including labour parties, have a record bereft of any insight into the position of the Government of Ontario with respect to an Ontario University in financial crisis. All of the Applicant, the Monitor and the Motion Judge acknowledge that the Sealed Documents are not only relevant to this proceeding, but also so significant that they could change stakeholder positions.

18. That the Sealed Documents could change stakeholder positions in regard to the restructuring has been argued to support restricting access to the Sealed Documents. To the contrary, however, the admitted significance of the documents to the restructuring provides a strong rationale for their disclosure. If important documents that would have an effect on the positions of the parties are not being disclosed, the mediation and other restructuring negotiations are being conducted on a plainly uneven playing field, in which the Applicant has a full and complete record while other stakeholders are provided, quite deliberately, with a partial record, specifically so that they cannot act on a fully informed rational basis.

19. The significance of the point on appeal to this proceeding is heightened by the engagement of the Applicant's duty to bargain in good faith, as constitutionally protected under section 2(d) of the *Charter*.

20. The proposed appeal is *prima facie* meritorious. The Motion Judge erred in ordering that the Sealed Documents be kept sealed and confidential from the parties to the proceeding, as:

a. The Supreme Court of Canada in *Sierra Club* required a balancing of a number of competing interests, including litigants' interests in a full and fair proceeding and achieving a just result through open and accessible court proceedings, the right to free expression, and the requirement that justice be done and be seen to be done and the concomitant need for public scrutiny and open courts; however, the Motion Judge adverted to none of these considerations and focused only on the Applicant's assertion of an important commercial interest and on a speculative lack of availability of alternative measures to protect the commercial interest;

b. *Sierra Club* was a case concerning public access to potentially confidential materials filed in a legal proceeding in which the litigants' access to the same confidential documents was uncontested; however, the Motion Judge applied the *Sierra Club* test to deny access to admittedly relevant documents to the litigants themselves without consideration of the controlling factors set out by the Supreme Court of Canada in *Sierra Club*;

c. *Sierra Club* required that a claim of confidentiality in respect of a commercial interest be "well grounded in the evidence"; however, the Applicant's claims of confidentiality and damage by disclosure were made in argument and without any evidentiary support at all; and

d. The purported damage that release of the Sealed Documents would cause was not damage to a self-standing commercial interest independent of this proceeding, as in *Sierra Club*, but was a speculative damage to the outcome of the proceeding itself; however, it is premature to determine the preferred outcome of this CCAA process prior to a Plan of Arrangement and, under the *Companies' Creditors' Arrangements Act*, it is for the Applicant's creditors and stakeholders, and not the Motion Judge or the Monitor, to determine the direction and nature of the restructuring appropriate to this publicly-funded University serving the communities of Northern Ontario;

e. In interpreting *Sierra Club*'s requirement to connect “commercial interest” to wider interests (and not merely a private interests), the Motion Judge selectively connected it to interests of Laurentian within the mediation, and Sudbury outside the mediation, but did not include the interests of the bargaining parties inside the mediation or interests of parties in knowing position of an interested public body (government) that elected not to participate in mediation despite being in “constant contact” with Laurentian;

f. The claimed basis for restricting access by some stakeholders to the Sealed Documents – that fully informed stakeholders may change their positions in a manner not considered desirable by the Applicant if they were provided with the Sealed Documents – is offensive to basic precepts of fair civil procedures, fair process, accessible Court proceedings, open public scrutiny, free expression and, in the context of a CCAA proceeding, serves to undermine what should be a transparent procedure conducted amongst parties with a full understanding of the issues.

21. The proposed appeal will not unduly hinder the progress of the CCAA proceeding. On the contrary, as long as the Sealed Documents remain confidential, the possibility of a successful restructuring is hindered as a key piece of information is being withheld from the relevant stakeholders.

Statutory Grounds

1. Rules 1.04, 1.05, 61.03 and 61.03.1 of the Rules of Civil Procedure.

2. Sections 2, 6, 11, 13 and 14 of the *Companies' Creditors Arrangement Act* R.S.C. 1985, c. C-36.

3. Such further and other grounds as the lawyers may advise.

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

1. The orders and endorsements made in the CCAA Proceedings;

2. Report of the Proposed Monitor, dated January 30, 2021;

3. First Report of the Monitor, dated February 7, 2021;

4. Affidavit of Dr. Robert Haché, sworn January 30, 2021;

5. Factum of the Applicant, dated January 30, 2021; and

6. Such further and other evidence as counsel may advise and as this Honourable Court may permit.

March 15, 2021

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Ontario Confederation of University
Faculty Associations

TO: SEE ATTACHED SERVICE 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

Court of Appeal File No. M52287

Court File No. CV-21-656040-00CL

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

FRESH AS AMENDED NOTICE OF MOTION FOR LEAVE TO APPEAL

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TAB 3

Court File No. CV-21-___656040_________________-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE CHIEF	)	MONDAY, THE 1ST
	)	
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

INITIAL ORDER

THIS APPLICATION, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard this day by videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of Dr. Robert Haché sworn January 30, 2021 and the Exhibits thereto (the "**Haché Affidavit**"), the pre-filing report of the proposed monitor, Ernst & Young Inc. ("**EY**"), dated January 30, 2021 (the "**Pre-Filing Report**"), and on hearing the submissions of counsel for the Applicant, counsel for EY and those other parties listed on the Counsel Slip, and on reading the consent of EY to act as the monitor (the "**Monitor**");

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application 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 Affidavit.

NON-APPLICANT STAY PARTY

3. **THIS COURT ORDERS** that the Laurentian University Students General Association (the "**SGA**") shall be referred to herein as a "**Non-Applicant Stay Party**". Although not an applicant under the CCAA, the Non-Applicant Stay Party shall enjoy certain of the benefits and protections provided herein and be subject to the restrictions as expressly hereunder set out.

APPLICATION

4. **THIS COURT ORDERS AND DECLARES** that the Applicant is insolvent and is a company to which the CCAA applies.

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business and deal with its assets, including the businesses and assets of the other entities, partnerships and joint ventures in which the Applicant has a direct or indirect interest, and is authorized to continue to provide services to such parties in respect of which it is currently providing services, in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to use the cash management system currently in place, as described in the Haché Affidavit, which for greater

certainty includes any segregated bank accounts now existing (together with any segregated accounts established pursuant to paragraph 7, the "**Cash Management System**"), and that any present or future bank or institution providing the Cash Management System to the Applicant shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, except to the extent that such terms are expressly modified by this Order or with the consent of the Applicant, the Monitor and any applicable bank or financial institution providing a Cash Management System, and shall be, solely in its capacity as provider of the Cash Management System only, an unaffected creditor under any plan or arrangement filed by the Applicant under the CCAA with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System on or after the date of this Order.

7. **THIS COURT ORDERS** that (a) any segregated bank accounts established by the Applicant from and after December 1, 2020, to hold funds received by it on the condition that such funds be used for a specific purpose in respect of a particular aspect of the Applicant's Business, including without limitation, funds provided to the Applicant for the purpose of research projects (including grants, awards or other similar funds), funds received in respect of restricted donations or endowments, and employee and employer contributions to benefit plans (collectively, the "**Segregated Funds**") shall be used for such specific purpose, and (b) from and after the date of this Order, the Applicant may establish additional segregated bank accounts, including trust accounts if necessary, to hold any additional Segregated Funds that are received by the Applicant under such agreed upon arrangements, and the Segregated Funds shall not form part of the Applicant's Property.

8. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages, salaries, employee and retiree benefits (including, without limitation, employee medical, dental, vision, insurance and similar benefit plans or arrangements), amounts owing under corporate credit cards issued to management and employees of the Applicant, 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 and the RHBP, as such terms are defined in the Haché Affidavit, or termination or severance payments, which are hereby stayed), and all other payroll processing and servicing expenses;

(b) all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts owing in respect of rebates, refunds or other similar amounts that are owing or may be owed to students or student associations of the Applicant, whether such amounts are as a result of the reimbursement of tuition fees, ancillary fees or otherwise, provided that such rebates, refunds or other similar amounts are subject to the existing policies and procedures of the Applicant;

(c) all outstanding 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; and

(d) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

9. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business (including the value thereof) including, without limitation, payments on account of insurance (including directors and officers' insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicant following the date of this Order or payments to obtain the release of goods or delivery of services contracted for prior to the date of this Order.

10. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) until further order of this Court, all outstanding and future normal course contributions to or payments in respect of the Pension Plan, as defined in the Haché Affidavit, in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;

(c) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(d) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

11. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of

the date of this Order (including for greater certainty in respect of the interest rate swap transactions); (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

12. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to continue negotiations with stakeholders in an effort to pursue all restructuring options.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

13. **THIS COURT ORDERS** that until and including February 11, 2021, or such later date as this Court may subsequently order (the "**Stay Period**"), no proceeding or enforcement process in or out of any court or tribunal or other forum, whether arising by contract (including pursuant to any collective agreement) or otherwise (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended, except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall:

(a) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on;

(b) exempt the Applicant from compliance with any statutory or regulatory provisions relating to health, safety or the environment;

(c) affect such investigations, actions, suits or proceedings by a regulatory body as are specifically permitted by Section 11.1 of the CCAA;

(d) prevent the filing of any registration to preserve or perfect a security interest;

(e) prevent the registration of a claim for lien; or

(f) prevent any actions that are permitted by Section 34(8) of the CCAA.

LIMITED STAY IN RESPECT OF THE NON-APPLICANT STAY PARTY

15. **THIS COURT ORDERS** that during the Stay Period, no Person shall (a) commence or continue any Proceeding or enforcement process, (b) terminate, repudiate, make any demand, accelerate, alter, amend, declare in default, exercise any options, rights or remedies, or (c) discontinue, fail to honour, alter, interfere with or cease to perform any obligation, pursuant to or in respect of any agreement, lease, sublease, license or permit with respect to which the Non-Applicant Stay Party is a party, borrower, principal obligor or guarantor, by reason of:

(a) the Applicant being insolvent or having made an application to this Court under the CCAA;

(b) the Applicant being a party to this proceeding or taking any steps related thereto; or

(c) the stay granted pursuant to this paragraph 15; and

(d) any default or cross-default arising from the matters set out in the foregoing subparagraphs,

except with the written consent of the Applicant and the Monitor, or with leave of this Court.

NO INTERFERENCE WITH RIGHTS

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant or the Non-Applicant Stay Party or take any steps to interrupt or interfere with the operation of the

Business or the continued use of the Property of the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the current or future directors or officers of the Applicant, including the members of the Board of Governors of the Applicant (the "**Board**") with respect to any claim against the directors, officers or the Board that arose before the date of this Order and that relates to any obligations of the Applicant whereby the directors, officers or the Board are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until

a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. **THIS COURT ORDERS** that the Applicant shall indemnify its directors, officers and the Board against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer, director or member of the Board, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. **THIS COURT ORDERS** that the directors, officers and Board of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $2,000,000, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 32 and 34 herein.

22. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors, officers and the Board shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any applicable insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. **THIS COURT ORDERS** that Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant's receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;

(c) advise the Applicant in the preparation of the Applicant's cash flow statements and any other reporting to the Court or otherwise;

(d) be at liberty to participate in discussions with representatives of the Ministry of Colleges and Universities ("**MCU**") and such other representatives of Provincial or Federal government agencies, at any time on all aspects of this proceeding and the Applicant's restructuring, subject to such terms of confidentiality as may be appropriate in the Monitor's assessment and in consultation with the Applicant;

(e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, wherever situate, in order to assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

(f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(g) perform such other duties as are required by this Order or by this Court from time to time.

25. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property of the Applicant, or any property of the Non-Applicant Stay Party, and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental legislation, unless it is actually in possession.

27. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant and the proposed DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and the Applicant's counsel and advisors in connection with the CCAA proceedings (collectively, the "Restructuring

Advisors") together with independent counsel to the Board ("**Board Counsel**") shall each be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Restructuring Advisors and Board Counsel. Notwithstanding the foregoing, the fees and disbursement of Board Counsel paid by the Applicant from and after the date of this Order shall not exceed the aggregate amount of $250,000, plus HST, pending further Order of the Court.

30. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

31. **THIS COURT ORDERS** that the Restructuring Advisors shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $400,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Restructuring Advisors, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 32 and 34 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

32. **THIS COURT ORDERS** that the priorities of the Administration Charge and the Directors' Charge (collectively, the "**Charges**" and each individually, a "**Charge**") as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $400,000); and

Second –Directors' Charge (to the maximum amount of $2,000,000).

33. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

34. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, construction liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, except for any Person who is a "secured creditor" as defined in the CCAA that has not been served with the Notice of Application for this Order.

35. **THIS COURT ORDERS** that the Applicant shall be entitled, on a subsequent attendance on notice to those Persons likely to be affected thereby, to seek an increase to the amounts, to seek additional charges and to seek priority of the Charges ahead of any Encumbrance over which the Charges have not obtained priority under this Order.

36. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the "**Chargees**"), or further Order of this Court.

37. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

38. **THIS COURT ORDERS** that, notwithstanding anything else contained herein and pending further Order of the Court, the Property subject to the Charges herein shall not include the Segregated Accounts.

SERVICE AND NOTICE

39. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail and the Sudbury Star a notice containing the information prescribed under the CCAA, and (ii) within five days of the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than $1,000 (excluding any individual employees, former employees with pension and/or retirement savings or benefits plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plan), and (C) prepare a list showing the names and addresses of those

creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

40. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure*, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.ey.com/ca/Laurentian.

41. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

42. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the case website as part of the public materials in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

43. **THIS COURT ORDERS** that the Applicant and the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

SEALING PROVISION

44. **THIS COURT ORDERS** that Confidential Exhibits "**EEE**" and "**FFF**" of the Haché Affidavit are hereby sealed pending further order of the Court, and shall not form part of the public record.

GENERAL

45. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

46. **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.

47. **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, and that the Monitor is authorized and empowered to act as a representative

in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

48. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

49. **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.

CHIEF JUSTICE G.B. MORAWETZ

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

FEB 0 1 2021

PER / PAR:

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-____________-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

INITIAL ORDER

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TAB 4

CITATION: Laurentian University of Sudbury, 2021 ONSC 659
COURT FILE NO.: CV-21-656040-00CL
DATE: 2021-02-01

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, Mitch W. Grossell, Andrew Hanrahan* and *Derek Harland*, for the Applicant

Ashley John Taylor and *Elizabeth Pillon*, for the Monitor

Peter J. Osborne, for the Board of Governors

Natasha MacParland, Lender Counsel to the Applicant

Pamela L.J. Huff and *Aryo Shalviri*, for Royal Bank of Canada

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

Martin R. Kaplan and *Vern W. DaRe*, for Firm Capital Mortgage Fund Inc., DIP Lender

Michael Kennedy, Labour Counsel for the Applicant

George Benchetrit, for Bank of Montreal

HEARD: February 1, 2021

ENDORSEMENT

Introduction

[1] Laurentian University of Sudbury ("LU" or the "Applicant") seeks certain relief pursuant to an order (the "Initial Order") under the *Companies' Creditors Arrangement Act* (the "CCAA").[1]

[2] LU is a publicly funded, bilingual and tricultural postsecondary institution in Sudbury, Ontario. Since inception, LU has provided higher education to the community of Sudbury and Northern Ontario at large and is an integral part of the economic fabric of the Northern Ontario community.

[3] As a result of many years of recurring operational deficits in the millions of dollars, and notwithstanding LU's recent efforts to improve its financial stability, LU is experiencing a liquidity crisis and is insolvent.

[4] LU submits that it requires the protection of the Court and the relief available under the CCAA so that it can financially and operationally restructure itself in order to emerge as a financially sustainable university for the benefit of all its stakeholders.

[5] The facts with respect to this application are briefly summarized below and more fully set out in the Affidavit of Dr. Robert Haché sworn January 30, 2021, filed in support of this application (the "Haché Affidavit").[2]

[6] For the following reasons, the Interim Order is granted.

Overview of the Applicant

[7] LU is a non-share capital corporation that was incorporated pursuant to *An Act to Incorporate Laurentian University of Sudbury*, S.O. 1960, c. 151, as amended by S.O. 1961-62, c. 154 (the "LU Act") and is a registered charity pursuant to the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

[8] The governance structure of LU is bicameral. The Board of Governors (the "Board"), the President, and the Vice-Chancellor generally have powers over the operational and financial management of LU, whereas the Senate of LU (the "Senate") is responsible for the academic policy of LU.

[9] LU primarily focuses on undergraduate programming, with approximately 8,200 total domestic and international undergraduate students (approximately 6,250 full-time equivalents) enrolled in the 2020-21 academic year. LU has five undergraduate faculties, each of which offer

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[1] *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

[2] Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Haché Affidavit. All references to currency in this factum are to Canadian dollars, unless otherwise noted.

programs in both English and French, and students can choose from 132 undergraduate programs to enroll in.

[10] LU also has a graduate program, with approximately 1,098 total domestic and international graduate students enrolled during the 2020-21 academic year. LU offers 43 Masters and PhD programs in a variety of disciplines.

[11] LU has a federated school structure whereby it has formal affiliations with several independent universities under the overall LU umbrella: the University of Sudbury, the University of Thorneloe, and Huntington University. The Federated Universities are integrated into LU, however, each of the Federated Universities are separate legal entities and are governed by Boards that are independent of LU.

[12] LU is one of the largest employers in the Greater Sudbury area. As at December 30, 2020, LU employed approximately 1,751 people, of which approximately 758 are full-time employees. Total salaries and benefits represent the single largest expense item for LU on an annual basis (approximately $134 million of $201 million in total expenses during fiscal year 2019-20).

[13] Approximately 612 LU employees are represented by the Laurentian University Faculty Association ("LUFA"). Approximately 268 non-faculty staff are represented by the Laurentian University Staff Union ("LUSU").

[14] LUFA and the Board of LU are parties to a Collective Agreement (the "LUFA CA"), with a three-year term that expired on June 30, 2020.

[15] Since April 2020, LU and LUFA have been engaged in bargaining with respect to a new collective bargaining agreement.

[16] On July 1, 2018, LUSU and LU entered into a Collective Agreement that was set to expire on June 30, 2021 (the "LUSU CA").

Assets and Liabilities

[17] LU does not prepare interim financial statements. The most recent audited statements for the year ended April 30, 2020, are attached to the Haché Affidavit.

[18] As at April 30, 2020, LU had assets with a book value totaling approximately $358 million, of which approximately $33 million is comprised of current assets such as cash and short-term investments, accounts receivable, and other current assets. The remaining assets of LU consist primarily of investments in LU's segregated endowment fund ($53 million) and capital assets ($272 million), comprising LU's land and buildings.

[19] As at April 30, 2020, LU had liabilities with a book value totaling approximately $322 million, comprised of: (i) approximately $43 million of current liabilities; (ii) approximately $168 million of deferred contributions; and (iii) approximately $110 million in long-term liabilities.

LU's Liquidity Crisis and Insolvency

[20] LU has experienced recurring operational deficits in the millions of dollars each year for a significant period of time. These operational deficits have led to the accumulated deficit in the operational fund of LU of approximately $20 million at the end of 2019-20 fiscal year. In the current 2020-21 fiscal year, LU projects a further operational deficit of $5.6 million.

[21] LU takes the position that it is insolvent and absent the relief sought in the Initial Order, will run out of cash to meet payroll in February.

[22] LU advises that it has a number of structural issues that are causing financial challenges and that need to be resolved to ensure long-term stability, including:

(a) The terms of the LUFA CA are above market in several respects, and that issue is exacerbated by the tenuous labour relationship between LU and LUFA;

(b) Operationally, the structure of the academic programming offered by LU and the distribution of enrollment among the programs offered is flawed and must be addressed; and

(c) With its current cost structure, it costs more for LU and the Federated Universities to educate each student than the average for all Ontario universities by approximately $2,000 per student, per year.

[23] LU submits that the financial challenges that LU faces are significant and, absent fundamental change, LU's short-term and long-term financial and operational sustainability are at risk.

Objective of CCAA Filing

[24] As part of its restructuring strategy, LU intends to implement long-term financial stability initiatives including, among other things:

(a) A review of the breadth of academic programs offered at LU and their enrollment levels;

(b) A re-evaluation of the Federated Universities model;

(c) Negotiations with LU's unions regarding what LU must look like in the future and ensuring that a restructured LU can be aligned with collective agreements that will facilitate its future sustainability;

(d) Identification of opportunities for future revenue generation;

(e) Refinement of the student experience at LU to continue providing a top-notch education; and

(f) Consideration of options for addressing current and long-term indebtedness.

Law and Analysis

[25] The CCAA applies to a “debtor company” whose liabilities exceed $5 million. A “debtor company” is defined, *inter alia*¸ as a “company” that is “insolvent” or that has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*.[3]

[26] The CCAA defines “company” to include, among other things, a company incorporated by or under an Act of the legislature of a province.[4]

[27] The Applicant is incorporated under an act of the legislature of the Province of Ontario, the LU Act, and therefore is a “company” for the purposes of the CCAA.[5] Further, as a not-for-profit, non-share capital corporation, the Applicant falls under the *Corporations Act* (Ontario).[6]

[28] There have been several CCAA proceedings commenced in respect of not-for-profit corporations, such as *Canadian Red Cross Society*[7] and *The Land Conservancy of British Columbia*.[8]

[29] I am satisfied that the Applicant’s status as a not-for-profit, non-share capital corporation does not impact the applicability of the CCAA to the Applicant.

Insolvency

[30] The insolvency of a debtor is assessed at the time of the filing of the CCAA application. While the CCAA does not define “insolvent”, the definition of “insolvent person” under the BIA is commonly referenced by the Court in assessing whether an applicant is a debtor company in the context of the CCAA.[9] The BIA defines “insolvent person” as follows:[10]

> “insolvent person” means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and
>
> (i) who is for any reason unable to meet his obligations as they generally become due,

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[3] R.S.C. 1985, c. B-3 (“BIA”).
[4] CCAA, s. 2(1).
[5] S.O. 1960, c. 151, as amended by S.O. 1961-62, c. 154.
[6] R.S.O. 1990, c. C.38.
[7] *Canadian Red Cross Society*, 2000 CarswellOnt 3269 (S.C.).
[8] *TLC, The Land Conservancy of British Columbia*, *Re*, 2014 BCSC 97 at paras. 14-18.
[9] *Stelco Inc. (Re)*, 2004 CarswellOnt 1211 (S.C.) at paras. 21-22 [*Stelco*].
[10] BIA, s. 2.

(ii) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(iii) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

[31] The tests for "insolvent person" under the BIA are disjunctive. A company satisfying either (i), (ii) or (iii) of the test is considered insolvent for the purposes of the CCAA.[11]

[32] In addition to the foregoing tests, in *Stelco*, Farley J. held that a financially troubled corporation is insolvent if it is reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring.[12]

[33] Based on the evidence set out in the Haché Affidavit and as summarized in the Report of Ernst & Young Inc., the Proposed Monitor, I find that the Applicant is plainly insolvent and faces a severe liquidity crisis.

[34] I also find that the Applicant is a "debtor company" to which the CCAA applies.

Stay of Proceedings

[35] Pursuant to section 11.02(1) of the CCAA, a Court may grant an order staying all proceedings in respect of a debtor company for a period of not more than ten days, provided that the Court is satisfied that circumstances exist to make the order appropriate.

[36] The Applicant submits that it is just and appropriate to grant a stay of proceedings. The Applicant submits that it requires a stay of proceedings in order to provide it with the breathing room necessary to financially and operationally restructure itself in order to emerge as a sustainable and long-term financially viable university to continue providing quality post-secondary education in Northern Ontario.

[37] The Proposed Initial Order provides for a stay of proceedings in favour of the Applicant's current and future directors and officers who may subsequently be appointed. The Applicant submits that the stay in favour of the current and future directors and officers is critical to retain the involvement of the Board and key officers who have knowledge that will assist the Applicant in negotiating with stakeholders and implementing a restructuring plan. I accept this submission.

[38] The Applicant also seeks a limited stay in respect of the Laurentian University Students General Association (the "Non-Applicant Stay Party" or "the SGA"). The stay in respect of the

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[11] *Stelco, supra* note 9 at para. 28.
[12] *Stelco*, *supra* note 9 at para. 26.

Non-Applicant Stay Party is limited to preventing any person from: (i) commencing proceedings against the Non-Applicant Stay Party, (ii) terminating, repudiating, making any demand or otherwise altering any contractual relationships with the Non-Applicant Stay Party or enforcing any rights or remedies, or (iii) discontinuing or ceasing to perform any obligations under any contractual agreements with the Non-Applicant Stay Party, resulting from the commencement of this CCAA proceeding by the Applicant, the stay of proceedings granted to the Applicant and any default or cross-default arising due to the foregoing.

[39] CCAA courts have, on numerous occasions, extended the initial stay of proceedings to non-applicants.[13] The Court's authority to grant such an order is derived from its broad jurisdiction under ss. 11 and 11.02(1) of the CCAA to make an initial order on "any terms that [the Court] may impose." It is well-established that it is appropriate for the Court to extend the protection of the stay of proceedings to third party entities where such parties are integrally and closely interrelated to the debtor companies' business or where doing so furthers the primary purpose of the CCAA, being the successful restructuring of an insolvent company.[14]

[40] In particular, where the business operations of a group of entities are inextricably intertwined, such as where there are agreements among the entities, guarantees provided by certain entities in the group in respect of the obligations of other entities in the group or shared cash management systems, courts have found it necessary and appropriate to extend a stay in respect of non-applicant parties.[15]

[41] In the present circumstances, the Applicant has provided a written guarantee in respect of a credit facility obtained by the Non-Applicant Stay Party. If counterparties were to exercise remedies due to the Applicant's insolvency, it would disrupt the Non-Applicant Stay Party and have financial implications for the Applicant.

[42] In my view, it is desirable to avoid disruption to the Non-Applicant Stay Party which is particularly critical given the Applicant's status as an operating university and its overarching aim in this CCAA proceeding to avoid or minimize any disruption to students resulting from the commencement of this proceeding. In furtherance of this objective, the Non-Applicant Stay Party will be essential to ensuring students are given all of the information and resources they need to stay informed. The Non-Applicant Stay Party will play a crucial role in maintaining an open dialogue between the Applicant and the interests/concerns of all students.

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[13] For example, *Sino-Forest Corporation (Re)*, 2012 ONSC 2063; *Canwest Global Communications Corp, Re*, 2009 CarswellOnt 6184 (S.C.) [*Canwest*]; *Cinram International Inc (Re)*, 2012 ONSC 3767 [*Cinram*].
[14] *Cinram, ibid* at paras. 61-65.
[15] *Tamerlane Ventures Inc., Re*, 2013 ONSC 5461 at paras. 20-21; *Cinram, ibid* at paras. 61-65.

[43] I am satisfied that extending a limited stay of proceedings to the Non-Applicant Stay Party will allow it to continue fulfilling its intended role and providing the myriad of other key services it provides to the Applicant's students.

Pre-Filing and Post-Filing Payments

[44] The Proposed Initial Order allows the Applicant to continue to make certain pre-filing and post-filing payments, including express authorization to:

(a) pay all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts owing in respect of rebates, refunds or other amounts that are owing or may be owed to students (directly, or to the student associations of the Applicant on behalf of students), in each case, subject to the policies and procedures of the Applicant; and

(b) pay all outstanding 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.

[45] The Applicant intends on operating in the ordinary course during this CCAA proceeding and minimizing the disruption to students as much as possible. To facilitate this, the Applicant must be able to process certain rebates owing to students and continue to provide students with scholarship and bursary money that is critical to their ongoing studies. Some students must pay tuition prior to the receipt of funding from the Ontario Student Assistance Program (OSAP). Upon receipt of OSAP funding, the Applicant reimburses the students who receive such funding. In many instances, scholarship, bursary and grant money has been committed and is critical to students in need of financial aid to fund their education.

[46] If the Applicant is unable to continue to process such payments, vulnerable students may be irreparably harmed. Many of these students are younger than 19 years of age, and therefore particularly vulnerable. In addition, a change to the manner in which these financial aspects are addressed by the Applicant with their students could create immediate emergencies and disruption to their ability to continue their studies.

[47] The proposed Monitor supports the inclusion of this provision and I am satisfied that it is reasonable in the circumstances.

The Administration Charge

[48] The Applicant requests that this Court grant a super-priority Administration Charge on the Property (as defined in the proposed form of the Initial Order) in favour of the Proposed Monitor, counsel to the Proposed Monitor, the Applicant's counsel and advisors, and independent counsel to the Board. At the initial hearing the Administration Charge was requested in the amount of $400,000, and the Applicant will seek to increase it to $1.25 million pursuant to a proposed Amended and Restated Initial Order on the Comeback Hearing. Section 11.52 of the CCAA provides the Court with statutory jurisdiction to grant the Administration Charge.

[49] In *Canwest Publishing*, Pepall, J. (as she then was) considered section 11.52 of the CCAA and identified the following non-exhaustive list of factors the Court may consider when granting an administration charge:

(a) the size and complexity of the business being restructured;

(b) the proposed role of the beneficiaries of the charge;

(c) whether there is an unwarranted duplication of roles;

(d) whether the quantum of the proposed charge appears to be fair and reasonable;

(e) the position of the secured creditors likely to be affected by the charge; and

(f) the position of the monitor.[16]

[50] The Applicant submits that the Administration Charge is warranted, necessary, and appropriate in the circumstances, given that:

(a) the proposed restructuring will require the extensive involvement of the professional advisors subject to the Administration Charge;

(b) the professionals subject to the Administration Charge have contributed, and will continue to contribute, to the restructuring of the Applicant;

(c) there is no unwarranted duplication of roles so the professional fees associated with these proceedings will be minimized;

(d) the Administration Charge will rank in priority to the DIP Charge and the Directors' Charge; and

(e) the Proposed Monitor believes that the proposed quantum of the Administration Charge is reasonable.

[51] Further, the Applicant has limited the quantum of the Administration Charge that it seeks approval of to what is reasonably necessary for the first ten days of the CCAA proceedings.

[52] The proposed Monitor supports the requested relief.

[53] I am satisfied that the Administrative Charge is reasonable in the circumstances.

The Directors' Charge

[54] The Applicant requests that this Court also grant a priority charge in favour of the Applicant's current and future directors and officers in the amount of $2 million (the "Directors' Charge"). The Applicant will seek to increase the Directors' Charge at the comeback hearing to

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[16] *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222 at para. 54; *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 2037 at para. 58.

$5 million, $3 million of which will rank subordinate to the DIP Charge. The Directors' Charge protects the current and future directors and officers against obligations and liabilities they may incur as directors and officers of the Applicant after the commencement of the CCAA proceedings, except to the extent that any such claims or the obligation or liability is incurred as a result of the director's or officer's gross negligence or wilful misconduct.

[55] The Applicant has certain insurance policies in place (as defined in the Haché Affidavit); however, the Applicant is concerned that the directors and officers may be unwilling to continue in their roles with the Applicant absent the Court granting the Directors' Charge. The Directors' Charge will only be available to the extent that any claim or liability is not covered by any applicable D&O insurance and in the event that the Applicant's D&O insurance does not respond to claims against the directors and officers.

[56] Section 11.51 of the CCAA provides the Court with the express statutory jurisdiction to grant the Directors' Charge in an amount the Court considers appropriate, provided notice is given to the secured creditors who are likely to be affected by it.[17]

[57] In approving a similar charge in *Canwest*, Pepall J. applied section 11.51 of the CCAA and noted the Court must be satisfied with the amount of the charge and that it is limited to obligations the directors and officers may incur after the commencement of the proceedings, so long as adequate insurance cannot be obtained at a reasonable cost.[18]

[58] The proposed Monitor supports the relief requested.

[59] I am satisfied that the Directors' Charge is reasonable in the circumstances because: (i) the Applicant will benefit from the active and committed involvement of the directors and officers, who have considerable institutional knowledge and valuable experience and whose continued participation will help facilitate an effective restructuring, (ii) the Applicant cannot be certain whether the existing insurance will be applicable or respond to any claims made, and the Applicant does not have sufficient funds available to satisfy any given indemnity should its directors and officers need to call upon such indemnities, (iii) the Directors' Charge does not secure obligations incurred by a director as a result of the directors' gross negligence or wilful misconduct, and (iv) the Proposed Monitor is of the view that the Directors' Charge is reasonable and appropriate in the circumstances.

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[17] CCAA, section 11.51.
[18] *Canwest*, *supra* note 17 at paras. 46 and 48.

Sealing Provision

[60] Pursuant to the *Courts of Justice Act* (Ontario), this Court has the discretion to order that any document filed in a civil proceeding be treated as "confidential", sealed and not form part of the public record."[19]

[61] In *Sierra Club of Canada v. Canada (Minister of Finance)*, Iacobucci J. set out that a sealing order should only be granted when:

(a) such an order is necessary in order to prevent serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternatives measures will not prevent the risk; and

(b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh the deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.[20]

[62] The Applicant requests that, in the Initial Order, this Court seal Confidential Exhibits "FFF" and "GGG" to the Haché Affidavit. These documents relate to correspondence between the Applicant and the Ministry of Colleges and Universities (the "Ministry"). The documents contain information with respect to the Applicant and certain stakeholders of the Applicant, including various rights or positions that stakeholders of the Applicant may take either inside or outside of a CCAA proceeding, which could jeopardize the Applicant's efforts to restructure.

[63] If the Confidential Exhibits are not sealed, the Applicant submits that stakeholders may react in such a way that jeopardizes the viability of the Applicant's restructuring. As such, the salutary effects of the sealing order, which provides the Applicant with the best possible chance to effect a restructuring, far outweigh the deleterious effects of not disclosing the correspondence between the Applicant and the Ministry.

[64] I have reviewed the Confidential Exhibits and I accept the submissions of the Applicant and grant the sealing request.

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[19] *Courts of Justice Act*, R.S.O. 1990, c C.43, s. 137(2). See also *Target Canada Corp (Re)*, 2015 ONSC 1487 at paras. 28 – 30.

[20] *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522 at para. 53.

The Requested Relief Sought is Reasonably Necessary

[65] Pursuant to s. 11.001, the relief sought on an initial application is to be limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during the initial stay period.[21]

[66] The stated purpose of s. 11.001 is to "limit the decisions that can be taken at the outset of a CCAA proceeding to measures necessary to avoid the immediate liquidation of an insolvent company, thereby improving participation of all players."[22]

[67] For the purposes of relief sought on this initial hearing, I accept the facts as stated in the Haché affidavit.

[68] The financial information required pursuant to s. 10(2) of the CCAA has been provided.

[69] I am satisfied the Ernst & Young Inc. is qualified to act as Monitor.

Disposition

[70] The requested relief complies with s. 11.001 of the CCAA in that it is limited to relief that is reasonably necessary for the continued operation of the applicant in the ordinary course of business. The Initial Order is granted in the form presented and it has been signed by me.

[71] The comeback hearing is to be held by Zoom on Wednesday, February 10, 2021 at 9:00 a.m.

Court-Appointed Mediator

[72] Finally, LU is also seeking 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 a successful restructuring.

[73] If appointed, the Applicant expects the Court-Appointed Mediator to assist with (i) negotiations related to the review and restructuring of the academic programs and (ii) the collective agreement between the Applicant and LUFA.

[74] The Applicant is of the view that the need for the appointment of a mediator by the court is urgent and a high priority item.

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[21] CCAA, s. 11.001, 11.02(1) and (3).
[22] *Lydian International Limited (Re)*, 2019 ONSC 7473 at paras. 22-26.

[75] The proposed Monitor is of the view that the appointment of a Court-Appointed Mediator is critical to ensure that LU, LUFA and the other negotiating parties have the best possible opportunity to succeed.

[76] It is the Proposed Monitor's view that it is necessary that the Court-Appointed Mediator be someone who is independent and objective, has experience in both insolvency matters as well as collective agreements and labour negotiations, someone who will appreciate the urgency with which the mediation must be conducted and have the time available to dedicate to it. Finally, in the Proposed Monitor's view, a sitting or recently retired judge meeting these characteristics would be preferable. The Proposed Monitor asks that the appointment be made by the court on an urgent basis.

[77] I appreciate and acknowledge the points put forth by counsel to both the Applicant and the Proposed Monitor. However, prior to determining this issue, in my view it is necessary to provide LUFA with an opportunity to make submissions.

[78] In recognition of the compressed timeline in these proceedings, it is desirable to determine this issue at the earliest opportunity and, in any event, not later than the comeback hearing on February 10, 2021.

[79] If LU, LUFA and the Proposed Monitor wish to address this matter prior to February 10, 2021, a case conference can be scheduled with me through the Commercial List Office.

CHIEF JUSTICE G.B. MORAWETZ

Date: February 1, 2021

TAB 5

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

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 0 5 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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Lawyers for the Applicant

TAB 6

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

TAB 7

Court File No. CV-21-656040-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE CHIEF	)	THURSDAY, THE 11TH
	)	
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

AMENDED AND RESTATED INITIAL ORDER

THIS MOTION, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order amending and restating the Initial Order (the "**Initial Order**") issued on February 1, 2021 (the "**Initial Filing Date**") and extending the stay of proceedings provided for therein was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of Dr. Robert Haché sworn January 30, 2021 and the Exhibits thereto (the "**Haché Initial Affidavit**"), the Pre-filing Report of Ernst & Young Inc. (the "**Monitor**") dated January 30, 2021, the First Report of the Monitor dated February 7, 2021 (the "**First Report**") and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, and those other parties listed on the Counsel Slip, no one else appearing although duly served as appears from the Affidavit of Service of Angela Maharaj sworn February 9, 2021, the Affidavit of Service of Derek Harland sworn February 4, 2021, and on reading the consent of Ernst & Young Inc. to act as the Monitor,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion 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.

NON-APPLICANT STAY PARTY

THIS COURT ORDERS that the Laurentian University Students General Association (the "**SGA**") shall be referred to herein as a "**Non-Applicant Stay Party**". Although not an applicant under the CCAA, the Non-Applicant Stay Party shall enjoy certain of the benefits and protections provided herein and be subject to the restrictions as expressly hereunder set out.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicant is insolvent and is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business and deal with its assets, including the businesses and assets of the other entities, partnerships and joint ventures in which the Applicant has a direct or indirect interest, and is authorized to continue to provide services to such parties in respect of which it is currently providing services, in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel

and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to use the cash management system currently in place, as described in the Haché Initial Affidavit, which for greater certainty includes any segregated bank accounts now existing (together with any segregated bank accounts established pursuant to paragraph 7, the "**Cash Management System**"), and that any present or future bank or institution providing the Cash Management System to the Applicant shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, except to the extent that such terms are expressly modified by this Order or with the consent of the Applicant, the Monitor and any applicable bank or financial institution providing a Cash Management System, and shall be, solely in its capacity as provider of the Cash Management System only, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System on or after the Initial Filing Date.

7. **THIS COURT ORDERS** that (a) any segregated bank accounts established by the Applicant from and after December 1, 2020, to hold funds received by it on the condition that such funds be used for a specific purpose in respect of a particular aspect of the Applicant's Business, including without limitation, funds provided to the Applicant for the purpose of research projects (including grants, awards or other similar funds), funds received in respect of restricted donations or endowments, and employee and employer contributions to benefit plans (collectively, the "**Segregated Funds**") shall be used for such specific purpose, and (b) from and after the date of this Order, the Applicant may establish additional segregated bank accounts, including trust accounts if necessary, to hold any additional Segregated Funds that are received by the Applicant under such agreed upon arrangements, and the Segregated Funds shall not form part of the Applicant's Property.

8. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order, in all cases subject to the availability of financing under the DIP Term Sheet (as defined below):

(a) all outstanding and future wages, salaries, employee and retiree benefits (including, without limitation, employee medical, dental, vision, insurance and similar benefit plans or arrangements), amounts owing under corporate credit cards issued to management and employees of the Applicant, 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 and the RHBP, as such terms are defined in the Haché Initial Affidavit, or termination or severance payments, which are hereby stayed), and all other payroll processing and servicing expenses;

(b) all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts owing in respect of rebates, refunds or other similar amounts that are owing or may be owed to students or student associations of the Applicant, whether such amounts are as a result of the reimbursement of tuition fees, ancillary fees or otherwise, provided that such rebates, refunds or other similar amounts are subject to the existing policies and procedures of the Applicant;

(c) all outstanding 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; and

(d) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

9. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business (including the value thereof) including, without limitation, payments on account of insurance (including directors and officers' insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicant following the date of this Order or payments to obtain the release of goods or delivery of services contracted for prior to the date of this Order,

provided that, to the extent such expenses were incurred prior to the date Initial Filing Date, the Applicant shall only be entitled to pay such amounts if they are determined by the Applicant, in consultation with the Monitor, to be necessary to the continued operation of the Business or preservation of the Property and such payments are approved in advance by the Monitor.

10. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) until further order of this Court, all outstanding and future normal course contributions to or payments in respect of the Pension Plan, as defined in the Haché Initial Affidavit, in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;

(c) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(d) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

11. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicant or the making of this Order) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

12. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of the date of this Order (including for greater certainty in respect of the interest rate swap transactions); (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

PENSION PLAN

13. **THIS COURT ORDERS** that the Applicant's obligation to make special payments (whether pursuant to the Ontario *Pension Benefits Act*, RSO 1990, c. P-8 and regulations made thereunder or to the terms of the Pension Plan, as such term is defined in the Haché Initial Affidavit, and whether in respect of the Applicant's own employees and former employees or in respect of the employees and former employees of the other employers participating in the

Pension Plan as set out in the Haché Initial Affidavit) in respect of the defined benefit component of the Pension Plan (such payments being the "**Special Payments**"), shall be suspended effective on and after February 1, 2021 for the duration of this CCAA proceeding, subject to further Order of this Court. For greater certainty, the suspension of Special Payments hereunder does not constitute a disclaimer or termination by the Applicant of any component of the Pension Plan, nor does it constitute an acknowledgment of any obligation by the Applicant to make Special Payments relating to employers other than the Applicant.

14. **THIS COURT ORDERS** that for the duration of this proceeding, no Person (as hereinafter defined), including employees and former employees of the Applicant (or the surviving spouse of any such person) entitled to a benefit under the defined benefit component of the Pension Plan (whether or not such member was represented by a union when the member was employed by the Applicant) or the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario, shall commence any action or other proceeding in connection with the suspension of the Special Payments or because the Applicant has not made the Special Payments.

15. **THIS COURT ORDERS** that the Applicant and each of its respective directors, officers, officials, and agents shall not incur any obligation or liability, whether by way of debt, damages for breach of any duty whether statutory, fiduciary, common law or otherwise, or for breach of trust, as a result of the suspension of the Special Payments in accordance with the terms of this Order.

16. **THIS COURT ORDERS** that if any claim, lien, charge or trust, including deemed trust, arises as a result of the suspension of the Special Payments, no such claim, lien charge or trust, including deemed trust, shall have priority over the Charges (as hereinafter defined) in this proceeding, or in any subsequent receivership, interim receivership or bankruptcy of the Applicant.

RESTRUCTURING

17. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of its Business or operations, and to dispose of redundant or non-material assets not exceeding $50,000 in any one transaction or $250,000 in the aggregate. Notwithstanding the foregoing, the Applicant shall not cease, downsize or shut down any parts of its Business if such action would cause any current students of the Applicant to be unable to continue and complete courses that they are already enrolled in, subject to further Order of the Court;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as they deem appropriate;

(c) vacate, abandon or quit any leased premises and disclaim or resiliate any real property lease and any ancillary agreements relating to any leased premises, subject to paragraphs 11 and 18 of this Order;

(d) disclaim arrangements or agreements of any nature whatsoever with whomever, whether oral or written, as the Applicant deems appropriate, with the Monitor's consent or pursuant to further Order of the Court, in accordance with Section 32 of the CCAA;

(e) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and

(f) pursue all avenues and to engage in discussions with key stakeholders of the Applicant in an effort to give effect to an operational restructuring of the Applicant;

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of its business (the "**Restructuring**").

18. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days' prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the

landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days' notice to such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

19. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

20. **THIS COURT ORDERS** that until and including April 30, 2021, or such later date as this Court may subsequently order (the "**Stay Period**"), no proceeding or enforcement process in or out of any court or tribunal or other forum, whether arising by contract or otherwise (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

21. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the

Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended, including any existing, pending or future information requests made to the Applicant under the *Freedom of Information and Protection of Privacy Act*, except with the written consent of the Applicant and the Monitor, or leave of this Court, including, without limitation, by way of terminating, making any demand, accelerating, amended or declaring in default, sweeping any cash in the Applicant's bank accounts (if available), exercising any option, right or remedy or taking any enforcement steps under or in respect of any agreement or agreements with respect to which the Applicant is a party, borrower, principal obligor or guarantor, by reason of:

(a) the Applicant being insolvent or having made an application to this Court under the CCAA;

(b) the Applicant being a party to this proceeding or taking any steps related thereto; or

(c) any default or cross-default arising from the matters set out in the foregoing subparagraphs,

provided that nothing in this Order shall:

(a) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on;

(b) exempt the Applicant from compliance with any statutory or regulatory provisions relating to health, safety or the environment;

(c) affect such investigations, actions, suits or proceedings by a regulatory body as are specifically permitted by Section 11.1 of the CCAA;

(d) prevent the filing of any registration to preserve or perfect a security interest;

(e) prevent the registration of a claim for lien; or

(f) prevent any actions that are permitted by Section 34(8) of the CCAA.

LIMITED STAY IN RESPECT OF THE NON-APPLICANT STAY PARTY

22. **THIS COURT ORDERS** that during the Stay Period, no Person shall (a) commence or continue any Proceeding or enforcement process, (b) terminate, repudiate, make any demand, accelerate, alter, amend, declare in default, exercise any options, rights or remedies, or (c) discontinue, fail to honour, alter, interfere with or cease to perform any obligation, pursuant to or in respect of any agreement, lease, sublease, license or permit with respect to which the Non-Applicant Stay Party is a party, borrower, principal obligor or guarantor, by reason of:

(a) the Applicant being insolvent or having made an application to this Court under the CCAA;

(b) the Applicant being a party to this proceeding or taking any steps related thereto; or

(c) the stay granted pursuant to this paragraph 22; and

(d) any default or cross-default arising from the matters set out in the foregoing subparagraphs,

except with the written consent of the Applicant and the Monitor, or with leave of this Court.

NO INTERFERENCE WITH RIGHTS

23. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant or the Non-Applicant Stay Party or take any steps to interrupt or interfere with the operation of the Business or the continued use of the Property of the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

24. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from

discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

25. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

26. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the current or future directors or officers of the Applicant, including the members of the Board of Governors of the Applicant (the "**Board**") with respect to any claim against the directors, officers or the Board that arose before the date of this Order and that relates to any obligations of the Applicant whereby the directors, officers or the Board are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

27. **THIS COURT ORDERS** that the Applicant shall indemnify its directors, officers and the Board against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer, director or member of the Board, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

28. **THIS COURT ORDERS** that the directors, officers and Board of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $5,000,000, as security for the indemnity provided in paragraph 27 of this Order. The Directors' Charge shall have the priority set out in paragraphs 45 and 47 herein.

29. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors, officers and the Board shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any applicable insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 27 of this Order.

APPOINTMENT OF MONITOR

30. **THIS COURT ORDERS** that Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

31. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant's receipts and disbursements;

(b) liaise with and assist the Applicant and the Assistants with respect to all matters relating to the Applicant's Business, the Applicant's Property and the Restructuring, and such other matters as may be relevant to the proceedings herein;

(c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;

(d) advise the Applicant in the preparation of the Applicant's cash flow statements and any other reporting to the Court or otherwise;

(e) be at liberty to participate in discussions with representatives of the Ministry of Colleges and Universities ("**MCU**") and such other representatives of Provincial or Federal government agencies, at any time on all aspects of this proceeding and the Applicant's restructuring, subject to such terms of confidentiality as may be appropriate in the Monitor's assessment and in consultation with the Applicant;

(f) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender (as defined below) and its counsel on a weekly basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

(g) advise the Applicant in its development of the Plan and any amendments to the Plan;

(h) assist the Applicant, to the extent required by the Applicant, with the holding and administering of a creditors' meeting for voting on the Plan;

(i) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, wherever situate, in order to assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

(j) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(k) perform such other duties as are required by this Order or by this Court from time to time.

32. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property of the Applicant, or any property of the Non-Applicant Stay Party, and shall take no part whatsoever in the management or supervision of the management of the Business and shall not,

by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental legislation, unless it is actually in possession.

34. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

35. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order or the Initial Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order or the Initial Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

36. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and the Applicant's counsel and advisors in connection with the CCAA proceedings (collectively, the "Restructuring Advisors") together with independent counsel to the Board ("**Board Counsel**") shall each be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Restructuring Advisors and Board Counsel. Notwithstanding the foregoing, the fees and disbursement of Board Counsel paid by the Applicant from and after the date of this Order shall not exceed the aggregate amount of $250,000, plus HST, pending further Order of the Court.

37. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

38. **THIS COURT ORDERS** that the Restructuring Advisors shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $1,250,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Restructuring Advisors, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

DIP FINANCING

39. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Firm Capital Mortgage Fund Inc., or its assignee (the "**DIP Lender**") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed $25,000,000, unless permitted by further Order of this Court.

40. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicant and the DIP Lender dated as of January 29, 2021 (the "**DIP Term Sheet**") attached as Exhibit "HHH" to the Haché Initial Affidavit, subject to such minor amendments as may be acceptable to the Applicant and the DIP Lender and approved by the Monitor.

41. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents and other definitive documents (collectively, the "**DIP Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms of the DIP Term Sheet, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the DIP Documents, as and when the same become due, and are to be performed, notwithstanding any other provision of this Order.

42. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, including without limitation, the real property set out in Schedule "A" (the "**Real Property**"), and the DIP Lender's Charge shall not secure any obligation that exists between the Applicant and the DIP Lender before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 45 and 47 hereof.

43. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the DIP Documents;

(b) upon the occurrence of an event of default under the DIP Documents or the DIP Lender's Charge or upon the Maturity Date (as defined in the DIP Term Sheet), the DIP Lender, upon 14 days' written notice to the Applicant and the Monitor, may exercise, with prior approval of this Court, any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Term Sheet, the DIP Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant, to make, demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

44. **THIS COURT ORDERS AND DECLARES** that, unless otherwise agreed by the DIP Lender, the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any other or similar proceeding that may be commenced by the Applicant with respect to any advances made under the DIP Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

45. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge and the DIP Lender's Charge (collectively, the "**Charges**" and each individually, a "**Charge**") as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $1,250,000);

Second – Directors' Charge (to the maximum amount of $2,000,000);

Third – DIP Lender's Charge (to the maximum amount of $25,000,000); and

Fourth – Directors' Charge (to the maximum amount of $3,000,000).

46. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, construction liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

48. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also

obtains the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the "**Chargees**"), or further Order of this Court.

49. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the DIP Documents shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Term Sheet, the creation of the Charges or the execution, delivery or performance of the DIP Documents; and

(c) the payments made by the Applicant pursuant to this Order, the DIP Term Sheet or the DIP Documents and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

50. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

51. **THIS COURT ORDERS** that, notwithstanding anything else contained herein and pending further Order of the Court, the Property subject to the Charges herein shall not include the Segregated Funds.

SERVICE AND NOTICE

52. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail and the Sudbury Star a notice containing the information prescribed under the CCAA, and (ii) within five days of the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than $1,000 (excluding any individual employees, former employees with pension and/or retirement savings or benefits plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plan), and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

53. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure*, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.ey.com/ca/Laurentian.

54. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal

delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

55. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the case website as part of the public materials in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

56. **THIS COURT ORDERS** that the Applicant and the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

SEALING PROVISION

57. **THIS COURT ORDERS** that Confidential Exhibits "**EEE**" and "**FFF**" of the Haché Initial Affidavit, are hereby sealed pending further order of the Court, and shall not form part of the public record.

GENERAL

58. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

59. **THIS COURT ORDERS** that upon the registration in the Land Titles Division of the Real Property of the DIP Lender's Charge in the form prescribed in the *Land Titles Act* or the

Registration Reform Act, or both, as applicable, the Land Registrar is hereby directed to register the DIP Lender's Charge on title of the Real Property.

60. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

61. **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.

62. **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, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

63. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

64. **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.

CHIEF JUSTICE G.B. MORAWETZ

Schedule "A"
Real Property

PIN	Legal Description
73584-0678	LT 63-67 PL 4SB MCKIM; LT 158-159 PL 25SA MCKIM; PT LT 160 PL 25SA MCKIM; PT LT 68-69 PL 4SB MCKIM; PT NELSON ST, DAVID ST PL 4SB MCKIM (CLOSED BY S70); PT S1/2 LT 5 CON 3 MCKIM AS IN S61148; S/T INTEREST IN S61148; S/T EXECUTION 00-00878, IF ENFORCEABLE; GREATER SUDBURY
73584-0804	LT 232-234 PL 6S MCKIM; PT LT 229-231 PL 6S MCKIM AS IN S53645 EXCEPT PART 1 53R6379; GREATER SUDBURY
73585-1167	PT LT 6, CON 3 MCKIN, PTS 1, 2, AND 3 ON PLAN 53R-19698; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 53R19698 AS IN SD225472; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD225678; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD229534; CITY OF GREATER SUDBURY
73592-0084	PCL 46194 SEC SES SRO; PT LT 2 CON 2 MCKIM PT 2 53R7594; GREATER SUDBURY
73592-0412	PCL 53884 SEC SES; 1STLY: PT LT 3 CON 2 MCKIM PT 1, 53R16920: 2NDLY: PT LT 3 CON 2 MCKIM PT 5, 8, 11 & 12 53R5371; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 2,4,5,6,8,10,11,12 & 13 53R17763 AS IN SD246793
73592-0426	PCL 30769 SEC SES; LT 3 CON 2 MCKIM SW OF PT 13 & 14 53R9175, E OF PT 15 & 16 53R5371, W OF BETHEL LAKE & N OF LT65581; S/T LT394500, LT891690; GREATER SUDBURY
73592-0427	PCL 30769 SEC SES; PT LT 3 CON 2 MCKIM LT 1 EXPROP PL M785; S/T LT622331; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 53R19195 AS IN SD246792
73593-0063	PCL 21810 SEC SES; FIRSTLY: PT LT 2 CON 1 MCKIM; SECONDLY: PT LT 2 CON 2 MCKIM AS IN LT130739; GREATER SUDBURY
73593-0406	PCL 34100 SEC SES AS IN LT264521; PT BROKEN LT 1 CON 1 MCKIM LOCATION 145, PT 1 SR1028; GREATER SUDBURY
73593-0446	PCL 53880 SEC SES; PT LT 3 CON 2 MCKIM PT 7 53R5371; GREATER SUDBURY
73593-0465	PCL 30769 SEC SES; LT 3 CON 2 MCKIM S OF UNIT 1,2,3,4,5 & 6 EXPROP PL D49 & SW OF PT 2,3,7,9 & 14 53R5371; EXCEPT PT 1 SR754 & PARTS 1,2,3 53R20763; N 1/2 LT 2 CON 1 MCKIM; EXCEPT LT130739; PT LT 2 CON 2 MCKIM AS IN EP6694; EXCEPT LT130739, PT 3 53R7594; SRO E 1/2 LT 3 CON 1 MCKIM; EXCEPT PT 1-6, 853R6915; PT LT 3 CON 1 MCKIM AS IN LT211094, EP4842, LT 1 EXPROP PL M764; EXCEPT PT 1 SR754; PT BROKEN LT 4 CON 2 MCKIM AS IN LT220905 (FIRSTLY); EXCEPT UNITS 1-3, 13 EXPROP PL D48; PT LT 4 CON 1 MCKIM AS IN LT2 20905 (SECONDLY) & PT 2 SR754; EXCEPT PT 1 53R4053, PT 1 53R7807, PT 1 & 2 53R8716 & PT 1 & 2 53R9178; PT LT 5 PL M92 PT 2 53R7807; S/T LT119418, LT32862, LT233153 (PARTIALLY RELEASED AS IN SD371949), LT436834, LT25019, LT748126, LT842126;; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 53R7680 AS IN SD261440; SUBJECT TO AN

	EASEMENT IN GROSS OVER PART 1 53R20567 AS IN SD317507; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 2 & 3 53R20797 AS IN SD353369; CITY OF GREATER SUDBURY
	Lease between Her Majesty the Queen in Right of Ontario as Represented by the Minister of Government and Consumer Services and Laurentian University dated January 1, 2020

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-21-656040-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

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Lawyers for the Applicant

TAB 8

CITATION: Laurentian University of Sudbury, 2021 ONSC 1121
COURT FILE NO.: CV-21-656040-00CL
DATE: 2021-02-11

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, Mitch W. Grossell, Andrew Hanrahan* and *Derek Harland*, for the Applicant

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

Peter J. Osborne and *David Salter*, for the Board of Governors

Pamela L.J. Huff and *Aryo Shalviri*, for Royal Bank of Canada

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

Vern W. DaRe, for Firm Capital Mortgage Fund Inc., DIP Lender

Michael Kennedy, Labour Counsel for the Applicant

Charles Sinclair, *Susan Philpott* and *Clio Godkewitsch*, Insolvency Counsel for Laurentian University Faculty Association ("LUFA")

David Wright, Labour Counsel for LUFA

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

Alex McFarlane and *Lydia Wakulowsky*, for Northern Ontario School of Medicine

Daniel Loberto, for Queen's University

André Claude, for University of Sudbury

Joseph Bellissimo, for Huntington University

Andrew J. Hatnay and *Sydney Edmonds*, for Thorneloe University

Linda H-C. Chen, for the Information and Privacy Commissioner of Ontario

Gale Rubenstein and *Bradley Wiffen*, Counsel for Financial Services Regulatory Authority

Murray Gold and *James Harnum*, for Ontario Confederation of University Faculty Associations

George Benchetrit, for Bank of Montreal

Shahana Kar, for Her Majesty the Queen in Right of Ontario

Guneev Bhinder, for Canada Foundation for Innovation

James MacLellan, for Zurich Insurance Company Ltd.

Tushara Weerasoriya and *Stephen Brown-Okruhlik*, for St. Joseph's Health Centre of Sudbury

Mark Baker and *Andriy Luzhetskyy*, for Laurentian University Students' General Association

HEARD: February 11, 2021

ENDORSEMENT

[1] The Amended and Restated Order has been signed.

[2] The Stay Period is extended until April 30, 2021.

[3] The stay of proceedings includes any actions taken pursuant to any collective agreement.

[4] Confidential Exhibits "EEE" and "FFF" of the Haché Initial Affidavit are to remain sealed. This issue will be addressed the way of a supplementary endorsement.

[5] The Service and Notice issues contained at paragraphs 57 – 62 of the draft order have been deleted.

[6] Detailed reasons reflecting the foregoing will follow, most likely, on February 12, 2021.

CHIEF JUSTICE G.B. MORAWETZ

Date: February 11, 2021

TAB 9

CITATION: Laurentian University of Sudbury, 2021 ONSC 1098
COURT FILE NO.: CV-21-656040-00CL
DATE: 2021-02-12

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, Mitch W. Grossell, Andrew Hanrahan* and *Derek Harland*, for the Applicant

Ashley Taylor, Elizabeth Pillon and *Ben Muller*, for Ernst & Young Inc., Monitor

Peter J. Osborne and *David Salter*, for the Board of Governors

Pamela L.J. Huff and *Aryo Shalviri*, for Royal Bank of Canada

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

Vern W. DaRe, for Firm Capital Mortgage Fund Inc., DIP Lender

Michael Kennedy, Labour Counsel for the Applicant

Charles Sinclair, *Susan Philpott* and *Clio Godkewitsch*, Insolvency Counsel for Laurentian University Faculty Association ("LUFA")

David Wright, Labour Counsel for LUFA

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

Alex McFarlane and *Lydia Wakulowsky*, for Northern Ontario School of Medicine

Daniel Loberto, for Queen's University

André Claude, for University of Sudbury

Joseph Bellissimo, for Huntington University

Andrew J. Hatnay and *Sydney Edmonds*, for Thorneloe University

Linda H-C. Chen, for the Information and Privacy Commissioner of Ontario

Gale Rubenstein and *Bradley Wiffen*, Counsel for Financial Services Regulatory Authority

Murray Gold and *James Harnum*, for Ontario Confederation of University Faculty Associations

George Benchetrit, for Bank of Montreal

Shahana Kar, for Her Majesty the Queen in Right of Ontario

Guneev Bhinder, for Canada Foundation for Innovation

James MacLellan, for Zurich Insurance Company Ltd.

Tushara Weerasoriya and *Stephen Brown-Okruhlik*, for St. Joseph's Health Centre of Sudbury

Mark Baker and *Andriy Luzhetskyy*, for Laurentian University Students' General Association ("LUSGA")

Miriam Martin, for Canadian Union of Public Employees ("CUPE")

HEARD: February 10, 2021

DETERMINED: February 11, 2021

REASONS: February 12, 2021

ENDORSEMENT

Background

[1] On February 1, 2021, an Initial Order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C–36, as amended (the "CCAA") was granted, the effect of which was to provide Laurentian University of Sudbury ("LU" or the "Applicant") protection under the CCAA.

[2] At the time of seeking the Initial Order, LU indicated that it intended to seek additional relief at the comeback hearing, upon notice to affected parties, pursuant to a more fulsome order (the "Amended and Restated Initial Order").

[3] The Applicant filed a factum in respect to both the relief sought in the Initial Order and the relief to be sought at the comeback hearing.

[4] The facts to support the requested relief for the Initial Order and for the comeback hearing were set out in the Affidavit of Dr. Robert Haché, sworn January 30, 2021 (the "Haché Affidavit"). Additional evidence was provided in the form of the Report of the Proposed Monitor dated January 30, 2021, and the First Report of the Monitor dated February 7, 2021.

[5] In granting the Initial Order, I made certain findings of fact, including:

i. the Applicant falls under the *Corporations Act*, R.S.O. 1990, c. C.38;

ii. the Applicant's status as a not-for-profit, non-share capital corporation does not impact the applicability of the CCAA to the Applicant;

iii. the Applicant is insolvent;

iv. the Applicant is a "debtor company" to which the CCAA applies;

v. the financial information required pursuant to s. 10(2) of the CCAA was provided;

vi. Ernst & Young Inc. is qualified to act as Monitor;

vii. the requested relief was limited to relief that was reasonably necessary for the continued operation of the Applicant in the ordinary course of business.

[6] The Initial Order provided for relief which included:

i. a stay of proceedings pursuant to s. 11.02(1) of the CCAA, which stay also covered the LUSGA;

ii. authorization to make certain pre-filing and post-filing payments;

iii. the granting of a super priority Administration Charge on the Property (as defined in the Initial Order) in favour of the Monitor, counsel to the Monitor, the Applicant's counsel and advisors, and independent counsel to the Board in the amount of $400,000;

iv. the granting of a priority charge in favour of the Applicant's current and future directors and officers ("Directors and Officers") in the amount of $2 million (the "Directors' Charge"); and

v. a Sealing Order in respect of Confidential Exhibits "EEE" and "FFF" to the Haché Affidavit, relating to correspondence between the Applicant and the Ministry of Colleges and Universities (the "Ministry").

[7] The Endorsement of February 1, 2021, also referenced that LU 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 a successful restructuring.

[8] At the conclusion of a case conference held on February 5, 2021, the Honourable Justice Sean Dunphy was appointed as Court-Appointed Mediator.

[9] At this comeback hearing, the Applicant sought, among other things, the following relief:

i. an extension of the stay of proceedings to April 30, 2021;

ii. approval of a debtor in possession facility (the "DIP Facility") in the amount of $25 million and a DIP Lender's Charge (defined below) to secure the DIP Facility;

iii. an increase in the Administration Charge from $400,000 to $1.25 million; and

iv. an increase in the Directors' Charge from $2 million to $5 million (the increase of $3 million was not to have priority over the DIP Charge).

[10] In its First Report, the Monitor states that since the date of the Initial Order, the Applicant has focused on maintaining normal day-to-day operations. Student classes are continuing (virtually due to the pandemic) with no disruption.

[11] In addition, the Applicant has commenced communications with its various stakeholders. It has launched a website 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.

[12] The Monitor also reports that the Applicant does not anticipate any material change in the weekly Cash Flow Forecast for the period from January 30, 2021 to April 30, 2021 (the "Cash Flow Forecast"), attached to the First Report.

[13] The Monitor also reports that the Applicant is in urgent need of funding in order to permit it to continue operations. LU, through its legal counsel, approached external lenders that specialize in real estate and infrastructure-based lending, including debtor-in-possession financing. The inquiries embarked upon by LU resulted in LU receiving nonbinding draft term sheets from three potential lenders. The Applicant and the Monitor reviewed the terms submitted by the prospective lenders and after further negotiations, the Applicant executed the term sheet (the "DIP Term Sheet") with Firm Capital Corporation. Subsequently, Firm Capital Corporation assigned its interest to Firm Capital Mortgage Fund Inc. (the "DIP Lender").

[14] The material terms of the DIP Facility are set out at paragraph 34 of the Monitor's report.

[15] The Monitor comments that the Applicant will be unable to maintain operations and address its operational and financial restructuring needs without access to DIP financing.

[16] The Monitor states that it is of the view that the Applicant's request for approval of DIP Financing and the DIP Term Sheet is required and reasonable.

Stay Extension

[17] The Monitor is of the view that the requested extension is appropriate for the following reasons:

a. the extension will provide comfort to LU 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

c. the Applicant continues to operate in good faith and with due diligence since the date of the Initial Order.

[18] In addition, based on the Cash Flow Forecast, and with the approval of the DIP Term Sheet and the DIP lender's charge ("DIP Lender's Charge"), the Monitor is of the view that the Applicant should have sufficient liquidity to fund its operations until April 30, 2021.

[19] The Monitor supports the Applicant's request for an order extending the stay to April 30, 2021.

Pension and Benefit Plans

[20] 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").

[21] The proposed Amended and Restated Order requests a stay of the payment of any pre-filing or post-filing special payments to the DB Pension Plan to assist LU with its current liquidity crisis.

[22] The Monitor reports that while the Applicant will have access to funding through the DIP Facility, 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

[23] The proposed Amended and Restated Order provides for a stay of any existing, pending or future information requests to the Applicant pursuant to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 ("FIPPA").

[24] The Monitor reports that the Applicant expects to receive a significant increase in volume of FIPPA information requests and that the Applicant does not have the resources to deal with the increased volume. The Applicant is of the view that it must focus all of its efforts in either serving the needs of students or supporting the operational restructuring process.

[25] The Monitor expects that there will continue to be substantial disclosure of information to all stakeholders through materials filed in the CCAA proceedings as well as additional communications from LU directly to stakeholders. Given the anticipated distraction that would result in attempting to deal with these requests, the Monitor is of the view that extending the stay to FIPPA requests is reasonable in the circumstances.

Super Priority Charges

[26] The proposed Amended and Restated Initial Order provides for the following super priority charges (collectively, the "Charges") on current and future assets of the Applicant, 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).

[27] The Applicant's secured creditors are primarily comprised of subcontractors who registered construction liens and equipment lessors. 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 in priority to these potential claims.

[28] The Administration Charge and the proposed Amended and Restated Initial Order provide for a charge up to $1.25 million 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.

[29] The Monitor is of the view that the proposed Administration Charge is reasonable and appropriate in the circumstances.

DIP Lender's Charge

[30] 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 to match the maximum allowable borrowing amount proposed in the DIP Term Sheet. The DIP

Lender's Charge will be secured by all Property (as defined in the Amended and Restated Initial Order) of the Applicant.

[31] The Monitor notes that the DIP Lender's Charge is a condition of the DIP Financing.

[32] The Monitor further reports the Applicant is in urgent need of the financing to fund operations and is of the view that the DIP Lender's Charge is appropriate and reasonable.

Directors' Charge

[33] The proposed Amended and Restated Initial Order provides for the amount not to exceed $5 million to secure the indemnity in favour of the current and future directors and officers of the Applicant against obligations and liabilities that they may incur as Directors and Officers for actions taken after the commencement of the CCAA proceedings, except to the extent that the obligation or liability is incurred as a result of such Directors' or Officers' gross negligence or wilful misconduct.

[34] 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 insurance policy.

[35] The DIP Term Sheet provides that a Directors' Charge may only rank ahead of the DIP Lender's Charge to a maximum of $2 million. Accordingly, the Applicant proposes 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.

[36] The Monitor has reviewed the calculation of the Directors' Charge, taking into account the amount of LU's payroll, current service pension contributions and vacation pay and notes that the Directors' Charge is less than the quantum of such amounts that will accrue during the CCAA proceedings.

[37] The Monitor is of the view that the Directors' Charge is required and is reasonable in the circumstances.

Conclusions of the Monitor

[38] In its conclusions, the Monitor states that it supports the relief sought by the Applicant in the proposed Amended and Restated Initial Order.

Oral Submissions

[39] A number of oral submissions were made by various parties, but no additional evidence was filed at the comeback hearing.

[40] I note that a number of these submissions, while of interest, were not germane to the relief being sought on this motion.

[41] Counsel also expressed concerns with respect to the scope of proposed language in paragraph 17(b) of the Amended and Restated Order. Counsel referenced certain protections which arise by way of tenure and academic freedom.

[42] Counsel also raised concerns with respect to the Sealing Order which formed part of the Initial Order. Counsel submitted that the relevant portions of the Haché Affidavit (paragraphs 284 – 291) did not establish the basis for a Sealing Order. This submission was echoed by a number of other counsel, including for the Ontario Confederation of University Faculty Associations, the Northern Ontario School of Medicine, the Laurentian University Staff Union, and CUPE.

[43] In addition, counsel indicated that he wished to reserve all rights to cross-examine Dr. Haché on his Affidavit. However, no such relief was requested on this motion. Should the need arise, this issue can be revisited by any interested party.

[44] A reservation of rights was also raised with respect to a potential trust claim for former retirees in respect of the RHBP, as referenced in paragraph 8(a) of the proposed Amended and Restated Initial Order. This reservation of rights is noted.

[45] Counsel on behalf of LUFA and Mr. Gold, on behalf of the Ontario Confederation of University Faculty Associations (the "Associations"), raised concerns about the absence of the Ministry in these proceedings. Although this issue is of interest to LUFA and the Associations and perhaps other stakeholders, it does not, in my view, impact the issues that have to be determined on this comeback motion.

[46] Mr. Gold also raised questions as to whether LU is insolvent. The evidence before me at the time of granting the Initial Order was sufficient for me to find that LU was insolvent. There is nothing in the evidence before me on this comeback hearing that would alter this finding.

[47] Mr. Gold also requested that the extension of the stay be restricted to the end of February, namely February 26, 2021. He reasoned that this timeline could result in the participation of the Ministry.

[48] Counsel on behalf of St. Joseph's Continuing Care and St. Joseph's Health Care Centre raised a concern that the granting of the CCAA charges may give rise to a default under St. Joseph's financing arrangements with, among others, Royal Trust. This issue was addressed by the affected parties and they are content with the following being included as part of my endorsement. Details of Royal Trust's financing of St. Joseph's and the negative covenant relating to encumbrances on the fee simple are set out at paragraphs 192 – 194 of the Haché Affidavit. Royal Trust has been served with these materials and has not objected to the granting of the charges. If St. Joseph's and Royal Trust need to, they may come back before this Court to discuss issues relating to their loan agreement. For greater certainty, this does not constitute a comeback or any reservation of rights with respect to the DIP Charge granted.

[49] Mr. McFarlane, on behalf of the Northern Ontario School of Medicine, submitted that all references to timing provisions in the proposed Initial Restated Order at paragraphs 59, 60 and 61

should be deleted. He reasoned that restructurings are unpredictable and issues may arise at the last moment.

[50] Counsel on behalf of CUPE supported the position put forth by Mr. Sinclair, counsel to LUFA, that there is gratuitous language in paragraph 20 of the proposed Amended and Restated Order. In particular, counsel objected to the inclusion of the words ("including pursuant to any collective agreement") which addresses the stay of proceedings. The inclusion of these words is not necessary. The jurisprudence establishes that a stay of proceedings is to be broadly interpreted. Paragraph 20 is broad enough and is interpreted as establishing that the stay of proceedings includes any actions taken in respect of any collective agreement.

[51] Counsel on behalf of CUPE also made reference to paragraph 17(b) of the proposed Amended and Restated Order which permits the Applicant to terminate the employment of such of its employees or temporarily lay off such of its employees as they deem appropriate. This language is contained in the Commercial List Model Order and reflects the current state of the jurisprudence.

[52] Counsel representing the Information and Privacy Commissioner raised concerns with respect to the stay provisions extending to requests made to the Applicant under the FIPPA. Concerns were expressed with respect to the overly broad language of this provision.

[53] Counsel on behalf of the Ministry of the Attorney General advised that she had not been provided with any instructions on this motion.

[54] Counsel on behalf of Royal Bank of Canada did not oppose the requested relief.

[55] In reply, counsel for LU, on the issue of the Sealing Order, submitted that there had been full and clear disclosure in the Affidavit of Dr. Haché with respect to the necessity and the need for the sealing provision. Counsel added that the Monitor is fully aware of the contents of the documents and supports the view that the sealing provision should be maintained.

LAW AND ANALYSIS

Stay Period and Scope of Stay

[56] Section 11.02(2) of the CCAA provides the authority to extend the stay beyond the initial 10 day stay period. The burden of proof on such an application is on the Applicant.

[57] I am satisfied that the Applicant has established that circumstances exist that make the order appropriate and further that the Applicant is acting in good faith and with due diligence.

[58] In my view it is reasonable and appropriate to grant the request of the Applicant, supported by the Monitor, to extend the stay, until April 30, 2021.

[59] In arriving at this conclusion, I have taken into account that the key stakeholders are participating in a mediation with a Court-Appointed Mediator, which mediation will focus on the

key aspects of any proposed restructuring. It is both necessary and important that the Applicant should focus on its proposed restructuring If this restructuring is to be successful, it will have to be largely completed by the end of April 2021. With the approval of the DIP Facility, the Applicant will have liquidity to the end of this period. It is my expectation that the Monitor will file periodic reports with the Court and these reports will provide updates to interested stakeholders. To the extent that any party is of the view that issues relating to the Stay Period should be brought to the attention of the Court, they can schedule such an attendance. The ability to schedule such an attendance addresses the concerns raised by Mr. Gold to the effect that the Stay Period should not extend beyond the end of February, 2021.

[60] With respect to whether the Amended and Restated Initial Order should provide that information requests made under the FIPPA be stayed, I accept the view expressed by the Applicant and the Monitor that the Applicant expects to receive a high volume of FIPPA requests at this time and the limited resources of the Applicant should not be diverted from its restructuring efforts. I also accept that the Monitor will, during this period, provide alternative means through which information can be obtained.

[61] However, I am unable to determine at this stage of the proceeding as to whether it would be appropriate to extend this specific provision of the stay for an indefinite period of time. I am prepared to continue the stay on the understanding that the Information and Privacy Commissioner can request that this issue be revisited in 30 days. Any request for reconsideration can be made through the Monitor and if the matter remains unresolved, a hearing on this issue can be expedited.

[62] With respect to the request that the court authorize the termination of employees as the Applicant deems appropriate, this provision has been fundamental to CCAA proceedings and is broadly worded to facilitate a restructuring (see: *Windsor Machine and Stamping Limited, Re*, Amended and Restated Initial Order dated September 2, 2008 and *Windsor Machine and Stamping Limited, Re*, 2009 CarswellOnt 4471 at para. 23; and *Aveos Fleet Performance Inc.*, Initial Order dated March 19, 2012 and *Aveos Fleet Performance Inc*./*Aveos Performance aéronautique inc.* (*Arrangement relatif à* [2013] QCCS 5924.

[63] I also note that the Applicant has acknowledged the challenges that will be faced in this aspect of the restructuring, including as it relates to tenure. The Applicant has also acknowledged the existence of the LUFA collective agreement which was entered into on July 1, 2017, which initial term expired on June 30, 2020, and remains in force during any negotiating period.

[64] The Applicant also points out that the relief sought will not substantially alter the LUFA collective agreement. Indeed, the collective agreement does not prevent employees from being terminated and specifically allows that they may be terminated in certain circumstances, which include redundancy and financial exigency.

[65] I am satisfied that the requested relief is not inconsistent with the provisions of s. 33 of the CCAA. The Applicant has addressed this issue at paragraphs 74 – 75 of its factum. Nor is it inconsistent with the provisions of section 18(b) of *An Act to incorporate Laurentian University*

of Sudbury, S.O. 1960, c. 151, which provides that the Board has the sole discretion to terminate faculty (Application Record – Vol. 2A, Tab 8A, p. 251).

Special Payments

[66] The Applicant requests that the Amended and Restated Initial Order stay any outstanding pre-filing special payments to the pension plan. I am satisfied that the liquidity crisis facing LU and restrictions on the use of the DIP Facility is such that it is necessary to stay any outstanding pre-filing or post-filing special payments to the pension plan. This will assist the Applicant with its severe liquidity crisis. This stay is limited to the special payments and does not apply to the Applicant's regular (ordinary course) contributions to the pension plan.

The CCAA Charges

Administration Charge

[67] The Applicant requests that an Administration Charge be granted super priority on the Property in the increased amount.

[68] Section 11.5 of the CCAA provides the court with statutory jurisdiction to grant the Administration Charge.

[69] In *CanWest Publishing Inc./Publications CanWest Inc., (Re)*, 2010 ONSC 222 at para. 54, Pepall J (as she then was) identified the following non-exhaustive list of factors the court may consider when granting an administration charge:

a. the size and complexity of the business being restructured;

b. the proposed role of the beneficiaries of the charge;

c. whether there is an unwarranted duplication of roles;

d. whether the quantum of the proposed charge appears to be fair and reasonable;

e. the position of the secured creditors likely to be affected by the charge; and

f. the position of the monitor.

[70] I am satisfied that the Administration Charge is warranted, necessary, and appropriate in the circumstances, given that the proposed restructuring will require the extensive involvement of professional advisors and there does not appear to be an unwarranted duplication of roles, so that the professional fees will be minimized. I also note that the Monitor is supportive of the proposed quantum of the Administration Charge.

[71] Based on the forecasted costs and the Cash Flow Forecast for the professionals covered under the Administration Charge, I am satisfied that the requested relief should be granted.

DIP Facility and DIP Charge

[72] The Applicant seeks approval of the DIP Facility and also seeks a super priority charge on the Property in the amount of $25 million, subject to the terms of the DIP Term Sheet. The DIP Charge is proposed to rank behind the Administration Charge (up to a maximum amount of $1,250,000) and the Directors' Charge (up to a maximum of $2 million), but ahead of all other interests in the Property of the Applicant, save and except properly perfected purchase money security interest on specific equipment.

[73] The evidence establishes that the Applicant is facing a liquidity crisis and that absent additional financing, the Applicant will be unable to meet payroll at the end of February.

[74] The evidence also establishes that a competitive process involving multiple potential DIP lenders was entered into, following which the Applicant secured the DIP Facility from the DIP Lender pursuant to the DIP Term Sheet.

[75] The Applicant's access to the DIP Facility is conditional upon an order of the court approving the DIP Term Sheet and the DIP Facility and granting the DIP Charge.

[76] Section 11.2 of the CCAA provides the Court with authority to approve the DIP Facility and the DIP Charge. Section 11.2(2) also provides the court with authority to order that the DIP charge rank in priority over the claim of any secured creditor of the company.

[77] Section 11.2 (4) sets out the factors to be considered by the court in deciding whether to grant a super priority charge in respect of DIP financing.

[78] I have concluded that it is appropriate to approve the DIP Facility and the DIP Charge. In arriving at this conclusion, I have taken into account that the notice requirements under s. 11.2(1) have been met; the Applicant has immediate liquidity needs and it is apparent that the Applicant cannot obtain alternative financing outside of these CCAA proceedings; the terms of the DIP Term Sheet resulted from an arms-length negotiation; the DIP Facility is necessary in order for the Applicant to implement its restructuring plan and without it, the Applicant will not be able to continue operations.

[79] In my view, the quantum of the DIP Facility is reasonable and appropriate. I also note that the Monitor is of the view that the DIP Term Sheet and DIP Charges are appropriate and limited to what is reasonably necessary in the circumstances.

Directors' Charge

[80] A Directors' Charge in the amount of $2 million was granted at the initial hearing. The Applicant seeks to increase the Directors' Charge to $5 million, $3 million of which will rank subordinate to the DIP Charge.

[81] Section 11.51 of the CCAA provides the court with the jurisdiction to grant a directors' charge in an amount the court considers appropriate, provided notice is given to the secured

creditors likely to be affected by it. In order to grant a directors' charge, the court must be satisfied of the following factors:

a. notice has been given to the secured creditors likely to be affected by the charge;

b. the amount is appropriate;

c. the applicant could not obtain adequate indemnification insurance for the directors at a reasonable cost; and

d. the charge does not apply in respect of any obligation incurred by directors as a result of the directors' gross negligence or wilful misconduct. (see: *Jaguar Mining Inc., Re,* 2014 ONSC 494 at para. 45).

[82] I am satisfied that the Directors' Charge is reasonable in the circumstances. In arriving at this conclusion, I accept the submissions that the Applicant will benefit from the active and committed involvement of the Directors and Officers; the Applicant cannot be certain whether the existing insurance will be applicable or respond to any claims made; the Directors' Charge is not to secure obligations incurred by the Directors as a result of gross negligence or wilful misconduct, and the Monitor is of the view that the Directors' Charge is reasonable and appropriate.

Confidential Exhibits – Sealing Order

[83] A Sealing Order was granted at the initial hearing.

[84] A number of parties raised concerns with respect to the Sealing Order at the comeback hearing. In view of the expiration of the Stay Period on February 11, 2021, it was necessary to determine this comeback motion no later than that date. In order to address the sealing provision, I require additional time. Accordingly, the sealing order in respect of Confidential Exhibits "EEE" and "FFF" to that Haché Affidavit will remain in effect pending the issuance of a Supplementary Endorsement addressing this issue.

Provisions in the Draft Order Relating to the Objection Deadline

[85] Paragraphs 57 - 62 of the proposed Initial and Restated Order purport to establish deadlines to file materials for court hearings. The *Rules of Civil Procedure* address this issue. I acknowledge the concerns raised by Mr. McFarlane that the establishment of strict deadlines may not be practical in the context of a time sensitive restructuring. There is always the possibility that events dictate that materials have to be filed on the eve of the hearing. I expect that counsel will cooperate with each other to minimize the delivery of any last-minute materials, but I also acknowledge that in certain circumstances this may be unavoidable. In the circumstances, I have determined that it is not necessary or desirable to include the proposed paragraphs 57 - 62.

INITIAL AND RESTATED ORDER

[86] In accordance with my brief endorsement of February 11, 2021, I modified the proposed Initial and Restated Order to reflect the foregoing. The signed order was provided to the Commercial List Office on February 11, 2021, for distribution to the parties.

CHIEF JUSTICE G.B. MORAWETZ

Date: February 12, 2021

TAB 10

CITATION: Laurentian University of Sudbury, 2021 ONSC 1453
COURT FILE NO.: CV-21-656040-00CL
DATE: 2021-02-26

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, Mitch W. Grossell, Andrew Hanrahan* and *Derek Harland*, for the Applicant

Ashley Taylor, Elizabeth Pillon and *Ben Muller*, for Ernst & Young Inc., Monitor

Peter J. Osborne and *David Salter*, for the Board of Governors

Pamela L.J. Huff and *Aryo Shalviri*, for Royal Bank of Canada

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

Vern W. DaRe, for Firm Capital Mortgage Fund Inc., DIP Lender

Michael Kennedy, Labour Counsel for the Applicant

Charles Sinclair, *Susan Philpott* and *Clio Godkewitsch*, Insolvency Counsel for Laurentian University Faculty Association ("LUFA")

David Wright, Labour Counsel for LUFA

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

Alex McFarlane and *Lydia Wakulowsky*, for Northern Ontario School of Medicine

Daniel Loberto, for Queen's University

André Claude, for University of Sudbury

Joseph Bellissimo, for Huntington University

Andrew J. Hatnay and *Sydney Edmonds*, for Thorneloe University

Linda H-C. Chen, for the Information and Privacy Commissioner of Ontario

Gale Rubenstein and *Bradley Wiffen*, Counsel for Financial Services Regulatory Authority

Murray Gold and *James Harnum*, for Ontario Confederation of University Faculty Associations

George Benchetrit, for Bank of Montreal

Shahana Kar, for Her Majesty the Queen in Right of Ontario

Guneev Bhinder, for Canada Foundation for Innovation

James MacLellan, for Zurich Insurance Company Ltd.

Tushara Weerasoriya and *Stephen Brown-Okruhlik*, for St. Joseph's Health Centre of Sudbury

Mark Baker and *Andriy Luzhetskyy*, for Laurentian University Students' General Association ("LUSGA")

Miriam Martin, for Canadian Union of Public Employees ("CUPE")

SUPPLEMENTARY ENDORSEMENT

[1] This Supplementary Endorsement to the Endorsement of February 12, 2021, addresses a challenge to the Sealing Order granted in the Initial Order of February 1, 2021. The Sealing Order covers Confidential Exhibits "EEE" and "FFF" (the "Exhibits") to the affidavit of Dr. Robert Haché, sworn January 30, 2021 (the "Haché Affidavit").

[2] "EEE" is a letter from the Ministry of Colleges and Universities (the "Ministry") to Laurentian University ("LU") dated January 21, 2021. "FFF" is a letter from LU to the Ministry dated January 25, 2021.

[3] LU contends that the Exhibits contain information with respect to LU and certain of its stakeholders, including various rights or positions that stakeholders or LU may take either inside or outside of these CCAA proceedings, the disclosure of which could jeopardize LU's efforts to restructure.

[4] Counsel to LU submits that the salutary effects of the Sealing Order far outweigh the deleterious effects of not disclosing the correspondence between LU and the Ministry.

[5] The position of LU is supported by the Monitor. The Monitor is fully aware of the state of negotiations, not only as between LU and the Ministry, but also between LU and various stakeholders, including the Laurentian University Faculty Association ("LUFA").

[6] Submissions in opposition to the Sealing Order were made by counsel on behalf of LUFA, the Ontario Confederation of University Faculty Associations ("OCUFA"), the Northern Ontario School of Medicine and Laurentian University Staff Union.

[7] The essence of the submissions in opposition to the Sealing Order was to the effect that there was no evidence that would suggest that the Sealing Order is necessary to protect a valid commercial interest. Therefore, there was no evidentiary basis on which to grant the Sealing Order.

[8] Mr. Gold, on behalf of OCUFA, took the position that the Sealing Order is not justified and is speculative in nature and it would be a dangerous precedent to seal the documents, just on the basis that they are not helpful to LU's position.

[9] It is necessary to take into account that the position of the Ministry in these proceedings, if any, is unknown.

[10] However, it is clear that Dr. Alan Harrison has been appointed as Special Advisor by the Ministry. His mandate is to provide advice and recommendations to the Ministry with respect to the current financial state of LU and its path to return to financial sustainability.

[11] It is also clear that the Honourable Justice Sean Dunphy is the Court-Appointed Mediator in these proceedings and a critical aspect of the mediation is the relationship between LU and its stakeholders, including LUFA.

[12] Section 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, provides the court with the discretion to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.

[13] In *Sierra Club of Canada* v. *Canada (Minister of Finance)*, [2002] 2 S.C.R. 522 (S.C.C.), Iacobucci, J. set out that a Sealing Order should only be granted when:

(a) such an order is necessary in order to prevent serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and

(b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

[14] The Supreme Court identified three important elements subsumed under the first branch of the above test. First, the risk in question must be real and substantial, in that the risk is well grounded in evidence and imposes a serious threat to the commercial interest in question. Second, a "commercial" interest must be an interest that goes beyond harm to the private commercial interests of a person or business. To qualify as an "important commercial interest", the interest must be one that can be expressed in terms of a public interest in confidentiality. Third, the phrase

"reasonable alternative measures" requires the court to consider not only whether reasonable alternatives to a confidentiality order are available, but also to restrict the order as much as is reasonably possible while preserving the commercial interest in question.

[15] The evidence of Dr. Haché can be summarized as follows:

(i) LU is insolvent;

(ii) LU has been completely transparent with the Ministry regarding the financial challenges it faces, has provided details to the Ministry regarding its financial situation and the outcome if the efforts undertaken by LU to resolve its concerns cannot achieve the required results;

(iii) LU has highlighted the benefits that it provides to the community of Northern Ontario and the costs and risks associated with attempting an informal restructuring outside of a proceeding and the costs and risks associated with the potential CCAA restructuring;

(iv) in the days and weeks leading up to this CCAA application, LU has been in frequent communication with the Ministry, members of the Treasury Board and senior staff members at the Ministry of Finance;

(v) LU has been in continuous dialogue with the Ministry and intends to continue this dialogue throughout the CCAA proceedings.

[16] Dr. Haché has not been cross-examined, although a number of parties at the comeback hearing reserved rights to cross-examine him at some point in the future.

[17] I have reviewed the Exhibits in detail.

[18] Firstly, the evidence as contained in the Haché Affidavit outlines that there has been continuous communication between LU and the Ministry with respect to the financial crisis currently facing LU. As such, the Ministry is well aware that a real-time solution to the crisis must be found if LU is to survive and continue operations beyond the current academic year. The crisis is real and immediate. The role, if any, that the Ministry will play is at this moment uncertain.

[19] In my view, the disclosure of the Exhibits, at this time, could be detrimental to any potential restructuring of LU. As such, the risk in disclosing the Exhibits is real and substantial and imposes a serious risk to the future viability of LU. I also note that it is speculative to conclude that the Exhibits contain information that is not helpful to LU's position.

[20] Secondly, it seems to me that the "commercial" interest related to the Exhibits transcends the direct commercial interests of LU. It involves the entire LU community, including the faculty, students, employees, third-party suppliers, and the City of Greater Sudbury and the surrounding area. It is of paramount importance to all of these groups that all efforts to restructure LU be explored. In order to do so, it is necessary to maintain the confidentiality of the Exhibits. The

disclosure of the Exhibits, at this time, could undermine the restructuring efforts being undertaken by LU.

[21] Thirdly, I am required to consider whether there are any reasonable alternatives to a confidentiality order affecting the Exhibits. At this time the stakeholders are involved in a mediation being conducted by Justice Dunphy. It could very well be that negotiations are at a sensitive stage or will shortly be at a sensitive stage. In my view, it would not be appropriate, at this time, to implement any alternative to a confidentiality order, as to do so could negatively impact the mediation efforts being conducted by Justice Dunphy.

[22] At this stage of the proceedings, I am satisfied that it is in the interests of all stakeholders that the Mediator be provided with an adequate opportunity to consult with the various stakeholders in order to ascertain whether or not common ground can be found on which to formulate a restructuring of LU.

[23] I am satisfied that the first branch of the test has been met.

[24] I am also satisfied, based on the evidence, that the salutary effects of the Sealing Order outweigh its deleterious effects, which in this context, includes the public interest in accessing the Exhibits. Thus, the second branch of the test is satisfied.

Disposition

[25] Accordingly, I conclude that LU has satisfied the test set forth in *Sierra Club* and that it is necessary to maintain the confidentiality of the Exhibits and the existing provision in the Amended and Restated Order providing for the sealing of the Exhibits.

CHIEF JUSTICE MORAWETZ

Date: February 26, 2021

TAB 11

Court File No. __________

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 PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT OF LAURENTIAN UNIVERSITY OF SUDBURY

REPORT OF THE PROPOSED MONITOR
January 30, 2021

INTRODUCTION

1. Ernst & Young Inc. ("**EY**" or the "**Proposed Monitor**") understands that Laurentian University of Sudbury ("**LU**" or the "**Applicant**") has brought an application before the Court seeking an initial order (the "**Proposed Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**") in order to, among other things, obtain a stay of proceedings to allow the Applicant an opportunity to financially and operationally restructure itself. The Applicant proposes that EY be appointed as Monitor in the CCAA proceedings.

2. This report (the "**Report**") has been prepared by the Proposed Monitor prior to and in contemplation of its appointment as Monitor in the CCAA proceedings to provide information to the Court for its consideration at the Applicant's initial CCAA hearing.

PURPOSE

3. The purpose of this report is to provide information to the Court on:

    i. EY's qualifications to act as Monitor;

    ii. an overview of the Applicant;

    iii. a summary of the Applicant's financial position;

iv. the circumstances leading to the Applicant’s decision to commence CCAA proceedings;

v. a summary of the Applicant’s historical and current cash management practices;

vi. information on the Applicant’s current cash and liquidity position;

vii. an overview of the Applicant’s thirteen-week cash flow forecast (the “**Cash Flow Forecast**”) and the Proposed Monitor’s comments regarding the reasonableness thereof;

viii. information on a proposed debtor-in-possession interim financing arrangement;

ix. certain relevant matters about the relief sought in the Proposed Initial Order;

x. the Proposed Monitor’s comments with respect to the appointment of a mediator; and

xi. the Proposed Monitor’s conclusions.

TERMS OF REFERENCE AND DISCLAIMER

4. In preparing this Report and making the comments herein, the Proposed 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 Report in respect of the Applicant’s Cash Flow Forecast:

i. the Proposed Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Proposed 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 Proposed Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information; and

ii. some of the information referred to in this 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.

5. Future oriented financial information referred to in this 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.

6. Unless otherwise indicated, the Proposed Monitor's understanding of factual matters expressed in this Report concerning the Applicant and its business is based on the Information, and not independent factual determinations made by the Proposed Monitor.

7. This 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 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.

8. The Proposed 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 states "*In preparing this affidavit, I have relied upon the financial information in this affidavit has been provided to me by the VP Administration who is accountable for, and has responsibility over, LU's Finance department. This is the best information available to me through the VP Administration, the Finance department and the books and records of LU as of the date of swearing. LU has experienced a number of challenges with the limited team and resources in the Finance department, and such difficulties are made even more pronounced with the additional demands placed on their time in connection with the preparation for this CCAA proceeding*". As a result, the Proposed Monitor notes that the Information relied upon for purposes of this Report may be limited by these challenges.

9. Unless otherwise stated all monetary amounts contained herein are expressed in Canadian dollars.

EY's QUALIFICATIONS TO ACT AS MONITOR

10. EY is a licensed insolvency trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act* (Canada). EY is not subject to any of the restrictions set out in section 11.7(2) of the CCAA on who may be appointed as Monitor.

11. As discussed in further detail later in this Report, EY has developed an understanding of the Applicant's operations and cash flow based on preparatory work in respect of the CCAA proceeding and will be able to very quickly and seamlessly perform its responsibilities as Monitor, if appointed.

12. Due to the Pandemic, EY anticipates that the performance of its responsibilities as Monitor will be performed virtually. While this creates some limitations, EY has the organizational and technological infrastructure in place to do so and on balance, does not anticipate any material differences in its ability to perform its role as Monitor.

13. The Proposed Monitor has retained Stikeman Elliott LLP to act as its independent counsel.

OVERVIEW OF THE APPLICANT

Background

14. This Report should be read in conjunction with the Haché Affidavit for additional background and financial information with respect to the Applicant.

15. 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.

16. LU is a publicly funded, bilingual and tricultural post-secondary institution. Its operations are located in the City of Greater Sudbury, Ontario and it has consistently been one of the largest employers in Sudbury.

17. The objectives and purposes of LU are described in the Laurentian Act as:

    i. the advancement of learning and the dissemination of knowledge; and

    ii. the intellectual, social, moral and physical development of its members and the betterment of society.

18. 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.

Governance Structure

19. As described in the Haché Affidavit, the governance structure of LU is bi-cameral. It has a Board of Governors (the "**Board**") and a Senate (the "**Senate**"), both of which derive their

powers from the Laurentian Act. The Board, and the President and Vice-Chancellor generally have powers over the operational and financial management of LU, whereas the Senate is responsible for decisions in respect of educational policy at LU.

20. Section 18(1) of the Laurentian Act provides that all powers over, in respect of or in relation to the governance, financial management and control of LU and its officers, servants and agents, its property, revenues, expenditures, business and affairs are vested in the Board. However, there is a carve out in section 18(1) for matters that are specifically assigned by the Laurentian Act to the President, the Senate or federated universities or colleges.

21. Section 21 of the Laurentian Act provides that the Senate is responsible for the educational policy of LU, subject to approval of the Board with respect to the expenditure of funds and the establishment of facilities.

22. Section 28(2) of the Laurentian Act provides that the President of LU is the chief executive officer and chairman of the Senate and has supervision over the direction of academic work and the general administration of LU.

23. The Board is currently comprised of 21 voting members and 9 non-voting members. Four voting member positions are vacant. With the exception of the President and two student association representatives, the voting members are all independent of LU. The non-voting members are comprised of Senate and employee bargaining unit representatives.

24. The Senate is comprised of 77 voting members and 6 non-voting members. The voting members are comprised of i) twenty-seven ex officio members, ii) eleven elected student members, and iii) thirty-nine elected faculty members. Two elected student voting member positions are vacant. Non-voting members are comprised of i) the Speaker of Senate, ii) the Registrar, who shall be Secretary of Senate, iii) the Director of Research, Development and Creativity, iv) the President of the Université de Hearst, v) the Executive Director, Goodman School of Mines, and vi) the deputy Speaker of Senate.

25. The Laurentian Act confers various powers on LU, including, among other things, the power to: (i) establish courses (Senate); (ii) confer degrees (Senate); (iii) enter into federation agreements with other colleges (Board); (iv) purchase, mortgage, lease and convey property (Board); (v) borrow money (Board); and (vi) commence proceedings in its own name (Board).

Operations

26. LU is one of the primary post-secondary organizations serving the large geographic region of Northern Ontario. At one time, LU operated a satellite campus in Barrie, Ontario which has been closed since 2019. LU is one of twenty public universities in Ontario.

27. LU's operations include its academic teaching operations, academic research and the provision of certain ancillary services.

28. LU's academic operations primarily focus on undergraduate programming, with approximately 8,200 domestic and international undergraduate students (or approximately 6,250 full time equivalents) enrolled in the 2020-2021 fall semester. LU also has a strong graduate program, with approximately 1,100 domestic and international graduate students (or approximately 830 full time equivalents) enrolled during the 2020-2021 fall semester.

29. LU has a bilingual and tri-cultural mandate offering programs and courses in both English and French with a comprehensive approach to Indigenous education for students with interest in that subject area.

30. LU's ancillary operations include i) student residences, ii) food services, iii) parking, iv) a printing centre, v) conferences and events, vi) the Laurentian English Language Institute, and vii) the Centre for Academic Development.

31. LU's research operations are a critical component of LU's operations. LU considers itself a comprehensive university, meaning it places significant emphasis on both its teaching and research operations. Faculty members are expected to spend 40% of their time on scholarly activity which includes research.

32. LU has material relationships with a number of affiliated entities, none of which are proposed to be applicants in the CCAA proceedings. These entities include:

    i. the Northern Ontario School of Medicine ("**NOSM**");

    ii. certain independent federated universities operating under the overall LU umbrella including the University of Sudbury ("**SU**"), the University of Thorneloe ("**Thorneloe**") and Huntington University ("**Huntington**") (collectively, the "**Federated Universities**");

    iii. the Sudbury Neutrino Observatory Laboratory (**SNOLab**");

    iv. the Mining Innovation Rehabilitation and Applied Research Corporation ("**MIRARCO**");

    v. the Centre for Excellence in Mining Innovation ("**CEMI**"); and

    vi. the Students General Association ("**SGA**"), Graduate Students Association ("**GSA**"), the Association des étudiantes et étudiants francophones ("**AEF**") and iv) the Indigenous Students Circle ("**ISC**") (collectively, the "**Students' Associations**")

33. Further information with respect to each of these entities is set out below.

Northern Ontario School of Medicine

34. NOSM is a not-for-profit corporation established under the *Corporations Act* (Ontario). LU and Lakehead University ("**Lakehead**") are the two members of NOSM.

35. Through an agreement between LU and Lakehead, located in Thunder Bay, Ontario, NOSM opened in 2005. NOSM is an independent not-for-profit corporation which serves as the faculty of medicine for both LU and Lakehead. A copy of the Corporation Profile Report for NOSM is attached to the Haché Affidavit as Exhibit C.

36. While NOSM operates legally, financially and operationally independent of LU, representatives of both LU and Lakehead University serve on the Board of Directors. Currently, LU's President, Dr. Haché serves as the Chair. With respect to NOSM's educational policy, academic decisions are required to pass at both LU's and Lakehead University's senates as ultimately NOSM students receive degrees conferred by one of LU or Lakehead.

37. NOSM has campuses located in Sudbury and Thunder Bay. LU owns the two buildings that NOSM occupies on the Sudbury campus and leases the buildings to NOSM.

38. Both LU and Lakehead provide facilities and support services, student registration and student fee collection, bursary (scholarship) receipt and disbursement, and other educational, research and operational services. As part of the operational services, students have access to most LU or Lakehead campus services. LU and Lakehead provide research support including the administration of NOSM research grants and awards. NOSM is invoiced monthly for the use of these services. NOSM student receipts and registration fees for certain of NOSM's students are deposited into LU's general operating accounts. These amounts are remitted to NOSM at certain points in the year, net of fees charged to NOSM for support services.

39. In addition, LU holds approximately $14 million in endowments designated to fund future scholarships for qualifying NOSM students. These endowments are described in greater detail in the Summary of Financial Position section of this Report.

Federated Universities

40. As described in the Haché Affidavit, LU has a federated school structure whereby it has formal affiliations with the Federated Universities: SU, Huntington and Thorneloe.

41. SU is a Roman Catholic bilingual university offering programs in Culture and Communication Studies, Indigenous Studies, Philosophy and Religious Studies including

courses in both English and French. It was founded in 1913 as Collège du Sacré-Coeur before changing its name to the University of Sudbury in 1957.

42. Huntington is an independent university founded in 1960 with its own charter, and offers programs in Communication Studies, Gerontology, Religious Studies and Theology.

43. Thorneloe is a university with historic roots and affiliation with the Anglican Church of Canada and offers programs in the departments of Ancient Studies, Religious Studies and Women's, Gender and Sexuality Studies.

44. Students who graduate from all of the Federated Universities have their degrees conferred by LU, save for a limited exception for students graduating from the Theology program at Huntington.

45. LU and the Federated Universities are affiliated through a variety of historical relationships and contractual arrangements which are described in detail in the Haché Affidavit. Each of the Federated Universities are separate legal entities and are each governed by a board of governors independent of LU.

46. Each of the Federated Universities owns certain buildings on land that is owned by LU and is leased to the Federated University by LU. The Federated Universities do not receive funding directly from the Province of Ontario (the "**Province**"), but historically, other than specific francophone grants directed to SU by the Ontario Ministry of Colleges and Universities (the "**MCU**"), LU has transferred a portion of the funding it receives from the Province to each Federated University according to a set formula (as described in greater detail below).

47. LU provides a number of non-academic services to the Federated Universities, which include but are not limited to: i) student fee collection and accounting; ii) central computing services; iii) administration of all pension and employee benefits; iv) campus security; and v) student support services.

48. The Federated Universities do not recruit or register their own students, nor do they grant their own degrees. All Federated University programs and courses are offered through LU. Students who enroll at LU may study at any or all of the three Federated Universities (as well as LU), which are all physically located on LU's campus. Students enrolled in programs, courses, majors and minors that are administered by the Federated Universities remain students of LU and these courses are credited towards a degree from LU, which has the sole authority to confer degrees upon students (with the exception of Theology at Huntington). In addition, all students of LU enrolled in courses delivered by the Federated Universities can fully utilize the services offered on the entire campus. To students, there is virtually no distinction between LU and the Federated Universities. For all intents and purposes, the Federated Universities are integrated into LU, however, each of the Federated

Universities is separately governed and manages its finances separately from each other, and from LU.

49. Most of the faculty of the Federated Universities are represented by the same labour union as LU's faculty, the Laurentian University Faculty Association ("**LUFA**"), but each of the Federated Universities has their own collective agreement with LUFA.

50. The employees of the Federated Universities are members of LU's pension plan. Each of the Federated Universities are required, pursuant to the pension plan, to contribute the amount required to fund the defined benefit pension plan in respect of their employees. Each of the Federated Universities directly contribute to the plan on a monthly basis.

51. As the Federated Universities are federated with LU and do not have the power to confer degrees, they do not receive operating grants directly from the Province of Ontario. Similarly, as students are all students of LU, the Federated Universities do not directly bill or collect tuition. As a result, LU and the Federated Universities have certain financial agreements in place pursuant to which LU allocates and distributes funds to the Federated Universities in accordance with a funding formula (the "**Federated Funding Formula**"). The key terms of the Federated Funding Formula include the distribution of the following:

    i. a portion of provincial grants received by LU to the Federated Universities based on the current and future provincial funding formulas for post-secondary institutions;

    ii. a portion of tuition fees received by LU based upon student enrolment in courses offered by the Federated Universities; and

    iii. an offsetting charge for service fees charged by LU to the Federated Universities in exchange for LU providing certain support services to the Federated Universities (calculated as 15% of grant and tuition revenues distributed to the Federated Universities).

<u>SNOLab</u>

52. SNOLab is an underground research laboratory, located in Vale's Creighton mine in close proximity to Sudbury, Ontario. SNOLab's science program focuses on astroparticle physics, although its unique location is well-suited to biology and geology experiments as well.

53. SNOLab is operated under a trust agreement between five member institutions: LU, Carleton University, Queen's University, University of Alberta and Université de Montréal. Oversight and governance of the SNOLab facility and the operational management occurs through the SNOLab Institute Board of Directors. The SNOLab Institute is formally an unincorporated institute of Queen's University which provides

overarching accountability with each university partner acting as a trustee for SNOLab assets. LU's proportionate share of the assets, liabilities and obligations of SNOLab is 20%.

54. LU provides certain services to SNOLab. In particular, LU processes the payroll for approximately 128 SNOLab employees, as of December 2020 and provides benefit programs to these employees. Eligible SNOLab employees participate in LU's pension plan as described below.

55. LU funds the payroll, benefits and contributions to the pension plan on behalf of SNOLab and then invoices SNOLab for the total amounts paid. Upon receipt of the invoice, SNOLab reimburses LU in full for the total cost of payroll, benefits and pension plan contributions.

MIRARCO

56. MIRARCO is headquartered in Sudbury, Ontario and is a not-for-profit mining research arm of LU.

57. MIRARCO is a corporation without share capital which LU is the sole member of. MIRARCO is consolidated in LU's financial statements. The majority of MIRARCO's Board of Directors are independent from LU, although there is some overlap with the Board. MIRARCO's executive team is comprised primarily of mining experts.

58. LU processes the payroll for MIRARCO's 19 employees, provides their benefit programs and eligible MIRARCO employees participate in LU's pension plan.

59. LU funds the payroll, benefit programs and contributions to the pension plan on behalf of MIRARCO and then invoices MIRARCO for the total amounts paid. Upon receipt of the invoice, MIRARCO reimburses LU in full for the total cost of payroll, benefits and pension plan contributions. However, MIRARCO has experienced financial difficulties in the last several years, which has resulted in delays in reimbursements to LU.

CEMI

60. CEMI is located in Sudbury, Ontario and is a corporation without share capital. Its mission is to be one of Canada's leading contributors to mining innovation by introducing new practices, procedures, tools and techniques to help generate significant improvement in the performance of mines. CEMI coordinates innovation initiatives with mining companies and helps ensure they are successfully implemented.

61. Oversight and governance of CEMI occurs through the CEMI Board of Directors, which is composed of leaders of the mining industry, including mining experts, government agency representatives and academics. Currently, the Vice-President, Research at LU

serves on the CEMI Board of Directors. CEMI has partnerships with numerous academic institutions globally, including LU.

62. The operations of CEMI are funded by a combination of private research grants and government research grants. CEMI also generates revenue by conducting training workshops for various entities in the mining sector.

63. LU processes the payroll for CEMI's 5 employees, provides their benefit programs and eligible CEMI employees participate in LU's pension plan.

64. LU funds the payroll, benefit programs and contributions to the pension plan on behalf of CEMI and then invoices CEMI for the total amounts paid. Upon receipt of the invoice, CEMI reimburses LU in full for the total cost of payroll, benefits and pension plan contributions.

Students' Associations

65. As set out above, there are four student bodies that represent LU's students and make up the Students' Associations: i) SGA; ii) GSA; iii) AEF; and iv) ISC.

66. The SGA is the largest bilingual undergraduate association at LU. The SGA provides undergraduate student representation and services. Policy and advocacy are essential branches of the SGA, as it actively participates and lobbies within LU, at municipal, provincial and federal levels of government on behalf of students and participates in both provincial and national student movements.

67. The GSA similarly provides advocacy and student services to its graduate student members.

68. The AEF represents the interests of francophone students on campus. Its mandate is to enhance social, academic and cultural ties that unite, through the promotion of the French language, student engagement in a variety of francophone activities and events, and political, academic and administrative representation.

69. The ISC works to support the academic endeavours of its members by promoting Indigenous culture and by supporting and developing opportunities for social and cultural interaction in the Laurentian community.

70. LU collects certain student fees on behalf of the Students' Associations as part of its regular student billing process. Students' Associations fees collected are then subsequently distributed to the respective organizations.

Employees

71. As at December 30, 2020, LU employed approximately 1,751 people. Of this total, approximately 758 are full-time employees and approximately 993 are fixed term, part-time and student employees. Of the same total, approximately i) 612 are LUFA employees, ii) 268 are LUSU (defined below) employees, iii) 305 are CUPE (defined below) employees, iv) 134 are LUAPSA (defined below) employees and v) 432 are non-unionized part-time and student employees.

72. The total number of employees fluctuates on a regular basis given the large number of part-time and student employees. Typically, the operating departments of LU employ approximately 400-500 student employees at any one time. However, due to the impact of COVID-19 and students studying remotely, there were approximately 200 student employees in November 2020 vs. 470 in November 2019.

73. Of the approximately 612 employees represented by LUFA, 355 are full-time faculty, many of whom will have tenure pursuant to the collective agreement, 252 are sessional faculty or health care professionals and 5 are full-time counsellors. The number of sessional employees varies from term to term depending on need.

74. The non-faculty staff are represented by the Laurentian University Staff Union ("**LUSU**"). LUSU represents LU's staff, which includes all employees of LU in clerical, technical, administrative, service and security work. LUSU represents approximately 268 employees.

75. The remainder of LU's full-time employees that are not represented by a union include approximately 23 senior leadership employees and 111 administrative and professional staff, most of whom are in managerial roles. The managerial and non-managerial employees are considered part of an informal association that LU recognizes as the Laurentian University Administrative and Professional Staff Association ("**LUAPSA**"). LUAPSA has an executive committee that meets with LU on occasion and LU solicits feedback from the LUAPSA executive committee regarding matters that affect employees that are in positions falling under the LUAPSA umbrella.

76. Masters level and PhD level students who are employed as Graduate Teaching Assistants ("**GTAs**") are represented by the Canadian Union of Public Employees ("**CUPE**"). Currently, there are approximately 305 GTAs although this number can fluctuate.

<u>LUFA</u>

77. LUFA and the Board of LU are parties to a collective agreement with a three-year term (the "**LUFA CA**") which expired on June 30, 2020. Pursuant to the provisions of the LUFA CA, the agreement automatically continues year-to-year unless notice is provided that either LUFA or LU intends to terminate or amend the LUFA CA. In February 2020, LUFA

provided LU with a notice to bargain. Pursuant to Article 13.15.3 of the LUFA CA, the agreement automatically remains in force during any period of negotiation. A copy of the LUFA CA is attached to the Haché Affidavit as Exhibit I.

78. Faculty currently represent approximately 60% of operating salaries and benefits (i.e. excluding research and SNOLab/MIRARCO related salaries and benefits) paid by LU. Therefore, the LUFA CA governs the biggest expense of LU.

79. LU and LUFA have been engaged in bargaining with respect to a new collective bargaining agreement since April 2020. The Proposed Monitor understands from Management that during bargaining, the University has informed LUFA of the severe financial challenges faced by LU and the possibility that LU could run out of money. Accordingly, the University has indicated that it is seeking various concessions. However, despite extensive bargaining between LU and LUFA, including with the assistance of a mediator, no material progress has been made on a new collective agreement.

80. The Proposed Monitor also understands that there are currently approximately 102 active unresolved grievances filed by LUFA as well as an ongoing unfair labour practice complaint and a judicial review with respect to the Provost's decision in 2020 to suspend enrolment in 17 academic programs with very low enrolment.

<u>LUSU</u>

81. On July 1, 2018, LUSU and LU entered into a collective agreement that was set to expire on June 30, 2021 (the "**LUSU CA**"). A copy of the LUSU CA is attached to the Haché Affidavit as Exhibit V.

82. In light of the financial challenges of LU, LUSU agreed to open the existing LUSU CA early for negotiation, prior to its expiration on June 30, 2021. Those negotiations resulted in the ratification of an amended collective agreement that achieved the following:

i. Year 1: a 1.0% salary reduction, which previously was a 1.5% salary increase under the LUSU CA;

ii. Year 2: a 0.5% salary increase on July 1, 2021 and January 1, 2022;

iii. Year 3: a 0.5% salary increase on July 1, 2022 and January 1, 2023;

iv. Six furlough days for all LUSU members without pay in 2020;

v. Confirmation of LU's ability to effect employee transfers and the additional flexibility to reassign and transfer staff during the collective agreement; and

vi. Retirement incentive to maintain salary and pension at the pre-reduced salary level as at June 30, 2020, with the condition to retire on or before October 31, 2020.

83. The furlough days provided LU with a one-time cash benefit of $450,000, paid directly by LUSU to LU, and the reassignment, transfer and retirement provisions resulted in 11.5 position redundancies in 2020 generating total annual savings of approximately $800,000.

CUPE

84. On September 1, 2019, CUPE and LU entered into a collective agreement (the "**CUPE CA**"). The CUPE CA is set to expire on August 31, 2021. A copy of the CUPE CA is attached to the Haché Affidavit as Exhibit W.

85. In September 2019, CUPE agreed to a total compensation increase of 1%. The entirety of the increase was allocated to scholarship payments, with a 0% increase in salary over the two-year term of the CUPE CA.

Pension and Benefit Plans

86. LU administers three employee pension and benefit plans: (i) a registered defined benefit pension plan (the "**DB Pension Plan**"); (ii) a supplementary unfunded retirement plan (the "**SuRP**") and (iii) a retirement health benefits plan (the "**RHBP**").

DB Pension Plan

87. The DB Pension Plan is open to all eligible employees of LU along with employees of the Federated Universities, SNOLab, MIRARCO and CEMI. LU is defined as the "primary employer" under the DB Pension Plan. A copy of the DB Pension Plan dated July 1, 2018 is attached to the Haché Affidavit as Exhibit X.

88. There are currently 406 individuals collecting a lifetime pension from the DB Pension Plan. There are 981 active members currently contributing to the DB Pension Plan but not yet collecting a benefit. In addition, approximately 500 members have deferred status, meaning they have left the University and have not yet started collecting pension benefits. All full-time employees of LU or the other applicable employers who are employed on a continuous full-time basis (as determined by the employer) must participate in the DB Pension Plan. Other employees who are not full-time employees may elect to join the DB Pension Plan once such employee has been continuously employed for at least two years and the employee meets certain minimum salary or employment hour requirements.

89. The most recent actuarial valuation of the DB Pension Plan 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).

90. 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. Currently, LU makes monthly payments in respect of LU, SNOLab, MIRARCO and CEMI employees. The Federated Universities make payments in respect of their employees.

91. The Proposed Monitor understands that in light of its current financial situation, LU will be seeking relief from this Court in the CCAA proceedings 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.

92. From an administration perspective, LU funds the DB Pension Plan's administration costs including the costs of the pension plan trustee and other professionals and is subsequently reimbursed by the DB Pension Plan. Historically these costs have been reimbursed on a quarterly basis.

SuRP

93. The SuRP was implemented on July 1, 2002 to provide additional retirement benefits to LU employees participating in the DB Pension Plan and earning income over a certain threshold. Retiring employees who qualify for the SuRP are automatically included in the plan and receive either an annual or monthly payment. A copy of the SuRP dated January 1, 2014 is attached to the Haché Affidavit as Exhibit Y.

94. The SuRP is unfunded. Historically, LU has made annual payments in respect of the SuRP from current operating funds in July of each year. There are currently 32 retired employees eligible to receive payments pursuant to the SuRP. The forecast amount payable in July 2021 to these retired individuals is approximately $260,000. As at April 30, 2020 the accrued benefit obligation in respect of the SuRP was estimated at $3,063,000.

95. The Proposed Monitor understands that LU also has contractual agreements to provide supplemental retirement benefits to two individuals in former or current leadership roles. These obligations are also unfunded.

96. The Applicant contemplates that if the Proposed Initial Order is granted, payments pursuant to the SuRP and any other contractual agreements will be stayed.

RHBP

97. Since 1998, LU has provided the RHBP to individuals that elect to enrol in the program. In addition to LU employees, the RHBP is available to employees of the Federated Universities, SNOLab, MIRARCO and CEMI. There are currently 866 active employees

enrolled in and contributing to the RHBP that are not yet collecting benefits. There are currently 358 retirees who are eligible to collect benefits. A copy of the RHBP policy (the "**RHBP Policy**") is attached to the Haché Affidavit as Exhibit Z.

98. To be eligible to participate in the RHBP, employees must satisfy the following conditions:

  i. The employee must retire at age 55 or older;

  ii. The employee must have contributed for at least 15 years to the RHBP; and

    a. The employee must purchase private coverage and provide the employer with receipts for private coverage; or

    b. The employee may elect not to purchase private coverage but must provide the employer with receipts for medical expenses.

99. Employees do not qualify if the employee qualifies for continued coverage under the Laurentian University Group Benefits Plan.

100. Employees participating in the RHBP are required to pay a monthly premium which varies depending on the type of employee (i.e. LU, Federated Universities, SNOLab or LUSU member) and whether the employee enrolls in single or family coverage.

101. The RHBP Policy communicated to employees provides that LU will establish a trust account in respect of the RHBP. This trust account was to receive all contributions by employees participating in the RHBP, an annual $25,000 contribution by LU and the proportionate contributions by the Federated Universities.

102. Rather than establishing a separate trust account, LU has historically tracked contributions to the RHBP as a liability in its accounting records and on its balance sheet. However, neither contributions by employees nor LU contributions to the RHBP were set aside in a separate bank account.

103. In December 2020, pursuant to a direction of the Board of Governors, LU began segregating RHBP contributions. Further information with respect to this change is set out in the Cash Management section of this Report.

FINANCIAL POSITION

104. LU does not prepare interim monthly or quarterly financial statements. The audited annual financial statements for the year ended April 30, 2020 are the most recent available financial statements. A copy of these financial statements is attached to the Haché Affidavit as Exhibit OO.

105. Set out below is a summary of LU's historical consolidated financial results for the last five years ending April 30:

(CAD $'000s)	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
Revenues:					
Operating grants and contracts	75,729	78,262	78,754	80,063	86,234
Tuition fees	51,959	55,538	54,940	55,581	53,211
Research grants and contracts	21,680	20,789	30,085	24,655	24,151
Other fees and income	15,593	15,126	13,453	14,940	17,587
Sales and services	11,092	11,257	12,482	12,468	11,620
Amortization of deferred capital contributions	3,150	3,885	4,631	4,864	5,594
Investment income	-	3,889	1,016	2,653	-
Total Revenues	**179,203**	**188,746**	**195,361**	**195,224**	**198,397**
Expenses:					
Salaries and benefits	125,532	134,278	126,751	134,939	134,552
Operating and research	24,464	24,053	33,383	27,880	28,175
Occupancy	12,340	13,208	12,386	15,163	15,271
Scholarships and bursaries	11,662	11,337	11,472	11,411	12,072
Amortization of capital assets	6,711	7,692	9,309	9,931	10,446
Investment loss	480	-	-	-	1,001
Total Expenses	**181,189**	**190,568**	**193,301**	**199,324**	**201,517**
Excess / (deficiency) of revenues over expenses	**(1,986)**	**(1,822)**	**2,060**	**(4,100)**	**(3,120)**

Revenues

106. LU's primary source of operating revenue comes from operating grants and tuition fees. These items account for approximately 70% of total revenues for the fiscal year ended April 30, 2020.

107. Operating grants are primarily received from the Province with a smaller portion coming from the federal government. Until recently, most operating funding received from the Province has been based on enrolment figures. Moving forward, the Province is transitioning to a model that places less weight on enrolment and greater weight on performance metrics tied to student and economic outcomes. Performance targets are set individually for each university. In addition to these operating grants, LU receives grants specifically to support its bilingual mandate and in recognition of its location in northern Ontario.

108. Tuition represents amounts charged to students for academic programming. Tuition charged to domestic students is regulated by the Province. In January 2019, the Province required all universities in Ontario to reduce domestic tuition fees by 10% and implemented a subsequent tuition freeze. Tuition charged to international students is not subject to the reduction or freeze and is much higher than domestic tuition rates.

109. Research grants and contracts represent grants, awards, contributions or contracts to provide sponsored funding for specific research projects (collectively, "**Research Grants**"). Research is conducted by faculty, graduate students under the direction of faculty (in many cases, these graduate students are required to complete research as part of their degree requirements) or by dedicated researchers employed by LU. In many cases, faculty apply for Research Grants directly while in other cases, LU applies for the grant as part of a larger project. Applications for Research Grants are approved for submission by the Vice-President Research at LU.

110. Research Grants are awarded by various federal government agencies, various provincial government agencies as well as private sector industry partners. Applications for Research Grants typically set out the proposed research work to be completed and the specific budgeted costs to complete the work. Awarded Research Grants typically provide that the funds awarded must be spent only in connection with the specific research set out in the Research Grant, cannot be used for any other purpose and in some cases, must be placed in a separate account. Typically, allowable costs under the Research Grants must be incremental costs (including salaries for researchers, specific equipment, subscriptions and other direct costs). In most cases, Research Grants cannot be used to fund faculty salaries or university operating overhead.

111. Other Fees and Services and Sales and Service relate primarily to ancillary income (ancillary fees charged to students for residence, meals, parking, conferences and other services or earned from other sources), donations and fees charged to various affiliated entities as described above.

112. Donations received by LU include: (i) unrestricted donations which are recognized in income immediately; (ii) restricted donations which are designated for a specific purpose and recorded as deferred contributions on the balance sheet until such time as the designated purpose is fulfilled; and (iii) endowments for which the capital amount of the donation is intended to be preserved with the income used to fund specific scholarships or other amounts. Endowments are not recognized in income and are recorded directly as an increase in net assets.

113. Amortization of deferred capital contributions represent the amortization into income of previously received donations and grants designated specifically for capital projects. These amounts were set up as a deferred liability when received and are amortized into income on a timeframe consistent with the depreciation of the related assets.

Expenses

114. Salaries and benefits represent LU's most significant expense at approximately 67% of total expenses for the fiscal year ended April 30, 2020. Salaries and benefits include amounts paid in connection with research, and to MIRARCO and SNOLab employees in

the aggregate of $16 million for fiscal 2020. The remaining $119 million in fiscal 2020 represents costs of the academic teaching operations and provision of ancillary services.

115. Operating and research and occupancy represent all the non-employee related costs of running the university including non-people related costs incurred in connection with the performance of research work. These costs include utilities, property maintenance, cleaning, municipal taxes, insurance, information technology, library subscription fees, travel, professional fees and other costs.

116. Scholarships and bursaries represent amounts awarded to students to help defray tuition costs. Some of this amount is funded through endowments (as described in further detail below) or other restricted donations.

Consolidated Statement of Financial Position

117. Set out below is LU's consolidated statement of financial position for the fiscal year ended April 30, 2020:

(CAD $'000s)	**April 30, 2020**
ASSETS	
Current	
Cash and short-term investments	4,544
Accounts receivable	27,045
Other current assets	1,650
	33,239
Non-current	
Accounts receivable	169
Investments	52,845
Capital assets	272,267
TOTAL ASSETS	**358,520**
LIABILITIES, DEFERRED CONTRIBUTIONS AND NET ASSETS	
Current liabilities	
Line of credit	14,400
Short-term loan	1,367
Accounts payable and accrued liabilities	22,319
Accrued vacation pay	1,846
Deferred revenue	1,009
Current portion of long-term debt	2,738
	43,679
Long-term obligations	
Long-term debt	88,973
Employee future benefits liabilities	20,788
	109,761

(cont'd on next page)

Deferred contributions	
Deferred contributions	38,519
Deferred capital contributions	129,879
	168,398
Net assets	
Unrestricted	(19,986)
Vacation and employee future benefits	(22,635)
Internally restricted	3,848
Investment in capital assets	22,610
Endowment	52,845
	36,682
TOTAL LIABILITIES, DEFERRED CONTRIBUTIONS AND NET ASSETS	**358,520**

Assets

118. As at April 30, 2020, LU had minimal cash on hand – approximately $2.6 million in cash and $1.9 million in short-term investments. It was reliant on an unsecured line of credit to fund operations as set out below.

119. LU's primary assets as at April 30, 2020 were its investments and capital assets.

120. LU maintains investment accounts at SEI Private Trust Company and RBC Dominion Securities Inc. At April 30, 2020, the balance in these investment accounts was $54.7 million representing the long-term investments and the $1.9 million in short term investments noted above. The majority of this amount is designated to support the $52.8 million in endowments held by LU as described further below.

121. Capital assets are comprised of: (i) buildings, (ii) equipment and furnishing, (iii) site improvements, and (iv) land. The book value of the capital assets (except land) are derived by their cost less accumulated amortization. As of April 30, 2020, the aggregate net book value of $272.2 million was comprised of buildings of approximately $249.6 million, equipment of approximately $7.3 million, site improvement of approximately $1.9 million and land of approximately $13.4 million.

122. In addition to the land and buildings on LU's main campus, the capital assets of LU consist of other buildings and real property in and around the Sudbury area such as the Art Centre located at 251 John Street, the President's House and the McEwen School of Architecture located in downtown Sudbury at 85 Elm Street.

Liabilities

123. As at April 30, 2020, LU had recorded liabilities with a book value totaling approximately $321.8 million.

124. LU's cash needs are cyclical. While operating grants are typically received evenly throughout the year, tuition and certain other ancillary income is billed at the start of the semester or academic year. As a result of its ongoing deficits and limited cash reserves, LU has been reliant on lines of credit to fund operations during certain months of the year. LU would draw on these lines of credit during the negative cash flow months and repay the facilities in the positive cash flow months when tuition was received.

125. Historically, LU had access to two unsecured revolving demand loan facilities: (i) with Caisse Populaire Voyageurs Inc. ("**Desjardins**") with availability up to a maximum amount of $26 million (the "**Desjardins Line of Credit**"); and (ii) with Royal Bank of Canada ("**RBC**") with availability up to a maximum principal amount of $5 million (the "**RBC Line of Credit**").

126. As at April 30, 2020, LU had drawn $14.4 million against the Desjardins Line of Credit. The RBC Line of Credit was undrawn. Subsequently, additional amounts were drawn on the Desjardins Line of Credit and then, the full amount owing was repaid in August and September 2020 upon receipt of significant tuition fees. Currently, no amounts are drawn on either facility.

127. As a result of recent discussions with these lenders in respect of LU's financial position, RBC has since advised LU that the RBC Line of Credit has been cancelled and is no longer available to LU. In addition, in connection with discussions with Desjardins, LU agreed that it would not draw any amount on the Desjardins Line of Credit in light of its financial challenges.

128. Pursuant to a letter agreement dated October 3, 2005 (as amended on May 30, 2008, June 1, 2009 and July 27, 2016, (the "**TD Credit Facility Agreement**"), the Toronto-Dominion Bank ("**TD**") also provided LU with a single draw committed reducing term facility in the initial principal amount of $2.0 million with a maturity date of April 3, 2021. The proceeds of this loan were previously used to fund the construction of LU's student recreation centre. As of January 29, 2021, the outstanding principal balance owing under this facility is $1,323,626 (exclusive of accrued interest and costs). This is a single draw facility and LU is not entitled to draw further amounts under this facility.

129. LU also has a number of unsecured long-term debt obligations to Bank of Montreal ("**BMO**"), RBC and TD.

130. Set out below is a summary of these long-term debt obligations (in $ millions) as at April 30, 2020:

Bank	Maturity	Amount Outstanding
BMO	2024	1.366
RBC	2040	13.187
RBC	2043	17.573
RBC	2023	2.770
RBC	2042	39.496
TD	2036	10.647
TD	2043	6.672
TOTAL LONG-TERM DEBT		91,711

<u>BMO</u>

131. Pursuant to a term sheet, fixed rate promissory note and an ISDA Master Agreement (collectively, the "**BMO Facility**"), each dated November 12, 2004, LU and BMO entered into an unsecured fixed rate term loan and fixed rate operating loan with an interest rate swap option up to the maximum principal amount of $4,116,098 (the "**BMO Credit Facility**"). The term of the BMO Facility is 20 years.

132. On June 16, 2020, LU requested, and BMO agreed to provide certain payment accommodations to LU in light of the ongoing Pandemic and defer principal payments under the BMO Credit Facility for a period of several months. As of today's date, approximately $1.3 million is outstanding under the BMO Credit Facility. A copy of the BMO Credit Facility is attached to the Haché Affidavit as Exhibit UU.

<u>RBC</u>

133. Pursuant to a letter agreement most recently dated June 12, 2019 (as amended from time to time, the "**RBC Credit Facilities Agreement**"), RBC provided LU with the following additional unsecured credit facilities:

i. a fully advanced non-revolving term facility in the principal amount of $13,547,000 with a maturity date of November 22, 2040, the proceeds of which were used by LU to finance the construction of a new building on LU's campus;

ii. a fully advanced non-revolving term facility in the principal amount of $17,994,000 with a maturity date of October 7, 2042, the proceeds of which were used for the takeout financing of a new residence located on LU's campus (the "**Residence Takeout Facility**");

iii. a fully advanced non-revolving term facility in the principal amount of $40,509,000 with a maturity date of December 15, 2041, the proceeds of which were used for the takeout financing in respect of a project undertaken by LU to modernize the Sudbury campus; and

iv. a fully advanced non-revolving term facility in the principal amount of $3,616,000 with a maturity date of May 31, 2023, the proceeds of which were used for takeout financing in respect of a renovation loan in respect of a single student residence (the "**Renovation Takeout Facility**").

134. In addition, RBC provided LU with a $250,000 revolving demand facility in respect of letters of guarantee.

135. A copy of the RBC Credit Facilities Agreement is attached to the Haché Affidavit as Exhibit RR.

136. On or about June 25, 2020, LU requested, and RBC agreed to provide certain payment accommodations to LU in light of the ongoing Pandemic and to defer principal payments for several months in respect of the Residence Takeout Facility and the Renovation Takeout Facility.

137. As at the current date, the aggregate principal amount owing under the RBC Credit Facilities Agreement is approximately $71.1 million.

138. Pursuant to the RBC Credit Facilities Agreement, LU has, among other things, covenanted not to grant, create, assume or suffer any charge, security interest or encumbrance affecting any of its properties or assets without the written consent of RBC.

<u>TD</u>

139. Pursuant to a letter agreement dated October 3, 2005 (as amended on May 30, 2008, June 1, 2009 and July 27, 2016, (the "**TD Credit Facility Agreement**"), TD provided LU with the following unsecured credit facilities:

i. committed reducing term facility in the initial principal amount of $14,800,000 with a maturity date of August 31, 2021, used to pay out a previous facility advanced by TD for the construction of a student residence. As of January 29, 2021, the outstanding principal balance owing under this facility is $10,575,875 (exclusive of accrued interest and costs). This is a single draw facility and LU is not entitled to draw further amounts under this facility; and

ii. committed reducing term facility in the initial principal amount of $6,150,000 (subsequently increased to $10,000,000), with a with a maturity date of September 30, 2018 (which was extended to September 28, 2023), used to pay out previous facilities advanced by TD and Infrastructure Ontario for the construction a new athletic facility and to convert long term debt. As of January 29, 2021, the outstanding principal balance owing under this facility is $6,570,917 (exclusive of accrued interest and costs). This is a single draw facility and LU is not entitled to draw further amounts under this facility.

140. A copy of the TD Credit Facility Agreement is attached to the Haché Affidavit as Exhibit VV.

141. On or about June 25, 2020, LU requested, and TD agreed, to provide certain payment accommodations to LU in light of the ongoing Pandemic and defer principal payments for a period of several months in respect of the TD Credit Facility Agreement.

142. As at the current date, the aggregate principal amount owing under the TD Credit Facilities Agreement is approximately $18.5 million.

143. Pursuant to the TD Credit Facility Agreement, LU covenanted that its indebtedness under the TD Credit Facility Agreement to TD will rank at least pari passu with all other obligations of LU.

144. Further, in accordance with a guarantee dated June 27, 2018, LU guaranteed the obligations owed by the SGA to TD pursuant to a Letter Agreement between the SGA and TD dated April 10, 2018 in the amount of $8,500,000. This indebtedness was incurred by the SGA to provide funding for a new student centre.

<u>Interest Rate Swaps:</u>

145. In order to manage its long-term interest rate risk, LU entered into a series of interest rate swap transactions with its lenders. In each case, LU agreed to pay a fixed rate of interest on a notional principal amount and the counterparty lender agreed to pay a variable rate of interest based on a notional principal amount on the Canadian Dollar Offered Rate ("**CDOR**").

146. Copies of the swap confirmations for the above interest rate swap transactions are attached to the Haché Affidavit as Exhibits WW, XX and YY.

147. As the interest rate swap transactions correspond to certain of LU's long-term debt obligations, the notional principal amount outstanding varies month to month in accordance with the amortization schedules appended to the interest rate swap confirmations. The net impact of these interest rate swap transactions has been a net cash outflow from LU of approximately $340,000 monthly.

<u>Employee Future Benefits</u>

148. The balance of $20.8 million reported on the annual audited financial statements as at April 30, 2020 in respect of employee future benefits represents the actuarial estimated accrued benefit obligation less the fair value of the plan assets pursuant to the DB Pension Plan, SuRP and RHBP, as further described above. The accrued benefit obligation is calculated based on certain assumptions and does not represent the actual deficit that would be applicable if the plans were wound up.

Deferred Contributions

149. The balance of $38.5 million reported on the annual audited financial statements as at April 30, 2020 in respect of deferred contributions represent externally restricted grants, awards, donations or other funds designated for a specific purpose in respect of which the designated expenditures have not been incurred. These deferred contributions include:

i. Unspent Research Grants: These are Research Grants that in many cases are received in advance of the research expenditures being incurred. As described above, the Research Grants provide that the funds can only be used for qualifying expenditures in connection with the specific grant;

ii. Restricted Donations: These represent donations or other contributions received that were designated for specific purposes and for which the planned expenditures have yet to be made;

iii. Scholarships: These represent donations or funds received specifically to fund scholarships to students and for which the scholarships have yet to be awarded. In some cases, this represents scholarships funded by endowments whereby investment income on the endowments has been allocated to specific scholarship funds; and

iv. RHBP Contributions: This represents amounts deducted from employee wages and designated as contributions to the RHBP in addition to the employer contributions to the RHBP as per the RHBP Policy.

150. Management has advised the Proposed Monitor that as of December 31, 2020, LU estimates the deferred contributions liability to be approximately $36.5 million.

151. The Proposed Monitor notes that while these amounts are recorded as a liability on LU's balance sheet, no funds have been set aside or are currently available to satisfy these obligations. Further information with respect to historical cash management practices are described in the Cash Management section of this report below.

Deferred Capital Contributions

152. Deferred capital contributions are comprised of either: i) unspent or ii) spent and unamortized capital donations and grants received for the purchase of capital assets. As described above, amounts received in respect of capital contributions are initially set up as a liability on the balance sheet and amortized into income on a timeframe consistent with the depreciation of the related assets they were used to fund. As at April 30, 2020, LU had a deferred capital contributions balance of approximately $129.9 million, of which $0.6 million represented the unspent portion and $129.3 million represented the unamortized portion.

153. Similar to deferred contributions, no funds were set aside for unspent deferred capital contributions.

Net Assets

154. Net assets have decreased by $32.9 million from $69.6 million in fiscal year 2014-2015 to $36.7 million in fiscal year 2019-2020. LU's net assets balance as of April 30, 2020 is comprised of: i) $20.0 million unrestricted fund deficit, ii) $22.6 million vacation and employee future benefits fund deficit, iii) $3.8 million internally restricted fund balance, iv) $22.6 million investment in capital assets fund balance, and v) $52.8 million endowment fund balance.

155. The unrestricted fund deficit represents the accumulated historical deficit from operations excluding amounts in respect of employee future benefits and capital transaction activity.

156. The vacation and employee future benefits fund deficit represents estimated accrued vacation pay and the actuarial estimated accrued benefit obligation, net of plan assets in connection with employee future benefit liabilities.

157. The internally restricted fund balance represents historical operating surpluses or specific amounts received that were internally designated by the Board to be used for specific purposes. The fund balance is comprised of: i) $1.1 million equity balance of MIRARCO, ii) $2.6 million balance of carried forward budget surpluses, iii) negative $0.7 million accumulated operating loss from the McEwen School of Architecture and iv) $0.9 million accumulated surplus of LU's ancillary operations. The Proposed Monitor notes that while these amounts are internally designated for these purposes, no funds are set aside to fund these items.

158. The investment in capital assets fund balance is calculated by taking the net book value of capital assets of $272.3 million less: i) $91.7 million of long-term debt outstanding, ii) $12.9 million of internal financing re-allocated from LU's operating fund, iii) $1.4 million of short-term loans outstanding, iv) $14.4 million owing on the revolving lines of credit; and v) $129.3 million of unamortized deferred capital contributions.

159. The endowment fund balance represents donations received for which the principal amount of the donation was designated to be preserved and for which the income was to be used to fund specific scholarships or for other designated purposes. The long-term investments held by LU as discussed above include funds historically received in respect of these endowments and set aside to be used specifically for this purpose. The Proposed Monitor notes that of the $52.8 million in endowments, approximately $14.0 million relates to endowments intended for NOSM student scholarships. The majority of these amounts were received prior to the incorporation of NOSM.

CIRCUMSTANCES LEADING TO THE APPLICANT'S CCAA FILING

160. As set out above in the Financial Overview section of this Report, LU has generated year-over-year losses for a significant number of years with few exceptions. As a result, LU's combined accumulated unrestricted fund deficit and employee liabilities deficit has grown to approximately $42.6 million.

161. Over recent years, certain events and circumstances have arisen that have contributed to LU's ongoing deficits. These include the following:

i. Tuition reduction and freeze: As set out above, in January 2019, the Province required all universities to implement a domestic tuition fee reduction of 10% for the 2019-2020 fiscal year and then a freeze on domestic tuition fees for the 2020-2021 fiscal year for all Ontario universities. The Province has not yet announced tuition fee guidelines for the 2021-2022 fiscal year and onwards. This has had a significant impact on recent and projected tuition fee revenue.

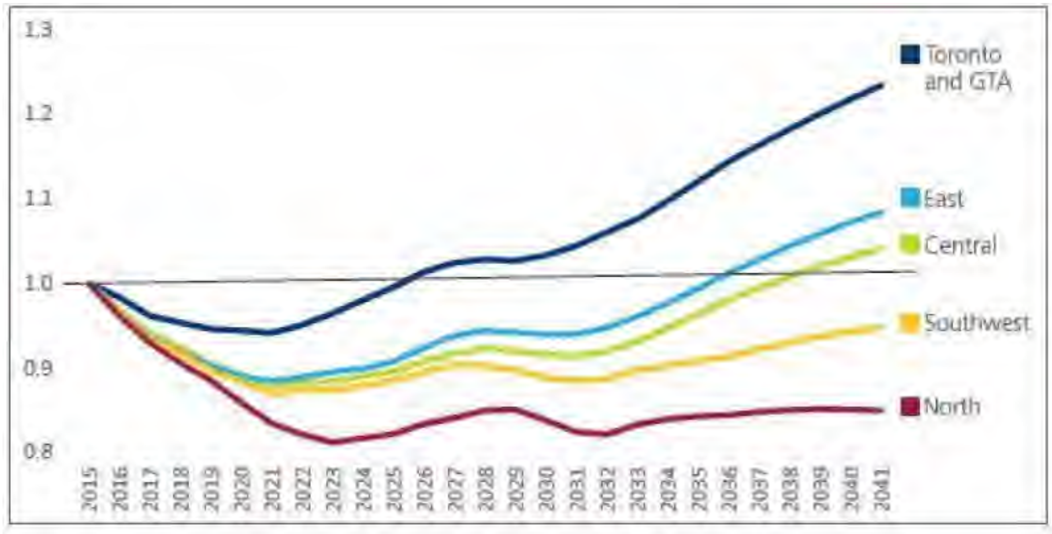
ii. Declining domestic enrolment: Below is an overview of LU's fall semester enrolment by region, measured in full time equivalents.

Fall Semseter Enrolment	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
Sudbury	3,254	3,180	2,975	2,875	2,860	2,741
GTA	1,117	1,135	1,054	1,008	983	1,078
Central Ontario	1,076	1,024	867	771	793	811
North Eastern Ontario	560	613	634	663	712	751
Eastern Ontario	444	452	510	552	523	586
South Western Ontario	258	261	256	258	262	291
North Western Ontario	59	52	55	65	66	77
Out of Province	370	393	377	378	409	482
International	95	90	134	165	176	241
Unknown	15	22	35	24	51	33
Total	7,246	7,222	6,896	6,758	6,834	7,090

As illustrated in the above chart, LU has experienced a net decrease in enrolment from the 2015-2016 to 2019-2020 fiscal year. In the 2020-2021 fiscal year, LU has seen an increase in enrolment of 3.7%. However, the increase is primarily attributable to growth in online course enrolment of 36.7%. Enrolment by students into first year programs declined by 2.3%.

In fiscal 2020-2021, enrolment from i) the province of Ontario was approximately 89%, ii) Sudbury was approximately 39%, and iii) the Northern Ontario regions (Sudbury, North Eastern Ontario and North Western Ontario) was approximately 50%. Accordingly, LU's enrolment is highly dependent on student enrolment from both Northern Ontario and Ontario as a whole.

The graph below shows Ontario's 18-to-20-year-old population projections by region, disaggregated into five regions tracked by the Ontario Ministry of Finance[1]:



Ontario Regional Population Projections - 18 to 20 Year Olds

The Ontario Ministry of Finance projections indicate that (i) the student pool in Northern Ontario is expected to remain relatively flat for the foreseeable future; ii) the Central, East and Southwest Ontario regions do not project significant increases for the foreseeable future; and iii) the Toronto and GTA region shows the stronger recovery.

Based on the above demographic projections, LU expects relatively flat domestic enrolment growth.

iii. Capital Expenditures: Over the last several years, LU embarked on a number of capital projects including a campus modernization project, construction of a Faculty of Education building, certain student residences and a student recreation centre. A significant proportion of this spending was financed through long term debt. It was thought that these projects would assist in driving increased enrolment which would lead to increased operating grant and tuition revenues. However, as set out above, enrolment actually declined resulting in the principal and debt payments required to service the debt adding additional stress to the operating budget.

iv. Academic Programming: LU has a large number of programs relative to its number of students. Currently, there are 175 different programs offered – 132 undergraduate programs and 43 graduate programs. While the programs that drive

[1]Weingarten, H. P., Hicks, M., Jonker, L., & Moran, G. (2017). University Sustainability: Signal Data. Toronto: Hig her Education Quality Council of Ontario.

student demand and enrolment have evolved over the years, LU's academic program list has not been continually refreshed to reflect these shifts in demand. As a result, the majority of students are enrolled in a relatively small subset of programs. A large number of programs have consistently low enrolment and are not financially sustainable. The following statistics highlight the enrolment profile in LU's programs:

- Of the 132 undergraduate programs, 25% of students are enrolled in the top 5 programs, 62% are enrolled in the top 25 and 83% are enrolled in the top 50 programs;

- Of these same 132 undergraduate programs, only 1% of students are enrolled in the bottom 25 programs and only 5% are enrolled in the bottom 50 programs;

- Of the 43 graduate programs, 48% of students are enrolled in the top 5 programs, 65% are enrolled in the top 10 and 91% are enrolled in the top 25 programs; and

- Of these same 43 graduate programs, less than 1% of students are enrolled in the bottom 5 programs and only 2.5% are enrolled in the bottom 10 programs.

v. Barrie Campus Closure: As discussed in the Overview section of this Report, LU previously operated a satellite campus in Barrie, Ontario through an arrangement with Georgian College. The agreement governing the arrangement expired in 2014 and despite attempts to negotiate a continuation of the arrangement, LU was unsuccessful. This led to a decision in 2016 to close the Barrie campus which ultimately closed in May 2019. The closure resulted in an overall decline in enrolment combined with an obligation under the LUFA CA to retain the faculty previously associated with the Barrie campus.

vi. COVID-19 Impact: Upon the declaration of the Pandemic, LU halted in-person activity, restricted its facilities to staff and students and took steps to move to a remote delivery format in March 2020 based on recommendations from Public Health Ontario.

Both the Spring and Summer semesters were transferred to alternate delivery and most of the Fall 2020 semester was online, with the delivery of on-campus activities (such as in-person research activities) where deemed necessary and in accordance with guidance from Public Health Ontario.

As a result of the Pandemic, LU has experienced and continues to face a number of financial and operational challenges, which include:

- a decrease in ancillary revenues associated with: (i) fewer students staying in on-campus residences owned and operated by LU, (ii) the loss of rental income from events and conferences hosted on campus, (iii) the loss of parking income, (iv) the loss of food service income, and (iv) reduced student fees;
- an increase in the liability associated with post retirement benefits as a result of the reduction in the Bank of Canada's overnight lending rate, resulting in a decrease to the discount rate used in such actuarial calculations;
- increased costs associated with the implementation of additional protective measures designed to reduce or eliminate the risk of COVID-19 transmission on-campus when students, faculty and staff are required to be physically present; and
- a reduction in the number of international students attending LU due to the global restrictions on travel.

Given that the outcome and timeframe to a recovery from the Pandemic is highly unpredictable, it is difficult to estimate the Pandemic's effect on future operations and the financial situation of LU.

vii. Growth in Costs: While the above factors have impacted revenue, LU's cost of operations has continued to grow as a result of continued salary and wage increases and other inflationary increases in operating expenses.

162. The events referenced above have all occurred in and around the last five years. However, LU incurred recurring deficits prior to this period and as a result, did not have any ability to effectively absorb the significant financial impacts of these events.

163. In response to the challenges discussed above and the limited potential to increase revenues in the short to mid term, LU implemented various cost cutting and cost deferral measures. These include:

i. Faculty and Employee Reductions**:** Through the combination of attrition and deferral of hiring for vacant positions, over the past few years, LU has reduced i) its non-faculty workforce by approximately 20 full time equivalents ("**FTEs**") and faculty workforce (excluding the Barrie closure) by approximately 14 FTEs.

ii. Hiring freeze**:** In the 2018-2019 fiscal year, LU began implementing stricter hiring controls. In 2019-2020, LU implemented a freeze on new faculty and staff hiring, except as approved by the President. Positions funded through research grants were exempt from this directive. Exceptions were made only if deemed critical and with the approval of the President.

iii. Salary reductions & freezes**:** i) As set out in the Overview section of the Report, in the summer of 2020, LU negotiated a 1% salary reduction for LUSU employees along with one time furlough days and other concessions, ii) LU reduced salaries for all full-time and temporary non-union employees, including executives (but not grant-funded employees), and iii) approved a pay freeze and reduced the salaries of certain members of the executive team.

iv. Revised Federated Funding Formula**:** On May 1, 2019, LU amended and restated its Federated Funding Formula. This amendment was intended to align the financial relationship of LU and the Federated Universities with the new funding model introduced by the Province, to which LU was subject. The effect of this amendment decreased the amount of funding distributed to the Federated Universities.

164. Despite these efforts, LU continues to experience significant financial challenges.

165. LU is insolvent and absent the relief sought in the Initial Order, will not have sufficient funding / liquidity to meet payroll in February.

CASH MANAGEMENT

166. LU's primary banking relationship is with RBC, which maintains a set of operating bank accounts through which all receipts and disbursements flow. LU also maintains a blocked account with both the Bank of Montreal and TD Canada Trust solely for the purpose of sweeping and processing debt service payments.

167. Historically, all receipts whether for operations (i.e. operating grants, tuition and ancillary revenue) or for restricted or designated purposes (i.e. Research Grants, designated scholarships etc.), were deposited into the same bank accounts and effectively co-mingled (the "**Operating Accounts**"). Donations, both unrestricted and restricted were initially received into a separate bank account (the "**Donation Account**") but were then transferred to the Operating Accounts and co-mingled. All disbursements whether on account of operations or in connection with activities funded by restricted funds were paid from the Operating Accounts. There were no separate bank accounts set up to receive and hold restricted funds. All funds available in the Operating Accounts were utilized prior to drawing on lines of credit.

168. The Proposed Monitor understands that it is not uncommon for universities to deposit Research Grants and other restricted funds into their main operating account. In most

cases, these universities have sufficient cash reserves to cover obligations associated with these items. However, in LU's case, as a result of its historical deficits and other issues described above, the funds held by LU at the current time are insufficient to cover obligations in connection with these restricted funds.

169. In December 2020, LU's cash management practices were brought to the attention of LU's President and the matter was discussed with the Board. The Board instructed management to amend its practice and immediately create three new bank accounts (the "**Unspent Research Grant Account**", the "**Restricted Funds Account**", and the "**RHBP Account**", and together, the "**Segregated Accounts**") in order to begin segregating newly received and unspent Research Grants, other restricted donations and funds and RHBP contributions. The Unspent Research Grant Account is to hold all research grant and award funding. The Restricted Funds Account is to hold all other restricted funds, other than new endowment contributions that will be transferred to the investment account that currently holds endowment funds. The RHBP Account is to hold both employee and employer contributions to the RHBP.

170. As of December 21, 2020, the Operating Accounts are to be monitored daily and any Research Grants received are to be immediately transferred into the Unspent Research Grant Account. LU is in the process of contacting parties that provide Research Grants to have future funding sent directly to the Unspent Research Grant Account.

171. Similarly, donations deposited into the Donation Account are to be reviewed at a minimum weekly. Only unrestricted donations are to be transferred to the Operating Accounts. Restricted donations are to be transferred to the Restricted Funds Account.

172. In addition, on each payroll date, LU is to transfer the amount of the employee and employer contributions to the RHBP to the RHBP Account.

173. While LU is aware that this does not address the issue of having insufficient funds to satisfy the current obligations represented by the deferred contributions, it does provide a process to set aside newly received funds going forward. The Proposed Monitor notes that the Applicant is seeking to have the Court approve its current cash management system, which includes the new measures taken.

CASH POSITION AND LIQUIDITY

174. As at January 29, 2021, the Applicant has an estimated aggregate cash balance in its operating accounts of approximately $13.3 million. In addition, it has an estimated aggregate cash balance in the Segregated Accounts (described above) of $3.3 million.

175. Due to the cyclical nature of its cash flows (i.e. primarily as a result of tuition and other student amounts being billed and collected at the beginning of each semester), LU expects significant cash outflow over the next several months, as further detailed in the Cash Flow Forecast section of this report below. As described in the Summary of Financial Position section of this report, lines of credit previously relied upon by the Applicant are no longer available to fund ongoing operations. In addition, in light of the historical practice of not setting aside Research Grants received in advance, research operations are expected to require significant cash flow for the outstanding research work to be completed. As a result, the Applicant currently has insufficient cash to fund operations through the month of February or beyond.

176. The Applicant has engaged in discussions with the Province in respect of its liquidity crisis and need for additional financing that would permit it to continue operations. However, the significance of the issues facing LU and the quantum of financing that would be required in the absence of the relief sought in the commencement of a CCAA proceeding have resulted in a situation in which LU currently does not have sufficient funding commitments to permit it to avoid a CCAA proceeding.

OVERVIEW OF THE APPLICANT'S THIRTEEN WEEK CASH FLOW FORECAST

177. The Applicant, with the assistance of the Proposed Monitor, has prepared a Cash Flow Forecast for the 13 week period from January 30, 2021 to the week ending April 30, 2021 (the "**Cash Flow Period**") for the purpose of projecting the Applicant's estimated liquidity needs during the Cash Flow Period. A copy of the Cash Flow Forecast is attached as Appendix "**A**" to this Report.

178. The Cash Flow Forecast has been prepared solely for the purpose described above, and readers are cautioned that it may not be appropriate for other purposes.

179. The Cash Flow Forecast is presented on a weekly basis during the Cash Flow Period and represents the estimates of Management of the projected cash flow during the Cash Flow Period. The Cash Flow Forecast has been prepared by Management of the Applicant, using the probable and hypothetical assumptions set out in the notes to the Cash Flow Forecast (the "**Assumptions**").

180. The Proposed Monitor has reviewed the Cash Flow Forecast to the standard required of a Court-appointed Monitor by section 23(1)(b) of the CCAA. Section 23(1)(b) requires a Monitor to review the debtor's Cash Flow Forecast as to its reasonableness and to file a report with the Court on the Monitor's findings.

181. Pursuant to this standard, the Proposed Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to information supplied to it by certain key members of Management and employees of the Applicant. Since the Assumptions need not be supported, the Proposed Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast. The Proposed Monitor also reviewed the support provided by Management for the Assumptions and the preparation and presentation of the Cash Flow Forecast.

182. Based on the Proposed Monitor's review, nothing has come to its attention that causes it to believe, in all material respects, that:

   i. The Assumptions are not consistent with the purpose of the Cash Flow Forecast;

   ii. As at the date of this Report, the Assumptions are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Cash Flow Forecast, given the probable and hypothetical assumptions; or

   iii. The Cash Flow Forecast does not reflect the Assumptions.

183. The Applicant maintains bank accounts with RBC as set out above in the Cash Management section of this Report. This includes the new Segregated Accounts as described above. The Cash Flow Forecast assumes that the Operating Accounts and the Segregated Accounts will continue to be utilized in the manner described in the Cash Management section of this Report.

184. The Cash Flow Forecast projects that during the Cash Flow Period, the Applicant will have estimated total combined receipts of approximately $29.5 million, net of $4.9 million in receipts from restricted funds to be directed to the Segregated Accounts. Estimated total combined disbursements are forecast to be approximately $58.5 million, net of reimbursements from the Segregated Accounts of $1.3 million. This results in projected net cash outflow (net of Segregated Account activity) of approximately $29.0 million. The Cash Flow Forecast projects that LU will have access to sufficient liquidity during the Cash Flow Period, subject to Court approval of a debtor in possession interim financing agreement (the "**DIP Agreement**") and related DIP Charge (as discussed later herein).

185. The main assumptions of the Cash Flow Forecast are as follows:

   i. academic teaching operations, the provision of ancillary services and certain in-process research activity continues in the ordinary course, uninterrupted;

   ii. all payments in respect of goods and services supplied pre-filing and principal and interest payments on pre-filing debt are stayed with the following limited exceptions (and as further discussed later in this Report);

a. customary exceptions with respect to wages and benefits (but not termination and severance) owing to active employees;

b. students will remain unaffected including in respect of ordinary course student refunds, scholarships, bursaries and other amounts; and

c. funds collected on behalf of the Students' Associations will be remitted in the ordinary course;

DIP AGREEMENT

186. As set out above, the Applicant is in urgent need of additional funding to continue operations through to the end of the current academic term and address its operational and financial restructuring needs. As a result, LU, through its legal counsel, approached multiple parties and engaged in discussions in respect of a potential DIP loan. These discussions resulted in the Applicant executing a term sheet (the "**DIP Term Sheet**") with Firm Capital Corporation. Subsequent to 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 DIP Agreement to formally document the terms and conditions set out in the DIP Term Sheet. Prior to the comeback hearing, the Applicant and the DIP Lender will negotiate and finalize the DIP Agreement.

187. The Proposed Monitor notes that while the DIP Agreement is critical to addressing LU's short-term liquidity issues, the Cash Flow Forecast as described above indicates that the Applicant does not need access to the funds during the first 10 days of the CCAA proceeding. Accordingly, the Applicant intends to wait until the comeback hearing to bring forward the DIP Term Sheet for this Court's approval. If appointed, the Proposed Monitor will provide the Court with further information with respect to the process to obtain the DIP Term Sheet and the executed DIP Agreement in its First Report.

RELEVANT MATTERS ADDRESSED IN THE PROPOSED INITIAL ORDER

188. The Proposed Monitor draws this Court's attention to certain provisions of the Initial Order that are relevant for the Court to consider.

Stay of Proceedings for Non-Applicant Stay Party

189. The Proposed Initial Order contemplates that the SGA be named as a Non-Applicant Stay Party and granted the benefits and protection of certain limited aspects of the stay of proceedings despite not being an Applicant in these CCAA proceedings.

190. The stay in respect of the Non-Applicant Stay party is limited to preventing any person from: (i) commencing proceedings against the Non-Applicant Stay Party, (ii) terminating, repudiating, making any demand or otherwise altering any contractual relationships with the Non-Applicant Stay Party as a result of the commencement of this CCAA proceeding by the Applicant, the stay of proceedings granted to the Applicant and any default or cross-default arising due to the foregoing.

191. The insolvency of LU puts the SGA in a highly vulnerable position. As described above, the SGA has long term indebtedness of approximately $8.5 million which indebtedness is guaranteed by the Applicant. If counterparties exercised their rights and remedies against the SGA due to the Applicant's insolvency, it would disrupt the SGA and have financial implications for the Applicant. The SGA is wholly dependent on LU continuing to operate in the normal course and on the receipt of fees charged to students of LU. The Proposed Monitor is of the view that affording the SGA a limited stay of proceedings while LU attempts to restructure is reasonable in the circumstances.

Limited Exceptions to the Stay of Proceedings

192. The Proposed Initial Order contemplates the customary stay of proceedings and provision prohibiting the payment on account of principal or interest in connection with goods and services provided prior to the date of the Proposed Initial Order. The exceptions include customary exceptions such as the ability to pay wages and benefits to employees as well as the following non-ordinary course exceptions which the Proposed Monitor highlights for this court:

i. <u>Student Payments</u> – Students are core to the university and are a particularly vulnerable stakeholder in these proceedings. In LU's view, for any restructuring to be successful, students must be protected and should not experience any direct negative ramifications during the CCAA proceedings. Accordingly, the Applicant seeks an exception permitting the ordinary course payment of all amounts owing to students in respect of the current academic year in accordance with normal policies, including on account of refunds of student accounts (i.e. in the event of an overpaid student account or a course change), scholarships, bursaries or grants or any other amounts whether relating to an obligation incurred prior to or after the date of the Proposed Initial Order; and

ii. <u>Students' Associations Fees</u> – As set out above, LU collects certain fees on behalf of the Students' Associations. The Students' Associations rely upon these fees to support their obligations including the SGA long-term debt of $8.5 million. These fees in no way relate to income of the Applicant or belong to the Applicant. The Students' Associations simply do not have the infrastructure or ability to charge and collect fees and accordingly, LU does so on their behalf. The Proposed Monitor understands that this is common practice across all colleges and universities. As a result, the Applicant is of the view that since these funds do not belong to LU, and given the reliance of the Students' Associations on these fees, it is appropriate to remit them to the Students' Associations in the ordinary course, whether received prior to or after the date of the Proposed Initial Order. The amount forecast to be remitted during the Cash Flow Period is approximately \$1.6 million, a substantial portion of which was collected prior to the proposed commencement date for the CCAA proceedings.

193. The Proposed Monitor is of the view that given the nature of the above amounts, it is appropriate that these limited exceptions to the stay of proceedings be granted and the relative prejudice, if any, to stakeholders of the Applicant, is far outweighed by the benefits of protecting students and vulnerable parties such as the Students' Associations.

Super-Priority Charges

194. The Proposed Initial Order provides for two 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:

i. first, the Administration Charge (up to a maximum amount of \$400,000); and

ii. second, the Directors' Charge (up to a maximum amount of \$2 million).

195. The quantum of these Charges has been determined based upon amounts necessary for the first 10 days of the CCAA proceedings. The Proposed Monitor understands that the Applicant intends to seek increases to these amounts at the comeback hearing.

196. 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 Charges sought in the Proposed Initial Order do not purport to rank ahead of potential claims of secured creditors without notice of the application. However, the Proposed Monitor understands that these parties will be served with notice of the comeback hearing and the relief sought at the comeback hearing will provide for the Charges to rank ahead of these potential claims.

Administration Charge

197. The Proposed Initial Order provides for a charge up to \$400,000 (the "**Administration Charge**") in favour of counsel and advisors to the Applicant, the Proposed Monitor, the Proposed 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 Agreement.

198. The Proposed 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 Proposed Monitor is of the view that the Administration Charge is required and reasonable in the circumstances.

Directors' Charge

199. The Proposed Initial Order provides for a charge in an amount not to exceed $2 million (the "**Directors' Charge**") to secure an 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.

200. The Directors and Officers shall only be entitled to the benefit of the Director's 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.

201. The Proposed Monitor reviewed the calculation of the Director's Charge that was prepared by the Applicant taking into consideration the amount of LU's payroll, pension contributions and vacation pay and notes that the $2 million proposed amount is less than the quantum of such amounts that will accrue in the first 10 days. 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.

202. The Proposed Monitor is of the view that the Directors' Charge is required and is reasonable under the circumstances.

DIP Lender's Charge

203. As set out above, in order to provide the required liquidity needed to fund the operations of LU during the CCAA proceedings, the Applicant will be seeking approval of the DIP Term Sheet at the comeback hearing. It is a condition of the DIP Term Sheet that the DIP Lender be granted a charge on LU's assets to secure amounts borrowed pursuant to the DIP Term Sheet. Accordingly, the Proposed Monitor notes that, at the same time, the Applicant

will also be seeking the creation of a charge (the "**DIP Lender's Charge**") to match the maximum allowable borrowing amount as proposed in the DIP Term Sheet.

204. If appointed, the Proposed Monitor will provide the Court with further information with respect to the proposed DIP Lender's Charge in its First Report.

MEDIATION

205. The relief set out in the Notice of Application brought by the Applicant in commencing these proceedings includes 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 its Federated Universities model, a restructuring of academic programs and reduction of employee headcount.

206. The Applicant is experiencing severe financial challenges. The Proposed Monitor notes that the pattern of recurring deficits over a number of years, exacerbated by recent significant pressures on revenue described earlier in this report, has brought the Applicant to the point where it has an immediate and dramatic liquidity crisis. Absent a CCAA filing, and access to funds pursuant to the DIP Term Sheet, the Applicant will not have sufficient liquidity to meet its payroll obligations in February, could not continue operations for the balance of the current academic term and faces an immediate shut down.

207. The DIP Term Sheet entered into by the Applicant, approval of which will be sought at the comeback hearing, should provide the Applicant with sufficient liquidity to continue operating through to the end of the current academic term. However, the Applicant must still implement a comprehensive financial and operational restructuring in that period of time in order to achieve a cost structure that is financially sustainable. If the Applicant cannot achieve a successful restructuring within this time period, LU will be unable to fund continued operations.

208. The Proposed Monitor notes the relationship between the Applicant and LUFA is currently strained. Negotiations with multiple stakeholders during an extremely condensed period of time will be required. Achieving the needed concessions to make the changes to the academic programs and faculty and employee headcount that are necessary to achieve financial sustainability will be very difficult.

209. It is the Proposed Monitor's view that the appointment of a Court-Appointed Mediator is critical to ensure that LU, LUFA and the other negotiating parties have the best possible opportunity to succeed. It is the Proposed Monitor's view that it is necessary that the Court-Appointed Mediator be someone who is independent and objective, has experience in both

insolvency matters as well as collective agreements and labour negotiations, someone who will understand the urgency with which the mediation must be conducted and have the time available to dedicate to it.

210. The Proposed Monitor is cognizant that stakeholders will have highly divergent views on all aspects of the restructuring including in all likelihood, the selection of a mediator. The Proposed Monitor therefore recommends that this Court consider appointing an individual that will be seen by all parties as independent, objective and neutral. In the Proposed Monitor's view, a sitting or recently retired judge meeting these characteristics would be preferable.

211. The Proposed Monitor is of the view that it would be preferable if this Court exercised its discretion to appoint the Court-Appointed Mediator, however, the Proposed Monitor would be pleased to provide further recommendations to the Court if so desired.

212. Ultimately, regardless of who is appointed, it is imperative that the Court-Appointed Mediator be appointed by this Court on an urgent basis.

CONCLUSIONS

213. The Proposed Monitor has reviewed the Applicant's filing materials and has consented to act as the Monitor of LU, should the Court see fit to grant the relief sought by LU.

214. As set out above, the Proposed Monitor notes that the Applicant currently has significant financial challenges and its liquidity position is such that it cannot continue operations, even through to the end of February, in the absence of access to financing pursuant to the DIP Agreement which is conditional upon the Initial Order being obtained. If LU were unable to continue operations, the impact to students would be significant as they would be unable to complete their academic term. The Proposed Monitor is of the view that the CCAA proceedings will provide the best opportunity for the Applicant to effect an operational and financial restructuring within a compressed time frame with the assistance of the Monitor and an experienced Court-Appointed Mediator all of which is in the best interest of all stakeholders.

215. For the reasons stated herein, the Proposed Monitor believes it is appropriate for the Applicant to be granted protection under the CCAA under the terms of the Proposed Initial Order.

All of which is respectfully submitted this 30th day of January, 2021.

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

Sharon Hamilton

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

APPENDIX “A”

CASH FLOW FORECAST

Laurentian University
Cash Flow Forecast

13 Week Cash Flow Forecast

(in 000s CAD$)	Week:	1	2	3	4	5	6	7	8	9	10	11	12	13	Total
		30-Jan-2021	06-Feb-2021	13-Feb-2021	20-Feb-2021	27-Feb-2021	06-Mar-2021	13-Mar-2021	20-Mar-2021	27-Mar-2021	03-Apr-2021	10-Apr-2021	17-Apr-2021	24-Apr-2021	30-Jan-2021
	Notes	05-Feb-2021	12-Feb-2021	19-Feb-2021	26-Feb-2021	05-Mar-2021	12-Mar-2021	19-Mar-2021	26-Mar-2021	02-Apr-2021	09-Apr-2021	16-Apr-2021	23-Apr-2021	30-Apr-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.

TAB 12

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, 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.ulaurentienne.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 Hamilton

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

TAB 13

Court File No. ________________________

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 ARRANGEMENTOF **LAURENTIAN UNIVERSITY OF SUDBURY**

Applicant

AFFIDAVIT OF DR. ROBERT HACHÉ
(sworn January 30, 2021)

Contents

I, Dr. Robert Haché, of the City of Sudbury, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS**:

I. INTRODUCTION

1. I am the President and Vice-Chancellor of Laurentian University of Sudbury ("**LU**" or the "**Applicant**") and a member of the Board of Governors (the "**Board**") of LU, having served in this role since July 2019.

2. Prior to joining LU in July 2019, I was the Vice-President of Research and Innovation at York University and prior to that, the Associate Vice-President of Research at the University of Calgary and the Vice Dean of Research for the Faculty of Medicine at the University of Ottawa. I have been involved in leadership positions at post-secondary institutions for over 15 years and have extensive experience in the operational, academic and research arms of such institutions.

3. As President and Vice-Chancellor, I am the chief executive officer (CEO) of LU. I am the chair of the Senate and have supervision over and direction of the academic work and general administration of LU, including the faculty staff, students, and officers and employees of LU. Further, I am a voting member of the Board, subject to certain limited exceptions. Generally speaking, I am the public face of LU. For example, I am involved in coordination with the Government of Ontario, the Federated Universities (as defined below) communications with students, including the student associations and, at a high level, the Unions (as defined below). Where I do not have direct communications, I rely on a team comprised of, among others, the Provost and VP Academic, AVP Human Resources & Organizational Development, VP Research, VP Administration, AVP

Financial Services, Chief Advancement Officer, the Executive Director of Communications, Marketing and Governmental Relations, and the University Secretary and the General Counsel of LU (collectively, the "**Internal Team**").

4. As such, I have knowledge of the matters hereinafter deposed to, save where I have obtained information from others. Where I have obtained information from others, I have stated the source of the information and believe it to be true.

5. In preparing this affidavit, I have relied upon the financial information in this affidavit has been provided to me by the VP Administration who is accountable for, and has responsibility over, LU's Finance department. This is the best information available to me through the VP Administration, the Finance department and the books and records of LU as of the date of swearing. LU has experienced a number of challenges with the limited team and resources in the Finance department, and such difficulties are made even more pronounced with the additional demands placed on their time in connection with the preparation for this CCAA proceeding.

6. This affidavit is sworn in support of LU's application for an Order (the "**Initial Order**"), among other things, commencing proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and appointing Ernst & Young Inc. ("**EY**") as the court-appointed monitor of the Applicant (in such capacity, the "**Proposed Monitor**") in the CCAA proceeding, to facilitate the restructuring of the Applicant for the benefit of its stakeholders.

7. All monetary amounts referred to in this Affidavit are in Canadian dollars, unless otherwise noted.

II. THE PRESSING NEED FOR RELIEF

8. LU has experienced recurring operational deficits in the millions of dollars each year for a significant period of time.[1] These operational deficits have led to the accumulated deficit in the operational fund of LU increasing from approximately $8.2 million in FY 2014-15 to approximately $20 million per year in FY 2019-20.

9. In the current 2020-21 fiscal year, LU projects a further operational deficit of $5.6 million. This is notwithstanding previous efforts implemented by the Internal Team and, previously, the budget committee (which was comprised of members of the Internal Team, among other academic and non-academic senior leaders) at LU to review and identify areas where LU could reduce its annual expenses and grow revenue. In the years preceding this application, LU has:

   (a) reduced its non-faculty workforce from approximately 429 to 409 and faculty workforce (excluding the Barrie campus closure) from approximately 358 to 344 at that time;

   (b) deferred the hiring of faculty and non-faculty positions;

   (c) negotiated with LUSU (as defined below) to forego their employee salary increases;

   (d) approved a pay freeze and reduced the salaries of its non-unionized, including managerial, employees;

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[1] In fiscal year 2017-18, LU reported an operational surplus of approximately $2 million due to certain positive one-time financial realizations by LU. This fiscal year was an anomaly.

(e) approved a pay freeze and reduced the salaries of certain members of the Internal Team[2]; and

(f) re-negotiated the funding model with the Federated Universities (as defined below).

10. Nonetheless, these efforts are not enough. LU is insolvent and absent the relief sought in the Initial Order, will run out of cash to meet payroll in February. The financial challenges that LU faces are significant and, absent fundamental change, LU's short-term and long-term financial and operational sustainability are at risk. The COVID-19 pandemic has only exacerbated these issues.

11. One significant source of financial challenge are the terms of LU's collective agreement with Laurentian University Faculty Association ("**LUFA**"), which is addressed in this affidavit. This financial issue is exacerbated by the labour relationship between LU and LUFA (there was a strike in 2017 during bargaining of the LUFA CA) stemming from decisions made in the past at LU and which remains challenging. For example, there are approximately 102 active grievances that have been filed by LUFA dating back to 2017. I am advised by LU's external employment and labour counsel Michael Kennedy of Hicks Morley LLP that this volume of grievances is significantly higher than volumes seen at other Ontario universities.

12. Operationally, the academic programming offered by LU is not sustainable in its current form and must be addressed. LU offers 132 undergraduate programs and 43 graduate

[2] Some members of the Internal Team are considered 'designated executives' under the Broader Public Sector Executive Compensation Act, 2014. The salary for the position of President and Vice-Chancellor of LU has remained unchanged since 2009.

programs. Approximately 25% of students are enrolled in the top five programs, approximately 62% are enrolled in the top 25 programs and 83% are enrolled in the top 50 programs.

13. When considering individual courses (each program offers multiple courses), the issues are magnified. Of the 1,902 courses offered by LU in the Winter 2021 semester:

(a) 162 courses (8%) have five students or fewer enrolled;

(b) 180 courses (9%) have between six to ten students enrolled;

(c) 1,018 courses (53%) have between eleven to fourteen students enrolled; and

(d) 568 courses (30%) have fifteen or more students enrolled.

14. Notwithstanding the number of students enrolled in a course, LU must employ a faculty member to instruct that course. A significant number of courses have ten or fewer students enrolled, and a majority of courses have fourteen or fewer students enrolled. For context, average first-year and second-year class sizes at Canadian universities range from 23.1 (Moncton) to 127.4 (McMaster). Average upper year class sizes at Canadian universities range from 13.8 (Brandon) to 51.8 (McMaster).[3]

15. Low enrolment in courses causes such courses to be financially unsustainable. The cost of offering such courses greatly exceeds the grant and tuition revenue received by LU for those courses.

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[3] Source: The average undergraduate class size at Canadian universities, 2017, Maclean's Canada: https://www.macleans.ca/education/the-average-undergraduate-class-size-at-canadian-universities.

16. Within the current structure, it costs more for LU and the Federated Universities to educate each student per year when compared to the average cost across all other Ontario universities. Based on data retrieved from Council of Ontario Finance Officers, it costs LU and the Federated Universities approximately $2,000 more to educate its students per year than the Provincial average across all universities.

17. Historical efforts to address LU’s program offerings have been unsuccessful. For example, LUFA has challenged the July 2020 decision by the Provost and VP Academic of LU to temporarily suspend admissions to 17 academic programs with low enrolment. This is currently the subject of a pending judicial review, which proceeding will be stayed if this application is granted.

18. LU seeks to commence proceedings under the CCAA in order to provide it with a platform to financially and operationally restructure itself in order to emerge as a sustainable and long-term financially viable institution. The commencement of a CCAA proceeding to address these significant issues represents the only realistic path forward for the university at this time.

19. It is in the interest of public policy, as well as current and future students, faculty, staff, retirees, the Greater Sudbury community and the Northern Ontario region generally, to provide LU with the breathing room and platform of a court-supervised proceeding with the oversight and assistance of a Monitor, in order for it to restructure. I believe that supporting a successful restructuring is consistent with the Ontario Legislature’s public policy objective of providing accessible (financially and geographically) higher education to Ontarians.

20. LU has made every effort over the last several years to support its students and provide the best academic and student experience possible. Such efforts will continue following the commencement of these proceedings. However, LU must take steps to ensure its long-term sustainability. LU requires financial assistance and the breathing room afforded by CCAA protection to effect an overall restructuring and to safeguard against significant changes to its operations and a corresponding decline in student experience which would likely result if this is not undertaken through a coordinated, transparent and efficient court-supervised process. A successful restructuring of LU will necessarily involve its federated universities: Huntington University, Thorneloe University and the University of Sudbury (collectively, the "**Federated Universities**"), as described below.

III. OVERVIEW OF THE APPLICANT

A. *Background and Corporate Structure*

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

22. LU is a non-share capital corporation governed by the Board. The Bylaws provide that the Board is to be comprised of 25 voting members. Currently, there are four vacancies and only 21 current voting members (of which I am one) and 9 non-voting members for a total of 30 members. The constitution of the Board is pursuant to the General Bylaws of the Board (the "**Bylaws**") and requires representation from various stakeholder groups of LU, as described more fully in paragraph 101. Attached as **Exhibit** "**B**" is a copy of the corporate profile report for LU obtained from the Ministry of Government and Consumer Services.

23. LU is a registered charity pursuant to the *Income Tax Act*. Its charitable registration number is 119009686RR0001. For all charitable contributions and donations received by LU, LU issues a tax receipt to the donor. LU's charitable fundraising is an essential component of various programs and services that LU provides to its students.

24. LU has operated in Sudbury, Ontario since its incorporation as a publicly-funded, bilingual postsecondary institution. At one time, LU operated a satellite campus in Barrie, Ontario which closed operations entirely in 2019.

25. As further discussed below, LU has a federated school structure whereby it has formal affiliations with several independent universities under the overall LU umbrella: the University of Sudbury ("**SU**"), the University of Thorneloe ("**Thorneloe**") and Huntington University ("**Huntington**").

26. Since inception, LU strives to provide quality higher education to the community of Sudbury and Northern Ontario at large. LU has rapidly grown its reputation as a leading university for Northern Ontario, with increasing international recognition and strong national, provincial and regional impact. The innovative programs that LU offers have been a significant factor in LU's growth and success.

27. LU is considered an "access university", since over 50% of the student population is comprised of first-generation postsecondary students (those whose parents did not attend university) and over 12% of the student population self-identifies as Indigenous.

28. LU is an integral part of the economic fabric of Northern Ontario and serves as the primary postsecondary institution for a large geographic region. The City of Greater Sudbury has

a population of approximately 165,000. Northern Ontario communities depend on LU to educate a local workforce of professionals in a wide array of disciplines, which assists with keeping these communities competitive and thriving. It is not uncommon for LU students from outside the region to decide to reside in Northern Ontario after graduation.

29. LU is consistently one of the largest employers in Sudbury. If LU ceased to operate, there would be a profound economic impact on the City of Greater Sudbury as many employees would lose their livelihood and, in some cases, that may cause such persons to move out of the region.

B. *Students and Academic Programming*

30. LU's mission is to provide the best possible academic and social experience to its students. LU recognizes that its students are the lifeblood of the organization and while this restructuring will touch on a significant number of financial and operational aspects of LU, the primary goal of the restructuring is to ensure that current and future students will continue to have access to a high quality post-secondary education at LU for years to come.

31. Academically, LU's programs result in success for its graduates. LU provides some of the best outcomes for students in Ontario, including the highest post-graduation employment rate in Ontario after both six months (94.3%) and two years (97.4%), as well as strong salary outcomes.[4]

32. This application is made with a view to protecting and preserving the student experience at LU. I am committed to ensuring that the organization takes every step necessary to

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[4] Source: Ontario University Graduate Survey, conducted in 2018-2019 with students who graduated in 2016. Available online at: http://www.iaccess.gov.on.ca/OsapRatesWeb/enterapp/home.xhtml.

ensure that the student experience is uninterrupted during this restructuring. That will allow our students to focus on what they are at LU for – learning and growing as individuals, within a community of fellow students. While the restructuring will be a central priority of the Board and Internal Team, it is our intention that student education and experience will not be impacted or disrupted.

i. Undergraduate Programming

33. LU primarily focuses on undergraduate programming, with approximately 8,200 total domestic and international undergraduate students (approximately 6,250 full-time equivalents) enrolled in the 2020-21 fall semester.

34. LU students may choose to combine program offerings for a multidisciplinary and well-rounded experience. To prepare LU students for the workforce, there are several programs offering hands-on experience, field work and co-op placements such as the Commerce and Engineering programs offered at LU.

35. LU has five undergraduate faculties:

    (a) Faculty of Arts;

    (b) Faculty of Education;

    (c) Faculty of Health;

    (d) Faculty of Management; and

    (e) the Faculty of Science, Engineering and Architecture.

36. Within these faculties, students can choose from approximately 132 undergraduate programs to enroll in. Each faculty offers English and French programs and the Faculty of

Science, Engineering and Architecture offers a bilingual Bachelor of Engineering program designed to be responsive to the Francophone population at LU.

37. As part of its bilingual mandate, LU offers its students the opportunity to obtain a Certificate of Bilingualism, which is awarded to students who earn a minimum of 15 credits in courses offered in English or French (whichever is not their primary language of study). In a world where fluency in more than one language is increasingly desirable, this Certificate is a valuable offering for LU students in their career progression and the Certificate provides a competitive edge in the workforce.

38. LU has a consistent track record of providing an accessible and enhanced academic experience for Indigenous students. Key to this initiative is the Indigenous Student Affairs team, which strives to ensure a positive learning environment in a manner consistent with the Indigenous worldview. This team nurtures a learning environment supportive of the academic, spiritual, physical and emotional well-being of the First Nations, Metis, and Inuit student body.

ii. Graduate Programming

39. LU also has a strong graduate program, with approximately 1,100 total domestic and international graduate students (approximately 830 full-time equivalents) enrolled during the 2020-21 fall semester.

40. Graduate studies are administered through the Faculty of Graduate Studies.

41. LU offers over 40 Masters and Ph.D degrees, including, among others: (i) Ph.D in Rural and Northern Health; (ii) Ph.D in Mineral Deposits and Precambrian Geology; (iii) Ph.D in Boreal Ecology; (iv) Ph.D in Biomolecular Sciences; (v) Ph.D in Materials Sciences;

(vi) Sciences humaines et interdisciplinarité (Ph.D) (French); (vii) Masters in Indigenous Relations; (viii) Masters in Science Communication; (ix) Masters in Forensic Science; and (x) Masters in Business Administration.

42. As part of their degree requirements, graduate students are required to complete research or scholarly activities. Depending on the degree, this research can take place on campus in specified labs, with one of LU's sixteen research centres, in the field in collaboration with industry and/or community partners, or in a clinical placement. Faculty supervise graduate students and, in many cases, fund the student's research projects through grants they apply for and receive from external sources including, but not limited to, government, industry and community partners.

iii. Northern Ontario School of Medicine

43. Through agreement between LU and Lakehead University (located in Thunder Bay, Ontario), the Northern Ontario School of Medicine ("**NOSM**") opened in 2005. NOSM is an independent not-for-profit non-share corporation which serves as the faculty of medicine for both LU and Lakehead University. LU and Lakehead University are the two members of NOSM and representatives from both organizations, among others, are on the Board of Directors of NOSM. I am the current Chair of NOSM. A copy of the Corporation Profile Report for NOSM is attached as **Exhibit** "**C**".

44. NOSM provides training in more than 90 communities across a geographic expanse of 800,000 square kilometers and was established with a mandate to improve the health of the people in Northern Ontario. The medical school is mandated both to educate doctors and to contribute to health care in Northern Ontario's rural, urban, and remote communities.

45. NOSM has campuses located in Sudbury and Thunder Bay. LU owns the two buildings NOSM occupies on the Sudbury campus: the Health Sciences Education Resource Centre and the Medical School Building, which are leased to NOSM. A copy of the lease with respect to the Medical School Building is attached as **Exhibit "D"** and a copy of the amendment to the lease which added the Health Sciences Education Resource Centre to the demised premises is attached as **Exhibit "E"**.

46. The medical school has approximately 461 students enrolled in the 2020-21 academic year across the medical doctor (MD) program, residency, the dietetic internship program and the Masters in Medical Studies (MMS) graduate program.

47. NOSM employs approximately 21 full-time faculty and has approximately 1,776 part-time stipendiary faculty. As a result of the nature of NOSM's learning model, many of the clinical stipendiary faculty are situated in more than 90 teaching sites across Northern Ontario and provide a clinical learning experience to the students of NOSM.

48. Pursuant to a Relationship Agreement dated December 18, 2018 (the "**Relationship Agreement**"), LU and Lakehead University each agreed to provide certain support services and faculty to NOSM. Both LU and Lakehead provide facilities and support services, student registration and student fee collection, scholarship receipt and disbursement, and other educational, research and operational services.

49. NOSM and LU entered into a subsequent agreement as a schedule to the Relationship Agreement which governs the collection and accounting of tuition and incidental fees for the 2020/2021 academic year. As part of this agreement, LU provides collection and accounting services for NOSM at a fee of $250 per NOSM student enrolled at the Sudbury

campus. A copy of the Relationship Agreement and its schedules are attached hereto as **Exhibit "F"**.

50. Certain NOSM students pay their fees to LU and those funds are deposited into LU's general operating account with all other student fees. LU provides monthly outstanding balance reports for NOSM students to NOSM and issues the relevant tax forms directly to NOSM students. LU also provides bursaries to NOSM students and LU is reimbursed directly by NOSM for such payments. These funds flow through LU's main operating account.

51. Although NOSM was formed by agreement between LU and Lakehead University, NOSM is legally, financially and operationally independent from LU, save and except for the aforementioned services provided by LU and the holding of endowment funds by LU from third parties designated for NOSM. NOSM faculty and staff have separate unions and the NOSM pension plan and benefits packages are separate from the LU programs. NOSM receives its government support directly from the Province of Ontario (the "**Province**").

52. Approximately $14 million of the $53 million in endowment funds currently held by LU are funds that are in respect of donations or gifts from third parties for NOSM, rather than LU. As will be described in greater detail below, due to the unique nature of endowment funds to a post-secondary organization, LU proposes that such funds continue to be held and available only for their designated and intended purpose (that is, to fund scholarships to qualifying students).

53. Other than any ancillary reputational impact as a result of LU's insolvency, LU anticipates that NOSM and its students will be largely unaffected by the commencement of these proceedings.

C. *Research and Scholarly Activity*

54. LU places considerable emphasis on its research and enjoys the reputation of being a leading undergraduate university in Canada for research and scholarly activity. In the most recent rankings from Research InfoSource, LU ranked first in sponsored research income in the undergraduate university category in Canada with $39.4 million. The average sponsored research income of similar undergraduate universities is $17.4 million.[5]

55. Sponsored research income includes all funds to support research received in the form of a grant, award, contribution or contract from external sources. As discussed further below, LU carries significant obligations in respect of deferred contribution amounts on its balance sheet, which, among other things, represent sponsored research funds that have been received by LU in advance of the related expenses being incurred. These amounts include research grant funding which has not yet been allocated towards the designated research activities. A few notable projects currently funded at LU through sponsored income are:

(a) Metal Earth, which is funded through the federal government's Canada First Research Excellence Fund ("**CFREF**"). This program has received over $80 million in in-kind funding from industry partners to date, and the federal government has committed $49 million in cash contributions over a seven-year

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[5] Source: https://researchinfosource.com/pdf/Top50List2020MainMetrics_Undergraduate.pdf

period, with approximately $17 million committed between March 1, 2021 and March 1, 2023.

(b) LU is scheduled to receive $3.7 million in funding over seven years from the McDonald Institute as an institutional partner in the CFREF project for astroparticle physics research.

(c) Listening to Children's Voices, which promotes Indigenous mental wellness, is funded by the Canadian Institutes of Health Research in the amount of $1.4 million over 5 years.

(d) Neurodegeneration in Aging is scheduled to receive approximately $2 million over five years from the Baycrest Centre for Geriatric Care; and

(e) the Canadian Foundation for Innovation has provided $200,000 to support the purchase of infrastructure for COVID-19 research.

56. Laurentian University has 14 Senate-approved research centres and two affiliated research centres (SNOLab and MIRARCO, as defined and discussed below). The majority of sponsored research is completed by faculty and students affiliated with a Senate-approved research centre. These include research centres that carry out research on social justice and policy, rural and Northern Ontario health, ecology and ethical conservation, occupational safety, the Franco-Ontarian population, children's health and Indigenous issues.

57. Pursuant to the collective agreement with LUFA, full-time faculty are generally required to spend approximately 40% of their time during the academic year on scholarly activity, which includes commitments to external granting agencies and research funded by private research contracts.

58. To support research and scholarly activity, the LUFA collective agreement provides that LU is required to set aside $160,000 each year for the Laurentian University Research Fund (“**LURF**”) and provide an additional $20,000 per year to support the research activities of retired faculty members. The Director of the Office of Research Services, under the supervision of the Vice-President Research, holds an open competition for LURF funding annually. LU’s past practice has been to roll over any LURF funds not awarded in a given calendar year into the next year’s open funding competition. However, this funding has not been set aside in a separate account and instead has only been allocated in the internal general ledger of LU. Historically, any LURF funds awarded to retired faculty members have been paid out of the general operating account of LU. As a result of its liquidity crisis, LU does not have the funds to continue with the LURF program.

59. External grants obtained by faculty are a significant source of funding used to support student research (including stipends for graduate students), employment for students and direct costs related to completing research activities. Funding programs administered by the Natural Sciences and Engineering Research Council, Social Sciences and Humanities Research Council, and Canadian Institutes of Health Research (collectively, the “**Tri-Agencies**”) are examples of grants held by faculty members to support their research programs, which create opportunities for students to develop their research skills and knowledge in a particular field.

60. LU’s research programming is critical for many LU students. As discussed above, graduate students are required to complete research/scholarly activities and many undergraduate programs have a research component as part of their degree requirements. This necessarily

requires access to research facilities, equipment, services, and library materials to support graduate and undergraduate programming.

D. ***Federated Universities***

61. LU and the Federated Universities are affiliated through a variety of historical relationships and contractual arrangements. Each of the Federated Universities are separate legal entities and are governed by Boards that are independent of LU.

62. Each of the Federated Universities owns its own buildings on land that is owned by LU and is leased to the Federated University by LU. The Federated Universities do not receive funding directly from the Ministry of Colleges and Universities ("**MCU**"), but historically, LU has transferred a portion of the funding it receives from the MCU to each Federated University according to a set formula, unless otherwise instructed by the MCU.

63. Students who enroll at LU may study at any or all of the three Federated Universities (as well as LU), which are all physically located on LU's campus. Students enrolled in programs, courses, majors and minors which are administered by the Federated Universities remain students of LU and these courses are credited towards a degree from LU, which has the sole authority to confer degrees upon students (with the exception of Theology). In addition, all students of LU enrolled in courses delivered by the Federated Universities can fully utilize the services offered on the entire campus. For all intents and purposes, the Federated Universities are integrated into LU, however, each of the Federated Universities manages its finances separately from each other, and from LU, subject to the arrangements described below.

64. From an employee perspective, most of the faculty of the Federated Universities are represented by LUFA, but each of the Federated Universities has its own collective agreement with LUFA.

65. The employees of the Federated Universities are a part of the defined benefit pension plan of LU. Each of the Federated Universities are required, pursuant to the pension plan, to contribute the amount required to fund the pension plan, taking into account the assets and liabilities of the plan. Each of the Federated Universities directly contribute to the pension plan on a monthly basis.

i. Terms of Financial Distribution between LU and the Federated Universities

66. On November 10, 1993, LU and the Federated Universities entered into a Proposed Grant Distribution and Services Fees arrangement (the "**1993 Funding Model**"). Although this document was not signed, meeting minutes are attached to the document which indicate that LU and the Federated Universities were all in agreement with the terms of same, and the parties operated under the terms of such agreement until it was amended as of May 1, 2019. A copy of the 1993 Funding Model is attached hereto as **Exhibit** "**G**".

67. The 1993 Funding Model was replaced by notices delivered by LU to each of the Federated Universities on May 1, 2019 (the "**Financial Distribution Notices**"). Copies of the Financial Distribution Notices for Huntingon, Thornloe and Sudbury, respectively, are attached as **Exhibits** "**H**", "**I**" and "**J**" hereto.

68. The Financial Distribution Notices update the previous funding formula under the 1993 Funding Model and set out the terms for the distribution of operating grants to the Federated Universities and service fees charged by LU to the Federated Universities from

and after May 1, 2019. The Financial Distribution Notices amended, restated and replaced in their entirety any prior documentation, oral or written representations and past practices relating to the distribution of grant funding, tuition fees and service fees between LU and the Federated Universities, including but not limited to, those described under the 1993 Funding Model.

69. The Financial Distribution Notices advised the Federated Universities that LU would transfer funds to each of the Federated Universities in accordance with the new university funding model introduced by the Province in 2017 (the "**New Funding Model**"). The New Funding Model adopted an enrolment-based approach, where the Province would provide each post-secondary organization with a base level of operating funding determined in accordance with a specific level of eligible enrolment and program of registration.

70. The underlying principle behind LU adopting the New Funding Model was to ensure that neither LU or any of the Federated Universities would subsidize the operations or services of the other, and each organization would be responsible for covering its own expenses. It was intended to align the financial relationship of LU and the Federated Universities with the New Funding Model introduced by the Province, to which LU was subject.

71. The Financial Distribution Notices also provide that, in exchange for the provision of non-academic administrative services by LU to the Federated Universities, each of the Federated Universities would be assessed a charge by LU in the amount of 15% of shared revenues, being grant revenue and tuition revenue as defined in the Financial Distribution Notices (the "**Administrative Services Fee**"). The Administrative Services Fee partially covers the costs incurred by LU for a number of non-academic services it provides, which

include but are not limited to: (i) student fee collection and accounting; (ii) central computing services; (iii) administration of all pension and employee benefits; (iv) campus security; and (v) student support services.

72. Since the Financial Distribution Notices were issued by LU to each of the Federated Universities on May 1, 2019 the parties have been operating in accordance with the funding mechanisms set out therein.

ii. University of Sudbury

73. SU is a Roman Catholic bilingual university offering programs in Culture and Communication Studies, Indigenous Studies, Philosophy and Religious Studies and courses in both English and French. It was founded in 1913 as Collège du Sacré-Coeur before changing its name to the University of Sudbury in 1957. There are 211 students enrolled in SU-delivered programs, along with a further 24 students in a combined LU/SU Philosophy program and 56 students in Religious Studies, which is jointly administered by the Federated Universities.

LU-SU Federation Agreement

74. LU and SU entered into a Federation Agreement on September 10, 1960 (the "**LU-SU Federation Agreement**"), a copy of which is attached hereto as **Exhibit** "**K**". The LU-SU Federation Agreement contains a provision stipulating that the relationship between LU and SU will be permanent, and the success of the relationship is to be predominantly fostered through "mutual cooperation and goodwill", rather than any formal agreements.

75. Pursuant to the LU-SU Federation Agreement, SU suspended all of its degree-conferring power (with the exception of Theology) in favour of LU, for so long as the LU-SU Federation Agreement is in effect.

76. Tuition fees paid by LU students enrolled in SU-delivered programs are apportioned between LU and SU pursuant to the Financial Distribution Notice.

77. The LU-SU Federation Agreement requires LU to allocate and reserve land within its campus for SU to purchase and construct buildings on. The allocation of land to SU was completed pursuant to the SU Indenture (as defined and described in detail below).

<u>Leases between LU and SU</u>

78. Pursuant to an Indenture between LU and SU dated April 9, 1965 (the "**SU Indenture**"), LU leased certain land for a term of 99 years to allow SU to construct buildings and student housing for SU. Provided that SU performs all of the covenants during the term of the SU Indenture, LU is required to renew the lease for a further 99 years on substantially the same terms.

79. The SU Indenture may be terminated by LU if: (i) SU withdraws from the federation with LU or the land and premises cease to be used for educational instruction at a university level for three years, or (ii) SU is in breach or non-performance of the covenants of the SU Indenture. In the event that the SU Indenture is terminated, LU is entitled to take possession of the lands, and may elect to purchase any or all of the buildings constructed on the lands from SU. The SU Indenture provides that the value of the buildings is to be determined by arbitration. A copy of the SU Indenture is attached hereto as **Exhibit** "**L**".

<u>iii. Huntington University</u>

80. Huntington is an independent university founded in 1960 with its own charter, and offers programs in Communication Studies, Gerontology, Religious Studies and Theology. Students who graduate from Huntington have their degrees conferred by LU, save for a limited exception in respect of Theology. There are 295 students enrolled in Huntington-delivered programs this year, along with a further 56 students in Religious Studies, which is jointly administered by the Federated Universities.

<u>LU-Huntington Federation Agreement</u>

81. LU and Huntington entered into a Federation Agreement on September 10, 1960 (the "**LU-Huntington Federation Agreement**"), a copy of which is attached hereto as **Exhibit** "**M**". The LU-Huntington Federation Agreement contains a provision stipulating that the relationship between LU and Huntington will be permanent, and the success of the relationship is to be predominantly fostered through "mutual cooperation and goodwill", rather than any formal agreements.

82. Pursuant to the Huntington Federation Agreement, Huntington agreed to suspend all of its degree-conferring powers except the power to grant degrees in Theology.

83. Tuition fees paid by LU students enrolled in Huntington-delivered programs are apportioned between LU and Huntington by the Financial Distribution Notice.

84. The LU-Huntington Federation Agreement requires LU to allocate and reserve land within its campus for Huntington to purchase and construct buildings on. The allocation of land

to Huntington was completed pursuant to the Huntington Indenture (as defined and described in detail below).

Other Agreements between LU and Huntington

85. Pursuant to a lease indenture between LU and Huntington dated July 3, 1964 (the "**Huntington Indenture**"), LU leased certain land to Huntington for a term of 99 years to allow Huntington to construct buildings and student housing for Huntington. The terms and conditions of the Huntington Indenture are substantially similar to the terms and conditions of the SU Indenture, such as:

(a) provided that Huntington performs all of the covenants during the term of the Huntington Indenture, LU is required to renew the lease for a further 99 years on substantially the same terms;

(b) the Huntington Indenture may be terminated by LU if: (i) Huntington withdraws from the federation with LU or the land and premises cease to be used for educational instruction at a university level for three years, or (ii) Huntington is in breach or non-performance of the covenants of the Huntington Indenture;

(c) in the event that the Huntington Indenture is terminated, LU is entitled to take possession of the lands, and may elect to purchase any or all of the buildings constructed on the lands from Huntington; and

(d) the Huntington Indenture provides that LU may pay for buildings that can be used by LU in the ordinary course for university purposes (such as residences and classrooms), but LU is not required to pay for any buildings that duplicate existing facilities at LU. The value of the buildings is calculated as the cost of construction less depreciation calculated at 4% per annum.

A copy of the Huntington Indenture is attached hereto as **Exhibit** “**N**”.

86. Pursuant to a Memorandum of Agreement between LU and Huntington dated December 12, 2005, Huntington transferred its music program to LU with provisions regarding the transfer of scholarship funds, space for the program and a cost sharing arrangement for the music faculty. A copy of the Memorandum of Agreement is attached hereto as **Exhibit** “**O**”.

iv. University of Thorneloe

87. Thorneloe is a university with historic roots and affiliation with the Anglican Church of Canada and offers programs in the departments of Ancient Studies, Religious Studies and Women’s, Gender and Sexuality Studies. There are 119 students enrolled in Thorneloe-delivered programs this year, along with a further 56 students in Religious Studies, which is jointly administered by the Federated Universities.

LU-Thorneloe Federation Agreement

88. LU and Thorneloe entered into a Federation Agreement in 1962 (the “**LU-Thorneloe Federation Agreement**”), a copy of which is attached hereto as **Exhibit** “**P**”. The LU-Thorneloe Federation Agreement contains a provision stipulating that the relationship between LU and Thorneloe will be permanent, and the success of the relationship is to be predominantly fostered through “mutual cooperation and goodwill”, rather than any formal agreements.

89. Pursuant to the LU-Thorneloe Federation Agreement, Thorneloe suspended all of its degree-conferring power (with the exception of Theology) in favour of LU, for so long as the LU-Thorneloe Federation Agreement is in effect.

90. Pursuant to the LU-Thorneloe Federation Agreement, tuition fees paid by LU students enrolled in Thorneloe-delivered programs are apportioned between LU and Thorneloe pursuant to the Financial Distribution Notice.

91. LU-Thorneloe Federation Agreement requires LU to allocate and reserve land within its campus for Thorneloe to purchase and construct buildings on. The allocation of land to Thorneloe was completed pursuant to the Thorneloe Indenture (as defined and described in detail below).

Leases between LU and Thorneloe

92. Pursuant to a lease indenture between LU and Thorneloe dated October 26, 1964 (the "**Thorneloe Indenture**"), LU leased certain land to Thorneloe for a term of 99 years to allow Thorneloe to construct buildings and student housing for Thorneloe. The terms and conditions of the Thorneloe Indenture are substantially similar to the terms and conditions of the Huntington Indenture, including:

(a) provided that Thorneloe performs all of the covenants during the term of the Thorneloe Indenture, LU is required to renew the lease for a further 99 years on substantially the same terms;

(b) the Thorneloe Indenture may be terminated by LU if: (i) Thorneloe withdraws from the federation with LU or the land and premises cease to be used for educational instruction at a university level for three years, or (ii) Thorneloe is in breach or non-performance of the covenants of the Thorneloe Indenture;

(c) in the event that the Thorneloe Indenture is terminated, LU is entitled to take possession of the lands, and may elect to purchase any or all of the buildings constructed on the lands from Thorneloe; and

(d) the Thorneloe Indenture provides that LU may pay for buildings that can be used by LU in the ordinary course for university purposes (such as residences and classrooms), but LU is not required to pay for any buildings that duplicate existing facilities at LU. The value of the buildings is calculated as the cost of construction less depreciation calculated at 4% per annum.

A copy of the Thorneloe Indenture is attached hereto as **Exhibit** “**Q**”.

E. *Statutory Framework*

93. LU is governed by the Act. The Act incorporated LU and vested the management of LU in the Board. The Act grants the Board all powers necessary or convenient to perform its duties and achieve the objects and purposes of the University.

94. The objects and purposes of LU are described in the 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.

95. The Act confers powers on LU, including, among other things, the power to: (i) establish courses (Senate); (ii) confer degrees (Senate); (iii) enter into federation agreements with

other colleges (Board); (iv) purchase, mortgage, lease and convey property (Board); (v) borrow money (Board); and (vi) commence proceedings in its own name (Board).

F. ***Governance Structure***

96. The facts set out in this section relating to LU's governance structure are based on my own knowledge and on information I have received and have been advised of by the University Secretary and General Counsel of LU, which I believe to be accurate in all respects.

97. The governance structure of LU is bi-cameral. The Board and the President and Vice-Chancellor generally have powers over the operational and financial management of LU, whereas the Senate of LU (the "**Senate**") is responsible for the academic policy of LU.

98. The Act establishes the governance structure for LU. Section 18(1) of the Act provides that all powers over, in respect of or in relation to the governance, financial management and control of LU and its officers, servants and agents, its property, revenues, expenditures, business and affairs are vested in the Board. However, there is a carve-out in section 18(1) for matters that are specifically assigned by the Act to the President, the Senate or federated universities or colleges.

99. Section 21 of the Act provides that the Senate is responsible for the educational policy of LU, subject to approval of the Board with respect to the expenditure of funds and the establishment of facilities.

100. Section 28(2) of the Act provides that the President of LU is the chief executive officer and chairman of the Senate and has supervision over the direction of academic work and the general administration of LU.

i. Composition of the Board

101. Pursuant to the Bylaws, the Board is comprised of 25 voting members, as follows:

(a) President and Vice-Chancellor;

(b) five members named by the Lieutenant Governor in Council; and

(c) nineteen (19) members selected by the Board. These members are comprised of three people nominated by each of the federated universities (SU, Huntington and Thorneloe) one person nominated by the Laurentian University Alumni Association, two people nominated by the Student Associations of LU, and seven people put forward by the Nominations Committee of the Board.

A copy of the Bylaws is attached hereto as **Exhibit** “**R**”.

102. All voting members, except the members elected from student nominations, hold office for a period of three (3) years ending at the close of the annual meeting in the third year following such appointments.

103. The elected voting members from student nominations hold office for a period of one (1) year ending at the close of the annual meeting in the year of such appointments.

104. No voting member is permitted to hold office for more than four consecutive terms, however, the number of terms of a voting Board member who serves as Chair, Vice-Chair or past Chair of the Board may be extended. A former voting member is eligible for re-election after a lapse of one year.

105. In addition, the Board may provide for non-voting members on the Board and Board Standing Committees. Such non-voting members are entitled to participate in the

discussions at meetings of the Board and Board Standing Committees, except when confidential matters are to be discussed "in camera".

106. A quorum is reached if there are ten (10) voting members present at a Board meeting. All bylaws, motions and resolutions are decided by a majority of the votes of members present at said meeting with the exception of the enactment, amendment or repeal of by-laws, which must be approved at a meeting where at least fifty percent (50%) of the voting Board members are present, by a two-third majority of the voting Board members present. Further, a resolution signed by all members of the Board has the same force and effect as if passed at a regularly constituted meeting of the Board.

ii. Formation of the Ad Hoc Committee

107. On November 12, 2020, the Executive Committee of the Board, in exercising the powers of the Board under the Bylaws, authorized the formation of a special In Camera Ad Hoc Committee on Contingency Planning (the "**Ad Hoc Committee**"). The Ad Hoc Committee was formed in response to the important and time sensitive work required to address LU's financial challenges.

108. The Ad Hoc Committee has the authority to act on behalf of the Board on matters related to all initiatives to address LU's financial challenges, including the preparation for this application under the CCAA and providing certain ongoing strategic direction following the commencement of this CCAA proceeding. The purpose of the Ad Hoc Committee is to provide day-to-day oversight and direction with respect to the CCAA proceedings in order to report back to the Board on any fundamental strategic decisions.

109. The Ad Hoc Committee is comprised of nine (9) voting members of the Board. Since its formation, the Ad Hoc Committee has met on at least a bi-weekly basis, with increasing frequency over the past several weeks.

110. Based upon the recommendation of the Ad Hoc Committee, the Board retained independent legal counsel (Peter Osborne of Lenczner Slaght Royce Smith Griffin LLP) to advise the Board with respect to issues solely related to the Board.

iii. Authority to Commence Proceedings

111. As set out above, section 8 of the Act provides that LU may commence proceedings. Further, section 18(1) of the Act provides that all powers over, in respect of or in relation to the governance, financial management and control of LU and its officers, revenues, expenditures, business and affairs are vested in the Board.

112. Accordingly, the Board has the authority to authorize the commencement of this court proceeding. On January 29, 2021, the Board convened a meeting duly constituted with quorum and on proper notice. At such meeting, the Board passed a resolution in camera authorizing LU to file this application to commence proceedings under the CCAA. A copy of the Board resolution is attached hereto as **Exhibit** "**S**".

G. *Key University Performance Measures*

113. LU has faced several major challenges recently, including declining demographics in Northern Ontario, the closure of LU's Barrie campus which commenced in 2016 and was finalized in 2019, high debt levels and the Province's domestic tuition reduction and freeze that was implemented in 2019.

114. Since 2011, Ontario has been facing weak demographic trends for university-aged entrants. This problem is particularly acute in Northern Ontario, where LU is located. LU's domestic undergraduate direct entry high school enrolment, which represents Ontario high school students who attend LU immediately after high school, is a significant contributor to LU's overall enrolment (around 40%) but has declined 22% since 2011. Ontario's population projections suggest these trends will continue to get worse until 2024. Although this decline was offset by enrolment growth from students in online degrees and graduate programs, this growth is not sustainable.

115. The current COVID-19 pandemic has exacerbated these issues, including due to the loss of ancillary revenues derived from, among other areas, residence, parking, conferences and food services. The loss of these revenues has made it increasingly difficult to manage the financial challenges that LU faces.

116. LU has the fourth lowest domestic tuition and student ancillary fees in the Province. Historically, this was a strategic decision designed to attract more students to LU. As tuition fees are one of LU's primary sources of revenue, the Provincially-mandated tuition reduction of 10% in 2019 resulted in further stress to the financial situation of LU. While LU did receive one-time funding from the MCU to partially offset this revenue decline in 2019-2020, the decrease in domestic tuition rates is a permanent loss of revenue which is further compounded by the Province-wide tuition freeze that is currently in place. There is a risk that continued tuition freezes may be implemented by the Province, notwithstanding rising costs on an annual basis.

117. In addition to the low tuition fees, every employee of LU (including those of the Unions) and all retirees are entitled to free tuition for themselves, their spouses and their dependants. As a significant employer within Sudbury, this creates a potentially significant loss of tuition revenue every year.

118. Due to these and other financial challenges, LU now has the worst primary reserve ratio of all universities in the Province (-29 days), the worst viability ratio (-17.6%) and one of the worst net income/loss ratios (-1.5%).

119. In Maclean's 2021 university rankings of primarily undergraduate schools across Canada, LU placed 12 out of 19 universities. Reflective of LU's leading research programs, LU ranked first in Canada in primarily undergraduate schools for total research dollars allocated to the school.[6] This figure, calculated relative to the size of each institution's full-time faculty, includes income from sponsored research such as grants and contracts, federal, provincial and foreign government funding, and funding from non-governmental organizations.

H. *Employees*

120. As at December 30, 2020 LU employed approximately 1,751 people. Of this total, approximately 758 are full-time employees. Term employees funded through grants may also work full-time hours, but are not included in the full-time employee total. The total number of employees fluctuates on a regular basis given the large volume of part-time and student employment offered by LU. Typically, the operating departments of LU employ

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[6] Source: https://www.macleans.ca/education/university-rankings/canadas-best-primarily-undergraduate-universities-rankings-2021/.

approximately 400-500 student employees. However, due to the impact of COVID-19 and students studying remotely, there were only approximately 200 student employees in November 2020, whereas there were 470 in November 2019. These amounts do not include GTAs (as defined below) and students employed by faculty for research purposes.

121. There are approximately 612 employees represented by LUFA. Among these employees, 355 are full-time faculty (including seven employees currently on a leave of absence from LU), 221 are sessional faculty or health care professionals and five are full-time counsellors. Almost all of the full-time faculty have acquired tenure as defined in the collective agreement. In addition, there are 31 individuals who are staff or students of LU who also teach a sessional/clinical course. The number of sessional employees varies from term to term depending on need.

122. The non-faculty staff are represented by the Laurentian University Staff Union ("**LUSU**"). LUSU represents LU's staff, which includes all employees of LU in clerical, technical, administrative, service and security work. LUSU represents approximately 268 employees.

123. The remainder of LU's full-time employees who are not represented by a union include approximately 23 senior leadership employees, and 111 administrative and professional staff, most of which are in managerial roles. The managerial and non-managerial employees are considered part of an informal association that LU recognizes as the Laurentian University Administrative and Professional Staff Association ("**LUAPSA**"). LUAPSA has an executive committee that meets with LU on occasion and LU solicits feedback from the LUAPSA executive committee regarding matters that affect employees that are in positions falling under the LUAPSA umbrella.

I. *Unions and Collective Bargaining Agreements*

i. LUFA

124. Total salaries and benefits represent the single largest expense item for LU on an annual basis (approximately $134 million of $201 million in total expenses during fiscal year 2019-20). The total salaries and benefits paid by LU to its faculty (i.e. the members of LUFA) were approximately $70 million during fiscal year 2019-20, or 52% of total consolidated salaries and benefits. However, when excluding funding for salaries and benefits received from research grants, faculty are 57% of total salaries and benefits funded through operations, comprising LU's single largest operating expense.

125. Currently, LUFA members represent approximately 60% of total salaries and benefits.

126. LUFA and the Board of LU are parties to a Collective Agreement (the "**LUFA CA**"), with a three year term which expired on June 30, 2020. Pursuant to the provisions of the LUFA CA, the agreement automatically continues year-to-year unless notice is provided that either LUFA or LU intends to terminate or amend the LUFA CA. In February 2020, LUFA provided LU with a notice to bargain. Pursuant to Article 13.15.3 of the LUFA CA, the agreement automatically remains in force during any period of negotiation. A copy of the LUFA CA is attached at **Exhibit** "**T**" hereto.

127. LU and LUFA have been engaged in bargaining with respect to a new collective bargaining agreement. As a prelude to bargaining and with a sense of the economic impact of COVID-19 becoming apparent, LU met with the LUFA bargaining team on April 27, 2020, and briefed them on the economic state of LU. In that discussion, LUFA was explicitly told by the University's chief labour spokesperson, Michael Kennedy from Hicks Morley LLP,

that there was a material risk that LU could run out of money during the life of the collective agreement and that could happen as early as the Fall 2020 or as late as Spring 2021. LUFA was also advised that LU would seek rollbacks in faculty compensation in the same way that it would with other unionized and non-unionized employee groups.

128. LUFA's response after the April 27, 2020, financial update meeting was to defer the commencement of bargaining on May 25 and 26, 2020, and seek more financial information regarding LU's financial status and the budget for the upcoming and future academic years. LUFA required such information prior to the continuation of bargaining.

129. LU has endeavoured to respond to much of LUFA's information requests. On April 27, 2020, LU responded to LUFA's first request for financial information. Further, on August 18, 2020, LU provided LUFA with a comprehensive package of financial information in response to their questions. LU also provided LUFA with financial update presentations on June 9, 2020 and August 26, 2020.

130. LU and LUFA bargained on September 11, 23, 25, 29, October 1 and 2, 2020. On September 11, 2020, LUFA responded to LU's response to its financial information requests by indicating that "the administration is indicating a sudden and unprecedented financial crisis – the data reveals that while our financial situation is not optimal, our current position fiscal situation is better than 2016". Following the September 11, 2020 bargaining date, LUFA provided a list of 11 priority questions regarding financial information they were seeking.

131. On October 1, 2020, LU advised LUFA that EY had been retained as a financial advisor and that more financial information would not be forthcoming until LU had a chance to

work with EY. On October 2, 2020, LUFA advised they did not think the information provided to date showed a financial crisis. LU responded that given LUFA's lack of satisfaction with the information provided to date demonstrating a financial crisis, that LU would defer providing more financial information until LU had the opportunity to review its financial data with EY.

132. The parties also engaged the services of William Kaplan as mediator and met with him on October 5 and 6, 2020. After the two-day mediation, bargaining was put on hold pending further review of LU's finances.

133. LU met with LUFA again on January 18, 2021 and responded to LUFA's preliminary response to University's financial circumstances. During the meeting on January 18, 2021, LUFA was advised by LU's chief labour spokesperson that since the parties broke off bargaining in October, LU's efforts to review and assess its finances had not changed the view that LU has profound economic challenges. In fact, the passage of time had only served to confirm how profound LU's financial challenges are. More specifically, LU's chief labour spokesperson confirmed as follows:

(a) LU continued to be at risk of running out of money prior to the end of the academic term;

(b) that LU had incurred short and long-term borrowing in excess of $100 million;

(c) LU has consistently realized annual deficits going back to at least 2014-15; and

(d) LU has no further capacity to service debt and/or acquire more debt.

134. Later that day on January 18, 2021, LUFA's chief spokesperson, David Wright, of Ryder Wright Blair and Holmes LLP emailed LU's chief labour spokesperson seeking production of a wide- ranging series of documents including:

(a) all documents and financial records which support LU's position that it is in an immediate financial crisis and will be unable to service debt or is likely to run out of funds in the near future; and

(b) any documents provided to LU by Ernst & Young Inc. as a result of its review/analysis/consultation regarding LU's finances.

135. On January 22, 2021, the President of LUFA wrote to me indicating an intention to bring an Unfair Labour Practice Complaint pursuant to the Ontario Labour Relations Board alleging that LU had not provided any financial information to support that LU was in financial duress and that LU, as a result, had unduly delayed bargaining. A copy of the letter is attached hereto as **Exhibit "U"**.

136. LU's chief labour spokesperson responded in an email to LUFA's information request on Friday, January 29, 2021. In his email response, LU's chief labour spokesperson explained the following:

(a) many of LUFA's questions were predicated on previously provided financial information which did not reflect the current financial circumstances of LU and were no longer applicable;

(b) LUFA's request for **all** documents and financial records which supports LU's position that it was in an immediate financial crisis, was unable to service its debt, or likely to run out of funds in the near future, was overly broad and beyond the duty to bargain in good faith;

(c) LUFA already had the information it needs to understand the precariousness of LU's financial circumstances. It was well known and documented that LU has had an ongoing deficit since 2014-2015 and had accumulated debt of over $100 million. Moreover, the December 11, 2020 Board Information Package showed LU's anticipated actual 2020-21 revenues were $148,548,297 and expenditures were $159,147,976; and

(d) LU did not have the ability to obtain or service more debt or have access to borrow more money to finance its operations. LU's operations continue to be funded by the revenue it receives from tuition, grants, and other ancillary revenue.

137. I am advised by our external labour counsel, Michael Kennedy of Hicks Morley LLP that as of the date of this affidavit, LUFA has not exercised its statutory right to request a conciliator pursuant to the *Labour Relations Act* and in fact, LUFA requested that LU agree to a moratorium whereby neither party would request a conciliator.

138. I am further advised by Mr. Kennedy that there are a number of terms of the LUFA CA in favour of LUFA members that are considered to be above-market. The following summarizes such provisions:

(a) the annual salary increases provided for in the LUFA CA have resulted in salaries for LU assistant professors that are among the highest when compared to other Ontario universities;

(b) faculty have the option to elect "buying out" of a course (up to 15 credits over 5 years, but no more than 6 credits in a given Academic Year) for the purposes of dedicating more time to scholarly activity if faculty reimburses LU for the cost of their replacement. The Dean of each faculty decides whether to approve the buy-out, however, LU has an obligation to not unreasonably withhold its approval. This was intended to have a net-zero cost impact, however, in practice, if a sessional is required to replace the course, there are additional benefits and vacation pay obligations which result in a 10% premium to LU because LU is not permitted to seek reimbursement over and above the base salary for a course;

(c) the large number of faculty who are able to reduce their teaching load to do other work that may not generate revenue (i.e. assume a chair/director position or the coordination of other duties), which causes LU to replace the workload through sessional instructors, thereby increasing overall faculty expenses;

(d) courses assigned to full-time faculty members may only be cancelled if there is zero enrolment, which requires LU to continue offering courses with very low enrolment that are not financially sustainable;

(e) sessional contracts which are typically entered into well in advance of the start date of a course cannot be reassigned to a full-time member or be cancelled without a financial penalty equal to 15% of the contract (approximately $1,200 per course), limiting LU's flexibility in ensuring appropriate deployment of academic resources;

(f) LUFA members who work between ages 65 and 71 are permitted to draw upon their pension while at the same time receiving a full salary. This has created a situation where LU has one of the highest rates of faculty members over the age of 65 in the Province. As of December 9, 2020, approximately 26 full-time faculty members were collecting both a pension and receiving a full salary;

(g) Some LUFA members, who earn an income over a certain threshold and are enrolled in the Pension Plan are also eligible for the SuRP (as defined below). Based on my experience at other Canadian universities, a SuRP such as the plan provided by LU is not normative in the university sector, particularly as a smaller university;

(h) Faculty years of service and earnings after the age of 62 continue to be counted towards accrual of pension value for LUFA members, which incentivizes LUFA members to postpone retirement; and

(i) all full-time faculty and retirees are entitled to free tuition at LU, together with the spouses and dependants of all full-time faculty, retirees, deceased retirees, and deceased faculty. As discussed above, this can contribute to a significant loss of tuition revenue every year.

139. The LUFA CA also contains financial exigency provisions which provide for a collegial process to evaluate the financial affairs of LU and determine whether budgetary cuts affecting members of LUFA are necessary.

140. Determination of whether financial exigency exists is made by a Financial Commission (the "**Commission**") consisting of three members (one LU representative, one LUFA representative and one mutually agreeable person).

141. The salient terms of the financial exigency provisions provide:

(a) financial exigency is defined as substantial and recurring deficits that are projected to continue for more than two years, which threaten the long-term solvency of LU as a whole;

(b) reductions in academic staff for reasons of financial exigency may only occur after efforts to alleviate the financial crisis by reductions in all other segments of the budget have been made;

(c) LU is responsible for providing notice that a state of financial exigency exists and bears the onus of proving financial exigency;

(d) the Commission decides whether financial exigency exists and, if so, the amount of reduction required in the budgetary allocation to salary and benefits;

(e) the Commission decides how the budget will be reduced across faculty, library and other similar units at which point, the faculty and library councils shall apportion the budgetary reductions across their departments and schools;

(f) tenured members may not be laid-off in preference to a non-tenured member, unless there is a clear and substantial reason for doing otherwise;

(g) LU must make efforts to secure alternative positions within the university for members who have been laid off with up to one year of re-training and members are entitled to a first right of refusal on academic vacancies for which they are competent for three years following lay off; and

(h) any members who are laid off are entitled to: (i) 12 months' notice or 12 months' salary in lieu of notice, and (ii) an additional one month's salary for each year as a full-time employee, provided that no tenured member shall receive less than 12 month's salary.

142. The financial exigency provisions entail a lengthy process for establishing whether financial exigency exists. LU does not have access to cash to meet its obligations while that process would be undertaken. LU's prospects of a successful restructuring will be handicapped if the financial exigency provisions and timeline are followed, particularly if a stay of proceedings is not obtained when financial exigency is declared by LU. The process is onerous and rigid requiring: (i) the transfer of control to the Commission, (ii) a protracted timeline for the review of LU's financial state and recommendations on terminations, (iii) priority rights in respect of who may be terminated, which may be incompatible with LU's long-term faculty requirements and need for an overall restructuring; and (iv) a high degree of discretion in decisions made by the three members constituting the Commission.

143. The financial exigency provisions of the LUFA CA create extraordinary liabilities for LU with respect to termination and severance payments that LU also does not have the cash to fund. This additional burden places LU in the untenable situation that it cannot be fiscally prudent and take the steps required for its financial stability, while also being unable to address material faculty costs as a result of the obligations arising under the financial exigency provisions of the LUFA CA.

144. Creating an effective process under the supervision of the Court and with the benefit of CCAA protection will provide LU with the opportunity to address the shortcomings in the process contemplated by the financial exigency provisions. LU is of the view that the

appointment of a Mediator by the Court within the parameters of these CCAA proceedings and providing the Mediator with flexibility to adapt a process and timeline to achieve a resolution is the best option available. Ultimately, it is the hope of LU that such mediation and discussions will result in LU achieving a collective agreement with LUFA in conjunction with negotiations and a resolution with other key stakeholders, that fits within the parameters of future sustainability of LU.

145. These negotiations, and most importantly a resolution, need to be undertaken, completed and capable of being implemented by May 2021 due to: (i) the extent of DIP financing relative to the cash flow forecast; (ii) the need to plan for and implement the necessary changes in programming for the 2021/2022 Academic Year to be ready for September; and (iii) the need to demonstrate to existing and prospective incoming students of the successful restructuring of these critical components in order for 2021 high school graduates to choose LU as their destination for university prior to the June 2021 deadline for acceptances, and in order to retain the support of existing LU students and their families.

146. The need for the court-supervised mediation to commence immediately is urgent. The labour situation at LU is tenuous, and stability and transparency within this CCAA proceeding and the involvement of the Monitor will be critically important to provide the Applicant with the best possibility of success.

ii. LUSU

147. On July 1, 2018, LUSU and LU entered into a Collective Agreement that was set to expire on June 30, 2021 (the "**LUSU CA**"). Over the past two years, LUSU executives and their members have engaged in dialogue with LU to address some of the issues facing LU. A copy of the LUSU CA is attached hereto as **Exhibit** "**V**".

148. The LUSU CA provides a 1.5% salary increase effective July 1, 2020. It also contains highly burdensome provisions regarding temporary lay-offs, which offers LU limited flexibility in addressing staffing issues. Deferring salary increases and loosening the provisions on temporary lay-offs will need to be reviewed and considered as part of LU's restructuring.

149. The LUSU CA provides flexibility to transfer and reassign staff based on the operational requirements of LU. Practically, this flexibility is limited due to the specialized skills of non-administrative positions in the LUSU bargaining unit. For example, biology technicians, information technology specialists and security require a specialized skillset which makes it difficult to reassign LUSU members to these positions when greater need arises.

150. Most importantly, the LUSU CA includes a memorandum of understanding, negotiated into a prior CA which has since been renewed for the remainder of the LUSU CA term, waiving the redundancy and termination provisions. This effectively prevents LU from terminating any LUSU employee for redundancy for the remaining term of the LUSU CA.

151. In light of the financial challenges of LU, LUSU agreed to open the existing LUSU CA early for negotiation, prior to its expiration on June 30, 2021. Those negotiations achieved the following:

(a) **Year 1:** a 1.0% salary reduction, which previously was a 1.5% salary increase under the LUSU CA;

(b) **Year 2:** a 0.5% salary increase on July 1, 2021 and January 1, 2022;

(c) **Year 3**: a 0.5% salary increase on July 1, 2022 and January 1, 2023;

(d) Six furlough days for all LUSU members without pay in 2020. This provided LU with a one-time cash savings of $450,000;

(e) Confirmation of LU's ability to effect employee transfers and the additional flexibility to reassign and transfer staff during the collective agreement;

(f) Retirement incentive to maintain salary and pension at the pre-reduced salary level on June 30, 2020, with the condition to retire on or before October 31, 2020; and

(g) The reassignment, transfer and retirement provisions resulted in 11.5 position redundancies in 2020, a total annual salary and benefits savings of approximately $808,077.

iii. CUPE Collective Agreement

152. On September 1, 2019, CUPE and LU entered into a Collective Agreement (the "**CUPE CA**") which covers Masters level and Ph.D-level students who are employed as Graduate Teaching Assistants ("**GTAs**"). Approximately 305 GTAs are represented by CUPE although this number can fluctuate. The CUPE CA is set to expire on August 31, 2021. A copy of the CUPE CA is attached hereto as **Exhibit** "**W**".

153. In September 2019, CUPE agreed to a total compensation increase of 1%. The entirety of the increase was allocated to scholarship payments, with a 0% increase in salary over the two-year term of the CUPE CA.

J. *Pension and Benefit Plans*

154. LU is the administrator of three types of plans for its employees: (i) a Primary Retirement Plan for Laurentian University and its Federated and Affiliated Universities (the "**Pension**

Plan"), (ii) a Supplementary Retirement Plan ("**SuRP**"), and (iii) a Retirement Health Benefits Plan (the "**RHBP**").

i. Defined Benefit Pension Plan

155. There are currently 406 individuals collecting a lifetime pension from the Pension Plan. There are 981 active members currently contributing to the Pension Plan but not yet collecting a benefit. In addition, there are approximately 500 individuals no longer employed by LU that are eligible, but not yet collecting such benefits. This includes beneficiaries of the Federated Universities, the Sudbury Neutrino Observatory Laboratory ("**SNOLab**"), the Mining Innovation Rehabilitation and Applied Research Corporation ("**MIRARCO**") and Centre for Excellence in Mining Innovation ("**CEMI**"). Under the Pension Plan, LU is defined as the "primary employer" for the Federated Universities, SNOLab, MIRARCO and CEMI. A copy of the Pension Plan is attached hereto as **Exhibit "X"**.

156. The Pension Plan is a defined benefit pension plan for all eligible employees of LU and the Federated Universities. Pursuant to the Pension Plan, all full-time employees of LU or the other applicable employers who are employed on a continuous full-time basis (as determined by the employer) must participate in the Pension Plan. Other employees who are not full-time employees may elect to join the Pension Plan once such employee has been continuously employed for at least two years and the employee meets certain minimum salary or employment hour requirements.

i. Pension Plan Valuation

157. Based on the actuarial valuation of the Pension Plan as of January 1, 2020 (updated December 2020), the Pension Plan had a solvency ratio of 85.4%, representing a going

concern deficiency of approximately $4.5 million. This liability must be liquidated over a period not exceeding ten years, beginning one year after the date of valuation (i.e. January 1, 2021).

158. As a result of this going concern deficiency, the actuary concluded that LU must make an annual special payment contribution of $505,000, payable in monthly instalments of approximately $42,083. LU made the January instalment of the special payment during the week of January 17, 2021.

159. Due to its insolvency, LU will be seeking relief from this Court to stay the payment of any pre-filing or post-filing special payments to the Pension Plan, which will assist LU with its current liquidity crisis and maximize the chance that LU can successfully restructure.

ii. Supplementary Retirement Plan (SuRP)

160. In addition to the Pension Plan, LU is the provider of a SuRP for certain employees of LU who are eligible for the Pension Plan and earn an income over a certain threshold.

161. The SuRP was commenced on July 1, 2002. If retiring employees are eligible based on income, they are automatically put into the plan and receive either an annual or monthly payment. In 2020, the aggregate amount of SuRP payments was $384,489.18. The projected amount of SuRP payments to be made in 2021 is $262,744.87. A copy of the SuRP policy is attached hereto as **Exhibit "Y"**.

162. The contributions and benefits of the Pension Plan are directly related to employees' salary. However, due to certain limitations under the *Income Tax Act*, the pension benefits payable from the Pension Plan to higher-paid employees may be less, as a percentage of salary, than the benefits payable to lower-paid employees. As a result, the SuRP was implemented

to provide additional benefits to active employees of LU over the amounts payable from the Pension Plan. The intention is that the total benefits from the two plans combined should be roughly equal to the amount that would have been payable from the Pension Plan alone if the *Income Tax Act* limits were not a factor.

163. Historically, LU has never set aside cash to fund the SuRP and as a result, the SuRP is unfunded. In previous years, LU paid the lump-sum payment out of its operations account. As such, the SuRP is entirely unfunded. As at April 30, 2020, the accrued benefit obligation was $3,063,000.

iii. Retirement Health Benefits Plan (RHBP)

164. LU also provides the RHBP to retired employees of LU that elect to enrol in the program. In addition to LU employees, the RHBP is available to employees of the Federated Universities, SNOLab, Mirarco and CEMI. There are currently 866 employees contributing to the RHBP but not yet collecting the benefit, and 358 retirees who are eligible to collect the benefit. A copy of the RHBP policy is attached hereto as **Exhibit "Z"**.

165. To be eligible to participate in the RHBP, employees must satisfy the following conditions:

(a) the employee must retire at age 55 or older;

(b) the employee must have contributed for at least 15 years to the RHBP; and

(i) the employee has purchased private coverage and can provide the employer with receipts for private coverage; or

(ii) the employee did not purchase private coverage, but can provide the employer with receipts for medical expenses.

166. Employees do not qualify if the employee qualifies for continued coverage under the Laurentian University Group Plan.

167. Employees participating in the RHBP are required to pay a monthly premium which varies depending on the type of employee (i.e. LU, Federated Universities, SNOLab or LUSU member) and whether the employee enrolls in single or family coverage.

168. The RHBP Policy provides that LU will establish a trust account in respect of the RHBP. This trust account was to receive all contributions by employees participating in the RHBP, the annual $25,000 contribution by LU and the proportionate contributions by the Federated Universities.

169. Rather than establishing a separate trust account, I understand that LU has historically tracked contributions to the RHBP as a liability in its accounting records. Contributions received by LU in respect of the RHBP were deposited into LU's general operating bank account and are not held separately, or at all at this time. As at April 30, 2020, the accrued benefit obligation was approximately $7,200,000.

170. I have only recently become aware of the fact that these contributions were merely recorded as internal accounting entries and had not actually been set aside. Upon this issue being brought to my attention, I have requested the finance team to take the steps necessary to establish a segregated bank account for the monthly RHBP contributions received from the employees of LU to be deposited and retained, and this process is currently underway.

K. *Certain Material Relationships and Contractual Arrangements*

i. SNOLab

171. SNOLab is Canada's deep underground research laboratory, located in Vale's Creighton mine in close proximity to Sudbury, Ontario. SNOLab's science program focuses on astroparticle physics, although it also conducts biology and geology experiments.

172. SNOLab is governed by the Third SNOLab Trust Agreement (the "**SNOLab Trust Agreement**") dated May 10, 2012 between Queen's University, Carleton University, the University of Montreal, and LU (collectively, the "**SNOLab Member Institutions**"). The SNOLab Trust Agreement incorporates the SNOLab Constitution, the most recent version of which is dated November 27, 2012 and effective as of February 1, 2013 (the "**SNOLab Constitution**"). A copy of the SNOLab Trust Agreement is attached hereto as **Exhibit "AA"** and a copy of the SNOLAB Constitution is attached hereto as **Exhibit "BB"**.

173. SNOLab is an unincorporated Senate-approved Institute of Queen's University. The SNOLab Constitution provides that although SNOLab is formally constituted as a part of Queen's University, it operates through the SNOLab Trust Agreement among the SNOLab Member Institutions.

174. The SNOLab Member Institutions have changed over time, but at present they are Queen's University, Carleton University, Université de Montreal, University of Alberta and LU. Pursuant to the SNOLab Trust Agreement, each SNOLab Member Institution has a twenty percent (20%) interest in SNOLab's assets, and is responsible for SNOLab's liabilities and obligations (including any potential wind-up obligations) on the same percentage basis.

175. Oversight and governance of SNOLab and its operational management occurs through the SNOLab Institute Board of Directors (the "**SNOLab Board**"). The SNOLab Board is made up of a majority of independent directors. Each of the SNOLab Member Institutions are entitled to appoint one non-independent director to the SNOLab Board and, as such, LU appoints one member to the SNOLab Board. LU's appointee is the Vice President, Research.

176. The operations of SNOLab are funded by a combination of federal and provincial government research grants. The SNOLab Trust Agreement provides that SNOLab Member Institutions may also apply for and receive individual grants on behalf of SNOLab and, when granted, such funds are governed by the SNOLab Trust Agreement.

177. During the time that LU has been a SNOLab Member Institution, certain LU faculty members have received research grants that, in whole or in part, are for research conducted at or with SNOLab. Prior to December 2020, those research grant funds were typically received and deposited by LU into its main operating account. It is likely that LU holds grant money that is allocated to research activities at SNOLab, but those amounts are difficult to ascertain absent an extensive reconciliation exercise.

178. SNOLab is the employer for all individuals appointed to SNOLab. However, pursuant to the SNOLab Constitution, SNOLab shall make arrangements for each employee to be on the payroll of a Member Institution and paid by a check drawn on its payroll account. All direct costs of such Member Institution will be charged and reimbursed by SNOlab, including salaries and benefits, termination costs and legal fees, if any. SNOLab retains

control of the employees and retains responsibility for ensuring that all statutory obligations are met for the employees.

179. As a result of this employee structure, LU processes the payroll for approximately 128 of SNOLab employees (2 on a monthly basis and 126 on a bi-weekly basis), provides their benefit programs, and eligible SNOLab employees participate in the Pension Plan.

180. LU funds the payroll, benefit programs and contributions to the Pension Plan on behalf of SNOLab up front and then invoices SNOLab for the total amounts paid. Upon receipt of the invoice, SNOLab reimburses LU in full for the total cost of payroll, benefits and Pension Plan contributions.

181. Save and except for the costs of administering such employment related matters, there are no further costs to LU related to providing these services to SNOLab. SNOLab funds all of the amounts required to meet its own payroll, benefits programs and the employer contributions to the Pension Plan.

ii. MIRARCO

182. MIRARCO is headquartered in Sudbury, Ontario and is the mining research arm of LU. MIRARCO's success is a significant reason for LU's reputation as a leading mining university in Canada. The operations of MIRARCO are funded by a combination of private research contracts and government grants for research and the provision of technical services. MIRARCO also generates revenue by conducting training workshops for various entities in the mining sector.

183. MIRARCO is a non-share capital corporation incorporated under the *Corporations Act*. MIRARCO is a wholly owned by LU and is consolidated in LU's financial statements. The

majority of MIRARCO's Board of Directors are independent from LU, although there is some overlap with the Board. MIRARCO's executive team is comprised primarily of mining experts.

184. As LU's mining research arm, LU processes the payroll for all of MIRARCO's 19 employees, provides their benefit programs and eligible MIRARCO employees participate in the Pension Plan.

185. Save and except for the costs of administering such employment related matters, there are no further costs to LU related to providing these services to MIRARCO. MIRARCO funds all of the amounts required to meet its own payroll, benefits programs and the employer contributions to the Pension Plan.

186. LU funds the payroll, benefit programs and contributions to the Pension Plan on behalf of MIRARCO up front and then invoices MIRARCO for the total amounts paid. Upon receipt of the invoice, MIRARCO reimburses LU in full for the total cost of payroll, benefits and Pension Plan contributions. I understand that MIRARCO has itself experienced financial difficulties in the last several years, which has resulted in outstanding payables owing to LU.

iii. CEMI

187. CEMI is a non-share capital corporation incorporated pursuant to the *Corporations Act.* CEMI is one of Canada's leading contributors to mining innovation by introducing new practices, procedures, tools and techniques to help generate significant improvement in the performance of mines. CEMI coordinates innovation initiatives with mining companies and helps ensure they are successfully implemented. The operations of CEMI are funded

by a combination of private research grants and government research grants. CEMI also generates revenue by conducting training workshops for various entities in the mining sector.

188. Oversight and governance of CEMI occurs through the CEMI Board of Directors, which is composed of leaders of the mining industry, including mining experts, government agency representatives and academics. CEMI has partnerships with numerous academic institutions globally, including LU.

189. Although LU is only one of CEMI's institutional partners, as part of its partnership with CEMI, LU processes the payroll for CEMI's five employees, provides their benefit programs and eligible CEMI employees participate in the Pension Plan.

190. Save and except for the costs of administering such employment related matters, there are no further costs to LU related to providing these services to CEMI. CEMI funds all of the amounts required to meet its own payroll, benefits programs and the employer contributions to the Pension Plan.

191. LU funds the payroll, benefit programs and contributions to the Pension Plan on behalf of CEMI up front and then invoices CEMI for the total amounts paid. Upon receipt of the invoice, CEMI reimburses LU in full for the total cost of payroll, benefits and Pension Plan contributions.

iv. St. Joseph's Health Centre of Sudbury

192. Pursuant to a lease between LU and St. Joseph's Health Centre of Sudbury ("**St. Joseph's**") dated February 26, 2001, LU leased certain lands to St. Joseph's for the construction of a

long-term health care facility with a term of 99 years (the "**St. Joseph's Lease**"). The rental rate was a one-time payment of $300,000 at the commencement of the term. LU and St. Joseph's are independent of each other, but have agreed to collaborate on certain research projects. A copy of the lease is attached hereto as **Exhibit "CC"**.

193. LU and St. Joseph's entered into a further agreement dated April 1, 2003, whereby LU agreed that it would not encumber or mortgage the title to the lands covered by the St. Joseph's Lease between April 1, 2003 and March 31, 2024. This restrictive covenant was registered on title to the leased lands. However, the agreement also provided that despite the restrictive covenant, LU is not precluded from selling the leased lands during the term of the St. Joseph's Lease. A copy of the agreement is attached hereto as **Exhibit "DD"**.

194. On October 20, 2003, St. Joseph's mortgaged its leasehold interest, with the consent of LU, in the leased lands to Royal Trust Corporation of Canada ("**Royal Trust**") in the amount of $8,005,693.00 pursuant to a financing agreement between St. Joseph's and Royal Trust. A Notice of Charge of Lease has been registered on title to the leased lands by Royal Trust. A copy of the mortgage with Royal Trust is attached here to as **Exhibit "EE"**.

v. Leases

195. LU has entered into a number of leases with various parties in which LU is the lessor. The following chart summarizes certain details of each lease:

Date	Counterparty	Expiry of Term	Building/Space Leased	Registration on title	Exhibit
Sept. 11, 2011 (amended September 1, 2016)	Ontario Minister of Infrastructure (Crown)	August 31, 2021	Vale Living with Lakes Centre	N/A	**"FF"**

April 1, 2019	Silvia Larocque	May 31, 2023	1,771 square feet in the McEwen School of Architecture	N/A	**"GG"**
January 1, 2019	Zayo Canada Inc.	December 31, 2020 (now monthly tenancy)	3,032 square feet in the McEwen School of Architecture	N/A	**"HH"**
February 26, 2001	St. Joseph's Health Centre of Sudbury	March 1, 2100	Village of Care Campus	Registered on PIN 73592-0412. Instrument # LT908773.	**"CC"**
October 24, 2019	Students' General Association	May 1, 2068	Student Centre building	N/A	**"II"**
April 9, 1965	University of Sudbury	April 9, 2064	University of Sudbury buildings	Registered on PIN 73593-0465. Instrument # LT223242.	**"L"**
July 3, 1964	Huntington University	July 3, 2063	Huntington buildings	Registered on PIN 73593-0465. Instrument # LT213378.	**"N"**
October 24, 1964	Thorneloe University	October 24, 2063	Thorneloe builidngs	Registered on PIN 73593-0465. Instrument # LT217228.	**"Q"**
July 1, 2006	NOSM	June 30, 2016 (now monthly tenancy)	Health Sciences Education Resource Centre	N/A	**"D"**
December 1, 2005 (amended July 1, 2011)	NOSM	August 31, 2035	Northern Ontario School of Medicine Building	N/A	**"E"**
March 16, 1964	Hydro-Electric Power Commission of the City of Sudbury	November 1, 2013 (now monthly tenancy)	Certain lands used for hydro substation	Registered on PIN 73593-0465. Instrument # LT436399.	**"JJ"**

September 12, 1969	Ontario Student Housing Corp.	August 14, 2019. Either party had option to renew for 5-year term, otherwise, the lessee is to return all lands and buildings to LU.	Single Student Residence (SSR) building	Registered on PIN 73593-0465. Instrument # LT287236.	"**KK**"
November 8, 1973	Ontario Student Housing Corp.	August 14, 2023.	Single Student Residence (SSR) building	Registered on PIN 73593-0465. Instrument # LT353270.	"**LL**"
February 12, 1988	Ontario Minister of Government Services (Crown)	January 1, 2087	Mineral and Mining Research Centre	Registered on PIN 73593-0465. Instrument # LT804581.	"**MM**"
October 15, 1968	Ontario Minister of Lands and Forests (Crown)	No term provided.	Crown granted LU certain tracts of land. LU agreed that if the land is no longer required for university purposes, LU will re-convey the land to the Crown if the Crown requests it to do so.	Registered on PIN 73583-0406. Instrument # LT264533.	"**NN**"

L. *Cash Management System*

196. Until December 2020, LU utilized a simple cash management system with one primary operating bank account at Royal Bank of Canada ("**RBC**") whereby substantially all funds received by LU were deposited and LU funded its operations and all expenses from the same account.

197. In addition, LU maintains an investment account with SEI Investments for the purpose of depositing all donations received to fund future scholarship in the endowment fund of LU and has a blocked account with both the Bank of Montreal ("**BMO**") and Toronto-Dominion Bank ("**TD**") solely for the purpose of sweeping and processing debt service payments.

198. Since December 2020, LU has taken steps to alter its cash management system to better manage the various sources of cash that are provided to LU, which included opening three new bank accounts. Today, LU's cash management system includes the following bank accounts:

(a) operating bank accounts where all grants, tuition and ancillary revenues are received, and through which disbursements are made;

(b) the investment account with SEI (which holds the endowment funds);

(c) the blocked accounts with BMO and TD;

(d) a bank account dedicated to all research grants and award funding;

(e) a bank account for all other restricted funds, other than certain restricted donations that are received through a dedicated account which funds will remain in that account; and

(f) a bank account dedicated to the employee and employer contributions to the RHBP.

199. The changes to the cash management system will allow LU to better account for cash that is received for specific purposes, and ensure that such funds are not comingled with other

operational amounts such as tuition, enrollment-based grants received from the Province and ancillary revenues

IV. FINANCIAL STATEMENTS

200. For the financial information that is described below, I have been advised of same by LU's VP Administration, and believe it to be true.

A. Financial Statements of LU

201. As at the close of business on January 28, 2021, LU had approximately $13 million in unrestricted cash on hand, after allowing for known payments that were due on that day. LU does not prepare interim quarterly financial statements and the audited annual financial statements are the most recent available financial statements in the last twelve months. A copy of LU's audited consolidated annual financial statements for the year ended April 30, 2020, are attached hereto as **Exhibit "OO"**.

202. As at April 30, 2020, LU's assets had a book value of approximately $358.5 million and LU's liabilities were valued as follows:

(CAD $'000s)	**April 30, 2020**
ASSETS	
Current	
Cash and short-term investments	4,544
Accounts receivable	27,045
Other current assets	1,650
	33,239
Non-current	
Accounts receivable	169
Investments	52,845
Employee future benefit assets	-
Capital assets	272,267
TOTAL ASSETS	**358,520**
LIABILITIES, DEFFERED CONTRIBUTIONS AND NET ASSETS	
Current liabilities	
Line of credit	14,400
Short-term loan	1,367

Accounts payable and accrued liabilities	22,319
Accrued vacation pay	1,846
Deferred revenue	1,009
Current portion of long-term debt	2,738
	43,679
Long-term obligations	
Long-term debt	88,973
Employee future benefits liabilities	20,788
	109,761
Deferred contributions	
Deferred contributions	38,519
Deferred capital contributions	129,879
	168,398
Net assets	
Unrestricted	(19,986)
Vacation and employee future benefits	(22,635)
Internally restricted	3,848
Investment in capital assets	22,610
Endowment	52,845
TOTAL LIABILITIES, DEFERRED CONTRIBUTIONS AND NET ASSETS	**358,520**

B. Assets

203. As at April 30, 2020, LU had assets with a book value totaling approximately $358 million, of which approximately $33 million is comprised of current assets such as cash and short-term investments, accounts receivable and other current assets.

204. The remaining assets of LU consist primarily of investments in LU's segregated endowment fund ($53 million) and capital assets ($272 million), comprising LU's land and buildings.

i. Capital Assets

205. The capital assets of LU are comprised of: (i) buildings, (ii) equipment and furnishing, (iii) site improvements, (iv) land; and (v) an art and library collection. The book value of the capital assets (except land) are derived by their cost less accumulated amortization. As of April 30, 2020, the book value of buildings is approximately $249 million, equipment is

approximately $7 million and site improvement is approximately $2 million. The land has a book value of approximately $13 million.

206. In addition to the land and buildings on LU's main campus, the capital assets of LU consist of other buildings and real property in and around the Sudbury area such as the Art Gallery Building located at 251 John Street, the President's House located at 179 John Street, the Vale Living with Lakes Centre at 840 Ramsey Lake Road and the McEwen School of Architecture located in downtown Sudbury at 85 Elm Street.

ii. Investments

207. LU's investments consist solely of its endowment fund created through historic gifts and donations from third parties to LU for the specific purpose of funding scholarships at LU. As of April 30, 2020, LU's endowment fund is approximately $53 million. As described previously, approximately $14 million of that is in respect of endowment funds received for NOSM students.

208. LU's endowment fund has been treated as not being accessible for operational purposes as it is only to be used for limited purposes such as the funding of student scholarships and other commitments supported by the fund. For 2020-2021, LU has set a spending rate of 2.5% of the endowment fund.

209. The endowment fund is comprised of an investment portfolio that holds the following asset classes: equity funds ($22 million), fixed income ($26 million), structured credit ($1.8 million) and real estate ($2.7 million).

210. As a result of the COVID-19 pandemic, the investment portfolio yielded a negative return for the 2019-2020 fiscal year, requiring LU to fund from its operations the shortfall of the

spending rate from 2019-2020 and a portion from 2018-2019. That shortfall was approximately $1.8 million.

211. Since access to the assets in the endowment fund is treated as limited to the specific purposes described above, these assets have not been accessed by LU for operational purposes or to satisfy any obligations and liabilities.

V. LIABILITIES OF THE APPLICANT

212. As at April 30, 2020, LU had liabilities with a book value totaling approximately $322 million, of which approximately $43 million is comprised of current liabilities, including $14.4 million for unsecured lines of credit (which as of today's date, have not been utilized due to LU's insolvency), a short-term loan, accounts payable, the current portion of long-term debt, accrued vacation pay and deferred revenue.

213. As at April 30, 2020, LU had deferred contributions with a book value of approximately $168 million, of which approximately $130 million consists of deferred capital contributions and $38 million consists of deferred external contributions for research and other expenses to be incurred in subsequent fiscal years.

214. The remaining long-term liabilities are mostly comprised of LU's long-term debt and future pension benefit liabilities in respect of LU's employees and those of the Federated Universities whose employees are members of the Plan.

215. As of January 29, 2021, LU is current on all statutory priority payables for which it is responsible, including with respect to SNOLab, MIRARCO and CEMI, which LU administers payroll on behalf of.

A. PPSA Registrations

216. Based on the searches conducted in the Personal Property Security Registration System (the "**PPSA Registry**") for "Laurentian University of Sudbury", the only security interest registrations made against LU are with respect to certain computer equipment lessors.

217. A copy of a certified search of the PPSA Registry as at January 26, 2021, with respect to LU is attached hereto as **Exhibit** "**PP**".

B. Unsecured Lines of Credit and Short-Term Credit Facility

218. LU had access to two unsecured revolving credit facilities with two financial institutions. Pursuant to a letter agreement most recently dated May 1, 2019, between LU and Caisse Populaire Voyageurs Inc. ("**Desjardins**"), LU had access to a revolving demand loan facility up to the maximum amount of $26 million (the "**Desjardins Line of Credit**"). The Desjardins Line of Credit provides that it may be used to finance daily operations, however, the agreement also provides that the revolving demand loan facility is for the purposes of providing short-term variable rate financing of internal projects. Attached hereto as **Exhibit "QQ"** is a copy of the agreement governing the Desjardins Line of Credit.

219. Due to the nature of LU's cyclical revenue cycle and the timing of when tuition payments and grant amounts are received by LU annually, the Desjardins Line of Credit is only needed at specific times during the year. For example, during the summer months, LU utilizes the full amount of the Desjardins Line of Credit. When tuition is received in September, the Desjardins Line of Credit is typically paid down and is not drawn again during the Fall. However, LU typically draws on the Desjardins Line of Credit again in February. At this time, no amounts are drawn on the Desjardins Line of Credit.

220. Upon filing for CCAA protection, LU will no longer have access to the Desjardins Line of Credit. Accordingly, LU is seeking DIP financing at the comeback hearing, as discussed below.

221. Pursuant to a letter agreement most recently dated June 12, 2019 (as amended from time to time, the "**RBC Credit Facilities Agreement**"), between LU and RBC, LU had access to, among other credit facilities with RBC, a demand revolving facility with availability of up to a maximum principal amount of $5 million (the "**RBC Line of Credit**"). Similar to the Desjardins Line of Credit discussed above, LU would draw on the RBC Line of Credit at various times of the year based on its immediate cash requirements. In addition to the RBC Line of Credit, RBC provided LU with a $250,000 revolving demand facility in respect of letters of guarantee. Attached hereto as **Exhibit "RR"** is a copy of the RBC Credit Facilities Agreement.

222. Pursuant to a letter agreement dated October 3, 2005 (as amended on May 30, 2008, June 1, 2009 and July 27, 2016, the "**TD Credit Facility Agreement**"), among other credit facilities, The Toronto-Dominion Bank ("**TD Bank**") provided LU with a single draw committed reducing term facility in the initial principal amount of $2,000,000, with a maturity date of April 3, 2021, for financing in respect of the Athletic Facility. As of January 29, 2021, the outstanding principal balance owing under this facility is $1,323,626 (exclusive of accrued interest and costs). This is a single draw facility and LU is not entitled to draw further amounts under this facility.

C. Guarantees

223. In accordance with a Guarantee dated June 27, 2018, LU guaranteed the obligations owed by the Laurentian University Students' General Association ("**SGA**") to TD Bank up to

the maximum principal amount of $8,500,000 pursuant to a Letter Agreement between SGA and TD Bank dated April 10, 2018 which is attached hereto as **Exhibit** "**SS**". Attached hereto as **Exhibit "TT"** is a copy of the Guarantee dated June 27, 2018.

D. Unsecured Long-term Debt

224. In addition to its short-term unsecured lines of credit with Desjardins and RBC, LU has unsecured long-term debt obligations to Bank of Montreal, RBC and TD Canada Trust.

Bank of Montreal

225. Pursuant to a term sheet, fixed rate promissory note and an ISDA Master Agreement (collectively, the "**BMO Facility**"), each dated November 12, 2004, LU and BMO entered into an unsecured fixed rate term loan and fixed rate operating loan with an interest rate SWAP option up to the maximum principal amount of $4,116,098 (the "**BMO Credit Facility**"). The term of the BMO Credit Facility is 20 years.

226. On June 16, 2020, LU requested and BMO agreed to provide certain payment accommodations to LU in light of the ongoing COVID-19 pandemic and defer principal payments under the BMO Credit Facility for a period of several months. As of today's date, approximately $1.3 million is outstanding under the BMO Facility. A copy of the credit facility agreement is attached hereto as **Exhibit** "**UU**".

Royal Bank of Canada

227. Pursuant to the RBC Credit Facilities Agreement, in addition to the RBC Line of Credit, RBC has provided LU with the following additional unsecured credit facilities:

(a) a fully advanced non-revolving term facility in the principal amount of $13,547,000, with a maturity date of November 22, 2040, the proceeds of which were used by LU to finance the construction of a new building on LU's campus;

(b) a fully advanced non-revolving term facility in the principal amount of $17,994,000, with a maturity date of October 7, 2042, the proceeds of which were used as takeout financing of a new residence located on LU's campus (the "**Residence Takeout Facility**");

(c) a fully advanced non-revolving term facility in the principal amount of $40,509,000, with a maturity date of December 15, 2041, the proceeds of which were used as takeout financing of the Sudbury Campus Modernization Project; and

(d) a fully advanced non-revolving term facility in the principal amount of $3,616,000, with a maturity date of May 31, 2023, the proceeds of which were used as takeout financing in respect of a renovation loan in respect of a single student residence (the "**Renovation Takeout Facility**")

(collectively, the "**RBC Credit Facilities**").

228. On or about June 25, 2020, LU requested, and RBC agreed, to provide certain payment accommodations to LU in light of the ongoing COVID-19 pandemic and defer principal payments for a period of several months in respect of the Residence Takeout Facility and the Renovation Takeout Facility.

229. Pursuant to the RBC Credit Facilities Agreement, LU has, among other things, covenanted not to grant, create, assume or suffer any charge, security interest or encumbrance affecting any of its properties or assets without the written consent of RBC.

230. Commencing January 11, 2021, LU engaged in open discussions with RBC with respect to its financial situation and the contingency planning exercises underway. Those discussions included advising RBC that LU was already in discussions with prospective DIP lenders

and requesting whether RBC would consider providing DIP financing on an expedited basis.

231. As a result of LU’s financial situation, LU could not satisfy the conditions precedent to borrow any additional amounts under the RBC Credit Facilities and LU advised RBC that it did not intend to make any further draws on any of the RBC Credit Facilities.

232. As a result, on January 15, 2021, RBC delivered a letter through counsel advising that all availability under the RBC Credit Facilities were cancelled. However, all cash balances in RBC bank accounts have continued to be available to LU.

<u>Toronto-Dominion Bank</u>

233. Pursuant to the TD Credit Facility Agreement, TD Bank has provided LU with the following unsecured credit facilities:

(a) committed reducing term facility in the initial principal amount of $14,800,000, with a maturity date of August 31, 2021, used to pay out a previous facility advanced by TD Bank for the construction of a student residence. As of January 29, 2021, the outstanding principal balance owing under this facility is $10,575,875 (exclusive of accrued interest and costs). This is a single draw facility and LU is not entitled to draw further amounts under this facility; and

(b) committed reducing term facility in the initial principal amount of $6,150,000 (subsequently increased to $10,000,000), with a maturity date of September 30, 2018 (which was extended to September 28, 2023), used to pay out previous facilities advanced by TD Bank and Infrastructure Ontario for the construction of a new Athletic Facility and to convert to long term debt. As of January 29, 2021, the outstanding principal balance owing under this facility is $6,570,917 (exclusive of accrued interest and costs). This is a single draw facility and LU is not entitled to draw further amounts under this facility.

234. Pursuant to the TD Credit Facility Agreement, LU has covenanted that its indebtedness under the TD Credit Facility Agreement to TD Bank will rank at least *pari passu* with all other obligations of LU. A copy of the TD Credit Facility Agreement is attached hereto as **Exhibit "VV"**.

235. On or about June 25, 2020, LU requested, and TD Bank agreed, to provide certain payment accommodations to LU in light of the ongoing COVID-19 pandemic and defer principal payments for a period of several months in respect of the TD Credit Facility Agreement.

236. Commencing January 11, 2021, LU engaged in open discussions with TD Bank with respect to its financial situation and the contingency planning exercises underway. Those discussions included advising TD Bank that LU was already in discussions with prospective DIP lenders and requesting whether TD Bank would consider providing DIP financing on an expedited basis.

237. Below is a summary of the long-term debt obligations of LU (in thousands) as at April 30, 2020 and as reflected in the notes to the annual financial statements:

Bank	**Maturity**	**Amount Outstanding**
BMO	2024	1,366
RBC	2040	13,187
RBC	2043	17,573
RBC	2023	2,770
RBC	2042	39,496
TD	2036	10,647
TD	2043	6,672

TOTAL LONG-TERM DEBT	91,711

E. Interest Rate Swaps

238. In order to manage its long-term interest rate risk, LU entered into a series of interest rate swap transactions with its lenders. In each case, LU agreed to pay a fixed rate of interest on a notional principal amount and the counterparty lender agreed to pay a variable rate of interest on a notional principal amount based on the Canadian Dollar Offered Rate ("**CDOR**").

239. As the interest rate swap transactions correspond to certain of LU's long-term debt obligations, the notional principal amount outstanding varies month to month in accordance with the amortization schedules appended to the interest rate swap confirmations. The net impact of these interest rate swap transactions to LU has been a net monthly cash outflow of approximately $340,000. Copies of the swap confirmations for the interest rate swap transactions separated by financial institution are attached hereto as **Exhibits "WW**" (RBC), **"XX**" (TD) and **"YY**" (BMO).

F. Employee Future Benefits

240. As described above, LU has three post-employment benefit plans. On an annual basis, LU determines its obligations for its employee future benefits using certain funding assumptions within the financial statements of LU.

241. In fiscal year 2019 - 2020, LU reduced the discount rate used in the calculation of future employee benefits, which had the corresponding effect of increasing the liability component to the post-employment benefit plans. The decrease in the discount rate was caused by the reduction of overnight interest rates by the Bank of Canada in response to the COVID-19 pandemic.

242. A lower discount rate resulted in a net increase in total plan liability after the asset value of the investments as at April 30, 2020.

G. Deferred Contributions

243. The deferred contribution amounts on LU's balance sheet represent funds that have been received by LU in advance of the related expense being incurred and in respect of which the funds were designated by the payor for a specific purpose. Such purposes include:

(a) **Research Grants:** Grants received pursuant to specific research awards that in many cases are received in advance of the research actually being undertaken. These funds are required to be held and only used for the specific research contemplated in the grant and only for qualifying types of expenditures;

(b) **Restricted Donations:** Donations or other contributions received with a requirement that the funds are to be used for specific purposes; and

(c) **Scholarships:** Donations or funds received specifically to fund scholarships to students.

244. Deferred research contributions include external research grants that faculty members have received which have outstanding allocations for 2021 to, among other things, pay students, fund research projects and research equipment purchases, and to transfer to affiliated research partners.

245. Contracts associated with research grants typically include the amount and designated purpose for which the funds are allocated. Most contracts also contain certain provisions with respect to financial administration obligations. For example, universities receiving funds from the Tri-Agencies are governed by the *Tri-Agency Guide on Financial*

Administration and are further bound by the *Agreement on the Administration of Agency Grants and Awards by Research* Institutions (the "**Tri-Agency Agreement**"). Typically, these agreements provide for reporting obligations and that the funds received by LU must be used for the specific purpose intended by the grant or award. In the case of the Tri-Agency Agreement, it requires LU to establish a separate account for each grant or award.

246. As of December 30, 2020, LU had a liability of approximately $36.5 million in respect of deferred contributions, which have been allocated in the internal general ledger. Although funds which comprise deferred contributions are received by LU for an intended purpose, historically, the funds have been received and deposited into LU's sole operating account and comingled with all other sources of revenue. As a result of the current financial position of LU, those funds have been spent and there are no funds set aside or available to satisfy the obligations represented by these deferred contributions.

247. I understand that it is not uncommon for Ontario universities to deposit research grants and awards into their main operating account. However, it is not an issue with universities that have sufficient cash. In this case, it is LU's liquidity crisis and insolvency over a number of years that have caused the issue because LU used those research grant and award funds for operating purposes.

248. This issue may impact LU's ability to meet its research obligations as they become due, which may cause an event of default under certain research contracts it has entered into privately and with the Tri-Agencies. LU's access to research funding may be negatively impacted in the future if corrective actions are not taken to rectify these historical issues.

249. Although LU cannot retroactively remedy the amounts received on account of historical deferred contributions, LU implemented measures in December 2020 to account for and separately track all funds that are received by LU for a specific purpose. As discussed above, LU implemented a new cash management system to allow LU to appropriately manage future research grant and award funding received.

250. The new cash management system and processes contemplate that new incoming restricted funds will be deposited and held in the appropriate dedicated bank accounts until such time as the underlying obligations as specified in the research grant or donation have been satisfied, at which time LU will reimburse itself for such costs from the segregated account.

251. Going forward, LU intends to continue to utilize the segregated bank account system established for all deferred contribution funds received and will advise agencies and donors of the establishment of these new bank accounts. However, there may be an interim period whereby these funds are first received in LU's general operating account until updated banking information for the new accounts can be provided to the sources for these payments. In the circumstances, members of LU's finance department will track receipts and transfer funds into the appropriate segregated account where they will be held for the specific purpose intended.

H. Deferred Capital Contributions

252. As at April 30, 2020, LU had a deferred capital contributions liability of approximately $129 million. This represents donations, grants or other contributions previously received by Laurentian to fund capital projects. This amount is amortized or recognized as income over a period consistent with the amortization of the capital assets. As a result, this amount does not represent a future cash liability of LU.

253. LU assesses the condition of its buildings and other assets and estimates the amount (the "**Deferred Maintenance Amount**") required to be spent on maintenance and other improvement-type items to ensure that the buildings remain in a good state of repair. This Deferred Maintenance Amount is not recorded on LU's financial statements because it is not an obligation that has been incurred, although it does represent future obligations that may need to be incurred to maintain the infrastructure, unless LU reduces its footprint. Currently, LU's estimate of the Deferred Maintenance Amount is approximately $135 million.

254. LU has allocated 1.5% of operating revenues, including the amounts received from the MCU under the Facilities Renewal Grant, in its annual budget since 2017 (approximately $2.3 million in 2020-21) to deferred maintenance contributions in order to deal with required capital and building repairs. It is very likely that the budgeted amount is not sufficient to manage the deferred maintenance needs of LU. However, as a result of LU's financial circumstances it is unable to contribute any additional amounts.

255. In the event that there are a series of significant and expensive maintenance projects that require immediate attention by LU, it would be extremely difficult for LU to address these issues without obtaining further external financing. Through these CCAA proceedings, LU intends to address its underlying financial difficulties, which will allow LU to normalize amounts allocated to deferred maintenance.

I. Litigation

256. LU is currently involved in several outstanding litigation matters. I am advised by the General Counsel of LU, that the outstanding litigation that LU is a party to generally consists of:

(a) **Construction Claims brought by LU:** LU has initiated a claim for damages against several contractors and subcontractors in the amount of approximately $2,500,000 with respect to certain alleged deficiencies in the cladding work on the School of Education building. Further, LU has initiated a separate claim for breach of contract damages against Bondfield Construction Company Ltd. ("**Bondfield**") in the amount of approximately $2,500,000 as well as a claim against Travelers Insurance Company for $2,000,000;

(b) **Construction Lien Claims**: Several subcontractors have registered construction liens against the lands owned by LU in relation to the McEwen School of Architecture project. The aggregate amount of the outstanding construction liens is approximately $5.9 million made by the following six lien claimants: (i) Accel Electrical Contractors Limited, (ii) BBM Excavating Company Ltd., (iii) F&M Caulking Ltd., (iv) Forma-Con Construction, (v) Interpaving Ltd. And (vi) Sandro Steel Fabrication Ltd.;

(c) **Civil Claims:** There are several minor civil litigation claims brought by and against LU;

(d) **Human Rights Claims:** There are four current human rights applications brought against LU for various alleged acts of discrimination;

(e) **Litigation Covered by Insurer:** Several claims for damages are covered by LU's insurance policies and are being defended by the insurer and its respective counsel; and

(f) **Data Breach Class Action:** LU is a named party to a proposed $40 million class action claim in respect of a security incident that resulted in the personal and confidential information of certain LU students being disclosed without permission. As of today's date, the proposed class action has not been certified to proceed as a class action and the claims against LU have not been evaluated on their merits.

257. A summary of the outstanding litigation matters described above is attached hereto as **Exhibit** "**ZZ**".

258. With respect to the construction projects on property and buildings owned by LU, I have been advised by the University Secretary and General Counsel at LU that pursuant to the *Construction Act* (Ontario), LU is required to holdback 10% of the price of the services or materials as they are actually supplied under the contract until all liens have been expired or satisfied. Based on information provided to me by the VP Administration and the LU Finance team, I understand that LU is responsible for approximately $3 million in unpaid holdback. While these obligations were recorded for internal accounting purposes as being held in trust, since LU uses only one operating account and has no trust accounts, LU does not have the requisite funds required to pay the holdback amounts.

259. As of January 8, 2021, LUFA has filed approximately 102 active grievances and one ongoing Unfair Labour Practice complaint. I am advised by LU's labour counsel Michael Kennedy of Hicks Morley LLP, who also acts for other universities, that the number of grievances at LU is considerably higher than he has seen at other universities in Ontario. During the fiscal years 2018/2019 and 2019/2020, LU's legal costs associated with grievances and complaints were $328,303 and $379,276, respectively. The most common

issues described in these grievances are challenges to LU's management rights, allegations of insufficient resources and challenges to promotion or performance assessments. There are a further two active grievances filed by LUSU and none by CUPE.

260. In the summer of 2020, LUFA brought an application for judicial review of the Provost and VP Academic's decision to suspend admissions to 17 academic programs which all had either low or very low enrolment. In some instances, these programs had 2-3 students. The Provost and VP Academic reached this conclusion after discussions with the various Deans and the future of the programs was then to be put to the Academic Planning Committee in the Senate. LUFA's application argues that the jurisdiction to make decisions on academic programs lies solely with the Senate. The decision to suspend admissions to programs as being within the purview of the Provost and VP Academic is supported by the Ontario Universities Council on Quality Assurance ("**CQA**"), which is the provincial body responsible for assuring the quality of all programs leading to degrees and graduate diplomas. A copy of the letter from the CQA dated January 22, 2021 approving the decision is attached hereto as **Exhibit** "**AAA**".

VI. CASH FLOW FORECAST

261. Attached as **Exhibit "BBB"** is a statement of the projected 13-week cash flow forecast (the "**Cash Flow Statement**") of LU for the week beginning February 1, 2021 to the week ending April 30, 2021. The Cash Flow Statement was prepared with the assistance of Ernst & Young Inc. ("**EY**"), the Proposed Monitor herein.

262. The Cash Flow Statement demonstrates that if the relief requested is granted, including the approval of the DIP Facility (as defined below) at the comeback hearing, LU has sufficient liquidity to meet its obligations during the initial 13-week period of a CCAA filing.

VII. INSOLVENCY AND LIQUIDITY CRISIS

A. Historical Long-Term Financial Stability Initiatives

263. LU's financial issues were first identified as early as 2008-09 when a previous administration presented a budget to the Board that would not likely be balanced for the 2008-2009 academic year, with little to no improvement for the future financial prospects of LU absent any change. Although that budget was approved, the Board expected the financial situation to be remedied as a top priority item.

264. During the summer of 2008, the acting President of LU convened a retreat of the entire leadership team at LU to launch a process to create a plan to address the current and future financial prospects of LU. This retreat led to the formation of a Core Transition Group Committee ("**CTG Committee**") made up of fifteen employees of LU from management and faculty to meet on a weekly basis to examine the various components identified at the retreat with a view to drafting a go-forward plan to present to the Board. The CTG Committee prepared a Plan for Regaining Sustainability at LU (the "**2009 Plan**") and presented it to the Board on December 18, 2008 and again on February 20, 2009. The Board approved the implementation of the 2009 Plan, expected to occur over a three-year period, during the February meeting. A copy of the 2009 Plan is attached hereto as **Exhibit "CCC"**.

265. Pursuant to the 2009 Plan, the CTG Committee recommended a number of measures such as: (i) efforts to increase domestic and international enrolment, (ii) an increased internet presence through a revamped website, (iii) an integrated marketing and communications strategy, (iv) the retention of first-year students, international students and aboriginal students, (v) a reorganization of several upper management positions to eliminate

inefficiencies and provide for a better decision-making process, and (vi) the establishment of the “Next 50 Campaign”– an initiative to raise $50 million in cash and pledges.

266. The 2009 Plan also identified that the growth of LU would lead to a severe shortage of space and a corresponding need for new capital projects. Beginning in 2014, LU undertook a $64 million Campus Modernization Project for the construction of approximately 250,000 sq. ft. of classrooms, research, study and public space.

267. The Campus Modernization Project involved LU incurring a substantial amount of long-term debt (approximately $40 million) to pay for the construction of buildings and facilities to modernize the campus in order to accommodate LU’s historical growth and fuel the projected enrolment growth. LU elected to defer repayment of the principal amounts borrowed until after construction was completed, leading to the accrual of further interest.

268. LU approved further significant investments in the 2014-15 budget to further support the 2012-2017 strategic plan outcomes, graduate expansion strategy and enrolment growth targets.

269. When the Board approved the 2016-17 operating budget, LU forecasted operational deficits continuing through 2021-22 leading to an accumulated operational deficit of greater than $43 million. The Board took steps to address the issue and in February 2017, the Board approved the Long-Term Sustainability Report (the “**2017 Report**”). The 2017 Report highlighted the need to take a hard look at areas where LU could reduce costs and increase revenues in an effort to improve LU’s financial outlook. It also outlined that many of the measures required to achieve long-term sustainability will take time to implement

and will generate benefits that start small and increase over time. A redacted copy of the Long-Term Sustainability Report is attached hereto as **Exhibit “DDD”**.

270. In June 2017, the Board approved the 2017-18 Budget and the multi-year projected revenues and expenses for 2018-2019 to 2022-2023. This budget included savings targets and forecasted a deficit of $889,000 for 2018-19.

271. In response to the financial challenges faced by LU, including the unexpected enrolment decline in Fall 2017, steps were taken by academic and non-academic senior leaders and other support resources to implement on-going sustainability measures identified in the 2017 Report and various other measures identified and informed by feedback from staff and faculty. Since 2018, LU and its senior leaders have tried to identify all potential sources of savings, efficiencies, cost avoidances and new sources of revenue in an effort to address its financial challenges and the accumulated operational deficit.

272. At one point, LU delivered programs at Georgian College in Barrie, beginning in 2001. After the term of the original agreements expired in 2014, LU and Georgian College engaged in negotiations to continue the relationship. LU considered a major expansion in Barrie, however, negotiations stalled with Georgian College and the MCU. Declining revenues and increasing expenses associated with the delivery of programs in Barrie, together with the failed expansion, resulted in the decision to close the Barrie campus being made in February 2016.

273. The Barrie campus ultimately closed in May 2019. As a result of the closure, LU experienced an overall decline in enrolment in 2017 and additional one-time and on-going faculty costs. LU also lost the enrolment of many international students as a result of

foreign policy issues in 2018. Notably, Saudi Arabia ordered its international students studying in Canada to relocate to educational institutions in other countries as a result of a diplomatic dispute with the Canadian government. Prior to this dispute, there were 163 students from Saudi Arabia enrolled at LU in Fall 2017. This enrollment decreased to 26 students from Saudi Arabia in Fall 2018.

274. These stresses on LU's revenue were exacerbated by changes made to the tuition fee structure across the Province. The Provincial Tuition Fee Framework for 2019-20 and 2020-21 required all universities in Ontario to reduce domestic tuition fees by 10% and the Province implemented a subsequent tuition freeze. This had the impact of a permanent loss of $5.5 million in revenue in 2019-20, including the foregone ability to increase rates by 3%. This projected loss of revenue compounds to approximately $6.8 million in 2020-21. The MCU provided a one-time Northern Tuition Sustainability Grant in 2019-20 in the amount of $4.3 million, of which $0.2 million was shared with each of the Federated Universities A further aggravating factor related to the tuition decrease and freeze is that prior to the implementation of the Provincial Tuition Fee Framework, LU's fees were already below the allowed maximum amount of tuition fees set by the Province as a result of a past strategic decision made by LU that was designed to increase enrolment.

275. At the same time as the tuition freeze, LU received less funding from certain MCU grants (such as the Graduate Capital Grant and Teacher Education Stabilization Grant). In 2020-2021, LU anticipates a decline in the funding of the Core Enrolment grant due to declining domestic enrolments, including from the closure of the Barrie campus.

276. With the exception of the modest growth experienced in 2020, enrolment has declined each year from 2015 to 2018 and tuition fees remain low, while labour and debt servicing costs have grown substantially. LU's academic costs are generally higher as a percentage of total costs than other Ontario universities. LU has made efforts to reduce administrative costs which has resulted in a situation in which the reduced administrative staff has limited ability to focus on potential revenue-generating projects, while academic costs have become unsustainable.

277. During the previous decade, LU has not periodically re-evaluated its offered programs to ensure it is focusing on programs that reflect current student demands. For example, demand for Faculty of Arts programs have declined while demand for business and engineering programs has increased. LU has not typically made program changes to align with these shifts in demand.

278. Finally, the financial impact of the COVID-19 pandemic, which is discussed below, has further derailed LU's efforts to achieve financial sustainability.

279. Despite the continued and best efforts of members of the LU administration, a fundamental change to the status quo is required.

B. Impact of COVID-19

280. Upon the declaration by the World Health Organization of the COVID-19 pandemic, LU halted in-person activity, restricted its facilities to staff and students and took steps to move to a remote delivery format in March 2020 based on recommendations from Public Health Ontario.

281. Both the Spring and Summer semesters were transferred to alternate delivery and most of the Fall 2020 and Winter 2021 semesters are online, with the delivery of on-campus activities where deemed necessary and in accordance with guidance from Public Health Ontario.

282. As a result of the COVID-19 pandemic, LU continues to face a number of financial and operational challenges. As at December 30, 2020, LU estimates that the impacts associated with the COVID-19 pandemic were approximately $5 million in 2019-20 and approximately $7.5 million in 2020-21 for a total of approximately $12.5 million since March 2020. These estimates are based on increased costs and decreased revenues, such as:

(a) a decrease in ancillary revenues associated with: (i) less students staying in on-campus residences owned and operated by LU, (ii) the loss of rental income from events and conferences hosted on campus, (iii) the loss of parking income, (iv) the loss of food service income, and (iv) reduced student fees and revenue from campus recreation services;

(b) an increase in the employer pension contributions in 2020-2021 and an increase in the associated future employee benefits liability as a result of the reduction in the Bank of Canada's overnight lending rate, resulting in a decrease to the discount rate used in such calculations;

(c) increased costs associated with the implementation of additional protective measures designed to reduce or eliminate the risk of COVID-19 transmission on-campus when students, faculty and staff are required to be physically present; and

(d) endowment investment return declines related to COVID-19 affected scholarships paid from operations, as of April 30, 2020.

283. LU received $0.8 million in one-time COVID relief funding from MCU. In addition, in response to known and potential COVID-19 impacts, LU amended and accelerated its sustainability plan to reduce reliance on revenue growth and focus on cost reductions and structural change to address its financial challenges. In addition, a series of one-time fiscal restraint measures were implemented to reduce spending in an attempt to mitigate the projected losses in 2020-21. The COVID-19 pandemic continues to evolve, and LU continues to adopt strategies to ensure that students continue to receive high quality education in the safest possible environment at LU. However, given that the outcome and timeframe to a recovery from the COVID-19 pandemic is highly unpredictable, it is difficult to estimate the pandemic's effect on future operations and the financial situation of LU.

C. Discussions with the Provincial Government

284. Concurrent with the exploration of contingency planning scenarios, LU has been completely transparent with the MCU regarding the financial challenges it faces, has provided details to the MCU regarding its financial situation and the concerns that are described herein, and the outcome if the efforts undertaken by LU could not achieve the required results.

285. Discussions regarding LU's financial challenges occurred with MCU during the Strategic Mandate Agreement bilateral negotiations which took place from November 2019 to April 2020, during the summer of 2020 and then again with LU's external advisors joining the discussions in December 2020.

286. During these discussions, LU highlighted the benefits that it provides to the community of Northern Ontario, but more importantly, the costs and risks associated with attempting an informal restructuring outside of a proceeding and the costs and risks associated with a potential CCAA restructuring.

287. In December 2020 and January 2021, I, together with LU's external counsel and advisors, have regularly met with the Minister of Colleges and Universities, several senior staff members at the MCU, members of the Treasury Board and senior staff members at the Ministry of Finance.

288. I have been advised that MCU is the lead Ministry on this matter and that MCU has also involved the Finance and Treasury functions of the Province and I understand that the Premier's office has been made aware of the situation. MCU has asked two sets of follow-up questions, which LU has provided prompt and complete responses to.

289. In the weeks and days leading up to this application, I have been in frequent communication with members of MCU and LU advised the MCU the date that LU would seek to commence CCAA proceedings.

290. More particularly, LU and MCU exchanged correspondence in the ten days prior to filing. A copy of the letter from MCU to LU dated January 21, 2021 is attached hereto as **Confidential Exhibit "EEE"** and a copy of the letter from LU to MCU dated January 25, 2021 is attached hereto as **Confidential Exhibit "FFF"**.

291. In summary, LU has been in continuous dialogue with MCU and intends to continue this dialogue throughout the CCAA proceedings.

VIII. OBJECTIVE OF THE CCAA FILING

A. Proposed Restructuring of LU

292. Leading up to this application for protection under the CCAA, I have worked with the Internal Team to plan for "Laurentian 2.0". Externally, Laurentian 2.0 will not look or feel much different than LU today because a vast majority of LU students take the most popular courses and the delivery of those courses should not materially change. However, LU will be internally overhauled from an operational and financial standpoint to focus on its strengths and shed areas of relative weakness or unnecessary costs.

293. Today, the future of LU could be in jeopardy due to, among others, the following factors:

(a) a Student-to-Faculty teaching ratio that is far too low when compared to other Ontario universities (LU is approximately 20:1);

(b) as described earlier, the annual cost to educate each student at LU and the Federated Universities is approximately $2,000 higher than the average cost when compared to other Ontario universities;

(c) LU employs more faculty members than are required (355), which is one of the largest expense items annually for LU;

(d) LU offers too many undergraduate programs today (132), many of which only have a handful of students, leading to programs that do not break-even; and

(e) in circumstances which LU's annual revenue is not expected to materially increase over the next five years due to declining demographics, LU's total estimated operating expenses for 2020-21 of $156 million, plus increases for inflation, are too high.

294. To address these operational and financial issues, the implementation of Laurentian 2.0 will seek to:

(a) increase the Student-to-Faculty teaching ratio;

(b) restructure its current academic model to reduce the number of undergraduate programs;

(c) reduce the number of faculty members as a result of the elimination of admissions into certain programs and reduce or re-deploy the number of non-faculty members as a result of internal reorganization and the elimination of unnecessary cost centres; and

(d) through these measures, significantly reduce expenses.

295. The Laurentian 2.0 framework seeks to accomplish the foregoing through:

(a) **Restructuring the Academic Model** by streamlining academic programming and delivery through the reduction of number of programs, restructuring academic supports and terminating the agreements and relationship with the Federated Universities; and

(b) **Restructuring the Business Model** by updating business operations, restructuring existing obligations through a compromise in the CCAA and ultimately balancing the budget.

296. Due to the unique bicameral nature of the university, the structure of the Federated Universities and LU's Unions and the many challenges it faces, LU requires the platform of a Court-supervised proceeding to effect its proposed restructuring into Laurentian 2.0.

297. LU intends to use this CCAA proceeding to commence an intensive mediation with certain of its stakeholders that can be conducted within a relatively short time frame, as a necessary pre-condition to determining if a financially sustainable outcome can be achieved. Given LU's significant cash requirements, the availability and extent of DIP financing, and the timing of the academic year for programs and students in September 2021, a determination must be made expeditiously as to whether, and if so on what terms, that may be accomplished.

298. More particularly, during this CCAA proceeding, LU intends to:

(a) complete its review of the breadth of academic programs offered at LU to ensure that adequate students are enrolling in programs and classes to justify their continuance at LU and engaging in discussions with the Senate of LU in respect of same;

(b) re-evaluate the Federated Universities model in such a way that the historic significance of the Federated Universities can be preserved while ensuring that the relationships reflect the current realities of each organization;

(c) use the CCAA proceeding as a platform for negotiations with its unions regarding what LU must look like in the future and ensuring that a restructured LU can be aligned with collective agreements that will facilitate its future sustainability;

(d) identify opportunities for future revenue generation;

(e) focus on refining the student experience at LU so that students continue to receive a top-notch education at a university that they enjoy attending;

(f) consider available options for addressing its current and long-term indebtedness to its lenders; and

(g) ultimately, implement the Laurentian 2.0 framework.

B. Evaluation of Federated Universities Model

299. In 2019, LU provided notice of a change in the funding agreement between LU and each of the Federated Universities. While this amendment was necessary to make the funding arrangements consistent with metrics in respect of tuition and grants from the Province, further work is required. LU estimates that the Federated Universities model costs LU approximately $5 million each year.

300. Currently, the Federated Universities have duplicative organizational infrastructure, functions and services. Although LU respects the autonomy of the Federated Universities, the Federated Universities also have financial challenges. One successful outcome of this CCAA proceeding may be the remolding of the Federated Universities model in such a way that creates economies of efficiency for LU and the Federated Universities while maintaining the historical significance and identities of the Federated Universities.

301. This Court-supervised proceeding will assist LU in focusing its discussions and negotiations with leadership of the Federated Universities to arrive at a compromise and solution that is acceptable and, more importantly, ensures the long-term sustainability of LU. If necessary, LU may utilize the proposed mediation to address and resolve the Federated Universities model.

C. Restructuring of Program Offerings

302. As summarized above, LU offers too many courses with low enrolment levels that cause the offering of such course to be financially unsustainable. Although LU recognizes that not every course offered will have consistently high levels of enrolment, LU cannot continue to offer courses and programs where there are less than ten students enrolled. The financial resources required to continue offering such courses are too great in circumstances which LU is insolvent.

303. The Provost of LU, working with members of the Senate, the various faculties and academic departments has taken a number of steps to academically restructure LU to save costs:

(a) on July 30, 2020, by way of report to the Senate (the "**July 30 Report**"), the interim Vice-President, Academic and Provost of LU identified 17 academic programs requiring temporary suspension, pending review by ACAPLAN, the academic planning committee of the Senate. Notwithstanding objection to the recommendation at the September 15, 2020 meeting of the Senate, ACAPLAN approved a motion on September 18, 2020, directing the Provost of LU to contact the programs listed in the July 30 Report to ensure the appropriate processes were followed;

(b) subsequently, an additional suspension of low enrolment programs is being considered in accordance with the Senate-approved Institutional Quality Assurance Program changes;

(c) in Fall 2020, faculties working collegially with Deans and the Provost agreed to decrease the number of course offerings for the 2021 Winter Term;

(d) there are ongoing discussions to create efficiencies by reducing the number of Departments and Schools at LU through realignment, mergers and closures;

(e) LU is moving towards implementing a new responsibility-based budget model, which empowers and holds Deans and academic units accountable for activity-based revenues, expenses and sustainable academic outcomes; and

(f) in my December report to Senate, I advised that LU has one of the highest education costs per student in the Province and that to be sustainable, LU must find ways to offer attractive, compelling programming in a way that also increases our student-to-faculty ratio and brings our cost per student in line with sustainable levels.

304. In my experience as an academic administrator, the normal course of Senate decision making entails extensive collegial committee work and Senate discussions, and takes up to one year to complete an academic program review and is only completed every seven years. LU does not have the necessary liquidity to sustain it during such a process, while it seeks to achieve financial sustainability.

305. Outside of a CCAA proceeding, LU will not be able to reduce the number of academic programs through the Senate in a timely way. This process must also be completed in an expedited fashion so LU can negotiate with LUFA to facilitate a reduction in the number of faculty members commensurate with the reduction in academic programs. Further, LU is financially unable to facilitate voluntary retirements or terminations under the LUFA CA due to the massive liabilities such actions precipitate, with no means of addressing same.

306. In conjunction with its academic restructuring efforts in the Senate, LU is working on reducing the number of full-time tenured faculty members such that the student to faculty ratios and class sizes that will be comparable to other Ontario comprehensive research universities. LU predicts this will require further reductions in the faculty complement. To facilitate reductions, the following measures are being taken:

(a) there will be no replacement of vacant faculty positions (except for: (i) critical positions approved in June 2020 as term contract hires to incentivise retirement, and (ii) externally funded research chairs);

(b) recruitment has been stopped for seven existing vacancies; and

(c) six retirements are anticipated by June 2021.

307. In addition to restructuring its program offerings, LU plans to increase academic-related revenue streams by implementing various measures, including:

(a) expanding LU's continuing education and micro-credential offerings, commencing in Spring 2021 which will include additional options for post-graduate training, professional development, summer youth camps, bridge programs for university admission, customized training programs for employers, specialized opportunities related to leadership, management, health and wellness, Indigenous culture and Francophone culture. LU has set a revenue goal for this expansion, net of costs, of $1.5 million for 2023;

(b) developing and enhancing business partnerships in order to deliver programs that meet the needs of businesses and the general public in collaboration with other postsecondary institutions in the Greater Sudbury area and employers;

(c) continuing to focus on the attraction and retention of international students, including a focus on competitive international tuition rates to attract and grow Francophone enrolment;

(d) restructuring student services under the leadership of AVP Student Affairs and AVP Student Experience, with an aligned focus on recruitment, admissions, health and well-being, pedagogical support and increased opportunities for lifelong learning;

(e) focusing on student success, leading to strong employment outcomes that will grow student demand, including bilingual and Francophone students;

(f) implementing a new marketing plan, focused on student recruitment, retention, and ancillary operations including targeted recruitment and retention strategies to increase domestic and international student enrolment (both undergraduate and graduate), with a minimum goal of maintaining current levels of student enrolment to counterbalance the declining regional demographic trends;

(g) continuing to build partnerships with other postsecondary institutions both within Canada and internationally to expand articulation opportunities;

(h) growing philanthropic revenues to support student scholarships and strategic priorities/initiatives; and

(i) reducing LU’s space footprint by a minimum of 20% from current occupancy which will create opportunities for revenue generation.

IX. RELIEF BEING SOUGHT

A. Stay of Proceedings and Limited Exemptions

308. Given LU's current financial situation, LU requires a broad of stay of proceedings, including the stay of pre-filing amounts for goods, services, and principal and interest debt obligations, to provide it with the breathing room required to restructure. I am advised by external counsel that the stay of proceedings sought is consistent with the Model Initial Order commonly used in CCAA proceedings, subject to certain exemptions described below.

309. As a publicly-funded university, LU is subject to information requests in respect of the *Freedom of Information and Protection of Privacy Act* ("**FIPPA**"). In the ordinary course, these requests are handled by the Office of the University Secretary and General Counsel. It is expected that one by-product of the CCAA proceeding will be an extraordinary influx of FIPPA requests. LU's human and financial resources are extremely thin, due in part to reductions undertaken over the past several years as a cost-cutting measure. LU's already-thin resources are stretched further by the demands of its insolvency, this CCAA proceeding and the "real-time" nature of responses required to extensive information and documentation requests from our external advisors and stakeholders. LU seeks an Order that the stay of proceedings will operate to suspend the requirement of LU to respond to existing and future FIPPA requests during the currency of the CCAA proceeding.

310. If the stay of proceedings does not extend to FIPPA requests, the limited resources of LU will be further stressed during a critical time period that it needs to focus on its restructuring efforts. This diversion of key resources could negatively affect LU's ability to achieve a successful restructuring. There are, and will continue to be, numerous means by which

interested parties can obtain full disclosure of all material facts throughout this CCAA proceeding. That includes the website hosted by the Monitor, an extensive communications plan implemented by LU itself, access to up to date information on LU's website, and through public statements, communications, Q&As and similar documents disseminated.

Limited Stay for Students General Association

311. As described herein, the finances and operations of LU are intertwined with certain entities that, while they are not related parties to LU, the commencement of proceedings under the CCAA may affect such parties. At this time, LU believes that only one entity, the SGA, may be directly affected by the CCAA proceedings of LU due to the SGA's credit facility in the amount of $8.5 million being guaranteed by LU. At this time, LU seeks a limited stay of proceedings in favour of the SGA.

312. The stay of proceedings in respect of the SGA is limited in nature in that it prevents any person from: (i) commencing proceedings against the SGA, (ii) terminating, repudiating, making any demand or otherwise altering any contractual relationships with the SGA or enforcing any rights or remedies, or (iii) discontinuing or ceasing to perform any obligations under any contractual agreements with the SGA, resulting from the commencement of CCAA proceeding by LU, the stay of proceedings granted to LU and any default or cross-default arising due to the foregoing.

Stay of Interest Rate Swaps

313. As previously described in the summary of LU's financial health, LU entered into a series of interest rate swap transactions with RBC, TD and BMO. In each of these swap

transactions, LU has agreed to pay a fixed rate of interest that varies between 4% to 5% on a notional principal amount and LU receives a variable rate of interest a notional principal amount based on CDOR.

314. Due to the low interest rate environment in Canada at this time and the decrease in the Bank of Canada's Prime Rate in 2020, the net effect of the interest rate swap transactions is that LU is required to pay approximately $341,764.22 per month, or approximately $4.1 million annually.

315. Given LU's current financial situation, LU seeks relief in the Initial Order confirming that the payment of any post-filing net amounts payable pursuant to the interest rate swap transactions is not permitted during the CCAA proceedings. For clarity, LU is not seeking to amend the swap transactions. Instead, LU simply seeks to stay payment of the net interest payment amounts.

Exemptions to the Stay of Certain Pre-filing Amounts

316. At its core, LU exists because of its students who attend the university and LU must make every effort to protect its students or suffer the irreparable result that it has a restructured university with no students to teach.

317. LU seeks to permit the payment of all outstanding amounts in respect of the current 2020-21 academic year and future amounts owing in respect of rebates, refunds or other amounts that are owing or may be owed to students or the student associations of LU, whether such amounts are as a result of the reimbursement of tuition fees, ancillary fees or otherwise. LU also seeks to permit the continued payment of pre-filing and post-filing amounts

payable in respect of scholarship, bursary or grants. This exemption is limited as long as any such rebates, refunds or other amounts are in accordance with LU's existing policies and procedures.

318. This exemption is intended to apply to students of LU and students who take courses offered by the Federated Universities (but are LU students).

319. LU intends on operating in the ordinary course during the CCAA proceeding and minimizing the disruption to students as much as possible. To facilitate this, LU must be able to process certain rebates owing to students and continue to provide students with scholarship and bursary money, which is a critical payment for students in need of financial aid. Students represent a particularly vulnerable population in terms of their age and the academic pressures they face, in addition to the added stress that remote learning and reduced interaction and services due to COVID has had.

B. Appointment of the Monitor

320. On August 28, 2020, the Board approved the engagement of EY as financial advisor to LU through a competitive process led by external counsel to LU. EY was engaged by the Board as financial advisor to assist LU in its restructuring efforts and if necessary, act as the Court-appointed Monitor of LU should LU decide to seek protection under the CCAA. The engagement letter was signed by EY and LU on September 4, 2020.

321. EY (the "**Proposed Monitor**") has consented to act as the Court-appointed Monitor of the Applicant, subject to its consent to any form of order of appointment that may be approved by the Court. A copy of EY's consent is attached hereto as **Exhibit** "**GGG**". I am advised by Sharon Hamilton of EY that EY is a "trustee" within the meaning of section 2 of the

BIA, and is not subject to any of the restrictions on who may be appointed as Monitor set out in section 11.7(2) of the CCAA.

C. Appointment of Mediator

322. In order for this restructuring to be successful, difficult negotiations are required with multiple stakeholders in a condensed period of time before LU runs out of cash. As a result of this dynamic, the Applicant is of the view that the best way to proceed is through court-supervised mediation in order to advance such negotiations and reach an outcome that results in a financially sustainable university.

323. LU will be seeking the appointment of a neutral third-party mediator (the "**Court-Appointed Mediator**"). At the outset, the Applicant expects the Court-Appointed Mediator to assist with: (i) negotiations related to the review and restructuring of the academic programs of the Academic, and (ii) the collective agreement between the Applicant and LUFA. However, the Court-Appointed Mediator's mandate will not be limited to such roles and will assist with any other issues that cannot be resolved consensually among the stakeholders and the Applicant.

324. The Applicant's counsel recently reached out to one party to canvass the possibility of being put forward as a proposed mediator, if appointed by the Court. That party's existing schedule did not permit them to undertake the role and intense time commitment that would be required through February, March and April. In our view, the need for the appointment of a mediator by the Court is urgent and a highest priority item, given the timeframes involved if key aspects of a restructuring can be effected.

325. The Applicant's relations with LUFA are strained at this time, and I am of the view that a fresh start in the negotiations within a court-supervised mediation setting will allow the parties to engage in open discussions with the benefit of all financial and other information that will provide the best framework for success. In my view, regardless of the skills and experience of any party that may be proposed by the Applicant to be appointed by the Court as mediator, such proposal will unfortunately face fierce objections from LUFA. I am concerned that valuable time will be lost in debating or objecting to the identity of the mediator, when there is virtually no time that can be lost in the process. It is critically important that the court-supervised mediation commence forthwith, in order to allow any outcome to be implemented within the availability of DIP Facility, with faculty and program changes that can be implemented for the Fall 2021 academic calendar, and with key messages of stability to students for their continued education at LU being available.

326. I believe that, in order to avoid any debates by stakeholders as to personal preferences, claims of bias or any other basis for objection, it would be most appropriate for the Court to identify and appoint a Mediator of its choosing at the earliest opportunity. In the Applicant's view, certain criteria that would be helpful in view of the issues to be addressed through mediation would be someone who is: bilingual, has experience in insolvency matters, is familiar with collective agreements and labour negotiations, and has the time available in their schedule to commit to an intensive schedule over the months of February, March and April. A sitting or recently-retired judge would be welcome, and in the case of a sitting judge, would not result in the costs being paid from the Applicant's strained cash position.

D. Administration Charge

327. The Applicant seeks a super-priority charge (the "**Administration Charge**") on the Property (as defined in the draft Initial Order) to secure the fees and disbursements incurred in connection with services rendered to LU both before and after the commencement of the CCAA proceedings by counsel and advisors to LU, the Proposed Monitor, counsel to the Proposed Monitor and independent counsel to the Board. During the initial ten days until the comeback hearing, the Applicant seeks the Administration Charge up to the maximum amount of $400,000, consistent with the first ten days in the Cash Flow Forecast. At the comeback hearing, the Applicant will seek to increase the Administration Charge up to $1.25 million, representing the estimated restructuring costs for a one-month period.

328. It is contemplated that each of the aforementioned parties: (i) will have extensive involvement during the CCAA proceedings; (ii) have contributed and will continue to contribute to the restructuring of LU; and (iii) will ensure that there is no unnecessary duplication of roles among the parties.

329. I understand that the Proposed Monitor has reviewed the proposed quantum of the Administration Charge and is of the view that it is reasonable and appropriate in the circumstances given the contemplated work required to be completed during the pendency of the CCAA proceedings and the services provided and to be provided by the beneficiaries of the Administration Charge.

E. Directors' Charge

330. To provide LU with continued direction during the CCAA proceedings, LU believes that the continued participation of the members of the Board would be helpful in this CCAA proceeding. None of the Board members receive remuneration for acting, and each brings

a unique perspective to the bilingual and tricultural nature of the university's operations. The volunteer nature of a directorship in a non-share corporation such as LU distinguishes it from a directorship in a typical OBCA or CBCA share capital corporation, where directors are typically both compensated and insured under their own policy. The Directors' Charge will also secure the fees of independent counsel to the Board.

331. There is a concern that the members of the Board may discontinue their services during this restructuring unless the Initial order grants the Directors' Charge to secure LU's indemnity obligations to the directors and officers that arise post-filing in respect of potential personal statutory liabilities.

332. The Applicant's payroll is approximately $11 million per month, and is payable once each month with some limited exceptions.

i. Insurance Policies

333. LU maintains an educational errors and omissions liability insurance policy with Canadian Universities Reciprocal Insurance Exchange ("**CURIE**") (the "**E&O Policy**"), which renews annually on January 1. The E&O Policy provides coverage for up to $5,000,000 in respect of claims for "wrongful acts", as defined under the E&O Policy, save and except for claims for "wrongful acts" in respect of terrorism, cyber risk and asbestos, which limit is only $3,000,000. It is notable that since the E&O Policy is only an errors and omissions policy, the E&O Policy expressly excludes, among others, the following categories of claim: (i) employee benefits, (ii) breach of contract, (iii) employment-related practices, including consequential losses, and (iv) tuition, fees or rents.

334. In addition, LU also maintains an excess liability insurance policy from CURIE (the "**Excess Policy**"). The Excess Policy provides increased coverage for up to $45 million for each claim in excess of the $5 million covered under the E&O Policy.

335. The proposed Initial Order contemplates that the Directors' Charge will be in the amount of $2 million. The Applicant worked with the Proposed Monitor in determining the proposed quantum of the Directors' Charge and believes that the Directors' Charge is reasonable and appropriate in the circumstances. The Director's Charge is proposed to rank behind the Administration Charge. At the comeback hearing, the Applicant proposes that the Directors' Charge will rank in priority to the DIP Lender's Charge up to the maximum amount of $2 million, with an additional amount that will rank subordinate to the DIP Lender's Charge.

336. The Proposed Monitor supports the granting of the Directors' Charge and will expand on such support for the Directors' Charge in its pre-filing report to the Court.

337. The directors and officers of LU do not know whether CURIE will seek to deny coverage on the basis that the E&O Policy and the Excess Policy do not cover particular claims (specifically in circumstances where the E&O Policy excludes claims commonly asserted against directors and officers of insolvent corporations and those that could be reasonably anticipated in this insolvency proceeding) or that coverage limits have been exhausted.

338. LU may not have sufficient funds available to satisfy any contractual indemnities to the directors or officers should the directors or officers need to call upon those indemnities. It is proposed that the Directors' Charge will only be engaged if the E&O Policy or Excess Policy, if applicable, fail to respond to a claim.

F. DIP Financing and DIP Lender's Charge

339. At the initial hearing for the commencement of these CCAA proceedings, LU will not be seeking approval of the DIP financing.

340. At the comeback hearing, LU will seek to have the DIP Term Sheet and the DIP financing approved. As demonstrated by the Cash Flow Forecast, LU forecasts that it will require an amount of up to $25 million of DIP financing during the first thirteen weeks of these CCAA proceedings.

341. During its contingency planning process, LU, with the assistance of its external legal counsel, canvassed the market for interim financing and evaluated competing offers. In order to preserve confidentiality, LU's counsel required potential lenders to execute a redacted form of Non-Disclosure Agreement ("**NDA**") prior to having LU's identity disclosed to them and prior to receiving any information in respect of LU. Once the redacted NDA was executed by the potential lender, external counsel to LU provided the potential lender with an unredacted form of NDA and requested that it be executed as well.

342. In December 2020, four potential external lenders were contacted by LU's counsel and each executed the applicable two forms of NDA. Beginning in December 2020, the potential lenders were granted access to a virtual data room containing certain information and documents that may be relevant to interim financing and external counsel convened telephone calls with these lenders. The data room was updated at various times with additional information.

343. The potential lenders requested and reviewed additional due diligence materials as necessary and were invited to submit interim financing term sheet proposals. Three non-binding term sheets were received from the four potential lenders originally contacted.

344. In January, LU, through its external counsel, also reached out to four additional parties (including three of LU's existing lenders) to see if those parties wished to provide DIP financing.

345. Following this process, LU identified two proposals for DIP financing as being superior to all others received by LU. LU engaged in further negotiations with the potential lenders in respect of the terms of their DIP financing proposals.

346. For the reasons described below, with the assistance of counsel and on an informed basis and in good faith with a view to the best interests of LU and its stakeholders, LU selected the DIP facility (the "**DIP Facility**") offered by Firm Capital Corporation ("**FCC**").

347. LU has negotiated and is seeking Court approval of the DIP Facility, described in more detail below, and a charge over the Property (defined below) securing the DIP Facility (the "**DIP Lender's Charge**"), as further described in the Term Sheet between LU and FCC dated January 29, 2021 (the "**DIP Term Sheet**") attached as **Exhibit** "**HHH**" hereto. I am advised by LU's external counsel Thornton Grout Finnigan LLP that subsequent to execution of the DIP Term Sheet, FCC will be assigning its interest to Firm Capital Mortgage Fund Inc. (the "**DIP Lender**"). In addition to addressing LU's short-term liquidity issues, approval of the DIP Facility will provide assurance to LU's suppliers, employees, students and other stakeholders that LU has the necessary funds to continue operating during this CCAA proceeding.

348. The salient terms of the DIP Term Sheet are as follows:

(a) the DIP Lender will make available to LU two advances of up to a maximum amount of $25 million;

(b) the DIP Facility has a maturity date of May 1, 2021, which maturity date may be extended if LU achieves the following milestones, to the satisfaction of the DIP Lender in its sole and unfettered discretion:

(i) LU enters into a negotiated settlement with LUFA with respect to the terms of a collective agreement between LUFA and LU;

(ii) LU reaches a consensus among all necessary stakeholders on an academic restructuring of LU's program offerings; 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) interest accrues on the outstanding indebtedness at a rate that is the greater of 8.50% per annum or the TD Canada Trust Posted Bank Prime Rate of Interest plus 6.05% per annum, which amounts are reflected in the Cash Flow Forecast;

(d) a Commitment Fee of $500,000 that is earned and payable to the DIP Lender on the date that the Court approves the DIP Facility;

(e) all amounts outstanding under the DIP Facility shall be secured by a charge on all of the current and future assets, undertakings and property of LU pursuant to a court-approved, super-priority charge (the "**DIP Lender's Charge**") that is only subordinate to: (i) the Administration Charge up to the maximum of $1.25 million;

(ii) the Directors' Charge up to the maximum of $2 million (with such further amount to be subordinate to the DIP Lender's Charge); and (iii) any valid purchase money security interests, including the registrations made under the *Personal Property Security Act* (Ontario);

(f) the DIP Facility is conditional on, among other things, LU obtaining a court order approving the DIP Term Sheet and the DIP Facility; and

(g) customary reporting covenants given the size of the DIP Facility and the third party nature of the DIP Lender.

349. The DIP Lender has requested a definitive DIP loan agreement to formally document the terms and conditions of the DIP Facility. Prior to the comeback hearing, the Applicant and the DIP Lender will negotiate and finalize the DIP Loan Agreement.

350. It is necessary to obtain the DIP Facility to support the costs to be incurred by LU after the commencement of the CCAA proceeding, as LU will not be further utilizing its existing unsecured lines of credit and has no other cash reserves on which to draw. The DIP Facility will allow LU to continue to operate in the ordinary course and will allow LU the opportunity to undertake its operational restructuring.

351. LU will access the DIP Facility in two tranches. One will be shortly after the comeback hearing and the second is expected to be 30-45 days afterwards, based on the cash needs of LU.

352. If a successful restructuring with LU's Unions and other stakeholders can be achieved by April, 2021, LU expects that it will seek this Court's approval for exit financing that would

allow LU's operations to return to a position of sustainability, and to fund any payments to be made under a Plan of Arrangement.

G. Ranking of Court-Ordered Charges

353. During the first ten days of the CCAA proceedings, the Applicant proposes ranking the Administration Charge and the Directors' Charge (collectively, the "**CCAA Charges**") as follows:

(a) first, the Administration Charge initially up to a maximum amount of $400,000; and

(b) second, the Directors' Charge initially up to a maximum amount of $2,000,000.

354. During the first ten days of the CCAA proceedings until the comeback hearing, the CCAA Charges are proposed to rank in priority to all other security interests, trusts, liens, construction liens, charges and encumbrances, except for any person who is a "secured creditor" as defined in the CCAA that has not been served with the Notice of Application.

355. At the comeback hearing, the Applicant proposes ranking the CCAA Charges, including the DIP Lender's Charge, as follows:

(a) first, the Administration Charge, which is proposed to be increased up to a maximum amount of $1,250,000;

(b) second, the Directors' Charge up to a maximum amount of $2,000,000;

(c) third, the DIP Lender's Charge, up to a maximum amount of $25,000,000; and

(d) fourth, the balance of the Director's Charge, up to a maximum amount of $3,000,000, (collectively, the "**Comeback CCAA Charges**").

356. The Applicant intends to provide notice of the comeback hearing to persons who are known to be secured creditors of the Applicant, including the construction lien claimants described above in paragraph 256(b), and will seek to elevate the Comeback CCAA Charges in priority to any other creditor of the Applicant. As discussed above, with the exception of PPSA registrations for certain equipment leases, LU does not have any other secured creditors and is current on all priority payables.

X. FORM OF ORDER

357. LU seeks an Initial Order under the CCAA substantially in the form of the "skinny" Model Initial Order adopted for proceedings commenced before the Commercial List in Toronto, subject to certain changes reflected to address the circumstances of LU, in the proposed form of order attached at Tab 4 in LU's Application Record, blacklined to the Model Order.

358. The form of Amended and Restated Initial Order that will be sought at the Comeback Hearing is attached at Tab 6 in LU's Application Record, blacklined to the Model Order.

359. LU also seeks an order sealing Confidential Exhibits "**EEE**" and "**FFF**" as the correspondence contains sensitive information that could jeopardize the ability of LU to complete a restructuring.

360. This affidavit is sworn in support of LU's application for protection pursuant to the CCAA and for no other or improper purpose.

AFFIDAVIT SWORN BY VIDEO CONFERENCE before me at the City of Toronto, in the Province of Ontario, this 30th day of January, 2021. Mitchell W. Grossell LSO # 69993I	**DR. ROBERT HACHÉ**

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. 20-CV-______________________

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

AFFIDAVIT OF DR. ROBERT HACHÉ

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TAB 14

Court File No. ________________________

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 ARRANGEMENTOF **LAURENTIAN UNIVERSITY OF SUDBURY**

Applicant

FACTUM OF THE APPLICANT

January 30, 2021

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Court File No. ________________________

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 ARRANGEMENTOF **LAURENTIAN UNIVERSITY OF SUDBURY**

Applicant

FACTUM OF THE APPLICANT

PART I - OVERVIEW

1. Laurentian University of Sudbury ("**LU**" or the "**Applicant**") seeks certain relief pursuant to an order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"),[1] substantially in the form of the draft order attached to the Application Record at Tab 4. LU intends to seek certain additional relief at the Comeback Hearing, upon notice to affected parties, pursuant to a more fulsome order (the "**Amended and Restated Initial Order**"), substantially in the form of the draft order attached to the Application Record at Tab 6. This factum is being filed in respect of both the relief sought in the Initial Order and the relief to be sought at the Comeback Hearing in the Amended and Restated Initial Order.

2. LU is a publicly-funded, bilingual and tricultural postsecondary institution in Sudbury, Ontario. Since inception, LU has provided quality higher education to the community of

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[1] *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.

Sudbury and Northern Ontario at large and is an integral part of the economic fabric of the Northern Ontario community.

3. As a result of many years of recurring operational deficits in the millions of dollars, and notwithstanding LU's recent efforts to improve its financial stability, LU is experiencing a liquidity crisis and is insolvent.

4. LU requires the protection of the Court and the relief available under the CCAA so that it can financially and operationally restructure itself in order to emerge as a sustainable, financially sustainable university for the benefit of all its stakeholders.

PART II - FACTS

5. The facts with respect to this application are briefly summarized below and more fully set out in the Affidavit of Dr. Robert Haché sworn January 30, 2021 filed in support of this CCAA application (the "**Haché Affidavit**").[2]

A. Overview of the Applicant

i. Background and Corporate Structure

6. LU is a non-share capital corporation that was incorporated pursuant to *An Act to Incorporate Laurentian University of Sudbury*, S.O. 1960, c. 151 C. 154 (the "**Act**") and is a registered charity pursuant to the *Income Tax Act*, R.S.C. 1985, c. 1.[3]

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[2] Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Haché Affidavit. All references to currency in this factum are to Canadian dollars, unless otherwise noted.
[3] *Haché Affidavit* at paras. 21-23.

7. The governance structure of LU is bi-cameral. The Board of Governors (the "**Board**"), the President, and the Vice-Chancellor generally have powers over the operational and financial management of LU, whereas the Senate of LU (the "**Senate**") is responsible for the academic policy of LU.[4]

ii. Academic Programming

8. LU primarily focuses on undergraduate programming, with approximately 8,200 total domestic and international undergraduate students (approximately 6,250 full-time equivalents) enrolled in the 2020-21 academic year. LU has five undergraduate faculties, each of which offer programs in both English and French, and students can choose from 132 undergraduate programs to enroll in.[5]

9. LU also has a strong graduate program, with approximately 1,098 total domestic and international graduate students enrolled during the 2020-21 academic year. LU offers 43 Masters and PhD programs in a variety of disciplines.[6]

iii. The Federated Universities

10. LU has a federated school structure whereby it has formal affiliations with several independent universities under the overall LU umbrella: the University of Sudbury, the University of Thorneloe, and Huntington University. For all intents and purposes, the Federated Universities are integrated into LU, however, each of the Federated Universities are separate legal entities and are governed by Boards that are independent of LU.[7]

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[4] *Haché Affidavit* at para 97.
[5] *Haché Affidavit* at paras. 33-36.
[6] *Haché Affidavit* at paras. 39-41.
[7] *Haché Affidavit* at para 61.

iv. LU Employees and Unions

11. LU is consistently one of the largest employers in the Greater Sudbury area. As at December 30, 2020 LU employed approximately 1,751 people, of which approximately 758 are full-time employees. Total salaries and benefits represent the single largest expense item for LU on an annual basis (approximately $134 million of $201 million in total expenses during fiscal year 2019-20).[8]

12. Approximately 612 LU employees are represented by the Laurentian University Faculty Association ("**LUFA**"). Approximately 268 non-faculty staff are represented by the Laurentian University Staff Union ("**LUSU**").[9]

v. Collective Bargaining Agreements and Negotiations

<u>LUFA</u>

13. LUFA and the Board of LU are parties to a Collective Agreement (the "**LUFA CA**"), with a three-year term that expired on June 30, 2020. Pursuant to the provisions of the LUFA CA, the agreement automatically continues year-to-year unless notice is provided that either LUFA or LU intends to terminate or amend the LUFA CA. In February 2020, LUFA provided LU with a notice to bargain. Pursuant to Article 13.15.3 of the LUFA CA, the agreement automatically remains in force during any period of negotiation.[10]

14. As described in greater detail in the Haché Affidavit, since April 2020, LU and LUFA have been engaged in bargaining with respect to a new collective bargaining agreement. During that time, the parties have engaged in several extensive, multiple-day bargaining sessions,

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[8] *Haché Affidavit* at para 124.
[9] *Haché Affidavit* at paras. 121-122.
[10] *Haché Affidavit* at para. 126.

as well as a two-day mediation in October 2020. Throughout the bargaining process, LU advised LUFA of the significant financial challenges facing LU.[11]

LUSU

15. On July 1, 2018, LUSU and LU entered into a Collective Agreement that was set to expire on June 30, 2021 (the "**LUSU CA**"). Over the past two years, LUSU executives and their members have engaged in dialogue with LU to address some of the issues facing LU, which resulted in the institution of certain improvements for LU, including cost reduction efforts and flexibility measures.[12]

vi. LU's Defined Benefit Pension Plan

16. LU is the administrator of three types of plans for its employees including, as particularly relevant on this Application, a Primary Retirement Plan for Laurentian University and its Federated and Affiliated Universities (the "**Pension Plan**"). The Pension Plan has a going concern deficiency of approximately $4.5 million and, as a result, the plan actuary concluded in January 2020 that LU must make an annual special payment contribution of $505,000, payable in monthly instalments of approximately $42,083 (the "**Special Payments**").[13]

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[11] *Haché Affidavit* at paras. 127-136.
[12] *Haché Affidavit* at para. 151.
[13] *Haché Affidavit* at para. 158.

B. Assets and Liabilities

17. As at April 30, 2020,[14] LU had assets with a book value totaling approximately $358 million, of which approximately $33 million is comprised of current assets such as cash and short-term investments, accounts receivable, and other current assets. The remaining assets of LU consist primarily of investments in LU's segregated endowment fund ($53 million) and capital assets ($272 million), comprising LU's land and buildings.[15]

18. As at April 30, 2020, LU had liabilities with a book value totaling approximately $322 million, comprised of: (i) approximately $43 million of current liabilities; (ii) approximately $168 million of deferred contributions; and (iii) approximately $110 million in long-term liabilities.[16]

C. LU's Liquidity Crisis and Insolvency

19. LU has experienced recurring operational deficits in the millions of dollars each year for a significant period of time. These operational deficits have led to the accumulated deficit in the operational fund of LU increasing from approximately $8.2 million in FY 2014-15 to approximately $20 million per year in FY 2019-20. In the current 2020-21 fiscal year, LU projects a further operational deficit of $5.6 million.[17]

20. In the years preceding this application, LU took a number of steps to try to improve its financial situation, including:

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[14] LU does not prepare interim quarterly financial statements and the audited annual financial statements for the year ended April 30, 2020, which are attached to the Haché Affidavit, are the most recent available financial statements in the last twelve months.
[15] *Haché Affidavit* at para. 204.
[16] *Haché Affidavit* at para. 212.
[17] *Haché Affidavit* at para. 9.

(a) Reducing its non-faculty workforce from 429 to 409 and faculty workforce from 358 to 344;

(b) Deferring the hiring of faculty and non-faculty positions;

(c) Negotiating with LUSU to forego their employee salary increases;

(d) Approving a pay freeze and reducing the salaries of its non-unionized employees, including managerial employees;

(e) Approving a pay freeze and reducing the salaries of all members of the Internal Team; and

(f) Re-negotiating the funding model with the Federated Universities.

21. Nonetheless, these efforts were not enough. LU is insolvent and absent the relief sought in the Initial Order, will run out of cash to meet payroll in February.

22. LU has a number of structural issues that are causing financial challenges and that need to be resolved to ensure long-term stability, including:

(a) The terms of the LUFA CA are above market in several respects, and that issue is exacerbated by the tenuous labour relationship between LU and LUFA[18];

(b) Operationally, the structure of the academic programming offered by LU and the distribution of enrollment among the programs offered is flawed and must be addressed[19]; and

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[18] *Haché Affidavit* at para. 138.
[19] *Haché Affidavit* at paras. 12-13.

(c) With its current cost structure, it costs more for LU and the Federated Universities to educate each student than the average for all Ontario universities by approximately $2,000 per student, per year.[20]

23. Put simply, the financial challenges that LU faces are significant and, absent fundamental change, LU's short-term and long-term financial and operational sustainability are at risk.

D. Objective of CCAA Filing

24. As part of its restructuring strategy, LU intends to implement long-term financial stability initiatives including, among other things:[21]

(a) A review of the breadth of academic programs offered at LU and their enrollment levels;

(b) A re-evaluation of the Federated Universities model;

(c) Negotiations with LU's unions regarding what LU must look like in the future and ensuring that a restructured LU can be aligned with collective agreements that will facilitate its future sustainability;

(d) Identification of opportunities for future revenue generation;

(e) Refinement of the student experience at LU to continue providing a top-notch education; and

(f) Consideration of options for addressing current and long-term indebtedness.

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[20] *Haché Affidavit* at para. 16.
[21] *Haché Affidavit* at para. 292.

25. With the benefit of the protection and flexibility afforded by the CCAA, LU intends to stabilize its financial situation, restructure its program offerings for the future, and optimally position LU to continue providing a first-class education for its students.

PART III - THE LAW AND ANALYSIS

26. This Application raises seven issues to be determined:

(a) Whether this Court should grant protection to the Applicant under the CCAA;

(b) Whether this Court should grant the requested stay of proceedings to the Applicant;

(i) Is the stay just and appropriate?

(ii) Should a limited stay be extended to the Non-Applicant Stay Party?

(iii) Should compliance with any information requests made to the Applicant under the *Freedom of Information and Protection of Privacy Act* ("**FIPPA**") be stayed?

(iv) Should this Court permit the continued flow-through of cash from the Applicant to certain parties in the ordinary course, due their interrelated nature?

(c) Whether this Court should authorize the Applicant to terminate the employment of its employees as it deems appropriate;

(d) Whether it is appropriate for the Court to appoint an experienced and neutral party as the Court-Appointed Mediator;

(e) Whether the Pension Plan Special Payments should be stayed;

(f) Whether this Court should grant the CCAA Charges; and

(g) Whether this Court should grant a sealing order in respect of Confidential Exhibits "EEE" and "FFF" to the Haché Affidavit.

A. This Court should grant protection to the Applicant under the CCAA.

27. The CCAA applies to a "debtor company" whose liabilities exceed $5 million. A "debtor company" is defined, *inter alia*¸ as a "company" that is "insolvent" or that has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*.[22]

i. The Applicant is a "company" under the CCAA

28. The CCAA defines "company" to include, among other things, a company incorporated by or under an Act of the legislature of a province.[23]

29. The Applicant is incorporated under an act of the legislature of the Province of Ontario, *An Act to Incorporate Laurentian University of Sudbury*, (the "**Act**")[24], and therefore is a "company" for the purposes of the CCAA.[25] Further, as a not-for-profit, non-share capital corporation, the Applicant falls under the *Corporations Act* (Ontario).[26]

30. The Applicant's status as a not-for-profit, non-share capital corporation does not impact the applicability of the CCAA to the Applicant. There have been several CCAA proceedings commenced in respect of not-for-profit corporations, such as *Canadian Red Cross Society*[27] and *The Land Conservancy of British Columbia*.[28]

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[22] CCAA, s. 2(1), and s. 3(1); R.S.C. 1985, c. B-3, s. 2 ("**BIA**").
[23] CCAA, s. 2(1).
[24] *Haché Affidavit* at Exhibit "A".
[25] S.O. 1960, c. 151 C. 154.
[26] R.S.O. 1990, c. C.38.
[27] *Canadian Red Cross Society*, 2000 CarswellOnt 3269 (Ont. S.C.).
[28] *TLC, The Land Conservancy of British Columbia, Re*, 2014 BCSC 97 at paras. 14-18.

ii. The Applicant is insolvent

31. The insolvency of a debtor is assessed at the time of the filing of the CCAA application. While the CCAA does not define "insolvent", the definition of "insolvent person" under the BIA is commonly referenced by the Court in assessing whether an applicant is a debtor company in the context of the CCAA.[29] The BIA defines "insolvent person" as follows:[30]

> "insolvent person" means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and
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> (i) who is for any reason unable to meet his obligations as they generally become due,
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> (ii) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
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> (iii) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

32. The tests for "insolvent person" under the BIA are disjunctive. A company satisfying either (i), (ii) or (iii) of the test is considered insolvent for the purposes of the CCAA.[31]

33. In addition to the foregoing tests, in *Stelco*, Justice Farley held that a financially troubled corporation is insolvent if it is reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring.[32] In other words, a corporation is insolvent if there is a reasonably foreseeable expectation at the time of filing that there is a looming liquidity crisis that will

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[29] *Stelco Inc. (Re)*, 2004 CarswellOnt 1211 (S.C. [Commercial List]) at paras. 21-22 [***Stelco***].
[30] BIA, s. 2.
[31] *Stelco, supra* note 9 at para. 28.
[32] *Stelco, supra* note 9 at para. 26.

result in the debtor company not being able to pay its debts as they become due without the benefit of a stay of proceedings.[33]

34. The Applicant is plainly insolvent and faces a severe liquidity crisis.

35. The Applicant respectfully submits that it is a "debtor company" to which the CCAA applies.

iii. The CCAA Proceeding has been duly authorized

36. The filing of this CCAA proceeding, which was approved by a resolution of the Applicant's Board of Governors (the "**Board**"), was duly authorized.

37. As mandated in the Act, the Applicant has a bi-cameral governance structure pursuant to which the Board is responsible for the operational and financial management of LU and the Senate of LU is responsible for academic policy.

38. On a plain reading of the Act, the power and authority to decide whether the Applicant may take steps to restructure, including commencing a proceeding under the CCAA, lies solely with the Board. As relevant here, Section 8 of the Act authorizes the Board to commence proceedings and further provides that all proceedings by or against the Applicant may be had and taken in the name of "Laurentian University of Sudbury". Further, Section 18(1) of the Act provides that all powers over, in respect of, or in relation to the government, financial management, and control of the Applicant and its officers, servants and agents, property, revenues, expenditures, business, and affairs are vested in the Board.

[33] *Stelco*, *supra* note 9 at para. 26. The *Stelco* test has been consistently applied in subsequent CCAA proceedings, including recently by this Court in *Target Canada Co.*, 2015 ONSC 303, at paras. 26-27.

39. Accordingly, the Board had the requisite authority to authorize the commencement of this CCAA proceeding.

B. It is appropriate to grant the requested stay of proceedings.

i. Granting the stay is just and appropriate

40. Pursuant to section 11.02(1) of the CCAA, a Court may grant an order staying all proceedings in respect of a debtor company for a period of not more than ten days, provided that the Court is satisfied that circumstances exist to make the order appropriate.

41. Exercising discretionary authority to grant a stay pursuant to the CCAA must be informed by the purpose behind the CCAA, which should be broadly and liberally interpreted.[34] The purpose of the CCAA is to, amongst other things, maintain the *status quo* for the debtor company for a period while it consults with its stakeholders with a view to continuing operations for the benefit of both the debtor company and its stakeholders.[35] The Supreme Court of Canada has held that when exercising judicial discretion under the CCAA, the court must often be cognizant of the various interests at stake in the reorganization, which can extend beyond those of the debtor and creditors to include employees, directors and, in certain cases, the broader public interest. The exercise of that discretion is appropriate in the present case.

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[34] *Re Stelco Inc.*, 2005 CarswellOnt 1188 (C.A.) at para. 44; *Nortel Networks Corporation (Re)*, 2009 CarswellOnt 4467 (S.C. [Commercial List]) at paras. 31 and 47 [***Nortel***]; *Sino-Forest Corporation (Re)*, 2012 ONSC 2063 at para. 40.
[35] *Ted Leroy Trucking [Century Services] Ltd., Re*, 2010 SCC 60 at para. 60.

42. In *Nortel*, Justice Morawetz (as he then was) held that the CCAA is intended to be flexible and must be given a broad and liberal interpretation to achieve its objectives, including the preservation of the going concern for the benefit of all stakeholders.[36]

43. It is just and appropriate for this Court to grant a stay of proceedings in respect of the Applicant, which has acted with due diligence and in good faith. The Applicant requires a stay of proceedings in order to provide it with the breathing room necessary to financially and operationally restructure itself in order to emerge as a sustainable and long-term financially viable university to continue providing quality post-secondary education in Northern Ontario. The commencement of a CCAA proceeding to address the significant issues the Applicant faces represents the only realistic path forward for the Applicant at this time. An inability to restructure in a coordinated, court-supervised manner would be potentially disastrous for many stakeholders of the Applicant, including the students and employees of the Applicant and the geographic region in which the Applicant operates.

44. Without the benefit of the stay of proceedings and the protections of the CCAA, the significant changes required by the Applicant to effect its financial and operational restructuring plan will take too long, may not be achievable, and the Applicant simply does not have the available liquidity that would be required to do so.

45. Consistent with the language of the Model Order and existing jurisprudence, the Proposed Initial Order provides for a stay of proceedings in favour of the Applicant's current and future directors and officers who may subsequently be appointed. The stay in favour of the

[36] *Nortel*, *supra* at para 47.

current and future directors and officers is critical to retain the involvement of the Board and key officers who have knowledge that will assist the Applicant in negotiating with stakeholders and implementing a restructuring plan. Furthermore, the stay of proceedings will benefit the Applicant due to the contractual indemnity that exists in favour of the Board by the Applicant. Litigation against the Board that the Applicant has indemnified will create a costly distraction and limit the Applicant's ability to successfully restructure, frustrating the objectives of this CCAA proceeding.

ii. A Limited Stay Should be Extended to the Non-Applicant Stay Party.

46. The Applicant seeks a limited stay in respect of the Non-Applicant Stay Party in the Proposed Initial Order. The stay in respect of the Non-Applicant Stay Party is limited to preventing any person from: (i) commencing proceedings against the Non-Applicant Stay Party, (ii) terminating, repudiating, making any demand or otherwise altering any contractual relationships with the Non-Applicant Stay Party or enforcing any rights or remedies, or (iii) discontinuing or ceasing to perform any obligations under any contractual agreements with the Non-Applicant Stay Party, resulting from the commencement of this CCAA proceeding by the Applicant, the stay of proceedings granted to the Applicant and any default or cross-default arising due to the foregoing.

47. CCAA courts have, on numerous occasions, extended the initial stay of proceedings to non-applicants.[37] The Court's authority to grant such an order is derived from its broad jurisdiction under ss. 11 and 11.02(1) of the CCAA to make an initial order on "any terms

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[37] For example, *Sino-Forest Corporation (Re)*, 2012 ONSC 2063; *Canwest Global Communications Corp, Re*, 2009 CarswellOnt 6184 (Ont. S.C. [Commercial List]) [***Canwest***]; *Cinram International Inc (Re)*, 2012 ONSC 3767 [***Cinram***].

that [the Court] may impose." It is well-established that it is appropriate for the Court to extend the protection of the stay of proceedings to third party entities where such parties are integrally and closely interrelated to the debtor companies' business or where doing so furthers the primary purpose of the CCAA, being the successful restructuring of an insolvent company.[38]

48. In particular, where the business operations of a group of entities are inextricably intertwined, such as where there are agreements among the entities, guarantees provided by certain entities in the group in respect of the obligations of other entities in the group or shared cash management systems, courts have found it necessary and appropriate to extend a stay in respect of non-applicant parties.[39]

49. In the present circumstances, the Applicant has provided a written guarantee in respect of a credit facility obtained by the Non-Applicant Stay Party. If counterparties were to exercise remedies due to the Applicant's insolvency, it would disrupt the Non-Applicant Stay Party and have financial implications for the Applicant.[40]

50. Avoiding disruption to the Non-Applicant Stay Party is particularly critical given the Applicant's status as an operating university and its overarching aim in this CCAA proceeding to avoid or minimize any disruption to students resulting from the commencement of this proceeding. In furtherance of this objective, the Non-Applicant Stay Party will be essential to ensuring students are given all of the information and resources

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[38] *Cinram*, *ibid* at paras. 61-65.
[39] *Tamerlane Ventures Inc., Re*, 2013 ONSC 5461 at paras. 20-21; *Cinram*, *ibid* at paras. 61-65.
[40] *Haché Affidavit* at paras. 311-312.

they need to stay informed. The Non-Applicant Stay Party will play a crucial role in maintaining an open dialogue between the Applicant and the interests/concerns of all students.

51. Further, the Non-Applicant Stay Party plays a critically important part in providing services for students including advocating on behalf of the interests of all students, administering health and dental benefits, campus safety programs such as the Laurentian University Campus Emergency Response Team and the operation of food banks for students in need, all of which it must be in a position to maintain during this CCAA proceeding.

52. Extending a limited stay of proceedings to the Non-Applicant Stay Party will allow it to continue fulfilling its intended role and providing the myriad of other key services it provides to the Applicant's students.

iii. Requests under the *Freedom of Information and Protection of Privacy Act* should be stayed and suspended

53. The Applicant requests that the Amended and Restated Initial Order provide that information requests made under the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 ("**FIPPA**") be stayed and suspended following the date of the Initial Order. The Applicant expects to receive a high volume of FIPPA requests during this CCAA proceeding and the limited resources of the Applicant cannot be diverted from its restructuring efforts without causing substantial disruption.

54. FIPPA's statutory purpose – granting access to information – will be fulfilled by the requirements of transparency and full disclosure under the CCAA. The Monitor will be able to efficiently respond to information requests and will facilitate information-sharing

through its website and its obligation to report to the Court. The Monitor's role as an officer of the Court, together with the supervisory function of the Court itself, will, during the period in which the CCAA proceeding is continuing, provide an alternate means through which information can be obtained.

55. The recent decision in *1077 Holdings Co-Operative (Re)*[41] confirms the jurisdiction of a CCAA Court to stay information requests. In that decision, the CCAA debtor (Mountain Equipment Co-operative or "**MEC**") sought the Court's direction regarding a request from two of its members to disclose MEC's members list, which contained the personal information of all of MEC's members.

56. The Court held that s. 11 of the CCAA and the stay provisions prevent "…actions being taken against a debtor unless authorized by this Court, with the aim of providing for an orderly restructuring and preventing actions which might hamper the conduct of this proceeding".[42] After reviewing the stay provision in the Amended and Restated Initial Order in that case (substantively similar to the proposed stay provision in this case), the Court concluded that the information requests could be characterized as individuals seeking to exercise their rights against the debtor company, which is caught by the stay provision.[43] Therefore, the information requests were denied.

57. Further, Section 11.1(2) of the CCAA, which provides that the stay provisions of s. 11 do not affect a regulatory body's investigation in respect of the debtor company or an action,

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[41] 2021 BCSC 42.
[42] *Ibid* at para. 59.
[43] *Ibid* at paras. 60-62.

suit or proceeding that is taken in respect of the company by or before the regulatory body, plainly does not apply to a stay of FIPPA requests. Although the Information and Privacy Commissioner that oversees FIPPA requests may be a regulatory body, information requests made under the FIPPA are not an “investigation in respect of the debtor company” or a “proceeding taken in respect of the company”. Staying the obligation to respond to information requests does not affect any investigation or proceeding in respect of the Applicant.

58. Even if s. 11.1(2) were applicable – which it is not – the Applicant requests this Court order that the s. 11.1(3) exemption apply to all information requests made under the FIPPA. Section 11.1(3) provides:

> On application by the company and on notice to the regulatory body and to the persons who are likely to be affected by the order, the court may order that subsection (2) not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court’s opinion
>
> (a) a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and
>
> (b) it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02.

59. If the Applicant is obligated to respond to voluminous information requests, it would unduly burden the Applicant by forcing it to expend considerable time and resources in responding to same. An order staying such requests would not be contrary to the public interest of the regulatory body affected, as disclosure of information will still be publicly available through the Monitor’s website, the Applicant’s own website, and through the court materials that are filed. These resources will be publicly available and equally accessible to any stakeholder or interested person.

iv. The Continued Flow-Through of Cash from the Applicant to Certain Parties is Required Due to their Interrelated Nature

60. The Proposed Initial Order will allow the Applicant to continue to make certain pre-filing and post-filing payments, including express authorization to:

(a) pay all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts owing in respect of rebates, refunds or other amounts that are owing or may be owed to students (directly, or to the student associations of the Applicant on behalf of students), in each case, subject to the policies and procedures of the Applicant; and

(b) pay all outstanding 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.

61. The Applicant intends on operating in the ordinary course during this CCAA proceeding and minimizing the disruption to students as much as possible. To facilitate this, the Applicant must be able to process certain rebates owing to students and continue to provide students with scholarship and bursary money that is critical to their ongoing studies. Some students must pay tuition prior to the receipt of funding from the Ontario Student Assistance Program (OSAP). Upon receipt of OSAP funding, the Applicant reimburses the students who receive such funding. In many instances, scholarship, bursary and grant money has been committed and is critical to students in need of financial aid to fund their education.

62. If the Applicant is unable to continue to process such payments, vulnerable students may be irreparably harmed. Many of these students are younger than 19 years of age, and

therefore particularly vulnerable. In addition, a change to the manner in which these financial aspects are addressed by the Applicant with their students could create immediate emergencies and disruption to their ability to continue their studies.

C. This Court Should Authorize the Termination of Employees as the Applicant Deems Appropriate

i. Relief is Consistent with Model Initial Order and Jurisprudence

63. To emerge as a financially-sustainable restructured university, the Applicant will need to terminate certain employees, including faculty, to bring costs to a sustainable level. Without this step being undertaken, the university will not have a financially sustainable cost structure. These terminations will be based on the demands of students as reflected in their historic and current utilization of program and course offerings.

64. The proposed Amended and Restated Initial Order provides that the Applicant may terminate the employment of such of its employees as it deems appropriate. This provision has become fundamental to CCAA proceedings and is broadly worded to facilitate a successful restructuring.[44] It is often relied upon to terminate both unionized and non-unionized employees under the CCAA to permit the debtor company the flexibility it requires to facilitate a successful restructuring.

65. In *Windsor Machine & Stamping Ltd., Re*, Justice Morawetz (as he then was), granted an initial order authorizing the debtor company to terminate the employment of such of its employees as it deems appropriate, subject to any applicable seniority provisions in any

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[44] This provision has been included in initial orders since at least 2009. See, for example, the Initial Order granted in the 2009 CCAA proceeding of Canwest Global Communications Corp. *et al*, which provides the debtor with the right to terminate or lay off its employees as it deems appropriate at paragraph 12(b).

applicable collective agreement, on such terms that may be agreed upon between the debtor company and such employee, or failing such agreement, to deal with the consequences thereof in a plan of arrangement.[45] Ultimately, 47 union employees were terminated pursuant to this provision.[46]

66. A similar initial order was granted by Justice Schrager in *Aveos Fleet Performance Inc.*, where numerous unionized employees were terminated and a claims process was undertaken for these employees to claim for termination and severance pay.[47]

67. The Applicant acknowledges the challenges that will be faced in this aspect of the restructuring, including as it relates to tenure. Faculty at a university are highly specialized in their field of study and are not able to be moved within programs outside their area of expertise.

ii. The Applicant is not Altering any Collective Agreement

68. As described above, the Applicant and LUFA entered into the LUFA CA on July 1, 2017, which initial term expired on June 30, 2020 but remains in force during any negotiating period.

69. The relief sought by the Applicant will not substantively alter the LUFA CA. Indeed, the LUFA CA does not prevent employees from being terminated and, in fact, specifically

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[45] *Windsor Machine & Stamping Ltd., Re*, Amended and Restated Initial Order dated September 2, 2008 at paras. 7 and 11(d).
[46] *Windsor Machine & Stamping Ltd., Re*, 2009 CarswellOnt 4471 (Ont. S.C. [Commercial List]) at para. 23.
[47] *Aveos Fleet Performance Inc.*, Initial Order dated March 19, 2012 at para. 32(d); *Aveos Fleet Performance Inc./Aveos Performance aéronautique inc. (Arrangement relatif à)* [2013] QCCS 5924 at paras. 9-18.

allows that they may be terminated in certain circumstances, which include redundancy[48] and financial exigency.[49]

70. The conditions for termination under the LUFA CA already exist. First, as to financial exigency: LU is insolvent and has been for some time, as detailed above. Second, there are *bona fide* academic reasons, including insufficient student demand to accommodate all current faculty members, to justify terminations for redundancy.

71. However, following the LUFA CA's designated processes to terminate faculty is not feasible given the urgency of the Applicant's financial position. As fully described in the Haché Affidavit, the redundancy and financial exigency provisions in the LUFA CA create a cumbersome and lengthy process to evaluate whether a state of redundancy exists, whether there is financial exigency, and the scope of the budgetary cuts required.

72. The Applicant does not have access to cash to meet its obligations while that process would be undertaken. As part of the CCAA proceeding, the process must be expedited or the Applicant will run out of cash to make payroll for any employees. The Applicant's prospects of a successful restructuring will be handicapped if these provisions and their corresponding timelines are followed because it involves a protracted timeline for resolution and is incompatible with the Applicant's long-term faculty requirements and need for an overall academic restructuring.

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[48] LUFA CA, Article 10.10, Haché Affidavit at Exhibit T.
[49] LUFA CA, Article 10.15, Haché Affidavit at Exhibit T.

73. In short, the relief sought by the Applicant is substantively consistent with the terms of the LUFA CA. This Court has the jurisdiction to make a finding that the Applicant is insolvent pursuant to federal insolvency legislation which occupies the field on that issue (in this case, the CCAA). This finding of insolvency is substantively and effectively equivalent to a determination pursuant to the financial exigency provisions of the LUFA CA and, as described above, the termination of faculty members is permitted when a determination of financial exigency is made.

74. Further, nothing in the requested relief is inconsistent with section 33 of the CCAA. Since the enactment of section 33 to the CCAA, the Courts have adopted a flexible approach to its interpretation. In *White Birch Paper Holding Company, Re*, the Court considered section 33 of the CCAA and held (emphasis added):

> The Union relies on the various testimonies provided before the Parliamentary Committee to suggest that collective agreements are now raised to the rank of absolute contracts which are completely outside the restructuring process and the CCAA unless the Union and the employer agree otherwise. **That, however, would be tantamount to paralyzing the employer with respect to reducing its costs by any means at all, and to providing the Union with a veto with regard to the restructuring process.**[50]

75. In balancing the interests of the union with the successful restructuring of the debtor company, the Court re-affirmed the importance of the CCAA as a legislative tool to assist distressed companies (emphasis added):

> **The Union is wrong in thinking that the collective agreement is outside the scope of the CCAA and that only an agreement may alter its terms and conditions**… The CCAA has to be taken as a whole, and its provisions must be construed within the general context of the purposes of this Act. Its purpose is, in fact, to enable distressed companies to avoid the pressure of their contractual

[50] *White Birch Paper Holding Company (Arrangement relatif à)*, 2010 QCCS 2590 at para. 35.

> obligations, to have a period of respite during which they will be able to propose a restructuring plan, shielded from their creditors, and hope to start again on a new footing. **If the debtor company is nevertheless required to fulfill all its obligations, it is tantamount to saying that the CCAA does nothing. Choices – sometimes difficult ones – must therefore be made, and all stakeholders interested in having the company survive and not be forced to close down must then compromise their rights.**[51]

76. Similarly in this case, if the Applicant is not permitted to terminate employees in accordance with the standard provision contained in the Model Initial Order, this would effectively paralyze the Applicant with respect to reducing its costs and would provide LUFA with a veto over the restructuring process.

77. The balance of convenience favours granting the relief sought by the Applicant. Faculty members who may be terminated are highly educated with specialized, transferable skills and knowledge. Their prospects for future employment are strong. Any prejudice suffered by the terminated faculty members is greatly outweighed by the salutary effects gained by the Applicant reducing its costs for the benefit of all stakeholders. If the Applicant cannot cut costs in a timely manner, the probability of a successful restructuring is jeopardized and the shutdown of the university becomes a possibility, which would entail the loss of thousands of jobs provided by the Applicant. This would be devastating to the livelihoods of hundreds of non-faculty employees, many of whom would not have the same prospects for future employment as terminated faculty.

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[51] *Ibid* at paras. 51-52.

iii. The Act Grants the Board the Jurisdiction to Terminate Faculty

78. Management of the university is within the jurisdiction of the Board. Further, pursuant to section 18(b) of the Act, the Board has the sole jurisdiction to terminate faculty. Section 18(b) of the Act provides that, upon the recommendation of the President, the Board has the power to "appoint and dismiss…the professors and other members of the teaching staff of the University…".

D. This Court Should Appoint a Neutral Third-Party as the Court-Appointed Mediator

79. The Applicant requests the urgent appointment of a neutral third-party as an officer of the Court to serve as mediator (the "**Court-Appointed Mediator**"). It is critical to the success of the Applicant's restructuring initiatives that a mediator be appointed to assist with: (i) negotiations related to the review and restructuring of the academic programs of the Applicant, together with the Senate; and (ii) the collective agreement between the Applicant and LUFA, among other issues that may arise during the course of the CCAA proceedings.

80. The Applicant proposes that the Court-Appointed Mediator's role not be limited to the above mandates, but rather the Court-Appointed Mediator be appointed to assist the Applicant with resolving any other issues which cannot be amicably resolved with its stakeholders.

81. This Court's jurisdiction to appoint the Court-Appointed Mediator derives from the Court's power to make any order that is considered appropriate under section 11 of the CCAA.

82. This Court recently appointed the Honourable Warren K. Winkler Q.C. as court-appointed mediator in the CCAA proceedings of JTI-MacDonald Corp., Imperial Tobacco Company Ltd. and Imperial Tobacco Canada Ltd., and Rothmans, Benson & Hedges Inc.[52]

83. The following factors can, and the Applicant submits should, inform the Court's exercise of discretion to appoint the Court-Appointed Mediator in this proceeding:

(a) Efficiency: The Court-Appointed Mediator would provide efficient and effective assistance with the resolution of the critical issues that the Applicant must address in this proceeding, thereby facilitating the administration of the proceedings and freeing up the judicial time of this Court. This in turn benefits all stakeholders of the Applicant who have an interest in an efficient, fair resolution of this proceeding.

(b) Expertise: The Court-Appointed Mediator would be someone with experience in resolving high-profile and complex disputes in particularly contentious circumstances. All of the Applicant's stakeholders will benefit from the Court-Appointed Mediator's expertise and assistance in arriving at mutually beneficial outcomes.

(c) Bargaining with LUFA has Stalled: The Applicant has bargained with LUFA in good faith, but negotiations have stalled and there is no indication that LUFA would be prepared to consider providing the type of concessions required by the Applicant to achieve financial stability. The Court-Appointed Mediator will be a neutral, independent third party who will assist the Applicant and LUFA with the exchange

[52] *JTI-MacDonald Corp., Re*, Amended and Restated Initial Order dated April 5, 2019 at paras. 41-46; *Imperial Tobacco Company Ltd., and Imperial Tobacco Canada Ltd.*, Amended and Restated Initial Order dated April 5, 2019 at paras. 39-44; *Rothmans, Benson & Hedges Inc., Re*, Amended and Restated Initial Order dated April 5, 2019 at paras. 40-45.

of information, reconcile their positions and assist in determining if a successful restructuring is possible.

(d) Urgency: As fully described in the Haché Affidavit, there are extreme time sensitivities associated with this proceeding. The Applicant's negotiations, and most importantly a resolution, with LUFA need to be undertaken and completed by April 2021 to support the Applicant's objective of emerging as a sustainable postsecondary institution. That timeline is required based on the available DIP financing and the necessity to have the changes to faculty and academic programs implemented in time for the Fall 2021 term. It is also necessary to demonstrate to incoming first-year students that the Applicant is well-positioned for future success and should continue to be a high school graduate's first choice destination. The Court-Appointed Mediator will have the flexibility to adapt a process and timeline to achieve a timely resolution that fits within the parameters of the future sustainability of the Applicant.

84. The Proposed Monitor supports the appointment of the Court-Appointed Mediator on an urgent timeline.

E. The Pension Plan Special Payments Should be Stayed

85. The Applicant requests that the Amended and Restated Initial Order stay any outstanding pre-filing or post-filing Special Payments to the Pension Plan.

86. Special payments made to pay down pension plan solvency deficits are commonly stayed in CCAA proceedings where the Applicant does not have the cash to make such payments

and the deferral is required to facilitate a successful restructuring.[53] Courts have held that employees are not prejudiced by the suspension of special payments if a suspension improves the odds of a successful restructuring and a failed restructuring would result in bankruptcy.[54]

87. In these circumstances, it is appropriate for this Court to stay payment of the Special Payments, which will assist the Applicant with its severe liquidity crisis and maximize the probability that a successful restructuring can be negotiated and effected. This stay is limited to the Special Payments and does not apply to the Applicant's regular (ordinary course) contributions to the Primary Plan.

F. The CCAA Charges Should be Granted.

i. The Administration Charge Should be Approved

88. The Applicant requests that this Court grant a super-priority Administration Charge on the Property (as defined in the proposed form of the Initial Order) in favour of the Proposed Monitor, counsel to the Proposed Monitor, the Applicant's counsel and advisors, and independent counsel to the Board. At the initial hearing the Administration Charge will be requested in the amount of $400,000, and the Applicant will seek to increase it to $1.25 million pursuant to a proposed Amended and Restated Initial Order on the Comeback Hearing. Section 11.52 of the CCAA provides the Court with statutory jurisdiction to grant the Administration Charge.

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[53] *Collins & Aikman Automotive Canada Inc., Re*, 2007 CarswellOnt 7014 (Ont. S.C.); *Fraser Papers Inc., Re,* 2009 CarswellOnt 4469 (Ont. S.C. [Commercial List]); *AbitibiBowater inc., re*, 2009 QCCS 2028; *Timminco Ltd., Re*, 2012 ONSC 506 [Commercial List] [***Timminco***].
[54] *Timminco, ibid* at para. 59.

89. In *Canwest Publishing*, Justice Pepall considered section 11.52 of the CCAA and identified the following non-exhaustive list of factors the Court may consider when granting an administration charge:

(a) the size and complexity of the business being restructured;

(b) the proposed role of the beneficiaries of the charge;

(c) whether there is an unwarranted duplication of roles;

(d) whether the quantum of the proposed charge appears to be fair and reasonable;

(e) the position of the secured creditors likely to be affected by the charge; and

(f) the position of the monitor.[55]

90. The Administration Charge is warranted, necessary, and appropriate in the circumstances, given that:

(a) the proposed restructuring will require the extensive involvement of the professional advisors subject to the Administration Charge;

(b) the professionals subject to the Administration Charge have contributed, and will continue to contribute, to the restructuring of the Applicant;

(c) there is no unwarranted duplication of roles so the professional fees associated with these proceedings will be minimized;

(d) the Administration Charge will rank in priority to the DIP Charge and the Directors' Charge; and

(e) the Proposed Monitor believes that the proposed quantum of the Administration Charge is reasonable.

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[55] *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222 at para. 54; *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 2037 at para 58.

91. Further, the Applicant has limited the quantum of the Administration Charge that it seeks approval of to what is reasonably necessary for the first ten days of the CCAA proceedings, to be increased thereafter on the comeback hearing, based on forecasted costs in the Cash Flow Forecast for the professionals covered under the Administration Charge.

ii. The DIP Financing and DIP Charge Should be Approved

92. The Applicant seeks approval at the comeback hearing pursuant to the Amended and Restated Initial Order of the debtor-in-possession financing facility (the "**DIP Facility**") between the Applicant, as borrower, and Firm Capital Corporation ("**FCC**") as lender, as further described in the Term Sheet between LU and FCC dated January 29, 2021 (the "**DIP Term Sheet**") attached as **Exhibit** "**A**" to the Haché Affidavit. FCC has indicated that, subsequent to execution of the DIP Term Sheet, it will assign its interest to Firm Capital Mortgage Fund Inc. (the "**DIP Lender**"). The DIP Lender has requested a definitive DIP loan agreement to formally document the terms and conditions of the DIP Facility. Prior to the comeback hearing, the Applicant and the DIP Lender will negotiate and finalize the DIP loan agreement.

93. The Applicant also seeks a super-priority charge on the Property in the amount of $25,000,000 subject to the terms of the DIP Term Sheet (the "**DIP Charge**"). The DIP Charge is proposed to rank behind the Administration Charge (up to a maximum amount of $1,250,000) and the Directors' Charge (up to a maximum amount of $2,000,000), but ahead of all other interests in the Property of the Applicant save and except properly perfected purchase money security interests on specific equipment.

94. The Applicant is facing a liquidity crisis. The Cash Flow Forecast demonstrates that, absent additional financing, the Applicant will require additional cash shortly after the date of the Comeback Hearing, on or about February 10, 2021. The next payroll of the Applicant is payable on February 25, 2021 and covers the period to February 28, 2021. The Applicant requires debtor-in-possession financing to pay operating expenses and begin to implement its restructuring strategy for the benefit of all of the Applicant's stakeholders.

95. Given that reality, and as described in more detail in the Haché Affidavit, the Applicant canvassed the market for interim financing and evaluated competing offers. Following a competitive process involving multiple potential lenders, the Applicant secured the DIP Facility from FCC pursuant to the DIP Term Sheet. The Haché Affidavit and the Proposed Monitor's Pre-Filing Report contains a detailed description of the DIP Term Sheet's relevant terms.

96. In short, pursuant to the DIP Term Sheet, the DIP Lender agreed to loan a maximum principal amount of $25,000,000 to the Applicant, subject to the terms and conditions prescribed in the DIP Term Sheet. The Applicant's access to the DIP Facility is conditional upon the provision of an order of this Court, among other things, approving the DIP Term Sheet and the DIP Facility and granting the DIP Charge. The relief sought will be pursuant to the Amended and Restated Initial Order sought at the Comeback Hearing, on notice to other parties.

97. Section 11.2 of the CCAA provides the Court with the express statutory authority to approve the DIP Facility Agreement and the DIP Charge. Section 11.2(2) further provides

the Court with the express statutory authority to order that the DIP Charge rank in priority over the claim of any secured creditor of the company.

98. Section 11.2(4) sets out the following factors to be considered by the Court in deciding whether to grant a super-priority charge in respect of DIP Financing:

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report.[56]

99. Based on the following factors, the DIP Term Sheet and the DIP Charge should be approved on the Comeback Hearing as:

(a) the notice requirements under 11.2(1) have been met;

(b) the Applicant has immediate liquidity needs and, given its current financial circumstances, the Applicant cannot obtain alternative financing outside of these CCAA proceedings;

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[56] CCAA, section 11.2(4).

(c) the terms of the DIP Term Sheet were subject to, and a result of, a competitive process and intensive arms-length negotiations;

(d) the Applicant, in consultation with the Proposed Monitor, has established a restructuring plan to ensure that costs can be reduced to the greatest extent reasonably possible during these CCAA proceedings;

(e) the DIP Facility is necessary in order for the Applicant to implement its restructuring plan, which will preserve its ability to operate as a postsecondary institution for the benefit of all its stakeholders;

(f) without the DIP Facility, the Applicant will not be able to continue operating;

(g) the quantum of the DIP Facility is reasonable and appropriate having regard to the Cash Flow Forecast; and

(h) the Proposed Monitor is of the view that the DIP Term Sheet and DIP Charge are appropriate and limited to what is reasonably necessary in the circumstances.

iii. The Directors' Charge Should be Approved

100. The Applicant requests that this Court grant a priority charge in favour of the Applicant's current and future directors and officers in the amount of $2 million (the "**Directors' Charge**"). The Applicant will seek to increase the Directors' Charge at the comeback hearing to $5 million, $3 million of which will rank subordinate to the DIP Charge. The Directors' Charge protects the current and future directors and officers against obligations and liabilities they may incur as directors and officers of the Applicant after the commencement of the CCAA proceedings, except to the extent that any such claims or the obligation or liability is incurred as a result of the director's or officer's gross negligence or wilful misconduct.

101. The Applicant has certain insurance policies in place (as defined in the Haché Affidavit); however, the Applicant is concerned that the directors and officers may be unwilling to continue in their roles with the Applicant absent the Court granting the Directors' Charge. The Directors' Charge will only be available to the extent that any claim or liability is not covered by any applicable D&O insurance and in the event that the Applicant's D&O insurance does not respond to claims against the directors and officers.

102. Section 11.51 of the CCAA provides the Court with the express statutory jurisdiction to grant the Directors' Charge in an amount the Court considers appropriate, provided notice is given to the secured creditors who are likely to be affected by it.[57]

103. In approving a similar charge in *Canwest*, Justice Pepall applied section 11.51 of the CCAA and noted the Court must be satisfied with the amount of the charge and that it is limited to obligations the directors and officers may incur after the commencement of the proceedings, so long as adequate insurance cannot be obtained at a reasonable cost.[58]

104. In *Jaguar Mining Inc., Re*, Justice Morawetz (as he then was) stated that, in order to grant a Directors' Charge, the Court must be satisfied of the following factors:[59]

(a) notice has been given to the secured creditors likely to be affected by the charge;

(b) the amount is appropriate;

(c) the applicant could not obtain adequate indemnification insurance for the directors at a reasonable cost; and

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[57] CCAA, section 11.51.
[58] *Canwest*, *supra* note 17 at paras. 46 and 48.
[59] *Jaguar Mining Inc., Re*, 2014 ONSC 494 at para. 45.

(d) the charge does not apply in respect of any obligation incurred by a director as a result of the director's gross negligence or wilful misconduct.

105. With respect to the Applicant, the Directors' Charge is reasonable in the circumstances because: (i) the Applicant will benefit from the active and committed involvement of the directors and officers, who have considerable institutional knowledge and valuable experience and whose continued participation will help facilitate an effective restructuring, (ii) the Applicant cannot be certain whether the existing insurance will be applicable or respond to any claims made, and the Applicant does not have sufficient funds available to satisfy any given indemnity should its directors and officers need to call upon such indemnities, (iii) the Directors' Charge does not secure obligations incurred by a director as a result of the directors' gross negligence or wilful misconduct, and (iv) the Proposed Monitor is of the view that the Directors' Charge is reasonable and appropriate in the circumstances.

iv. The CCAA Charges Should Prime the Liens

106. As part of the Amended and Restated Initial Order, the Applicant requests that the Administration Charge, Directors' Charge, and DIP Charge (collectively, the "**CCAA Charges**") take priority over lien claimants. The only secured creditors that will be affected by the CCAA Charges are the lien claimants who have construction liens registered on title against lands owned by LU (the "**Lien Claimants**"). The aggregate amount of the liens is approximately $6.179 million.

107. This relief is required by the DIP Lender pursuant to the terms of the DIP Agreement. Without priority over the liens, the DIP Lender will not advance the funds required by the

Applicant to carry out this restructuring process. This would jeopardize the success of the CCAA proceeding.

108. The CCAA authorizes the CCAA Charges to take priority over the Lien Claimants. Secured creditors are defined under s. 2(1) of the CCAA to include the holder of a lien against any property of the debtor and the CCAA permits granting priority of the CCAA Charges over any secured creditor. Indeed, this relief is consistent with paragraph 40 of the Model Initial Order and is routinely granted in CCAA proceedings.

109. Further, each of the Lien Claimants will be given adequate notice prior to the comeback hearing, satisfying the obligation to give notice to any secured creditor likely to be affected by the granting of the CCAA Charges pursuant to ss. 11.2(1), 11.51(1) and 11.52(1) of the CCAA.

G. The Confidential Exhibits Should be Sealed.

110. Pursuant to the *Courts of Justice Act* (Ontario), this Court has the discretion to order that any document filed in a civil proceeding be treated as "confidential", sealed and not form part of the public record."[60]

111. In *Sierra Club of Canada v. Canada (Minister of Finance)*, Justice Iacobucci set out that a sealing order should only be granted when:

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[60] *Courts of Justice Act*, R.S.O. 1990, c C.43, s. 137(2). See also *Target Canada Corp (Re)*, 2015 ONSC 1487 at paras. 28 – 30.

(a) such an order is necessary in order to prevent serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternatives measures will not prevent the risk; and

(b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh the deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.[61]

112. The Applicant respectfully requests that, in the Initial Order, this Court seal Confidential Exhibits "FFF" and "GGG" to the Haché Affidavit. These documents relate to correspondence between the Applicant and the Ministry of Colleges and Universities (the "**Ministry**"). The documents contain information with respect to the Applicant and certain stakeholders of the Applicant, including various rights or positions that stakeholders of the Applicant may take either inside or outside of a CCAA proceeding, which could jeopardize the Applicant's efforts to restructure.

113. If the Confidential Exhibits are not sealed, stakeholders may react in such a way that jeopardizes the viability of the Applicant's restructuring. As such, the salutary effects of the sealing order, which provides the Applicant with the best possible chance to effect a restructuring, far outweigh the deleterious effects of not disclosing the correspondence between the Applicant and the Ministry.

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[61] *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para. 53.

H. The Relief Sought is Reasonably Necessary.

114. Pursuant to s. 11.001, the relief sought on an initial application is to be limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during the initial stay period.[62]

115. The stated purpose of s. 11.001 is to "limit the decisions that can be taken at the outset of a CCAA proceeding to measures necessary to avoid the immediate liquidation of an insolvent company, thereby improving participation of all players."[63]

116. The Applicant has limited the relief sought on this initial Application to only the relief that is reasonably necessary in the circumstances for its continued operation. After using the initial stay period to stabilize its operations, the Applicant intends to return to this Court to request further relief. For the sake of cost efficiency, and to provide all stakeholders with time to consider the Applicant's position on the various relief sought and to be sought at the comeback hearing, this Factum is filed at the outset of the proceeding to address all relief. Accordingly, the Applicant submits that the relief sought on this initial Application is in accordance with s. 11.001 of the CCAA and should be granted.

PART IV - RELIEF REQUESTED

117. For all of the foregoing reasons, the Applicant requests an Order substantially in the form of the draft Initial Order.

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[62] CCAA, s. 11.001, 11.02(1) and (3).
[63] *Lydian International Limited (Re)*, 2019 ONSC 7473 at paras. 22-26, citing Government of Canada (Press Release), "Insolvency reforms to come into force" (4 September 2019), online: <perma.cc/8SLT-ZADL>.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of January, 2021.

Thornton Grout Finnigan LLP

Thornton Grout Finnigan LLP

Counsel for the Applicant

SCHEDULE "A" – LIST OF AUTHORITIES

1. *Canadian Red Cross Society*, 2000 CarswellOnt 3269 (Ont. S.C.).
2. *TLC, The Land Conservancy of British Columbia, Re*, 2014 BCSC 97 at paras. 14-18.
3. *Stelco Inc. (Re)*, 2004 CarswellOnt 1211 (S.C. [Commercial List]) at paras. 21-22.
4. *Target Canada Co.*, 2015 ONSC 303.
5. *Re Stelco Inc.*, 2005 CarswellOnt 1188 (C.A.).
6. *Nortel Networks Corporation (Re)*, 2009 CarswellOnt 4467 (S.C. [Commercial List]).
7. *Sino-Forest Corporation (Re)*, 2012 ONSC 2063.
8. *Ted Leroy Trucking [Century Services] Ltd., Re*, 2010 SCC 60 at para. 60.
9. *Sino-Forest Corporation (Re)*, 2012 ONSC 2063.
10. *Canwest Global Communications Corp, Re*, 2009 CarswellOnt 6184.
11. *Cinram International Inc (Re*), 2012 ONSC 3767.
12. *Tamerlane Ventures Inc., Re*, 2013 ONSC 5461.
13. *1077 Holdings Co-Operative (Re)*, 2021 BCSC 42.
14. Initial Order granted in the 2009 CCAA proceeding of Canwest Global Communications Corp.
15. *Windsor Machine & Stamping Ltd., Re*, Amended and Restated Initial Order dated September 2, 2008.
16. *Windsor Machine & Stamping Ltd., Re*, 2009 CarswellOnt 4471 (Ont. S.C. [Commercial List]).
17. *Aveos Fleet Performance Inc.*, Initial Order dated March 19, 2012.
18. *Aveos Fleet Performance Inc./Aveos Performance aéronautique inc. (Arrangement relatif à)* [2013] QCCS 5924.
19. *White Birch Paper Holding Company (Arrangement relatif à)*, 2010 QCCS 2590.
20. *JTI-MacDonald Corp., Re*, Amended and Restated Initial Order dated April 5, 2019.
21. *Imperial Tobacco Company Ltd., and Imperial Tobacco Canada Ltd.*, Amended and Restated Initial Order dated April 5, 2019.
22. *Rothmans, Benson & Hedges Inc., Re*, Amended and Restated Initial Order dated April 5, 2019.
23. *Collins & Aikman Automotive Canada Inc., Re*, 2007 CarswellOnt 7014 (Ont. S.C.).
24. *Fraser Papers Inc., Re*, 2009 CarswellOnt 4469 (Ont. S.C. [Commercial List]).
25. *AbitibiBowater inc., re*, 2009 QCCS 2028.
26. *Timminco Ltd., Re*, 2012 ONSC 506 [Commercial List].
27. *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222.
28. *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 2037.
29. *Jaguar Mining Inc., Re*, 2014 ONSC 494.
30. *Target Canada Corp (Re)*, 2015 ONSC 1487.
31. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41.
32. *Lydian International Limited (Re)*, 2019 ONSC 7473.

SCHEDULE "B" – RELEVANT STATUTES

Bankruptcy and Insolvency Act**, R.S.C. 1985, c. B.3**

Section 2

Definitions

In this Act,

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

> (a) who is for any reason unable to meet his obligations as they generally become due,
>
> (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
>
> (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

Companies' Creditors Arrangement Act**, R.S.C., 1985 c. C-36**

Section 2

Definitions

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the Bank Act, telegraph companies, insurance companies and companies to which the Trust and Loan Companies Act applies;

debtor company means any company that

> (a) is bankrupt or insolvent,
>
> (b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,
>
> (c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or
>
> (d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent.

Section 3

Application

(1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than $5,000,000 or any other amount that is prescribed.

Section 10

Documents that must accompany initial application

(2) An initial application must be accompanied by

(a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;

(b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and

(c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

Section 11

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Stays, etc. – initial application

11.02(1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. – other than initial application

11.02(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

11.02(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Meaning of regulatory body

11.1 (1) In this section, regulatory body means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.

Regulatory bodies — order under section 11.02

(2) Subject to subsection (3), no order made under section 11.02 affects a regulatory body's investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.

Exception

(3) On application by the company and on notice to the regulatory body and to the persons who are likely to be affected by the order, the court may order that subsection (2) not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court's opinion

(a) a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and

(b) it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02.

Declaration — enforcement of a payment

(4) If there is a dispute as to whether a regulatory body is seeking to enforce its rights as a creditor, the court may, on application by the company and on notice to the regulatory body, make an order declaring both that the regulatory body is seeking to enforce its rights as a creditor and that the enforcement of those rights is stayed.

Interim financing

11.2(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

11.2(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

11.2(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

11.2(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company’s business and financial affairs are to be managed during the proceedings;

(c) whether the company’s management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company’s property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor’s report referred to in paragraph 23(1)(b), if any.

Security or charge relating to director’s indemnification

11.51(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Priority

11.51(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Restriction — indemnification insurance

11.51(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

11.51(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director’s or officer’s gross negligence or wilful misconduct or, in Quebec, the director’s or officer’s gross or intentional fault.

Court may order security or charge to cover certain costs

11.52(1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

11.52(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Section 33

Collective agreement

33(1) If proceedings under this Act have been commenced in respect of a debtor company, any collective agreement that the company has entered into as the employer remains in force, and may not be altered except as provided in this section or under the laws of the jurisdiction governing collective bargaining between the company and the bargaining agent.

***Courts of Justice Act*, R.S.O. 1990, c. C.43**

Section 137

Sealing documents

137(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

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. 21-CV-______________________

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

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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 of Appeal File No. M52287

Court File No. CV-21-656040-00CL

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

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