

**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**

Applicant

MOTION RECORD

SHEPPARD & CLAUDE

Law Offices
202-1173 Cyrville Road
Ottawa ON K1J 7S6
T. : 613- 748-3333
F. : 613- 748-1599

André Claude (LSO No. 27596J)

Tel: 613-748-3333, ext. 7

aclaude@sheppardclaud.ca

Lawyers for University of Sudbury

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Notice of Motion

The Applicant, University of Sudbury ("**USudbury**") will make a motion pursuant to section 32(2) of the *Companies Creditors Arrangement Act*, to a judge presiding over the Commercial List, on a date to be scheduled by the Commercial List Office at Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard by videoconference or orally.

THE MOTION IS FOR:

1. An Order that the following agreements, described in the Notice by Laurentian University of Sudbury ("**Laurentian**") to Disclaim or Resiliate an Agreement dated April 1, 2021 directed to USudbury (the "**Proposed Disclaimer**") are not to be disclaimed or resiliated under section 32 of the *Companies' Creditors Arrangement Act* ("**CCAA**"):
 - a) Federation Agreement between Laurentian and USudbury dated September 10, 1960, as same may have been

amended from time to time (the “**Federation Agreement**”);
and

- b) Financial Distribution Notice between Laurentian and USudbury dated May 1, 2019, amending the Proposed Grant Distribution and Services Fees agreement between Laurentian, USudbury, Thorneloe University, and Huntington University dated November 10, 1993 (the “**Financial Distribution Notice**”) (the Federation Agreement and the Financial Distribution Notice, collectively, the “**Agreements**”).

- 2. Its costs of this motion; and
- 3. Such other and further relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- 4. Sections 18.6 (good faith) and 32 (disclaimer or resiliation of agreements) of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
- 5. As more fully described below:
 - a) the Proposed Disclaimer will likely cause significant financial hardship to USudbury;
 - b) Laurentian is not acting in good faith in connection with the Proposed Disclaimer or the Agreements; and
 - c) The Proposed Disclaimer will not enhance the prospects of a viable compromise being made by Laurentian.

6. USudbury was founded as Collège du Sacré-Coeur in 1913. On April 20, 1914, the Ontario legislature adopted the Charte du Collège du Sacré-Coeur. In 1957, the Collège du Sacré-Coeur changed its name to University of Sudbury¹.
7. Laurentian was incorporated in 1960. It is a non-share capital corporation created by *An Act to Incorporate Laurentian University of Sudbury* S.O. 1960, c. 151 C. 154, operating as a publicly funded, bilingual university in Sudbury, Ontario. It is a registered charity under the *Income Tax Act*.
8. Laurentian owes its existence to USudbury. In 1960, USudbury, along with others, petitioned the Ontario government to establish Laurentian as a non-denominational, bilingual university to serve the Sudbury community.
9. From inception, Laurentian's incorporating statute contemplates that it would enter into federation agreements with other universities.
10. In 1960, the year it was incorporated, Laurentian entered into the Federation Agreement with Sudbury. The Federation Agreement includes the declarations of Laurentian and USudbury that they each:

¹ *An Act to Incorporate Sacred Heart College of Sudbury*, chapter 131 of the Statutes of Ontario 1914, amended by *An Act respecting Sacre Heart College of Sudbury*, chapter 103 of the Statutes of Ontario 1923, *The University of Sudbury Act*, 1957 and the *University of Sudbury Act*, 1960.

[E]xpress the firm hope and conviction that the relationship between the Universities established by this agreement will be a permanent one and that they and the other universities and colleges which become federated or affiliated with Laurentian University will work together to fulfil the objects of the Act of Incorporation of Laurentian University...The Parties fully realize that the success of the task which they have set themselves will depend more on the mutual understanding, goodwill and cooperation between the institutions now or hereafter associate together in Laurentian University, than upon any formal agreements.

11. As part of the federation arrangement between Laurentian and USudbury, the parties entered into a perpetual lease dated April 9, 1965 for an initial term of 99 years (the "**Lease**").
12. Consistent with the parties' stated intention for a permanent and perpetual federated relationship (the "**Federation Relationship**"), the Lease contained an option for USudbury to renew for another 99 years, with the options to renew to continue on each renewal.
13. The Federation Relationship is reflected in the Federation Agreement, the Financial Distribution Agreement and the Lease, the terms of which agreements are interdependent and interlocked.
14. Laurentian also entered into federation agreements with University of Thorneloe ("**Thorneloe**") and Huntington University ("**Huntington**") (USudbury, Thorneloe and Huntington, collectively, the "**Federated Universities**").

15. USudbury expected that the Federation Relationship would be permanent and relied on it being so when it entered into the Federation Agreement and the Lease.
16. The Federation Relationship required Sudbury to:
 - a) suspend its right to confer diplomas on students in favour of Laurentian, except for diplomas in Theology;
 - b) suspend its right to receive money from the Ministry of Colleges and Universities for students ("**Grants**");
 - c) suspend its right to receive tuition funds from students ("**Tuitions**");
 - d) pay for the construction and operating costs of buildings and student housing (the "**Buildings**") on lands under the Lease (the "**Leased Lands**");
 - e) maintain and pay the full costs of its professors and teaching staff for all courses it offers.
17. In exchange for USudbury's obligations under the Federation Relationship, Laurentian transfers a percentage of the monies it receives per student from Tuitions and Grants to USudbury. The amounts Laurentian transfers to USudbury are calculated using an agreed formula. The formula is based on the number of students registered with Laurentian, taking courses provided by USudbury.
18. The most recent formula is set out in the Financial Distribution Notice, which states, as its underlying principle that:

...none of Laurentian University or any of the Federated Universities will subsidize the operations or services of another, and each will be responsible for covering its own costs. The funding mechanism in place at any given time will be consistent with the funding mechanism between the Province and Laurentian University.

...

Each Federated University employs its own staff and is, and will continue to be, responsible for its own financial affairs. Laurentian University is the principal employer for administering pension plan and benefits and provides access to these employee benefits to each of the Federated Universities, with each Federated University bearing the sole financial responsibility for all contributions and funding for such employee benefits for its own staff.

19. The terms of the Financial Distribution Notice can be amended by the parties at any time. They are meant to allocate costs and revenue between Laurentian and USudbury consistent with the funding actually received by Laurentian from the Province of Ontario.
20. The Proposed Disclaimer is not the first time Laurentian has attempted to unilaterally terminate or materially alter the Federation Agreement.
21. During the course of their 60-year federation, Laurentian and the Federated Universities entered into a series of agreements to address the allocation of funding and costs of services. The final agreement between the Federated Universities and Laurentian is a

Grant Distribution and Service Fees Agreement dated November 10, 1993 (the “**1993 Funding Agreement**”).

22. The 1993 Funding Agreement governed for over 25 years. It included a funding formula that detailed, how (i) Grants and Tuition received by Laurentian would be distributed to the Federated Universities; and (ii) the service fees that would be paid to Laurentian, which were calculated as being a portion of the Grants and Tuitions received by each Federated University.
23. Effective May 1, 2019, Laurentian, without the consent of USudbury or the other Federated Universities, and not acting in good faith, purported to unilaterally revise or replace the 1993 Funding Agreement and the allocation of funding between Laurentian and each of the Federated Universities through the issuance of separate “Notices of Terms of Financial Distribution” to each of the Federated Universities. The most recent of these is the Financial Distribution Notice which is one of the two agreements that Laurentian seeks to disclaim.
24. By purporting to revise the allocation of revenues on its own, without consultation or discussion with USudbury, Laurentian was not acting within the guiding principles of the Federation Agreement or in good faith.
25. Based on its own proposed formula, Laurentian retains 15% of the Tuition funding per student, releasing only 85% of the funding from Grants and Tuitions to the Federated Universities who actually deliver the courses and programs. Laurentian receives funding based on the number of students enrolled at the Federated Universities for purposes of the provincial funding formula but does

not pay the Federated Universities the full amount for each student, even before an allocation between the Federated Universities and Laurentian applies. The 15% that goes to Laurentian comes “off the top”.

26. The existing funding formula was not forced upon Laurentian. To the contrary, Laurentian sought to impose it on the Federated Universities. The 2019 revised funding formula reflected Laurentian’s own unilateral assessment of the economic allocation of Grants and Tuition and funding between Laurentian and the Federated Universities.
27. The Financial Distribution Notice should be amended, not disclaimed, on terms and under a formula that ensures that Laurentian suffers no loss by sharing its revenue with USudbury under the Federation Relationship.
28. Laurentian does not in any way contribute to the costs of USudbury. There is no debt instrument or services for compensation agreement under which Laurentian pays any sums to USudbury.
29. Laurentian is insolvent. It commenced proceedings under the CCAA on February 1, 2021.
30. Laurentian is insolvent because it saddled itself with capital costs and debt and bank loans that are independent of and are not a result of the Federation Relationship. Laurentian’s insolvency is not caused by the Federation Relationship or the Agreements.
31. It would be inequitable and unjust to allow Laurentian to disclaim the Agreements and cause direct and significant financial hardship

on USudbury in order to benefit Laurentian's trade and lending creditors.

32. By choosing not to amend the Financial Distribution Notice but to disclaim it and the Federation Agreement, Laurentian would force USudbury to immediately pivot from being a federated university to being an independent university, offering its own courses and issuing its own diplomas. If such a transformation is to occur, it is not possible to complete the administrative and other mechanical steps required for this transformation in time for the next academic semester, which begins May 1, 2021. USudbury would need until at least the academic semester starting September 1, 2021. This is known to Laurentian.
33. The immediate effect of a termination of the Federation Relationship, effective April 30th, 2021 would be to leave USudbury unable to take the myriad steps needed to convert itself into an independent university. At the same time, USudbury would be required to pay for all of the expenses associated with the Federation Relationship and its termination, including:
 - a) The (lay-off) costs of termination of its 13 full time professors, 37 sessional professors and other employees could reach up to \$4 million;
 - b) The annual upkeep of its buildings on the Leased Lands of at least \$400,000; and
 - c) The substantial costs of transitioning the administration, email addresses and related mechanics of being a fully independent university.

34. All of the above expenses would have to be paid without USudbury receiving any revenue from Grants or Tuitions, all of which Laurentian would keep.
35. By disclaiming the Agreements, Laurentian would put itself in a position to keep 100% of all student revenues without making any allocation of those revenues to USudbury.
36. Laurentian would have also put itself in a position to now give courses directly to students who would have otherwise taken these courses from USudbury. A continued Federation Relationship where students and revenues were shared would be lost between the two universities, leaving Laurentian to keep all revenues and all students to the complete exclusion and detriment of USudbury.
37. In its process, Laurentian is making it very difficult, if not harmful, for USudbury to continue to function on the same campus, while creating new problems for itself. Laurentian is likely to suffer more, not less financial harm from the Proposed Disclaimer.
38. By proposing to disclaim the Agreements, Laurentian would effectively be:
 - a) causing financial hardship to USudbury as an operating teaching university as at May 1, 2021;
 - b) putting itself in a position under the Lease to take over ownership of the Buildings that USudbury paid many millions of dollars to build and maintain;

- c) taking students who would have otherwise taken courses from USudbury; and
- d) saddling USudbury with the costs of the termination of its employees estimated to be \$4 million,

all while Laurentian would appropriate 100% of all student revenues from Tuition and Grants.

- 39. Under the Lease, on termination, both Laurentian and USudbury have the right to purchase the Buildings. However, the Lease gives Laurentian the unilateral right to elect to treat it as being terminated or not. Laurentian can unilaterally trigger its option when the Proposed Disclaimer becomes effective, leaving USudbury with no students, no revenue and no Buildings. By attempting to put itself in this position in the context of the Federation Arrangement, Laurentian is not acting in good faith.
- 40. The Lease cannot be disclaimed under section 32 of the CCAA. Laurentian has not included the Lease in the Proposed Disclaimer.
- 41. It is an underlying fundamental principle of the Federation Relationship that it be perpetual. The Financial Distribution Notice can be amended or revised based on a formula that ensures Laurentian does not suffer losses from its continued operation. USudbury relied on the perpetual continuation of the Federation Relationship when entering into it. Laurentian is not acting in good faith in connection with the Proposed Disclaimers or the Agreements and this Court should not permit the Agreements to be disclaimed.

Likely Significant Financial Hardship to Sudbury

42. USudbury spent in excess of \$5 million in constructing the buildings on the Leased Lands. It costs approximately \$400,000 a year to keep the buildings in operation, not including any major repairs or capital expenditures.
43. USudbury currently employs 13 full time professors and 37 sessional professors. These jobs will be lost if the Proposed Disclaimer is permitted.
44. In the event that the Federation Agreement is terminated, USudbury will be forced to terminate the employment of all of these persons, at an approximate aggregate cost of more than \$4 Million, including termination and severance pay.
45. The effect of the Proposed Disclaimers, in the context of the Federation Arrangement, will be that USudbury will cease as an operating university, with triggered losses and damages of over \$5 million, including lost revenue from Tuition and Grants.

Proposed Disclaimer Not Likely to Increase the Possibility of a Viable Plan

46. USudbury and the other federated universities have a unique commonality of interest sufficient for them to be put into their own separate class for voting purposes. Their combined claims for damages will be substantially higher by millions of dollars if their respective agreements are disclaimed, the result of which will be that a viable plan that will be accepted by all classes of creditors is less, not more likely, to occur if the Proposed Disclaimer is

permitted. USudbury will be seeking to have the federated universities put into one class for voting purposes and will vote against any plan that includes the disclaimer of the Agreements without its consent.

Other grounds:

47. Section 32 of the CCAA;
48. Sections 1 and 5 of the *French Language Services Act*, SRO 1990, c F.32;
49. Designation of Public Service Agencies Regulation, O. Reg. 398/93;
50. *An Act to Incorporate Laurentian University of Sudbury*, S.O. 1960, c. 151 C. 154 4(c);
51. *An Act to Incorporate Sacred Heart College of Sudbury*, chapter 131 of the Statutes of Ontario 1914, amended by *An Act respecting Sacre Heart College of Sudbury*, chapter 103 of the Statutes of Ontario 1923;
52. *The University of Sudbury Act, 1957*;
53. *The University of Sudbury Act, 1960*;
54. Such further and other grounds as this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

55. The affidavit of Pierre Riopel, sworn April 14, 2021, and the exhibits thereto;
56. Dossier de motion de L'Assemblée de la francophonie de l'Ontario, dated March 31, 2021, including all accompanying affidavits in the said motion record;

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

April 14, 2021

SHEPPARD & CLAUDE

Law Offices
202-1173 Cyrville Road
Ottawa ON K1J 7S6
T. : 613- 748-3333
F. : 613- 748-1599

André Claude (LSO No. 27596J)

Tel: 613-748-3333, ext. 7
aclaude@sheppardclaud.ca
Lawyers for University of
Sudbury

TO: See attached Service List

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

**SERVICE LIST
(as at April 5, 2021)**

THORNTON GROUT FINNIGAN LLP 100 Wellington St. West, Suite 3200 TD West Tower, Toronto-Dominion Centre Toronto, ON M5K 1K7 D.J. Miller Tel: 416-304-0559 Email: djmiller@tgf.ca Mitchell W. Grossell Tel: 416-304-7978 Email: mgrossell@tgf.ca Andrew Hanrahan Tel: 416-304-7974 Email: ahanrahan@tgf.ca Derek Harland Tel: 416-304-1127 Email: dkharland@tgf.ca Lawyers for the Applicant	ERNST & YOUNG INC. 100 Adelaide Street West EY Tower Toronto, ON M5H 0B3 Sharon Hamilton Tel: 416-943-2153 Email: sharon.s.hamilton@ca.ey.com Michael Nathaniel Tel: 416-932-5837 Email: michael.nathaniel@ca.ey.com Court-appointed Monitor of the Applicant
--	--

STIKEMAN ELLIOTT LLP 5300 Commerce Court West 199 Bay Street Toronto, ON M5L 1B9 Ashley Taylor Tel: 416-869-5236 Email: ataylor@stikeman.com Elizabeth Pillon Tel: 416-869-5623 Email: lpillon@stikeman.com Zev Smith Tel: 416-869-5260 Email: zsmith@stikeman.com Ben Muller Tel: 416-869-5543 Email: bmuller@stikeman.com Lawyers for the Monitor	LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP 130 Adelaide Street West, Suite 2600 Toronto, ON M5H 3P5 Peter J. Osborne Tel: 416-865-3094 Email: posborne@litigate.com David Salter Tel: 416-649-1818 Email: dsalter@litigate.com Lawyers for the Board of Governors of Laurentian University of Sudbury
MINISTRY OF THE ATTORNEY GENERAL McMurtry-Scott Building 720 Bay Street, 11th floor Toronto, ON M7A 2S9 Michelle Pottruff Tel: 416-528-1235 Email: michelle.pottruff@ontario.ca Lawyer for the Ministry of Colleges and Universities	HICKS MORLEY LLP 77 King Street West 39th Floor Toronto, ON M5K 1K8 Michael J. Kennedy Tel: 416-864-7305 Email: michael-kennedy@hicksmorley.com Labour Counsel to the Applicant

FOGLER, RUBINOFF LLP 77 King Street West, Suite 3000 Toronto, ON M5K 1G8 Martin R. Kaplan Tel: 416-941-8822 Email: mkaplan@foglers.com Vern W. DaRe Tel: 416-941-8842 Email: vdare@foglers.com Joseph Fried Tel: 416-941-8836 Email: jfried@foglers.com Lawyers for the DIP Lender, Firm Capital Mortgage Fund Inc.	BLAKE, CASSELS & GRAYDON LLP 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9 Pamela L.J. Huff Tel: 416-863-2958 Email: pamela.huff@blakes.com Aryo Shalviri Tel: 416-863-2962 Email: aryo.shalviri@blakes.com Jules Monteyne Tel: 416-863-5256 Email: jules.monteyne@blakes.com Lawyers for Royal Bank of Canada
FASKEN MARTINEAU DUMOULIN LLP Bay-Adelaide Centre 333 Bay Street, Suite 2400 P.O. Box 20 Toronto, ON M5H 2T6 Stuart Brotman Tel: 416-865-5419 Email: sbrotman@fasken.com Dylan Chochla Tel: 416-868-3425 Email: dchochla@fasken.com Mitch Stephenson Tel: 416-868-3502 Email: mstephenson@fasken.com Lawyers for Toronto-Dominion Bank	CHAITONS LLP 5000 Yonge Street, 10th Floor Toronto, ON M2N 7E9 George Benchetrit Tel: 416-218-1141 Email: george@chaitons.com Gary Feldman Tel: 416-218-1130 Email: gary@chaitons.com Lawyers for Bank of Montreal

CAISSE POPULAIRE VOYAGEURS INC. 40 Elm Street, Unit 166 Sudbury, ON P3C 1S8 Richard Dupuis, Director Tel: 705-525-2373 Email: richard.u.dupuis@desjardins.com	ATTORNEY GENERAL OF CANADA Department of Justice Ontario Regional Office The Exchange Tower 130 King Street West Suite 3400, Box 36 Toronto, ON M5X 1K6 Diane Winters Tel: 647-256-7459 Email: diane.winters@justice.gc.ca Lawyer for Canada Revenue Agency including Charities Directorate
RYDER WRIGHT BLAIR & HOLMES LLP 333 Adelaide Street West, 3rd Floor Toronto, ON M5V 1R5 David Wright Tel: 416-340-9070 Ext. 237 Email: dwright@rwbh.ca Labour Counsel for Laurentian University Faculty Association (LUFA)	GOLDBLATT PARTNERS LLP 20 Dundas Street West, #1039 Toronto, ON M5G 2C2 Clio Godkewitsch Tel: 416-979-4059 Email: cgodkewitsch@goldblattpartners.com Insolvency Counsel for LUFA
	Susan Philpott Tel: 416-979-6417 Email: sphilpott@goldblattpartners.com Charles Sinclair Tel: 416-979-4234 Email: csinclair@goldblattpartners.com Insolvency Counsel for LUFA and lawyers for Ontario Public Service Employees Union (OPSEU), Local 667

WRIGHT HENRY LLP 200 Wellington Street West, Suite 602 Toronto, ON M5V 3C7 Tracey Henry Tel: 416-306-8275 Email: thenry@wrighthenry.ca Michael D. Wright Tel: 416-306-8270 Email: mwright@wrighthenry.ca Danielle Stampley Tel: 416-306-8272 Email: dstampley@wrighthenry.ca Brendan Scott Tel: 416-306-8277 Email: bscott@wrighthenry.ca Lawyers for Laurentian University Staff Union (LUSU)	MCMILLAN LLP Brookfield Place 181 Bay Street, Suite 4400 Toronto ON M5J 2T3 Tushara Weerasooriya Tel: 416-865-7890 Email: tushara.weerasooriya@mcmillan.ca Stephen Brown-Okruhlik Tel: 416-865-7043 Email: stephen.brown-okruhlik@mcmillan.ca Matthew DeAmorim Tel: 416-945-8012 Email: matthew.deamorim@mcmillan.ca Lawyers for St. Joseph's Health Centre of Sudbury and St. Joseph's Continuing Care Centre of Sudbury
	Wael Rostom Tel: 416-865-7790 Email: wael.rostom@mcmillan.ca Peter Giddens Tel: 416-307-4042 Email: peter.giddens@mcmillan.ca Guneev Bhinder Tel: 416-307-4067 Email: guneev.bhinder@mcmillan.ca Lawyers for Canada Foundation for Innovation

DELL FINANCIAL SERVICES CANADA LIMITED 155 Gordon Baker Road, Suite 501 North York, ON M2H 3N5 Gregory J. Segal, Legal Counsel Tel: 416-758-3316 Email: gregory_segal@dell.com	KOSKIE MINSKY LLP 20 Queen Street West Suite 900, Box 52 Toronto, ON M5H 3R3 Murray Gold Tel: 416-595-2085 Email: mgold@kmlaw.ca James Harnum Tel: 416-542-6285 Email: jharnum@kmlaw.ca Lawyers for Ontario Confederation of University Faculty Associations
LENOVO FINANCIAL SERVICES 5035 South Service Road Burlington, ON L7R 4C8 Randy Poulton, Regional Leasing Manager Email: customerservice@lenovofs.ca	DAVIES WARD PHILLIPS & VINEBERG LLP 155 Wellington Street West 40th Floor Toronto, ON M5V 3J7 Natasha MacParland Tel: 416-863-5567 Email: nmacparland@dwpv.com Natalie Renner Tel: 416-367-7489 Email: nrenner@dwpv.com Lender Counsel to the Applicant

BORDEN LADNER GERVAIS LLP

Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 3400
Toronto, ON M5H 4E3

Alex MacFarlane

Tel: 416-367-6305
Email: amacfarlane@blg.com

Lydia Wakulowsky

Tel: 416-367-6207
Email: lwakulowsky@blg.com

Charlotte Chien

Tel: 416-367-7267
Email: cchien@blg.com

Lawyers for Northern Ontario School of
Medicine

James W. MacLellan

Tel: 416-367-6592
Email: jmaclellan@blg.com

Lawyer for Zurich Insurance Company Ltd.

DENTONS CANADA LLP

77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

Kenneth Kraft

Tel: 416-863-4374
Email: kenneth.kraft@dentons.com

Daniel Loberto

Tel: 416-863-4760
Email: daniel.loberto@dentons.com

Lawyers for Queen's University

SHEPPARD & CLAUDE 202-1173 Cyrville Road Ottawa, ON K1J 7S6 André Claude Tel: 613-748-3333 Email: aclaude@sheppardclaud.ca Lawyer for University of Sudbury	CASSELS BROCK & BLACKWELL LLP 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2 Joseph Bellissimo Tel: 416-860-6572 Email: jbello@casells.com Jed Blackburn Tel: 416-860-6725 Email: jblackburn@casells.com Natalie Levine Tel: 416-860-6568 Email: nlevine@casells.com Sophie Moher Tel: 416-860-2903 Email: smoher@casells.com Lawyers for Huntington University
SUDBURY NEUTRINO OBSERVATORY LABORATORY Creighton Mine #9 1039 Regional Road 24 Lively, ON P3Y 1N2 Tel: (705) 692-7000 Nigel Smith, Executive Director Email: n.j.t.smith@snolab.ca	MINING INNOVATION REHABILITATION AND APPLIED RESEARCH CORPORATION Cliff Fielding Building, Room CF203 935 Ramsey Lake Road Sudbury, ON P3E 2C6 Tel: (705) 675-1151 Jennifer Abols, President Email: jabols@mirarco.org

CENTRE FOR EXCELLENCE IN MINING INNOVATION 105 Elm Street, Unit A Sudbury, ON P3C 1T3 Tel: (705) 673-6568 Douglas Morrison, President Email: dmorrison@cemi.ca	BAKER & COMPANY 130 Adelaide Street West, Suite 3300 Toronto, ON M5H 3P5 Mark G. Baker Tel: 416-777-0100 Email: mbaker@bakerlawyers.com Andre Luzhetskyy Tel: 416-777-0100 Email: aluzhetskyy@bakerlawyers.com Lawyers for Laurentian University Students' General Association
INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO 2 Bloor Street East, Suite 1400 Toronto, ON M4W 1A8 Linda Hsiao-Chia Chen, Legal Counsel Tel: 416-326-3333 Email: linda.chen@ipc.on.ca	CORFAB COMPANY LIMITED 1360 Kelly Lake Road Sudbury, ON P3E 5P4 John Corsi, President Tel: 705-522-9096 Email: jcorsi@jcorsi.com
F&M CAULKING LIMITED 10 Kenmore Avenue, Unit #1 Stoney Creek, ON L8E 5N1 Jeffrey Lucato, Manager Tel: 905-643-8085 Email: jlucato@fmcl.ca	ACCEL ELECTRICAL CONTRACTORS LIMITED 100 Haist Avenue Woodbridge, ON L4L 5V4 George Caufin, President Tel: 905-850-8668 Email: georgecaufin@accelectric.com

BIANCHI PRESTA LLP 9100 Jane Street Building A, 3rd Floor Vaughan, ON L4K 0A4 Domenic Presta Tel: 905-738-1078 Ext. 2223 Email: dpresta@bianchipresta.com Lawyer for 1033803 Ontario Inc. o/a Forma-Con Construction and Forma Finishing and B.B.M. Excavation Company Limited	PARISÉ LAW OFFICE 58 Lisgar Street, Suite 200 Sudbury, ON P3E 3L7 Réjean Parisé Tel: 705-674-4042 Email: pariselaw@unitz.ca Lawyer for Interpaving Ltd.
DEDIANA, ELORANTA & LONGSTREET 219 Pine Street Sudbury, ON P3C 1X4 James Longstreet Tel: 705-674-4289 Email: spisani@bellnet.ca Lawyer for Sandro Steel Fabrication Ltd.	CANADIAN UNION OF PUBLIC EMPLOYEES 1378 Triole St Ottawa, ON K1B 3M4 Miriam Martin, In-House Counsel Tel: 613-212-4325 Email: mmartin@cupe.ca
MINDEN GROSS LLP 2200-145 King Street West Toronto, ON M5H 4G2 Rachel Moses Tel: 416-369-4137 Email: rmoses@mindengross.com Lawyer for Royal Trust Corporation of Canada	MINISTRY OF INFRASTRUCTURE 777 Bay Street, 5th Floor Toronto, ON M5G 2C8 Jennifer Bell, Chief of Staff Tel: 416-327-4412 Email: jennifer.bell3@ontario.ca

SILVIA LAROCQUE 905 Cambrian Heights, Unit 36 Sudbury, ON P3C5R5 Tel: 705-675-1151 ext. 3804 Email: kennethlarocque@hotmail.com	ZAYO CANADA INC. 625, Rue Belmont Montreal, QC H3B 2M1 Derek Wilk, Associate General Counsel Tel: 416-644-6705 Email: dwilk@zayo.com
MINISTRY OF FINANCE 777 Bay Street College Park 11 th Floor Toronto, ON M5G 2C8 Anthony R. Golding, Senior Counsel Tel: 416-938-5069 Email: anthony.golding@ontario.ca	CANADIAN UNIVERSITIES RECIPROCAL INSURANCE EXCHANGE 5500 North Service Road #901 Burlington, ON L7L 6W6 Stewart Roberts, Claims Manager Email: sroberts@curie.org Jillian Jarvis, Claims Examiner Email: jjarvis@curie.org
NATURAL SCIENCES AND ENGINEERING RESEARCH COUNCIL OF CANADA 350 Albert Street, 16 th Floor Ottawa, ON K1A 1H5 Patricia Sauvé-McCuan, CFO and Vice-President Email: patricia.sauve-mccuan@nserc-crsng.gc.ca	SOCIAL SCIENCES AND HUMANITIES RESEARCH COUNCIL 350 Albert Street P.O. Box 1610 Ottawa, ON K1P 6G4 Patricia Sauvé-McCuan, CFO and Vice-President Email: patricia.sauve-mccuan@sshrc-crsh.gc.ca
CANADIAN INSTITUTES OF HEALTH RESEARCH 160 Elgin Street, 10 th Floor Address Locator 4809A Ottawa, ON K1A 0W9 Anita Ploj, Senior Corporate Advisor Email: anita.ploj@cihr-irsc.gc.ca	CANADA FOUNDATION FOR INNOVATION 55 Metcalfe Street, Suite 1100 Ottawa, ON K1P 6L5 Isabelle Henrie, Vice President Tel: 613-943-1123 Email: isabelle.henrie@innovation.ca

MCKENZIE LAKE LAWYERS 140 Fullarton Street Suite 1800 London, ON N6A 5P2 Michael J. Peerless Tel: 519-667-2644 Email: mike.peerless@mckenzielake.com Emily Assini Tel: 519-672-5666 Ext. 7359 Email: emily.assini@mckenzielake.com Class Counsel for Representative Plaintiff	NORTON ROSE FULBRIGHT CANADA LLP 222 Bay Street, Suit 3000 Toronto, ON M5K 1E7 Evan Cobb Tel: 416-216-1929 Email: evan.cobb@nortonrosefulbright.com Lawyer for Ernst & Young Inc. in its capacity as Monitor of Bondfield Construction Company Limited
ALLAN SNELLING LLP 340 March Road, Suite 600 Ottawa, ON K2K 2E4 David Contant Tel: 613-270-8600 Email: dcontant@compellingcounsel.com Lawyer for Cy Rheault Construction Limited	HUGH CONNELLY LAW 92 CentrepoinTE Drive Nepean, ON K2G 6B1 Hugh Connelly Tel: 613-723-7007 Email: info@hughconnellylaw.com Lawyer for Lindsay Lotan
HAMEED LAW 43 Florence Street Ottawa, ON K2P 0W6 Yavar Hameed Tel: 613-232-2688 Email: yhameed@hameedlaw.ca Lawyer for Issyakha Camara	DEVRY SMITH FRANK LLP 95 Barber Greene Road, Suite 100 Toronto, ON M5C 3E9 David Schell Tel: 416-446-5096 Email: david.schell@devrylaw.ca Lawyer for Zhiju Zhu

DIAMOND AND DIAMOND LAWYERS 255 Consumers Road, 5th Floor Toronto, ON M2J 1R4 Simon Diamond Tel: 1-800-567-4878 Ext. 207 Email: simon@diamondlaw.ca Lawyer for Petra Spencer	LAMER STICKLAND LLP 101 Worthington Street East North Bay, ON P1B 8G6 Geoffrey Larmer Tel: 705-478-8100 Email: larmer@larmerstickland.com Lawyer for Nina Kucheran and Mary-Catherine Kucheran
CITY OF GREATER SUDBURY P.O. Box 5000, Station ‘A’ 200 Brady Street Sudbury, ON P3A 5P3 Carolyn A. Dawe, Assistant City Solicitor Tel: 705-674-4455 Ext. 4545 Email: carolyn.dawe@greatersudbury.ca	MARSH CANADA LIMITED 120 Bremner Boulevard, Suite 800 Toronto, ON M5J 0A8 Murray Davidson, Senior Vice-President Tel: 416-349-4354 Email: murray.s.davidson@marsh.com
MARKEL CANADA LIMITED 200 Wellington Street West, Suite 400 Toronto, ON M5V 3C7 Maeve O’Malley, Senior Claims Specialist Tel: 416-601-2477 Email: maeve.omalley@markel.com	DOOLEY LUCENTI LLP 10 Checkley Street Barrie, ON L4N 1W1 Scott R. Fairley Tel: 705-792-7963 Email: sfairley@dllaw.ca Lawyer for Cladco Limited

GOODMANS LLP Bay Adelaide Centre 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7 Gale Rubenstein Tel: 416-597-4148 Email: grubenstein@goodmans.ca Bradley Wiffen Tel: 416-597-4208 Email: bwiffen@goodmans.ca Michael Wilson Tel: 416-597-4130 Email: mwilson@goodmans.ca Lawyers for Financial Services Regulatory Authority	MCKENZIE LAKE LAWYERS LLP 140 Fullarton Street, Suite 1800 London, ON N6A 5P2 Michael J. Peerless Tel: 519-667-2644 Email: mike.peerless@mckenzielake.com Matthew D. Baer Tel: 519-667-2646 Email: matt.baer@mckenzielake.com Emily Assini Tel: 519-672-5666 Email: emily.assini@mckenzielake.com Lawyers for Sarah Connell
ATTORNEY GENERAL FOR ONTARIO Crown Law Office - Civil 720 Bay Street, 8th Floor Toronto, ON M7A 2S9 Shahana Kar Tel: 416-571-2100 Email: shahana.kar@ontario.ca Jonathan Sydor Tel: 416-689-8279 Email: jonathan.sydor@ontario.ca Lawyer for Her Majesty the Queen in Right of Ontario	KSV RESTRUCTURING INC. 150 King Street West, Suite 2308 Toronto, ON M5H 1J9 David Sieradzki Tel: 416-428-7211 Email: dsieradzki@ksvadvisory.com Bobby Kofman Tel: 416-282-6228 Email: bkofman@ksvadvisory.com Financial advisors for LUFA

CANADIAN ASSOCIATION OF UNIVERSITY TEACHERS 2705, promenade Queensview Drive Ottawa, ON K2B 8K2 Sarah Godwin Tel: 613-820-2270 Email: godwin@caut.ca	THORNELOE UNIVERSITY 935 Ramsey Lake Road Sudbury, ON P3E 2C6 Tel: (705) 673-1730 Dr. John Gibaut, President Email: president@thorneloe.ca
GOWLING WLG (CANADA) LLP 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, ON M5X 1G5 Virginie Gauthier Tel: 416-844-5391 Email: virginie.gauthier@gowlingwlg.com Thomas Gertner Tel: 416-369-4618 Email: thomas.gertner@gowlingwlg.com Lawyers for Lakehead University	XEROX CANADA LTD. 20 York Mills Road, Suite 500 Toronto, ON M2P 2C2 Stephanie Grace, Senior Legal Counsel Tel: 416-250-3917 Email: stephanie.grace@xerox.com
POWER LAW LLP 130 Albert Street, #1103 Ottawa, ON K1P 5G4 Francis Poulin Tel: 613-702-5569 Email: fpoulin@powerlaw.ca Charlotte Servant-L'Heureux Tel: N/A Email: cservantlheureux@powerlaw.ca Lawyers for the Assemblée de la francophonie de l'Ontario	AIRD & BERLIS LLP Brookfield Place 181 Bay Street, Suite 1800 Toronto, Ontario M5J 2T9 Steven L. Graff Tel: 416-865-7726 Email: sgraff@airdberlis.com Jonathan Yantzi Tel: 416-865-4733 Email: jyantzi@airdberlis.com Lawyers for the David Harquail and the Harquail family, The Goodman Family Foundation, Rob McEwen and The Bharti Charitable Foundation

FARBER GROUP INC. 150 York Street, Suite 1600 Toronto, ON M5H 3S5 Allan Nackan Tel: 416-496-3732 Email: anackan@farbergroup.com Hylton Levy Tel: 416-496-3070 Email: hlevy@farbergroup.com Financial advisors for Thorneloe University	WEISZ FELL KOUR LLP 100 King Street West, Suite 5600 Toronto, ON M5X 1C9 Pat Corney Tel: 416-613-8287 Email: pcorney@wfkllaw.ca Lawyer for Weeneebayko Area Health Authority
UNITED STEELWORKERS Canadian National Office, legal Department 234 Eglinton Avenue East, 8th Floor Toronto, ON M4P 1K7 Robert Healey Tel: 416-544-5986 Email: rhealey@usw.ca Lawyers for the Respondent, United Steel, Paper and Forestry, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers)	OSLER, HOSKIN & HARCOURT LLP 1000 De La Gauchetière Street West, Suite 2100 Montréal, QC H3B 4W5 Julien Morissette Tel: 514-904-5818 Email: jmorissette@osler.com Lawyer for Canadian Research Knowledge Network

E-Service List

djmiller@tgf.ca; mgrossell@tgf.ca; धारलंद@tgf.ca; ahanrahan@tgf.ca;
sharon.s.hamilton@ca.ey.com; michael.nathaniel@ca.ey.com; posborne@litigate.com;
dsalter@litigate.com; ataylor@stikeman.com; lpillon@stikeman.com; bmuller@stikeman.com;
michael-kennedy@hicksmorley.com; nmacparland@dwpv.com; nrenner@dwpv.com;
pamela.huff@blakes.com; aryo.shalviri@blakes.com; sbrotman@fasken.com;
dchochla@fasken.com; mstephenson@fasken.com; george@chaitons.com; gary@chaitons.com;
dwright@rwbh.ca; sphilpott@goldblattpartners.com; csinclair@goldblattpartners.com;
thenry@wrighthenry.ca; diane.winters@justice.gc.ca; mkaplan@foglers.com;
vdare@foglers.com; jfried@foglers.com; richard.u.dupuis@desjardins.com;
gregory_segal@dell.com; jbellissimo@cassels.com; jblackburn@cassels.com;
smoher@cassels.com; n.j.t.smith@snolab.ca; jabols@mirarco.org; dmorrison@cemi.ca;
jcorsi@jcorsi.com; jlucato@fmcl.ca; georgecaufin@accelectric.com;
dpresta@bianchipresta.com; pariselaw@unitz.ca; spisani@bellnet.ca; jennifer.bell3@ontario.ca;
sroberts@curie.org; jjarvis@curie.org; carolyn.dawe@greatersudbury.ca;
mike.peerless@mckenzielake.com; emily.assini@mckenzielake.com;
info@hughconnellylaw.com; yhameed@hameedlaw.ca; simon@diamondlaw.ca;
murray.s.davidson@marsh.com; maeve.omalley@markel.com;
evan.cobb@nortonrosefulbright.com; mwright@wrighthenry.ca; bscott@wrighthenry.ca;
amacfarlane@blg.com; lwakulowsky@blg.com; sfairley@dllaw.ca;
michelle.pottruff@ontario.ca; mmartin@cupe.ca; grubenstein@goodmans.ca;
bwiffen@goodmans.ca; mwilson@goodmans.ca; dcontant@compellingcounsel.com;
david.schell@devrylaw.ca; shahana.kar@ontario.ca; customerservice@lenovofs.ca;
tushara.weerasooriya@mcmillan.ca; stephen.brown-okruhlik@mcmillan.ca;
matthew.deamorim@mcmillan.ca; dwilk@zayo.com; dsieradzki@ksvadvisory.com;
bkofman@ksvadvisory.com; mgold@kmlaw.ca; jharnum@kmlaw.ca;
jules.monteyne@blakes.com; anthony.golding@ontario.ca; larmer@larmerstickland.com;
aclaude@sheppardclaude.ca; president@thorneloe.ca; kenneth.kraft@dentons.com;
daniel.loberto@dentons.com; linda.chen@ipc.on.ca; isabelle.henrie@innovation.ca;
wael.rostom@mcmillan.ca; peter.giddens@mcmillan.ca; guneev.bhinder@mcmillan.ca;
ahatnay@kmlaw.ca; sedmonds@kmlaw.ca; jmaclellan@blg.com;
mike.peerless@mckenzielake.com; matt.baer@mckenzielake.com;
emily.assini@mckenzielake.com; cgodkewitsch@goldblattpartners.com;
jonathan.sydor@ontario.ca; kennethlarocque@hotmail.com; mbaker@bakerlawyers.com;
aluzhetskyy@bakerlawyers.com; anita.ploj@cihr-irsc.gc.ca; godwin@caut.ca;
nlevine@cassels.com; virginie.gauthier@gowlingwlg.com; thomas.gertner@gowlingwlg.com;
rmoses@mindengross.com; stephanie.grace@xerox.com; fpoulin@powerlaw.ca;
cservantlheureux@powerlaw.ca; dstampley@wrighthenry.ca; patricia.sauve-mccuan@nserc-crsng.gc.ca;
patricia.sauve-mccuan@sshrc-crsh.gc.ca; sgraff@airdberlis.com;
hyantzi@airdberlis.com; anackan@farberggroup.com; hlevy@farberggroup.com;
pcorney@wfkllaw.ca; rhealey@usw.ca; zsmith@stikeman.com; cchien@blg.com;
jmorissette@osler.com

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**

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

Proceedings commenced at Toronto

NOTICE OF MOTION

SHEPPARD & CLAUDE

Law Offices
202-1173 Cyrville Road
Ottawa, ON K1J 7S6

T. 613-748-3333

F. 613-748-1599

André Claude (LSO #27596J)

aclaude@sheppardclaud.ca

Lawyers for the Moving Party
University of Sudbury

**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**

Applicant

**AFFIDAVIT OF PIERRE RIOPEL
(sworn April 14, 2021)**

I, Pierre Riopel, of the Municipalité of Rivière-des-Français, in the Province of Ontario,
MAKE OATH AND SAY:

1. I am the Chair of the Board of Regents at the University of Sudbury ("**USudbury**"), and as such have personal knowledge of the matters hereinafter deposed to. Where I do not have personal knowledge of the facts set out in this affidavit, I state the source of that information and verily believe the information to be true.
2. In preparing this affidavit, I have reviewed the affidavit of Robert Haché sworn January 30th, 2021 (the "**Haché Affidavit**") in support of the Application of Laurentian University of Sudbury ("**Laurentian**") under the *Companies' Creditors Arrangements Act* "**CCAA**").

History of the Federated Relationship Between USudbury and Laurentian

3. USudbury was founded as Collège du Sacré-Coeur in 1913. On April 20, 1914, the Ontario legislature adopted the *Charte du Collège du Sacré-Coeur*. In 1957, the Collège du Sacré-Coeur changed its name to University of Sudbury.

4. Under its enabling statute, Sudbury was bestowed with a number of powers, including the power to confer degrees.
5. USudbury is a bilingual and tri-cultural university based in the tradition of its founding francophone Jesuit Fathers. It is committed to promoting the traditions and culture of the Indigenous people. USudbury offers French- and English-language programs and courses in “Culture et Communications” (including journalism and folklore components) (French-language only), Indigenous Studies (founded in 1975), Philosophy and Religious Studies. A number of the French-language courses offered through Laurentian have been provided by USudbury.
6. Besides providing French and English language electives to students enrolled in a program at Laurentian or at another Federated University, USudbury offers students the possibility of adding a minor or minors to a specialized program as well as the possibility of earning a language certificate as a complement to any degree. The transdisciplinary skills (critical, analytical and creative thinking, problem-solving, adaptation, communications and multicultural awareness) and knowledge acquired through the courses taught at USudbury are invaluable to students in their quest for future employment, career development and everyday life.
7. Laurentian owes its existence to the USudbury. In 1960, USudbury, the Anglican Diocese of Algoma, and the United Church Presbytery petitioned the Ontario government to establish Laurentian as a non-denominational, bilingual university to serve the Sudbury community. Laurentian’s enabling legislation specifically contemplates that Laurentian would enter into federation agreements with church-related universities or colleges and that credits from such institutions would be treated as if they were given in Laurentian’s “University College.”¹

¹ *An Act to Incorporate Laurentian University of Sudbury*, S.O. 1960, c. 151 C. 154 4(c).

8. One of the driving factors for the creation of Laurentian was to ensure that it would become a beacon for the francophone community in offering programs and courses in French to meet its needs, and that this mission would always remain a priority for the newly created university. Laurentian was incorporated in 1960. It is a non-share capital corporation created by *An Act to Incorporate Laurentian University of Sudbury* S.O. 1960, c. 151 C. 154, operating as a publicly funded, bilingual university in Sudbury, Ontario. It is a registered charity under the *Income Tax Act*.
9. From inception, Laurentian's incorporating statute contemplates that it would enter into federation agreements with other universities.
10. In 1960, the year it was incorporated, Laurentian entered into a Federation Agreement with Sudbury (the "**Federation Agreement**"). The Federation Agreement includes the declarations of Laurentian and Sudbury that they each:

[E]xpress the firm hope and conviction that the relationship between the Universities established by this agreement will be a permanent one and that they and the other universities and colleges which become federated or affiliated with Laurentian University will work together to fulfil the objects of the Act of Incorporation of Laurentian University...The Parties fully realize that the success of the task which they have set themselves will depend more on the mutual understanding, goodwill and cooperation between the institutions now or hereafter associate together in Laurentian University, than upon any formal agreements.

A copy of the Federation Agreement is attached as **Exhibit "A"**.

11. As part of the federation arrangement between Laurentian and USudbury, the parties entered into a perpetual lease dated April 9, 1965 for an initial term of 99 years (the "**Lease**"), a copy of which is attached as **Exhibit "B"**.
12. Consistent with the parties' stated intention for a permanent and perpetual federated relationship (the "**Federation Relationship**"), the Lease contained an option for USudbury to renew for another 99 years, with the options to renew and continue on each renewal.

13. The Federation Agreement was intended to be permanent and perpetual. There is no provision for its termination, and the parties never intended for there to be the possibility of a unilateral termination of the Federation Relationship.
14. Despite the contemplated permanency of the Federation Relationship, Laurentian seeks to terminate it by its Notice to Disclaim or Resiliate an Agreement dated April 1, 2021 (the “**Proposed Disclaimer**”) in which the Federation Agreement and a Financial Distribution Notice between Laurentian and USudbury dated May 1, 2019, amending the Proposed Grant Distribution and Services Fees agreement between Laurentian, USudbury, Thorneloe University, and Huntington University dated November 10, 1993 (the “**Financial Distribution Notice**”) are sought to be disclaimed.

A copy of the Financial Distribution Notice is attached as **Exhibit “C”**.

15. The Federation Relationship is reflected in the Federation Agreement, the Financial Distribution Notice and the Lease, the terms of all of which are interdependent and interlocked. USudbury expected that the Federation Relationship would be permanent and relied on it being so when it entered into the Federation Agreement and the Lease.
16. The Federation Relationship required USudbury to:
 - a) suspend its right to confer diplomas on students in favour of Laurentian, except for diplomas in Theology;
 - b) give up its right to receive money directly from the Ministry of Colleges and Universities for students (“**Grants**”);
 - c) give up its right to receive tuition funds directly from students (“**Tuitions**”);

- d) pay out of its own funds for the construction and operating costs of buildings and student housing (the “**Buildings**”) on lands under the Lease (the “**Leased Lands**”); and
- e) maintain and pay the full costs of its professors and teaching staff for all courses it offers.

17. The Financial Distribution Notice states, as its underlying principle that:

...none of Laurentian University or any of the Federated Universities will subsidize the operations or services of another, and each will be responsible for covering its own costs. The funding mechanism in place at any given time will be consistent with the funding mechanism between the Province and Laurentian University.

...

Each Federated University employs its own staff and is, and will continue to be, responsible for its own financial affairs. Laurentian University is the principal employer for administering pension plan and benefits and provides access to these employee benefits to each of the Federated Universities, with each Federated University bearing the sole financial responsibility for all contributions and funding for such employee benefits for its own staff.

18. USudbury has two buildings on the Leased Lands, a main building for administration and classrooms, and a residence, which were constructed by USudbury at its cost of more than **\$5M** (the “**Buildings**”).

19. Section 6 of the Lease provides that:

... this lease and any renewal thereof shall at the option of [Laurentian] cease and be void if at any time during the term hereby granted [USudbury] shall withdraw from federation with [Laurentian] or if the lands and premises cease for a period of three years to be used by [USudbury] for educational instruction at a university level, or if [USudbury] shall cease for a period of three years to operate as a University. In the event of such termination [USudbury] shall have the right to purchase the demised lands forthwith...²

20. In the event of any of the foregoing, USudbury has the right to purchase the demised lands on which USudbury's building has been constructed at a value to be determined in accordance with the terms set out in the lease. If USudbury does not exercise its right to purchase the demised lands, then Laurentian shall have the option to purchase the USudbury's building at cost minus depreciation (based on a formula set out in the USudbury Lease).

21. Laurentian also entered into federation agreements with University of Thorneloe ("**Thorneloe**") and Huntington University ("**Huntington**") (USudbury, Thorneloe and Huntington, collectively, the "**Federated Universities**").

Lack of Good Faith

22. The Proposed Disclaimer is unfortunately not the first time Laurentian has attempted to unilaterally terminate or materially alter the Federation Agreement.

² USudbury Lease at s 6, Laurentian Mediation Brief at Appendix D.

The 2019 Financial Distribution Notice

23. During the course of their 60-year federation, Laurentian and the Federated Universities entered into a series of agreements to address the allocation of funding and costs of services. The final agreement between the Federated Universities and Laurentian is a Grant Distribution and Service Fees Agreement dated November 10, 1993 (the “**1993 Funding Agreement**”).
24. The 1993 Funding Agreement governed for over 25 years and included a funding formula that detailed, among other things, how (i) Grants and Tuition received by Laurentian would be distributed to the Federated Universities; and (ii) the service fees that would be paid to Laurentian, which were calculated as being a portion of the Grants and Tuitions received by each Federated University.
25. Effective May 1, 2019, Laurentian, without the consent of USudbury or the other Federated Universities, purported to unilaterally revise or replace the 1993 Funding Agreement and the allocation of funding between Laurentian and each of the Federated Universities through the issuance of separate “Notices of Terms of Financial Distribution” to each of the Federated Universities. The most recent of these is the Financial Distribution Notice which is one of the two agreements that Laurentian seeks to disclaim.
26. USudbury was not asked to and did not consent to Laurentian unilaterally revising or replacing the 1993 Funding Agreement through the Financial Distribution Notice or otherwise. By purporting to revise the allocation of revenues on its own, without consultation or discussion with USudbury, Laurentian was not acting within the guiding principles of the Federation Agreement or in good faith.
27. Based on its own proposed formula, Laurentian retains 15% of the Tuition funding per student, releasing only 85% of the funding from Grants and Tuitions to the Federated Universities who actually deliver the courses and programs. Laurentian

receives funding based on the number of students enrolled at the Federated Universities for purposes of the provincial funding formula but does not pay the Federated Universities the full amount for each student, even before an allocation between the Federated Universities and Laurentian applies. The 15% that goes to Laurentian comes “off the top”.

28. The existing funding formula was not forced upon Laurentian by USudbury or the Federated Universities. To the contrary, Laurentian sought to impose it on the Federated Universities. The 2019 revised funding formula reflected Laurentian’s own unilateral assessment of the economic allocation of Grants and Tuition and funding between Laurentian and the Federated Universities.
29. There is no reason that the allocation of revenues from Tuition and Grants cannot be divided in a way that is acceptable to both Laurentian and USudbury and that does not hamper Laurentian financially or create undue hardship to USudbury. If necessary, the Financial Distribution Notice should be revised, by agreement of the parties, not unilaterally disclaimed by Laurentian. The Federation Agreement itself in no way causes any financial obligations on Laurentian that either hinders or hampers it from making a viable plan to its creditors. By seeking to terminate the Agreements rather than attempting to negotiate new terms for financial allocation of revenues and expenses, Laurentian is acting contrary to the principles agreed to and enunciated in the Federation Agreement and in bad faith.

Lease

30. The Lease gives Laurentian the right to elect whether or not to trigger any termination and its right to purchase the Buildings. The Lease was intended to work in parallel with the Federation Agreement so that neither party could withdraw from the Federation Arrangement without the consent of the other. A disclaimer of the Federation Agreement would saddle USudbury with all of the cost of maintaining the Buildings while depriving it of any revenues from Tuitions or Grants, all of which

would be kept by Laurentian, along with Laurentian's unilateral ability to control who owns the land beneath the Buildings.

31. I am advised by André Claude, USudbury's lawyer, and verily believe that the Lease cannot be disclaimed under the CCAA which is likely why Laurentian has not attempted to do so. However, by attempting to disclaim the Agreements and putting itself in a position to keep all revenues and force USudbury to pay the operating costs of the Buildings and put itself in a position to unilaterally determine who will own the Buildings, Laurentian is not acting in good faith in connection with the Lease, the Agreements or the Proposed Disclaimers. The approximate annual cost of maintaining the Buildings is \$400,000, not including any additional repairs or replacements that are required from time to time.

Employees

32. In the 2019/2020 academic year, USudbury had a faculty of 13 full-time professors and 37 sessional professors. USudbury had an average faculty to student ratio of 1:45, an average class size of 14, a Full Student Course Equivalent (full-year) enrolment of 2,228 and individual registrations in all courses of 4,080 students.
33. USudbury has estimated the cost of terminating its employees if the Proposed Disclaimer was permitted to be as high as \$4 million. The teaching faculty is under a collective bargaining agreement and is represented by LUFA. Other employees, also unionized, are under a collective agreement negotiated with UNIFOR.

Laurentian's Insolvency

34. The Haché Affidavit describes low class enrolment as being a factor in its insolvency (para. 12 and following) and suggests that an overhaul and restructuring of the Federation Arrangement must occur to make Laurentian's courses financially sustainable. Under the Federation Agreement, USudbury pays the full costs of teaching any courses it offers and under the Lease it pays for the construction and

operation of the Buildings. Mr. Haché provides no explanation whatsoever as to how the Federation Agreement is causing or materially contributing to Laurentian's courses not being financially unsustainable. The Federation Agreement in no way contributes to Laurentian's current financial woes. On top of its attempt to dissolve the Federation, Laurentian has now announced deep cuts to its programs and course offering, which may resolve some of its problems and create a whole new set of problems. In doing so, Laurentian is striking at the very heart of its obligations towards the Francophone community, and it is striking directly at USudbury's ability to carry-out its obligations towards this same community. In support of this statement, I rely on the Notice of Motion and its supporting materials served and filed by the Assemblée de la francophonie de l'Ontario, which is dated on March 31, 2021.

35. What is obvious from the Haché Affidavit, as the real cause of Laurentian's insolvency, is the debt burden it carries related to capital expenditures and construction, bank lending and disputed grievances, as described in paragraphs 212 to 260. The Federation Arrangement has nothing to do with these expenditures. Mr. Haché does not explain how terminating the Federation Arrangement will result in Laurentian being operationally solvent so long as those other obligations exist.

Lease Rights

36. USudbury intends to continue the Lease in accordance with its terms and will continue to utilize the properties and Buildings for its purposes.
37. Laurentian can only terminate the Lease if USudbury (i) withdraws from the federation with Laurentian; (ii) ceases to use the land for university-level education for three years; or (iii) ceases to operate as a university for three years. USudbury has not had or expressed any intention of withdrawing from the federation with Laurentian, prior to February 1, 2021. To the contrary it is Laurentian that wishes

to terminate the federation against the wishes of USudbury and without the good faith discussions required by the Federation Agreement.

38. Mr. Haché says in paragraph 295 of the Haché Affidavit that Laurentian seeks to establish a “Laurentian 2.0” by, among other things “...terminating the agreements and relationship with the Federated Universities”. By making this statement without discussion or consultation with the Federated Universities, and USudbury in particular, in connection with the Proposed Disclaimer, Laurentian is not acting in good faith in connection with the Agreements or in connection with its actions under the CCAA.

Likely Significant Financial Hardship to USudbury

39. The immediate effect of a termination of the Federation Relationship, effective April 30th, 2021 would be to leave USudbury unable to take the myriad steps needed to convert itself into an independent university. At the same time, USudbury would be required to pay for all of the expenses associated with the Federation Relationship and its termination, including:

- a) The lay-off costs for its employees which could amount to \$4 million; and
- b) The annual upkeep of its buildings on the Leased Lands of approximately \$400,000.

40. In addition, the disclaimer of the Agreements would cause a significant financial loss to USudbury from the future loss of income from Grants and Tuition fees.

Likelihood of Viable Plan not Enhanced by Proposed Disclaimers

41. USudbury desires and intends to continue to operate as a university and provide university-level education whether or not the Court permits the Proposed

Disclaimers. If it is compelled to continue operating in the absence of a Federation Relationship with Laurentian, it will do so without the benefit of the Agreements and the Relationship which commit Laurentian and USudbury to find solutions together to serve the Sudbury and area population.

42. I am advised by our legal counsel, André Claude, and I verily believe, that he wrote to Laurentian's counsel, Ms. D.J. Miller, on April 12, 2021 for the purposes of opening a discussion with Laurentian about the possibility of having French-language programming, services and infrastructure transferred to USudbury, while remaining federated with Laurentian, in an effort to avoid irreparable harm to the Franco-Ontarian community. Laurentian's counsel responded to Mr. Claude's letter on the same day, making clear that Laurentian would not entertain any discussion with USudbury about any such transfer in the course of its restructuring. A copy of these letters are attached hereto as **Exhibit "D"** and **Exhibit "E"** respectively.
43. USudbury needs to go on, regardless, and as a result, Laurentian will risk losing revenue for each student that enrolls for a USudbury course. Given that under the Federation Relationship USudbury only receives a portion of Grant and Tuition funds but has to pay the costs of the Buildings and the full costs of its teaching staff for the courses it provides, Laurentians' financial position will not be bettered but will be worsened by the Proposed Disclaimers.
44. If, despite its desire to continue as an operating university, USudbury is unable to pivot quickly enough in becoming an independent university due to the immensely short time span in which it must take all mechanical and administrative steps to separate itself from the Federated Relationship because of the Proposed Disclaimers, this would cause more than significant financial hardship. USudbury wishes, if at all possible, to arrive at an arrangement with Laurentian with the Federation Agreement and Relationship, to offer all of the French programs and courses. The significance to the Francophone community of ensuring not only the survival but the actual promotion of these programs and courses cannot be overstated. Such an arrangement can be arrived at, or imposed if necessary, within

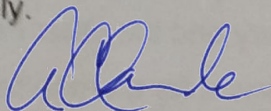
the scope of the Federation. In either scenario, the Proposed Disclaimers and the unilateral termination of the Federation Agreement and Federation Relationship should not be permitted by this Court and may be contrary to the *French Language Services Act*, RSO 1990, c. F. 32, amongst other.

Disclaimer Means Substantially Higher Claims and Creditor Opposition to any Plan

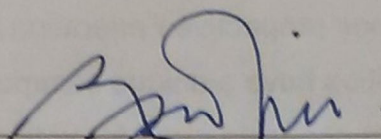
45. Under their respective Federation Agreements, USudbury and the other Federated Universities have a unique commonality of interest sufficient for them to be put into their own separate class for voting purposes. Their combined claims for damages will be substantially higher by millions of dollars if their respective agreements are disclaimed. The result of this is that a viable plan that will be accepted by all classes of creditors is less, not more likely, to occur if the Proposed Disclaimer is permitted.
46. USudbury will be seeking to have the Federated Universities put into one class for voting purposes and will vote against any plan that includes the disclaimer of the Agreements without its consent. The likelihood that Laurentian will be able to file a viable plan acceptable to all classes of creditors is smaller, not greater, if that plan includes the termination of the Federation Arrangement.
47. Laurentian and USudbury currently have integrated IT and email systems, including email currently managed by Laurentian. As Mr. Haché says in paragraph 63 of the Haché Affidavit, “For all intents and purposes, the Federated Universities are integrated into Laurentian...” It is not possible to disentangle USudbury from Laurentian so that USudbury is able to restructure to be able to offer courses and diplomas to students for the next academic semester beginning May 1, 2021. It is likely that the earliest semester USudbury could offer courses for would be September 1, 2021 or January 1, 2022.
48. This affidavit is made in the English language for the sake of expediency.

49. I make this Affidavit in support of the relief set out in the Notice of Motion herein
and for no other or improper purpose.

Sworn remotely by Pierre Riopel in the)
Municipalité of Rivière-des-Français, in)
the province of Ontario, before me in)
the city of Ottawa, in the province of)
Ontario, on April 14, 2021, in)
accordance with O. Reg. 431/20)
Administering Oath or Declaration)
Remotely.)

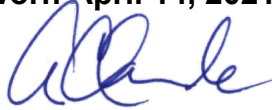


A Commissioner, etc.)



PIERRE RIOPEL

**This is Exhibit "A" to the
Affidavit of Pierre Riopel
sworn April 14, 2021**

A handwritten signature in blue ink, appearing to be 'A. Riopel', is written above a horizontal line.

**A Commissioner for taking
Affidavits.**

DATED 10th SEPTEMBER 1960

LAURENTIAN UNIVERSITY OF SUDBURY

- and -

THE UNIVERSITY OF SUDBURY

A G R E E M E N T

CASSELS, BROCK & KELLEY
255 Bay Street
Toronto 1 Ontario

**This is Exhibit "B" to the
Affidavit of Pierre Riopel
sworn April 14, 2021**

A handwritten signature in blue ink, appearing to be 'A. Riopel', is written above a horizontal line.

**A Commissioner for taking
Affidavits.**

THIS INDENTURE made in triplicate this 9th day of April, 1965, in pursuance of The Short Forms of Leases Act;

B E T W E E N:

LAURENTIAN UNIVERSITY OF SUDBURY,

hereinafter called "the Lessor"

OF THE FIRST PART

- and -

THE UNIVERSITY OF SUDBURY

hereinafter called "the Lessee"

OF THE SECOND PART

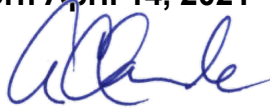
WHEREAS the Lessee has entered into an agreement of federation with the Lessor;

AND WHEREAS the Lessor has agreed to allocate and reserve land within its campus which the Lessee may acquire and upon which it may construct buildings for teaching at the University level, administration, and faculty and students residences, with or without chapels, subject to the prior written approval of the Lessor as to architectural design and upon such arrangements and conditions as to title and tenure as may be agreed upon;

WITNESSETH that in consideration of the premises and in further consideration of the rents, covenants and agreements hereinafter contained on the part of the Lessee to be observed and performed, the Lessor hath demised and leased and by these presents doth demise and lease unto the Lessee

That part of Lot 3 in the First Concession and that part of Lot 3 in the Second Concession of the Township of MaKim in the District of Sudbury and being designated as PART 4 on a plan of survey of record in the office of Land Titles at Sudbury as SR-Plan 525.

**This is Exhibit "C" to the
Affidavit of Pierre Riopel
sworn April 14, 2021**

A handwritten signature in blue ink, appearing to be 'A. Riopel', is written over a horizontal line.

**A Commissioner for taking
Affidavits.**

**LAURENTIAN UNIVERSITY FINANCIAL DISTRIBUTION TO
FEDERATED UNIVERSITIES**

THESE TERMS OF FINANCIAL DISTRIBUTION, effective as of the 1st day of May, 2019
(the “**Effective Date**”)

B E T W E E N :

LAURENTIAN UNIVERSITY OF SUDBURY

(“**Laurentian University**”)

- and -

UNIVERSITY OF SUDBURY

(the “**Recipient**”)

This Notice is delivered further to the Proposed Grant Distribution and Services Fees document dated November 10, 1993 (the “**1993 Funding Model**”) and sets out the terms for the distribution of operating grants to the Recipient and service fees charged to the Recipient from and after the Effective Date. This document amends, restates and replaces in its entirety any prior documentation, oral or written representations and past practices relating to the distribution of grant funding, tuition fees and service fees between Laurentian University and the Recipient, including but not limited to those described under the 1993 Funding Model. No future amendments to the terms set out in this Notice are effective unless confirmed and agreed to in writing, in advance, by Laurentian University.

The Recipient is a separate legal entity established by separate Acts and governed by an independent Board. The Recipient owns its own buildings on land that is owned by Laurentian University and leased to the Recipient by Laurentian University.

The Recipient is recognized under the *Laurentian University Act* by allowing Laurentian University to admit “church-related universities or colleges into federation as colleges of the Faculty of Arts and Science, which church-related universities or colleges have the right to give instruction in philosophy and religious knowledge and in such other subjects as may from time to time be approved by the Faculty of Arts and Science of the University and be consented to by the Senate and Board, and the University shall accept such courses in partial fulfillment of the requirements for a degree under the same academic terms and conditions as would obtain if the instruction were given in University College”.

**This is Exhibit "D" to the
Affidavit of Pierre Riopel
sworn April 14, 2021**

A handwritten signature in blue ink, appearing to be 'A. Riopel', written over a horizontal line.

**A Commissioner for taking
Affidavits.**

lundi, 12 avril 2021

Transmission par courriel

THORNTON GROUT FINNIGAN LLP
100 Wellington St. West, Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

Compétence : D.J. Miller
Mitchell W. Grossell
Andrew Hanrahan
Derek Harland

ERNST & YOUNG INC.
100 Adelaide Street West
EY Tower
Toronto, ON M5H 0B3

Compétence : Sharon Hamilton
Michael Nathaniel

STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Compétence : Ashley Taylor,
Elizabeth Pilon
Ben Muller

**Objet : DANS L'AFFAIRE CONCERNANT UNE TRANSACTION OU UN
ARRANGEMENT VISANT L'UNIVERSITÉ LAURENTIENNE (sous la LACC)
Dossier de la cour n° CV-21-656040-00CL
Demande de l'Université de Sudbury liée à la programmation des cours en
français de l'Université Laurentienne**

Mesdames et Messieurs :



Nous vous avisons que l'Université de Sudbury a l'intention de s'objecter à toutes démarches judiciaires présentes et futures entamées par l'Université Laurentienne (la Laurentienne) qui portent ou pourraient porter atteinte aux droits et acquis de l'Université de Sudbury. Notamment elle s'objecte à l'avis de résiliation que vous nous avez signifié le 1^{er} avril courant.

Comme vous le savez, l'Université de Sudbury a annoncé le vendredi, 12 mars dernier, qu'elle devient une université homogène de langue française. Elle a déjà entamé sa transition en vue de réaliser rapidement cette mission renouvelée.

À cette fin, l'Université de Sudbury réclame l'ensemble des programmes, des cours et des services offerts en français à l'Université Laurentienne, ainsi que des installations et des ressources afférentes. Nous croyons cette avenue non seulement dans le meilleur intérêt des deux universités, mais surtout nécessaire pour éviter les torts irréparables qui sont infligés sur la communauté franco-ontarienne à cause de l'incertitude entourant l'avenir de la Laurentienne, particulièrement en ce qui regarde la continuité de cette programmation si essentielle à la communauté francophone.

Nous avons tous pu observer depuis plus d'une décennie, et surtout dans les dernières semaines, une réduction dans l'intérêt de la Laurentienne, voire un manque de passion, pour les grands efforts dans sa prestation de services en français. Force est de reconnaître que la continuité de tous les services en français est actuellement en péril, et que dire de l'épanouissement de l'offre de programmes pour la communauté? Entre les mains de la Laurentienne le dossier est et demeurera en régression plutôt qu'en progression. Il ne faut surtout pas s'étonner que la communauté franco-ontarienne accorde maintenant à l'Université de Sudbury tout son appui et réclame que lui soit confiée la charge totale de cette filière.

Tout cela dit, la communauté francophone demande à la Laurentienne sa coopération pour assurer un transfert coordonné des programmes et services durant le cours de cette importante transition. Étant donné les présentes circonstances, ceci est le moindre que la Laurentienne puisse faire pour le bien-être de la communauté.

Une possibilité assez directe pour atteindre cet objectif, si la Laurentienne y est intéressée, est d'effectuer cette transition à l'intérieur de l'entente de fédération existante. Le cas échéant, on procéderait à négocier un remaniement complet des contrats.

Nous croyons possible de le faire dans un esprit de collaboration, afin de colmater les torts déjà infligés sur la communauté franco-ontarienne. Ainsi, l'Université de Sudbury invite le Conseil des gouverneurs et le Sénat de l'Université Laurentienne à rencontrer l'Université de Sudbury afin d'établir les modalités d'un tel transfert et d'une collaboration pour bâtir ensemble ce nouvel avenir. Un tel dialogue entre les parties offre une occasion unique permettant à la Laurentienne de s'allier avec l'Université de Sudbury dans le but de donner effet au projet d'une université par et pour les francophones, avec tous les bénéfices que cela engendrera sur le plan financier, et il y aura



assurément des bénéfices financiers importants si la collaboration est au rendez-vous. L'Université de Sudbury considère que cette avenue est dans l'intérêt de toutes les parties concernées : elle favorise à la fois la viabilité financière de la Laurentienne et assure du même coup le respect des droits de la minorité linguistique.

Le projet de l'Université de Sudbury répond à la volonté exprimée de la communauté franco-ontarienne et permettra de mieux desservir ses besoins. Il existe un consensus communautaire selon lequel le développement et l'épanouissement de la communauté de langue minoritaire passent nécessairement par la mise en place d'institutions gérées par et pour les Franco-Ontariennes et Franco-Ontariens; nous en avons déjà la preuve au scolaire (élémentaire et secondaire) et au collégial. Tout en reconnaissant les nombreuses années que la Laurentienne a évolué avec elle, la communauté franco-ontarienne préconise aujourd'hui un modèle d'université unilingue de langue française, qui pourra s'effectuer soit dans le cadre de l'entente de fédération existante ou de façon indépendante.

Il y a ici une opportunité unique qui se présente aux deux institutions de repositionner l'enseignement post-secondaire dans le Moyen-Nord de sorte que ces deux institutions pionnières de Sudbury puissent s'entraider afin de fleurir et accroître l'offre d'enseignement dans un nouveau modèle de fonctionnement qui répondra aux besoins pressants de la communauté franco-ontarienne.

Aussi n'oublions pas la possibilité d'unir les forces de l'Université de Sudbury à celles de la Laurentienne pour continuer à améliorer l'offre de services envers les communautés autochtones dont les liens d'appartenance sont profonds avec les deux institutions universitaires.

Étant donné l'urgence occasionnée par l'insolvabilité de l'Université Laurentienne et la vitesse à laquelle se déroule le processus entamé en vertu de la LACC, nous vous prions de nous confirmer dès midi lundi (demain) votre ouverture à entretenir avec nous des pourparlers à l'amiable sur la possibilité de la mise en œuvre, en partie ou en totalité, de notre proposition.

Dans l'attente d'une réponse favorable, veuillez agréer, Mesdames et Messieurs, nos salutations les meilleures.

Sheppard & Claude

André Claude

c.c. Pierre Riopel, Président du Conseil des régents, Université de Sudbury
John Meehan, Recteur, Université de Sudbury
Ronald F. Caza, Caza Saikaley

**This is Exhibit "E" to the
Affidavit of Pierre Riopel
sworn April 14, 2021**

A handwritten signature in blue ink, appearing to be 'A. Riopel', is written over the text of the affidavit.

**A Commissioner for taking
Affidavits.**

April 12, 2021

VIA EMAIL (aclaude@sheppardclaude.ca)

Sheppard & Claude
202 – 1173 Road Cyrville Road,
Ottawa ON K1J 7S6

Attention: André Claude

Dear Sir:

Re: In the Matter of the *Companies' Creditors Arrangement Act* and In the Matter of a Plan of Compromise or Arrangement of Laurentian University of Sudbury, Court File No.: CV-21-00656040-00CL

We acknowledge receipt of your letter of today's date.

We agree that the restructuring of Laurentian University of Sudbury ("**Laurentian**") ought to proceed with a spirit of collaboration, and Laurentian has every intention of working with the University of Sudbury ("**US**") to that end. In particular, Laurentian remains prepared to engage in meaningful discussions with US as to how to best transition to two separate institutions following: (i) the announcement by US on March 12, 2021 that it intends to become a unilingual Francophone university, and (ii) the issuance of the Notice of Disclaimer of the Federation Agreements by Laurentian on April 1, 2021. Laurentian has made clear that it respects the historic legacy of US, notwithstanding termination of the federation relationship.

Laurentian and US are on different paths in terms of how they intend to deliver French language post-secondary education in Ontario. US has taken a view that it ought to be a French-only institution. Laurentian intends to maintain its commitment to the Franco-Ontario community and to remain a tri-cultural institution that provides strong, comprehensive academic programs in both English and French.

Laurentian's French language programs (serving approximately 2,000 Laurentian students) are at the core of its mandate. As such, Laurentian does not intend to transfer any French language programs or services to US. Laurentian does not agree that transferring its French language programmes and services to US, "... promotes both the financial viability of Laurentian and at the same time ensures respect for the rights of the linguistic minority." To the contrary, Laurentian believes that maintaining French-language programs is critical to its successful restructuring and

its ability to serve both the English and French speaking communities, in addition to its strong commitment to the Indigenous communities of Ontario.

Laurentian is a “government agency” for the purposes of the *French Language Services Act* and O. Reg. 398/93 *Designation of Public Service Agencies* and it intends to continue to comply with its obligations therein.

Notwithstanding the different approaches that Laurentian and US intend to pursue for the delivery of French language post-secondary education in the future, Laurentian confirms its continued willingness to engage in a cooperative dialogue with US as to the best path forward through the necessary transition. In that regard, we have not received a response from US in respect of the transition proposal delivered by Laurentian on March 26, 2021, and we would be pleased to discuss same.

Yours truly,

Thornton Grout Finnigan LLP



D.J. Miller

cc: *Laurentian University of Sudbury*
 Ernst & Young Inc. – Court-appointed Monitor
 Stikeman Elliott LLP – Counsel to the Court-appointed Monitor

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**

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

Proceedings commenced at Toronto

**AFFIDAVIT OF PIERRE RIOPEL
Sworn April 14, 2020**

SHEPPARD & CLAUDE
Law Offices
202-1173 Cyrville Road
Ottawa, ON K1J 7S6

T. 613-748-3333
F. 613-748-1599

André Claude (LSO #27596J)
aclaude@sheppardclaud.ca

Lawyers for the Moving Party
University of Sudbury

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**

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

Proceedings commenced at Toronto

MOTION RECORD

SHEPPARD & CLAUDE

Law Offices
202-1173 Cyrville Road
Ottawa, ON K1J 7S6

T. 613-748-3333

F. 613-748-1599

André Claude (LSO #27596J)

aclaude@sheppardclaud.ca

Lawyers for the Moving Party
University of Sudbury