

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 OF THE MOVING PARTY
(VOLUME 2 OF 2)**

(Motion by Thorneloe University for Leave to Appeal)

May 31, 2021

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**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**

**COMPENDIUM OF TRANSCRIPTS, EXHIBITS, RESPONSES TO
UNDERTAKINGS, UNDER ADVISEMENTS AND REFUSALS
OF THORNELOE UNIVERSITY
(for motions returnable April 29 and April 30, 2021)**

April 28, 2021

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Laurentian CCAA

Robert Hache
on Friday, April 23, 2021



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Court File No. CV-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
Applicant

--- This is the Cross-examination of ROBERT
HACHÉ, taken by Neesons, a Veritext Company,
via Zoom virtual platform, on the 23rd day of
April, 2021.

REPORTED BY: Helen Martineau, CSR

A P P E A R A N C E S:

D.J. MILLER, Esq., for the Applicant
& ANDREW HANRAHAN, Esq.,
& FRASER HUGHES, Esq.

ANDRÉ CLAUDE, Esq. for University
& RON CAZA, Esq. of Sudbury

PETER J. OSBORNE, Esq. for the Board of
Governors of
Laurentian
University of
Sudbury

EUGENE MEEHAN, Q.C. for Thornloe
& DEMETRIOS YIOKARIS, Esq. University
& ANDREW J. HATNAY, Esq.

ASHLEY JOHN TAYLOR for the Monitor

Also Present:

Sharon Hamilton (Court-appointed Monitor of the
Applicant), Sara Kunto

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WITNESS: ROBERT HACHÉ

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The following list of undertakings, advisements
and refusals is meant as a guide only for the
assistance of counsel and no other purpose.

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4	Volume 2, Volume 3 and Volume 4.	
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1 --- Upon commencing at 8:00 a.m.

2 ROBERT HACHÉ: AFFIRMED:

3 CROSS-EXAMINATION BY MR. CAZA:

4 1 Q. Now, my understanding is that
5 you -- you've -- you've sworn two affidavits.
6 And I just want to let you know, I've actually
7 got a paper copy of your affidavit. So are you
8 looking at an electronic version or do you have
9 a paper copy?

10 A. I have a caper copy, yes.

11 2 Q. So what I'll be doing is I'll be
12 referencing the actual page number that was --
13 that's in the top, right-hand corner that your
14 counsel -- the pagination for the whole
15 application record. So you'll see it's in the
16 top, right-hand corner. So if I go to tab 1,
17 the Notice of Application starts at page 6, do
18 you see that?

19 A. No, I do not.

20 3 Q. And do you see a page 6 in the
21 top, right-hand corner?

22 A. I don't have any pagination in
23 the top, right-hand corner. My pagination is in
24 the middle.

25 4 Q. So you don't have, I guess, the

1 copy of the affidavit from the -- from the --
2 the application record? You've got a copy
3 simply of your application or the Notice of
4 Application that's paginated in the middle of
5 the page. So, for example, the application
6 itself, let's start at page 3.

7 A. Yes.

8 5 Q. And your affidavit --

9 A. That's what it says in mine.

10 6 Q. That's fine. And how about your
11 affidavit? Your first affidavit, the one you
12 swore on January 30th, 2021? Do you have that
13 simply also paginated, basically your 100 and --
14 110 pages?

15 A. Yes.

16 7 Q. Okay. So I will be referencing,
17 just for everybody's -- so everybody we're on
18 the same page literally, the actual page number
19 of your affidavit or the page number of the
20 application.

21 Now, Mr. Haché, is your mother tongue
22 French?

23 A. My mother's tongue is French,
24 yes.

25 8 Q. And were you provided with the

1 opportunity -- were you given the opportunity to
2 prepare your affidavit in French?

3 A. I imagine so. It wasn't really
4 an issue.

5 9 Q. Okay. So just so that I'm clear,
6 you were told or you were aware that you could
7 have proceeded in French, correct?

8 A. I am aware that the court can
9 function in French and English, yes.

10 10 Q. And you -- my understanding is
11 you knew that we could cross-examine you in
12 French and you asked to be cross-examined in
13 English, correct?

14 A. I actually don't know that, but I
15 imagine my counsel --

16 11 Q. That was my understanding.

17 A. My counsel is -- does not speak
18 French and therefore it is important for them to
19 understand the cross-examination.

20 12 Q. Okay. So just so I'm clear, so
21 we're proceeding in English because your counsel
22 doesn't understand French, correct? Otherwise
23 we'd be proceeding in French, right?

24 MR. HANRAHAN: I don't think -- that's
25 not what he said.

1 BY MR. CAZA:

2 13 Q. Well, --

3 A. What I said is we're proceeding
4 in English.

5 14 Q. Well, let's put it this way, if
6 you were able to proceed in French, would you
7 prefer proceeding in French?

8 A. Not this morning.

9 15 Q. No, not this morning because you
10 have counsel that cannot proceed in English
11 (sic), but I'm asking you, if you had been given
12 the option as to whether or not you would prefer
13 proceeding in French or English, would you have
14 preferred to proceed in French?

15 MR. HANRAHAN: Counsel, what's the
16 relevance of this? He's entitled to proceed in
17 either language.

18 BY MR. CAZA:

19 16 Q. Actually, it's going to be quite
20 relevant because of the position we're taking
21 with respect to Laurentian University and its
22 commitment to the offering Francophone programs,
23 being able to serve the Francophone community.

24 My question is very simple, Mr. Haché
25 would you have preferred to --

1 MR. HANRAHAN: I can tell you he's
2 going to proceed in English and his counsel
3 speaks English and he's entitled to have his
4 counsel represent him here at this examination.

5 Beyond that, I don't really see how
6 this is relevant to what Laurentian is doing in
7 terms of its French language programs.

8 BY MR. CAZA:

9 17 Q. Well, actually, are you objecting
10 because you're saying it's not relevant? I'm
11 telling you it's very relevant that the fact
12 that we're proceeding in English instead of
13 French is actually quite relevant.

14 My question, if you're objecting, I'm
15 going to ask the question again. Mr. Haché, if
16 you had your preference as to whether you'd
17 rather proceed to be cross-examined in French or
18 English, would you rather be cross-examined in
19 French?

20 A. I am completely comfortable being
21 cross-examined in English.

22 18 Q. So you're actually refusing to
23 answer my question?

24 MR. HANRAHAN: I think he's answered
25 your question.

1 BY MR. CAZA:

2 19 Q. I've asked you whether you would
3 prefer to do it in French or English. Are you
4 refusing to answer the question?

5 A. I believe I've answered the
6 question.

7 20 Q. Well, actually you've told me
8 you're comfortable in either language. Let's
9 move on.

10 Now, I'm looking at the application.
11 So I'm assuming that you were involved in the
12 preparation of this Notice of Application?

13 A. Yes.

14 21 Q. Okay. For the purposes of the
15 record, and I'm speaking to -- and I guess it
16 would be Andrew. If you don't mind me calling
17 you by your first name, I can call you counsel
18 for Laurentian University. Can we agree that
19 the exhibit will be the actual application
20 record even though it's not the application
21 record that the witness has before him?

22 MR. HANRAHAN: I guess I'd like to
23 clarify. Rob, do you have the full -- what is
24 it that you have in front of you?

25 THE WITNESS: So I have the paper copy

1 of the -- what was -- what you provided me in
2 terms of the full application. I do have, I
3 believe, the application of record of the second
4 filing electronically that has the numbers up on
5 the right-hand tab. I haven't seen a difference
6 between the two.

7 BY MR. CAZA:

8 22 Q. Actually there is no difference.
9 I just want to make sure we're all -- so the
10 affidavit you had, does it have all of your
11 exhibits?

12 A. Yes.

13 23 Q. The copy you have in front of
14 you? Okay.

15 So are we satisfied, Mr. Hanrahan,
16 that we're going to mark the application record
17 or do you want to mark as -- I actually don't
18 have a loose copy of his affidavit. I only have
19 the application record. I just want to make
20 sure we're all on the same page.

21 MR. HANRAHAN: That is fine. We can
22 mark that.

23 BY MR. CAZA:

24 24 Q. So we'll mark -- in fact, the way
25 I do it is we'll mark as Exhibit 1 -- there'll

1 be Exhibit 1, volume 1 of the application
2 record; Exhibit 1, volume 2; Exhibit 1, volume
3 3; and, Exhibit 1, volume 4. So now I'm in
4 Exhibit 1, volume 1.

5 EXHIBIT NO. 1: Application Record,
6 Volume 1, Volume 2, Volume 3 and
7 Volume 4.

8 BY MR. CAZA:

9 25 Q. So if I'm looking at the actual
10 grounds for the application. And if I go to
11 page 6 of the Notice of Application, are you
12 with me?

13 A. So which -- are we talking about
14 the January or April?

15 26 Q. We're looking at the Notice of
16 Application. There's only one. The other one's
17 Notice of Motion.

18 A. So we're presumably talking about
19 the January one then?

20 27 Q. Yeah. It's -- in fact, I'll give
21 you the date. It was --

22 A. January 30th.

23 28 Q. That's right. It's an 11-page
24 document -- 12-page document. And then after
25 the 12 pages, there's a list of -- a service

1 list.

2 MR. HANRAHAN: Rob, just to clarify,
3 do you have -- so you have your January
4 affidavit, but do you have the Notice of
5 Application in front of that or is it just your
6 affidavit that you have there?

7 THE WITNESS: It is just the
8 affidavit.

9 BY MR. CAZA:

10 29 Q. We're going to need the exhibits.
11 So you don't --

12 MS. MILLER: Can you not pull it up on
13 the screen and do a screen share of exactly
14 where in the Notice of Application you want to
15 refer him to?

16 BY MR. CAZA:

17 30 Q. Yeah, I'd rather not do that. I
18 think for one reason when I do that, I can't see
19 the witness. And the other thing is I think the
20 witness should have a copy of the document.

21 Do you only have one screen,
22 Mr. Haché, or two screens?

23 A. I have more than one screen, yes.

24 31 Q. So why don't we -- can we --
25 maybe somebody can forward you a copy of the

1 affidavit and you can maybe put it up on the
2 screen, if you don't have the full copy. If you
3 don't have the copy with the exhibits, and I'm
4 referring to your affidavit of January 30th,
5 2021.

6 MS. MILLER: I think you were
7 referring to the Notice of Application. You're
8 referring now to the affidavit?

9 BY MR. CAZA:

10 32 Q. No, we are referring to the
11 Notice of Application, but I think we also need
12 to provide, Mr. Haché, my understanding is he
13 does not have a full copy of his affidavit. He
14 only has the affidavit without the exhibits, so
15 we're going to have to give him access --

16 A. No, I have the affidavit with the
17 exhibits.

18 33 Q. You do have it? Both of them?

19 A. Yes.

20 34 Q. Okay. Perfect. So now, do you
21 have a copy of the Notice of Application?

22 A. That's what I'm suggesting I
23 don't have.

24 35 Q. Okay. Okay. Then that's okay --
25 maybe, I have no objection, Mr. Hanrahan, if you

1 want to forward a copy to him. Email him a
2 copy.

3 MS. MILLER: I will do that.

4 MR. HANRAHAN: Thank you.

5 BY MR. CAZA:

6 36 Q. So, Mr. Haché, just let me know
7 when you get a copy so we can continue.

8 A. Depends on the refresh rate.
9 It's not instantaneous, as much as we'd like it.

10 MR. OSBORNE: Mr. Caza, just while
11 we're waiting here, if there are other documents
12 you wish to put to Dr. Haché, could you or one
13 of your colleagues on your team get them ready
14 so we could put them up on the screen as we go
15 along? It's your examination but it just make
16 things faster. Thanks so much.

17 MR. CAZA: Well, I can advise you the
18 only documents I'll be putting on for the next
19 few hours, I'll only be referring to his
20 affidavits and the exhibits to his affidavits.
21 Now I'm referring to the Notice of Application.

22 THE WITNESS: I have it now.

23 BY MR. CAZA:

24 37 Q. Thank you so much. The copy you
25 have, does it have pagination in the top,

1 right-hand corner?

2 A. No, it does not.

3 38 Q. Okay. So can we go to page 4?

4 A. Okay.

5 39 Q. So what we have here is what
6 the -- what the university is applying for, and
7 on page 4, under paragraph (g), it says:

8 "granting the following charges
9 over the Applicant's property:"

10 And Roman numeral two says:

11 "a charge in favour of the
12 current and future directors and
13 officers of the Applicant in the
14 maximum amount of \$2 million, such
15 amount to be in priority to the DIP
16 Charge (as hereafter defined) pursuant
17 to the Initial Order, with a further
18 amount of \$3 million to be subordinate
19 to the DIP Charge [...]."

20 I just want to make sure my

21 understanding is correct. So the DIP Lender who
22 is actually seeking, if you want, protection or
23 guarantees, actually comes after an -- a
24 \$2 million amount that has been -- that has
25 been, if you want, set aside in case it's needed

1 for potential liability of future directors or
2 current and/or future directors and officers?

3 A. I believe that's what it says.

4 40 Q. Okay. If we go to page 11 --
5 sorry, you'll have to bear with me. I've got my
6 whole transcript set with the application.

7 If you go to page 6, under paragraph
8 (d). Are you there?

9 A. Yes.

10 41 Q. It says:

11 "The Applicant requires immediate
12 protection from this Court to permit
13 it to, amongst other things:"

14 And it's got five points set up. And
15 the fourth one says:

16 "Evaluate the structure and
17 sustainability of its ongoing
18 relationships with the Federated
19 Universities."

20 Can you just explain to me what
21 exactly is meant by evaluate? What is it that
22 you wanted the opportunity to do?

23 A. So at that phase, as we entered
24 into the application, we were -- it was
25 necessary to, you know, look at all of the

1 operations of the university, how finances are
2 flowing in one direction or other, and
3 determine, you know, what was sustainable for
4 the university going forward.

5 42 Q. So, Mr. Haché, as far as the:
6 "[...] structure and
7 sustainability of its ongoing
8 relationships with the Federated
9 Universities."

10 The application says that's something
11 that you will need to evaluate, which means that
12 you'll need to look at what your options are
13 with respect to that ongoing relationship,
14 correct?

15 A. That's what it says.

16 43 Q. Okay. And that's what it means.
17 That was your intention.

18 On January 30th, Mr. Haché, had you
19 already made a determination or decision that
20 Laurentian was going to seek to terminate the
21 ongoing relationships with the Federated
22 Universities?

23 A. We, on January 30th thinking
24 back, recognized there was a fiscal imbalance
25 that needed to be dealt with in one way or

1 another.

2 44 Q. Mr. Haché, on January 30th when
3 you swore this affidavit, a decision had already
4 been made at Laurentian University that you
5 would be seeking to terminate the -- the
6 agreements you had -- Laurentian had with its
7 three Federated Universities, that's fair?

8 A. No. I think all options were on
9 the table at that point.

10 45 Q. Okay. So I want to --

11 A. Including seeking the
12 termination, if that were necessary.

13 46 Q. So your evidence is that you were
14 not seeking termination of those agreements when
15 this Notice of Application was issued?

16 A. It was one of the things that was
17 under consideration. And recognizing it was a
18 very -- it was -- you know, recognizing where we
19 were financially and what the financials said,
20 it needed to be a strong consideration.

21 47 Q. So I just want to get your
22 evidence just so I'm clear. On January 30th,
23 2021, when this application was issued, your
24 evidence is that you had not yet decided as to
25 whether or not you would be seeking the

1 termination of the agreements with the Federated
2 Universities?

3 A. We expected that this would be
4 one likely -- we expected that this -- it was
5 one thing that we strongly expected would
6 happen, based on what the analysis at the time.

7 48 Q. And I think, Mr. Haché, I think
8 it's fair to say that you're describing it as
9 being, you know, highly likely or whatever words
10 you used. Effectively, you were -- Laurentian
11 had decided that there was no way it would be
12 able to continue and be able to get out of its
13 predicament, its financial predicament, without
14 bringing to an end those relationships, that is,
15 the agreements with the Federated Universities,
16 that's fair?

17 A. It was very difficult to see a
18 way forward in the current federal structure.

19 49 Q. Now, just so we're fair, so if --
20 so you're telling me that the decision had not
21 yet been made? You were still looking as to
22 whether or not you'd be seeking that
23 termination?

24 A. I think that the decision was
25 unless there was something else that could be

1 identified, we would have to go in that
2 direction.

3 50 Q. And we can agree that you never,
4 and no one at Laurentian University, ever spoke
5 to anyone -- any representative of one of the
6 three -- either of the three Federated
7 Universities to discuss whether or not there
8 were alternatives to bringing to an end the
9 agreements between Laurentian University and the
10 Federated Universities?

11 A. We had been discussing that for
12 some time actually.

13 51 Q. There was no discussion as of
14 January 30th, the day you swore your affidavit,
15 right through till today, at no point has anyone
16 at Laurentian University discussed with anyone
17 at any of the Federated Universities any option
18 other than offering or advising that you were
19 seeking to terminate the agreements with the
20 Federated Universities?

21 A. Other than in the context of
22 mediation, I don't believe so.

23 52 Q. Well, the context of mediation,
24 actually you refer to that in your affidavit.
25 You actually say which there's a question as to

1 whether or not that should have been in your
2 affidavit, but we'll talk about what happens in
3 the -- to whatever extent we can examine.

4 So you're -- you're telling me, okay,
5 and mediation, who was present at mediation from
6 the Federated Universities? First of all, who
7 was present from Laurentian University?

8 A. I would have to -- I don't recall
9 exactly who was in the room.

10 53 Q. You were in the room?

11 A. I was not in the room.

12 54 Q. You were not in the room. So you
13 have no idea what was discussed at the
14 mediation, correct?

15 A. I have no specific knowledge of
16 the conversation in the room, yes.

17 55 Q. So what you're telling me is
18 anything you'd know from what went on in that
19 room is what somebody may have told you that was
20 in the room, is that fair?

21 A. Yes.

22 56 Q. So I think we can agree that
23 you're the Rector and you can advise us that
24 there was no discussion with any representative
25 of one of the Federated Universities on the

1 issue of whether or not the relationship between
2 Laurentian University and the Federated
3 Universities should come to an end. You can
4 confirm that.

5 MR. HANRAHAN: Counsel, are we still
6 talking about in the context of the mediation,
7 because he's not going to get into those
8 discussions?

9 BY MR. CAZA:

10 57 Q. He can't get into those
11 discussions. He told us he wasn't there.

12 So my question to you is, never mind
13 the mediation. You've already told us that the
14 only time there may have been discussions
15 between representatives of the -- of Laurentian
16 University and the federated representatives of
17 the Federated Universities as to whether or not
18 the relationship should continue was at the
19 mediation.

20 So I'm asking you, can you confirm --
21 can you confirm that there were no discussions
22 between Laurentian University and its
23 representatives and the representatives of the
24 Federated Universities on the issue of whether
25 or not it was a good thing or a bad thing, or

1 alternatives to bringing to an end the agreement
2 between Laurentian and the Federated
3 Universities?

4 A. So I can't confirm that. What I
5 can say is that we -- there was one conversation
6 that I had in the context of mediation, but
7 outside the mediator's room, with the president
8 of Threlloe to determine seeking --

9 MR. HANRAHAN: Rob, we're not going to
10 get into --

11 BY MR. CAZA:

12 58 Q. So why don't we -- maybe what we
13 can agree on, you've told us this, I think it's
14 fair to say that you were never involved in any
15 discussions, you, as the Rector of a rich
16 university, were not involved in any discussions
17 with a representative of a federated university
18 other than what you're talking about possibly
19 this one, whatever, discussion at the mediation
20 where the issue of a possible ongoing
21 relationship was discussed?

22 A. I was not in the room.

23 59 Q. Now, and so actually I didn't ask
24 if you were in the room.

25 Mr. Haché, you're the Rector. You

1 have never spoken to anyone, any representative
2 of the Federated Universities, where you gave
3 them an opportunity to have a discussion with
4 you on the issue of whether or not the agreement
5 should come to an end as between your
6 organizations?

7 A. I never turned down any
8 opportunities for the discussion.

9 60 Q. You were not involved in any such
10 discussions, is that correct?

11 A. That is correct.

12 61 Q. And you're not aware of anyone at
13 Laurentian University that would have been
14 involved in any such discussions?

15 A. No.

16 62 Q. Okay. Now, if I go to page 8,
17 and I'm at paragraph P, are you with me?

18 A. I am.

19 63 Q. So it says, there's a title at
20 the top, it says "Urgent Need for the DIP Loan."
21 And paragraph (p) says:

22 "The Applicant requires this
23 debtor-in-possession financing to
24 [...] providing operating cash."
25 Correct?

1 "[...] fund the costs of its
2 day-to-day operations, and negotiate
3 and then implement a plan for its
4 restructuring."

5 So that was the role that you had
6 anticipated or hoped that the DIP Lender would
7 play, correct?

8 A. Yes.

9 64 Q. And it's the university that
10 would be negotiating and implementing a plan for
11 the restructuring. It's not the DIP Lender,
12 correct?

13 A. It is the university's job to do
14 the negotiating, yeah.

15 65 Q. So it wasn't the DIP Lender that
16 was doing the negotiations. It was the -- it
17 was Laurentian University, correct?

18 A. It was Laurentian University
19 through our representatives.

20 66 Q. Were you involved in any
21 discussions with the DIP Lender before the DIP
22 Lender was retained? And I'm speaking about
23 Firm Capital Mortgage Fund. Were you involved
24 in any discussions with them concerning their
25 retainer or conditions for their advancing of

1 the funds?

2 A. I was aware of all discussions.
3 I was not directly involved.

4 67 Q. So you did not attend any
5 meetings, and you were not part of any Zoom or
6 any other type of conference, or teleconference,
7 where there were discussions involving a
8 representative of Firm Capital Mortgage Fund?

9 A. That is correct.

10 68 Q. Okay. Now, you said that you
11 were kept aware or that you were kept advised.
12 Who was actually carrying out those discussions?

13 A. Those discussions were led by my
14 counsel or the university's insolvency counsel,
15 rather, to be correct.

16 69 Q. And who would that be?

17 A. DJ Miller.

18 70 Q. So your understanding is that
19 DJ Miller is the one that negotiated the terms
20 of the DIP Lender or the DIP Lending Agreement?

21 A. Yes.

22 71 Q. And she would keep you advised as
23 to what those terms were, what they were
24 negotiating?

25 A. Yes.

1 72 Q. Now, why don't you tell me what
2 information you have as to the issue of the
3 initial conditions that the DIP Lender wanted to
4 impose? So tell me what your evidence is as to
5 what the DIP Lender advised Laurentian
6 University that it wanted as conditions for
7 providing the DIP loan, the initial \$25 million
8 DIP loan?

9 A. I have the term sheet.

10 73 Q. Okay. Well, the term sheet is
11 there, but you -- what information do you have
12 that -- as to what was proposed by the DIP
13 Lender or what was proposed by Ms. Miller? Do
14 you have any of that information or evidence?

15 A. I don't know specifically what
16 you're referring to. I mean, I have the end
17 product and there were a number of conversations
18 leading up to that.

19 74 Q. And you weren't involved in any
20 of those conversations, but you're telling us
21 you were kept aware or kept advised as to what
22 was discussed, correct?

23 A. That is correct.

24 75 Q. Okay. We'll get back to that
25 when we -- when we're looking at the actual

1 details.

2 If I now turn the page, so I'm at
3 page 9.

4 A. Okay.

5 76 Q. So we see here a court order,
6 charges, it says:

7 "The Applicant is seeking the
8 Court's approval of an Administration
9 Charge and a Director's Charge as part
10 of the Initial Order, and a DIP Charge
11 as part of the Amended and Restated
12 Initial Order (collectively, the
13 'Charges')."

14 It says:

15 "[...] to secure the professional
16 services required to complete this
17 CCAA proceeding, ensure the continued
18 assistance and oversight of the
19 Applicant's directors and officers,
20 and maintain the Applicant's continued
21 operation in the ordinary course of
22 business during the Stay of
23 Proceedings."

24 My understanding is that \$25 million
25 has been spent, am I correct? That's what I

1 understood.

2 A. Are we -- so can you hone in on
3 that page 9 paragraph what?

4 77 Q. T.

5 A. Paragraph (t), sorry.

6 78 Q. Sorry, I should have been more
7 precise, that's my mistake. So if you want to
8 just review paragraph (t). My question is, I've
9 read the sort of -- the court ordered charges.
10 My question is, so the \$25 million that was
11 advanced by the DIP Lender, has it been -- my
12 understanding is it's been fully spent?

13 A. I believe, depending on payroll
14 at the end of this month, it will be close to
15 being fully spent is my understanding.

16 79 Q. Well, you would know this.
17 You're the Rector. I'm assuming you're keeping
18 an eye on what's going on with that \$25 million?

19 A. I don't receive a daily cash flow
20 analysis.

21 80 Q. So you get what? A weekly cash
22 flow analysis?

23 A. We do weekly cash flow.

24 81 Q. So you obtain a weekly cash flow
25 analysis?

1 A. We do a weekly cash flow
2 analysis, yes.

3 82 Q. So I want to be clear, so are you
4 saying that as of -- your evidence, and I'm
5 assuming you have this knowledge, is that as of
6 April 30th, the full \$25 million will have been
7 spent? You have knowledge of that?

8 MR. HANRAHAN: That's not what he
9 said. He said he wasn't sure exactly --

10 BY MR. CAZA:

11 83 Q. I'm actually asking him.

12 A. Yeah.

13 84 Q. Are you able --

14 MS. MILLER: I'm going to ask that you
15 suggest that you clarify whether you're asking
16 him if the full 25 million has been fully drawn
17 down on the borrowings as opposed to having been
18 spent. I think that's the question, is it not?

19 BY MR. CAZA:

20 85 Q. Well, actually I don't know to
21 what extent. There's a difference.

22 But you have \$25 million that was made
23 available to the university from the DIP Lender.
24 Has it been fully drawn down or will it be fully
25 drawn down by April 30th, 2021?

1 A. We have received the full
2 \$25 million. Is every last penny out the door?
3 That I cannot say.

4 86 Q. And as the last that you heard,
5 how much money was not -- had not yet been --
6 was not yet out the door?

7 A. I do not recollect.

8 87 Q. Okay. Now, is that something you
9 can check and let me know? Like are you able to
10 check to get that information?

11 A. I believe it is a question that I
12 could ask. I would be guessing.

13 88 Q. Well, who would know that?

14 A. Our finance people and the
15 monitor.

16 89 Q. Okay. Now, when was the last
17 cash flow analysis you got? When was the last
18 time you got a cash flow analysis?

19 A. I saw something last week, I
20 think.

21 90 Q. So and how much was left to be
22 spent at that point?

23 A. I do not have a specific
24 recollection of the amount.

25 91 Q. Are you able to assist us in

1 understanding how much of the \$25 million was
2 actually spent on professional services?

3 A. Again, I don't have the exact
4 figures in front of me.

5 92 Q. Well, tell me -- give me --
6 what's your best -- what's your knowledge?
7 What's your information?

8 MR. HANRAHAN: No, we don't want him
9 to guess. I think he's told you he's not sure
10 what the answer to that question is.

11 BY MR. CAZA:

12 93 Q. Let me know what is your
13 knowledge as to how much money has been spent on
14 professional fees? Of the \$25 million, how much
15 was drawn to pay for professional service fees?

16 A. I do not know the answer to that.

17 94 Q. Okay. Now, you don't know the
18 exact number. Do you have an idea of how much
19 has been spent?

20 MS. MILLER: You're asking him to
21 guess, Mr. Caza. He's already told you he
22 doesn't know the answer.

23 BY MR. CAZA:

24 95 Q. Well, no, actually I'm not asking
25 him to guess.

1 Just so I'm clear, you're telling me,
2 Mr. Haché, you're the Rector, and you have no
3 idea how much money of the \$25 million has been
4 spent on professional services? Is that your
5 evidence?

6 A. I am the Rector.

7 96 Q. Yes.

8 A. And I cannot provide you with an
9 exact number --

10 97 Q. I didn't ask for an exact number.

11 A. -- at this moment.

12 98 Q. I didn't ask for an exact number.

13 I said do you have any idea how much has been
14 spent? That's a question. Do you have any idea
15 how much has been spent in professional
16 services? Do you know if it's less than a
17 million dollars?

18 A. I know it's not less than a
19 million dollars.

20 99 Q. In fact, my understanding is that
21 it's in excess of \$5 million. Is that your
22 information?

23 A. I cannot confirm that because I
24 do not have that information in front of me.

25 100 Q. Is it your understanding that

1 more than \$5 million or 20 percent of the
2 \$25 million has been spent on professional
3 services?

4 A. I cannot confirm that.

5 101 Q. I didn't ask you to confirm. I
6 said is that your understanding?

7 MR. HANRAHAN: He just answered that
8 question and he told you he doesn't know.

9 BY MR. CAZA:

10 102 Q. So you've told us you know it's
11 more than a million dollars. Do you know if
12 it's more than \$2 million?

13 A. You have me into guessing
14 territory again.

15 103 Q. But you definitely know that it's
16 more than a million?

17 A. I expect that it is, yes.

18 104 Q. Well, actually you told me that
19 you knew it was more than a million. Are you
20 saying now you expect it to be or you know it's
21 more than a million?

22 A. I would be very surprised if it
23 was not more than a million.

24 105 Q. I just want to be clear. I'm
25 cross-examining you on an affidavit in an

1 application where you're seeking to go to court
2 to get another \$10 million and you're telling me
3 you have no idea how much of the \$25 million was
4 used to pay professional services. That's your
5 evidence, correct?

6 A. That is not what I said.

7 106 Q. Well, actually, okay, so what did
8 you say if you didn't tell me that you had no
9 idea?

10 A. I said my expectation is that
11 there is an amount greater than a million
12 dollars that has been spent on professional
13 services and I do not know the exact amount as I
14 do not have it in front of me.

15 107 Q. So you don't know if it's --

16 A. It's not in front of me.

17 108 Q. I'm not asking if it's in front
18 of you. This is something I would expect the
19 Rector to remember. You don't know if it's a
20 million a hundred thousand or if it's 5 million?
21 You have no idea. All you can tell me is you
22 know it's more than a million. That's your
23 evidence?

24 A. I would be guessing with any
25 other figure.

1 109 Q. You know, this is the trouble I'm
2 having, okay? I'm not asking you to give me a
3 precise number, okay? I'm asking you to tell me
4 what knowledge you have. And what you're
5 telling me is you have no knowledge that the --
6 as to how much those fees are, the professional
7 fees that have been incurred, which are
8 significant, other than you'd be surprised that
9 it's not more than a million dollars. That's
10 the only information or knowledge you have?
11 That's your evidence under oath?

12 A. I receive updates on --

13 110 Q. Tell me about the updates. Tell
14 me about the updates. What's the last update
15 you saw? What were the numbers?

16 A. I cannot -- without having the
17 update in front of me, I cannot tell you how
18 much was from February 1st because the updates I
19 get are longer term and cumulative and they are
20 also after the fact. So I actually don't have
21 the information. We do track the information,
22 but I do not have it for you this morning.

23 111 Q. When's the last update you
24 received?

25 A. It was last week.

1 112 Q. Okay. Why don't you -- you got
2 an email?

3 A. Not that I have access to.

4 113 Q. Okay. Sorry, how do you not have
5 access to your email?

6 A. I have downloaded the update
7 somewhere.

8 114 Q. Well, why don't we take -- let's
9 take a short break and go get the update.
10 Download it and then you can answer my
11 questions.

12 MR. HANRAHAN: All right, counsel, no,
13 we're not going to do that on the fly here. If
14 you want to make a request, we can take it under
15 advisement, but we're not going to do that while
16 we're sitting here.

17 BY MR. CAZA:

18 115 Q. This is not under advisement.
19 This is not an examination for discovery. This
20 witness has access to that information now. I'm
21 asking him to get it to give me the evidence.

22 R/F MR. HANRAHAN: I'm telling you we're
23 not going to do that.

24 BY MR. CAZA:

25 116 Q. And sorry, can you explain to me

1 what's the basis of your objection to him
2 getting relevant evidence that he can access
3 right now? What's the basis of your objection?

4 MR. HANRAHAN: Because if you'd like
5 the information, you're free to make a request
6 and we'll give you our answer whether we're
7 going to take it under advisement, whether we're
8 going to provide it, we'll do that, but we're
9 not going to have him open up his email on the
10 fly while we're sitting here and do that.

11 BY MR. CAZA:

12 117 Q. And I'm trying to understand
13 here. Actually, he wasn't going to open his
14 email. My understanding is he has got the
15 document, he was going to download it.

16 He was supposed to attend with all the
17 relevant documents. This is a relevant
18 document. I'm -- and I accept that he's
19 attending if he has brought them with him if he
20 has access to him.

21 It's very relevant how much money has
22 been spent by Laurentian University on
23 professional fees in order to go through this
24 CCAA. This witness has said that he has access
25 to that information. He can go get it for me

1 right now by downloading the document and you're
2 actually telling him not to do that. Is that
3 correct?

4 MR. HANRAHAN: I am telling him not to
5 do that. I told you we'll take your request
6 under advisement and we'll get back to you.

7 MR. CAZA: No, it's not under
8 advisement. This is a cross-examination. You
9 either object and I move on. Are you objecting
10 to this witness getting this evidence that he
11 actually can go get right now that's very
12 relevant to this application and to our motion?
13 Are you objecting?

14 MR. HANRAHAN: I think I've given you
15 our position, so why don't you move on because
16 we're not going to do that right now.

17 BY MR. CAZA:

18 118 Q. No, no, I'm sorry. Your position
19 is you're taking it under advisement. That's
20 not a position. You're objecting. If you're
21 not objecting, the witness should be looking up
22 the document and giving me the information.

23 MR. HANRAHAN: You're free to take
24 that position, but I've given you our position.
25

1 BY MR. CAZA:

2 119 Q. So, Mr. Haché, can you please
3 answer the question? Please get the document
4 and provide me with the information. There's
5 been no objection.

6 MS. MILLER: Mr. Caza, if you refer to
7 Mr. Haché's affidavit, he clearly says in
8 paragraph 251 of his affidavit that the cash
9 flow forecast will be filed with the court, will
10 be attached to a monitor's report in connection
11 with this motion.

12 So if you want to ask Mr. Haché
13 something specific that's in his affidavit with
14 respect to the cash flow, that's what his
15 affidavit refers to.

16 BY MR. CAZA:

17 120 Q. I'm sorry, Ms. Miller, a
18 cross-examination is in no way limited to what
19 you've decided is going to be in the affidavit.
20 I can ask questions on anything that's relevant.
21 I've asked the question. Either the witness is
22 going to answer or you're going to object.
23 You're going to object on the record and I'm
24 going to continue. Are you objecting?

25 If not, Mr. Haché, answer the

1 question.

2 MS. MILLER: You have our position.

3 BY MR. CAZA:

4 121 Q. I'm sorry, no, so there's no
5 position. There's no objection.

6 Mr. Haché, answer the question,
7 please. Download the document and give me the
8 information.

9 MR. HANRAHAN: You're not going to do
10 that. We've been over this several times now,
11 so I think you should just move on.

12 BY MR. CAZA:

13 122 Q. No, I'm not moving on. You're
14 not going to sit here and say the witness is
15 going to do this, the witness is going to do
16 that. This is a cross-examination. You're
17 either going to object or he's going to answer.
18 You can't be telling him don't answer this
19 question. Are you objecting or are you not
20 objecting?

21 MR. HANRAHAN: It's not -- what you're
22 asking him is not a question. You're giving him
23 a direction asking him to download a document
24 and I'm telling you he's not going to do.

25

1 BY MR. CAZA:

2 123 Q. Hold on. So you're objecting to
3 the request I've asked the witness to consult a
4 document that he has access to right now while
5 he's being cross-examined. You're objecting to
6 that, correct?

7 MR. HANRAHAN: I've already answered
8 that a few times.

9 BY MR. CAZA:

10 124 Q. Give me the basis of your
11 objection.

12 MR. HANRAHAN: I don't see the purpose
13 in going round and round on this. We've told
14 you --

15 BY MR. CAZA:

16 125 Q. Well, actually we're going to
17 move on. I don't understand why you're not
18 objecting. I think you're not objecting
19 because, and I want this to be stated on the
20 record, because you know there is no basis to
21 not permit the witness to get this information
22 and answer. I'm moving on.

23 Can we go to page -- we go to the
24 service list, which is after page 12 in the
25 Notice of Application.

1 Laurentian University is paying those
2 legal fees. So the lawyers for the applicant,
3 Thornton Grout Finnegan, those legal fees are
4 paid by Laurentian, correct, Mr. Haché?

5 A. That is correct.

6 126 Q. And Ernst & Young, the court
7 appointed monitor, those fees are paid by
8 Laurentian University?

9 A. That is correct.

10 127 Q. The next page, Stikeman Elliott,
11 the legal fees for the lawyers for the monitor,
12 that's paid by Laurentian University?

13 A. That is correct.

14 128 Q. The Lenczner Slaght legal fees,
15 lawyers for the Board of Governors of Laurentian
16 University of Sudbury, that's paid by the
17 university?

18 A. That is correct.

19 129 Q. Now, the Davies Ward and Beck
20 lender counsel, that's paid by the university?

21 A. Lender counsel, so that's counsel
22 for whom?

23 130 Q. To the applicant. To Laurentian.
24 Davies Ward and Beck, Natasha MacParland?

25 A. Who are they counsel to?

1 131 Q. The applicant. They're lender
2 counsel to the applicant?

3 A. Lender counsel?

4 132 Q. Yes.

5 A. I'm not quite sure what that
6 means, but.

7 133 Q. Do you know if you're paying
8 their legal fees?

9 A. I -- it's the lender counsel for
10 the applicant part that I find --

11 134 Q. Well, the applicant is
12 Laurentian, so they're lender counsel to you so
13 you'd be paying the legal fees?

14 A. So it's the counsel to the
15 lender, yes, I believe that is correct.

16 135 Q. And you're paying the legal fees
17 of the DIP Lender?

18 A. I believe that is correct.

19 136 Q. And you're paying Hicks Morley,
20 your labour counsel for their legal fees?

21 A. Yes.

22 137 Q. If we can now go to your
23 affidavit, if you can pull up your affidavit,
24 and I'd like to start at paragraph 11.

25 A. Okay.

1 138 Q. Now, this affidavit, I'm assuming
2 before you swore that it was true and that is
3 your signature we see at page 110? Page 110 of
4 your affidavit. It was sworn by video?

5 A. That is my signature.

6 139 Q. Now, I'm assuming you reviewed
7 drafts of this affidavit before you signed it?

8 A. I did.

9 140 Q. And you made changes and
10 corrections to the drafts that you received?

11 A. I did.

12 141 Q. And then they were returned and
13 then when you were satisfied with everything
14 that was in the affidavit, after having read it
15 carefully, you swore that it was true, correct?

16 A. After conversations with my
17 counsel, yes.

18 142 Q. So you -- okay, now just so I'm
19 clear, what you've sworn is true. You -- it is
20 your evidence that to the best of your
21 information, knowledge and belief it's all true,
22 correct?

23 A. That is correct. To the best of
24 my information, knowledge and understanding that
25 much of the information here was information

1 provided to me, I believe it is true.

2 143 Q. Well, I guess I'm a little
3 concerned. If you go to page -- paragraph 4 at
4 page 4 of your affidavit. Are you there?

5 A. Yes.

6 144 Q. It says:

7 "As such, I have knowledge of the
8 matters hereinafter deposed to, save
9 where I have obtained information from
10 others. Where I have obtained
11 information from others, I have stated
12 the source of the information and
13 believe it to be true."

14 Do you see that?

15 A. Yeah, that is correct.

16 145 Q. Unless you say in the paragraph
17 or when you're giving the evidence that you got
18 the information from someone else, for example
19 your lawyer, you actually have knowledge of
20 the -- of the evidence you're providing in your
21 affidavit, correct?

22 A. I would think that's what it
23 says, but I'm not a lawyer.

24 146 Q. You don't have to be lawyer. You
25 swore this. I'm reading your affidavit. This

1 is you. You swore this is true. So you're
2 telling me you don't know what this means? You
3 swore it was true, you don't know what it means?

4 A. I believe I know what it means.

5 147 Q. So it says:

6 "As such, I have knowledge of the
7 matters hereinafter deposed [...]."

8 That means you know what you're
9 saying. You have personal knowledge.

10 A. I have knowledge of it.

11 148 Q. "[...] save where I obtained
12 information from others." And when you've done
13 that, you've actually said in your affidavit,
14 and you've done it in certain paragraphs, you
15 state the source and you also state you believe
16 it to be true. So you'll agree with me on that?

17 A. I believe what's in here to be
18 true, that is correct.

19 149 Q. Not only that it's true, you have
20 personal knowledge of it, correct?

21 A. And that I have knowledge of
22 those parts which I said I have knowledge of.

23 150 Q. It's not what you said you have
24 knowledge. It's your whole affidavit. Unless
25 you've specifically said you got the information

1 from someone else. Do you agree with me on
2 that?

3 A. That's what I understand, yes.

4 151 Q. Go to paragraph 11 at page 6.

5 A. Yes.

6 152 Q. Okay. So you start by saying:

7 "One significant source of
8 financial challenge are the terms of
9 Laurentian University's Collective
10 Agreement With LUFA, which is
11 addressed in this affidavit."

12 I'm trying to understand, what
13 percentage of your budget would be wages, wages
14 and salaries?

15 A. I don't have an exact percentage.

16 153 Q. Just give me what is your
17 understanding? Just give me what your belief
18 and knowledge is as to what that percentage is.
19 Is it more than 50 percent?

20 A. What is that number looking back?
21 I mean, I have access -- I'm not going to -- no.

22 MS. MILLER: That information is
23 contained in his affidavit. Would you like to
24 direct him to it?

25

1 BY MR. CAZA:

2 154 Q. We'll get to that -- we'll get to
3 the sort of different percentages because it's
4 actually broken down in a different fashion, but
5 I guess that information is something that you
6 knew or were aware of at the time you swore this
7 affidavit, is that fair? For you to say that
8 it's a significant source, you had information
9 and knowledge as to how significant that source
10 was. Is that fair?

11 A. Yes, that is correct.

12 155 Q. Okay. Now, so and we'll come
13 back to the issue of how much money, but I think
14 it's fair to say that probably one of the big
15 sources of concern for Laurentian University, in
16 order to be able to come out of its financial
17 predicament was to get significant and important
18 concessions from its unions, is that fair?

19 A. Yes, to be financially
20 sustainable, we needed to have changes in the
21 total amount of compensation going to our
22 unionized people, yes.

23 156 Q. And my understanding is that you
24 had attempted to negotiate that or did you
25 attempt to negotiate that before seeking --

1 attempting to seek relief from the CCAA?

2 A. Yes.

3 157 Q. Now, if I go to page -- so that's
4 one significant source of financial challenge.
5 The other one, I'm in paragraph 12, you say:

6 "Operationally, the academic
7 programming offered by Laurentian
8 University is not sustainable in its
9 current form and must be addressed."

10 What did you mean by that?

11 A. What I meant by that, the cost of
12 operating the number of programs that are listed
13 there exceeds the revenue that was received for
14 those programs and therefore was not
15 sustainable.

16 158 Q. And that's all you meant by that
17 sentence, right? That's what you were referring
18 to, the courses and the programs that Laurentian
19 University is offering, what it's costing you,
20 and how much revenue you're getting to offer
21 those courses, correct?

22 A. Yes. It's an academic structure
23 that is not -- that doesn't balance revenue with
24 the cost of delivering those courses and
25 programs.

1 159 Q. Now, if I go to paragraph 13, I
2 see here, you go:

3 "When considering individual
4 courses (each program offers multiple
5 courses), the issues are magnified."

6 I just want to be clear that this
7 paragraph 13 and these numbers have nothing to
8 do with any of the courses that are offered by
9 the Federated Universities.

10 A. These are courses and programs
11 offered by Laurentian.

12 160 Q. And the same with paragraph 12:

13 "[...] the academic programming
14 offered by Laurentian University
15 [...]."

16 You're not at all, in paragraph 12,
17 referring to any of the courses or anything with
18 respect to the Federated Universities, is that
19 fair?

20 A. That is correct. These are --
21 I'm referring to Laurentian courses and
22 programs.

23 161 Q. If I go to paragraph 14, again
24 this has nothing to do with any of the courses
25 that are being offered and the students that are

1 taking the courses offered by Federated
2 Universities?

3 A. I believe that faculty student
4 number is based on Laurentian registrations
5 only. That's my understanding.

6 162 Q. Sorry, so the -- when we look at
7 these -- this information, when you swore the
8 affidavit, you were -- your knowledge was that
9 this only refers to Laurentian University,
10 correct?

11 A. That is correct. That is my
12 knowledge.

13 163 Q. I think somebody may be
14 objecting?

15 MR. HANRAHAN: I just wanted to
16 clarify that there's reference in the second --
17 we're talking about paragraph 14?

18 BY MR. CAZA:

19 164 Q. Yeah.

20 MR. HANRAHAN: So there's reference in
21 there to numbers from other schools outside of
22 Laurentian.

23 BY MR. CAZA:

24 165 Q. Sorry, so is that an objection?

25 MR. HANRAHAN: Well, I just wanted to

1 clarify you're --

2 BY MR. CAZA:

3 166 Q. What are you doing?

4 MR. HANRAHAN: Your question --

5 BY MR. CAZA:

6 167 Q. Is this an objection? I'm
7 cross-examining this witness. Are you
8 objecting? This is not a discovery.

9 MR. HANRAHAN: I'm clarifying the
10 question. Thank you, I'm aware of that. Your
11 question was suggesting that this paragraph only
12 has to do with Laurentian and I'm saying to you
13 that the second half of this paragraph refers to
14 numbers from schools other than Laurentian.

15 BY MR. CAZA:

16 168 Q. So your objection is that my
17 question was improper?

18 MR. HANRAHAN: It was unclear.

19 BY MR. CAZA:

20 169 Q. Next time if you want to object,
21 please object before the witness answers the
22 question, if you're going to object to a
23 question. And I am going to insist that we let
24 the witness answer questions at this
25 cross-examination.

1 Now, your counsel has objected. Does
2 that change your answer to paragraph 14 that you
3 just gave me?

4 A. So the reference to the
5 significant number of courses that have 10 or
6 fewer students, majority have 14 or fewer
7 students that I have direct knowledge of.

8 The averages that are there for
9 Canadian universities are, of course, secondhand
10 based on information that is either publically
11 available or otherwise provided.

12 170 Q. You actually gave it to us. See
13 at the bottom? You've actually given us the
14 source of that information. I was referring to
15 the first two sentences. So you're correct,
16 you've actually given the sources.

17 A. Okay.

18 171 Q. Paragraph 15 reads as follows:

19 "Low enrolment in courses causes
20 such courses to be financially
21 unsustainable. The cost of offering
22 such courses greatly exceeds the grant
23 and tuition revenue received by
24 Laurentian University for those
25 courses."

1 You are referring to courses offered
2 by Laurentian University and not the Federated
3 Universities, correct?

4 A. That is correct.

5 172 Q. Paragraph 16. It states in
6 paragraph 16:

7 "Within the current structure, it
8 costs more for Laurentian University
9 and the Federated Universities to
10 educate each student per year when
11 compared to the average cost across
12 all other Ontario universities."

13 Okay, where are you getting that
14 information? You have knowledge of that?
15 What's your knowledge based on?

16 A. That's based on the total
17 enrollments at Laurentian including the
18 Federated Universities. And the Ontario average
19 as based on data provided by the Council of
20 Ontario Universities.

21 173 Q. So just so that I'm clear, when
22 you're looking at what the cost is to educate
23 each student per year, your concern and
24 Laurentian University's concern is what it's
25 costing Laurentian University to educate each

1 student and not what it's costing the Federated
2 Universities, is that fair?

3 A. Of course our concern is
4 Laurentian, yes.

5 174 Q. So if we now go to paragraph 17.
6 You state in paragraph 17:

7 "Historical efforts to address
8 Laurentian University's program
9 offerings have been unsuccessful."

10 And you give an example where you
11 temporarily suspended admissions to 17 academic
12 programs with low enrollment and there was a
13 judicial review. All of that had nothing to do
14 with any courses offered by Federated
15 Universities, correct?

16 A. That is correct.

17 175 Q. Now, if we go to paragraph 19,
18 are you with me?

19 A. Yes.

20 176 Q. You start by saying -- you start
21 your paragraph by saying:

22 "It is in the interest of public
23 policy [...]."

24 Do you see that?

25 A. Yes.

1 177 Q. "[...] as well as current and
2 future students, faculty, staff,
3 retirees, the Greater Sudbury
4 community and the Northern Ontario
5 region generally, to provide
6 Laurentian University with the
7 breathing room and platform of a
8 court-supervised proceeding with the
9 oversight and assistance of a Monitor,
10 in order for it to restructure."

11 Why are you saying that that's in the
12 interest of public policy?

13 A. It's in the interest of public
14 policy because Laurentian University serves and
15 provides for an important need for northern
16 Ontario.

17 178 Q. Just so that I'm clear, so you
18 say it's in the interest of public policy and
19 I'm trying to understand what you mean by that.
20 What do you mean by the "interest of public
21 policy"? I just want to understand what that
22 means.

23 A. The university makes an important
24 contribution to the community and to the north
25 in providing access to post-secondary education.

1 179 Q. So you'll agree with me that it
2 is also in the interests of public policy that
3 the Federated Universities also be able to offer
4 courses to students and have faculty and staff.
5 You'll agree with me on that?

6 A. What I will say is that the
7 presence of Laurentian University in the north
8 is important for the community, yes. And then
9 if you want to say that Laurentian University at
10 large, in whatever structure that represents,
11 yes.

12 180 Q. You brought up the interest of
13 public policy. You've actually said that in
14 your affidavit. So obviously you've said that
15 because it's relevant or you wouldn't have put
16 it in there. So the interest of public policy
17 is something that you've considered and you're
18 asking the judge, this will be read by the
19 court, this affidavit and this transcript. So
20 this is -- you're giving evidence to the court.

21 A. Yes.

22 181 Q. You told the court in your
23 affidavit that one of the things that should be
24 considered is the interest of public policy. I
25 think we can agree, just as you've explained it,

1 is in the interest of public policy for
2 Laurentian University to be able to -- to
3 function well, it's also in the -- you'll agree
4 with me, it's in the interest of public policy
5 for your Federated Universities to also be able
6 to do so, is that fair?

7 A. All I can say is it's in the
8 interest of public policy for Laurentian to
9 function well. That is my responsibility.

10 182 Q. So you are refusing to answer my
11 question, which is do you agree with me that it
12 is also in the interest of public policy for the
13 Federated Universities to be able to continue
14 offering courses? You're refusing to answer
15 that question?

16 MR. OSBORNE: Mr. Caza, I'm going to
17 jump in here. That's precisely not what he said
18 as you know.

19 BY MR. CAZA:

20 183 Q. Well, --

21 MR. OSBORNE: So I've been very
22 patient here, Mr. Caza. Please let Dr. Haché
23 finish his answers before you interrupt him and
24 you're certainly entitled to put to him a
25 proposition, if you wish, and he can agree or

1 disagree. But please don't misstate what his
2 evidence has clearly and unequivocally been.
3 Thank you, sir.

4 BY MR. CAZA:

5 184 Q. Well, Mr. Osborne, one thing is,
6 I want to apologize. With the -- when we're
7 doing this virtually, it's hard for me sometimes
8 to see whether or not Mr. Haché has actually
9 completed answering.

10 MR. OSBORNE: Understood. Fair
11 enough.

12 BY MR. CAZA:

13 185 Q. If I ask you a question, if you
14 haven't finished, I would ask you put your hand
15 up. I literally mean that, and I will stop,
16 because I thought you had finished.

17 So I'm sorry. So I guess the
18 question -- I'll just rephrase the question.
19 I'll ask you the question.

20 Would you agree with me that it is in
21 the interest of public policy that the Federated
22 Universities also be able to continue offering
23 courses?

24 A. I believe I've already answered
25 that question. I can agree that it is important

1 for Laurentian University to function -- to have
2 the presence and ability to offer the courses.
3 I cannot comment beyond that.

4 186 Q. So actually you can. You can
5 refuse -- or I guess my understanding is you're
6 refusing to answer the question because the
7 answer can be yes, it is in the interest of
8 public policy, no, it's not, or provide another
9 answer. And my understanding is when I ask you
10 the question, do you agree with me that it's in
11 the interest of public policy for the Federated
12 Universities to be able to teach their courses,
13 your answer is that what's important is the
14 interest of public policy of Laurentian
15 University, is that fair?

16 A. That is what I said.

17 187 Q. Okay. Let's move on.
18 Now, if we go to the next page,
19 paragraph 20, so that's at page 9.

20 A. Uhm-hmm.

21 188 Q. So it says here:
22 "Laurentian University has made
23 every effort over the last several
24 years to support its students and
25 provide [...]."

1 Then it says that -- the third
2 sentence:

3 "However, Laurentian University
4 must take steps to ensure its
5 long-term sustainability,"

6 Then I'm just quoting your affidavit
7 here:

8 "Laurentian University requires
9 financial assistance and the breathing
10 room afforded by CCAA protection to
11 effect an overall restructuring and to
12 safeguard against significant changes
13 to its operations and a corresponding
14 decline in student experience which
15 would likely result if this is not
16 undertaken through a coordinated,
17 transparent and efficient
18 court-supervised process."

19 Now, you've used the word
20 "transparent". Why do you use the word
21 "transparent"? What did you mean by that?

22 A. So my understanding is that the
23 CCAA protection provides for a transparent
24 process, all of the affidavits and so forth
25 become -- are public documents, and the outcome

1 of all mediations become public. So it is --
2 everything is -- is done out in the open through
3 a court-assisted process.

4 189 Q. And you're -- what you're telling
5 us, and you'll agree with me, that transparency
6 is very important in a process of this nature,
7 is that fair?

8 A. I believe a process of this
9 nature provides for that transparency, yes.

10 190 Q. And the transparency is very
11 important. You'll agree with me it's important
12 that there be transparency?

13 A. It's integral to the process.

14 191 Q. Then you go on and your next
15 sentence reads:

16 "A successful restructuring of
17 Laurentian University will necessarily
18 involve its federated universities."

19 Then you name the three universities.
20 So I just want to be clear here. So when you
21 say involve, what you're saying is they have to
22 participate in the discussion that's going to
23 lead to whatever decisions may be made
24 concerning the -- your relationship with the
25 Federated Universities, is that fair?

1 A. I think that that sentence refers
2 to is that the restructuring that must occur
3 needs to include restructuring of the federation
4 because that federation is part of the issue
5 with sustainability of the university.

6 192 Q. And you were involved and you
7 were in fact played a leading role in
8 determining that the agreements between
9 Laurentian University and the Federated
10 Universities needed to come to an end? You were
11 involved in those discussions and played a
12 leading role in arriving at that decision, is
13 that fair?

14 A. I was involved in those
15 discussions leading to the conclusion that there
16 was no viable alternative to that end, yes.

17 193 Q. So you say you were or were not?

18 A. I was, yes.

19 194 Q. Okay, good. So you'll be able to
20 assist the court in understanding why Laurentian
21 University is taking the position that they need
22 to bring these agreements to an end, is that
23 fair?

24 A. That is correct, yes.

25 195 Q. So we'll be dealing with that

1 later on as we get into the details.

2 Now, I'm going to -- so maybe just go
3 back. And I must have misread this and I
4 apologize. When you say:

5 "A successful restructuring of
6 Laurentian University will necessarily
7 involve its federated universities."

8 You didn't mean that they needed to be
9 involved in those discussions. What you meant
10 is we have to deal with that structure that
11 exists?

12 A. I believe that's what it says,
13 yes. The -- what it says is that the
14 restructuring needs to involve the federation
15 and it says, "as described below" so I believe
16 that that is elaborated on at great length
17 below.

18 196 Q. Now, and we'll -- we can deal
19 with that later.

20 So we go now to paragraph 21. Are you
21 with me?

22 A. Yes.

23 197 Q. What I'd like to do is I want to
24 go to Exhibit A. Okay? So Exhibit A, have you
25 got access to Exhibit A?

1 A. I do have the exhibits. It'll
2 take me a moment.

3 198 Q. So why don't you pull up Exhibit
4 A?

5 A. I have it.

6 199 Q. It's an 11-page document.

7 A. I have Exhibit A. I have it.

8 200 Q. Now, you were familiar with this
9 Act before the whole question of CCAA came up
10 when you were appointed to your present position
11 because initially it was on an interim basis.

12 You became or you made sure to become
13 aware and were aware of this legislation, is
14 that fair?

15 A. To be correct, I was not
16 appointed on an interim basis. I was appointed
17 directly as the permanent president.

18 201 Q. Perfect.

19 A. And I was aware there was
20 legislation. Did I read the legislation before
21 taking up the position or only sometime
22 thereafter, I cannot remember. But at some
23 point, I read the legislation, yes.

24 202 Q. Is the right title -- should I
25 say President? It's not Rector, it's President,

1 right?

2 A. If we are speaking English, it is
3 President and Vice Chancellor. If we are
4 speaking French, it would be Rector and Vice
5 Chancellor.

6 203 Q. So now, Mr. Haché, so you hadn't
7 read this until you swore your affidavit.
8 That's the first time you saw this piece of
9 legislation?

10 A. No. I've read it before I swore
11 the affidavit, for sure.

12 204 Q. So you were familiar before --
13 you had read this legislation before this whole
14 CCAA issue came up at Laurentian, you had
15 already read this Act?

16 A. Yeah, I read it. I wouldn't say
17 I had a recital knowledge of it, but I had read
18 it and I was familiar with it.

19 205 Q. So you knew, if we look at the
20 preamble, it says:

21 "WHEREAS the University of
22 Sudbury, the United Church of Canada
23 and The Incorporated Synod of the
24 Diocese of Algoma by their petition
25 have represented that they are

1 desirous of establishing [...]."

2 This university.

3 So you were aware that the three
4 Federated Universities are actually the three
5 institutions that got together in order to
6 effectively ensure the creation of Laurentian
7 University?

8 A. Yes.

9 206 Q. And if we go to paragraph 4 on
10 the second page, are you with me? Under
11 "Powers"?

12 A. Oh, yes.

13 207 Q. It says:

14 "The University has university
15 powers, including the power,"

16 It says:

17 "Establish courses."

18 It says:

19 "to establish and maintain, in
20 either or both of the French and
21 English languages, such faculties,
22 schools, institutes, departments and
23 chairs as determined by the Board,
24 other than those already established
25 by the University of Sudbury, which

1 faculties, schools, institutes,
2 departments and chairs are continued
3 in the University under authority of
4 the Board and Senate."

5 So you were aware that all of those
6 courses, the faculties, the schools, everything
7 that existed at the University of Sudbury, this
8 piece of legislation continued their existence
9 at Laurentian University, with Laurentian
10 University, correct?

11 A. That's what the paragraph says.

12 208 Q. And you were aware of that when
13 you swore your affidavit?

14 A. Yes.

15 209 Q. If we go to the next page, page 3
16 at the top of the page. We have "Federation of
17 church-related colleges". And then when it
18 looks at the power, because we're under the
19 power section, it says:

20 "to admit church-related
21 universities or colleges into
22 federation as colleges of the Faculty
23 of Arts and Sciences, which
24 church-related universities or
25 colleges have the right to give

1 instruction [...]."

2 So you were aware that you had the
3 power to basically federate other universities
4 and colleges, correct?

5 A. That is correct.

6 210 Q. Now, if I go to -- under the --
7 under "Federation", it goes under e):

8 "to permit federation or
9 affiliation of other colleges or
10 universities with the University and
11 to make agreements for federation or
12 affiliation with other colleges or
13 universities [...]."

14 It says:

15 "[...] provided that Hearst
16 College and Prince Albert College,
17 presently affiliated with The
18 University of Sudbury, may enter into
19 agreements to affiliate with the
20 University."

21 Now, presently you do have an
22 affiliation with Université de Hearst, correct?

23 A. That is correct.

24 211 Q. Yeah. What other affiliations do
25 you have?

1 A. Of a federated nature?

2 212 Q. Yes.

3 A. That I'm aware of, well, I guess
4 the other one would be the Northern Ontario
5 School of Medicine.

6 213 Q. Right.

7 A. It's not strictly a federated
8 relationship, but there is a relationship there
9 that in terms of utilizing the Laurentian Senate
10 for the approval of courses and programs.
11 Unless I'm forgetting any, I believe that's it.

12 214 Q. Well, that's two. So there's the
13 Université de Hearst and NOSM, right, those are
14 the two, correct?

15 A. To my understanding, yes.

16 215 Q. Now, recently, and I think it was
17 like last week, there was legislation passed.
18 You're familiar with that legislation?

19 A. Yes.

20 216 Q. Okay. And what was the impact of
21 that legislation on your relationship with these
22 two -- with NOSM and Université de Hearst?

23 A. It signaled the likelihood of a
24 change in that relationship.

25 217 Q. Has that change occurred yet?

1 A. No, it has not.

2 218 Q. Have discussions started with
3 respect to that change?

4 A. Not with the university.

5 219 Q. Now, if go to paragraph -- on
6 page 4, paragraph 2, so it's under the title
7 "Enrolment of students". Do you see that?

8 A. Yes.

9 220 Q. It says:

10 "Every undergraduate student in
11 the Faculty of Arts and Science shall
12 enroll either in University College or
13 in one of the church-related colleges
14 of the Faculty. "

15 So that's provided for in the Act,
16 correct, and you were aware of that at the time
17 you swore your affidavit?

18 A. Yes, I was aware of the Act.

19 221 Q. And aware of this section
20 pertaining to undergraduate students and how
21 they're able to enroll, correct?

22 A. Yes.

23 222 Q. Are you familiar -- are you aware
24 as to whether or not this Act has ever been
25 amended or changed?

1 A. I'm not either, I must say.
2 Unless there's something written at the end of
3 it saying it was updated at some point, I am not
4 aware.

5 223 Q. So if we go to page 6. We've got
6 at the bottom of the page, it says:

7 "Management of University vested
8 in Board."

9 Except -- and then it goes on 18(1):

10 "Except as to such matters as are
11 by this Act specifically assigned to
12 the President, the Senate, federated
13 universities and federated colleges."

14 And then it goes on to say, basically
15 all the powers that the university has. So you
16 understood that those powers are subject to any
17 powers resting with the Federated Universities,
18 correct?

19 A. It says -- it says:

20 "[...] and the Board has all
21 powers necessary or convenient to
22 perform its duties and achieve the
23 objects and purposes of the University
24 and, without limiting the generality
25 of the foregoing, has power."

1 So I believe it refers to the Board.

2 224 Q. Right. And the powers of the
3 Board are -- they go to such matters unless
4 they've been specifically assigned to, among
5 other entities, the Federated Universities,
6 correct?

7 A. You'd have to show me where it
8 says that.

9 225 Q. Yeah, just go to the top of -- in
10 fact, bottom of page 6, top of page 7.

11 A. Yes.

12 "[...] to such matters as are by
13 this Act specifically assigned to the
14 Present, the Senate, federated
15 universities [...] all powers."

16 Yes.

17 226 Q. Now, if we go to page 8. And at
18 page 8, we have "Composition of Senate". Are
19 you with me?

20 A. Yes.

21 227 Q. So the Senate, as per this Act,
22 the legislation, shall be composed, so:

23 "There shall be a Senate of the
24 University composed of,"

25 And if we look at c), it's the

1 principal and head of each federated university
2 or college, correct?

3 A. That is correct.

4 228 Q. That's in the Act, correct?

5 A. That is correct.

6 229 Q. And then h) says:

7 "one full-time professor elected
8 annually by each federated university
9 [...]."

10 Do you see that?

11 A. That is correct, yes.

12 230 Q. So I'm just trying to understand
13 here. So just so I'm clear, you're attempting,
14 you're seeking to bring the agreement between
15 Laurentian University and the Federated
16 Universities to an end. Just so that I'm clear,
17 even though you're bringing that to an end, is
18 it your understanding that they're still going
19 to sit on your Senate?

20 A. No, that would not be correct.

21 231 Q. So maybe you can assist me
22 because the Act actually says they sit on your
23 Senate. So explain to me where I'm wrong.

24 A. We expect -- we understand that
25 the Act may need to be amended.

1 232 Q. I'm sorry. So just so I'm clear,
2 so for the -- your understanding is that for the
3 agreements to be set aside, we're going to need
4 to amend this Act? Is this your understanding?

5 A. No. My understanding is that
6 should the agreements be set aside, the Act will
7 need to be amended.

8 233 Q. Okay. But you don't have any
9 control as to amending this Act. This would
10 need to be the legislature, correct?

11 A. This would be -- need to be the
12 legislature, that is correct.

13 234 Q. Now, if we can go to page 9.

14 A. Yes.

15 235 Q. Sorry, wrong page number. See at
16 to the bottom of page 10, there's a title called
17 "Suspension of degree-granting rights of
18 federated colleges." Do you see that?

19 A. Yes.

20 236 Q. Paragraph 27, it says:

21 "If any university or college is
22 federated or affiliated with the
23 University and has the right to grant
24 degrees, such right, except for
25 degrees in Theology, shall remain

dormant during the time that such university or college remains federated or affiliated with the University."

So just so we're clear here, when the federated colleges entered into -- and I'm talking Thorneloe and the Université de Sudbury, when they entered into the agreement or if I'm looking at this Act, when they joined the university as per this Act, they were in a position to grant degrees, and that right was rendered or it had to remain dormant, which is what the present situation is, correct?

A. That is what that paragraph says.

237 Q. So the Université de Sudbury and Thorneloe presently cannot grant degrees, correct?

A. Except for theology.

238 Q. Except for theology. Do you know what they would need to do in order to be in a position to award degrees and no longer be dormant? Do you have any idea what would need to be done?

A. I do not.

239 Q. Now, if we go to -- back to your

1 affidavit. So I'm at paragraph 25 of your
2 affidavit at page 10. So it states at page 10,
3 I'm just going to read you what we've got here.
4 It says at paragraph 25:

5 "As further discussed below,
6 Laurentian University has a federated
7 school structure whereby it has formal
8 affiliations with several independent
9 universities under the overall
10 Laurentian University umbrella."

11 Now, can you explain to me what's --
12 what is a federated school structure? What does
13 that mean?

14 A. It means that each of the
15 universities listed there are independently
16 incorporated entities that participate in a
17 federal structure.

18 240 Q. Now, so, Mr. Haché, just so I'm
19 clear, and I will use for the example Université
20 de Sudbury, the same with Thorneloe, they offer
21 courses and those courses are offered by
22 their -- sort of their -- courses of their
23 institution, their university, correct?

24 A. They offer courses and programs
25 approved through the Senate of Laurentian

1 University, but the delivery of those courses
2 and programs happens at the federated
3 institution.

4 241 Q. So when we're looking at courses
5 offered by the Université de Sudbury or
6 Universitie de Sudbury, they are courses that
7 are actually offered by Université de Sudbury,
8 correct?

9 A. They are delivered by faculty
10 members who are employed by the University of
11 Sudbury, yes.

12 242 Q. And the courses are courses
13 offered by Université de Sudbury. If we look at
14 what are the courses and programs offered by
15 Université de Sudbury, we will find those
16 courses. They're not offered by Laurentian
17 University?

18 A. They are -- they are offered by
19 Laurentian University in the sense that they are
20 courses that qualify for Laurentian degrees. So
21 they -- maybe it's best to say they are offered
22 through Laurentian University by the federated
23 institution. Trying to be correct, not trying
24 to be misleading.

25 243 Q. No, no. In fact, my

1 understanding is that the courses are offered by
2 Université de Sudbury, other courses are offered
3 by University of Thorneloe, and those courses
4 are recognized by Laurentian University for
5 giving or providing diplomas or allowing your
6 students to graduate, correct?

7 A. I believe that is the correct way
8 to say it, yes.

9 244 Q. So we have -- if I'm a student,
10 I'm a student of Laurentian University. If I
11 sign up for a course at Université de Sudbury,
12 I'm actually taking a course that is offered by
13 an independent university, but there's an
14 agreement that that course will be recognized
15 when I am to obtain my diploma at Laurentian
16 University?

17 A. That is correct.

18 245 Q. Can you explain to me how -- what
19 is the administrative arrangement? I'm trying
20 to understand the details of administrative
21 arrangement between Laurentian University and
22 its federated -- and the Federated Universities.
23 More specifically, I want to understand costs,
24 revenues, explain to me how that works, just
25 practically speaking so the court can

1 understand?

2 A. Can you be more specific?

3 246 Q. Sure. So I guess if -- so I'm
4 trying to see -- remember how you were saying a
5 while ago or we looked at -- so I'm looking at a
6 course -- so let's say there's a course offered
7 at Université de Sudbury, and we'll just say a
8 certain course in philosophy, we'll call it
9 Introduction a la Philosophie. Now, that course
10 is offered at Université de Sudbury. Now, does
11 Laurentian University make any money or get --
12 receive any revenue from the fact that
13 Université de Sudbury is offering this course?

14 A. It depends.

15 247 Q. So explain.

16 A. Can you be more specific?

17 248 Q. Well, I mean, I think I'm being
18 very specific. Explain to me, does Laurentian
19 University -- how does Laurentian University, if
20 at all, make any money or generate any revenue
21 for itself when students sign up for a course at
22 one of the Federated Universities?

23 A. So I believe the funding formula
24 is included in the documents.

25 249 Q. What's your understanding of the

1 funding formula?

2 A. So the -- you know, I think, if
3 we want to get precise, we can go to the actual
4 page in the document, but my understanding,
5 without going to that, and, you know, subject to
6 correction of what's specifically written when
7 I'm looking at the document, is that the student
8 who is registered in a program at the
9 university -- the program that is delivered by
10 the University of Sudbury, grant and tuition
11 revenue attribute to the University of Sudbury,
12 minus an administration fee that is collected
13 for all the things that Laurentian University
14 does in a centralized manner.

15 250 Q. And since when has that been the
16 case?

17 A. Early 2019. I believe before my
18 arrival at the university.

19 251 Q. Okay. So I am a student. I sign
20 up for a course at Université de Sudbury
21 Introduction de la Philosophie, so where does
22 the money come from that you're taking the
23 15 percent cut? That's coming from where?

24 A. That comes from the combination
25 of grant and tuition revenues that attribute to

1 that registration.

2 252 Q. So there's grant and tuition
3 revenue for this course offered at Université de
4 Sudbury and that money does not come directly to
5 them, it goes through you?

6 A. Yes. Funding flows through
7 Laurentian.

8 253 Q. So all of that money is generated
9 because -- or is generated as a result of a
10 student signing up to take a course at either a
11 formal university or Université de Sudbury,
12 that's what's generating that money, the tuition
13 and the grants, but they're not getting that
14 money directly. It's actually going through
15 Laurentian University and they end up getting or
16 being transferred or Laurentian ends up
17 transferring 85 percent of that amount, correct?

18 A. If the student is registered in a
19 program at the federated institution, correct.

20 254 Q. Now, so all of the courses -- all
21 of the students that are registered presently at
22 Thorneloe or at Université de Sudbury,
23 Laurentian University makes 15 percent of the
24 revenue generated by that student taking that
25 course, right?

1 A. Laurentian doesn't make
2 15 percent. Laurentian -- in order to
3 administer to allow the student to apply to the
4 university, come to the university, use student
5 services, library facilities, recreational
6 facilities, everything that is associated with
7 the university, and there is a cost to that and
8 that is reflected in the administration charge
9 that is retained by the university.

10 And these are all, you know, things
11 that students need to have access to and, of
12 course, they are all things that do cost to
13 deliver the service, and the service is
14 delivered centrally by Laurentian University.

15 255 Q. And Laurentian, for what you've
16 described, keeps 15 percent of the revenue
17 generated, either through grants or tuition
18 fees, as a result of a student taking a course
19 in one of the Federated Universities, correct?

20 A. That is correct.

21 256 Q. Now, just so that I'm clear, so
22 for example, if I'm only taking four courses,
23 and I'm only taking courses at Université de
24 Sudbury, four courses that are offered by
25 Université de Sudbury, those are the only

1 courses I'm taking, that doesn't change anything
2 in what you said. That amount of money -- the
3 money will still be sent to Laurentian
4 University for --

5 A. The student has still applied
6 through Laurentian, the student is still
7 taking -- getting all the administration of
8 their progress and their degree through
9 Laurentian, they're using the libraries, the
10 various facilities at Laurentian, all that is
11 centrally provided in the federated model.

12 257 Q. So the answer is yes, right?

13 A. The answer is they have -- the
14 answer really is that, you know, a student at
15 the university takes courses, but there is a lot
16 of infrastructure, support, advising, et cetera,
17 many things are needed in order to enable the
18 student to successfully take and complete those
19 courses and complete their degree that go beyond
20 the course itself.

21 258 Q. I wasn't asking you to justify.
22 I didn't ask you to justify.

23 A. I was merely explaining the cost.

24 MR. CAZA: Rob, just make sure you let
25 Mr. Caza finish before you speak.

1 BY MR. CAZA:

2 259 Q. My question was simply in the
3 situation I described to you, you would still
4 end up keeping 15 percent of the amount. And I
5 think the answer was yes and you explained why
6 you thought that was okay.

7 Now, so that I'm clear, if I have a
8 situation where a number of students are signed
9 up, and I'll give you, for example, the last
10 school year. So it would be -- why don't we
11 take the last one. So why don't we take from
12 September 2019, okay, through to June 2020.
13 Would that be the year -- what would the year be
14 for the university if you look at numbers?
15 What's your fiscal year?

16 A. The fiscal year runs from
17 May 1st. The academic year runs from July 1st.

18 260 Q. So let's use the May 1st year.
19 So May 1st, 2019, till April 30th, 2020, okay?
20 A certain amount of revenue was generated by --
21 at Laurentian University that you were able to
22 use, and if you want in your general account,
23 from courses that students had signed up for in
24 Federated Universities, correct?

25 A. That is correct, yes.

1 261 Q. And what's that amount of money?
2 Where would I find how much money that
3 represents?

4 A. I believe there is a -- one of
5 the exhibits has that breakdown. I'm not sure
6 exactly where it is, but there is one in the
7 exhibits.

8 262 Q. What would the document be? What
9 would it be called? Is it the financial
10 statement?

11 A. Well, it's broken out of the --
12 it would not be in the consolidated financial
13 statement, I don't believe, but it would be
14 broken out within the financial statements, yes.

15 263 Q. Do you know -- would you have an
16 idea -- would you have any knowledge as to
17 approximately how much money would be generated
18 from courses offered by Université de Sudbury
19 and Thorneloe?

20 A. The total amount of revenues that
21 go to --

22 264 Q. Yes.

23 A. I believe the total amount of
24 revenues, and I would have to say to all three
25 of the federated institutions for the past

1 fiscal year, '19/'20, I believe that amount is
2 9.1 million. And I also believe it's in one of
3 the exhibits in this document, if that's not the
4 exact figure.

5 265 Q. Let's say it's 9.1 million.
6 Could be another number. That's your
7 recollection, correct?

8 A. That is my recollection. I'm
9 trying to figure out where within the 750 pages
10 the exact number is.

11 266 Q. That's fine, but your
12 recollection is it's approximately that number,
13 right?

14 A. The total amount of revenue
15 that's generated is approximately that number.

16 267 Q. So if I go 9,100,000 and multiply
17 that by 15 percent, you would be retaining
18 \$1,365,000, correct?

19 A. I believe that's about -- that is
20 approximately correct, yes.

21 268 Q. Now, just so I'm clear, and if I
22 sign up for a course at Université de Sudbury or
23 Thorneloe, or -- and at one point it was
24 Huntington, but we're now talking about
25 Thorneloe and Université de Sudbury, if I sign

1 up, you get that. But if I decide I'm not going
2 to take a course at Université de Sudbury, but
3 instead I'm going to go take a course at
4 Lakehead or I'm going to take a course
5 elsewhere, or I'm not going to take a course,
6 well, obviously you're not making that revenue,
7 correct?

8 A. Yeah, if the student doesn't
9 register to take a course, there is no revenue
10 to anyone within the federation.

11 269 Q. Just so I'm clear, Mr. Haché, the
12 agreement you have that your evidence is you
13 have an agreement and you're getting 15 percent,
14 correct?

15 MS. MILLER: Mr. Caza, I'm loathe to
16 interrupt, but I think you're recharacterizing
17 what he's referring to when you say you're
18 getting 15 percent. I think Mr. Haché's
19 evidence is they're getting 100 percent and they
20 are delivering a portion.

21 BY MR. CAZA:

22 270 Q. Actually, well, actually I find
23 that -- I don't actually think that's a fair
24 correction, but you've heard what your counsel
25 has said.

1 Mr. Haché, you're getting the money
2 because you're the channel through which the
3 money from the ministry or whatever the tuition
4 fees and the grants, wherever they're coming
5 from, they're going through you as a channel to
6 the federated university?

7 A. One of the services that we
8 provide is collecting tuition and, yes, the
9 ministry flows money to a single entity in the
10 federation and that is Laurentian and it is
11 passed on thereafter.

12 271 Q. You do not consider that money
13 that you're receiving as revenue. It's not
14 revenue. It's money that's going through you
15 that needs to be remitted at 85 percent to the
16 federated university. That's not your revenue.

17 A. It is revenue that is generated
18 as a result of students registered in programs
19 leading to Laurentian degrees.

20 272 Q. Well, it's interesting that you
21 describe it that way because actually what we
22 have -- you'll agree with me, Mr. Haché, is what
23 you have are people that are signing up for
24 courses at an independent university, a
25 university that is independent from Laurentian,

1 and that money -- those tuition and grants that
2 are being provided for that course are being
3 provided for a course that's offered to the
4 students by a federated university.

5 The only reason you're getting that
6 money that is going through you is because
7 that's the agreement you have with the Federated
8 University.

9 A. And the government.

10 273 Q. And the government. Now, just so
11 that I'm clear, if I look at the actual
12 agreement that you have, and we'll be going
13 through that agreement, because you've referred
14 to it's been there since 2019, if that agreement
15 was negotiated and you would get a higher
16 percentage, so instead of 15 percent you'd get a
17 higher percentage, you'd get say 20 percent, if
18 you would have negotiated that kind of an
19 agreement, you would have increased the revenue
20 that would be made by Laurentian as a result of
21 its relationship with the Federated
22 Universities, correct?

23 A. That is correct.

24 274 Q. But you never discussed that
25 option with the Federated Universities, is that

1 fair.

2 A. I have not, no.

3 -- RECESSED AT 9:43 A.M. --

4 -- RESUMED AT 10:01 A.M. --

5 BY MR. CAZA:

6 275 Q. If we go to page 10 of your
7 affidavit, and I'm always referring to your
8 affidavit of January 30th, 2020 for now.

9 A. Okay.

10 276 Q. And if I go to paragraph 27.

11 A. Uhm-hmm.

12 277 Q. It says:

13 "[Laurentian University] is
14 considered an 'access university,'
15 [it says] over 50% of the student
16 population is comprised of
17 first-generation postsecondary
18 students (those whose parents did not
19 attend university) and over 12% of the
20 student population self-identifies as
21 Indigenous."

22 That is 12 percent of the student body
23 of Laurentian University excluding the
24 federations, correct?

25 A. I would believe that would be

1 including the federation in this case, but let
2 me say I'm not -- I can't confirm one way or the
3 other, but that would be my suspicion.

4 278 Q. Well, one of the reasons you have
5 that suspicion is that there are significant
6 courses offered in Indigenous studies at
7 Université de Sudbury, so you would assume that
8 that would contribute to increasing that
9 percentage, is that fair?

10 A. So I think -- yeah, there is an
11 undergraduate program in Indigenous studies that
12 is offered through the University of Sudbury,
13 yes.

14 279 Q. Now, if we go to page -- I just
15 have to convert these pages, give me a second
16 here, page 12, paragraph 36.

17 And you -- it says here, 36:

18 "Within these faculties, students
19 can choose from approximately 132
20 undergraduate programs to enroll in.
21 Each faculty offers English and French
22 programs and the Faculty of Science,
23 Engineering and Architecture offers a
24 bilingual Bachelor of Engineering
25 program designed to be responsive to

1 the Francophone population at
2 [Laurentian University]."

3 Can you explain how a bilingual
4 program can be responsive to the Francophone
5 population? Like, I don't understand that.

6 A. I think bilingual program can be
7 responsive to the needs of all populations. I
8 think it is one of the value-add that we have at
9 Laurentian University that one has the ability
10 to study in their language of choice, in their
11 first language and also to benefit from courses
12 in the other official language of the country.

13 280 Q. What you say there -- sorry, go
14 ahead.

15 A. We offer programs that are
16 completely Francophone; we offer programs that
17 are completely Anglophone; and we offer the
18 ability for students to study between the two
19 languages in many cases.

20 281 Q. Well, to study between the two
21 languages, just so that I'm clear, I think we
22 can agree that if you are a Francophone student
23 at Laurentian University, you can take all your
24 courses in French, like you're able to take all
25 your courses in French. You would not need to

1 take courses in English because of any
2 impediment to take it in French. So that is why
3 I'm a little confused when you say --

4 A. We are a suite of programs,
5 Francophone programs where students can complete
6 their degrees entirely in French, yes.

7 282 Q. Okay, that's correct. And that
8 would be designed to be responsive to the
9 Francophone population where you can actually
10 take all of your courses in French. You will
11 agree with me on that one?

12 A. Absolutely.

13 283 Q. You are not responding to the
14 Francophone population where some of the courses
15 you take, you have to take them in English. You
16 will agree with me on that?

17 A. I think we are providing, you
18 know, the broadest spectrum of courses and
19 programs available in French that students are
20 looking for, yes.

21 284 Q. Well, I guess my question is --
22 and I don't want to belabour the point -- I find
23 it odd to be quite honest that you say in your
24 affidavit that you have -- you speak of Faculty
25 of Science, Engineering and Architecture

1 offering a bilingual Bachelor of Engineering as
2 opposed to one in French, and you're saying it's
3 designed to be responsive to the Francophone
4 population.

5 A. Yes.

6 285 Q. So am I missing something or --

7 A. You might be. The -- the
8 bilingual Bachelor of Engineering program, there
9 is no Francophone engineering program in the
10 Province of Ontario, but Laurentian is trying to
11 meet the desires and needs of the Francophone
12 population and, therefore, we offered in
13 Science, Engineering and Architecture, Bachelor
14 of Engineering program that was, in fact,
15 bilingual in which the earlier courses were
16 offered to be taken in French, but not all
17 courses leading to the degree could be taken in
18 French. So it is, in the way that you have --
19 yeah.

20 286 Q. Now if I go to -- and that
21 paragraph, it says here in paragraph 43, it
22 starts with:

23 "Through agreement between
24 [Laurentian University] and Lakehead
25 University (located in Thunder Bay

1 ...), the Northern Ontario School of
2 Medicine opened in 2005."

3 Can you explain to me, does that
4 agreement end up generating any source of income
5 for Laurentian University? Your relationship --
6 sorry?

7 A. There is no net income for
8 Laurentian University through that relationship.

9 287 Q. Okay. So as opposed to your
10 relationship with the Federated Universities
11 where you're getting 15 percent of the moneys
12 that are paid in tuition and grants, you're
13 actually telling me you're getting no money as a
14 result --

15 A. No, no. I'm saying there is no
16 net income. As per the federations, there is no
17 profit being made as a result of the
18 relationship. Maybe I should say it that way.
19 We don't make a profit for NOSM. We do provide
20 certain services, and so forth, and students,
21 you know, their programs go through Laurentian
22 Senate. But there is a flow -- but there is a
23 flow-through of tuition and so forth.

24 288 Q. But you keep --

25 A. And we have a relationship

1 agreement -- I expect there is an administrative
2 charge, yes.

3 289 Q. Okay.

4 A. It may be in the document. I
5 don't know exactly what the charge is --

6 290 Q. I saw somewhere --

7 A. -- at this point.

8 291 Q. I saw somewhere where you are
9 charging \$250 or something per application. But
10 I'm trying to understand, first of all you say
11 there is no profit. My understanding is that
12 Laurentian is a not-for-profit organization,
13 correct?

14 A. That's right. We are not
15 generating revenue in excess of our expenses
16 with relation to our relationship with NOSM.
17 We're a federated institution.

18 292 Q. Well, this is what I'm trying to
19 understand. Are you generating revenue as a
20 result of your relationship with NOSM?

21 A. Yes, but not in -- not in excess
22 of expenses.

23 293 Q. Okay. Well, I guess I'm a little
24 at a loss there. So when you say not in excess
25 of expenses, so have the expenses specifically

1 attributable to NOSM been identified?

2 A. I believe so, yes.

3 294 Q. Okay. So just so that I'm clear,
4 so as opposed to your situation with the
5 Federated Universities where you've told us all
6 the services you're offering, but none of the
7 costs have been specifically identified or
8 attributed to the students, correct? Like for
9 example, some students may use your facilities,
10 some may not. That is what I'm trying to
11 understand. I'm trying to understand the
12 difference --

13 A. I don't think materially there is
14 that much difference.

15 295 Q. This is what I'm trying to
16 understand here. First of all, I guess, if a
17 student registers at NOSM, okay, so they decide
18 they're going to -- just like a student can
19 register for courses at Federated University,
20 students register for courses at NOSM to follow
21 the program at NOSM?

22 A. No, it's not --

23 MR. HANRAHAN: Sorry, Rob, just wait
24 until the question to finished.

25 THE WITNESS: Sorry, yeah.

1 BY MR. CAZA:

2 296 Q. Sorry, I was going to say, is --
3 the students that attend NOSM, do they register
4 through Laurentian University?

5 A. That's a good question. So
6 students that are in the medical program at
7 NOSM, which is -- it's an entirely
8 self-contained program, so they, at the end of
9 that program, receive a degree from Laurentian
10 University, so the program is -- and courses
11 goes through the Laurentian University Senate
12 and Lakehead Senate, in fact. It has to go
13 through both.

14 But there is a degree of separation
15 that is greater for NOSM students in the sense
16 that it is entirely a self-contained program.
17 There is no free flow of students between
18 courses and programs, as far as I understand.

19 297 Q. Now so, but just so I'm clear, so
20 when students pay tuition, are they paying a
21 tuition to Laurentian University?

22 A. Laurentian University collects
23 the tuition and flows it through to NOSM. That
24 is one of the services that we presently
25 provide.

1 298 Q. And instead of retaining
2 15 percent, you're actually retaining a specific
3 amount per student, correct?

4 A. That seems to be correct, and the
5 difference, of course, is the much more
6 substantial tuition for medical education than
7 for programs. I mean, one could -- I presume
8 could do a percentage as well, but I can't
9 comment on how this historic relationship was
10 set up.

11 299 Q. Now I guess the -- and do you
12 know the impact of the legislation that was
13 passed last week? In fact, maybe you can just
14 explain to us. How does the legislation that
15 was passed, how does it change the nature of the
16 NOSM? How does it change it?

17 A. So the -- the legislation that
18 was introduced, if it achieves royal assent,
19 will provide NOSM as a stand-alone institution
20 so degrees will no longer be granted by
21 Laurentian or Lakehead University; they will be
22 granted by NOSM themselves. So it would be, in
23 essence, the same as if a student who applied to
24 any other university in Ontario compared to
25 Laurentian University.

1 They would be, you know, completely
2 separate. There would no longer be a
3 relationship agreement, and, you know, what --
4 and I can't really comment beyond that because I
5 don't know what form it will take going forward.

6 300 Q. So you don't know what the
7 financial impact will be if they get royal
8 assent, but I think we can assume that it's not
9 going to be good for Laurentian University?

10 A. It will be --

11 MS. MILLER: I'm sorry to interrupt,
12 but you're asking him a question without
13 referring to his affidavit. There is a specific
14 section of his affidavit addressing that very
15 point and the question you've asked.

16 MR. CAZA: Sorry, which question?

17 MS. MILLER: The question you've asked
18 in terms of any financial impact of the -- any
19 changes at NOSM, and that is specifically
20 addressed in his affidavit.

21 MR. CAZA: That would be specifically
22 addressed in your second affidavit, correct?

23 MS. MILLER: Correct.

24 BY MR. CAZA:

25 301 Q. I don't want to jump around too

1 much here. So you have provided evidence to
2 that effect. Do you remember what that evidence
3 is?

4 A. Yeah, there is -- there is not
5 expected to be -- you know, there would be no
6 negative -- no impact on Laurentian financially.

7 302 Q. Okay, which means that --

8 A. No net impact at the end of the
9 day because NOSM is completely a flow-through
10 relationship.

11 303 Q. Just so that I'm clear, so what
12 you're saying whatever revenue you're getting
13 and it could be a -- stipend per student, it is
14 actually costing you that much money. So at the
15 end of the day, if they separate, you're even
16 because you don't have the expense but you don't
17 have the revenue; that's what you're telling me,
18 right?

19 A. That's my understanding, yes.

20 304 Q. Okay. Now, if I go to paragraph
21 45, so what is the arrangement with the
22 buildings? Does NOSM -- just so I'm clear, and
23 I see there is a copy of the lease here. But
24 they are actually leasing those buildings from
25 you? You own those buildings, correct?

1 A. Yeah, Laurentian owns the primary
2 NOSM building, and NOSM leases space from
3 Laurentian in an adjacent building as well.

4 305 Q. And you don't know -- you don't
5 know what is going to happen? Like, has there
6 been discussion yet that they would end up
7 purchasing those buildings from you now that
8 they would be sort of independent? Or that
9 hadn't been discussed?

10 A. There has been no discussion yet.

11 306 Q. So if I go to paragraph 48 it
12 says here:

13 "[...] Laurentian and Lakehead
14 each agreed to provide certain support
15 services and faculty to NOSM."

16 So, and I see here the facilities are
17 support services, student registration and
18 student fee collection, scholarship receipt and
19 disbursements.

20 That's the work you're doing, and both
21 universities are doing this with NOSM?

22 A. Yeah. We each do it on our
23 separate campuses for students that are located
24 on one or the other campus.

25 307 Q. Now here's 49. This is what I

1 was referring to earlier. It says that:

2 "NOSM and [Laurentian] entered
3 into a subsequent agreement as a
4 schedule to the Relationship Agreement
5 which governs the collection and
6 accounting of tuition and incidental
7 fees for 2020/2021 academic year. As
8 part of this agreement, Laurentian
9 University provides collection and
10 accounting services for NOSM at a fee
11 of \$250 per NOSM student enrolled at
12 the Sudbury campus."

13 Now, do you know how much money -- do
14 you know how many students there are at NOSM?

15 A. I believe it's --

16 MR. HANRAHAN: I think that is
17 referred to in paragraph 46.

18 THE WITNESS: Oh, yeah there is more
19 than I thought. But I think that's across both
20 campuses. 461 students.

21 BY MR. CAZA:

22 308 Q. How many?

23 A. 461 students it says in paragraph
24 46, and I believe that would be across -- okay,
25 the MD residency. You have the complete list

1 there of what it comprises.

2 309 Q. And what are you looking at now?

3 Paragraph 47?

4 A. Paragraph 46 --

5 310 Q. 46. Okay.

6 A. -- the answer to that question.

7 311 Q. And how many of those students
8 would you estimate would be at Laurentian? What
9 percentage?

10 A. Either -- it would either be 100
11 or 50 percent, I'm not sure.

12 312 Q. It says:

13 "The medical school has
14 approximately 461 students enrolled in
15 the 2020-21 academic year across the
16 medical doctor program, residency
17 [...]"?

18 A. Yes.

19 313 Q. So is that only in Sudbury at
20 Laurentian?

21 A. If it refers to the medical
22 school in its entirety, that would be split
23 between Sudbury and Lakehead -- Sudbury and
24 Thunder Bay, sorry.

25 314 Q. Do you know? Do you know how

1 many students there are on the -- the \$250,
2 you're only getting paid 250 for the students
3 that are at the Sudbury campus, correct?

4 A. That is correct.

5 315 Q. So, okay. That's fine. And that
6 is an amount that is paid to you every year,
7 correct?

8 A. That is an amount that is
9 collected every year, yes, for the services that
10 are provided. And if the services would change,
11 I would imagine that that amount would change as
12 well.

13 316 Q. And just so I understand what
14 your evidence is, your evidence is that if you
15 no longer collect the \$250 from all of the
16 students, you are not losing any money because
17 your evidence is that it's costing you that much
18 money to be able to offer the services that have
19 been described in your affidavit, right?

20 MS. MILLER: Mr. Caza, can you please
21 look at and direct the deponent to the evidence
22 that you're referring to which is paragraph 49,
23 which refers to the \$250, and which is what it
24 relates to, the collection and accounting
25 services? Can you please direct the deponent to

1 the question that you're referring to?

2 MR. CAZA: No. I'm asking him
3 questions. I'm not going to tell him, look,
4 this is what you said in your affidavit. I've
5 actually read that section to him. I just read
6 it.

7 317 Q. And I just want to be clear and I
8 just want to understand, your evidence is that
9 if you lose that \$250 because NOSM no longer
10 will use your collection and accounting
11 services, your evidence to me is, you're not
12 losing, and if I'm not -- if that's incorrect
13 let me know, but I understood that you would not
14 be losing any money because your evidence is
15 that's how much it costs you to actually carry
16 or offer those services?

17 A. Yeah. The expenses balance the
18 revenues that are received, yes. That's my
19 understanding. That reflects the cost of the
20 services that we provided, and if we no longer
21 provide those services we no longer have that
22 cost.

23 318 Q. And it's the same thing with the
24 Federated Universities?

25 MR. HANRAHAN: When you say the same

1 thing, what do you mean?

2 THE WITNESS: What do you mean by
3 that?

4 BY MR. CAZA:

5 319 Q. If they were no longer -- if you
6 were no longer needing to provide the services
7 you're providing to students that are at
8 Université de Sudbury, so, for example if for
9 some reason the services you were offering were
10 no -- you no longer needed to offer them, you
11 would not be losing any money. That's my
12 understanding of your evidence because it's
13 costing you 15 percent to do that work, right?

14 A. Yeah, but they're -- these are
15 all Laurentian students so presumably we still
16 need to do the work for the students that remain
17 at Laurentian.

18 320 Q. Well, actually I'm going to want
19 to talk to you about that later because
20 that's -- you're making quite a few presumptions
21 when you arrive at that conclusion, and I want
22 to discuss that with you later.

23 But just so I'm clear, I had -- when
24 there is a student that takes a course at
25 Université de Sudbury, they take that course and

1 they -- there is a thousand dollars paid in
2 grants and tuition -- I'm just giving you that
3 as an example -- for that course taken at a
4 university that is independent from Laurentian.
5 It's Université de Sudbury.

6 The grants and the tuition comes to
7 Laurentian University; they keep \$150 and they
8 send \$850 to Université de Sudbury, correct?

9 A. Yeah, I think for every student
10 that comes to Laurentian University and
11 registers in a course and takes a program, it
12 costs a certain amount of money to provide those
13 services. And so, yes, I mean the answer to
14 your question is that for every student, be they
15 at the University of Sudbury or be they at
16 Laurentian proper, there is a cost for those
17 services that are provided that are attributed
18 directly to, you know, the revenues that the
19 student brings in.

20 321 Q. Mr. Haché, no, your evidence --
21 this is my understanding of your evidence. The
22 15 percent that you're keeping, actually it's
23 costing you that amount of money to offer that
24 service. So if the student is not signed up at
25 Laurentian -- at Université de Sudbury, you are

1 not getting the 15 percent but it doesn't matter
2 because even if you got it, you're incurring
3 that amount of expenses so you'd be -- you'd end
4 up net in any event, right?

5 A. I don't believe that's what I
6 said, if I followed you correctly, and I'm not
7 sure I did, but what I'm saying is for any
8 student that comes to Laurentian there is --
9 there are administrative costs. And if the
10 students at the University of Sudbury, it's
11 approximately 15 percent and if it's at
12 Laurentian -- if they're in a Laurentian
13 program, it's approximately 15 percent.

14 And so if a student, if you had -- add
15 or subtract a student here or there, the impact
16 in terms of the cost is the same. It's not --
17 it's not a profit-making exercise.

18 322 Q. You know there is a difference
19 between profit and having activities that are
20 generating more income than they are incurring
21 costs. That is not profit. You have to have
22 that.

23 Because there is other activities that
24 generate no income but have costs. And if you
25 are going to balance the budget, you actually

1 need to be generating revenue. You have to
2 generate revenue.

3 What you're telling me -- and this is
4 why, and if I'm not understanding you correctly,
5 I want you to correct me. All of the revenue
6 that is generated as a result of you keeping
7 15 percent for the tuition and grants that are
8 paid to -- for students that are taking courses
9 at Federated Universities, that 15 percent is
10 actually not a source of revenue for you because
11 the cost to offer it is the same.

12 So for you to end that -- this is what
13 I understand your evidence to be -- for you to
14 bring an end to that issue would generate no
15 loss and no income to you. That's your
16 evidence.

17 A. Assuming that the student is no
18 longer at the university, that would be the
19 case; however, much of the revenue that flows to
20 the University of Sudbury is from students that
21 are registered in Laurentian programs or taking
22 courses at the University of Sudbury, and those
23 students would be expected to remain at
24 Laurentian University.

25 323 Q. Listen, now hold on. You're

1 making an assumption there, and I -- this has
2 got to be really important --

3 MS. MILLER: Mr. Caza, he is answering
4 the question. He's not making an assumption
5 there.

6 THE WITNESS: No assumption there.

7 BY MR. CAZA:

8 324 Q. Mr. Haché, Mr. Haché, no, there
9 is an assumption. Mr. Haché, you have a
10 significant amount of students -- we've looked
11 at the numbers -- that are taking courses in the
12 Federated Universities. They are taking courses
13 in the Federated Universities, okay.

14 And, just so that I'm clear, if you
15 terminate -- if you terminate the agreement,
16 which is what you're trying to do, with the
17 Federated Universities, the reason you're doing
18 that is that you're hoping that the students
19 that are taking the courses, the courses that
20 are being taken at these Federated Universities,
21 instead of taking those courses they are going
22 to take courses at Laurentian University because
23 those courses are no longer available?

24 A. Well, they will take courses at
25 Laurentian University because they're registered

1 in Laurentian University programs, and they will
2 have a selection of courses to choose from, yes.

3 325 Q. So what you're doing is you're
4 incapacitating the Federated Universities.
5 You're stopping them -- by bringing this
6 agreement to an end, you're stopping them from
7 being able to offer these courses that they are
8 actually offering to their students, and the
9 only reason you're doing that is because what
10 you're hoping is that those students will,
11 therefore, have to take courses at Laurentian
12 and that will provide you with an additional
13 source of income. That's the only reason you're
14 doing it, right?

15 A. So I think the first correction
16 is that our students, we have -- you know, when
17 you do the analysis of the financial situation
18 of the university, we have -- and looked at
19 where there are outflows of money, where there
20 are capacities to deliver the activities inside
21 the university and yet we are spending money to
22 deliver the activities outside the university,
23 that is one of the things that we need to
24 correct to arrive at a university structure that
25 is financially sustainable.

1 And so Laurentian students registered
2 in Laurentian programs need to be taking their
3 courses at Laurentian University where we have
4 capacity and courses that they can take in order
5 for the university to be financially viable
6 going forward.

7 326 Q. So what you want is you want
8 students -- they are not your students. They
9 are students that are taking courses at
10 Laurentian University, and they are taking
11 courses at other universities that are
12 independent of Laurentian.

13 And what you're doing is you are
14 trying to create a situation where the other
15 universities are basically killed off, because
16 you are bringing them -- your attempt is to stop
17 them from being able to offer the courses so
18 that the students will then need to or you are
19 hoping will end up taking courses at your
20 university, at Laurentian University.

21 A. I disagree with what you said.
22 Go ahead.

23 327 Q. Will you explain to me why you
24 disagree? Explain to me why you disagree that
25 that is exactly what Laurentian is trying to do

1 by bringing -- by terminating this agreement.

2 A. I disagree with your
3 characterization of the students. These are
4 Laurentian students that we are talking about,
5 students that are registered in Laurentian
6 programs that need to -- need to -- for
7 Laurentian's programs to be viable take their
8 courses at Laurentian University.

9 328 Q. Just so that I'm clear, presently
10 you have an agreement with universities, two
11 that I'm talking about, Thorneloe and
12 Laurentian, and you've had that for what?
13 Almost over 50 years now that you've had the
14 agreement, right?

15 A. It's over 50 years, yes.

16 329 Q. It's over 50 years and what
17 happens is students -- because, and that's the
18 agreement you have. People can sign up for
19 courses in those universities, but they go
20 through you. That's the agreement you have,
21 correct?

22 A. Students can register for
23 programs -- they go through us and they register
24 for programs that are offered direct -- at
25 Laurentian directly or at one of the Federated

1 institutions. And they can register for courses
2 across those boundaries, outside of their
3 program.

4 330 Q. A student cannot presently
5 register directly with one of the Federated
6 Universities to take a course, correct?

7 A. I believe that is correct. The
8 registration happens through the Laurentian
9 system.

10 331 Q. So there is a pipe -- there's a
11 pipe that gets money to those Federated
12 Universities. And the pipe goes from the
13 government, or whoever else -- the student, the
14 tuition and the grants and that pipe goes
15 through the university. Part of it -- part of
16 the money flows through the university, and then
17 the pipe keeps going to these -- to the two
18 federated colleges that we're discussing.

19 And what you want to do is you want
20 that pipe to stop at your university and no
21 longer continue onto the Federated Universities.
22 That's exactly what you're doing, correct?

23 By saying -- by having a situation
24 where those courses, since they are no longer
25 available, because you're bringing an end to the

1 Federated agreement, the students will then --
2 and you're hoping -- take courses at Laurentian
3 so that all of that money that is presently
4 going to the federation -- Federated
5 Universities, will come to Laurentian
6 University, correct?

7 A. Laurentian University is
8 currently not financially sustainable under the
9 model that we operate.

10 332 Q. And part of your solution is to
11 stop students from being able to go, to sign up
12 for courses at University of Sudbury, Université
13 de Sudbury and Thorneloe. You're trying --
14 you're stopping them by bringing that agreement
15 to an end.

16 And the only reason you're doing that,
17 and it's the only reason is because you want
18 those students, instead of taking courses at
19 those Federated Universities, to take courses at
20 Laurentian University, correct?

21 A. We have both the capacity and the
22 need to provide those courses to our students,
23 yes.

24 333 Q. So the answer to my question is
25 yes, correct?

1 A. I believe I said yes.

2 334 Q. All right. So we can move on.

3 If we can now go to page 21, paragraph 66.

4 A. Indeed.

5 335 Q. So paragraph 66 refers to Exhibit
6 G. There are notes of a meeting, et cetera.

7 You have an understanding as to how that funding
8 model works? What does -- how did that funding
9 model work?

10 A. Historically I don't have a good
11 understanding of that 1993 model, no. Well
12 before my time.

13 336 Q. But I think it is your
14 understanding that the present model is more
15 generous, if you want. It leaves more money to
16 Laurentian University than the '93 funding
17 model, is that fair?

18 A. The present model reflects the
19 way in which funding is received by the
20 university.

21 337 Q. So I've asked you a question.
22 Either you agree with me, disagree or you have
23 no knowledge. My question to you was, the
24 amount of money you're receiving -- okay, it's
25 the 15 percent -- is a higher amount of money

1 than what university -- the university was
2 receiving under the 1993 funding model. Do you
3 agree with that?

4 A. I suspect --

5 MR. HANRAHAN: I believe he answered
6 that.

7 THE WITNESS: I believe I answered
8 that to the best of my knowledge.

9 BY MR. CAZA:

10 338 Q. So you suspect that that's true.
11 That is what you were going to say before you
12 were interrupted, correct?

13 A. No, I believe I answered that.

14 339 Q. And your answer, just so that I'm
15 clear, because there's -- your answer is you
16 suspect that it's more money now, right?

17 A. My answer is that I have no
18 detailed knowledge of the 1993 funding
19 agreement. I do understand the current funding
20 agreement.

21 340 Q. So you have no knowledge, so I'm
22 just going to ask you this. My question is, is
23 the university -- please let me ask my question.

24 Is the Laurentian University keeping a
25 bigger share of the income generated by courses

1 offered by the Federated Universities presently
2 with your 15 percent arrangement than they were
3 under the 1993 funding model? Do you know that
4 or you don't know that?

5 A. I have no specific knowledge of
6 that, but I suspect that might be correct.

7 341 Q. So in fact -- okay, when you say
8 might be correct, you suspect that that is
9 correct, right?

10 MR. HANRAHAN: He has told you he
11 doesn't have a detailed knowledge. That
12 means --

13 MR. CAZA: I'm sorry, that's -- are
14 you -- you can object. Don't repeat his
15 answers, please. If you're objecting, you can
16 object. I am cross-examining this witness. He
17 has answered. I can come back with another
18 question.

19 342 Q. My question is --

20 MR. HANRAHAN: Your question is
21 misstating what he said.

22 MR. CAZA: My question is another
23 question that I'm asking him. I'm not telling
24 him that is what he said. I'm cross-examining
25 him. I can put words in his mouth all day long.

1 That is part of what a cross-examination is.

2 343 Q. Mr. Haché, you'll agree with
3 me --

4 MR. OSBORNE: Mr. Caza, with respect,
5 there was nothing wrong with Mr. Hanrahan's
6 objection there whatsoever. You can put
7 whatever questions, propositions or suggestions
8 you wish to the witness, but you cannot misstate
9 the evidence he has already given. Thank you.

10 MR. CAZA: Well actually, when he says
11 "may" and I come back and I say, it's not "may",
12 it actually is, that's not putting his evidence
13 to him; that's asking him another question.

14 MR. OSBORNE: You may do that. You
15 just can't misstate what he has put to you.

16 MR. CAZA: That is exactly what I did.
17 I didn't say you said this to me. I asked him a
18 subsequent question.

19 344 Q. In any event, Mr. Haché, I am
20 putting to you that your understanding, your
21 general understanding is that the present
22 arrangement whereby you keep 15 percent is more
23 generous to the university than the previous
24 1993 model, is that fair?

25 A. My present understanding is that

1 the present arrangement more appropriately
2 balances the revenues and the costs, and if --
3 right. So that we have a -- we have a
4 distribution of funding at the present time
5 since 2019 that more correctly reflects the
6 costs that are incurred by the university. That
7 much -- that I understand, and if it was out of
8 whack previously, I don't -- I don't have a
9 recollection or detailed knowledge of the 1993
10 agreement on which to base any firm conclusions.

11 345 Q. Okay. That's fine. So what
12 you're telling me, and this is my understanding,
13 is you don't know if you were making more money
14 or less money; what you know, your information
15 is the money you are making now reflects what
16 the costs are? That's a little --

17 A. And when -- upon, you know, from
18 the time I have arrived at the university and
19 looked at the funding model that we have, upon
20 my arrival, it more accurately reflects the
21 costs that are incurred by the university. And
22 it explicitly reflects the mechanism under which
23 the government flows funding to the university
24 for all programs and courses, a funding formula
25 that was adapted by the government many years

1 ago, actually.

2 346 Q. So if we can now go to -- I'm
3 looking at your -- paragraph 67 of your
4 affidavit, okay?

5 A. Okay.

6 347 Q. And it refers to Exhibits H, I
7 and J, so if we could go to Exhibit I to your
8 affidavit? And that, Mr. Haché, is your
9 agreement, the agreement between Laurentian
10 University and Thorneloe.

11 A. It's going to take me -- all
12 right. "I", Laurentian University Financial
13 Distribution to Thorneloe, is that --

14 348 Q. That's the way it works, right?
15 So that's the agreement you are referring to.
16 It is signed by Dr. Pierre Zundel. That is the
17 agreement you're referring to that is now in
18 place, correct?

19 A. That is the -- that is the
20 schedule that is now in place, yes. I believe.
21 Is it -- I don't see a signature, but maybe.

22 349 Q. Yeah, I think there is a
23 signature if you go to page 3, Dr. Zundel.

24 A. Oh yes. Page 3 there is a
25 signature by my predecessor. Yes.

1 350 Q. Yes, he signed that. Now, I'm
2 trying to understand -- if you go to page 5, I'm
3 trying to understand these numbers. Do you
4 understand, sir, it says "Core, Performance,
5 Northern, Total Grant Distributed." Do you
6 understand how that works? Can you explain
7 that, so that the Court can understand what that
8 is?

9 A. There is a core grant attached to
10 each student registered in a program, and then
11 there are other grants that can be called
12 special purpose grants, if you will. So, the
13 Northern grant we get a premium from the
14 government because of additional costs of
15 working in the environment that we're in. We
16 also receive a premium for offering programs
17 that are bilingual, which costs, there are
18 additional costs associated with offering those
19 programs in both official languages.

20 351 Q. Okay. So I see here, so I'm at
21 page 5. So if I look at Thorneloe, for example,
22 all of the students that are signed up to take
23 courses at Thorneloe, courses that are offered
24 by that university, the core grant provided to
25 those students is \$322,523?

1 A. That seems to be correct.

2 352 Q. And then if we look at those
3 courses, the performance generates \$46,805?

4 A. From those programs, correct.

5 353 Q. From those programs. And the
6 Northern amount is \$80,462, correct?

7 A. Yeah, those are distributed
8 proportionally.

9 354 Q. Right. I'm sorry -- yeah,
10 proportionately to the students that are there.

11 A. Yeah, yeah, right.

12 355 Q. So the total grant distributed is
13 \$449,790, correct?

14 A. That is correct.

15 356 Q. Now, and this is what I'm trying
16 to understand. So the total of University of
17 Sudbury, Université de Sudbury, Huntington and
18 Thorneloe is -- the total grant distributed is
19 \$2,651,354, right?

20 A. That is correct.

21 357 Q. Now, is that the number -- okay.

22 A. It's what it says there, so I'm
23 assuming that's correct.

24 358 Q. But is that the number -- I'm
25 trying to -- is that the number from which the

1 university takes 15 percent?

2 A. That is part of the number from
3 which the university takes 15 percent I believe.
4 If that is not net, that would be gross. That
5 would be part of the number, yes.

6 359 Q. And then the other missing part
7 is the tuition, right?

8 A. Is from the tuition, yes.

9 360 Q. And if I go to page 6, we have
10 here a chart and it breaks down the capital
11 grants. We see here the total for the province,
12 right? How much the Laurentian University and
13 the Feds, the total obtained by them. And then
14 it's broken down how much is Laurentian
15 University, University of Sudbury, Huntington
16 and Thorneloe, right?

17 A. That is correct.

18 361 Q. What is FRP funding?

19 A. Facilities Renewal Program I
20 believe it refers to.

21 362 Q. So this is the sharing --

22 A. Sorry, Facilities Renewal Grants,
23 so, yeah. Facilities Renewal Program it says at
24 the top of page 5; FRP is the abbreviation
25 thereof.

1 363 Q. And that is the amount of monies.
2 Just so I'm clear, so these are the amounts that
3 are remitted from that envelope, and it's all
4 based on a pro rata calculation as far as what
5 courses are being offered by which university,
6 is that correct?

7 A. Yeah, by where the students are
8 located, in terms of their programmatic homes.

9 364 Q. So that --

10 A. And that money varies from year
11 to year. The money we receive from the province
12 varies from year to year. It is distributed
13 according to a formula of where students --
14 where the home program of the student is
15 delivered.

16 365 Q. And if go to tab J, which is the
17 next tab --

18 A. Okay.

19 366 Q. Okay. And we have here at
20 page 2, if you -- let me know when you're there.

21 A. Yeah.

22 367 Q. So it's got "Revenue Sharing" at
23 the top. It says:

24 "The Federated Universities do
25 not receive funding directly from the

1 government. Laurentian University has
2 historically transferred a portion of
3 the funding it receives from the
4 government to each Federated
5 University according to a set formula,
6 unless otherwise instructed by the
7 government."

8 And then you talk about the 1993
9 funding model.

10 Now, if we look at the fourth
11 paragraph, this is all under "Revenue Sharing"
12 it starts, "The purpose of this notice [...]."

13 Are you with me?

14 A. Yes.

15 368 Q. "[...] is to ensure that all
16 funding transferred by Laurentian
17 University to any of the Federated
18 Universities from and after the
19 Effective Date --"

20 And the effective date would be the
21 date, I guess, of this agreement, correct?
22 May 1st, 2019, correct?

23 A. That would seem to be the case,
24 yes.

25 369 Q. "[...] is consistent with the New

1 Funding Model, and that the financial
2 effects of the New Funding Model and
3 that the financial effects of the New
4 Funding Model are recognized and
5 assumed proportionately by each of
6 Laurentian University and the
7 Federated Universities, on the terms
8 set out herein."

9 And it goes on:

10 "The underlying principle is that
11 none of Laurentian University or any
12 of the Federated Universities will
13 subsidize the operations or services
14 of another, and each will be
15 responsible for covering its own
16 costs."

17 And that's what the purpose of this
18 agreement is, correct?

19 A. From providing provision of
20 services, yes.

21 370 Q. Well, not just provision of
22 services. It says:

23 "The underlying principle is that
24 none of Laurentian University or any
25 of the Federated Universities will

1 subsidize the operations or services
2 of another, and each will be
3 responsible for covering its own
4 costs."

5 That's what the goal and that is what
6 this agreement that you have advised us has been
7 entered into between Laurentian University and
8 the Université de Sudbury, also with Thorneloe,
9 that is what it accomplishes, correct?

10 A. That is what the document says,
11 yes.

12 371 Q. And it not only says that, but
13 you agree with me that -- sorry -- we're -- so
14 do you --

15 A. I agree with what it says, yes.

16 372 Q. And you agree that it does
17 accomplish this? Your understanding is that
18 that has been accomplished, correct?

19 A. My agreement -- my understanding
20 is that that was the intent of the agreement,
21 yes.

22 373 Q. And your evidence is that that
23 was accomplished? You'll agree with me that you
24 did accomplish that --

25 A. From the provision of services,

1 yes.

2 374 Q. Well, from the provision -- not
3 only that, but also on the issue of the
4 operations of the --

5 A. Well, that is the -- yeah,
6 services that are required for the operations,
7 yes.

8 375 Q. Yes. Sorry, about that. Maybe
9 I'll just -- so I guess we're both saying the
10 same thing. I guess the issue is when you look
11 at all the costs that are incurred to offer a
12 cost, the administration that needs to be done,
13 this formula actually attributes the revenue to
14 where the cost is actually occurring, is that
15 fair?

16 A. On a per student basis.

17 376 Q. Okay. Thank you so much. We can
18 now go back to your affidavit, and we're looking
19 at page 22.

20 A. Okay.

21 377 Q. And it's a little bit of what we
22 were talking about here at paragraph 70:

23 "The underlying principle behind
24 Laurentian University adopting the New
25 Funding Model was to ensure that

1 neither [Laurentian University] or any
2 of the Federated Universities would
3 subsidize the operations or services
4 of the other, and each organization
5 would be responsible for covering its
6 own expenses. It was intended to align
7 the financial relationship of
8 [Laurentian University] and the
9 Federated Universities with the New
10 Funding Model introduced by the
11 Province, to which [Laurentian
12 University] was subject."

13 That's what you did and that's what
14 this agreement accomplished, correct?

15 A. That's what -- that was the
16 intent of the agreement, for sure, yes.

17 378 Q. And your understanding is that
18 that was accomplished, right?

19 A. My understanding is the agreement
20 has been in effect with -- and that's the goal,
21 yes.

22 379 Q. And that goal has been attained,
23 right?

24 MR. HANRAHAN: Sorry, when you're
25 talking about accomplished and goals, are you

1 saying the entering into and this agreement
2 taking effect was accomplished or that the goal
3 of balancing the financial relationship was
4 accomplished?

5 BY MR. CAZA:

6 380 Q. Okay. So that -- so I'll clarify
7 the question.

8 I guess what I'm saying is what the
9 purpose -- what you wanted to ensure was that
10 the model would ensure that neither Laurentian
11 University or any of the Federated Universities
12 would subsidize the operations or services of
13 the other. And all I'm saying is that you're
14 satisfied that the application and the agreement
15 has attained that goal?

16 A. I believe it has, yes.

17 381 Q. Okay. If we can now go to
18 paragraph 71. It says:

19 "The Financial Distribution
20 Notices also provide that, in exchange
21 for the provision of nonacademic
22 administrative services by [Laurentian
23 University] to the Federated
24 Universities, each of the Federated
25 Universities would be assessed a

1 charge by [Laurentian University] in
2 the amount of 15% of shared revenues,
3 being grant revenue and tuition [fee]
4 as defined in the Financial
5 Distribution [...]."

6 And it's called -- it's been
7 identified as -- it's called the "Administrative
8 Service Fee", correct?

9 A. That's what it says, yes.

10 382 Q. When we're talking about the
11 Administrative Service Fee, we're talking about
12 what we discussed earlier, right?

13 A. Yes.

14 383 Q. And these -- just so I'm clear,
15 these are revenues that -- this 15 percent is
16 provided to Laurentian University from revenue
17 generated by courses that are offered by the
18 Federated Universities, right?

19 A. Yes.

20 384 Q. Can I go -- take you now to
21 Exhibit K? Let me know when you're there.

22 A. I have "K".

23 385 Q. So you've had a chance to review
24 this document. It is the September 10th,
25 1960 -- in fact, it's almost -- it's over -- I

1 guess now it's over 60 years --

2 A. Yes.

3 386 Q. -- between Laurentian University
4 and the University of Sudbury. You've had a
5 chance to read the document?

6 A. I've had a chance to the read,
7 yes.

8 387 Q. So in the agreement, looking at
9 the second paragraph, are you with me on the --
10 my copy is -- yes, it is paginated. It would be
11 the first page. It is not paginated, but the
12 first page of the document, correct?

13 A. Yeah.

14 388 Q. So the agreement actually repeats
15 what we found -- what we read earlier in the Act
16 that it says:

17 "[...] pursuant to the petition
18 of the University of Sudbury, the
19 United Church of Canada and The
20 Incorporated Synod of the Diocese of
21 Algoma."

22 That Laurentian University was
23 incorporated, correct?

24 A. That is correct, that is what it
25 says.

1 389 Q. And page 2. And you understood
2 this, that paragraph 2 on page 2 it says:

3 "While this agreement remains in
4 force, Sudbury University shall
5 suspend all its degree-conferring
6 powers except the power to grant
7 degrees in Theology."

8 And that has been suspended for the
9 past 60 years, correct?

10 A. That is correct.

11 390 Q. And Laurentian, if we go to --
12 turn to page 3. Are you with me? At paragraph
13 5, it reads as follows:

14 "All students, including those
15 enrolled in federated universities or
16 colleges [...]."

17 And you're enrolled in a federated
18 university or college if that's where you're
19 taking -- you're taking a course from one of
20 those universities, correct?

21 A. If you're registered for a
22 program in one of those universities.

23 391 Q. Then it goes on to say, "who
24 intend" -- well, in fact:

25 "[...] who intend to proceed

1 towards degrees or to obtain diplomas
2 certificates or other academic
3 qualifications at Laurentian
4 University shall register at
5 Laurentian University and must comply
6 with the requirements of Laurentian
7 University for entry to and
8 registration in Laurentian University
9 and to become entitled to degrees,
10 diplomas, certificates or other
11 academic qualifications at Laurentian
12 University must comply with all
13 requirements of Laurentian
14 University."

15 So those that are enrolled in
16 Federated Universities or colleges, that is
17 where they are taking their courses, they still
18 need to meet all of these conditions in order to
19 get their diploma from Laurentian University,
20 right?

21 A. If they are enrolled at a program
22 at the Federated University, yes. At a program
23 that is delivered by the Federated University,
24 yes.

25 392 Q. Well, hold on. So which programs

1 would we be talking -- would you be referring to
2 when you're talking about the University of
3 Sudbury --

4 A. It's talking about students
5 enrolled in Federated University or college that
6 -- they are referring to students enrolled in a
7 program that is delivered through the Federated
8 University or college as opposed to a student
9 that is simply taking an individual course.

10 393 Q. Actually, if you keep reading, it
11 says:

12 "[...] who intend to proceed
13 towards degrees or to obtain diplomas,
14 certificates or other academic
15 qualifications at Laurentian
16 University [...]."

17 So they are actually referring to
18 courses that are being taken. They are not
19 referring to programs. They are saying it's
20 courses taken to obtain diplomas, certificates,
21 and academic qualifications from Laurentian.

22 A. The reference to diploma -- go
23 ahead.

24 MR. HANRAHAN: We can obviously have a
25 legal argument about that, but what Mr. Haché

1 has said it is not inconsistent with what you
2 just read. Students that are enrolled in
3 programs through the Federated Universities do
4 proceed to Laurentian degrees.

5 BY MR. CAZA:

6 394 Q. I think that is a good comment
7 that in fact it is a legal document, and I
8 should not be asking you for your legal opinion
9 on that and I accept that objection.

10 So it goes on to say, the next
11 sentence:

12 "In the case of students enrolled
13 in Federated Universities or colleges
14 [...]."

15 And you're saying that is when they
16 are enrolled in a program, right?

17 A. That's -- that's where they are
18 enrolled, yes.

19 395 Q. It says:

20 "[...] fees paid shall be
21 apportioned between Laurentian
22 University and such federated
23 universities or colleges as may from
24 time to time be agreed upon between
25 the parties [...]."

1 While, actually, if somebody is
2 enrolled for one course you are sharing the
3 fees, correct? There is a sharing of fees?

4 A. There is a sharing of tuition,
5 yes.

6 396 Q. And grants, not just tuition but
7 grants also, correct?

8 A. At the present time it's simply
9 tuition.

10 397 Q. Okay. Sorry, what do you mean by
11 the present time it's only tuition?

12 A. We were talking about the 2019
13 agreement.

14 398 Q. I'm sorry, yes.

15 A. Right, so that the agreement
16 that's in force when a student registered in a
17 Laurentian program takes a course at the
18 University of Sudbury, let's say, the tuition
19 from that course flows through to the University
20 of Sudbury. When a student at -- registered in
21 a program at the University of Sudbury takes a
22 course at Laurentian University, the tuition is
23 retained by Laurentian and the grant is retained
24 by the University of Sudbury.

25 So when a student registered in a

1 program at the University of Sudbury takes a
2 course at the University of Sudbury, both the
3 grant and the tuition flow through to the
4 University of Sudbury. That is the current
5 funding model.

6 399 Q. Okay. That's correct, okay. And
7 if we go to paragraph 9, it goes on to say:

8 "Laurentian University agrees to
9 assume the contracts of employment
10 [...]" et cetera.

11 If we go to page 5, paragraph 11:

12 "General facilities provided by
13 Laurentian University such as physical
14 training, health and athletic
15 facilities, buildings and quarters
16 (other than residences) provided for
17 the use of Laurentian University
18 faculty and students shall be
19 available to the faculty and students
20 of Sudbury University upon the same
21 fee basis as to the faculty and
22 students of Laurentian University."

23 And that's presently the case?

24 A. I believe that is correct, yes.

25 400 Q. And if go to paragraph 12:

1 "Laurentian University shall
2 allocate and reserve land within its
3 campus [...]."

4 Okay, that we know has been done.
5 If we now go to page 6?

6 A. Yes.

7 401 Q. Paragraph 15:

8 "Any federation or affiliation
9 agreements or modifications thereof
10 relating to federation or affiliation
11 with Laurentian University shall be
12 discussed with the universities and
13 colleges federated or affiliated with
14 Laurentian University prior to
15 Laurentian University entering into
16 any such agreements or agreeing to
17 modifications of any such agreement."
18 And then we go to 17:

19 "Both Laurentian University and
20 Sudbury University declare and express
21 the firm hope and conviction that the
22 relationship between the Universities
23 established by this agreement will be
24 a permanent one and that they and the
25 other universities and colleges which

1 become federated or affiliated with
2 Laurentian University will work
3 together to fulfill the objects of the
4 Act of Incorporation of Laurentian
5 University and to build a great
6 institution of learning which shall
7 forever be bi-lingual and
8 non-denominational in its character.
9 The Parties fully realize that the
10 success of the task which they have
11 set themselves will depend more on
12 mutual understanding, goodwill and
13 cooperation between the institutions
14 now or hereafter together in
15 Laurentian University, than upon any
16 formal agreement."

17 And the question I have for you is,, I
18 want you to tell me what the university did
19 before imposing its condition, and effectively
20 its hope, to bring to an end the agreement, this
21 present agreement? What it did to show mutual
22 understanding, goodwill and co-operation?

23 A. I initiated conversations with
24 the presidents of the three federated
25 institutions in June, I believe it was June of

1 last year, to see whether we could -- how we
2 could go forward. It was clear, I mean it talks
3 about a firm hope in the first part and a
4 permanent relationship. That assumes that all
5 parties continue, including Laurentian
6 University.

7 And the current financial situation of
8 Laurentian is that it will not be able to
9 continue under the present relationship. So
10 there were conversations that were initiated on
11 the basis of needing to talk about reciprocity
12 and everything being on the table to develop
13 that relationship going forward that would work
14 for all parties. And that was initiated in
15 June.

16 402 Q. Oh, sorry. Go ahead. I didn't
17 want to interrupt you.

18 A. No, that was the end of my
19 answer.

20 403 Q. Mr. Haché, you can agree with me
21 that at no point did you ever have a discussion,
22 from June 2020 right through to February 1st,
23 2021, at no point did you ever advise anyone at
24 the Federation, at any of the federations,
25 Federated Universities, that what you intended

1 to do was to terminate the agreement, that's
2 fair?

3 A. That is not correct. What I --
4 when we started the conversation, I explicitly
5 indicated that all options needed to be on the
6 table.

7 404 Q. Sorry, that's not my question.
8 I'm asking you very specifically, is it your
9 evidence that you told -- you -- that you or
10 anyone at Laurentian University actually told or
11 advised -- I'm not talking about all options --
12 actually advised and said that you intended,
13 that you were actually looking at bringing to an
14 end the agreement between Laurentian University
15 and the Federated Universities?

16 I'm not -- I'm not -- this is not --
17 I'm not asking you, you know, you're doing this
18 under CCAA? What's your opinion? Can you do
19 that? I'm not asking you that.

20 All I'm saying, there was never that
21 discussion where you told them, Laurentian told
22 the Federated Universities this is what we're
23 looking at and that there was a discussion. I
24 mean basically what happens is, my understanding
25 and from what you told me is, Laurentian got

1 its -- has now -- has got its back up against
2 the wall and your position is that you have no
3 choice but to proceed in this fashion, is that
4 correct?

5 A. That is correct. We have no
6 choice but to proceed in this fashion.

7 MS. MILLER: You've asked about four
8 questions without giving him an opportunity to
9 answer those questions. You asked whether there
10 were any discussions with respect specifically
11 to a termination. Can you please allow him to
12 answer that question?

13 BY MR. CAZA:

14 405 Q. So why don't I ask that question
15 again, just so we're clear when you're answering
16 it.

17 There was no specific meeting and
18 there was no specific correspondence, and there
19 was never any specific discussion where a
20 representative of Laurentian University
21 advised -- and I'm talking any time before
22 February 1st, 2021, advised of Laurentian
23 University's either interest or intent to bring
24 to an end its agreement with the Federated
25 Universities, that's fair?

1 A. So you're asking the question in
2 a very specific way.

3 406 Q. Yes.

4 A. So let me be specific in my
5 answer.

6 407 Q. Can you answer --

7 A. In the conversations -- I'm
8 trying to answer the question as accurately as I
9 can.

10 In the conversations that happened
11 between myself and the presidents of the three
12 federated institutions, discussing potential
13 pathways forward for the Federation, I
14 explicitly indicated that all options needed to
15 be on the table including ending the current
16 federated structure.

17 Now did I notify them that that was
18 the intention of the university? Which is the
19 other part of the question. What I explicitly
20 said that all options needed to be on the table,
21 so that is not expressing an intent to
22 immediately go to that conclusion, but that is
23 saying that this needs to be included in the
24 conversation.

25 408 Q. Who was -- how many meetings are

1 you talking about, where you specifically said
2 ending the current structure, basically
3 terminating the Federation Agreements, that you
4 put that on the table to be discussed? What
5 meeting was that? How many meetings?

6 A. We met regularly from June
7 through the end of the year once or twice a
8 month, and that was --

9 409 Q. And --

10 A. -- that was part of the
11 conversation. You know, did that statement
12 explicitly come up at every meeting? I can't
13 say. Was it part of the -- was it part -- was
14 it something that was on the -- that I put on
15 the table and did not take off the table? Yes.
16 Was it something that was responded to in a
17 positive fashion? No.

18 410 Q. Who was at the meeting where
19 you -- first of all, I want to be clear to you.
20 Your evidence is that you specifically said at a
21 meeting -- I just want it to be clear -- that
22 you advised everyone present that one of the
23 options Laurentian University was considering is
24 ending the agreements it had with the Federated
25 Universities? You have a recollection of having

1 said that at a meeting?

2 A. I -- you know, I will be -- I
3 will correct the way in which it is being said.
4 So my recollection is that we needed to -- in
5 looking at how we might be able to move forward,
6 we needed to look at all options, all options,
7 including ending the existing or substantially
8 changing the existing federation structure.

9 411 Q. Okay. And when you -- just so
10 I'm clear, when you're giving your evidence and
11 you say "all options" and then you continue
12 giving sort of examples of an option, are you
13 saying that those were understood when you said
14 "all options" or did you specifically provide
15 those details during the meeting?

16 A. I provided the details in the way
17 in which I recounted it. That's -- that's my
18 recollection of what I said during those
19 meetings.

20 412 Q. And to whom did you say that that
21 was a representative of the Université de
22 Sudbury?

23 A. John Meehan.

24 413 Q. So you told that to John Meehan?
25 And who did you tell that to who was a

1 representative of Thorneloe University?

2 A. John Gibaut and Kevin McCormick
3 from Huntington.

4 414 Q. So let's -- and then I think
5 it's -- in fairness, so you had discussions. I
6 think we can both agree that the issue of
7 terminating the agreement was never actually
8 discussed. You advised that that was one of the
9 options but there was never any discussion, is
10 that fair?

11 A. Yeah, there was no conclusion,
12 but that was the -- that what needed to be done.
13 There might have been another way to -- you
14 know, we were having conversations to see how we
15 could work through the issues that existed.

16 415 Q. But you never had a discussion,
17 for example, of what the consequences would be
18 if that ended? Like, it never got to that in
19 your discussions? Is that fair?

20 A. No, there was not an interest to
21 entertain that discussion.

22 416 Q. Now, if we can now go back to
23 your affidavit? One second, please.

24 Mr. Haché, if I can ask you, when you
25 talked about and you mentioned one of the

1 possibilities was ending the current structure,
2 the suggestion wasn't that there would no longer
3 be any relationship between the university and
4 the federated -- Laurentian University and the
5 Federated Universities; what you're saying is
6 the actual structure that existed would need to
7 be changed dramatically, is that fair?

8 MS. MILLER: Mr. Caza, I think he's
9 given that answer.

10 MR. CAZA: Actually no, he hasn't
11 given that answer because I haven't asked that
12 question.

13 MS. MILLER: You have asked and it has
14 been answered and I think the record will
15 reflect that.

16 MR. CAZA: Well, I'm asking you now --
17 no, actually I have not asked this question.
18 I'm going to ask it again and if you object,
19 object, and Mr. Haché, you may want to wait
20 until I finish my question before answering.
21 Ms. Miller may be objecting, just so you know.

22 417 Q. My question is, you've spoken and
23 told us that one of the options that you said
24 that was part of the package or was on the table
25 is ending the current structure. You're saying

-- I wrote in my notes that that is what you said.

So my question to you is, when you -- when that -- when you talked about and you said that was one of the options being considered was ending the current structure, I think we can both agree that that didn't necessarily mean that there would no longer be a relationship between the Laurentian University and the federated colleges?

A. It didn't presume that there would be zero relationship, but it didn't presume as to what form a relationship there might be.

418 Q. If we can go now to page 24,
paragraph 78. Let me know when you're there?

A. Yes.

419 Q. So we've got here, it says:

"Pursuant to an Indenture between [Laurentian University] and [Sudbury] dated April 9, 1965 [Laurentian University] leased certain land for a term of 99 years to allow [Sudbury] to construct buildings and student housing for [Sudbury]. Provided that

1 [Sudbury] performs all of the
2 covenants during the term of the
3 [Sudbury] Indenture, [Laurentian
4 University] is required to renew the
5 lease for a further 99 years on
6 substantially the same terms."

7 You're not alleging that up until now
8 there's been any failure to perform any
9 covenant?

10 A. No.

11 420 Q. Okay. And if we look at
12 paragraph 79, it lists -- it's a list that you
13 provided from the SU Indenture as to when
14 Laurentian University may terminate the
15 indenture, and I think we agree that none of
16 those conditions are met in the present case?

17 A. I believe that's correct.

18 421 Q. We can now go to page 27. And
19 if -- I'm at paragraph 88, and there's a
20 reference to Exhibit P. And if we can -- if I
21 can just draw your attention, if you can pull up
22 Exhibit P? So basically they are the same
23 question -- it's the same wording as the last so
24 we'll just move on.

25 -- RECESSED AT 11:10 A.M. --

1 -- RESUMED AT 11:18 A.M. --

2 BY MR. CAZA:

3 422 Q. So Mr. Haché, can we go to
4 page 88? If we go to page 88 and I'm looking at
5 paragraph 292. Let me know when you're there.

6 A. I'm there.

7 423 Q. So this is the section under your
8 affidavit that's titled "Objective of the CCAA
9 Filing", and we see the -- your evidence goes
10 from page 292, and it keeps going until section
11 9.

12 So what I would like to do is if you
13 have got 229, it says here -- and I'm just
14 looking at it -- "Proposed Restructuring of
15 [Laurentian University]" paragraph 292:

16 "Leading up to this application
17 for protection under the CCAA, I have
18 worked with Internal Team to plan for
19 'Laurentian 2.0.'"

20 Just so that I'm clear, is that how
21 you're referring -- I guess 2.0 is what the
22 Laurentian -- what you're hoping it will look
23 like after the CCAA process has been completed;
24 is that what we're talking about?

25 A. Yeah, the new Laurentian going

forward.

424 Q. And it says:

"Externally, Laurentian 2.0 will not look or feel much different than [Laurentian University] today because a vast majority of [Laurentian University] students take the most popular courses and the delivery of those courses should not materially change. However, [Laurentian University] will be internally overhauled from an operational and financial standpoint to focus on its strengths and shed areas of relative weakness or unnecessary costs."

And that, as I was saying, is under a section that's called "A. Proposed Restructuring of [Laurentian University]."

Now, it says at 293:

"Today, the future of [Laurentian University] could be in jeopardy due to, among others, the following factors:"

And it goes A, B, C, D, E. Can you --
I just want to make sure that everything we find

1 in section 293 refers only to Laurentian
2 University and not the Federated Universities.

3 A. Paragraph (b) says:

4 "[...] the annual cost to educate
5 each student at [Laurentian
6 University] and the Federated
7 Universities [...]."

8 So I guess that one refers to both.

9 425 Q. How about the other -- the five
10 other ones, (a) (c), (d) and (e)? Just confirm
11 that that is all with respect to Laurentian
12 University?

13 A. That is correct, I believe.

14 426 Q. Now, if go to next page,
15 paragraph 294?

16 A. Yes.

17 427 Q. If you could just confirm that
18 you're looking at the implementation -- in
19 implementing Laurentian 2.0 you're going to be
20 addressing these four operational and financial
21 issues.

22 And can you confirm that the four of
23 them are with respect to Laurentian University
24 and have nothing to do with the Federated
25 Universities?

1 A. Yeah, that is correct.

2 428 Q. If we go to 295 we see that -- it
3 seeks to accomplish the foregoing, everything
4 you've said by:

5 "(a) Restructuring the Academic
6 Model by streamlining academic
7 programming and delivery through the
8 reduction of number of programs,
9 restructuring academic supports and
10 terminating the agreements and
11 relationship with the Federated
12 Universities."

13 Can you explain to me how by
14 accomplishing what we've just read, terminating
15 the agreements and relationships with the
16 Federated Universities is going to assist you to
17 accomplishing this?

18 A. It will -- it will reduce the
19 outflows of revenue for teaching activities that
20 can be accomplished readily within Laurentian
21 University.

22 429 Q. So if I could just break that
23 down, it will reduce the outflow of revenues,
24 and the outflow of revenues are monies that are
25 paid in tuition and grants for courses offered

1 by the Federated Universities? That's what
2 you're talk be about, right?

3 A. Tuition specifically, yes.

4 430 Q. So tuition that's paid to the
5 Federated Universities for courses that are
6 taken at the Federated Universities. And what
7 you're saying is, if that's no longer available
8 we're going to be able to offer those courses
9 ourselves and keep the tuition fee, is that
10 fair?

11 A. Not quite. What I'm saying is
12 that we already offer courses that are available
13 that are not -- which have capacity to take in
14 those students, so we're not offering additional
15 courses but simply to fill the courses that we
16 do have on offer.

17 431 Q. Let me rephrase my question,
18 Mr. Haché. So what you have is -- what you're
19 looking at is, by terminating the agreements and
20 the relationship with the Federated Universities
21 they will no longer be able to offer the courses
22 that they're presently offering at their
23 universities, and for which students, through
24 Laurentian, are paying tuition fees?

25 A. Students at Laurentian would no

1 longer have the ability to take courses at the
2 Federated Universities as credit towards their
3 Laurentian degrees, yes.

4 432 Q. And just so I'm clear, so then
5 the way you get money is then what you're
6 looking is you have courses that you're already
7 offering, and those students would then take
8 those courses instead of taking the courses at
9 the Federated Universities?

10 A. Yeah, those courses would have
11 higher numbers of registrants.

12 433 Q. Now, if University of Sudbury was
13 to awaken its degree-discerning ability to be
14 able to get degrees, and they started, in fact,
15 offering courses, if they did would you
16 recognize those courses? Have you thought about
17 whether you're recognize those courses toward a
18 Laurentian University diploma?

19 A. There is a mechanism in the --
20 provincially, and may even be nationally, but
21 certainly there is a mechanism provincially for
22 students to request to take a course at another
23 institution and have credit granted back at the
24 home institution. That's an existing mechanism.
25 I imagine that that mechanism would have to be

1 followed and utilized, assuming that --

2 434 Q. If it was followed and utilized
3 then it wouldn't work any more because if
4 people -- if your students wanted to take the
5 courses at the University of Sudbury then you
6 wouldn't be getting the income you had hoped to
7 get, right? The only way that works is if the
8 University of Sudbury doesn't offer courses,
9 right?

10 A. Not correct. It's called the
11 "Letter of Permission". So the student has to
12 demonstrate that the course that they are
13 wishing to take is both necessary for their
14 degree and not offered at the -- at their home
15 institution.

16 435 Q. Okay. So just so we're clear.
17 So the only way -- and so that's important that
18 I understand that, so if I -- if I am a student
19 at Laurentian and I want to take a course at the
20 University of Ottawa, for example, or a couple
21 of courses at the University of Ottawa, I then
22 need you to recognize those courses if I'm going
23 to get a diploma from Laurentian University.

24 And you're saying one of the criteria
25 that's used is whether or not a course or

1 similar course was offered and could have been
2 obtained at Laurentian, and if it has or is
3 you're not going to recognize the course from
4 another university?

5 A. A Letter of Permission is
6 required for the student to take the course at
7 an external university and have it registered as
8 credit at the home university. That is for
9 Laurentian, that's for every university in
10 Ontario.

11 436 Q. Okay. That's fine.

12 So we've had Thorneloe that have
13 provided that evidence if the agreement is
14 terminated they will not be in a position to
15 continue and to offer courses, et cetera.

16 So you would be accomplishing your
17 goal, definitely, with respect to terminating
18 your agreement with Thorneloe if you know they
19 won't be able to continue, correct?

20 A. Well, our goal is for Laurentian
21 students to register more fully in Laurentian
22 courses, yes.

23 437 Q. Your goal is to stop students
24 from being able to take courses at the Federated
25 Universities that count towards their

1 university -- Laurentian University diploma;
2 that's your goal, right?

3 A. I believe that was the answer I
4 gave. It says essentially the same thing.

5 438 Q. So what I've said and what you're
6 saying, we can agree, is essentially the same
7 thing, right?

8 A. I think there is a difference in
9 emphasis, but yes.

10 439 Q. Now, if I can now go to 297. So
11 paragraph 90:

12 "[Laurentian University] intends
13 to use this CCAA proceeding to
14 commence an intensive mediation with
15 certain of its stakeholders that can
16 be conducted within a relatively short
17 time frame [...]."

18 That intensive mediation that you're
19 referring to, did that also apply to your
20 discussions with the Federated Universities?

21 A. Yes, it did.

22 440 Q. Now, and it says at paragraph
23 298:

24 "More particularly, during this
25 CCAA proceeding, [Laurentian

1 University] intends to: (a)
2 complete its review of the breadth of
3 academic programs offered at LU to
4 ensure that adequate students are
5 enrolling in programs and classes to
6 justify their continuance at
7 [Laurentian University] and engaging
8 in discussions with the Senate of
9 [Laurentian University] in respect of
10 same."

11 And (b) says:

12 "Re-evaluate the Federated
13 Universities model in such a way that
14 the historic significance of the
15 Federated Universities can be
16 preserved while ensuring that the
17 relationships reflect the current
18 realities of each organization."

19 Okay, what does that mean? Because
20 this is part of your affidavit? What does that
21 mean?

22 A. It means, as you pointed out
23 earlier, we have a 60-year relationship. There
24 are students that -- many students that have
25 gone through and done programs or courses at the

1 three federated institutions. There is a legacy
2 there. And to me certainly history is
3 important.

4 And having -- finding a way to
5 recognize that legacy, as we go forward, through
6 whatever means we could come together on, I
7 think was -- is something, you know, it's --
8 that is certainly important I think to me
9 personally, recognizing the importance of
10 history.

11 And I think providing that legacy
12 factor I think is simply something that I -- we
13 thought would be a positive development.

14 441 Q. Now, I'm assuming you didn't
15 write this affidavit? It was written by someone
16 else and you reviewed it to satisfy yourself of
17 its contents, is that fair?

18 A. Yes, I reviewed it and edited it
19 and suggested this and that along the way,
20 absolutely.

21 442 Q. But the initial draft was written
22 by someone else?

23 A. Working with my counsel, yes.

24 443 Q. I'll tell you why. I think you
25 will agree with me, in light of everything

1 you've told me about what the situation was at
2 the time you signed your affidavit, what the
3 situation was, where you were looking at what
4 your actual options were, I think you'll agree
5 that the word "reevaluate", "reevaluate" is a
6 little disingenuous.

7 That's really -- that is not the word
8 you wanted to put there. I mean, you should
9 have been putting there, "bring to an end" the
10 Federated University model in such a way that
11 you weren't reevaluating anything.

12 You had made a decision. You were
13 bringing it to an end. You'll agree with me
14 that is the wrong word to put?

15 A. Well, I think practically
16 speaking at that time, as we got to the 30th of
17 January, it became obvious that there were
18 not -- there were not a lot of practical
19 alternatives to what you just said.

20 444 Q. There were none?

21 A. I won't say there were none, but
22 I would say there didn't seem to be any
23 practical call alternatives.

24 445 Q. Okay.

25 A. And so if you think we should

1 have used a word that was stronger then
2 "reevaluate", maybe we should have.

3 446 Q. And just so that I'm clear, now I
4 see what you're saying. You're saying, there
5 was really no practical alternative --

6 A. There seemed to be. To me, to
7 us, we were open to practical alternatives but
8 there didn't seem to be --

9 447 Q. Well --

10 A. There were none that we seemed to
11 be able to identify at the time.

12 448 Q. Well, we'll talk about how open
13 you are there. But when you say the practical
14 reality is, you are in desperate need of cash
15 and need to restructure. So practically
16 speaking you need to find a way to keep the
17 monies that are flowing through you at the
18 university, I think that's fair?

19 A. That's fair.

20 I know the court reporter was going to
21 tell us to not speak at the same time.

22 449 Q. That's fair.

23 If we go to paragraph 299.

24 "In 2019, [Laurentian University]
25 provided notice of a change in the

1 funding agreement between [Laurentian
2 University] and each
3 of the Federated Universities."

4 We've already talked about that:

5 "While this amendment was
6 necessary to make the funding
7 arrangements consistent with metrics
8 in respect of tuition and grants from
9 the Province, further work is
10 required."

11 So what you're saying is that your
12 amendment was not sufficient to meet your dire
13 financial needs, is that fair?

14 A. That is correct.

15 450 Q. And you go on to say:

16 "[Laurentian University]
17 estimates that the Federated
18 Universities model costs [Laurentian
19 University] approximately \$5 million
20 each year."

21 So, I just want to understand here.
22 The \$5 million a year is the amount of money
23 that is flowing through you, basically being the
24 source of revenue, the full source of revenue of
25 both of your Federated Universities, correct?

1 That is the \$5 million?

2 A. You said -- can you repeat that
3 please? I'm not sure I understood it correctly.

4 451 Q. When you say the model costs
5 Laurentian University approximately \$5 million a
6 year, what you're referring to is there is
7 \$5 million flowing through you, which is the
8 revenue to the Federated Universities for
9 teaching their courses. And that revenue, when
10 you say it's costing you, is that you are giving
11 it to them, giving them the revenue instead of
12 keeping it by having students take your own
13 courses?

14 A. Yes, substantially that the
15 revenue that flows for the teaching of
16 Laurentian students in courses at the Federated
17 Universities exceeds the revenue that is
18 retained at Laurentian for teaching courses at
19 Laurentian for students that are registered in
20 programs at the Federated Universities.

21 452 Q. But the \$5 million is the total
22 revenue that is paid for grants and tuition to
23 the Federated Colleges for the courses that they
24 are offering, that is the \$5 million, right?

25 A. No.

1 453 Q. So what's the 5 million --

2 A. That is the \$9.1 million we were
3 talking about earlier, minus the administration
4 fee.

5 454 Q. So what's the 5 million? Where
6 do you get the 5 million figure. Where is that?

7 MS. MILLER: Mr. Caza, if you direct
8 him to the sentence it refers to estimates.

9 BY MR. CAZA:

10 455 Q. I actually read this:

11 "[Laurentian University]
12 Estimates that the Federated
13 Universities model costs [Laurentian]
14 approximately \$5 million each year."

15 That 5 million, when you say "costs",
16 that is the amount of money flowing through
17 Laurentian going to the Federated Universities
18 to pay for the courses, right?

19 A. That is correct.

20 456 Q. All right. Let's move on.

21 That's what I understood.

22 -- OFF-THE-RECORD DISCUSSION --

23 BY MR. CAZA:

24 457 Q. So if we go to paragraph 301 at
25 page 91? It says:

1 "This Court-supervised proceeding
2 will assist [Laurentian University] in
3 focusing its discussions and
4 negotiations with leadership of the
5 Federated Universities to arrive at a
6 compromise and solution that is
7 acceptable and, more importantly,
8 ensures the long-term sustainability
9 of [Laurentian University]."

10 Then you go on:

11 "If necessary, [Laurentian
12 University] may utilize the proposed
13 mediation [...]."

14 When you talk about "arrive at a
15 compromise and solution", that compromise and
16 solution would need to include Laurentian
17 University being able to deep basically the
18 monies that are flowing to the Federated
19 Universities for the courses that the students
20 are taking there, is that fair?

21 A. It would need to balance the
22 teaching that happens at the Federated
23 Universities and at Laurentian, yes.

24 458 Q. But actually it's more than that,
25 or are you saying balance that could work? I

1 thought what you were saying is no, that
2 couldn't work.

3 The compromise and solution needs to
4 have -- needs to result in all of the revenue
5 that is presently flowing through to be stopping
6 at Laurentian, that's fair?

7 A. That would be the balance, yes.

8 459 Q. So that's the balance, okay.

9 Thank you.

10 If I can now go to page 114? Sorry --
11 paragraph 302 at page 92. Can you just confirm
12 that paragraphs 302 through to 306 have nothing
13 do with the Federated Universities? That is all
14 internal matters to Laurentian University?

15 A. Give me a moment to read them.

16 MR. HANRAHAN: Take a moment to read
17 them.

18 BY MR. CAZA:

19 460 Q. Take your time and take a look at
20 them. That's my understanding. Like I said
21 going through them if you can just confirm.

22 A. (Witness reading the document.)

23 So to 30 what? What is the end
24 paragraph.

25 461 Q. 06.

1 A. Yes, I believe that is correct.
2 It refers entirely to Laurentian courses
3 programs and faculty.

4 462 Q. And it's the same with paragraph
5 307?

6 A. (Witness reading the document.)
7 Essentially, yes, although when you
8 look at:

9 " [...] focusing on student
10 success leading to strong employment
11 outcomes [...]."

12 That speaks to activities and
13 experiences that go beyond the classroom and
14 would be available to all Laurentian students,
15 including those registered in the federated
16 programs, but substantially all related to
17 Laurentian, yes.

18 463 Q. Can I now draw your attention
19 to -- it's the last tab in your last volume and
20 it's tab HHH. It's A -- its the Firm Capital
21 Corporation DIP Financing Agreement.

22 A. I believe you were saying HHH
23 which starts "Firm Capital Corporation [...]."
24 Okay.

25 464 Q. Have you got a copy of that.

1 Yes, I do. So it's a seven-page letter, and
2 attached to the letter is a schedule A, schedule
3 B. Okay.

4 So I'm going to look at the letter.
5 So that letter was sent to your attention,
6 correct? On January 29, 2021?

7 A. That is the date.

8 465 Q. So we can assume that you would
9 have received it on that date?

10 A. Fair assumption.

11 466 Q. Now, that's a fair assumption?

12 A. Yes, it's affair assumption. I
13 would expect that's the date I received it.
14 Unless I've been cutting out?

15 467 Q. No, that's fine.

16 So then we look at the purpose of the
17 financing, a loan of \$25 million secured by
18 super priority charge.

19 Then if I turn the page and we look at
20 the interest rate, I just want do make sure I'm
21 understanding this correctly. So the interest
22 rate that will be paid on the \$25 million, okay,
23 that was advanced, the interest rate is floating
24 at the greater of 8.5 percent per annum, or the
25 TD Canada Trust posted bank prime rate plus

1 6.05 percent.

2 So it's a minimum interest, it's a
3 minimum interest rate of 8.5 percent, right?

4 A. That is what it says.

5 468 Q. Now, the term, it says:

6 "To mature May 1, 2021.

7 Provided the DIP Financing is not
8 in default, the DIP Lender shall agree
9 to extend the Maturity Date to a date
10 to be determined by further agreement
11 between the Borrower and the DIP
12 Lender, but in any event, such
13 extension shall be for a minimum
14 period of 90 additional days (July 30,
15 2021) and a maximum of 5 months
16 (October 1, 2021), subject to the
17 Borrower achieving the following
18 milestones [...]."

19 So just to that I'm clear, your
20 understanding -- I mean, this is written to you,
21 is as long as DIP Lender is not in default, and
22 my understanding is they are not in default, if
23 you meet these conditions then there shall be an
24 extension for a minimum of 90 additional days.
25 Was that your understanding?

1 A. To the satisfaction of the lender
2 in to its sole and unfettered discretion. So my
3 understanding and that they have discretion.

4 469 Q. But there's three -- but there's
5 three factors that you had to meet, right? One
6 is, you had to enter into a negotiated
7 settlement with LUFA, and you did that, right?

8 A. That is correct.

9 470 Q. The second one was you had to
10 reach consensus among the stakeholders on
11 academic restructuring of the program offerings,
12 and we'll look at that later, that's the
13 academic restructuring. And is it your
14 understanding that you've done that?

15 A. The Senate has approved an
16 academic restructuring.

17 471 Q. And the third one is:

18 "The Borrower provides a revised
19 cash flow forecast and multi-year
20 budget to the DIP Lender, taking into
21 consideration the implementation of
22 the Faculty Settlement and the
23 Academic Restructuring, demonstrating
24 to the Lender, in its sole and
25 unfettered discretion that the

1 Borrower is financially sustainable."
2 Have you provided that cash flow
3 forecast?

4 A. Yes, we have, I believe. The
5 Monitor can confirm that.

6 472 Q. Is that part of what's already
7 been produced?

8 A. What do you mean? Is it in the
9 documents.

10 473 Q. Yes.

11 MS. MILLER: Mr. Caza, the cash flow
12 forecast was in fact filed with the court, it's
13 referenced in the court's endorsement and it's
14 attached to the Monitor's report.

15 BY MR. CAZA:

16 474 Q. Okay so, we find it in the
17 exhibit of the Monitor's report?

18 MS. MILLER: Correct.

19 BY MR. CAZA:

20 475 Q. Thank you. Now, if go to page 3
21 -- just so we're clear, there was no condition
22 that you had to bring to an end the federated --
23 your agreement with the Federated Universities,
24 is that correct?

25 A. It's not mentioned explicitly,

1 no.

2 476 Q. Well, it's not even implicitly.
3 That was not a condition when you received this
4 document on January 29th, 2021, there was no
5 condition of bringing to an end the federated --
6 your agreement with the Federated Universities?

7 MS. MILLER: Mr. Caza, I think he's
8 answered it was not explicitly mentioned. You
9 have also read to him condition 3 and referred
10 him to that.

11 BY MR. CAZA:

12 477 Q. I'm sorry, just so we're clear,
13 so you're saying it was implicitly included,
14 Mr. Haché?

15 A. I'm saying that condition 3, the
16 borrower provide as revised cash flow, et
17 cetera, et cetera, to the lender in its sole and
18 unfettered discretion that the borrower is
19 financially sustainable.

20 So what that says to me is that the
21 lender has the sole and unfettered discretion to
22 determine whether the borrower is financially
23 sustainable, above and beyond what is mentioned
24 in 1 and 2.

25 478 Q. So the revised cash flow forecast

1 that you provided, okay, does it include
2 \$5 million for having brought to an end the
3 existing and federation operating agreements --
4 the agreements with the federated --

5 A. Yeah.

6 479 Q. Where is the cash flow? Where
7 would that be? Is that in one of the -- we'll
8 just go off the record for a second, just to go
9 find that document.

10 -- OFF-THE-RECORD DISCUSSION --

11 MS. MILLER: This is referring to what
12 has to occur in order for that maturity date to
13 be pushed out, right? Which is, these are
14 conditions in favour of the DIP Lender, and
15 condition 3 is referring to it having received,
16 prior to May 1, a revised cash flow forecast and
17 a multiyear budget, taking into account those
18 demonstrating -- so the revised cash flow
19 forecast, which is the cash flow forecast in
20 support of the extension of the DIP, and the
21 extension of the stay period, which is being
22 filed, that's referenced in Mr. Haché's
23 affidavit at the -- towards the end. I have
24 pointed you to that provision previously. I can
25 find you the paragraph.

1 That is the revised cash flow forecast
2 that is being attached to the Monitor's report.

3 MR. CAZA: Sorry, where would I find
4 that?

5 MS. MILLER: So that's -- the
6 Monitor's report for the April 29th motion has
7 not yet been filed.

8 MR. CAZA: Okay, so --

9 MS. MILLER: But I think you're --
10 we're talking cash flow forecast, right, which
11 is for a period of time, right? You're talking
12 about apples and oranges here. The cash flow
13 forecast is just showing the ins and outs of
14 cash for a specific period of time.

15 The cash flow for first attendance on
16 February 1 was for the period February 1 to
17 April 30. The cash flow forecast for the next
18 period is for May 1 to August 31.

19 MR. CAZA: Now, that May 1 revised
20 cash flow forecast, do we have a copy of that?

21 MS. MILLER: No, because that is being
22 filed as part of the Monitor's court report.

23 MR. CAZA: Okay. So we --

24 MS. MILLER: And are we on the record
25 or off the record?

1 MR. CAZA: We're on the record.

2 BY MR. CAZA:

3 480 Q. What about the multiyear budget
4 to the DIP, has that been filed yet?

5 MS. MILLER: That is not something
6 that I believe is being filed.

7 BY MR. CAZA:

8 481 Q. So what's being filed --

9 MS. MILLER: And I don't mean to be
10 answering these questions. I'm just trying to
11 be of assistance.

12 BY MR. CAZA:

13 482 Q. No, while here -- this is
14 something that you would know, and I'm just
15 trying to understand here and it is of
16 assistance. So the revised cash flow forecast
17 that the borrower is to provide as the third
18 condition to being able to get the extension has
19 not yet -- we have not yet seen it. It is going
20 to be filed, I guess, on May 1st or whatever,
21 right?

22 MS. MILLER: It is going to be filed
23 whenever the Monitor files its report to the
24 court in respect of the April 29 motion.

25

1 BY MR. CAZA:

2 483 Q. I guess what I'm trying to
3 understand is -- because I think the evidence --
4 and now I'm back to you Mr. Haché, you were
5 saying that indirectly this point, point
6 number 3, this term, may or does take into
7 consideration the need or -- yeah, the need by
8 Laurentian University, that's your argument, to
9 bring to an end its agreements with the
10 Federated Universities. Did I understand that
11 correctly?

12 A. Yes. The go-forward budget does
13 require -- for the university to be sustainable
14 does require that.

15 484 Q. But we -- but we haven't seen
16 that budget?

17 MS. MILLER: Again, I'm sorry to
18 interrupt but you are a little bit mixing apples
19 and oranges, but we'll leave it at that. I'm
20 sorry to interrupt.

21 BY MR. CAZA:

22 485 Q. I guess what I want to know is, I
23 want the judge to understand your -- I'm reading
24 this. I don't see in paragraph 3 where your
25 position that you need to end or terminate your

1 agreement with the Federated Universities is
2 relevant unless you tell me that the revised
3 cash flow forecast, for example, includes income
4 that you're anticipating receiving as a result
5 of bringing to an end your agreement with the
6 Federated Universities?

7 MS. MILLER: What I'm saying,
8 Mr. Caza, is that that number 3 that you've
9 referred to refers to three things: One is the
10 revised cash flow forecast, which is for the
11 period of the stay extension; it also refers to
12 a multiyear budget.

13 And you're referring to a revised cash
14 flow forecast which is the point in time showing
15 the ins and outs of cash for the period of the
16 stay extension. And my point was simply to
17 clarify for your benefit that point number 3 is
18 referring to two different things.

19 BY MR. CAZA:

20 486 Q. Can we agree, Mr. Haché, and if
21 we can't I want you to let me know -- can we
22 agree that we're not in a position to question
23 you on, to what extent your request to terminate
24 the agreement with the Federated Universities is
25 relevant to term number 3 until we actually see

1 the Monitor's Report?

2 A. So that wouldn't -- wouldn't be
3 for me to say definitively, but from listening
4 to the conversation, I understand that that
5 information will be provided in the Monitor's
6 Report.

7 487 Q. So have you seen a draft yet of
8 the Monitor's Report?

9 A. No.

10 488 Q. So you're not aware if, in the
11 Monitor's Report, the Monitor has assumed or is
12 assuming getting revenue or additional revenue,
13 additional income as a result of the termination
14 of your agreement with the Federated
15 Universities?

16 A. Right. So I have not seen the
17 Monitor's Report. I have seen the cash flow
18 forecast and the multiyear budget forecast for
19 the university going forward.

20 And that multiyear budget forecast
21 includes capturing all of the tuition for
22 students that are registered in Laurentian
23 programs to be taking Laurentian courses.

24 489 Q. Can you show me that document?
25 Where is that document?

1 A. I do not have it before me.

2 490 Q. Can you get it during the lunch
3 break?

4 A. No.

5 MS. MILLER: That is a draft. It is a
6 draft.

7 THE WITNESS: It is a draft. It is a
8 draft. It is not a completed document but it is
9 a draft.

10 BY MR. CAZA:

11 491 Q. So I guess I'm -- so I'm at a bit
12 of a loss. I would like to cross-examine you on
13 that, even if it is a draft. So I guess my
14 question is, am I able to do that or you're not
15 going to be providing the draft?

16 R/F MS. MILLER: No, we would object to
17 providing a draft.

18 BY MR. CAZA:

19 492 Q. Now, just so I'm clear, so what
20 you have is you have a DIP Lender that needs to
21 be satisfied of your financial sustainability
22 and that DIP Lender -- that is all the DIP
23 Lender is looking at. What you're telling us is
24 you've decided -- Laurentian University, you've
25 decided to include in the document that will

1 hopefully convince the borrower of your
2 financial sustainability, revenues that you
3 anticipate receiving if you bring an end to
4 the -- to the agreement between Laurentian
5 University and the Federated Universities?

6 A. We're -- we're developing a
7 budget that reflects the revenues and expenses
8 of the university under the new structure going
9 forward.

10 493 Q. Okay. And is it your evidence
11 that you will not be able to demonstrate that
12 you are financially sustainable unless the court
13 brings to an end the agreement between
14 Laurentian University and the Federated
15 Universities?

16 A. Yeah. So -- and we've talked a
17 little bit about this during the course of
18 this -- this examination this morning. There
19 are a number of components, right, a number of
20 components both on the revenue and on the
21 cost-saving side that need to come together to
22 formulate the budget.

23 And so this is -- this is an overall
24 how do you get to a budget that is sustainable
25 for the university? And in order to achieve

1 that, yes, at this point this does include
2 termination of the relationship with the
3 Federated Universities to -- to allow for
4 Laurentian -- to provide a budget that provides
5 for the prospect of a sustainable Laurentian
6 University going forward.

7 494 Q. So Mr. Haché, has the decision
8 already been made? Has the decision already
9 been made that your revised cash flow forecast,
10 okay, will definitely include getting cash flow
11 from bringing to an end the agreement between
12 Laurentian University and the Federated
13 Universities?

14 A. So, you know, we have served the
15 disclaimer --

16 495 Q. Yes.

17 A. -- indicating the desire to
18 terminate by the end of April, and so our
19 budgeting reflects that.

20 496 Q. And that's definite? Like, the
21 budget you have reflects revenues that you're
22 anticipating receiving as a result of this --
23 that agreement being terminated?

24 A. Yeah, that the draft budget that
25 is being developed is based on the expectations

1 for how we'll be able to go forward past
2 May 1st.

3 497 Q. Okay. Now, and obviously the
4 Court will be relying on that information
5 because that is going to be quite relevant to
6 the determination -- not only to the Court but
7 also the borrower will very likely be relying on
8 that information, correct?

9 A. I would expect so.

10 498 Q. I think it's crucial evidence and
11 I want to see it. I want to see it, and I want
12 the opportunity to cross-examine you on it
13 because we don't accept that evidence.

14 And we have to have the opportunity to
15 challenge it, and right now we don't because
16 everything is being forced at a hundred miles an
17 hour. So I'm putting this on the record.
18 Whenever that cash flow forecast comes out, I
19 want to have the opportunity to cross-examine
20 you before the hearing, so if you want to use a
21 draft, whatever it is. Because we're not
22 accepting that evidence and that is evidence
23 that is going to be key, I'm assuming, in the
24 present -- in the upcoming motions. I'm putting
25 that on the record.

1 I do have one question for you.

2 MR. YIOKARIS: Sorry to interrupt,
3 Mr. Caza. We reiterate that concern that was
4 just expressed. Thank you.

5 U/T MS. MILLER: And when the cash flow
6 forecast -- to be clear, when that cash flow
7 forecast is filed in support of the stay
8 extension, absolutely, if there is any questions
9 arising from that cash flow forecast, we will
10 certainly either, you know, you can provide the
11 answers in writing and we'll provide them or
12 we'll make Mr. Haché available for a further
13 brief cross-examination addressing the cash flow
14 forecast.

15 BY MR. CAZA:

16 499 Q. Well, we also want the same
17 undertaking for the budget, okay. The multiyear
18 budget we need the same undertaking.

19 U/A MS. MILLER: We are only providing him
20 for cross-examination if -- on any evidence
21 that's filed with the Court on which the Court
22 will be provided and the stakeholders are to be
23 provided as part of this motion. If that
24 multiyear forecast is filed, then that would be
25 an option. If it is not, because it is still in

1 draft and it's not part of the evidence or the
2 record for the April 29th motion, then we will
3 not be.

4 MR. CAZA: Can we go off the record
5 for a second? And we'll be back in a second.

6 -- OFF-THE-RECORD DISCUSSION --

7 BY MR. CAZA:

8 500 Q. We're back on the record.

9 Ms. Miller, just so we're clear, our
10 understanding, and if I'm incorrect just let me
11 know, is that if -- you say if the evidence you
12 filed is before the Court, but that includes
13 also if it's evidence you're providing to the
14 DIP Lender, is that fair? Like, if you are not
15 providing to the DIP Lender a multiyear budget,
16 then I think it's -- it does become irrelevant.
17 But if he is being provided or it is being
18 provided, we then need to see it. Because if
19 he -- it's relying on that, we want to have the
20 opportunity to challenge any -- any numbers that
21 are being put forward?

22 U/A MS. MILLER: We will take that under
23 advisement.

24 BY MR. CAZA:

25 501 Q. Can you at least, just so we're

1 clear -- and I understand you're taking it under
2 advisement. Can you at least let me know if
3 you've done it so that I can then take the
4 measures to attempt, and you can -- and I
5 understand you may be disagreeing -- to attempt
6 to at least challenge that evidence? I won't
7 know if you don't let me know that you've
8 actually provided it to him. Can I have that
9 undertaking?

10 U/A MS. MILLER: No, we'll take that under
11 advisement.

12 BY MR. CAZA:

13 502 Q. So if you are taking everything
14 under advisement, how do I know if -- how am I
15 able to protect my client's best interest here?
16 You take it under advisement whether or not very
17 relevant evidence is going to be provided? I'm
18 not going to know unless you decide --

19 MS. MILLER: Well, we haven't accepted
20 the "very relevant evidence" aspect of it, but I
21 take that that's your position.

22 BY MR. CAZA:

23 503 Q. Well, I think it will be.

24 So when will the decision be made or
25 when will you have that information as to

1 whether or not you will be filing those
2 documents?

3 MS. MILLER: I don't expect we will
4 be.

5 MR. CAZA: That's the fine. If you
6 are, I'm asking you to let me know if you are.
7 And we may have to take our own measures. I'm a
8 little at a loss here where I can't see how I'm
9 going to protect my client if I don't have an
10 undertaking from you, not to accept my position,
11 but to put me in a position where I'm able to
12 challenge the information. That's all I want.
13 And I can't do that.

14 So now what I need is I've got to get
15 a court order, and I think that is what we are
16 going to have to do -- we're going to have to
17 get a court order that you are to advise me if
18 you are giving that information and it's
19 relevant to the decision being made by the DIP
20 Lender, you going to have to let me know. And
21 if you don't, well, we'll have to protect
22 ourselves accordingly.

23 504 Q. Mr. Haché, if I may, so I want to
24 be clear here. I want to know what your
25 evidence is. We are challenging both Thorneloe

1 and Université de Sudbury, we are challenging
2 your right to disclaim both of these agreements.

3 So your evidence is that if we're
4 successful, Laurentian University is going
5 bankrupt, right?

6 A. My evidence is that if that is
7 successful, Laurentian University will not be
8 able to continue into the month of May.

9 505 Q. And it will go bankrupt?

10 A. If that's the technical term. I
11 know we will cease operations.

12 506 Q. I'll tell you why, because I'll
13 tell you -- and maybe I can ask you one more
14 question. You have no evidence and there is no
15 contingency plan -- and there's been no
16 discussion about how you're going to go about
17 satisfying the DIP Lender if, indeed, your
18 disclaimer is refused and that the agreement
19 with the Federated Universities is maintained.
20 You have not even discussed the possibility of
21 convincing the DIP Lender to proceed with
22 advancing you 10 more million dollars.

23 A. My understanding is that that is
24 one of the conditions of the DIP Lender
25 advancing us \$10 million.

1 507 Q. Just so I'm clear, and that's the
2 only reason why you're saying that it is -- that
3 if the -- if the Federation Agreements don't
4 come -- are not terminated with the Laurentian
5 University's agreements with the Federated
6 Universities is not terminated, that it's over
7 because that is a condition that has been put
8 into -- that's been put up by the DIP Lender?

9 MS. MILLER: Objection. That's not
10 what he said. He did not say that was the only
11 reason.

12 BY MR. CAZA:

13 508 Q. Well, what other reason is there,
14 aside from the fact that the DIP Lender has put
15 it in as a condition?

16 MR. HANRAHAN: I think we discussed
17 that quite extensively, right, the fact that it
18 was tuition money and those changes that are
19 necessary. So to say that the DIP Lender is the
20 only condition or the only reason, that's just
21 not something that Dr. Haché said.

22 BY MR. CAZA:

23 509 Q. So let's start with the DIP
24 Lender as a condition, and in fact we know there
25 is condition because he's told you, right?

1 Mr. Haché, has he --

2 A. It is --

3 510 Q. You have spoken to the DIP
4 Lender?

5 A. It is in the terms for the
6 renewal of the DIP loan.

7 511 Q. And did you speak to the DIP
8 Lender on that issue?

9 A. I did not speak directly with the
10 DIP Lender but through counsel.

11 512 Q. I'm a little confused here. So
12 you have never had a conversation with the DIP
13 Lender?

14 A. I have not spoken in Zoom with
15 the DIP Lender, no, or on the telephone.

16 513 Q. And you've never -- so there has
17 been no direct communication between the DIP
18 Lender and yourself?

19 A. That is correct.

20 514 Q. So anything you know about what
21 the DIP Lender is saying is basically hearsay
22 evidence that you're getting from your lawyer,
23 is that correct?

24 A. Well, it's written -- there is
25 written.

1 MS. MILLER: Objection.

2 THE WITNESS: Yeah, okay, sorry.

3 MS. MILLER: Finish your answer which
4 is --

5 THE WITNESS: There is written
6 communication from them. All of my
7 communication with the DIP Lender has been in
8 writing.

9 BY MR. CAZA:

10 515 Q. And you produced all of that
11 communication?

12 MS. MILLER: We're referring to a
13 written term sheet, Mr. Caza, that is contained
14 in the court record which --

15 BY MR. CAZA:

16 516 Q. Actually, if I may, you may want
17 to let Mr. Haché answer this. Do you have any
18 exchange of emails with the DIP Lender?
19 Mr. Haché --

20 A. I don't believe --

21 517 Q. -- have you seen any emails?

22 A. Direct emails, I don't believe
23 so.

24 518 Q. Well how about indirect? Have
25 you seen emails exchanged between your lawyers

1 and the DIP Lender?

2 A. Not that I recall.

3 519 Q. I am asking to be produced all
4 emails and all correspondence exchanged with the
5 DIP Lender.

6 Okay, Ms. Miller I'm asking for that.
7 All of the emails you sent to him or received,
8 anybody on your team, including the Monitor,
9 either sent to the DIP Lender or any of its
10 representatives or received, I'm asking you to
11 produce all of that correspondence.

12 R/F MS. MILLER: And we will not produce
13 that. So you have a refusal.

14 BY MR. CAZA:

15 520 Q. Well, I will tell you, so what we
16 have, okay, and I'm asking that -- my
17 understanding -- what about examining for
18 discovery the DIP Lender? Has the DIP Lender
19 been made aware that we want to examine him?
20 Does he know that?

21 MS. MILLER: His counsel was attending
22 the case conference when that request was made,
23 and His Honour specifically directed, pursuant
24 to an endorsement following that case conference
25 that questions of the DIP Lender were to be put

1 in writing to the Monitor.

2 BY MR. CAZA:

3 521 Q. Now, so if I -- if I now go to
4 the -- I'm now in another document. It's your
5 second -- it's your motion record. We were
6 looking at your application record. Now I'm in
7 your motion record.

8 MR. YIOKARIS: Mr. Caza, sorry to
9 interrupt. Ms. Miller, I just wanted to confirm
10 all undertakings, under advisements, and
11 refusals --

12 MS. MILLER: You were cutting out a
13 bit. I didn't hear what you just said, I'm
14 sorry.

15 MR. YIOKARIS: Yes, sorry. I just
16 wanted to make sure that all undertakings, under
17 advisements and refusals for Mr. Caza are also
18 made to our client as well?

19 MR. HANRAHAN: I think you're just
20 saying you don't want to have to repeat all the
21 same ...

22

23 MR. YIOKARIS: Correct.

24 MR. HANRAHAN: Yes.

25

1 BY MR. CAZA:

2 522 Q. So go to your Notice of Motion.

3 A. Yes.

4 523 Q. Have you got a copy?

5 A. Yes.

6 524 Q. So this one here, is it the same
7 thing? You have the actual document? You don't
8 have the record?

9 A. That is correct.

10 525 Q. So can we go to the first page of
11 the Motion Record -- sorry, the Notice of
12 Motion.

13 A. So page 3?

14 526 Q. Actually I think it's page 1. It
15 would be -- it says on top "Ontario Superior
16 Court, Commercial List" and then it has got
17 "Notice of Motion"?

18 A. I only have a page 3. I may have
19 it electronically.

20 527 Q. You've got the grounds for the
21 motion. It's dated April 21 -- there it is,
22 April 21st on page 9.

23 A. Oh, yes, here it is. I found it.
24 I'd just taken the table of contents out of the
25 document so I could follow it easier, I guess.

1 528 Q. So we can agree on looking at
2 what the motion is for, and I think we can agree
3 that nowhere in the motion does it seek as one
4 of the orders that the agreement between the
5 university and the -- Laurentian University and
6 the Federated Universities be terminated. It is
7 not one of the orders that you are seeking in
8 your motion, is that fair?

9 MS. MILLER: Mr. Caza, let him --

10 MR. HANRAHAN: Just to be clear, first
11 of all it's a legal question, but second of all
12 the motions are motions brought by University of
13 Sudbury and Thorneloe, which is why it is not
14 reflected as a motion we're bringing here.

15 MR. CAZA: Now, if you look at -- just
16 stop for a second.

17 -- OFF-THE-RECORD DISCUSSION --

18 MR. CAZA: Sorry, Ms. Miller, I got
19 taken aback a little bit. The Notice of Motion
20 I'm looking is your motion; it is not our
21 motion.

22 MS. MILLER: Correct. But what
23 Mr. Hanrahan was trying to point out is that
24 under the CCAA, the motion that is to be brought
25 if a party opposes the disclaimer is the motion

1 brought by that party. Laurentian is not
2 required to bring a motion for an order
3 confirming the disclaimers. The disclaimers
4 were issued and the CCAA provides what the
5 process is thereafter.

6 BY MR. CAZA:

7 529 Q. Okay, I understand what you're
8 saying.

9 So if we now go to page 3, which I
10 think is the original page you had, Mr. Haché,
11 are you with me?

12 A. I hope so. We'll see.

13 530 Q. It says:

14 "The grounds for this motion are
15 [...]." Do you see that?

16 A. No, I don't have the right
17 document. I'm looking at my affidavit.

18 531 Q. If you can just pull up the
19 Notice of Motion? Or maybe -- maybe Ms. Miller
20 can send it to you. I have an objection.

21 MS. MILLER: It should be in the
22 bound, printed motion record called "Motion
23 Record, returnable April 29". It was printed.

24 THE WITNESS: I don't believe I have
25 that. I only have January 30th and April 21st.

1 BY MR. CAZA:

2 532 Q. I think we have 15 minutes before
3 we are going to break. Are we breaking at
4 12:30 or at 1:00?

5 A. 12:30.

6 -- OFF-THE-RECORD DISCUSSION --

7 BY MR. CAZA:

8 533 Q. Maybe during the break if you
9 can -- if someone from your team, Ms. Miller,
10 can provide Mr. Haché with a copy of the Notice
11 of Motion I'd like to --- just if we can
12 continue.

13 If we go to now your affidavit, and
14 more specifically I would like to go to page 3.

15 A. I have it.

16 534 Q. Okay. So this is your affidavit.
17 Are you with me at page 3?

18 A. Yes.

19 535 Q. And you say as follows
20 "Introduction", and then you say at paragraph 3:

21 "This affidavit is sworn in
22 support of [Laurentian University's]
23 motion pursuant to the [CCAA], for an
24 order substantially in the form of the
25 draft order attached as Tab 3 of the

1 Motion Record [...]."

2 And then you have a list of everything
3 you're seeking. So if I now go to page 5?

4 A. Yes.

5 536 Q. So page 5 and we're at paragraph
6 10. It says:

7 "Although [Laurentian
8 University's] overall enrollment
9 numbers for full-time equivalent
10 undergraduate students has decreased
11 over the past several years [...]."

12 You talk about Laurentian's track
13 record in attracting French-speaking -- can I
14 just ask you, do you know how many full-time
15 equivalent undergraduate students, like the
16 total number you had in fall 2016?

17 A. Off the top of my head, no.

18 537 Q. How about 2020? Would you know
19 what it was -- the total was for fall term 2020?

20 A. It's listed in the documents
21 somewhere.

22 538 Q. Okay. I don't recall seeing it.

23 A. I believe it's -- it's in the
24 order of 6,000.

25 MR. HANRAHAN: I think that might have

1 been in the initial affidavit.

2 THE WITNESS: It may have been in the
3 initial affidavit.

4 BY MR. CAZA:

5 539 Q. So 2020 would be about 6,000.

6 Okay, I remember seeing that.

7 And what about 2016? I don't remember
8 seeing the fall term 2016. Do you recall what
9 the fall term was for that?

10 A. It would have been more than
11 that.

12 540 Q. It would have been more than
13 6,000?

14 A. Yes, it would have.

15 541 Q. Okay. That's fine. So we can
16 keep going. So then if I go to page 8. So at
17 page 8 we have, under paragraph 24, you say in
18 the middle of the paragraph:

19 "In addition, [Laurentian
20 University] has acquired Huntington
21 University's rights to the Gerontology
22 program, subject to the Order sought
23 on this motion being granted;"

24 So, just so that I'm clear, so that is
25 part of your agreement that you've reached with

1 Huntington's, correct?

2 A. That is correct, yes.

3 542 Q. And then you mention that
4 Laurentian has entered into an agreement with
5 the University of Sudbury to teach six
6 Indigenous study courses in the spring term.

7 So when you say it's entered into an
8 agreement, I think it's fair to say that this
9 was an agreement that was entered into in order
10 to ensure short-term relief to those students so
11 that they -- we, both institutions were working
12 together to minimize any and all inconvenience
13 and problems with the individuals taking those
14 courses, right?

15 A. Yeah, it was to allow the courses
16 that would have been the normal course been
17 offered in the spring term to continued to be
18 offered so that students would not be impacted.

19 543 Q. So if we now go to page 15, so --
20 and I'm trying to understand this. You see
21 under "A. Program and Course Closures," do you
22 see that, Mr. Haché?

23 A. I see that.

24 544 Q. Okay. Now, so it goes:

25 "Laurentian University's approach

1 to academic restructuring was guided
2 by four foundational principles:"

3 The second one is:

4 "[Laurentian University] must
5 continue to meet its mandate of being
6 a bilingual and tri-cultural
7 postsecondary organization in Northern
8 Ontario providing access to
9 post-secondary education in Northern
10 Ontario and in the [greater] -- in the
11 City of Greater Sudbury."

12 Now, I didn't read (a) but I think we
13 can agree that (a) has nothing to do with actual
14 programs in French, is that fair? 46(a)?

15 A. I think it's -- it's relevant to
16 all our programs, that there must be financial
17 sustainability for the University for all
18 programs.

19 545 Q. Okay, so this is what I'm trying
20 to get my mind around, and when we see (b), so
21 when you talk about your mandate of "being
22 bilingual and tri-cultural post-secondary
23 organization," you're talking about -- where do
24 we find that mandate?

25 A. Where do we find it? It's in

1 the -- in the vision -- in the mission and the
2 vision of the university. It's also found in
3 the partial designation of the university as a
4 French language institution.

5 546 Q. And I want to get back to that.
6 See in paragraph (c):

7 "[Laurentian University] must
8 focus on programs and courses that are
9 in higher demand today and are
10 expected to be in the future, with
11 appropriate levels of academic
12 staffing across categories, with a
13 process to re-evaluate student demands
14 in the future;"

15 And the last one:

16 "post-restructuring" -- thanks for
17 telling me, I apologize.

18 "(d) post-restructuring,
19 [Laurentian University] must continue
20 to pursue its vision of being a
21 leading comprehensive research-engaged
22 university [...]."

23 I just want to make -- just something
24 so I'm clear, (c) and (d) are not specifically
25 addressing French programs; they are addressing

1 all the programs of the university.

2 A. Including the French programs,
3 yes.

4 547 Q. Including the French programs.
5 And the same with (a). It's applying in the
6 same way to French and English programs, (a),
7 (c) and (d), correct?

8 A. Yes.

9 548 Q. And (b), when you say:
10 "[...] must continue to meet its
11 mandate of being a bilingual and
12 tri-cultural post-secondary education
13 [...]"

14 I'm trying to understand how the cuts
15 that you made to the French programs, how does
16 that work into you continuing to meet your
17 mandate of being a bilingual post-secondary
18 organization?

19 A. We are -- we are providing the
20 French programming that is of interest and need
21 to the students.

22 549 Q. So what you're doing, I'm just so
23 I'm clear, is you're applying the same criteria
24 that you applied to determining which programs
25 you would cut in English to the French programs,

1 except that the French programs, because you're
2 getting additional grants to provide them, the
3 threshold was higher before you would cut one of
4 those courses, correct?

5 A. Yeah. The threshold for
6 sustainability requires students -- fewer
7 students registered in a French language program
8 than an English language program because we do
9 receive specific additional funds for that --
10 for that French language mandate. And so we are
11 not preferencing -- we are directing the funds
12 for which we receive them in determining the
13 sustainability of programs.

14 550 Q. And your decisions as to which
15 programs in French that you eliminated, which
16 programs in English you eliminated, was a purely
17 objective accounting exercise, correct?

18 A. It was an objective exercise that
19 looked at the sustainability, but also took into
20 account the French Language Services Act and the
21 overall mandate of the institution.

22 551 Q. Actually, I don't understand why
23 you're saying that, because the decision as
24 to -- that was made to determine which programs
25 you would be cutting, both in French and in

1 English, was purely an accounting exercise and
2 the French programs, because you're getting
3 extra grants, there was more leeway in that you
4 were able to continue offering some courses,
5 even though there were fewer students, because
6 of the fact that you had these subsidies which
7 is something that wasn't -- that was sort of --
8 it was an advantage that the French programs had
9 that the English ones did not.

10 MS. MILLER: Objection, Mr. Caza
11 you're trying to put words in his mouth and
12 you're attempting to say what he is not saying.
13 In his evidence, as reflected in --

14 MR. CAZA: Don't repeat his evidence.

15 MS. MILLER: Okay. Well, he has
16 answered the question and given the answer, and
17 his answer to you was that it was not purely
18 economic.

19 BY MR. CAZA:

20 552 Q. Well, then, can you please
21 explain to me --

22 MS. MILLER: Please restate the
23 question, if you like.

24 BY MR. CAZA:

25 553 Q. Yeah, well, can you explain to me

1 how -- I'll tell you my understanding and I want
2 you to explain to me how I'm wrong.

3 My understanding is that somebody sat
4 down and you had a formula worked out and the
5 formula was, we need so many students in order
6 to be able to offer a certain course, and that
7 was calculated and taken into consideration the
8 cost of offering the course and new revenue, and
9 how you needed to get a teacher, you did a whole
10 analysis.

11 And then you sat down and you applied
12 it to all your courses. When you applied it to
13 the French courses, you took it into
14 consideration that it would cost you less to
15 offer that course because you actually got
16 specific grants, but the rest of your exercise
17 was purely objective, it was purely objective.

18 And so that you would be able to say,
19 and you have said, that's my understanding, that
20 the programs that were cut you were fair to both
21 French and English programs, but the French
22 programs less of them were cut because of the
23 fact that they were grants. That is my
24 understanding.

25 Where do you disagree with that?

1 MS. MILLER: Mr. Caza, I have directed
2 you to paragraph 50. You are trying to
3 paraphrase Mr. Haché's evidence incorrectly, and
4 he has answered the question and told you that
5 there were other factors.

6 MR. CAZA: I didn't --

7 MS. MILLER: He's told --

8 MR. CAZA: I told him my understanding
9 of the evidence. I can put that to him and say,
10 where do you disagree with me? I need to know
11 where he disagrees with me, because I don't
12 understand how the French Language Services Act
13 ever came into the calculation.

14 554 Q. Maybe that's what I need for you
15 to explain to me.

16 My understanding, it was a purely
17 accounting exercise. It was irrelevant that you
18 had the French Language Services Act. What am I
19 missing?

20 MS. MILLER: And I have directed you
21 to Mr. Haché's evidence, and you can ask him if
22 you'd like on that point in paragraph 50 of his
23 affidavit. But please don't --

24 BY MR. CAZA:

25 555 Q. You know what, I don't know to

1 what extent -- I don't know to what extent you
2 should be telling the witness, that, you know,
3 go look at this paragraph. Let's look at
4 paragraph 50.

5 "Ideally, programs would be
6 positive economic drivers for
7 [Laurentian University]. However,
8 [Laurentian University] also took into
9 account that, for a certain subset of
10 programs with a direct link to
11 [Laurentian University]'s mission,
12 such programs should operate despite
13 not satisfying the self-funding
14 threshold."

15 Give me an example of where you did
16 that with a French program or a French course.
17 Give me one example.

18 A. I would have to get back to you
19 on the specifics of that. I will say that the
20 list of courses and programs on the Francophone
21 side that were discussed in mediation were
22 explicitly -- explicitly considered the
23 implications under the French Language Services
24 Act and the partial designation of the
25 university to ensure that we were, to the best

1 of our ability, maintaining our compliance with
2 the -- with the expectations of the university
3 under that Act.

4 And so what you're saying is that
5 there was a financial exercise done at the front
6 end, yes, but there was also other things that
7 were entered -- that entered into the equation
8 before the final decisions were made. And
9 ultimately at the end of that, you needed to end
10 up with a suite that overall was sustainable.

11 556 Q. So here's my question.

12 A. And I believe that's reflected in
13 the record.

14 557 Q. So here is my question to you. I
15 want you to advise me of any courses that were
16 not cancelled, okay, any courses in French that
17 you did not cancel that when you apply the
18 threshold in the self-funding threshold that you
19 developed for French courses, you would have
20 cancelled. I want you to provide me with that
21 evidence.

22 Because my understanding is that
23 you're saying that although you don't say that
24 in paragraph 50, my understanding is you're
25 suggesting at the very least that some courses

1 in French fell under that statement in paragraph
2 50, and if you can provide us with that
3 evidence.

4 And I think it's 12:31. You had to
5 leave at 12:30 to take a break. We'll see you
6 back at two o'clock.

7 -- RECESSED AT 12:31 P.M. --

8 -- RESUMED AT 2:01 P.M. --

9 BY MR. CAZA:

10 558 Q. Mr. Haché, you're still there.

11 So if we can go to your second affidavit. If we
12 can go to tab 16, paragraph 49.

13 A. Okay.

14 559 Q. The title is "Viability Analysis
15 of LU's Programs". I think you'll agree with me
16 that these three paragraphs deal with the actual
17 programs offered by Laurentian University and
18 not by the Federated Universities?

19 A. That is correct.

20 560 Q. Now, when we're looking at the --
21 page 17, the next page, we started talking -- we
22 were speaking a while ago, and if I'm looking
23 here, we've got 54 and it talks about the ratio.
24 Mr. Haché, we talked about that before the
25 break.

1 Then there was the -- in addition to
2 the ratio, there was other issues we looked at
3 at 55 and 56, talks about the partial
4 designation.

5 So the partial designation, if you
6 could just remind me, was it -- if it was taken
7 into consideration, what was the relevance of --
8 or what impact did it have on the actual
9 decision you made as to the courses that you did
10 eliminate?

11 A. So it was -- you know, first of
12 all, you need to understand that this was the --
13 a negotiation with the Senate group that was
14 nominated to conduct a discussion on behalf of
15 the Senate. But in that conversation, they were
16 very, very cognizant of the expectations of the
17 partial French designation for the university.
18 They had the list of degrees and programs and
19 that was actively considered in the discussions
20 and in the conversations.

21 Now, I was not in the room for those
22 conversations, but I do know that they were
23 highlighted, and in all of the feedback that I
24 received that that was absolutely a
25 consideration in the decision making.

1 So you had data in the first instance
2 and then you had the other parameters that
3 needed to be considered.

4 561 Q. What I'm asking you, and that's
5 what I asked you before the break. I said,
6 you've used data. I said, was there a decision
7 made that the data was not basically the
8 deciding factor? Like, an actual decision. Not
9 did we talk about it. And I think you don't
10 know, right?

11 MS. MILLER: We answered that question
12 prior to the break I believe, Mr. Caza, and now
13 you're going back on a question that's been
14 asked and answered.

15 BY MR. CAZA:

16 562 Q. I can do that all day. I can ask
17 the same question 10 times. Like, I can do that
18 in cross-examination.

19 So, Mr. Haché, my question to you, and
20 if I've asked you the question, I'm asking
21 again. You have no evidence that the -- that
22 anything but the mathematical formula, the
23 accounting formula, was applied in determining
24 which French courses were to be -- were to be
25 eliminated.

1 A. That is -- okay.

2 MS. MILLER: Objection, because he has
3 answered that question, Mr. Caza, to say that is
4 not correct.

5 BY MR. CAZA:

6 563 Q. Well, you know, I think he was
7 just going to say that it is correct before you
8 interrupted him.

9 A. No. I was going to say that is
10 not correct. That is absolutely incorrect.

11 564 Q. Give me your evidence of any
12 course that was not cancelled that would have
13 been cancelled if you'd only applied the
14 mathematical formula.

15 MS. MILLER: You have asked for an
16 undertaking on that and we have given that
17 undertaking.

18 BY MR. CAZA:

19 565 Q. Sorry about that. In fact,
20 Mr. Claude told me he thought we had an
21 undertaking. Let's move on. I'm fine with
22 that.

23 Now, the six-person Senate Committee,
24 did they deal with any of the courses offered by
25 the federations, Mr. Haché?

1 A. That was not their mandate.

2 566 Q. Now here's a question I have, I
3 think you've told us that the French Language
4 Services Act, and your obligations pursuant to
5 that, were an important criteria that you took
6 into consideration in proceeding to make the
7 determination of courses that would be cut,
8 right?

9 A. That is correct.

10 567 Q. Why is it that you didn't even
11 mention the French Language Services Act in your
12 first affidavit?

13 A. Look, I think it's very clear
14 that in the academic considerations that were
15 conducted that the French Language Services Act
16 was front and centre in the consideration of all
17 Francophone programs that were evaluated.

18 568 Q. I think it became front and
19 centre when the University of -- Université de
20 Sudbury took the position that they were not
21 going to allow you and let you sacrifice, and
22 end up with a situation where the Francophone
23 community would suffer irreparable harm and they
24 wanted to basically have you transfer all those
25 programs. And then all of a sudden, Mr. Haché,

1 all of a sudden you started talking about the
2 French Language Services Act. You didn't talk
3 about it once in your first affidavit.

4 MS. MILLER: Objection. You're asking
5 him for information with respect to what might
6 have gone on in the confidential mediation and
7 that is not an appropriate question to ask him.

8 THE WITNESS: I was going to also say
9 I didn't hear a question there.

10 BY MR. CAZA:

11 569 Q. No, in fact I'm talking about his
12 affidavit. His affidavit outlines all kinds of
13 -- I'm talking about your first affidavit,
14 which I believe is 110 pages long. It outlines
15 all kinds of relevant factors, things you need
16 to take into consideration. The impact that the
17 decision will have. The words "French Language
18 Services Act", those words, are nowhere in your
19 affidavit because Laurentian University does not
20 consider that to be one of its priorities.

21 How could you be facing dissemination
22 as an institution and not bring that up in your
23 affidavit if in fact it is an important criteria
24 to the university?

25 MR. OSBORNE: Dr. Haché, just a

1 moment.

2 Mr. Caza, you put another statement as
3 a premise to your question, which is simply not
4 this witness' evidence at all, as you know.

5 If you want to break it down and
6 remove that statement and ask Mr. Haché --
7 Dr. Haché, excuse me, about his statements or
8 other propositions you wish to put to him,
9 that's fine.

10 But stop premising with your
11 questions, if you would, sir, with improper and
12 inaccurate statements. Put to him suggestions
13 if you wish, but not as statements.

14 BY MR. CAZA:

15 570 Q. You know what? I am not limited
16 in my cross-examination to putting whatever
17 statement he may have said.

18 MR. OSBORNE: You're not. My point
19 is, sir, if you put to him a statement as
20 evidence, it has to be accurate or we're not
21 going to proceed. That's my point. You can put
22 any proposition to him you like.

23 BY MR. CAZA:

24 571 Q. Mr. Haché -- okay, I gotta tell
25 you, I don't agree with Mr. Osborne's position

1 on this, but I will rephrase my question.

2 Mr. Haché, do you agree with me that
3 you did not mention the French Language Services
4 Act in your affidavit? Your first affidavit it
5 is nowhere mentioned. Do you agree with that?

6 A. I agree that it was -- nor were
7 the criteria for evaluating the academic
8 programs mentioned, which is where it all ties
9 together.

10 572 Q. So I guess the answer to my
11 question is you agree with me that you didn't
12 mention the French Language Services Act, is
13 that fair?

14 A. I said I agree that we did not
15 mention the French Language Services Act, nor
16 did we mention any of the criteria that would be
17 used for the evaluation of the academic
18 programming.

19 573 Q. I didn't ask you that question.
20 I didn't ask --

21 A. But they're intimately linked.

22 574 Q. Well, let's move on. I think
23 it's important that you answer the questions
24 because we'll need more than finishing at 4
25 o'clock.

1 You'll agree with me that when you
2 prepared that affidavit --

3 MR. HANRAHAN: Hold on, just before we
4 move on, he's entitled to answer the questions
5 in the way he thinks is appropriate and
6 accurate, and I think that's what he's doing.
7 So I don't think the commentary after the answer
8 is not --

9 BY MR. CAZA:

10 575 Q. The transcript will speak for
11 itself, Mr. Haché.

12 MR. HANRAHAN: It will.

13 BY MR. CAZA:

14 576 Q. When you prepared the affidavit,
15 when you prepared that affidavit, it was clear
16 that this was an affidavit that, to a great
17 extent, you were at least under the impression
18 that the survival of the university depended on
19 you being successful in seeking protection under
20 the CCAA, is that fair?

21 A. Yes, it was important for the
22 survival of the university.

23 577 Q. And it was important that all of
24 the information that would be relevant to be
25 taken into consideration in making that

1 determination be included in the affidavit, is
2 that fair?

3 A. In making the determination to
4 grant the stay of proceedings, yes.

5 578 Q. In making the determination of
6 issues that needed to be taking into
7 consideration in making the -- in ensuring that
8 the survival of the university, the conditions
9 that would encompass its survival were set out
10 in the court proceedings, correct?

11 A. For the initial stay, yes.

12 579 Q. And now, when you told us, and
13 I -- this is what I understood you to say, that
14 there was a meeting, I guess would it be a
15 meeting at the Senate where the Senate had a
16 meeting in order to make a determination on the
17 whole issue of approving the cuts to the -- both
18 the English and French programs. Was it the
19 Senate that made that decision?

20 A. It is the academic Senate of the
21 university that has the authority to close
22 academic programs and it is done through Senate
23 meetings.

24 580 Q. And you were at that meeting,
25 correct?

1 A. That is correct.

2 581 Q. Okay. And at that meeting, my
3 understanding is -- because -- I did just math,
4 so this is only a mathematical calculation, that
5 there are 101 programs in English and 38 percent
6 or 38 of the programs, so a little less than
7 38 percent, were cut?

8 A. So, yeah, approximately
9 40 percent of the programs in the English stream
10 were cut and approximately 40 percent of the
11 programs in the Francophone stream were cut.

12 582 Q. That's the numbers I got.

13 MS. MILLER: Just to be clear, you're
14 talking undergraduate programs?

15 BY MR. CAZA:

16 583 Q. That's correct.

17 A. Undergraduate.

18 584 Q. And my understanding is at that
19 meeting, that student Senate Academic -- or the
20 academic -- Senate Academic Committee meeting,
21 that a motion was made by one of the members of
22 the committee that all of the courses that you
23 were -- that you were cancelling, all the
24 courses that you were no longer going to offer,
25 a motion was made that you should transfer those

1 courses to -- or those programs to Université de
2 Sudbury, do you recall that?

3 A. I don't believe I can comment on
4 that as that Senate meeting was done in camera
5 under the confidentiality order of the court.

6 585 Q. I'm speaking of the next meeting,
7 the one that was -- there was a subsequent
8 meeting, a Senate meeting, where the whole issue
9 was discussed, and my understanding is that that
10 meeting was not confidential, correct?

11 A. That is correct. If you're
12 referring to the more recent meeting, yes.

13 586 Q. And at that meeting, you were in
14 attendance?

15 A. At that meeting, I was in
16 attendance.

17 587 Q. And one of the members of the
18 Senate Committee or one of the members of your
19 Senate made a motion that the courses that you
20 were no longer offering that you'd made the
21 decision the courses in French that you were not
22 going to offer, that the motion was that those
23 courses be transferred to the Université de
24 Sudbury to give them an opportunity to offer
25 those courses. Do you recall that?

1 A. That is not correct.

2 588 Q. What's your recollection?

3 A. The motion was made that the
4 university consider whether the Francophone
5 courses at the university be transferred to the
6 University of Sudbury.

7 589 Q. The Francophone courses that had
8 been cancelled?

9 A. Yes.

10 590 Q. And so, okay, so the -- my
11 mistake. So I'm going on information that I've
12 been told. So you're telling me actually it was
13 a motion to have that considered -- to
14 consider --

15 A. To consider.

16 591 Q. -- having that transferred. And
17 my understanding is you voted against that
18 motion, correct?

19 A. That is correct.

20 592 Q. And can you explain why you voted
21 against that motion?

22 A. Because it's -- it was not a --
23 it was not a motion that could be practically
24 acted on.

25 593 Q. So you're saying it's not a

1 motion that could have been practically acted on
2 and that you could have transferred the courses
3 or had those courses -- offer the opportunity
4 to -- a little bit to see how the Indigenous
5 studies university that Sudbury and Laurentian
6 had a discussion where you ended up offering
7 those courses. You having decided not to offer
8 many courses in French you're saying,
9 practically speaking, you don't know how you
10 could have spoken to Université de Sudbury to
11 see how they could be prepared to offer those
12 courses? Because you were aware that there was
13 an interest -- they had expressed an interest to
14 teach all of the -- or to offer all of the
15 French courses?

16 A. The assumption you're making
17 there is that the -- that Laurentian University
18 has ownership of the materials needed to
19 transfer, which is not correct.

20 594 Q. Okay. In any event, you've
21 explained what the motion -- the motion that was
22 made and how you voted on it.

23 One of the things I'm looking at if I
24 go back to your affidavit, if I go to page 21 of
25 your affidavit, at page -- top of the page, it's

65, 65's on the previous page, you see it (a):

"with respect to the Master of Arts, neither the English nor the French-language degree will continue to be offered, because the programs leading to Master's degree in History and Master's degree in Sociology have historically had low enrollment. Existing students are expected to be able to continue their program, subject to the availability of a supervisor."

So another thing that came that to an end was a French language degree, a masters in French, a Master's of Arts in French, that program was terminated, correct?

A. That program was included in the closure list. So it will end with the current students in the program graduating.

595 Q. Do you -- you're aware that a letter was sent, and I'm assuming it was brought to your attention where the Université de Sudbury would have been interested in discussing what Laurentian University purchasing or providing funds in order to obtain the courses

1 that you're offering in French in order to be
2 able to offer them at Université de Sudbury?

3 MS. MILLER: Mr. Caza, can you direct
4 him to the letter to which you are referring and
5 give him an opportunity to read it?

6 BY MR. CAZA:

7 596 Q. Well, I can surely do that, give
8 me a sec here. While we're getting that, I have
9 to pull it out, it's in a part of our materials.

10 If we can go to page -- paragraph 69
11 of your affidavit. Are you with me?

12 A. Yes.

13 597 Q. At page 23, it says:

14 "Continuing to offer some
15 French-language programs with
16 consistent very low enrollment or
17 virtually no enrollment is not
18 financially feasible and is not
19 consistent with the funding that
20 Laurentian University receives for
21 French-language programs."

22 Okay. On that issue, did you turn
23 your mind to seeing or trying to understand why
24 you had very low enrollment in some of those
25 programs?

1 A. Because the programs were not of
2 interest to students.

3 598 Q. So that's the conclusion you came
4 to? If you have low enrollment it's because the
5 students -- did you look into whether or not it
6 was sufficiently promoted, marketed, if you --
7 in the various Francophone high schools, et
8 cetera?

9 A. All of those things are
10 considered and we have programs that are highly
11 subscribed in which students demonstrate
12 consistent and growing interest and programs
13 that have waning interest. It is a natural
14 cycle in universities that programs are popular
15 and, with time, priorities change and programs
16 become less popular.

17 599 Q. Okay.

18 A. It's a natural cycle at
19 universities and it just happens that Laurentian
20 has been particularly poor at sunseting
21 programs with low interest.

22 600 Q. You'll agree with me that you did
23 not look into what would be the impact on the
24 Francophone community if such a program was no
25 longer available?

1 A. Minimal impact because there're
2 no students in the program.

3 601 Q. But the fact that you were no
4 longer offering the program or were offering it
5 to some students, and just so that I'm clear,
6 nobody was provided with any warning outside of
7 the university that those courses were going to
8 be cancelled, is that fair?

9 A. That the programs were going to
10 be ending? No. But we are providing the
11 opportunity for students that are in the program
12 to complete the program if at all possible.

13 602 Q. All I'm saying is, but there's no
14 new students after. It's like a sunset. Once
15 those students go through, it's over.

16 A. That is correct. There are no
17 new student, but understand, there are very few
18 students anyway. So we're not impacting a large
19 number of prospective students. It's a very
20 small number of students that are in these
21 programs.

22 603 Q. And it's been a small number of
23 students for the last little while, correct?

24 A. Years.

25 604 Q. Years. Now, and if I can now go

1 to tab R, page -- well, you don't have the page
2 numbers, tab R to your second affidavit.

3 A. Is there a paragraph number to
4 that or?

5 605 Q. Actually, it's at tab R. It's
6 attached to your affidavit.

7 A. Schedule? Are you referring to a
8 schedule?

9 606 Q. Yes, schedule. I think it's
10 exhibit -- I think it's called Exhibit R.

11 A. I've got schedule R, "Thesis
12 Supervision", is that what you're referring to?

13 607 Q. No. It's a letter from Sheppard
14 & Claude to Ms. Miller.

15 A. Let me see if I can find it in my
16 table of contents.

17 608 Q. Exhibit R, as in Robert.

18 A. I've got Exhibit F here. I've
19 got exhibits and I have schedules and it's all
20 mixed together.

21 I have Exhibit H and then I go to
22 schedule A.

23 609 Q. Okay. Well, I don't know why. I
24 assumed you'd have a copy of the materials when
25 I'm cross-examining you.

1 A. I assume I do. Just let me look
2 somewhere else.

3 610 Q. We'll get back to that, okay.
4 We'll get back to that. We're actually time
5 limited here.

6 A. There is a -- in another place.
7 Okay, Exhibit R, okay, I have it.

8 611 Q. Do you remember reading this
9 letter?

10 MS. MILLER: Exhibit R, for reference,
11 contains a French and an English version in the
12 record.

13 BY MR. CAZA:

14 612 Q. Actually it contains a French
15 letter and an English translation.

16 Do you remember reading that letter,
17 Mr. Haché?

18 A. I remember seeing the letter.
19 Let me just refresh my memory.

20 613 Q. Well, maybe I can just ask you
21 this, look at tab -- can you see tab S?

22 MS. MILLER: Mr. Caza, you've just
23 directed him to an exhibit. He's trying to read
24 the letter. Can you give him --
25

1 BY MR. CAZA:

2 614 Q. He's taken five minutes. I don't
3 know how much time. We're limited. If he
4 doesn't have access to documents, I'm going to
5 move on.

6 MR. HANRAHAN: He says he has the
7 document.

8 THE WITNESS: I have the document.

9 BY MR. CAZA:

10 615 Q. So you've got the document at tab
11 R. What I'd like you to do is look at the
12 document at tab S, as in Susan, and my question
13 is, were you involved in drafting this response?
14 That's my question, which is a response to the
15 letter at tab R.

16 MR. HANRAHAN: And, Dr. Haché, to the
17 extent you need to minute to look at each of
18 these exhibits, you should feel free to do that.

19 THE WITNESS: (Witness reading the
20 document.)

21 So the question was, was I implicated
22 in the response that was written?

23 BY MR. CAZA:

24 616 Q. That's correct, that was my
25 question.

1 A. Yes.

2 617 Q. Now, can you advise me of what
3 consultations you carried out with any
4 organization or members of the Franco Ontarian
5 community outside of the university, outside of
6 Laurentian University? Who did you consult with
7 before preparing -- before participating and
8 preparing the response found at tab S, which is
9 the letter from -- I guess it's from Ms. Miller
10 dated April 12, 2021?

11 MR. HANRAHAN: Counsel, is there a
12 suggestion in the letter he has made those
13 consultations that you're referring to?

14 BY MR. CAZA:

15 618 Q. There is not. I'm asking, who
16 did you consult with before providing this
17 response, if you consulted with anyone?

18 A. There was no specific
19 consultation around this letter.

20 619 Q. Was there any consultation at all
21 outside of the university with any organization
22 or members of the Franco Ontario community
23 before you proceeded to cancel all of the
24 classes and courses and programs that you ended
25 up cancelling? Was there any consultation?

1 MS. MILLER: Pardon my interruption
2 but you've referred to the cancellation of
3 classes and I don't believe there's any evidence
4 anywhere of cancellation of classes.

5 BY MR. CAZA:

6 620 Q. I misspoke, I apologize. I
7 misspoke. With respect to the cancellation of
8 courses and programs.

9 A. So that was -- I believe that was
10 covered by the court ordered confidentiality
11 order preventing us from doing that. So we did
12 not breach the confidentiality of the court.

13 621 Q. I want to get this straight. So
14 you're telling me that because of the CCAA and
15 the process that imposed confidentiality, you're
16 saying that because of that, all these decisions
17 were made and were basically in the process of
18 implementing them and you never consulted the
19 Franco Ontario community, is that correct?

20 MS. MILLER: Mr. Caza, the objection
21 is that there is a court ordered confidentiality
22 in place with respect to the mediation and the
23 academic restructuring formed part of that
24 mediation.

25 So you can ask him -- you've asked him

1 a question about the letter in consultation,
2 that's fine, that lettered was delivered. But
3 with respect to things in the confidential
4 mediation relating to the academic
5 restructuring, he will answer to the best of his
6 ability, but not with respect to breaching
7 confidentiality of the court order.

8 BY MR. CAZA:

9 622 Q. What I can tell you is what
10 you're telling me that the CCAA, this is what my
11 understanding is, Ms. Miller, and I'm asking
12 you, Mr. Haché, the CCAA is a process by which
13 decisions are made that can have a serious
14 impact on the Franco Ontario community because,
15 according to your own evidence, Laurentian
16 University has an important role to play and the
17 decisions are made behind closed doors without
18 the Franco Ontario community being involved. Is
19 my understanding correct, Mr. Haché? That's
20 what happened, right?

21 A. That is actually not correct.
22 Inasmuch as the Senate group had absolute -- had
23 representation from all of the communities at
24 Laurentian University. So the group of senators
25 that was elected to represent the Senate in the

1 mediation included members of the Francophone
2 community.

3 623 Q. Members of the Francophone
4 community that sit -- that are members of the
5 Senate of Laurentian University, correct?

6 A. That is correct. That was the
7 process. And within -- we ensured that not only
8 the Francophone community, but Indigenous
9 perspectives and all communities that the
10 university had were represented in -- the Senate
11 ensured really, but in the conversation with the
12 Senate, we ensured collectively that the various
13 communities were appropriately represented,
14 according to the ways that were permitted
15 through the court.

16 624 Q. I'm only asking you about the
17 Francophone community and I just want to know --
18 what you've told me is the only consultations
19 that were carried out were internally at the
20 university, correct?

21 A. I'm saying that the consultation
22 that was had with communities was the same with
23 the Francophone community, as the Indigenous
24 community, as other communities, and it was
25 based on what was the conditions that were

1 mandated by the court and that we were very
2 conscious to include those communities to the
3 extent possible in a fair and proportional
4 representation.

5 625 Q. So I'm just trying to understand
6 because my question was quite straightforward
7 and you gave me a lot more information and
8 that's fine. I just don't want the answer to
9 the question to be lost in the answer you
10 provided.

11 My question was, do you agree with me
12 that the decisions that were made and eventually
13 implemented on the issue of cancelling courses
14 and programs, French courses and programs at
15 Laurentian University, were all made without any
16 consultation carried out outside of the
17 university itself?

18 A. That was not permitted by the
19 court order.

20 626 Q. Okay. That's fine. So let's
21 keep going.

22 Remember when I asked you earlier
23 about the motion at the Senate Committee and how
24 there was a vote as to whether or not you should
25 consider transferring the courses that were

1 cancelled or the programs that were cancelled,
2 the French ones, to the Université de Sudbury,
3 and you advised me that you voted against that
4 motion. Do you remember how Marie Josie Berge
5 [ph] voted?

6 A. No, I do not.

7 627 Q. You don't recall that she voted
8 against the motion also?

9 A. There were 200 people on the
10 call. I don't remember how everybody voted.

11 628 Q. Thank you. If I now go to
12 paragraph 98, which is at page 30.

13 A. Yes.

14 629 Q. Okay. I just want to -- this is
15 what I'm seeing as -- it says, page 98, I'm not
16 going to read it all, but the last sentence in
17 the first paragraph reads:

18 "The Sub-Committee Report made
19 the following recommendations."

20 Correct? And that's the
21 recommendations that were made -- that was made
22 and that's the recommendations -- is that the
23 recommendation that was accepted by the Senate,
24 the academic Senate Committee?

25 A. That is correct.

1 630 Q. Now, if we can go to paragraph
2 102, it's "Midwifery", do you see that?

3 A. Yes.

4 631 Q. Paragraph 102 through to 107, I
5 believe. So I just want to look at this. So
6 102 says:

7 "Laurentian University made the
8 decision to close the Midwifery
9 program due to the financial costs
10 associated with running that program
11 that could not adequately be met by
12 funding received from the [ministry at
13 AMCU] and Ministry of Health pursuant
14 to a transfer payment agreement."

15 So I'm trying to understand. MCU
16 funds the academic university component of the
17 midwifery program while the Ministry of Health
18 and Long-Term Care funds the clinical components
19 of the midwifery program. I'm just trying to
20 understand. So are you saying that it costs
21 more money to offer the program than the
22 revenue, the tuition and the grants or whatever
23 you were receiving?

24 A. That is the correct. Given the
25 limitations on enrollment, that is correct.

632

Q. So if I go to 103, it says:

"As financial support to post-secondary institutions generally is subject to the prerogative of the Province and Midwifery is an expensive program to run (relative to the programs), it is difficult for Laurentian to solely rely on grant funding to continue operating the program. Further compounding matters is the fact that the (Ministry) has imposed an annual cap of 30 students [...]."

I think that's what you just told me:

"[...] that may be accepted into the Midwifery program at Laurentian, which limits its potential growth." Correct?

A. That limits any growth.

633

Q. And just so that I'm clear, one

of the programs that was cancelled, and my understanding is you're saying that those that are completing their fourth year will be able to continue, but basically that program has been -- has been eliminated, except people that are in

1 their third year and fourth year will be able to
2 complete the program, but those that are in the
3 first and second year will not. And you're
4 going to assist them to transfer to other places
5 and I think you mentioned McMaster and Ryerson
6 that also offer those programs, right?

7 A. Yes. That is all students that
8 are registered in midwifery will have the
9 opportunity to complete a midwifery program.
10 Third and fourth year students with a Laurentian
11 degree and earlier students with a degree from
12 Ryerson or McMaster. And in any event, Ryerson
13 and McMaster will be facilitating the completion
14 of all students' degrees.

15 634 Q. My understanding is this program
16 is offered in French?

17 A. That is correct.

18 635 Q. And it's only offered in English
19 at McMaster and Ryerson?

20 A. That is correct.

21 636 Q. So I just want to be clear. So
22 anyone that is in the process of completing
23 their first or second year, you're prepared to
24 assist them to go complete that program in
25 English at another university, correct?

1 MS. MILLER: Mr. Caza -- go ahead.

2 THE WITNESS: It's not completely
3 correct. The conversation with Ryerson has been
4 to how to accommodate students in the
5 Francophone program. And Ryerson has been very,
6 very co-operative in providing a mechanism which
7 students currently registered in the Francophone
8 program will also be able to proceed to
9 completion of their degree.

10 BY MR. CAZA:

11 637 Q. Did you have any discussions with
12 any members of the Francophone community,
13 outside of Laurentian University, before
14 proceeding to cancel this specific program,
15 midwifery program?

16 A. Still covered by the same
17 confidentiality order as before.

18 638 Q. Off the record for a second.

19 -- OFF-THE-RECORD DISCUSSION --

20 BY MR. CAZA:

21 639 Q. Now, if I go to -- if we can go
22 to paragraph 113, which is at page 34. The term
23 sheets with the labour partners.

24 A. Yes.

25 640 Q. Mr. Haché, you know, you talk in

1 one -- paragraph 113, you talk about LUFA. And
2 paragraph 114, we talk -- or, I should say, 124,
3 it's LUSU and then there is LUFA. Are you able
4 to tell me approximately how much money was
5 saved as a result of these negotiations you had,
6 successful negotiations, from what we
7 understand, with the unions? How much money
8 were you able to save?

9 A. So going forward, there are
10 approximately 115 position reductions in the
11 faculty association. Overall there are about
12 170 position reductions at the university as a
13 result of that. One would have to do the math
14 with the average salaries of each of those
15 categories. I don't believe I have those
16 figures immediately in front of me, but you have
17 the numbers of people. You know, suffice to say
18 that it is substantial.

19 It's 115 out of 355 or 65, don't quote
20 me on the exact number, total faculty. So
21 almost a third of the total faculty and about 20
22 to 25 percent of the other labour groups. And
23 so I would say, from a salary savings
24 perspective, you would be proportional there.

25 641 Q. And there's been -- you have seen

1 no number calculating approximately what the
2 value was --

3 A. I have no number in front of me.

4 642 Q. What about do you recall reading
5 any approximate calculations --

6 A. Yeah, I don't have --

7 MR. HANRAHAN: Just wait till the
8 question is finished.

9 THE WITNESS: Sorry.

10 BY MR. CAZA:

11 643 Q. My question is, would you be
12 aware of information that would provide us with
13 some range of what the savings have been as a
14 result of these successful term sheets that
15 you've negotiated with the labour partners?

16 MS. MILLER: He's not going to guess
17 on that.

18 THE WITNESS: As I say, I would not
19 want to guess on something. I would not want to
20 guess on that and I don't have the information
21 immediately in front.

22 BY MR. CAZA:

23 644 Q. What was the -- do you remember
24 what was the target? How much were you hoping
25 to save? When you were doing these

1 negotiations, what was your target as to how
2 much you wanted to save?

3 MS. MILLER: Mr. Caza, you're starting
4 from a premise that you can put to him, Did you
5 start with a target and go from there. But you
6 have put to him a premise and he has not
7 accepted that premise.

8 BY MR. CAZA:

9 645 Q. Did you have a -- had you set a
10 target that you were hoping to attain in order
11 to meet the needs of the DIP Lender when you set
12 off to start negotiating with your labour
13 partners?

14 MS. MILLER: Again, Mr. Caza, I have
15 to interrupt. You are starting with a premise
16 that it's a target set by a DIP Lender or that
17 it's a target at all. Please don't start with
18 an assumption that you are attributing to the
19 witness that is not an assumption that he has
20 given evidence on.

21 BY MR. CAZA:

22 646 Q. Well, actually he has given
23 significant evidence on that. He's given
24 significant evidence that the DIP Lender needs
25 to be satisfied with the amount of monies

1 basically that have been saved as a result of
2 renegotiating with the unions. He's told me
3 that more than three times.

4 MS. MILLER: His evidence, Mr. Caza,
5 is financial sustainability. He has not given
6 evidence of targets or anything like that. You
7 are attributing evidence to him that he has not
8 given.

9 BY MR. CAZA:

10 647 Q. So how did you go about
11 calculating what you needed to save as a result
12 of your discussions with your labour partners to
13 attain financial sustainability?

14 A. Okay. So everything --

15 MS. MILLER: Again, just to preface --

16 BY MR. CAZA:

17 648 Q. He was answering the question --

18 MS. MILLER: Mr. Caza, the objection
19 is -- listen, the objection is he can answer the
20 question to the extent that you are not asking
21 him to breach the confidentiality of discussions
22 that occurred in the mediation. If the question
23 is, what are the considerations that you gave,
24 you're perfectly fine to ask him that. If
25 you're asking him to breach the to and fro

1 confidential discussions in a mediation subject
2 to court order, he will not get into that.

3 BY MR. CAZA:

4 649 Q. Okay. Maybe just to start off
5 with, Mr. Haché, is it confidential the amount
6 of monies that you ended up saving as a result
7 of negotiating the term sheets with the labour
8 partners? Is that confidential?

9 A. I actually don't know.

10 650 Q. So when you told me that there
11 were 115, that's my understanding, at one point
12 you used the number of 115 out of 355, and then
13 you used the number of 170. Why don't we just
14 go back to that? There was no objection, so I'm
15 assuming because, you know what? That may be
16 the best way for me to do this.

17 So 115 of what? You said out of 355
18 or 365. What staff is that? Which union would
19 that be?

20 A. That would be faculty
21 association.

22 MR. HANRAHAN: This evidence is in his
23 affidavit, so why don't we give him the actual
24 numbers that are in there. Paragraph 121.
25

1 BY MR. CAZA:

2 651 Q. We can go back through the
3 affidavit after. I'm just trying to understand
4 the process.

5 So then when you were speaking of 170,
6 what employees were you talking about there?

7 A. So that was the faculty
8 association or LUFA members. That was LUSU
9 members or staff association. That was
10 nonunionized management employees and senior
11 leaders.

12 652 Q. There's 170 of those positions,
13 correct?

14 A. In total, yes.

15 653 Q. And faculty is approximately 115?

16 A. That is correct.

17 654 Q. Now, were there any other cuts or
18 were there any other financial concessions that
19 you were able to obtain other than the
20 elimination of those positions?

21 A. Yes, there were.

22 655 Q. What were they?

23 A. There are salary rollbacks, FRO
24 [ph] days, other changes to work rules that
25 involve some economic -- that are of some

1 economic value to the university.

2 656 Q. Would there exist a document that
3 would have a calculation made of the value of
4 the savings that you were able to obtain? I
5 mean, someone must have, I'm assuming, done a
6 calculation. Where would I find such a document
7 so that I'm able to determine how much was
8 actually saved?

9 MS. MILLER: Dr. Haché, first of all,
10 the question is, does a document exist? And I
11 think he's asking if it does, where does he find
12 it? So let's break that down if you don't mind.

13 THE WITNESS: Does a consolidated
14 document exist? I think there are drafts of
15 various parts that exist and the consolidation
16 of it in draft potentially, but it is a
17 continuing and evolving situation.

18 BY MR. CAZA:

19 657 Q. So I guess I'm -- I want to get
20 that information. I think it's very relevant
21 for the court to know how much you've succeeded
22 in -- how much money you've succeeded in saving
23 as a result of your negotiation with your labour
24 partners.

25 So I guess my question to you is, how

1 would you recommend we go about obtaining that
2 information? Because I'm not sure if you have
3 that information. For example, 115 faculty, you
4 said we multiply that by the average salary.
5 Can you give us an idea of what the average
6 salary would be approximately?

7 A. Unfortunately I don't have that
8 figure before me.

9 658 Q. But is that a number you can
10 obtain?

11 A. Yeah, if it's not already
12 somewhere in the affidavit. It is a number that
13 is obtainable, yes.

14 659 Q. Is it the same thing for the 170
15 positions, giving an average salary for those
16 positions?

17 A. Well, for LUSU, probably for
18 sure. By four categories, potentially.
19 Certainly LUSU nonunionized management. I don't
20 know if for the senior leaders there is an
21 average.

22 660 Q. So can I have an undertaking
23 because I think the court would want to know
24 that. Could I have an undertaking for you to
25 provide us with basically a document that would

1 outline the financial value of the savings you
2 were able to obtain that you've described to me
3 that flow from your successful negotiation with
4 your labour partners?

5 U/A MS. MILLER: We'll take that under
6 advisement and we will do, to the extent
7 possible, Mr. Caza, to the extent that things
8 are actually quantifiable. And certainly with
9 respect to salaries and that type of thing, I
10 expect that's quantifiable. There may be
11 aspects that are not, but we will take that
12 under advisement and, on a best efforts basis,
13 get you something that is responsive to the
14 question.

15 BY MR. CAZA:

16 661 Q. So although you're using the word
17 "under advisement" you are giving me the
18 undertaking that you described, correct?

19 MS. MILLER: As I've described it.

20 BY MR. CAZA:

21 662 Q. Okay, thank you.

22 So the only thing that I may ask in
23 addition to the undertaking that you've given,
24 for which I thank you, is that if you are not
25 able to provide me with the information, if you

1 could just give me a short explanation as to why
2 you can't obtain that information. Is that
3 fine?

4 U/T MS. MILLER: That's fine. We'll give
5 an explanation.

6 BY MR. CAZA:

7 663 Q. Now, if I go to paragraph 131,
8 that's the whole issue with the grievances,
9 outstanding grievances. Can you tell me what
10 that's about? Because it seems there's like 102
11 outstanding grievances and there was an
12 extension given. Can you explain to me what
13 that's all about?

14 MR. HANRAHAN: Can you clarify when
15 you say "what that's all about"?

16 BY MR. CAZA:

17 664 Q. I'm trying to understand. What
18 are these outstanding grievances and why is that
19 something that had to be settled? And I'm
20 trying to understand by reading what exactly,
21 what was negotiated with respect to resolving
22 those grievances?

23 MR. HANRAHAN: Sorry, I'm still a
24 little unclear. Is the question what is the
25 substance of the grievances or how was the

1 resolution of those negotiated?

2 BY MR. CAZA:

3 665 Q. Well, maybe tell me a little bit.
4 What are -- these outstanding grievances, how
5 long have they been outstanding? Like why do
6 you have 102 outstanding grievances?

7 A. Because that is the number of
8 grievances that have been filed by the faculty
9 association under the Collective Agreement.

10 666 Q. And that is how long -- for a
11 period of how long?

12 A. I can't say specifically. I
13 mean, they regularly get filed and regularly get
14 resolved. There were currently at that time 102
15 that were filed but not yet resolved and it
16 covers a period of time.

17 667 Q. And these grievances, if they --
18 if the union is successful, could you end up
19 having to pay monies?

20 MS. MILLER: I think that's a legal
21 question with respect to the CCAA and I'm happy
22 to answer that, if you'd like.

23 BY MR. CAZA:

24 668 Q. I'd like to hear your answer, but
25 actually my question, I didn't pose it

1 correctly. What I meant was, are you -- do the
2 grievances themselves, could they end up with a
3 result being that a payment is owed by the
4 university? Not whether or not you would have
5 to pay it and that was my question. Or are they
6 all grievances that do not involve the payment
7 of money?

8 MS. MILLER: Because I think it is a
9 legal answer, Mr. Caza, because we're in a
10 proceeding, would you like me to answer the
11 question?

12 BY MR. CAZA:

13 669 Q. I would, I would, please, thank
14 you.

15 MS. MILLER: So any grievance that
16 relates to the payment of money, to the extent
17 it is determined to be accepted and includes the
18 payment of money, would be a claim as part of
19 the claims process. It would not be paid in
20 cash.

21 BY MR. CAZA:

22 670 Q. And I guess the idea is we're
23 trying to have all of the grievances completed,
24 is it by May 31st, 2021, so that anyone who's
25 successful can be in a position, if need be, to

1 make a claim, correct?

2 MS. MILLER: Correct.

3 BY MR. CAZA:

4 671 Q. Now, I'm trying to understand, so
5 I guess somebody negotiated with the DIP Lender
6 to extend that date, correct? Because it
7 actually says:

8 "{...} the DIP Lender has agreed
9 to extend the date by which the
10 Existing Grievances must be resolved
11 [...]."

12 Previously it was April 30th, 2021,
13 correct?

14 A. Yeah, it was part of the original
15 conditions of the DIP financing. It was one of
16 the milestones that needed to be achieved to
17 extend the financing.

18 672 Q. And then discussions were had
19 with the DIP Lender. And were you involved in
20 those discussions that led to a one-month
21 extension?

22 A. In the same way I've been
23 involved in all the discussions with the DIP
24 Lender.

25 673 Q. Which is through your counsel --

1 through legal counsel, correct?

2 A. Through my counsel.

3 -- OFF-THE-RECORD DISCUSSION --

4 BY MR. CAZA:

5 674 Q. Sorry for that brief interlude
6 there.

7 Can we go to page 44? I'm at your
8 second affidavit.

9 A. Yes.

10 675 Q. Okay. So at the bottom of the
11 page, section B says:

12 "Negative Financial Impact of the
13 Federated University Model on LU."
14 And I'm at paragraph 150 on the next
15 page:

16 "Arising out of its solvency and
17 these CCAA Proceedings, LU has
18 undertaken a full review of its
19 operational model. That review has
20 also necessitated a review and
21 reconsideration of the future
22 viability of the relationship between
23 LU and the Federated Universities."

24 Now, when you say -- okay, "Arising
25 out of its solvency", I'm just trying to

1 understand.

2 MR. HANRAHAN: I believe -- I'll just
3 jump in, Mr. Caza. I think that's a typo and it
4 should say "Arising out of its insolvency in
5 these CCAA proceedings."

6 BY MR. CAZA:

7 676 Q. And then you go on, that review
8 has also necessitated, the second sentence on
9 150:

10 "[...] a review and
11 reconsideration of the future
12 viability of the relationship between
13 LU and the Federated Universities."

14 I'm just trying to understand. When
15 you say "the future viability", I'm just saying
16 that is to continue the relationship as it
17 exists at the moment, correct? That's -- the
18 future viability of doing that, correct?

19 A. The viability for Laurentian
20 University, yes.

21 677 Q. For Laurentian University to
22 continue in a relationship by which it is
23 withholding 15 percent and transferring all
24 other grants and tuition fees received to the
25 Federated University offering the course,

1 correct?

2 A. With the current relationship,
3 correct.

4 678 Q. What I've described, correct?
5 Which is what I've described, the current
6 relationship?

7 A. You've described a portion of it,
8 yes.

9 679 Q. Which parts am I missing?

10 A. The students taking -- students
11 in one program or another taking courses at
12 different institutions.

13 680 Q. I'll tell you something, the --
14 sorry, go ahead. I thought you were finished.

15 A. I was.

16 681 Q. Sorry. I'll tell you something I
17 don't understand, it's statement you've made
18 about six times. My understanding is presently
19 there's a federation that exists. It's
20 Laurentian University with three other Federated
21 Universities and together you form a federation.
22 How do you get to say that these students
23 somehow belong to Laurentian University when
24 they're in fact students of the federation?

25 A. Actually all students are

1 Laurentian University students. And with --
2 from the students that are -- all of the
3 students are Laurentian University students.
4 And Laurentian University students may be
5 registered in programs that are seeded at
6 Laurentian University or they may be registered
7 in programs that are delivered through one of
8 the Federated Universities. That is the
9 actuality of our situation.

10 682 Q. So you're telling me the
11 Université de Sudbury and Thorneloe actually
12 have no students, correct? Those are two
13 federated universities that have no students.
14 That's what you're telling me, right?

15 A. Except for theology, all of the
16 students are Laurentian students.

17 683 Q. So even -- I just want to be
18 clear here because the way you're discussing
19 this, and I just want to make sure I'm clear
20 here, when you say "all of those students are
21 Laurentian University students", the reason
22 you're able to say that is because that's the
23 agreement you have that was -- that's basically
24 in the Act that we've read and the agreement you
25 have with both of the Federated Universities

1 that all the students would sign up and be
2 students of Laurentian University, correct?

3 A. That is correct. All those
4 students receive Laurentian University degrees.

5 684 Q. Because that's how the federation
6 has been set up, correct?

7 A. That is correct.

8 685 Q. Okay. Now, if I go to paragraph
9 151:

10 "While there is strong affinity
11 within the Laurentian University
12 community for the Federated
13 Universities, LU's review of the
14 federated model demonstrated that it
15 comes at significant financial cost
16 [...]."

17 Actually, Mr. Haché, there is no cost.
18 What it comes at is it comes at a -- it provides
19 a possibility of Laurentian increasing its
20 revenue, correct, by obtaining the revenue that
21 is presently going to the Federated
22 Universities. Would you agree with that?

23 A. Absolutely not.

24 686 Q. Where is the cost when what
25 you're looking at is the legal entity offering

1 the actual course is getting the money? How do
2 you get a cost? How is that a cost to your
3 university --

4 A. It is a loss of revenue to
5 Laurentian University not to have students in
6 Laurentian classrooms that are there offering
7 courses that are there, so that students can
8 take courses elsewhere instead of taking courses
9 at Laurentian University.

10 687 Q. And elsewhere, just so I'm clear,
11 it's elsewhere in the federation that was
12 basically created by the Federated Universities
13 and agreements that flow from that creation.
14 And what you're telling me is you're describing
15 that arrangement as being one that comes at a
16 cost to Laurentian because Laurentian is not
17 keeping the revenues that are being provided to
18 the Federated Universities offering the course,
19 correct?

20 A. Not quite. Laurentian is not
21 able to -- Laurentian is not teaching all of the
22 courses that it should be or could be for -- I
23 say could be rather than should be, for students
24 registered in Laurentian programs.

25 688 Q. What prevents you -- is there an

1 agreement between the Federated Universities and
2 Laurentian that you're not going to teach the
3 same courses?

4 A. I believe we do not -- we
5 collaborate more than compete, yes.

6 689 Q. All I'm saying is there's nothing
7 that prevents Laurentian University from
8 offering any of the courses that are presently
9 being offered at Université de Sudbury, correct?

10 A. The same courses, I would think
11 there would be prohibition on that. Related
12 courses, no -- I mean, related programming --
13 inasmuch as it can be approved by the Senate.

14 690 Q. And also if you wanted to teach
15 some of the courses that are presently being
16 offered at the Université de Sudbury, you could
17 actually call up the President, Mr. Meehan, and
18 say, Look, I'd like to talk to you and we'd like
19 to teach some of the courses you're offering.
20 You could do that, correct?

21 A. Inasmuch as the University of
22 Sudbury owns the intellectual property
23 associated with the course, they could. That
24 does not work in the opposite direction as
25 Laurentian University professors own the

1 intellectual property associated with courses
2 that they deliver at Laurentian University.

3 691 Q. So I guess just so that I'm clear
4 on that -- I just want to make sure I've got a
5 clear picture and the evidence is clear.

6 When you -- when the -- when the
7 agreement -- when you bring to an end and you're
8 attempting and if you're successful in bringing
9 to an end the agreement between the Federated
10 Universities and Laurentian, what you're hoping
11 is that since those courses will no longer be
12 offered by the Federated Universities, the
13 students that are taking those courses are going
14 to take some of the courses that you have
15 available and some of the classes where you
16 actually have room in order to be able to
17 complete their degree at Laurentian University,
18 correct?

19 A. That is correct.

20 -- OFF-THE-RECORD DISCUSSION --

21 -- RECESSED AT 2:59 P.M. --

22 -- RESUMED AT 3:05 P.M. --

23 BY MR. CAZA:

24 692 Q. If we can go to page 45,
25 paragraph 152.

1 A. Yes.

2 693 Q. "I am advised by Normand
3 Lavallee, the Associate
4 Vice-President, Financial Services at
5 LU and do verily believe, that LU
6 transferred approximately \$7.7 million
7 in Fiscal Year 2020 as a result of LU
8 students taking programs and courses
9 through the Federated Universities,
10 when those students could be taking
11 all programs and courses through LU
12 directly."

13 I just want to make one thing clear.
14 First of all, you've been mentioning 5 million,
15 but I guess it's 7.7 million. Is that what it
16 is?

17 A. I think it's -- it says all
18 programs.

19 694 Q. Okay.

20 A. And then I think if you break
21 that into LU programs and programs delivered by
22 the federation.

23 695 Q. Okay.

24 A. Right.

25 696 Q. So my question is, all of the

1 programs -- all of the courses that you are
2 hoping the students will -- the programs and
3 courses that are now -- right now they're taking
4 programs and courses through the Federated
5 Universities. If that door is shut, you're
6 hoping they're going to take programs and
7 courses that you already offer, correct?

8 A. Certainly students that are in
9 Laurentian programs already will take Laurentian
10 courses, yes.

11 697 Q. I guess what I'm saying is you're
12 not going to be developing new programs or new
13 courses. They're going to take programs and
14 courses that you already have, right?

15 A. Yeah. We've just rationalized
16 our programs so, yes, those are the programs
17 that we'll have for the next year. Going
18 forward, of course, for university, programs
19 come and go.

20 698 Q. But you don't have any new
21 programs. The rationalization is not -- you've
22 got the same programs as you had previously, but
23 you have less of them, right?

24 A. Yeah. 98 percent, yes. I think
25 there was one new program in business that was

1 created at the last Senate meeting, which is
2 a -- it's a conversion of an old program into a
3 new program. So there's constant evolution in
4 programming, but our suite of programs for the
5 fall is fixed.

6 699 Q. So the students that are taking
7 programs and courses through the Federated
8 Universities, they decided they were going to
9 take those courses. It's a decision they've
10 already made, instead of the ones you want them
11 to take now because now what you're saying is
12 they'll have no choice because the federated
13 university courses are not available, right?

14 A. Well, they would not be
15 available, yes.

16 700 Q. If we go to paragraph 153, it
17 says:

18 "Specifically, in Fiscal Year
19 2020, LU transferred to the Federated
20 Universities approximately
21 \$3.5 million in total grants,
22 \$5.3 million in net tuition, and
23 \$0.3 million in material fees. In
24 some, in Fiscal Year 2020, LU
25 transferred approximately \$9.1 million

1 in tuition, grants, and fees to the
2 Federated Universities, which was
3 offset by a 15 % service fee of
4 approximately 1.4 million [...]."
5 Okay. So now what we see here --
6 MR. HANRAHAN: Just to clarify, I
7 think you said 3.5 million in tuition and it's
8 5.3.

9 BY MR. CAZA:

10 701 Q. Thanks for clarifying that. So
11 the total becomes 9.1 million, I think I have
12 that number right, and you presently are getting
13 15 percent of that. And what you want is,
14 instead of getting 15 percent, you'd end up
15 getting a hundred because what you're hoping is
16 all of the courses that are being taken at the
17 Federated Universities by students are now going
18 to be taken within the programs and courses
19 you're presently offering, correct?

20 MS. MILLER: Objection. You started
21 the question by saying you're currently getting
22 15 percent, and that is not the evidence. The
23 evidence is that Laurentian is currently getting
24 100 percent and retaining 15 percent and
25 delivering the balance.

1 BY MR. CAZA:

2 702 Q. I want to make sure that
3 correction is clear on the record. I want to be
4 sure that it's clear on the record. I said that
5 they're getting 15 percent of the monies that
6 are coming in and you said, no, no, no, they're
7 getting a hundred and they're keeping
8 15 percent, is that correct?

9 MS. MILLER: That's correct.

10 BY MR. CAZA:

11 703 Q. Okay. And I just want this to be
12 clear on the record. Your correction's going to
13 be very important. I'm actually going to refer
14 to it probably in the hearing.

15 You consider monies going through
16 university as a pipeline as being monies that
17 are paid to Laurentian University. That's what
18 you've just told us in correcting me. That's
19 the position you're taking, right? It's a
20 pipeline.

21 MS. MILLER: Well, that's your word,
22 not mine. I've described it as 100 percent of
23 the funds that come in are funds that are
24 received by Laurentian.

25

1 BY MR. CAZA:

2 704 Q. Well, I guess, Ms. Miller, you'd
3 be saying, you know the bank? At the bank,
4 somebody goes and deposits money, and it's my
5 money that's deposited into my account. But I
6 guess somebody could say, Well, no, the money's
7 being paid to the bank. I mean, that's the
8 logic.

9 MS. MILLER: That's not an analogy
10 that we agree with, just to be clear, but I just
11 wanted --

12 BY MR. CAZA:

13 705 Q. That's argument, you're correct.
14 Can we go now the paragraph 162? Now,
15 162 refers to two exhibits, Exhibit O and
16 Exhibit P. And if you could pull those up and
17 have a look at them, Mr. Haché. If you see it,
18 it just says -- Mr. Claude is writing to
19 Ms. Miller and it says:

20 "This request is made on behalf
21 of my client, University of Sudbury,
22 under subsection 32(8) of the
23 Companies' Creditors Arrangements Act,
24 for Laurentian University of Sudbury's
25 reasons, in writing, for the

1 above-described proposed disclaimer or
2 resiliation."

3 And the reply, do you have a copy of
4 the reply, Mr. Haché?

5 A. That would be Exhibit P?

6 706 Q. That's correct. Do you have a
7 copy?

8 A. Yes.

9 707 Q. Were you involved in the
10 preparation of this reply?

11 A. I reviewed it, yes.

12 708 Q. So you didn't prepare the initial
13 draft?

14 A. No.

15 709 Q. Okay. So I'm looking at this
16 letter dated April 19, 2021. And I go to the
17 second paragraph:

18 "By email exchange you advised
19 that we did not need to respond to the
20 request within the time referenced
21 under the CCAA, if our client's motion
22 record for the motion returnable
23 [...]"

24 And then it goes on to talk about the
25 evidence. Now, at the bottom of that page, it

1 says:

2 "These brief reasons will be
3 supplemented by the motion record in
4 respect of the April 29 motion,
5 once served."

6 Now, I just want it to be clear that
7 you've read this letter and you agree with all
8 of the contents of this letter?

9 A. (Witness reading the document.)

10 Yes, I believe the letter is accurate.

11 710 Q. So I want to go to the second
12 paragraph in the second page. It says:

13 "The facts giving rise to
14 Laurentian's insolvency are outlined
15 in the Affidavit of Dr. Robert Haché
16 filed in support of the CCAA
17 application. Laurentian's insolvency
18 has resulted in profound operational,
19 academic and other changes having to
20 be made in order to re-establish
21 financial sustainability. That
22 includes:"

23 And we have 1, 2, 3, 4, 5, 6, 7, 8,
24 there is eight bullet points of what needs to be
25 done, correct?

1 A. (Witness reading the document.)
2 That's eight bullet points that
3 include the things that need to be done.

4 711 Q. That's right. That include the
5 things --

6 A. It's not an exhaustive list.

7 712 Q. It's not an exhaustive list, but
8 it is a list and it's basically an answer to the
9 question that was provided in the letter dated
10 April 11th that was sent by -- the letter dated
11 April 11th, that's correct, that was provided by
12 Mr. Claude, correct?

13 A. That's what it says.

14 713 Q. Now, I'm -- so -- that's fine.
15 You've read it and it's clear that
16 you've agreed that you are adopting the comments
17 in this letter.

18 -- OFF-THE-RECORD DISCUSSION --

19 BY MR. CAZA:

20 714 Q. Mr. Haché, when looking at what
21 you have explained to me what you are hoping
22 will happen, the consequences or the likelihood
23 that the students were -- who are presently
24 taking courses at one of the Federated
25 Universities, if those Federated Universities

1 are no longer able to offer courses as a result
2 of Laurentian ending the agreement.

3 Have you actually prepared a document
4 that provides what you anticipate will be the
5 number of students that will be taking those
6 courses at Laurentian University?

7 A. Expressly outlining numbers of
8 students, no, I don't believe we have.

9 715 Q. Did you do any studies as to --
10 is there any document that exists where someone
11 has sat down and said, Okay, here are the
12 students taking these courses and we're
13 anticipating that they're going to take these
14 other courses that we're offering at Laurentian
15 University? Has that exercise been done?

16 A. A transition plan has been
17 prepared. You'd have to ask the provost and the
18 deans about that for the specifics.

19 716 Q. Sorry, what's -- what did you
20 call the plan?

21 A. Transition plan.

22 717 Q. Okay. So you don't have a copy
23 of the transition plan?

24 A. No, I do not before me, no.

25 718 Q. Have you read the transition

1 plan?

2 A. I have been in discussions about
3 it, yes.

4 719 Q. What about are there any
5 projected enrollments?

6 A. We do have and we do maintain
7 modelling over enrollments at the university and
8 that includes going forward. It is -- it is
9 our -- part of our enrollment management
10 capacity and system.

11 720 Q. I'm just going to go off the
12 record.

13 -- OFF-THE-RECORD DISCUSSION --
14 BY MR. CAZA:

15 721 Q. The only thing I need to confirm
16 is this modelling, which is current modelling,
17 that modelling would include what is anticipated
18 as a result of the Federation Agreements coming
19 to an end, correct?

20 A. As a result of the program
21 closures, all of the things that are happening
22 in the context of the CCAA that impacts on
23 programs and students, yes.

24 722 Q. Including cancelling the
25 Federation Agreement?

1 A. Including ending the Federation
2 Agreement, the transfer of gerontology from
3 Huntington, all of those things.

4 723 Q. And that modelling, that's a
5 document that actually exists? Like, it's been
6 completed, correct?

7 A. No. It is a living draft.

8 724 Q. So there's a living -- there's an
9 up-to-date version that exists now and you are
10 changing it as new information comes up?

11 A. Yeah. It is constantly updated,
12 tracking applications, confirmations, and so
13 forth, and projections. It includes
14 demographics. It's quite comprehensive and it
15 has a modelling -- has a modelling tool and it
16 sort of guides us through the annual cycle of
17 recruitment and registration.

18 725 Q. And that -- that modelling would
19 include all the Francophone students too, right?
20 All the French programs and the French courses?

21 A. Absolutely.

22 726 Q. Okay. Thank you. Just go off
23 the record a sec.

24 -- OFF-THE-RECORD DISCUSSION --

25

1 BY MR. CAZA:

2 727 Q. If we can now go to paragraph 164
3 of your second affidavit?

4 A. Yes.

5 728 Q. It says, I'm just going through
6 it:

7 "As discussed further below, each
8 of Thorneloe and Université de Sudbury
9 have brought motions opposing the
10 Notices of Disclaimer. Since it is a
11 condition of the DIP Amendment
12 (defined below) and the availability
13 of a further \$10 million in DIP
14 financing that the Disclaimers become
15 effective on May 1, 2021, it will be
16 necessary to determine the motions
17 brought by Thorneloe and Université de
18 Sudbury at the return of the
19 Applicant's motion April 29, 2021. In
20 addition, steps taken following the
21 implementation of the academic
22 restructuring of Laurentian University
23 and the necessity to finalize the
24 program and course offerings for Fall
25 2021 within the timeline of the

1 academic calendar year, as outlined in
2 the Initial Haché Affidavit, require
3 that the issue be determined by
4 April 30th, 2021."

5 You go on to say:

6 "The Spring term commences on May
7 3, 2021, which necessitates the
8 removal of courses from the available
9 online catalogue for Thorneloe."

10 Then you go on to say:

11 "Each of Huntington and SU have
12 already requested that Laurentian
13 University remove the courses on offer
14 in the program catalogue for the
15 Spring term that they would have
16 otherwise taught."

17 and I guess what I'm trying to
18 understand here is, are you aware of the
19 discussions that went on with the DIP Lender
20 that resulted in the conditions that the DIP
21 Lender has included in the term sheet?

22 A. As I've answered with other
23 questions, I've not been in direct conversation
24 the DIP Lender, but have been tracking the
25 conversation that has been had through counsel.

1 729 Q. So the term sheet and the
2 conditions that have been imposed by the DIP
3 Lender are as a result of discussions between
4 the DIP Lender and your counsel, correct?

5 A. They are conditions that are
6 imposed by the DIP Lender. Exactly how they got
7 to that, I'm not fully aware.

8 730 Q. But you're not -- it didn't
9 involve you, Mr. Haché, in those discussions?

10 A. It didn't -- I -- no, it did not
11 involve me directly in those discussions.

12 731 Q. In fact, you're not aware of
13 anyone that was involved -- that would have been
14 involved other than your legal counsel, correct?

15 A. That is to my knowledge, yes.

16 732 Q. Okay. Just go off the record.

17 -- OFF-THE-RECORD DISCUSSION -
18 BY MR. CAZA:

19 733 Q. If I can now go to page 54 of --
20 yeah, 54 of your affidavit, at paragraph 182.

21 A. Yes.

22 734 Q. You state:

23 "While LU is cognizant that the
24 Notices of Disclaimer will have
25 financial consequences for the

1 Federation Universities, the
2 unfortunate reality is that the
3 termination of federated
4 relationships, and the revenue will
5 remain with LU as a result, is a
6 necessary component of a successful
7 restructuring of Laurentian
8 University."

9 So it's not an issue of costs. It's
10 actually an issue of revenue, correct?

11 A. As is stated there, yes, but the
12 revenue is needed by Laurentian.

13 735 Q. And presently you've got
14 15 percent of that revenue without needing to
15 offer the course, and what you're looking at is
16 basically getting the other 85 percent while
17 actually needing to offer the course, correct?

18 MS. MILLER: Objection. That's
19 mischaracterizing the evidence that's been
20 given.

21 BY MR. CAZA:

22 736 Q. You are not offering the course
23 and you get to keep 15 percent of the tuition
24 and the grants that are being provided to the
25 Federated Universities for offering the course.

1 Is that misexplaining the evidence --

2 MS. MILLER: Yes.

3 BY MR. CAZA:

4 737 Q. -- Mr. Haché? If it is, correct
5 me. Mr. Haché, correct me if that's wrong.

6 MS. MILLER: I stated an objection
7 because his evidence on the record, which we can
8 read back, if we find the reference, is that the
9 15 percent is in respect of all of the services
10 and everything that is provided by Laurentian.
11 That's what the 15 percent is retained in
12 respect of. His evidence was that 100 percent
13 of the revenue currently is received by
14 Laurentian and 85 percent is paid.

15 BY MR. CAZA:

16 738 Q. Okay. And I guess the -- my
17 understanding is you're not going to be -- the
18 work that you're doing for which you're getting
19 15 percent, you're still going to need to do
20 that work and offer those services for these
21 courses if you end up -- if these students end
22 up taking your courses, correct?

23 A. Yeah. The services still need to
24 be provided. I think the important correction
25 is that we are not offering additional courses.

1 The students will take existing courses and so
2 there's no additional cost to the course
3 delivery for Laurentian.

4 739 Q. You are hoping the students will
5 take the existing courses, is that fair? You
6 have not done any -- you have not approached any
7 of the students; you've done no -- any kind of
8 polling; you are just assuming; you're hoping
9 that, is that fair?

10 A. No. The courses that are
11 available as electives and for the programs
12 exist at Laurentian. They are courses that are
13 offered. Students will have the opportunity to
14 choose and take those courses as they complete
15 their program. And --

16 740 Q. What are the courses?

17 A. They're already on the books.
18 They're already offered.

19 741 Q. And those are courses --

20 A. And they have capacity.

21 742 Q. -- that were offered when those
22 students decided to take the course at the
23 Federated Universities and they preferred or
24 wanted to take a course at the Federated
25 Universities, correct?

1 A. I can't comment on their specific
2 motivation, but they're courses that were
3 offered.

4 743 Q. Now, if I go to paragraph --
5 okay, one second please, just go off the record.

6 -- OFF-THE-RECORD DISCUSSION --

7 BY MR. CAZA:

8 744 Q. Mr. Haché, if we can go to
9 paragraph 189, you say:

10 "I am advised by Jonathan Mair of
11 the DIP Lender, and do verily believe,
12 that the DIP Lender has made clear
13 that the satisfaction of this
14 Condition to Funding is essential to
15 the DIP Lender's willingness to
16 advance further funds under the
17 Amended DIP Facility."

18 I understood you to say that you had
19 never contacted anyone from the DIP Lender
20 directly. So is this -- did you misspoke here?

21 A. No, I said I had never had a
22 conversation. I didn't say there wasn't
23 electronic communication. That was communicated
24 to me by the DIP Lender through counsel.

25 745 Q. So you didn't say through

1 counsel. You say, "I am advised by Jonathan
2 Mair". You didn't say through counsel.

3 A. Well, it's a letter that was
4 communicated to me through -- I believe it came
5 through counsel, yes.

6 746 Q. So have you got that letter?

7 A. I would assume that we do.

8 747 Q. The letter was sent to you. I
9 just want to understand. You're saying you were
10 advised by Jonathan Mair, so he wrote the letter
11 to you?

12 A. He wrote the letter to me and it
13 came to me through counsel, I believe.

14 MS. MILLER: Just to correct so that
15 we're not going down a rabbit hole here,
16 Mr. Caza. I believe what Mr. Haché -- Dr. Haché
17 is referring to is an email confirmation of the
18 fact in 189, but we will confirm that, and if
19 it's different than as I have described, then we
20 will certainly produce it.

21 BY MR. CAZA:

22 748 Q. Actually if you can just send me
23 a copy of the email so we can see the email.
24 I'm a little concerned. Is the email addressed
25 to you or is it addressed to Mr. Haché?

1 MS. MILLER: I believe -- again, I
2 don't want to assume, but I believe it is
3 addressed to both of us, but I will verify that.

4 BY MR. CAZA:

5 749 Q. Well, why don't you go take a
6 look. We don't have a lot of time left. How
7 long -- can you undertake to give me a copy of
8 that email?

9 U/A MS. MILLER: I will take that under
10 advisement. I'm happy to take a break and speak
11 to it after, if you like.

12 BY MR. CAZA:

13 750 Q. I don't have a lot of time left,
14 so I would just like to continue here.

15 Jonathan Mair, Mr. Haché, do you know
16 who that is? What is that person's role at the
17 DIP Lender? Do you know? Is he legal counsel
18 or is he the actual DIP Lender?

19 A. I don't have a specific
20 recollection of his title. I'm sure that would
21 be in the email communication.

22 751 Q. And is that the only email that
23 you -- that you're describing here that you
24 received that was sent to you? Is that the only
25 email that was sent to you from the DIP Lender?

1 A. Over the course of the past
2 several months. Most certainly there are other
3 communications with the DIP Lender that we have
4 had that have come through counsel to me, yes.

5 752 Q. So I think I made this request
6 already and if I have, I apologize. I want to
7 be provided, Ms. Miller, I want all of the
8 correspondence, emails, exchanges that you,
9 anyone on your team, or anyone at Laurentian
10 University has had, either to or from the --
11 anyone working either working for the DIP Lender
12 or his legal counsel.

13 R/F MS. MILLER: Yes. And I believe we've
14 refused that and I've referred you to the
15 request that was made at the case conference
16 before Justice Morawetz for an examination of
17 the DIP Lender. And the endorsement that was
18 made was to make all requests in respect of that
19 through the Monitor.

20 BY MR. CAZA:

21 753 Q. Okay, thank you.

22 Are we to understand, Ms. Miller, that
23 if we make that request, the Monitor will
24 provide the documentation?

25 MS. MILLER: No, that's not what I've

1 said. I've said that the written requests for
2 information are to go through the Monitor. The
3 Monitor will consider them, I'm sure, and ask
4 us, as applicant's counsel, what our position is
5 and we'll deal with it accordingly.

6 BY MR. CAZA:

7 754 Q. And what will be your position?

8 MS. MILLER: I don't know because I
9 haven't seen the questions, but let's follow
10 what the endorsement was that was issued by
11 Chief Justice Morawetz and we'll go from there.

12 BY MR. CAZA:

13 755 Q. That was quite the confidential
14 process. All I'm asking is to be provided --
15 you are relying on what the DIP Lender is saying
16 in order to force the hand of the court to
17 accept to bring to an end the agreement between
18 Laurentian University and the Federated
19 Universities, and you're taking the position
20 that you don't even know if you're going to
21 consent or agree?

22 And, in fact, you don't need the
23 permission of the court. The applicant could
24 send us all that information. I'm asking you to
25 send it to me. I'm asking you to send me that

1 information.

2 MS. MILLER: And I disagree with the
3 characterization of forcing the court's hand and
4 I disagree with everything that you've said.
5 And you have our position on that request.

6 BY MR. CAZA:

7 756 Q. So you don't consider it forcing
8 the court's hand when you say, Hey, look, this
9 DIP Lender -- this DIP Lender has a condition
10 here that we have to bring to an end all of the
11 agreements between Laurentian University and the
12 Federated Universities? A DIP Lender that I
13 have -- we have no doubt has very little, if
14 any, knowledge of how Federated Universities
15 work. And all of a sudden he's got this
16 condition and we've got an affidavit where he's
17 spoken to the Rector saying, Oh, if I don't get
18 that, we're not going ahead.

19 MS. MILLER: We are getting into legal
20 argument.

21 MR. CAZA: And I apologize for that.

22 BY MR. CAZA:

23 757 Q. If we can go to paragraph 192,
24 Mr. Haché?

25 A. Yes.

758

Q. So you go:

"To be clear, LU does not take the decision to end its federation relationships lightly and regrets that it is necessary. As noted above, there is a strong affinity within the LU community for the Federated Universities and LU is committed to honouring that legacy."

And you say:

"To that end, Laurentian University has made every effort (within its financial constraints) to smooth the transition for the Federated Universities."

You've actually sworn in an affidavit that you've made every effort. I want you to describe all the efforts you've made to smooth the transition. Like all of them. Like don't skip any. I want to hear all of them. You've sworn that you have and you've made every effort. Tell me what you've done?

You've done nothing. Mr. Haché, you know you've done nothing. You've told them it's over and there's been no discussion. You've

1 done nothing.

2 MS. MILLER: Mr. Caza.

3 BY MR. CAZA:

4 759 Q. You've made no effort.

5 MS. MILLER: Please, if you have a
6 question, allow him to answer. And he has given
7 evidence on that point, so allow him to answer
8 your question.

9 BY MR. CAZA:

10 760 Q. You've asked me to let him answer
11 the question and I agree. So if he can answer
12 the question.

13 A. I would ask to restate the
14 question just so I can be sure what's being
15 asked here. There's been a lot that's gone on.

16 761 Q. The question is pretty simple.
17 You've sworn under oath that LU has made every
18 effort within its financial constraints to
19 smooth the transition for the Federated
20 Universities. I want you to tell me everything,
21 every effort you've made to do that.

22 A. So I have had, since last June,
23 an open-door conversation with the presidents of
24 the Federated Universities about how we can go
25 forward. And I have said I am available to them

1 at any time. Sometimes they've chosen to
2 engage, other times they have not.

3 We have also, as demonstrated with
4 Huntington University, come to agreeable terms
5 for Huntington to move forward and for
6 Laurentian University to move forward in a
7 manner that is mutually acceptable.

8 I would say that's a tangible
9 demonstration of the willingness of Laurentian
10 University to work with the federated partners.

11 762 Q. I don't know, somebody could say
12 that's a tangible example of intimidation that
13 has been successful, but we can argue that one
14 later.

15 I do want to ask you, because I don't
16 think you've answered my question, we're talking
17 about efforts to smooth the transition. The
18 transition is you having made the decision that
19 you want to end the relationship. What have you
20 done to smooth the transition of you ending that
21 relationship? Tell me what you've done?

22 A. We have made an offer on how to
23 facilitate the continuation of services and so
24 forth. I think it is outlined in our materials
25 in terms of should -- in going forward, how can

1 we make this transition from a federation to no
2 longer a federation as smooth as possible,
3 recognizing that we are intertwined in a
4 locational sense and have certain shared
5 services and so forth and how can we go forward
6 on that?

7 And as recently as earlier this week,
8 Father Meehan contacted me on how to continue IT
9 services and I referred him to our IT department
10 to look at what could be done with respect to a
11 service level agreement around IT, as an
12 example.

13 763 Q. Are you telling me, because I
14 haven't heard this at all, are you telling me
15 that you were contacted by John Meehan? I'm
16 just trying to understand what you're saying.

17 A. That's correct.

18 764 Q. Who was telling you that one of
19 the things he presently needs is continuation or
20 he needs IT services, correct?

21 A. Yeah, email and so forth. And he
22 would be interested in negotiating an
23 arrangement with Laurentian post May 1st. And I
24 very rapidly responded and indicated that we
25 would be happy to engage in that conversation

1 and work out a solution that would be amenable.

2 765 Q. And just so I understand, so
3 presently, does everybody use the same email
4 system?

5 A. Yeah. Presently Laurentian
6 administers the email system and student
7 learning system and so forth, and we have that
8 as part of our -- I believe our service level
9 agreement with Huntington University going
10 forward. And we would look to use the same
11 model with other federated institutions.

12 766 Q. Mr. Haché, I just want to know,
13 today, nevermind -- today, Laurentian is --
14 basically there's a one-email system for all of
15 the Federated Universities and Laurentian. It's
16 one email system, correct?

17 A. I believe that is true and it is,
18 you know, part and parcel of the administration
19 charge that we've been talking about frequently.

20 767 Q. So that's part of the -- for
21 example, the 15 percent that you're keeping,
22 that's part of the services you're offering?

23 A. That is correct, part of the
24 services provided.

25 768 Q. I'm just going to go off the

1 record for a second.

2 MR. CAZA: Mr. Haché and everyone,
3 we're going to take a few minutes to review our
4 notes to see if we have any more questions. And
5 my friends from Thorneloe may have some
6 questions, so we'll be back -- it will just take
7 a few minutes.

8 -- RECESSED AT 3:40 P.M. --

9 -- RESUMED AT 3:43 P.M. --

10 BY MR. CAZA:

11 769 Q. I can tell you that I have
12 further questions and they deal with the DIP
13 Lender, and we're not looking for information,
14 which is what the order basically says we get
15 information from the Monitor, we're actually
16 looking -- we need evidence. There is actual
17 evidence.

18 Mr. Haché has confirmed there's been
19 emails that have been exchanged. We want full
20 disclosure. I think it's important in light of
21 the position being taken by the applicant. So
22 we are reserving our right.

23 We will have to decide what is the
24 best way of proceeding to get access to all that
25 information, which is essential, and we are

1 reserving our rights to obviously return to
2 cross-examine once we get that information or
3 that documentation, as well as once we get the
4 answers to the undertakings and the under
5 advisements that have been provided and we're,
6 of course, reserving all our rights with respect
7 to those.

8 Now, what I'd like to do, there is 15
9 minutes left. I don't know if my friends at
10 Thorneloe may have some questions for you.
11 Thank you very much, Mr. Haché.

12 A. Thank you.

13 MS. MILLER: I just wanted to respond.
14 You had asked for an undertaking with respect
15 to -- an undertaking given with respect to
16 paragraph 50 of Dr. Haché's affidavit and we
17 would like to provide the answer to that
18 undertaking now and on the record.

19 Paragraph 50 of his affidavit related
20 to:

21 "Ideally, programs would be
22 positive economic drivers for LU.
23 However, LU also took into account
24 that, for a certain subset of programs
25 with a direct link to LU's mission,

1 such programs should operate despite
2 not satisfying the self-funding
3 threshold."

4 You had asked for an undertaking to
5 advise if there was any single program that
6 remained, notwithstanding that it fell below the
7 economic or financial threshold, and I'd like to
8 provide the answer to that undertaking as
9 follows. And I'll provide this list of programs
10 so that the reporter has it for the transcript.

11 There is one French language
12 undergraduate program that was not cancelled,
13 notwithstanding that it fell below the
14 determined threshold. That program is Service
15 Social, which has a total of 37 students across
16 all four years of the program.

17 In addition, there are 12 other French
18 language undergraduate programs where a
19 financial ratio could not be calculated because
20 the programs don't have a specific number of
21 credits that are required to complete the
22 program, which is one of the key inputs in
23 determining the financial thresholds.

24 Twelve of these programs have very low
25 enrollment and would not comply with the

1 thresholds if the programs required a dedicated
2 number of credits. The French language programs
3 in that category that continue to be offered
4 with a direct link to Laurentian's mission,
5 pursuant to paragraph 15 of Dr. Haché's
6 affidavit, are and I'll read those other 12
7 programs in addition to the Service Social. The
8 4-year BA which has one student registered
9 across all four years. The BA intro which has
10 one student registered across all of the years.
11 The Équité, diversité et droit de la personne
12 which has one person registered across all four
13 years. The Pré Service Social Ste-Anne which
14 has one student registered across all four
15 years. The Bachelor of Science four-year degree
16 intro has two students registered across all
17 four years. The BA three-year degree has three
18 students registered across all three years.
19 Biology has four students registered across all
20 years. The Études interdisciplinaires has four
21 students registered across all years. And the
22 Online BA, the three-year degree, has four
23 students registered across all three years. And
24 the Éducation option two hybride has nine
25 students registered across all years. And the

1 Service social Ste- Anne has 15 students
2 registered across all years. And the Biochimie
3 has 19 students registered across all years.

4 So that's the answer to the
5 undertaking with respect to paragraph 50.

6 BY MR. CAZA:

7 770 Q. So I have two points. So
8 that's -- I believe that's 13 courses in all,
9 correct?

10 MS. MILLER: Programs. These are
11 programs.

12 BY MR. CAZA:

13 771 Q. Programs. So how many programs
14 are left at Laurentian University? I had the
15 number. Was it 37 in French? Are you able to
16 just confirm that?

17 MS. MILLER: We're just going to
18 check.

19 MR. HANRAHAN: It's in the affidavit.

20 THE WITNESS: Yes, it's in the
21 affidavit.

22 MR. HANRAHAN: Paragraph 57 of the
23 affidavit.

24 MS. MILLER: So there are 38 remaining
25 French language programs, but what I've

1 described, these are all undergraduate programs,
2 and so let's just confirm if the 38 is all
3 undergrad.

4 BY MR. CAZA:

5 772 Q. Mr. Haché, are you able to
6 confirm?

7 MS. MILLER: We will get back to you
8 on that.

9 THE WITNESS: We'll have to. If it's
10 not 38, I think it's 35 because -- I don't know,
11 we'll have to check whether it includes grad or
12 not. They're stated in different ways in
13 different places.

14 BY MR. CAZA:

15 773 Q. So what I understand from that is
16 that you are not able to get some of the
17 information you would have needed to do the
18 calculation, but that the numbers, from what
19 you've told me, are such that you may have not
20 allowed those 13, which means that you would
21 have cut -- instead of cutting I guess 27, you
22 would have cut 40. And there would only be --
23 whatever, 25 courses left.

24 Could I have the documentation
25 supporting the evidence that you've just

1 provided, Ms. Miller? All the documentation you
2 Have that we could look at and study confirming
3 all the information you've just provided to us?

4 U/T MS. MILLER: What I've just provided
5 to you is the number of enrollments across all
6 years and, yes, we will provide that. It was
7 going to be provided to the reporter, in any
8 event, and that lists the number enrollments
9 across all years.

10 And so the answer to your question is
11 these are ones that would have fallen below the
12 financial sustainability threshold, but are
13 nonetheless being retained because of the
14 specific link to the mission, the bilingual
15 nature of the university.

16 BY MR. CAZA:

17 774 Q. Could you -- what I want you to
18 provide is the necessary criteria, just so I can
19 understand. All you've done is given us
20 information. I'd like to see the written
21 criteria and any documentation to support
22 basically any assessment or analysis that was
23 carried out with respect to these 13 courses.

24 MS. MILLER: The affidavit covers that
25 and the relief does not include an assessment of

1 the academic -- the information that you're
2 asking for. So I think the process that was
3 followed is set out in the affidavit. If
4 there's something specific that you're looking
5 for, then perhaps you could advise us and we'll
6 take it under advisement --

7 BY MR. CAZA:

8 775 Q. I'm asking you now. All this
9 information that you're giving me, where did you
10 get that. That comes from where?

11 MS. MILLER: From the Registrar.

12 BY MR. CAZA:

13 776 Q. Okay. So the Registrar is
14 looking at what? His notes? Documents? What
15 is he looking at? He doesn't remember that by
16 heart. I want all the documents.

17 MS. MILLER: These are enrollment
18 numbers, Mr. Caza, that I've just provided to
19 you for those courses.

20 BY MR. CAZA:

21 777 Q. So those are enrollment numbers
22 that you obtained from the Registrar for those
23 courses. And if we look at the formula that was
24 provided in the affidavit of Mr. Haché, all of
25 those courses don't meet the criteria, which is

1 basically for French courses, all of the --
2 basically the costs not outweighing the revenue,
3 with the revenue including any special grants,
4 is that correct?

5 MS. MILLER: If you were looking at it
6 as a purely financial analysis, then based on
7 the enrollment numbers in those courses, that's
8 what the undertaking was, that's what the
9 question was, and that's the information that's
10 been provided.

11 THE WITNESS: Could I correct that
12 we're talking about programs and not courses.

13 BY MR. CAZA:

14 778 Q. Thank you, Mr. Haché.

15 If I can ask you a question that flows
16 from that? Don't you get any money from the
17 federal government? I didn't see -- maybe I'm
18 missing something, but don't you get a
19 substantial amount of money through government
20 Canada departments and agencies for the offering
21 courses and programs in French?

22 MS. MILLER: That's addressed in
23 paragraph 54 of Mr. Haché's affidavit.

24 BY MR. CAZA:

25 779 Q. And that's the extent of it?

1 There's no more than what you've set out in
2 paragraph 54?

3 MS. MILLER: If there's something
4 specific that you want to ask Mr. Haché that's
5 in his affidavit, then I'm just trying to be
6 helpful and show you that there's a reference
7 there in paragraph 54.

8 THE WITNESS: We also discussed it
9 earlier in one of the exhibits where you went
10 through the different grants and how they were
11 allocated to the various institutions that
12 included a bilingualism grant. And, yes, in the
13 financial calculation, I believe we stated this
14 earlier as well, that in the financial
15 calculation for the sustainability of programs,
16 the grant funding is included in the
17 calculations such that it's understood that
18 French language programs require fewer students
19 to be sustainable because there are additional
20 special purpose grants for those programs. And
21 that is all included in the calculation and it's
22 detailed in the affidavit.

23 BY MR. CAZA:

24 780 Q. Mr. Haché, you have provided in
25 your affidavit all of the information pertaining

1 to all of the grants that you're obtaining for
2 offering services or programs and courses in
3 French. It's all in your affidavit, correct?

4 A. I believe that is true.

5 MR. CAZA: Okay. So subject to what
6 I've already advised you, that's the end of my
7 cross-examination. I invite Mr. Yiokaris, if he
8 has any further questions.

9 MR. YIOKARIS: Thank you, Mr. Caza.

10 CROSS-EXAMINATION BY MR. YIOKARIS:

11 781 Q. Good afternoon, Mr. Haché, I'm
12 counsel for Thorneloe. I will be asking you
13 some questions. Mr. Caza has been very
14 thorough, so I don't anticipate to be very long,
15 maybe 20 minutes or so. And I'm not going to go
16 over the same areas that he went over, but I do
17 have some targeted questions in some of those
18 areas, thank you.

19 How is my voice?

20 A. I can distinguish what you're
21 saying, yes.

22 782 Q. As I read your evidence and
23 hearing in your evidence today, loosely I
24 understand part of the motivation for
25 terminating the Federation Agreements is to --

1 those students who were enrolled in the
2 Federated Universities, then Thorneloe, would
3 then now be taking those courses -- would now be
4 taking other courses at Laurentian, and
5 Laurentian has the capacity and courses to take
6 those students.

7 Now, what I'm curious about is in the
8 future. A couple of years from now, 5 years
9 from now, 10 years from now, do you have any
10 studies or surveys to confirm that Laurentian
11 will retain those total enrollment levels in the
12 future if you terminate the Federated
13 Universities?

14 A. So certainly the Laurentian
15 programming that we offer, the programs that are
16 cited at Laurentian University, there is both
17 historical information in terms of the
18 attraction of students, there is demographic
19 information in terms of the demographics in our
20 region and what that will mean for student
21 applications going forward. And there is other
22 modeling in terms of how do we continuously
23 improve our offerings and make it attractive to
24 students? So there's a lot of work that's done
25 in terms of, you know, for the future, how do we

1 ensure that we maintain and even -- against
2 demographics grow our enrollments.

3 783 Q. My question was much more
4 specific than that. My question is terminating
5 the federations. Have you done studies and
6 modelling to ensure or to see whether you'll be
7 able to retain those enrollment levels in the
8 future?

9 A. So the studies and modelling that
10 we have done focus specifically on Laurentian
11 programs and students that are registered in
12 Laurentian programs and, yes, project the, you
13 know, the healthy maintenance of these programs
14 going forward. We're not -- you know, there's a
15 substantial academic reorganization that has
16 just gone on. We are not intent on redoing that
17 every few years.

18 784 Q. Right. But do those projections
19 include and those studies include if you
20 terminate the Federated Universities?

21 A. So we have not specifically
22 looked at the programming that is offered by the
23 Federated Universities that would be closed as a
24 result of the termination of the federation.

25 Whether we retain the students that

1 have come for those programs, whether students
2 that have come for those programs would come to
3 other Laurentian programs, you know, that's a
4 very small number of students, first of all, and
5 it's not included nor is it -- not included in
6 the calculations.

7 785 Q. I'm talking about those students
8 who are taking these elective courses at the
9 Federated Universities as well.

10 A. We anticipated --

11 786 Q. Also future students. Have you
12 done any modelling to say now that you've
13 terminated them, what the retention levels will
14 be given these terminations?

15 A. We don't believe the retention
16 levels of students in Laurentian programs will
17 be materially affected by eliminating the
18 opportunity for electives at the Federated
19 Universities.

20 787 Q. But that's what I'm getting at.
21 On what basis do you believe that? Have you
22 done studies? Have you done student interviews?
23 Have you gone into the high schools to ask
24 students if this will affect them and affect
25 their decisions?

1 A. Based on overall enrollment
2 planning and based on what we're hearing from
3 students, yes, in terms of students interacting
4 with program directors and deans.

5 788 Q. So prospective students, you've
6 gone out and sampled them and surveyed them? Do
7 you have that reported anywhere?

8 A. We have not done a formal survey
9 of prospective students until we know that --
10 what is happening.

11 789 Q. So you haven't done any formal
12 surveys or studies to see whether the retention
13 in total enrollment levels will stay the same if
14 the Federated Universities are terminated,
15 correct?

16 A. That is correct. What we do know
17 is the majority of students do not make any
18 distinction between Laurentian and a federated
19 institution. Most are not even aware of whether
20 they're taking a course that is offered by
21 Laurentian or a course that is offered by a
22 federated institution. They see the whole thing
23 as Laurentian, and so my expectation is they
24 will continue to see it all as Laurentian.

25 790 Q. Which students have said that?

1 Do you have a name or a survey or a data base of
2 that?

3 A. No, it is anecdotal for the most
4 part. But it is heard broadly from students
5 when you talk to them. And if you wish -- I
6 would ask -- if I were you, I would ask the
7 leaders of the student associations who will
8 confirm that.

9 791 Q. Well, sir, you are the one who
10 are making that statement and I don't see
11 anywhere where you've listed the students that
12 have actually been canvassed.

13 In contrast, I'm sure you've seen at
14 Exhibit, I believe it's C or D, of Mr. Gibaut's
15 affidavit, he's spoken to dozens and dozens and
16 dozens of students who say it is material to
17 them, of the termination.

18 And what I'm looking for is not
19 anecdotal double, triple hearsay that you've
20 heard. I'm asking if you've got any studies or
21 reports. And as I understand your evidence, no,
22 you don't. You've just got some double or
23 triple anecdotal hearsay evidence, correct?

24 A. We do not have any formal reports
25 to that effect, yes.

1 792 Q. Thank you.

2 MR. HANRAHAN: The evidence you're
3 referring to in that affidavit and the
4 statements are similarly anecdotal and hearsay.

5 MR. YIOKARIS: Counsel, unless it's an
6 objection, please don't interrupt, thank you.

7 BY MR. YIOKARIS:

8 793 Q. In terms of the list of courses,
9 now, I'm sure you're aware that Thorneloe offers
10 courses in gender studies, ancient studies, and
11 religious studies?

12 A. Yes, I'm aware of that.

13 794 Q. And does Laurentian have
14 equivalent courses?

15 A. I don't believe that we do.

16 795 Q. So, for instance, and I'm just
17 going to list off a few courses. For instance,
18 1006, Greek Civilization, is there an equivalent
19 one being offered at Laurentian?

20 A. I don't know, but -- I don't
21 know. I would imagine not.

22 796 Q. 1007, Roman Civilizations?

23 A. Again, the same answer. I don't
24 have the full course list, but I imagine that we
25 don't duplicate.

1 797 Q. 2016, Classical Mythology, same
2 answer?

3 A. Same answer.

4 798 Q. 2036, the Ancient World in Film,
5 same answer?

6 A. Yes.

7 MR. HANRAHAN: You're obviously free
8 to conduct this how ever you like, but I suspect
9 if you ask Dr. Haché his answer is going to be
10 the same for every course you're listing because
11 he doesn't have the information in front of him.

12 BY MR. YIOKARIS:

13 799 Q. Thank you, counsel, I appreciate
14 that and I will continue on.

15 2046, Sport and the Ancient World,
16 same answer?

17 A. I believe so.

18 800 Q. 2136, Greek and Latin Roots of
19 English, same answer?

20 A. I believe so.

21 801 Q. 4416, Greek History, Athens and
22 Sparta, same answer?

23 A. I believe so.

24 802 Q. 2116, Introduction to Classical
25 Greek, same answer?

1		A.	Yes.
2	803	Q.	2115, Introductory Latin, same
3	answer?		
4		A.	Yes.
5	804	Q.	2216, Religion and Violence, same
6	answer?		
7		A.	Yes.
8	805	Q.	2246, Women, Religion and
9	Spirituality, same answer?		
10		A.	Yes.
11	806	Q.	3107, The Pauline Letters and the
12	New Testament, same answer?		
13		A.	I believe so.
14	807	Q.	3166, Mark's Gospel, same answer?
15		A.	Yes.
16	808	Q.	3306, Issues in Religion and
17	Time, same answer?		
18		A.	Yes.
19	809	Q.	1005, Introduction to Women and
20	Gender Studies, same answer?		
21		A.	Yes.
22	810	Q.	2006, Women as Visual Artists, A
23	Women's Art History, same answer?		
24		A.	Yes.
25	811	Q.	2036, Gender, Work and Families,

1 same answer?

2 A. I believe so, yes.

3 812 Q. 3046, Gender, Race and Racism,
4 same answer?

5 A. Yes.

6 813 Q. 2296, Gender Issues and
7 Education?

8 A. Yes.

9 814 Q. 2406, Violence Against Women?

10 A. As best I know with the
11 information I have in front of me, yes.

12 815 Q. Okay, thank you.

13 You've read the Farber Report,
14 correct?

15 A. The Farber Report?

16 816 Q. Yes, it's part of our material.
17 I believe you indicated in your affidavit that
18 you had read that report?

19 A. If I said I have, I have. I'm
20 just not recognizing the name at the moment.

21 817 Q. It's by Allan Nackan. You say at
22 paragraph 180 of your second affidavit:

23 "I have reviewed the Disclaimer
24 Motions including [...] the Nackan
25 Affidavit."

1 A. Yes, if it says I verified it,
2 that was correct. Do I remember the particulars
3 of that affidavit at this present time, I'm
4 afraid it's escaping me.

5 818 Q. It was just served, I believe on
6 Monday, and you just swore this affidavit on
7 Wednesday. So if you've forgotten, you've
8 forgotten, but --

9 A. There have been, you know,
10 thousands of pages of materials in the last
11 week. So I don't have --

12 819 Q. Okay.

13 A. I've looked at everything, but I
14 don't have a specific recollection of this one,
15 I'm sorry.

16 820 Q. Okay. I'm going to bring it up
17 on the screen. I just want to go over a few
18 sections quickly.

19 A. Thank you.

20 821 Q. Is that appearing on your screen,
21 Mr. Haché?

22 A. It is.

23 822 Q. Mr. Nackan, in his report, goes
24 through a number of financial numbers and I just
25 wanted to review some of them with you, because

1 even though you can't remember reviewing his
2 report, specifically in your affidavit, you say
3 he's misguided..

4 So at section 6.22 you say, Mr. Nackan
5 says that Thorneloe received about 568,770 in
6 grants, which is .66 percent of the total grants
7 of approximately 86 million received by
8 Laurentian. Are those numbers probably about
9 right, as far as you know?

10 MS. MILLER: Objection. You're asking
11 him to verify someone else's evidence?

12 BY MR. CAZA:

13 823 Q. Well, he's in charge of this
14 university and I'm understanding he should know
15 these numbers. He's given a lot of these
16 numbers out in his affidavit. I want to know if
17 he's contesting these numbers or if he's got any
18 different information.

19 MS. MILLER: Well, first of all, these
20 are not his numbers and he's just mentioned to
21 you that he's read thousands of pages of
22 information and now you've put a number to him
23 and asked him if it's correct. It's found in
24 someone else's affidavit. It does not appear to
25 me to be something he would know off the top of

1 his head, in fairness.

2 BY MR. YIOKARIS:

3 824 Q. Well, I would suggest he does.

4 He's the one in charge of Laurentian and these
5 are figures about his university and about the
6 federation. I would submit to you, he should.
7 I mean, if he doesn't know, that's fine, but
8 it's a proper question.

9 So if you're going to object, I will
10 take that refusal, but I would like to pose it.
11 If he doesn't know, he doesn't know.

12 A. I cannot verify whether that's
13 correct or not with the information I have in
14 front of me.

15 825 Q. And similarly at 6.23, Mr. Nackan
16 says that in 2020, Thorneloe's revenues from
17 tuition were only 1.5 million whereas Laurentian
18 received 50.5 million in tuition. Do you know
19 if those numbers are about right?

20 A. Again, I can't verify the
21 numbers, but they are what is written there.

22 826 Q. First of all, do you know if
23 Laurentian received about 50.5 million in
24 tuition into 2020? Do you know that?

25 A. Yeah, I think within 10 million

1 that's about -- that's -- it's ballpark, yes.

2 827 Q. Okay. And then in the first one
3 that I went over before, how about the
4 86 million received in total grants in 2020, is
5 that ballpark right?

6 A. Yeah, I think that is, you know,
7 within -- it's within the area, I would believe,
8 yes. I can't -- I don't have at the end of a
9 long day specific recollection of those exact
10 lines, but, yes.

11 828 Q. Okay. And then finally at
12 section 6.24, Mr. Nackan says that Thorneloe
13 employs only 7 full-time faculty, whereas
14 Laurentian employs 355 full-time faculty. And
15 that the salary and benefits paid by Thorneloe
16 to its faculty members was approximately
17 2.4 million, whereas Laurentian paid 134 million
18 to its faculty members during that same period.
19 Is that in the ballpark?

20 A. Oh, I can verify that we employed
21 355 full-time faculty members. That's in the
22 affidavit, we went over it today. I can't
23 verify any of the other three figures.

24 829 Q. So you don't know how much
25 Laurentian paid its faculty members?

1 A. Off the top of my head, I don't
2 have that figure in front of me. I mean, it's
3 probably in the affidavit somewhere, but asking
4 me off the top of my head, no, I can't verify.
5 I simply -- I would be guessing.

6 830 Q. Okay. But even a ballpark, you
7 don't know within 10 million if that's right or
8 not?

9 A. I think I've answered the
10 question. I don't know.

11 831 Q. Okay. Now, as I read your
12 affidavit, I understand you to state that the
13 revenue gained by terminating the federated
14 agreement and the Thorneloe agreement is crucial
15 to Laurentian's successful restructuring.

16 Now, you'd agree with me that you
17 don't have degree in accounting, correct?

18 A. That is correct. I have a degree
19 in biochemistry.

20 832 Q. And you're not a financial
21 analyst, correct?

22 A. I am not a certified financial
23 analyst, no.

24 833 Q. And has Laurentian done financial
25 models to see how Laurentian would operate in

1 the future if it kept the Federated Universities
2 post the LUFA and LUSU concessions that were
3 recently reached?

4 A. So I think all of our financial
5 modelling is comprised of a complex series of
6 inputs. We've talked about LUFA. We've talked
7 about LUSU. You've got the management
8 employees. You've got the federated
9 institutions plus, plus, plus a number of things
10 that I haven't mentioned. And what one needs to
11 understand is that building a sustainable
12 university going forward requires the sum of all
13 of those inputs. And, you know, it is like, you
14 know, building blocks, and if there's a block
15 missing then the whole thing doesn't work.

16 And that's what we were saying in this
17 affidavit that the sum of all the different
18 things, and we talked about it earlier as well,
19 there were questions on it, but the sum of all
20 of the different things are needed in order for
21 the university to move forward.

22 And, you know, they will have greater
23 or lesser contributions, but all are necessary.

24 834 Q. With respect, sir, that wasn't
25 responsive to my question. I asked, does

1 Laurentian have financial models to see how
2 Laurentian operated in the future if it kept the
3 Federated Universities post the LUFA and LUSU
4 concessions? Has it done that to see whether it
5 could be financially viable, given all these
6 other concessions to keep the Federated
7 Universities? Has somebody sat down to do that
8 modeling to see what that would look like?

9 A. It is not financially -- the
10 point is, it is not financially viable to keep
11 the Federated Universities in the context of all
12 of the modeling that we have done. And I think
13 I've answered the question.

14 835 Q. No, you haven't answered my
15 question. I'm asking is there modelling done to
16 see what Laurentian finances would look like,
17 how it would operate in the future if it kept
18 the Federated University?

19 A. I think the modelling that has
20 been done indicates that Laurentian is only
21 financially viable with the totality of the
22 changes that are needed. And that is an answer
23 to your question, I believe.

24 836 Q. Well, no, no, it's not.
25 I'm asking if somebody sat down and

1 plugged in saying, keeping the Federated
2 Universities post these concessions, what would
3 the financial picture look like?

4 A. People have sat down with the
5 sliding scale around all the different
6 components and moved the sliders this way and
7 that way to try to understand what a financially
8 viable institution is. And what you have at the
9 end of the day is the position that we've put
10 forward.

11 837 Q. Okay. Can I have a copy of the
12 financial modelling of what the finances would
13 look like if the Federated Universities were
14 kept in post the LUFA and LUSU concessions? Can
15 I have a copy of that?

16 MS. MILLER: We've already gone over
17 that. The objection was already previously
18 noted and I think what you've heard is that it
19 is a matrix. First of all, it's a draft. It's
20 a matrix of all of the component parts. And I
21 think we previously have registered an objection
22 on the record in terms of the draft work that's
23 been done.

24 BY MR. YIOKARIS:

25 838 Q. Fair enough. And those

1 objections also carry on to me. But I just
2 wanted to make sure that no one actually sat
3 down and did one specifically that would include
4 the Federated Universities. I kind of
5 understood his testimony, it wasn't clear to me
6 whether there was one or not, but if you're
7 objecting to it, that's fine, I will take the
8 refusal and move on?

9 MS. MILLER: Yeah, I think it was
10 previously answered.

11 BY MR. YIOKARIS:

12 839 Q. So I will take that refusal.
13 At paragraph 55 of your second
14 affidavit, Mr. Haché, if you can turn to that?

15 A. Okay.

16 840 Q. There you talk about that:
17 "Although the Federation
18 Agreements express a 'hope' that the
19 federated relationships will be
20 permanent --"

21 A. I'm sorry, you're saying
22 paragraph 55?

23 841 Q. Sorry, paragraph 155.

24 A. I'm sorry, I was at -- I was at
25 paragraph 55. Okay, I have 155 now.

1 842 Q. The second sentence there, you
2 write:

3 "[...] relationships will be
4 permanent, the parties always
5 recognized that the Federation
6 Agreements might be ended at some
7 point."

8 And then you talk about it as being an
9 aspirational goal later on in that paragraph,
10 right?

11 A. That is the way I interpret the
12 word "hope".

13 843 Q. Okay. So let's go to Exhibit P
14 of your first affidavit.

15 A. Exhibit P, that will take a
16 minute.

17 844 Q. This is the actual Federation
18 Agreement from back in 1962. And Mr. Caza
19 already went over the Federation Agreement, but
20 I just have one or two points here.

21 A. I'm just going to try and find
22 that. That would be Exhibit P, yes, I have it.
23 Thank you.

24 845 Q. And if you can turn to clause 12,
25 please?

1 A. Going down to number 12. There
2 we are.

3 846 Q. And that agreement provides:
4 "Both Laurentian University and
5 Thorneloe University declare and
6 express the firm hope and conviction
7 that the relationship between the
8 universities established by this
9 agreement will be a permanent one."
10 And a conviction, as you know, means a
11 firmly held belief, correct?

12 A. Yes, and I understand what hope
13 means as well. And we have -- the federation
14 has lasted for 60 years. That's a very long
15 time.

16 847 Q. But this is not just a hope.
17 It's a firm hope and a conviction, right?

18 A. It is. But it is a hope and a
19 conviction, yes. It is an aspirational goal, as
20 we've described.

21 848 Q. Okay.

22 A. And the aspiration was maintained
23 for 60 years.

24 849 Q. Okay. Well, let's see how you
25 described it in your first affidavit, so if you

1 can go back to your actual first affidavit at
2 paragraph 88, please?

3 A. Yes.

4 850 Q. Here you write:

5 "Laurentian and Thorneloe entered
6 into a Federation Agreement in 1962
7 [...]."

8 A. Sorry, I had the page 88, not the
9 paragraph. Apologies, it's getting late.
10 Taking me a little longer to react to these
11 things. Okay, here we are.

12 851 Q. Okay:

13 "Laurentian and Thorneloe entered
14 into a Federation Agreement in 1962
15 [...] a copy of which is attached
16 hereto as Exhibit 'P'. The
17 LU-Thorneloe Federation Agreement
18 contains a provision stipulating that
19 the relationship between Laurentian
20 and Thorneloe will be permanent, and
21 the success of the relationship is to
22 be predominantly fostered through
23 'mutual cooperation and goodwill',
24 rather than any formal agreements."
25 So here you don't mention anything

1 about hope or aspirational. You come right out
2 and say, just like the document does, that it'll
3 be permanent, correct?

4 A. I think we've just clarified by
5 looking at the original document about the firm
6 hope and conviction. I think, you know, those
7 are the -- that's very correct if the word hope
8 is missing from paragraph 88, I apologize.

9 852 Q. Okay. Well, we can agree to
10 disagree.

11 Now, back at paragraph 155 of your
12 second affidavit that we were looking at before,
13 you gave an example about why you thought it may
14 be ended one day. And one of the things that
15 you said in there was because the indentures
16 support your belief:

17 "Indentures also include specific
18 provisions for what happens to the
19 Federated Universities' Land and
20 buildings in the event that a party
21 'withdraws' from the Federation
22 Agreement."

23 Correct?

24 A. That's what is written there,
25 yes.

1 853 Q. And now if we are at Exhibit Q of
2 your first affidavit again, and here's a copy of
3 the indenture or the lease, as I'll call it,
4 with Thorneloe.

5 A. Exhibit Q, which I have.

6 854 Q. Right. Dated October 1964. If
7 you can go to clause 2. And clause 2, you'd
8 agree with me that this is a 99-year lease?

9 A. Yes. Let me say in response to
10 the lead up to this question that you said --
11 you first talked about should the withdrawal
12 from the federation occur. So I think that
13 inherently reinforces my point that while there
14 is a hope of a long-term federation, there are
15 provisions for should the federation fall apart
16 by one party or another wanting to discontinue.

17 855 Q. Sir, I haven't asked you --
18 that's not the question I asked. The question I
19 asked is with respect to the lease. You agree
20 with me that there is a 99-year lease?

21 A. I agree that there's a 99-year
22 lease and there is a provision to end the lease
23 in advance of 99 years as well.

24 856 Q. And you'd agree with me that
25 clause 5 also provides the right of renewal for

1 another 99 years, taking it to about the year
2 2161, correct?

3 A. Yes, I think it's 60, but, yes.
4 Or 63 to 61, yes. But as I said, there's also
5 clause in terms of should one want to get out of
6 the lease or should Thorneloe want to get out of
7 the lease.

8 857 Q. I'll get -- right, thank you. So
9 it's not the parties who can withdraw, but it's
10 that Laurentian may withdraw, right? That's
11 what clause 6 talks about? Your affidavit was a
12 little vague and talked about the parties
13 withdrawing, but I don't see anything in this
14 agreement referencing Laurentian being able to
15 withdraw. It just mentions Thorneloe being able
16 to withdraw, correct?

17 A. Well, it said -- it explicitly
18 indicates that while the relationship, there is
19 a hope for it to be permanent, there are
20 mechanisms in place, in this case specifically
21 should Thorneloe wish to withdraw.

22 858 Q. I'm talking about the lease.

23 A. In the lease, that's what I'm
24 saying.

25 859 Q. I'm talking about the lease right

1 now. In the -- in your affidavit, you had
2 mentioned that the lease contemplates that the
3 parties may withdraw from the federation.

4 A. It does. And I don't believe we
5 are disclaiming the lease.

6 860 Q. No, no, no, I know, but I'm
7 asking specifically about the lease. Where does
8 it say there -- where does it contemplate that
9 Laurentian may withdraw from the federation in
10 this lease document?

11 A. Okay. So I believe somewhere in
12 the lease it indicates that the lease may be
13 terminated should Thorneloe cease to meet
14 certain expectations within the lease.

15 861 Q. And none of those terminations --
16 issues of default have occurred here, right?

17 A. I didn't hear the last part,
18 sorry.

19 862 Q. That Thorneloe isn't in breach of
20 this lease, correct?

21 A. Yeah, if Thorneloe becomes in
22 breach of the lease, it may be terminated, yes.

23 863 Q. But it doesn't talk about
24 Laurentian withdrawing from the federation,
25 correct?

1 A. Well, it doesn't talk about
2 Laurentian disclaiming the federation, which is
3 what we're doing.

4 864 Q. Okay. Thank you.

5 Now, as I understand it, four DIP
6 Lenders were initially approached regarding the
7 DIP. Is that your understanding --

8 A. I think four DIP Lenders
9 originally approached us.

10 865 Q. Four DIP Lenders originally
11 approached you?

12 A. Four DIP Lenders expressed an
13 interest in potentially providing a DIP to
14 Laurentian University.

15 MS. MILLER: So that's not confusing
16 on the record, just to correct so there's no
17 confusion and you're not going down a road of
18 operating on an incorrect fact. You're talking
19 about the prefiling period in which case DIP
20 Lenders were approached by us on behalf of
21 Laurentian, not the other way around. The DIP
22 Lenders would not have known about the pending
23 CCAA filing obviously.

24 BY MR. YIOKARIS:

25 866 Q. Thank you, counsel. I'll take

1 the evidence from Mr. Haché. Unless you're
2 objecting, please -- please don't interrupt.
3 Mr. Haché said he was kept informed of all of
4 these DIP negotiations and I don't want to put
5 you in a position of being an advocate and
6 giving evidence, thank you.

7 A. Counsel is expressing it
8 correctly. And if I misstate it, then it should
9 be corrected.

10 867 Q. As far as you know, what was the
11 extent of the approach?

12 A. Well, again, I was not directly
13 involved, and so we followed advice of counsel
14 and worked through counsel.

15 MS. MILLER: I'd like to direct him to
16 his affidavit where he addresses that.

17 BY MR. YIOKARIS:

18 868 Q. That's directed at paragraph 29
19 of the first Monitor's report.

20 MS. MILLER: Well, he also swore
21 evidence on it, so perhaps you could direct him
22 to his affidavit?

23 BY MR. YIOKARIS:

24 869 Q. I don't know if he actually swore
25 evidence on that point, but I know it is in the

1 first Monitor's report.

2 A. I believe it does as well. I
3 couldn't say exactly where, but I believe it
4 does.

5 870 Q. So let's talk about what you do
6 know about this, okay? Why was this -- do you
7 know why this particular DIP Lender was selected
8 over the other three?

9 A. Because they offered the most
10 favourable terms.

11 871 Q. Okay. And, counsel, I'm assuming
12 that the objections you made before also
13 include -- because I'd like to ask for
14 undertaking to provide a copy of draft term
15 sheets and correspondence or documents relating
16 to the negotiation of the DIP and these other
17 potential DIP Lenders?

18 MS. MILLER: I think if you refer to
19 his affidavit evidence on the exact points
20 you're addressing, which are in his first
21 affidavit, paragraphs 339 to 352.

22 BY MR. YIOKARIS:

23 872 Q. I'm happy to take a break or I
24 should be done in about five minutes.

25 Counsel, I've asked for an undertaking

1 to provide a copy of any draft term sheets and
2 any correspondence or documents relating to the
3 negotiation of the DIP and these other potential
4 DIP Lenders. May I have that undertaking?

5 R/F MS. MILLER: No, that's refused.

6 BY MR. YIOKARIS:

7 873 Q. Did any of the other DIP Lenders,
8 Mr. Haché, as far as you know, expressly require
9 the termination of the federated agreement?

10 A. I have no knowledge that allows
11 me to answer that question.

12 874 Q. Okay. So at Exhibit Z, and we
13 don't have to turn to it, but at Exhibit Z of
14 your second affidavit is a loan amendment
15 agreement with the DIP Lender, dated April 19th,
16 2021.

17 Now, for the DIP extension, were the
18 three other potential lenders, referenced in
19 your first affidavit, approached or consulted?
20 Do you know if that's the case?

21 A. I believe it says -- in the first
22 affidavit it indicates that the DIP Lender has a
23 priority on additional DIP lending and counsel
24 can probably elaborate on that further.

25 875 Q. Sir, I'm saying that whenever you

1 went to get additional funding, right, because
2 Laurentian got the 25 million and you needed
3 10 million more. To get that 10 million more,
4 do you know if you ever went back to the other
5 three potential DIP Lenders?

6 A. What I'm saying is that the
7 conditions of the original DIP loan indicated
8 that the DIP had a priority on any future DIP
9 loans.

10
11 876 Q. Right. But --

12 A. That's what I know of the
13 situation.

14 877 Q. Right. But what I'm asking is,
15 if any other DIP Lenders, including these three
16 potential DIP Lenders, were consulted about this
17 additional 10 million funding? Like, were they
18 canvassed? Do you know that?

19 A. As I said, the DIP Lender that we
20 have had a priority and so I believe we went to
21 that DIP Lender first, as we were expected to
22 do.

23 878 Q. I'm not asking if you went to
24 them first. I'm asking if you consulted any of
25 the other three DIP Lenders?

1 A. I don't believe that we did. I
2 don't know the answer to the question, no. To
3 be specific, I'm not sure what the answer. I
4 don't know. I suspect not, but I don't know.
5 I'm not the person to ask that question.

6 879 Q. And when was the term mentioned
7 by the DIP Lender about the Federated
8 Universities having to be terminated? When was
9 that term first mentioned by the DIP Lender? As
10 far as you know, is that in the
11 April 19th letter?

12 A. It was -- as far as I can recall,
13 it was in the draft term sheet that I saw.

14 880 Q. And when did you see that draft
15 term sheet?

16 A. Oh, you know, it's somewhere in
17 the last two weeks. Again, specific date and
18 time, so many documents, I couldn't say for
19 sure.

20 881 Q. Okay. So somewhere in the last
21 two weeks. They certainly said it on
22 April 2019, so sometime maybe in the week before
23 that?

24 A. Well, sometime around April 19th.
25 I couldn't be more specific honestly, I'm sorry.

1 882 Q. And, counsel, just to confirm
2 that that was also covered as part of the
3 refusal, correct, the draft term sheet, as I
4 recall?

5 MS. MILLER: Is the question that you
6 want an answer to whether the first draft of the
7 term sheet for the amendment that was provided
8 by the DIP Lender included a term that related
9 to the disclaimer of the Federated University?

10 BY MR. YIOKARIS:

11 883 Q. No. My question was going to be
12 if I can have an undertaking to have a copy of
13 that draft term sheet provided about the
14 \$10 million extension. And as I understood it,
15 that was already refused. I just wanted to make
16 sure that that was encompassed by the refusal
17 that was given earlier.

18 MS. MILLER: Yes, that the refusal
19 relates to providing copies of drafts, but if
20 the question that you want to ask is whether
21 the -- you know, whether from the outset in
22 respect of the negotiation of the amendment, the
23 condition relating to the disclaimers of the
24 federated agreements was contained in there,
25 then that's a separate question.

1 BY MR. YIOKARIS:

2 884 Q. Yeah, I've already asked for all
3 the negotiations and documents with respect to
4 any DIP Lenders and that you've already told me
5 about 10 minutes ago is already refused. So I'm
6 going to continue on.

7 MS. MILLER: Well, that is refused.
8 I'm just trying to assist you by saying if your
9 question is narrower and you want to know the
10 answer to that question, then I'm -- that's a
11 different question.

12 BY MR. YIOKARIS:

13 885 Q. I've asked Mr. Haché the
14 questions I need to ask him and he's given me
15 his evidence. Thank you.

16 Did Firm Capital ever provide you, as
17 far as you know, Mr. Haché, any modelling of
18 detailed financial analysis as to why the
19 termination of the three Federated Universities
20 was essential to the extension?

21 A. I have not seen anything to that
22 effect from Firm Capital, no.

23 886 Q. Thank you. Now, paragraph -- and
24 again, this you don't have to turn to, but I can
25 tell you that paragraph 161 of your second

1 affidavit, you state Laurentian is not
2 extinguishing the right of Thorneloe and the
3 other Federated Universities to exist.

4 You would agree with me though that if
5 the agreements are terminated with Thorneloe,
6 that Thorneloe would suffer financial
7 consequences?

8 A. I imagine they would, yes.

9 887 Q. And would you also agree with me
10 that this would likely cause the bankruptcy of
11 Thorneloe?

12 A. I can't say that. I don't know
13 the inner details of the finances of Thorneloe
14 or any other plans they may have.

15 888 Q. So you wouldn't -- you don't know
16 that they would likely become bankrupt, is what
17 you're saying?

18 A. I'm saying I don't have access to
19 the information that would allow me to draw a
20 conclusion there.

21 889 Q. All right. Okay. Now, when was
22 Ernst & Young first engaged even before the
23 Monitor?

24 A. So we engaged Ernst & Young, my
25 recollection is, in September of 2020 to assist

1 us in some financial analysis of our financial
2 issues because I felt it necessary to go
3 externally.

4 890 Q. And when was the decision made to
5 file for CCAA protection?

6 A. The day before we filed.

7 891 Q. The day before you filed. So
8 you're telling me all that motion material that
9 probably took somebody weeks to prepare was done
10 in 24 hours?

11 A. No. I'm saying you asked me when
12 the decision was made and I believe we had a
13 Board meeting the day before and the Board of
14 Governors of Laurentian University, which has
15 the authority to make that decision, made the
16 decision to proceed on the eve of when we filed.

17 892 Q. Okay. And when was the decision
18 made that Laurentian would likely be pursuing a
19 CCAA? Not when it was approved by the Board,
20 but when you thought and believed that it looks
21 like we're going to have to go the route of the
22 CCAA. Like when did you have that term in your
23 head where you thought, forget about what the
24 Board approved, but where you thought, yes,
25 we're going to have to file for CCAA protection?

1 A. I would say pretty much at the
2 same time. We were investigating all
3 possibilities for a resolution. CCAA was not a
4 decision of no choice or no other choice.

5 893 Q. So you're saying that in your
6 head that you didn't make up the decision to
7 file for CCAA, but that was likely what was
8 going to happen, until the day before the filing
9 happened? That you prepared all this detailed
10 material and in your head it was still, I'm not
11 sure if we're going to file until the day
12 before?

13 A. Well, it was, you know, one has
14 to do one's preparations, but as I said, we were
15 investigating all possible ways not to go down
16 this pathway. And, you know, it is the sort of
17 thing that at the 11th hour you realize there is
18 no other way.

19 894 Q. So you instructed counsel and you
20 instructed Ernst & Young to do all this
21 preparatory work, which cost a substantial
22 amount of money, and you still weren't sure up
23 until the day before filing?

24 A. I mean, the -- we're always
25 hoping and trying to -- we were trying to avoid

1 this right up until the end, yes, but that
2 doesn't say, you know, you don't prepare. You
3 do prepare, but you also try and find any other
4 eventuality that -- any other path forward that
5 you can because this is not a desirable path.
6 This is a path of no choice.

7 895 Q. Okay. Well, let me the phrase it
8 this way, when did you think the CCAA was
9 probable? Not --

10 MS. MILLER: I think he's answered the
11 question a couple of times.

12 BY MR. YIOKARIS:

13 896 Q. Okay. If that's his answer to
14 the question, that's his answer. Okay. Those
15 are my questions, subject to answers to
16 undertakings and refusals.

17 I just want to be clear that the
18 number of objections that Mr. Caza had said
19 particularly with respect to the DIP
20 documentation and refusal to produce documents,
21 we reiterate and support full, whole, all of
22 those. Thank you.

23 MS. MILLER: And I want to ask the
24 reporter if we could impose on you, I know it's
25 going to take some time even on an expedited

1 basis to turn around the transcript, would it be
2 possible to get a list of the under advisements
3 and undertakings and refusals so that counsel
4 for the parties could review those as quickly as
5 possible and see if we can't advance those as
6 quickly as possible.

7 --- Whereupon the examination was
8 completed at 4:38 p.m.

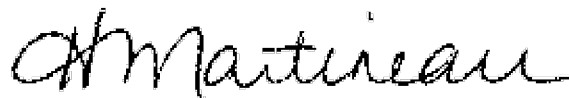
REPORTER'S CERTIFICATE

I, HELEN MARTINEAU, CSR, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were
taken before me at the time and date therein set
forth at which time the witness was put under
oath by me;

That the testimony of the witness and
all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
accurate transcript of my shorthand notes so
taken. Dated this 24th day of April, 2020.



PER: HELEN MARTINEAU
CERTIFIED SHORTHAND REPORTER

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TAB 1(B)

Cross-Examination of Dr. Robert Haché Held Virtually via Neesons on April 23, 2021

Item	Pg./Q.	Type UT/UA/R	Description	Answer
1	189-190 Q. 498	UT	To respond to any questions regarding the Cash Flow Forecast, once filed.	The Cash Flow Forecast will be attached as an Appendix to the Monitor's Report, which we understand is being served some time today. If there are any questions once the Cash Flow Forecast is served, we will provide answers in writing or will make Dr. Haché available for a further brief cross-examination on the Cash Flow Forecast. The Monitor has assisted the Applicant with the Cash Flow Forecast and we anticipate that the Monitor will also be available to the parties to respond to any inquiries.
2	190 Q. 499	UA	To respond to any questions regarding the multi-year forecast, if filed in respect of the motion.	Laurentian is not filing any multi-year forecast on this motion, and to date only a <u>draft</u> of same exists. A document that summarizes the current estimated impact of Laurentian's draft multi-year forecast has been prepared, and will be attached as an Appendix to the Monitor's Report. We understand that the Monitor's Report will be served some time today.

Item	Pg./Q.	Type UT/UA/R	Description	Answer
3	191 Qs. 500-501	UA	To (i) provide a multiyear budget if it has been provided to the DIP Lender; and (ii) to advise if it has been provided to the DIP lender.	As set out above, only a <u>draft</u> multiyear budget has been prepared and the draft was provided to the DIP Lender. It is not in evidence, is not being relied on in support of the relief sought by Laurentian, or in opposition to the motions brought by Thorneloe or the University of Sudbury. The document referenced above which will be attached as an Appendix to the Monitor's Report will address this point.
4	254-255 Q. 660	UA	To provide a document summarizing the financial value of the savings Laurentian was able to obtain that flow from the successful negotiations with the labour partners (LUFA and LUSU), on a best-efforts basis.	The document referenced above which will be attached to the Monitor's Report will address this point.
5	255-256 Q. 662	UT	If Laurentian is not able to provide the information relating to the financial value of the cost savings, to give a short explanation as to why.	Answered, as above.
6	288 Q. 749	UA	The request to produce a copy of the email from Jonathan Mair if it was different than as described by D.J. Miller on the record in lines 14-20 of page 287 of the transcript was taken under advisement.	The request that was taken under advisement has been overtaken by the University of Sudbury making a request of the Monitor (pursuant to the Endorsement of Chief Justice Morawetz dated April 21, 2021) which has been relayed to the DIP Lender. Accordingly, the DIP Lender will be providing its response.

TAB 1(C)

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**

**REFUSALS AND UNDERTAKINGS CHART
CROSS-EXAMINATION FOR DISCOVERY OF ROBERT HACHÉ, HELD APRIL 23, 2021
(ONLY LISTS THOSE REFUSALS NOT RESPONDED TO BY LAURENTIAN)**

ONLY LISTS THOSE REFUSALS NOT RESPONDED TO BY LAURENTIAN AFTER THE CROSS-EXAMINATIONS

Refusals						
Refusals to answer questions on the cross-examination of Robert Haché ("Haché") dated April 23, 2021						
	Issue & relationship to pleadings or affidavit (Group the questions by issues.)	Q. No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
1.		115	38	To allow Haché to access the information as to how much was spent on professional fees, and to produce same. Despite going to court asking for \$10 million more in DIP funds, Haché, the Rector of LU, did not know how much had been spent on professional fees, or how much of the \$25 million DIP loan previously advanced was drawn to pay for professional service fees. He expects it would be more than a million dollars. When it was put to him that the amount spent is actually in excess of \$5 million or more than 20% of the \$25 million, he could not confirm same. Haché believed he had access to the amount spent in professional fees (as he received an email with an update from last week and downloaded same). Despite that, Laurentian refused to allow Haché to access that information. (see generally, pg. 33-45, q. 95-125)	[No response provided by Laurentian after cross-examinations.]	

2.		519	198	To produce all correspondence between Laurentian and its lawyers (or the Monitor) that were exchanged with the DIP Lender or any of its representatives. Other than the written term sheet produced, there has been no direct communication between Haché and the DIP Lender. Communications have all gone through counsel. He has not spoken to the DIP Lender via zoom or the telephone, does not believe he has exchanged emails directly with the DIP Lender, and does not believe he has seen emails exchanged between Laurentian's lawyer and the DIP Lender. Despite this, Laurentian refused to produce any correspondence between Laurentian's lawyers (or the Monitor) exchanged with the DIP Lender or any of its representatives. (see generally, p. 196-199, q 510-519, and p 289, q 752)	[Not provided. See also "Laurentian's Position on Responses to Thorneloe's Questions for the DIP"]	
3.		749	288	To produce a copy of the correspondence from Jonathan Mair of the DIP Lender supporting Haché's evidence at paragraph 189 of his second affidavit that Jonathan Mair made clear to him that the Agreements with the Federated Universities must be terminated by May 1, 2021. At paragraph 189 of his second affidavit, Haché writes "I am advised by Jonathan Mair of the DIP Lender, and do verily believe, that the DIP Lender has made clear that the satisfaction of this Condition to Funding is essential to the DIP Lender's willingness to advance further funds under the Amended DIP Facility." At his cross-examination, Haché confirmed that there has been no direct communication between himself and the DIP Lender. Communications have all gone through counsel. He has not spoken to the DIP Lender via zoom or the telephone, does not believe he has exchanged emails directly with the DIP Lender.	[See April 21, 2021 email sent at 10:40 a.m.]	

				Further, at pages 197-198, question 518, Haché indicated that he does not believe he has seen emails exchanged between Laurentian's lawyer and the DIP Lender. Despite that evidence, Haché later on in his cross-examination indicated that he also believes that Jonathan Mair of the DIP Lender wrote a letter to him through counsel confirming the evidence at paragraph 189 of his second affidavit. (see generally, p 286-288, q 744 to 749; and p. 196-199, q 510-519; and p 289, q 752)		
4.		871-873	335-336	To produce a copy of any and all draft term sheets and correspondence and documents relating to the negotiation of the original DIP, including the conditions, and the new conditions for the amended DIP. As indicated in Haché's First Affidavit and the Monitor's First Report, Laurentian's counsel approached four potential DIP Lenders regarding providing a DIP Loan. Haché did not know if the other DIP Lenders expressly required the termination of the Federated Agreements.	[Not provided. See also "Laurentian's Position on Responses to Thorneloe's Questions for the DIP"]	
5.		871-873	335-336	To produce a copy of any and all draft term sheets and correspondence and documents relating to the negotiation of the DIP, with any other potential DIP Lenders, including the three referenced in the material. As indicated in Haché's First Affidavit and the Monitor's First Report, Laurentian's counsel approached four potential DIP Lenders regarding providing a DIP Loan. Haché did not know if the other DIP Lenders expressly required the termination of the Federated Agreements.	[Not provided. See also "Laurentian's Position on Responses to Thorneloe's Questions for the DIP"]	

April 28, 2021

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

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

REFUSALS AND UNDERTAKINGS CHART

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Laurentian CCAA

John Gibaut
on Friday, April 23, 2021



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1 Court File No. CV-656040-00CL
2 ONTARIO
3 SUPERIOR COURT OF JUSTICE
4

5 (COMMERCIAL LIST)
6

7 IN THE MATTER OF THE COMPANIES' CREDITORS
8 ARRANGEMENT ACT, R.S.C. 1985, c. C-36,
9 AS AMENDED
10

11 AND IN THE MATTER OF A PLAN OF COMPROMISE OR
12 ARRANGEMENT OF LAURENTIAN UNIVERSITY OF SUDBURY
13 Applicant
14

15 -----
16

17 --- This is the Cross-examination of JOHN
18 GIBAUT taken by Neesons, a Veritext Company, via
19 Zoom virtual platform, on the 23rd day of April,
20 2021.
21

22 -----
23

24 REPORTED BY: Helen Martineau, CSR
25

A P P E A R A N C E S:

D.J. MILLER, Esq., for the Applicant
& ANDREW HANRAHAN, Esq.,
& FRASER HUGHES, Esq.

ANDRÉ CLAUDE, Esq. for University
& RON CAZA, Esq. of Sudbury

PETER J. OSBORNE, Esq. for the Board of
Governors of
Laurentian
University of
Sudbury

EUGENE MEEHAN, Q.C. for Thornloe
& DEMETRIOS YIOKARIS, Esq. University
& ANDREW J. HATNAY, Esq.

ASHLEY JOHN TAYLOR for the Monitor

Also Present:

Sharon Hamilton (Court-appointed Monitor of the
Applicant), Sara Kunto

I N D E X

PAGE

WITNESS: JOHN GIBAUT

Cross-examination by Mr. Hanrahan.....6

The following list of undertakings, advisements
and refusals is meant as a guide only for the
assistance of counsel and no other purpose.

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by
U/T and appear on the following page/line:
NONE.

INDEX OF ADVISEMENTS

The questions/requests taken under advisement
are noted by a U/A and appear on the following
page/line: 6/10; 63/3.

INDEX OF REFUSALS

The questions/requests refused are noted by R/F
and appear on the following page/line: 14/17;
27/6; 55/25.

INDEX OF EXHIBITS

NO./	DESCRIPTION	PAGE
1	Article entitled "Despite senate rulings, there's no money to restart cancelled Thorneloe programs, president says", published by Sudbury.com, May 26. 2020.	67

1 --- Upon commencing at 7:24 p.m.

2 MS. MILLER: My objection on the
3 record is to having Pierre Riopel, the president
4 of the University of Sudbury who is being
5 deposed at 9:00 a.m. tomorrow, sitting in and
6 attending on this cross-examination of
7 Mr. Gibaut, the president of Thorneloe. I have
8 put that objection on the record, and I maintain
9 that objection.

10 And my objection includes, you know,
11 relaying to the deponent, who is being
12 cross-examined tomorrow at 9, the evidence
13 that's given in this cross-examination of
14 Mr. Gibaut this evening.

15 MR. CLAUDE: I'm not going to dwell on
16 this all evening. I certainly will sit in on
17 this cross-examination. To the extent where
18 Mr. Yiokaris, it may prejudice your
19 cross-examination -- well, not your
20 cross-examination but the cross-examination of
21 your witness, we don't want to create
22 unnecessary conflict.

23 I certainly don't see what you're
24 talking about. I hear your point, but anyway on
25 that basis, unless somebody insists otherwise,

1 Pierre Riopel.

2 [Speaking French]

3 I just told the witness -- not the
4 witness but Pierre Riopel, that he should
5 disconnect from this call.

6 MS. MILLER: Thank you. And I assume
7 that the second part of my request is also
8 respected in terms of the relaying of
9 information from the examination this evening?

10 U/A MR. CLAUDE: I'll take that under
11 advisement.

12 MS. MILLER: Thank you.

13 JOHN GIBAUT: AFFIRMED.

14 CROSS-EXAMINATION BY ANDREW HANRAHAN:

15 1 Q. Evening, Mr. Gibaut.

16 A. Good evening Mr. Hanrahan.

17 2 Q. Is it mister or doctor?

18 A. Doctor.

19 3 Q. Dr. Gibaut, thank you for joining
20 us at 7:30 on a Friday night.

21 So you understand that you're here to
22 answer questions regarding affidavits that you
23 swore on April 19th in support of Thorneloe's
24 motion opposing the disclaimers that were -- or
25 opposing the disclaimer that was delivered by

1 Laurentian University?

2 A. Yes, I do.

3 4 Q. And do you have a copy of your
4 affidavit in front of you today?

5 A. Yes, I do.

6 5 Q. And did you have a chance to
7 review the affidavit again before you appeared
8 here today?

9 A. Yes, I did.

10 6 Q. And were there any changes or
11 corrections that you wanted to make to the
12 affidavit?

13 A. No, I don't think so. No.

14 7 Q. You stand by the contents of your
15 affidavit today?

16 A. I do.

17 8 Q. And you've been sworn to tell the
18 truth today?

19 A. Yes.

20 9 Q. Okay. If we could just turn to
21 page 23 of your affidavit, and that's your
22 signature on that page?

23 A. It is.

24 10 Q. Thank you. And did your lawyer
25 draft your affidavit?

1 A. In collaboration with me, yes.

2 11 Q. So your lawyered drafted it and
3 you reviewed it and provided comments?

4 A. Correct.

5 12 Q. Do you also have a copy of
6 Thorneloe's Motion Record in front of you?

7 A. Yes.

8 13 Q. And do you have both the original
9 Motion Record from April 15th and the
10 Supplemental Motion Record from April 19th?

11 A. Supplemental is my affidavit, I
12 believe.

13 14 Q. Correct.

14 A. Yes.

15 15 Q. Actually it's your affidavit and
16 the affidavit of Mr. Nackan although we won't be
17 referring to that today, I don't think.

18 Dr. Gibaut, you're a priest in the
19 Anglican Diocese of Ottawa, is that right?

20 A. That's correct, and I serve
21 currently under the license of the Archbishop of
22 Algoma where Sudbury is.

23 16 Q. And you have a directorate in
24 theology from the University of Trinity College?

25 A. Correct.

1 17 Q. And what year did you obtain
2 that?

3 A. I graduated in 1994.

4 18 Q. And do you have any other
5 post-secondary degrees?

6 A. Yes, I have a Master's degree and
7 I have a Bachelor's Degree, all -- both from the
8 University of Toronto as well.

9 19 Q. And what are those degrees in?

10 A. My undergraduate was a degree in
11 history with an area of medieval, and my master
12 was a Master of Divinity from Trinity College in
13 the University of Toronto.

14 20 Q. You are currently the president
15 of Thorneloe University?

16 A. Correct.

17 21 Q. And you were appointed to that
18 position by the Thorneloe Board of Governors?

19 A. Correct.

20 22 Q. And how did you come to be
21 appointed president of Thorneloe?

22 A. I was approached in the summer of
23 2018 by the chair of the selection committee, so
24 I was approached directly by Thorneloe to
25 consider my candidacy.

1 23 Q. Did you know the chair of the
2 selection committee?

3 A. No, I didn't.

4 24 Q. And how was it that they came to
5 approach you?

6 A. I have no idea.

7 25 Q. They reached out out of the blue?

8 A. Well, they probably reached out
9 people who knew people who would have the
10 experience for this kind of position.

11 26 Q. Okay. And was that June 2019
12 that you were appointed president of Thorneloe?

13 A. First of June 2019, correct.

14 27 Q. And you weren't employed by
15 Thorneloe in any capacity before that?

16 A. No.

17 28 Q. So, Dr. Gibaut, it's accurate to
18 say Laurentian and Thorneloe have been in a
19 federation since 1962, correct?

20 A. Correct.

21 29 Q. And that arrangement is pursuant
22 to a Federation Agreement that was signed
23 between Laurentian and Thorneloe?

24 A. Correct.

25 30 Q. And that agreement was signed in

1 1962?

2 A. Yes, it was.

3 31 Q. And you told me a few minutes ago
4 that you joined Thorneloe for the first time in
5 2019, correct?

6 A. Correct.

7 32 Q. So obviously you weren't at
8 Thorneloe when that agreement was signed?

9 A. In 1962?

10 33 Q. Correct.

11 A. No, I was four years old.

12 34 Q. Fair enough. So you'd agree with
13 me that other than reading the words of the
14 agreement, you don't have any personal knowledge
15 as to what the parties intended in the
16 Federation Agreement?

17 A. There is a very good history that
18 I have right in front of me done ten years about
19 the history of Laurentian. That book was given
20 to me long before I started. That was a very
21 important -- that was an important source for me
22 to know.

23 I am a historian, as I mentioned
24 earlier, and one of the things I certainly had
25 done since I have been there is gone through all

1 sorts of documents and talked to people; talked
2 to people in the community, talked to people who
3 are graduates, listened to my colleagues.

4 35 Q. And the book you referred to,
5 what book is that?

6 A. This is a book for the
7 50th anniversary of Laurentian University,
8 called "Laurentian University: A History".

9 36 Q. And does that book talk about the
10 Federation Agreement?

11 A. It does indeed. It talks
12 about -- yes, it does.

13 37 Q. I would like to turn to your
14 affidavit, turn to paragraph 17. Paragraph
15 17 -- sorry, are you there?

16 A. Yes.

17 38 Q. In paragraph 17 you say:
18 "Thorneloe's Federation
19 Agreement, entered into in 1962,
20 states the intention to be bounded
21 into a permanent federation
22 arrangement:"

23 Do you see that?

24 A. I do.

25 39 Q. And then you quote -- in that

1 same paragraph you quote from paragraph 12 of
2 the Federation Agreement, and that quote
3 includes the language:

4 "Both Laurentian University and
5 Thorneloe University declare and
6 express the firm hope and conviction
7 that the relationship between the
8 Universities established in this
9 agreement will be a permanent one
10 [...]."

11 Do you see that?

12 A. Yes, I do.

13 40 Q. You'd agree with me that
14 expressing a hope to do something is not the
15 same as expressing an agreement to do something,
16 correct?

17 A. I'm not sure. This was a signed
18 agreement, so it's more than just aspirational
19 if it's signed.

20 41 Q. Well, they -- when they signed
21 the agreement you're agreeing to the words on
22 the page, right?

23 A. Hmm.

24 MR. YIOKARIS: And, counsel, in
25 fairness to the witness, it says "firm hope and

1 conviction". It just doesn't say a hope.

2 MR. HANRAHAN: Right. I'm just asking
3 about the word "hope" right now.

4 MR. YIOKARIS: Sorry, I thought you
5 were quoting the section.

6 BY MR. HANRAHAN:

7 42 Q. So "hope" and "agreeing" are two
8 different concepts, right?

9 A. I think "hope" is about
10 intention. It's not the same as the word
11 "wish".

12 43 Q. If I asked two friends to dinner
13 and one of them says, I hope to be there and one
14 of them says, I agree I'll be there, my
15 expectations about what those two friends are
16 going to do would be different right?

17 R/F MR. YIOKARIS: I'm not going to let
18 him answer questions about hypotheticals or
19 about friends you had over for dinner.

20 MR. HANRAHAN: Well, I don't think
21 it's a hypothetical in the sense of putting it
22 to an expert. I am asking him for his
23 understanding of these terms.

24 MR. YIOKARIS: Yes, and you can ask
25 him what he understands those words to mean, and

1 he has answered that so you can ask him again if
2 you like.

3 MS. MILLER: This is a
4 cross-examination. He doesn't have to ask him
5 open-ended questions. He can ask whatever he
6 likes.

7 MR. MEEHAN: That's not the case. He
8 cannot ask whatever he likes. That is
9 absolutely not true.

10 MS. MILLER: Maybe you can refer to
11 Mr. Caza's statements on the record earlier
12 today.

13 MR. MEEHAN: We're dealing with this
14 witness.

15 MR. YIOKARIS: You have our position
16 on the question about Mr. Hanrahan's two friends
17 at dinner that we're not going to be answering
18 that question. But you are free to ask other
19 questions about his understanding of the word
20 "hope" in this context.

21 BY MR. HANRAHAN:

22 44 Q. Let's do that. Why don't we pull
23 up the Federation Agreement, which is Exhibit A
24 to the Edmond's affidavit which is in the
25 April 15th Motion Record.

1 Just let me know when you have it in
2 front of you.

3 A. I do.

4 45 Q. Talking generally for a second,
5 this is the Federation Agreement between
6 Laurentian and Thorneloe. Are you familiar with
7 this agreement?

8 A. I am.

9 46 Q. You've reviewed it before?

10 A. Yes.

11 47 Q. And you reference it in your
12 affidavit, correct?

13 A. Yes.

14 48 Q. Okay. Now, why don't we turn to
15 paragraph 3 of the Agreement.

16 MR. YIOKARIS: What tab is that
17 agreement at again?

18 MR. HANRAHAN: That is tab -- Exhibit
19 A to the Edmond's affidavit.

20 MR. YIOKARIS: Thank you.

21 BY MR. HANRAHAN:

22 49 Q. So looking at paragraph 3, we
23 start at the beginning of the paragraph there,
24 it says:

25 "Laurentian agrees to continue

1 all its faculties, schools,
2 institutes, departments and chairs now
3 established in accordance with the
4 provisions of the Act of Incorporation
5 of Laurentian University, and
6 Thorneloe University shall be entitled
7 to give instruction in Theology and
8 Philosophy in accordance with the Acts
9 of Incorporation of Laurentian
10 University and Thorneloe University."

11 Do you see that?

12 A. I do.

13 50 Q. And you'd agree with me that this
14 paragraph is an important component of the
15 Federation Agreement, right?

16 A. Yes.

17 51 Q. And in this case, in this
18 important provision in the Agreement, the
19 parties used language "agree", didn't they?

20 A. They do.

21 52 Q. They say, "Laurentian University
22 agrees to do this", and "Thorneloe University
23 shall be entitled to give instruction."

24 Do you see that?

25 A. Yes.

1 53 Q. And that's different than the
2 language we looked at in paragraph 12, correct?

3 A. It is.

4 54 Q. Why don't we look at paragraph 8?
5 Paragraph 8 says:

6 "Laurentian University shall
7 allocate and reserve land within its
8 campus that Thorneloe university may
9 acquire and upon which Thorneloe
10 University may construct buildings for
11 teaching, administration, and faculty
12 and students residences, with or
13 without chapels, subject to the prior
14 written approval of Laurentian
15 University as to architectural design
16 and upon such financial arrangements
17 and conditions as to title and tenure
18 as may be agreed upon between
19 Thorneloe University and Laurentian
20 University."

21 And you agree with me that this is
22 also an important provision of the Federation
23 Agreement?

24 A. Yes.

25 55 Q. And here the parties have used

1 the language "Laurentian University shall",
2 right?

3 A. Uhm-hmm.

4 56 Q. And again that's different than
5 the language that they've used in paragraph 12,
6 which refers to expressing a hope and
7 conviction, correct?

8 A. I think the language is "firm
9 hope and conviction".

10 57 Q. Fair enough.

11 A. And they declared it and express
12 it.

13 58 Q. But that's different than someone
14 saying that you shall do something, correct?

15 A. It's a different kind of a
16 paragraph. It's function within the document is
17 very different than the preceding paragraphs.

18 59 Q. When you say it's functionally
19 different, what do you mean by that?

20 A. It's the final paragraph leading
21 to the signatures.

22 60 Q. And why would that affect the
23 words that are chosen in the agreement?

24 A. I don't understand your question.

25 61 Q. Well, I was just trying to

1 understand the distinction that you were making
2 between the language used in paragraph 8 and
3 paragraph 12.

4 A. The previous paragraphs you're
5 looking at specific issues. The 12 -- that
6 final paragraph is looking at a relationship and
7 the quality of the relationship.

8 62 Q. Do you agree with me that the
9 language "shall do something" is more definitive
10 than expressing a hope and conviction?

11 A. No.

12 63 Q. Well, "shall" indicates that
13 someone will do something and is required to do
14 something, right?

15 A. Not necessarily. They would have
16 used the word "require" or "will". "Shall" is
17 also another form of future tense.

18 64 Q. The implication of "shall" is
19 that something will be done, right?

20 A. I would say the same thing is the
21 true about when one declares and expresses firm
22 hope and conviction. I don't see the difference
23 in language.

24 65 Q. Okay. Well, we may have to agree
25 to disagree on that concept, but I will move on.

1 You'd agree with me that when the
2 parties wrote this we can assume that they chose
3 the words that they used in the agreement with
4 purpose, right?

5 A. I'm sorry, I missed your last
6 words.

7 66 Q. You would agree with me that when
8 the parties wrote this agreement they would have
9 chosen their words with purpose, right?

10 A. I would expect they would have,
11 yes.

12 67 Q. Now, in addition to the
13 Federation Agreement, Laurentian and Thorneloe
14 also have an Indenture Agreement, right?

15 A. Yes.

16 68 Q. And pursuant to that indenture
17 agreement, Thorneloe leases land to -- leases
18 land from Laurentian, correct?

19 A. Correct.

20 69 Q. Let's pull that up. I don't know
21 if the witness has that available to him.

22 A. I don't have it available. I've
23 seen it. I don't have it available.

24 70 Q. Counsel, if you can pop it up on
25 the screen?

1 -- OFF-THE-RECORD DISCUSSION --

2 BY MR. HANRAHAN:

3 71 Q. Do you have it open?

4 A. I do.

5 72 Q. Okay, so Dr. Gibaut you now have
6 the document in front of you?

7 A. Yes, 26th of October, 1964.

8 73 Q. And do you recognize the
9 document?

10 A. I do. It's been a while since
11 I've seen it, but I recognize it.

12 74 Q. You have seen it before though?

13 A. Yes.

14 75 Q. So this is the indenture we were
15 referring to earlier between Laurentian and
16 Thorneloe?

17 A. Uhm-hmm.

18 76 Q. Sorry, just for the reporter's
19 benefit, you just have to use yes or no so she
20 can get it on the transcript.

21 A. Yes, yes. Thank you for that.
22 Yes.

23 77 Q. So this indenture sets out the
24 terms by which Thorneloe leases land from
25 Laurentian, correct?

1 A. Correct.

2 78 Q. And similar to the Federation
3 Agreement, this document being from the 1960s,
4 as we discussed earlier you were not at
5 Thorneloe when the document was signed, correct?

6 A. Yes, I was not there.

7 79 Q. So I'd like to just take you to
8 paragraph 6 in the agreement, which is on the
9 second page. And if you look at paragraph 6 it
10 says:

11 "Provided that this lease and any
12 renewal thereof shall, at the option
13 of the lessor, cease and be void if at
14 any time during the term hereby
15 granted the lessee shall withdraw from
16 the federation with the lessor."

17 Do you see that?

18 A. Uhm-hmm.

19 80 Q. So you would agree with me that
20 this provision says that the lease can be void
21 if Thorneloe withdraws from the federation,
22 correct?

23 MR. YIOKARIS: Counsel, I'm not going
24 to let him opine on the interpretation of
25 documents. These are legal interpretations.

1 He hasn't attached it as an exhibit to
2 his affidavit, nor do I believe he has, in his
3 affidavit, put an interpretation of this
4 document. So unless you can pinpoint me in the
5 affidavit where he has given an interpretation
6 of this document, I'm not going to allow him to
7 opine on a legal interpretation.

8 MR. HANRAHAN: Sorry, I'm not asking
9 for his legal interpretation of the document.
10 I'm just asking him to tell me how he reads this
11 document, and it doesn't have to be something
12 that is referenced in his affidavit. I can put
13 this to him. He said he is familiar with the
14 agreement and he's seen it before. I can ask
15 questions of him.

16 MR. YIOKARIS: I just don't want him
17 to be giving any interpretations about this
18 particular document. But, sorry, please, what
19 was your question?

20 BY MR. HANRAHAN:

21 81 Q. My question was just, would you
22 agree that this provision says that the lease
23 can be void if Thorneloe withdraws from the
24 federation? Which I think is what the words on
25 the page say.

1 MR. YIOKARIS: Well, it says what it
2 says.

3 BY MR. HANRAHAN:

4 82 Q. Right. So I'm asking him if he
5 sees that provision and he reads that provision?

6 MR. MEEHAN: But the provision says a
7 lot more than that, with respect. It doesn't
8 just say that.

9 MR. HANRAHAN: I'm not sure what you
10 mean by that.

11 MR. MEEHAN: Well, read the provision
12 out and you'll see that it says more than what
13 you say it says. Just as before, you were
14 quoting to him the word "hope" and omitting the
15 word "firm" and "conviction", please quote the
16 whole part that is here. Please be fair to this
17 witness.

18 MR. HANRAHAN: I'm happy to have the
19 witness read the whole paragraph. I don't think
20 it's relevant to my question, but if he'd like
21 to read it he can do that. I didn't read it
22 because it's not relevant to what I'm asking him
23 about.

24 83 Q. Dr. Gibaut, would you agree with
25 me that this provision refers to the lease being

1 voided if Thorneloe withdraws from the
2 federation?

3 A. That's what it says, yes.

4 84 Q. So in other words, this agreement
5 is explicitly contemplating that there might be
6 a scenario where the Federation Agreement
7 between Laurentian and Thorneloe comes to an
8 end, correct?

9 A. I don't know. I would have to
10 compare it to other forms of legal contracts
11 like a marriage, which is intended, but there
12 are also other things that stipulate if such a
13 marriage contract should dissolve. There is
14 this permanency and there is a clause like this.

15 85 Q. I'm not sure that you would have
16 to consult any other documents. This document
17 talks about a scenario where the lease could be
18 voided if Thorneloe withdraws from the
19 federation. We disagreed on that proposition,
20 and if --

21 MR. YIOKARIS: No. Hold on. He
22 agreed that the document says what it says.
23 Again, I'm not going to allow him to be
24 interpreting and giving what is tantamount to a
25 legal interpretation of a document. It says

1 what it says.

2 BY MR. HANRAHAN:

3 86 Q. Well, I disagree that it requires
4 a legal interpretation. I mean, are you
5 refusing the question?

6 R/F MR. YIOKARIS: Yes.

7 BY MR. HANRAHAN:

8 87 Q. Dr. Gibaut, there is a Financial
9 Distribution Notice that is in effect between
10 Laurentian and Thorneloe, correct?

11 A. Correct.

12 88 Q. And you may or may not want to
13 have it in front of you when I ask the
14 questions, but you're welcome to. It is Exhibit
15 C to the Edmond's affidavit.

16 And the Financial Distribution Notice
17 sets out the terms for the distribution of
18 operating grants and tuition from Laurentian to
19 Thorneloe, correct?

20 A. Wrong document.

21 89 Q. Sure, take your time if you need
22 a minute.

23 A. I have the document.

24 90 Q. Have you seen it before?

25 A. Yes, I have.

1 91 Q. You're familiar with it?

2 A. Yes, I am.

3 92 Q. And so my question from a moment
4 ago was, this notice sets out the terms for the
5 distribution of operating grants and tuition
6 from Laurentian to Thorneloe, correct?

7 A. Yes, it does.

8 93 Q. And so this agreement has been in
9 effect since May 1st, 2019?

10 A. Can I ask a question?

11 94 Q. Sure.

12 A. This is not an agreement.

13 There's only one signature on this -- on this
14 funding formula.

15 95 Q. Well, that may be getting into
16 the legal questions that your counsel wanted to
17 avoid earlier so I can rephrase it, if you like.

18 This document has been in effect since
19 May 1st, 2019, correct?

20 A. Correct.

21 96 Q. And I think we discussed earlier
22 that you had become president of Thorneloe in
23 June, June 1st, 2019?

24 A. That's correct.

25 97 Q. So when you became president of

1 Thorneloe, this Financial Distribution Notice
2 was already in effect?

3 A. Yes, it was.

4 98 Q. And I would like to just turn to
5 paragraph 20 of your affidavit. Just let me
6 know as soon as you're there.

7 A. I'm there. What paragraph?

8 99 Q. Paragraph 20.

9 A. On page 20, yeah.

10 100 Q. No, I'm sorry, paragraph
11 number 20, page 9. Paragraph 20.

12 A. (Witness reading the document.)
13 Yes.

14 101 Q. So in paragraph 20 of your
15 affidavit you say:

16 "[...] Laurentian unilaterally
17 revised the terms of the agreements
18 but the Federated Universities without
19 proper re-negotiation by all parties."

20 A. Yes.

21 102 Q. And this is referring to the
22 Financial Distribution Notice replacing the
23 previous funding agreement from 1993, correct?

24 A. Correct.

25 103 Q. Now, since we just established a

1 moment ago that you weren't at Thorneloe when
2 the Financial Distribution Notice went into
3 effect, what is your basis for that statement?

4 A. Well, I arrived a month after it
5 was in place. It was the major topic on the
6 table of the Board of Governors, of the
7 Executive Committee. It was -- our Board of
8 Governors had been -- had been in discussion
9 with Laurentian trying to stop this.

10 So this is very much listening to the
11 members of our governance bodies, senior
12 administrators. It was very fresh in people's
13 minds and memories.

14 104 Q. So when you say in paragraph 20
15 that this was done:

16 "[...] without proper
17 renegotiation by all parties."

18 That's based on what other people
19 have told you because you weren't actually at
20 Thorneloe when this happened?

21 A. Correct.

22 105 Q. And who specifically did you
23 speak to about it?

24 A. I spoke to our chair of the Board
25 of Governors. I spoke with other federated

1 leaders, senior staff within -- within
2 Thorneloe.

3 My principal sources of information
4 though would have been from the Executive
5 Committee of Thorneloe and the Board of
6 Governors.

7 106 Q. And what specifically do you
8 recall from those conversations?

9 A. I recall the frustration of not
10 being able to negotiate something together. I
11 recall the frustration of the Laurentian not
12 dealing with the three federated partners
13 together but separately.

14 I remember there being no transition
15 from the earlier formula to the present formula,
16 that it was a decision of the Laurentian Board
17 of Governors. It was made in-camera after some
18 hours of conversation.

19 107 Q. Anything else you remember?

20 A. Like what sort of thing are you
21 looking for?

22 108 Q. Just any details they might have
23 told you about this notice and its coming into
24 effect?

25 A. I think it marked for our

1 governance bodies a low point in the
2 relationship with Laurentian. It was something
3 imposed upon us, not discussed with us.

4 109 Q. So when you had these
5 conversations, of all the people that you spoke
6 to, none of them mentioned that there were
7 meetings between senior leaders at Laurentian
8 and Thorneloe to discuss the changes being made
9 before this went into effect?

10 A. There were conversations about
11 that. I don't recall anyone talking about any
12 changes that were to be made.

13 110 Q. What do you understand those
14 conversations were about?

15 A. I don't know.

16 111 Q. You just know that there were
17 discussion about something between Thorneloe and
18 Laurentian?

19 A. Yes. What I do know -- well, I
20 remember members of the Board trying to object
21 to the formula that was proposed. I remember
22 that as being topics of meetings but those were
23 hardly negotiations.

24 112 Q. And it's fair to say that both
25 Laurentian and Thorneloe have been operating

1 under the terms of this agreement since
2 May 2019, right?

3 A. We have indeed, yes.

4 113 Q. If we just look for a second back
5 to the Financial Distribution Notice, if you
6 could just turn to schedule B, if we look at the
7 second paragraph it says:

8 "All tuition revenue collected
9 from students for course registrations
10 at Federated Universities are
11 transferred by Laurentian University
12 to the recipient net of tuition set
13 aside."

14 Do you see that?

15 A. Yes.

16 114 Q. And so that's referring to the
17 transfer of tuition funds from Laurentian to
18 Thorneloe, correct?

19 A. Correct.

20 115 Q. Dr. Gibaut, is it fair to say
21 students taking programs offered through the
22 Federated Universities are Laurentian University
23 students?

24 A. They are all Laurentian
25 University students.

1 116 Q. So when students are looking to
2 take a program at Thorneloe, they actually apply
3 to Laurentian, correct?

4 A. Correct.

5 117 Q. Not to Thorneloe?

6 A. Correct.

7 118 Q. And all admission decisions on
8 Thorneloe's programs are made by Laurentian?

9 A. Correct.

10 119 Q. Thorneloe itself doesn't admit
11 any students?

12 A. Not in any courses through the
13 faculty of -- through the Faculty of Arts. It
14 does through its own School of Theology, but
15 that is under its own charter and granted by its
16 own authority.

17 120 Q. Fair enough. Okay.
18 Thorneloe doesn't actually have any
19 oversight of admissions at all, does it?

20 A. Not at all.

21 121 Q. And Thorneloe doesn't register
22 students?

23 A. No.

24 122 Q. Thorneloe doesn't have a
25 Registrar?

1 A. No.

2 123 Q. And at the end of their program
3 students who have taken a program through
4 Thorneloe have a Laurentian degree not a
5 Thorneloe degree, correct?

6 A. Correct.

7 124 Q. And I want to turn to paragraph
8 22 of your affidavit. And in paragraph 22 you
9 are referring to the grant money that is
10 transfer from Laurentian to Thorneloe and you
11 say:

12 "The flow of funds to Thorneloe
13 through Laurentian is intended and the
14 funds do not belong to Laurentian."

15 Do you see that?

16 A. Yes, I do.

17 125 Q. But isn't it true, sir, that
18 there are no provincial funding grants provided
19 by the province to the Federated Universities?

20 A. Federated Universities are
21 reimbursed through Laurentian for the teaching
22 it does, so it goes through Laurentian. That's
23 what a federated university is.

24 126 Q. So the grants go to Laurentian.
25 All provincial grant money goes to Laurentian

1 and none is directly sent to any federated
2 university, correct?

3 A. For the courses that it teaches
4 and the students that it teaches.

5 127 Q. And the province doesn't allocate
6 money specifically for the Federated
7 Universities?

8 A. No, it doesn't.

9 128 Q. And Laurentian only transfers the
10 grant funds to Thorneloe and the other Federated
11 Universities because of the Financial
12 Distribution Notice, correct?

13 A. Correct.

14 129 Q. So when you say that the funds
15 don't belong the Laurentian, that's not really
16 correct, is it? The province allocates those
17 funds to Laurentian.

18 A. To be passed on to Thorneloe, or
19 the other Federated Universities for the
20 teaching that they do for Laurentian students.

21 130 Q. That's not required by the
22 province though, right?

23 A. I don't know.

24 131 Q. I would like to talk about
25 Thorneloe's operations for a minute. So in

1 paragraph 24 of your affidavit you refer to the
2 fact that Laurentian -- or you describe
3 Laurentian and Thorneloe as "highly integrated"?

4 A. Correct.

5 132 Q. And then in paragraph 16 you
6 mention the fact that they were intended to
7 operate as a single university. Do you see
8 that?

9 A. Yes.

10 133 Q. But Thorneloe actually operates
11 independently in a lot of ways, isn't that
12 right?

13 A. For example?

14 134 Q. It's managed by its own
15 independent Board of Governors?

16 A. It is, yeah. Yes, it is.

17 135 Q. It operates some buildings?

18 A. It does.

19 136 Q. It has its own student residence?

20 A. It does.

21 137 Q. It has its own administrative
22 staff?

23 A. It does.

24 138 Q. It's own faculty?

25 A. Yes and no.

1 139 Q. What do you mean by that?

2 A. They are employees of Laurentian
3 University. They are deployed by the Faculty of
4 Arts. They teach courses that are approved by
5 the Faculty of Arts and the Senate.

6 140 Q. My understanding is that faculty
7 are employed by Thorneloe, is that not correct?

8 A. Yes, they are employed by
9 Thorneloe. "Deployed" was the word I used.

10 141 Q. In the sense that -- is what
11 you're saying Laurentian directs where those
12 employees are to teach courses? Is that what
13 you mean by "deployed"?

14 A. Deployed would be the scheduling
15 of courses is done through the Faculty of Arts.
16 Courses that are offered or not offered are done
17 through the Faculty of Arts. Thorneloe can't
18 offer a course unless it's been through Faculty
19 of Arts Council, the Senate and its
20 subcommittees such as ACAPLAN, and approved by
21 the Senate itself.

22 So the courses that our professors
23 teach are, in effect -- we may offer them but
24 they are Laurentian courses.

25 142 Q. And so that's why you say that

1 they are deployed by Laurentian?

2 A. Yes.

3 143 Q. But going back to my question,
4 they are employed by Thorneloe?

5 A. That's correct.

6 144 Q. And they have their own labour
7 union, LUFA, that is separate from Laurentian's?

8 A. It's -- it's LUFA, but it's a
9 separate bargaining unit.

10 145 Q. And Thorneloe's staff and faculty
11 are paid by Thorneloe?

12 A. They are.

13 146 Q. And Thorneloe has its own bank
14 accounts?

15 A. It does.

16 147 Q. You manage your own money?

17 A. We do.

18 148 Q. You have your own financial
19 statement?

20 A. Yes.

21 149 Q. Madam Court, Reporter what is a
22 good schedule for you here?

23 -- RECESSED AT 8:14 P.M. --

24 -- RESUMED AT 8:26 P.M. --

25

1 BY MR. HANRAHAN:

2 150 Q. Dr. Gibaut, Thorneloe has three
3 academic departments, is that correct?

4 A. That is correct.

5 151 Q. And those are Ancient Studies,
6 Religious Studies and Women's Gender and
7 Sexuality Studies?

8 A. That's correct.

9 152 Q. And separate from that there's
10 also the School of Theology?

11 A. I beg your pardon?

12 153 Q. Separate from that there is the
13 School of Theology?

14 A. Yes.

15 154 Q. And could we just turn to
16 paragraph 4 of your affidavit. And I'm just
17 looking at 4(a), and do you have that in front
18 of you?

19 A. Yeah.

20 155 Q. And if we look at 4(a) that
21 sentence refers to Thorneloe having
22 approximately 140 programs and courses --

23 A. That's an error. It should say
24 140 courses.

25 156 Q. Okay. That was going to be my

1 question.

2 A. Yeah, yeah. I don't know how I
3 missed that.

4 157 Q. So that reference should just be
5 courses and that's 140 courses across all of the
6 three --

7 A. That's right.

8 158 Q. -- academic departments? Or does
9 that also include courses from the School of
10 Theology?

11 A. No. The School of Theology has
12 nothing to do with Laurentian University. We
13 reference it here, but it's not part of the
14 Federation Agreement.

15 159 Q. In terms of student head count at
16 Thorneloe, is it fair to say for the last three
17 years that the total number of full and
18 part-time students enrolled in programs offered
19 by Thorneloe has been slightly less than 100
20 students?

21 A. It depends on how you count
22 students. How are you counting them?

23 160 Q. Well, there's I believe -- I can
24 pull it up and it will take me a second -- an
25 Exhibit to Dr. Haché's affidavit.

1 A. 96 is what he says in his
2 affidavit.

3 161 Q. Okay. And do you count it
4 differently than that?

5 A. Yes.

6 162 Q. In what way?

7 A. 96 refers to those students who
8 are in our courses who are majoring. It doesn't
9 take into account FTEs, which is full time
10 equivalents which is also calculated by the
11 number of elective students. I can't remember
12 exactly what the number is, but when you hit six
13 or seven students that gets -- that becomes an
14 FTE. And it doesn't take into account the
15 students that are -- we actually teach in our
16 courses.

17 So that 96 doesn't take into account
18 all the students who take us -- who do
19 electives.

20 163 Q. So it's 96 students enrolled as
21 majors who will have degrees in the programs
22 that you offer?

23 A. That's correct.

24 164 Q. And I think -- I was just trying
25 to find it. There is another number where I

1 think you refer to FTEs. Paragraph 31 refers
2 to there being 297 FTEs?

3 A. Uhm-hmm.

4 165 Q. Is that what you were just
5 referring to a moment ago?

6 A. Yeah.

7 166 Q. And that would encompass students
8 who -- who are taking programs at Laurentian but
9 take electives through courses offered through
10 Thorneloe?

11 A. That's correct.

12 167 Q. Okay. And actually just sticking
13 on paragraph 31 for a minute, that paragraph
14 also refers to there being -- or refers to
15 Thorneloe teaching 2,861 Laurentian students?

16 A. 2019-2020, correct.

17 168 Q. Right. And how was that 2,861
18 number calculated?

19 A. That was calculated looking at
20 student enrollments through Ellucien which is
21 the Laurentian program that monitors that sort
22 of thing.

23 169 Q. And does the number represent
24 every student who took at least one elective,
25 either an elective or they're taking a degree in

1 courses offered by Thorneloe?

2 A. That number refers to the number
3 of registrations in all of our courses in total.
4 Now there may be some students who are taking
5 two courses with us or three courses or ten
6 courses or just one, but when you add up all the
7 students enrolled in our courses, that's the
8 number.

9 170 Q. So I just want to make sure I
10 understand that. So if I'm taking a program at
11 Laurentian but I take one elective course
12 through Thorneloe, I'm included in this 2,816?

13 A. You are. Yes.

14 171 Q. If I am a student at Laurentian
15 and I take three elective courses through
16 Thorneloe, am I represented three times in this
17 number or one time?

18 A. Yes, you are.

19 172 Q. Three times?

20 A. Yes, because you are in three
21 courses.

22 173 Q. Okay. And if I took eight
23 courses through Thorneloe's electives, I would
24 be represented eight times, right?

25 A. Yes, and you would probably be

1 counted as an FTE.

2 174 Q. And so given that we just talked
3 a moment ago about how there's I think it was 96
4 students enrolled in the programs offered by
5 Thorneloe as -- for their degree, it's safe to
6 say that the overwhelming majority of the 2,816
7 students in this number are enrolled in programs
8 offered by Laurentian rather than Thorneloe,
9 right?

10 A. That's correct.

11 175 Q. Okay. As we're discussing
12 earlier about the Financial Distribution Notice,
13 if a student is enrolled in a Laurentian program
14 and they take a course as an elective through
15 Thorneloe, the tuition revenue for that course
16 is paid from Laurentian to Thorneloe, correct?

17 A. No, a portion of it is.

18 176 Q. So you're referring to the
19 15 percent --

20 A. Service fee, scholarship fee and
21 other material fees.

22 177 Q. Understood. Okay.

23 Sorry, can we just go off the record
24 for one second?

25 -- OFF-THE-RECORD DISCUSSION --

1 BY MR. HANRAHAN:

2 178 Q. So Dr. Gibaut before we took a
3 break for a moment there, we were discussing the
4 fact that if a student enrolled in -- in a
5 Laurentian program takes an elective course
6 that's offered by Thorneloe, the tuition revenue
7 for that course is paid from Laurentian to
8 Thorneloe. And you had clarified that to say
9 that a portion of it was and there's a portion
10 deducted as a result of fees, is that right?

11 A. Correct.

12 179 Q. Is it fair to say that if that
13 same Laurentian -- that same student is taking a
14 program through Laurentian did not take any
15 courses through Thorneloe and took all of their
16 electives through Laurentian, then all tuition
17 revenue for that student would stay within
18 Laurentian?

19 A. I have no idea.

20 180 Q. Well, it wouldn't go to Thorneloe
21 and it wouldn't go to any of the other Federated
22 Universities, is that fair?

23 A. Well, just remember that those 96
24 students who are majors, identifiable majors,
25 those are Laurentian students. They're all

1 Laurentian students.

2 The comparison would be doing a major
3 in Women Gender and Sexuality Studies in the
4 Faculty of Arts and doing an English degree in
5 the Faculty of Arts, in the same faculty.

6 181 Q. So maybe I'll clarify my
7 question. So if I'm a student who's taking a
8 program that is offered by Laurentian rather
9 than Thorneloe, or a program offered by any of
10 the other Federated Universities, and I take all
11 of my electives through Laurentian rather than
12 any electives through the Federated
13 Universities, all the tuition revenue would stay
14 within Laurentian; no tuition revenue from that
15 student would go to any of the Federated
16 Universities. Right?

17 A. I would think that is a fair
18 assumption, yes.

19 182 Q. So every time one of the 2861
20 students we're talking about a minute ago, every
21 time one of those students who is a student that
22 is enrolled in a program that's offered through
23 Laurentian, takes an elective course through
24 Thorneloe, that is lost tuition revenue for
25 Laurentian, correct?

1 A. I don't think so. Why would it
2 be lost tuition?

3 183 Q. Well, I think we just discussed
4 that tuition for those courses gets transferred
5 over to Thorneloe when a Laurentian student --

6 A. Right, but earlier we talked
7 about how provincial funding flows through
8 Laurentian to Thorneloe.

9 184 Q. Let me put it this way. So if a
10 student takes all of -- as I was saying a minute
11 ago, if they take all of their electives through
12 Laurentian, I think we agree that their tuition
13 money would stay within Laurentian; it wouldn't
14 go to any of the Federated Universities. Right?

15 A. Yes.

16 185 Q. But if that same student took
17 several electives through Thorneloe, I think we
18 have also discussed that tuition revenue for
19 those courses also goes to Thorneloe?

20 A. Yes.

21 186 Q. So that represents -- in the
22 first scenario I gave you, Laurentian gets X
23 tuition dollars and keeps X tuition dollars; in
24 the second scenario I gave you where they take
25 classes through Thorneloe, there's now a portion

1 of X that's being transferred to Thorneloe?

2 A. Yes.

3 187 Q. And so that's lost tuition
4 revenue for Laurentian, right?

5 A. That's a hypothetical question.
6 A preceding question would be, would they have
7 come to Laurentian without those elective
8 options, first question.

9 Second question is that all of those
10 students, no matter where they take their
11 courses, are counted by Laurentian and that's
12 part of the metrics that they share with the
13 Ministry of Colleges and Universities, that they
14 are all part of that corridor that Laurentian is
15 trying so desperately to keep within.

16 188 Q. Well, respectfully I don't think
17 it's a hypothetical. This is something that
18 actually happens with these students, right? So
19 there are probably, I'm sure, students that take
20 all of their electives within Laurentian and
21 there will be students that take some electives
22 within Laurentian and some at Thorneloe.

23 And in the first case, Laurentian
24 keeps all of their tuition revenue, and in the
25 second case, a portion of their tuition revenue

1 goes to Thorneloe, right?

2 A. A portion is returned to
3 Thorneloe for doing the teaching. This is not
4 charity or a gift. You make it sound like
5 something else.

6 189 Q. I'm not suggesting that it's
7 charity, but it's -- it is a fact that if that
8 student had taken courses taught by Laurentian
9 then the money would have stayed within
10 Laurentian, right?

11 A. Possibly. Possibly if those
12 courses were offered at the Federated
13 Universities, they might not have come to them
14 in the first place or stayed. It's a
15 hypothetical question.

16 190 Q. So Dr. Gibaut, are you aware that
17 in fiscal year 2020 Laurentian transferred
18 approximately 5.3 million?

19 A. You broke up there. I missed the
20 first part of your question.

21 191 Q. Sorry, can you hear me okay now?

22 A. I can now.

23 192 Q. Are you aware that in fiscal year
24 2020 Laurentian transferred approximately
25 \$5.3 million in net tuition fees to the

1 Federated Universities?

2 A. That's the first time I've heard
3 that. Recently Dr. Haché said it was 7.7. In
4 his affidavit he talks about approximately an
5 estimate of 5 million, and in his May -- his
6 April 1st press release he spoke of millions.
7 So I have heard a lot of different figures. I
8 haven't seen anything substantiated.

9 193 Q. So maybe I'll clarify. I think I
10 know probably the source of confusion. So I'm
11 referring just to tuition fees with that number
12 I just gave you, 5.3 million. The 7.7 that I
13 believe that you're referring to from Dr. Haché
14 includes grants and fees, plus the tuition
15 number. That is how you get to the 7.7 I was
16 talking about.

17 A. It's not that -- you have made
18 that much more specific than he has.

19 194 Q. Okay. But you say you haven't
20 seen anything -- this is the first time you're
21 hearing that number?

22 A. This is the first time I've heard
23 that number, and specified not grants just
24 simply tuition.

25 195 Q. Why don't we talk about Thorneloe

1 specifically then? Could you turn to paragraph
2 54 of your affidavit.

3 A. Got it.

4 196 Q. And in paragraph 54 you've
5 included a table here. Do you see that?

6 A. Yes, from Farber.

7 197 Q. You have anticipated my first
8 question. So this a table that was prepared by
9 Farber, who is your financial advisor, is that
10 right?

11 A. Correct.

12 198 Q. And the numbers we're referring
13 to here are for fiscal year 2020?

14 A. Yes.

15 199 Q. And it's your understanding that
16 these numbers are accurate?

17 A. They are part of our financial
18 statements that have been -- yup.

19 200 Q. And so if we look at the second
20 line of the table, it reflects Thorneloe
21 receiving tuition fees of 1,570,964. Do you see
22 that?

23 A. Uhm-hmm.

24 201 Q. And so that represents the amount
25 of tuition fees that were transferred from

1 Laurentian to Thorneloe in fiscal year 2020,
2 correct?

3 A. Yup.

4 202 Q. And so in addition to that
5 1.5 million we were just looking at that's
6 transferred, there's similarly grant -- amounts
7 of grant money that are transferred from
8 Laurentian to the other Federated Universities
9 as well, right?

10 A. Correct.

11 203 Q. And just looking at the table
12 again, the amount of grants transferred to
13 Thorneloe in fiscal year 2020 is 568,771, right?

14 A. Uhm-hmm.

15 204 Q. And then in addition to that
16 there are certain fees that are transferred from
17 Laurentian to Thorneloe, is that right?

18 A. I think they're transferred the
19 other way.

20 205 Q. Sorry, I'm looking at the -- I
21 think you're thinking of the service fee line.
22 I'm looking at the material fees line.

23 A. Oh right, yes.

24 206 Q. And so material fees transferred
25 in fiscal year 2020 are 65,623, right?

1 A. Correct.

2 207 Q. And so if we add up those amounts
3 that I was just taking you through for the
4 tuition, the grants and the material fees in
5 fiscal year 2020, that gives us approximately
6 2.2 million, is that right? I think that's
7 reflected in the line that says "total".

8 A. That's what the report says.

9 208 Q. And then this is what we were
10 discussing a few minutes ago. There's a service
11 fee that Thorneloe pays to Laurentian, right?

12 And so if you net out the service fee,
13 which is reflected here as \$358,086, the total
14 amount transferred from Laurentian to Thorneloe
15 in fiscal year 2020 was \$1,847,272, right?

16 A. Correct.

17 209 Q. And like we were discussing
18 earlier, most of the 2,861 students that took
19 Thorneloe courses last year were students that
20 are actually enrolled in programs offered by
21 Laurentian, right?

22 A. Yes.

23 210 Q. So if we look at -- go down a
24 couple of paragraphs to paragraph 57 in your
25 affidavit, where you say:

1 "Thorneloe does not cost
2 Laurentian money."

3 That's not quite accurate, is it?

4 A. I don't see that. I don't see a
5 paragraph 67 in my --

6 211 Q. Paragraph 57.

7 A. 57, thank you. What is your
8 question?

9 212 Q. You say that Thorneloe does not
10 cost Laurentian money and that is not quite
11 accurate, is it?

12 A. Show me why.

13 213 Q. Well, because of the numbers we
14 just looked at that reflect approximately
15 1.8 million being sent from Laurentian to
16 Thorneloe as a result largely of Laurentian
17 students taking electives at Thorneloe.

18 A. So they represent student choice
19 and student satisfaction. Students at
20 Laurentian, their choice, their satisfaction.

21 214 Q. So if we imagined a world where
22 there wasn't any federated relationships and
23 students could only have their choices to
24 take --

25 R/F MR. MEEHAN: Hypothetical question.

1 We're not imagining anything. We're dealing
2 with the facts here please where no imagination
3 is needed.

4 MR. HANRAHAN: I disagree that these
5 type of hypotheticals are improper questions,
6 but if you're going to refuse it we'll take that
7 refusal.

8 215 Q. Could you turn to page 15 of your
9 affidavit?

10 A. Yes.

11 216 Q. And you'll see about mid-way down
12 the page there is a heading the "CCAA DIP Loan
13 and Related Milestones"?

14 A. Yes.

15 217 Q. And I'm happy for you to read the
16 section again if you like, but just generally
17 speaking, these paragraphs are talking about the
18 fact that Laurentian obtained a \$25 million DIP
19 loan in February, is that correct?

20 A. That's correct.

21 218 Q. And in paragraph 45 you have a
22 quote from the first report of the Monitor,
23 starting right near the bottom of page 15.

24 A. I see it.

25 219 Q. And I'm looking at the last

1 sentence that's quoted on this page that starts
2 "The maturity date". It says:

3 "The maturity date may be
4 extended for an additional 90 days if
5 Laurentian achieves the following
6 milestones, to the satisfaction of the
7 DIP Lender, in its sole and unfettered
8 discretion."

9 Do you see that?

10 A. I do.

11 220 Q. And then below that it lists
12 three conditions that are conditions to the
13 extension of the maturity date, one of which is
14 Laurentian reaching an agreement with LUFA. Do
15 you see that?

16 A. I do.

17 221 Q. And then you go on to say in
18 paragraph 47 that Laurentian has, in fact,
19 reached an agreement with LUFA that was
20 publically announced, correct?

21 A. It says that.

22 222 Q. And then in paragraph 49 you say:
23 "The new Collective Agreements
24 and associated faculty and program
25 reductions satisfy the terms of the

1 DIP Agreement allowing Laurentian to
2 obtain a further advance on the DIP
3 loan [...]."

4 Do you see that?

5 A. I do.

6 223 Q. That's not actually correct, is
7 it?

8 A. I think it was correct on the
9 date of this -- the date the affidavit was
10 sworn.

11 224 Q. Well, the terms we were looking
12 at were referring to an extension of the
13 maturity date on the loan, right?

14 MR. YIOKARIS: What's your question,
15 counsel? Was that a question or were you just
16 reviewing stuff?

17 MR. HANRAHAN: No, that was a
18 question.

19 MR. YIOKARIS: What was the question?

20 BY MR. HANRAHAN:

21 225 Q. Well, first I had asked whether
22 his statement in paragraph 49 is correct, and he
23 said he thought it was. And I said the
24 conditions that he's referring to going back to
25 paragraph 45 talk about conditions for an

1 extension of maturity date, correct?

2 MS. MILLER: I don't think we got an
3 answer yet.

4 THE WITNESS: I'm not sure what the
5 question is.

6 BY MR. HANRAHAN:

7 226 Q. The question is, if we go back to
8 paragraph 45 of your affidavit, and what we were
9 just talking about a minute ago, the conditions
10 that you quote here including reaching a deal
11 with LUFA, those are conditions for an extension
12 of the maturity date of the DIP, correct?

13 A. This is a quote from the
14 Monitor's first report.

15 227 Q. Right. And I'm asking about the
16 content of that quote.

17 A. That's what the quote says.

18 228 Q. And an extension of a maturity
19 date is not the same as obtaining further
20 advances on a DIP loan, right?

21 A. I don't know.

22 229 Q. Well, you swore to it in your
23 affidavit. Did you not understand what it
24 meant?

25 A. Well, I understood what I see

1 there. You're asking me another kind of a
2 question.

3 230 Q. Well your affidavit suggests that
4 the satisfaction of these conditions, you say in
5 paragraph 49, allows Laurentian to obtain a
6 further advance on the DIP loan. And I'm
7 suggesting to you that that is not correct.
8 These are conditions for the extension of the
9 maturity date; they don't provide for obtaining
10 a further advance. Would you agree with that?

11 A. If you're suggesting I'm
12 misleading you, I disagree with that. This is
13 the best of my understanding.

14 231 Q. Was it your understanding that
15 the satisfaction of these conditions would allow
16 Laurentian to obtain further funds from the DIP?

17 A. Yes, it was -- that was my
18 understanding.

19 232 Q. And why was that your
20 understanding?

21 A. Because that seemed to be what
22 was in the first report of the Monitor.

23 233 Q. I think if we look at it in
24 paragraph 45, the quote from the first report of
25 the Monitor says that the maturity date may be

1 extended for an additional 90 days if these
2 milestones are achieved. Did you understand the
3 extension of the maturity date to be the same
4 thing as a further advance?

5 A. I did.

6 234 Q. Okay. Are you aware that
7 Laurentian has now agreed on an amendment to the
8 DIP loan for further DIP financing that includes
9 conditions beyond what is described in your
10 affidavit?

11 A. I understand there have been
12 changes, yes. I do understand there have been
13 changes.

14 235 Q. Okay. So I think I'm nearly
15 finished. Could we take a short break so I can
16 take a look at my notes?

17 -- RECESSED AT 8:58 P.M. --

18 -- RESUMED AT 9:09 P.M. --

19 BY MR. HANRAHAN:

20 236 Q. Dr. Gibaut, just referring back
21 to paragraph 54 of your affidavit -- and that's
22 the paragraph that includes the table that we
23 went through earlier. Do you see that?

24 A. Uhm-hmm, yes.

25 237 Q. The numbers I think you mentioned

1 in here earlier are based on Thorneloe's
2 financial statements, is that right?

3 A. Yes.

4 238 Q. And that's what --

5 A. Anything to 2019-2020 are from
6 audited statements. Anything after that is from
7 our own use of Ellucien and other reporting.

8 239 Q. Sorry, I missed the first part of
9 what you said. Is it 2020 is the last set of
10 the audited statements that you have?

11 A. That's right.

12 240 Q. And what's your -- what's the
13 financial year end for Thorneloe?

14 A. End of April.

15 241 Q. Okay. And the numbers in here
16 are based on the financial statements, but you
17 haven't actually delivered with any of your
18 materials any financial statements from
19 Thorneloe, have you?

20 A. They're part of the basis of
21 Farber report.

22 242 Q. But the actual statements
23 themselves are not included, correct?

24 A. Correct.

25 243 Q. Can I have an undertaking for the

1 last set of audited financial statements for
2 Thorneloe?

3 U/A MR. YIOKARIS: I'll take that under
4 advisement, counsel. I want to take a look at
5 them first and let you know.

6 MS. MILLER: And to be clear, they
7 will referenced in paragraph 54 of his
8 affidavit, right? The source of the information
9 in the table is the financial statements?

10 MR. YIOKARIS: Yes, thank you.

11 MS. MILLER: Is that still under
12 advisement or is that an undertaking?

13 MR. YIOKARIS: No, it's still under
14 advisement.

15 MR. HANRAHAN: And I just point out
16 for the record, they are also included in the
17 list of documents relied on in the Farber
18 report. So I think we're entitled to see those.

19 244 Q. Dr. Gibaut, you'd agree with me
20 that it's important for a university to be well
21 managed and fiscally responsible, right?

22 A. Yes.

23 245 Q. And it's appropriate for a
24 university to review its course and program
25 offerings to make changes where it's fiscally

1 responsible to do so?

2 A. Yes.

3 246 Q. And in fact that's what Thorneloe
4 did recently, actually less than a year ago with
5 its theatre arts and motion picture arts
6 program, isn't that right?

7 A. That's correct.

8 247 Q. You did review and determine that
9 the program wasn't profitable to the university
10 and made a decision to terminate it, right?

11 A. That's correct.

12 248 Q. And you did that because you saw
13 it as the fiscally responsible thing to do?

14 A. Correct.

15 249 Q. And for the students that were
16 affected by that closure, isn't it true that 47
17 of the 49 students that were in that program
18 were successfully accommodated in other programs
19 that are offered by Laurentian?

20 A. They were accommodated. I'm not
21 sure I would agree with the word "successfully".

22 250 Q. Why do you disagree with that?

23 A. Anecdotal comments that they have
24 made to other colleagues of mine, and certainly
25 at the time last spring when they were trying to

1 find the courses that corresponded to their own,
2 and also working hard with the Dean of Arts that
3 to find courses that would correspond and it
4 wasn't always possible. So they were
5 accommodated. "Successfully" is the word I
6 would question.

7 251 Q. And did you do anything to try
8 and help to accommodate those students?

9 A. We worked very closely with the
10 Faculty of Arts. The professors that lost their
11 jobs also worked very closely be the dean of
12 arts and the vice dean who was looking after
13 those particular students.

14 252 Q. Isn't it true that most of the
15 accommodation efforts or all of the
16 accommodation efforts were done by Laurentian
17 rather than Thorneloe?

18 A. That is why I said the Faculty of
19 Arts, but in consultation with us so that they
20 would know what the students were expecting,
21 what courses they had taken.

22 253 Q. And it's also true, isn't it,
23 that the Laurentian Senate tried to overrule
24 that decision to close the program?

25 A. It did. It tried, yes.

1 254 Q. And you effectively ignored or
2 didn't -- didn't accept the Laurentian Senate's
3 decision on that?

4 A. Well, the Laurentian Senate did
5 actually close them. There was a long debate,
6 and they were formally closed last autumn by the
7 Senate.

8 255 Q. Do you recall if this got a lot
9 of press coverage at the time in Sudbury?

10 A. It created a lot of press
11 coverage.

12 256 Q. And you were speaking to a
13 Sudbury.com reporter about this?

14 A. Uhm-hmm.

15 257 Q. And I just would like to show you
16 an article which I'll can share on the screen
17 and mark as an exhibit and counsel, I'm happy to
18 email this to you as well.

19 MR. YIOKARIS: Just let the record
20 show that this is the first time I've seen this
21 article or being advised about this article.

22 BY MR. HANRAHAN:

23 258 Q. Sorry, just give me one second.
24 can you see it?

25 A. Yes.

1 MR. YIOKARIS: If you can give us a
2 few minutes to read it.

3 MR. HANRAHAN: Take your time.

4 MR. YIOKARIS: And Mr. Hanrahan, do
5 you intend to rely on any other documents you
6 haven't shown us?

7 MR. HANRAHAN: This will be the last
8 document. Let's mark it as an exhibit.

9 EXHIBIT NO. 1: Article entitled
10 "Despite senate rulings, there's no
11 money to restart cancelled Thorneloe
12 programs, president says", published
13 by Sudbury.com, May 26. 2020.

14 BY MR. HANRAHAN:

15 259 Q. Doctor, so this article is
16 describing the closure that we were just
17 discussing in the Senate. The Laurentian Senate
18 attempted to overrule that, correct?

19 A. Yes and no. The issue that is
20 not reported here, Thorneloe's Board of
21 Governors used the language of "suspend
22 courses". The Laurentian Senate, quite rightly,
23 said that the language of suspend needs to come
24 from ACAPLAN to the Senate. What Thorneloe
25 should have said was "we closed our programs",

1 that is the language we used here. But the
2 actual language in the motion was "suspend"
3 within our Board of Governors.

4 In fact the Senate last autumn did
5 suspend all of the programs within theatre arts
6 and motion picture arts.

7 260 Q. And as we were discussing a few
8 minutes ago, ultimately you determined it was
9 necessarily because of the financial realities
10 facing Thorneloe, right?

11 A. Because of the 30 percent
12 decrease in funding from Laurentian without any
13 transition time, we had no choice but to
14 close -- to do hard cuts.

15 261 Q. And that's reflected -- you will
16 see there is a couple of quotes in here from
17 you. Do you recall giving these quotes that are
18 in the article?

19 A. Yes.

20 262 Q. And they are accurate quotes?

21 A. As far as I can remember.

22 263 Q. And you reflected that rationale
23 in here in the quote, in the third paragraph,
24 where you say:

25 "While Thorneloe acknowledges the

1 jurisdictional parameters of the
2 Laurentian University Senate to close
3 an academic program for academic
4 reasons, the Senate decision did not
5 take into account the financial
6 reality that Thorneloe University
7 faces, resulting in part due to a
8 significant change in the way
9 Laurentian University funds the
10 federated universities."

11 A. That's correct.

12 264 Q. And then there is another quote
13 just below that from you as well where you say:

14 "Thorneloe University, as an
15 independent institution with its own
16 autonomy, is solely responsible for
17 the financial costs and operation of
18 the programs which fall under the
19 department of Theatre Arts and Motion
20 Picture Arts. For that reason, the
21 April 23, 2020 decision of the
22 Thorneloe Board of Governors will
23 stand, and programs and resources
24 under the department of Theatre Arts
25 and Motion Picture Arts will no longer

1 operate at Thorneloe, effective June
2 30, 2020."

3 That's correct?

4 A. It's from a press release.

5 265 Q. That was from a press release
6 that Thorneloe issued?

7 A. Yes.

8 266 Q. So that was drafted by you?

9 A. It was drafted by a lot of
10 people. I don't think this was -- this was
11 drafted by somebody else I think.

12 267 Q. And you had input into it?

13 A. I can't remember what paragraphs
14 I had put in. That's over a year ago. But I do
15 recognize this as from a press release.

16 268 Q. And you would have reviewed it
17 before it was made public?

18 A. I would have.

19 269 Q. And that's -- that's a different
20 message than what you had in your affidavit in
21 paragraph 16 where you say that Laurentian and
22 the Federated Universities are intended to
23 operate as a single university, isn't it?

24 A. The intention of the parties with
25 that -- I stand by that. The intention among

1 the parties was that the federated would operate
2 as a single university. Last year Thorneloe was
3 put in a very difficult position. The Board of
4 Governors of Laurentian University reduced its
5 funding and the Senate, apparently, would let us
6 close a program that the other part bicameral
7 government had forced us to do.

8 The intention is what is important in
9 16.

10 270 Q. Well, the intention in what you
11 did with the theatre arts and motion picture
12 arts was to go it alone, effectively, right?
13 You said Thorneloe made this decision
14 independently.

15 A. Yes, it made the decision
16 independently. Laurentian leadership at the
17 most senior levels and within the Faculty of
18 Arts knew that this was happening, so it was in
19 consultation with Laurentian.

20 271 Q. But the Laurentian Senate was not
21 in agreement with it, at least as of the time of
22 this article?

23 A. No, the Laurentian Senate was not
24 in agreement for it. LUFA was not in agreement
25 for it. The technical reason that the Senate

1 was going to block it was because our motion
2 used the word "suspend". We were ill advised to
3 use that particular word.

4 At the end of the day, as I said, last
5 I think it was November or -- probably likely
6 November, the Laurentian Senate did, through the
7 recommendation of ACAPLAN, suspend all of the
8 courses and programs of theatre and motion
9 picture arts.

10 272 Q. And you mentioned a minute ago
11 that LUFA was also not in favour of it. Is that
12 because you were terminating all of the faculty
13 associated with this program?

14 A. Yes, we did that according to
15 their -- according to the Collective Bargaining
16 Agreement to the letter.

17 273 Q. Okay. Subject to undertakings,
18 under advisement and refusals, those are my
19 questions. Thank you, Mr. Gibaut.

20 MR. YIOKARIS: Thank you.

21 THE WITNESS: May I say one thing in
22 conclusion? In the break I looked up the Oxford
23 dictionary, the meaning of the word "hope". It
24 is defined as "expectation with desire". I
25 would say that's where Thorneloe University is

1 right now with Laurentian, expectation and
2 desire to remain federated.

3 MR. HANRAHAN: I would just say it's
4 funny you mention that, because I also looked up
5 the definition of "conviction". Perhaps there
6 is different definitions, different dictionaries
7 but it referenced a strong belief or opinion.
8 And I think, counsel, one of the other parties
9 may have mentioned that same definition at some
10 point in the examinations earlier today as well.

11 MR. YIOKARIS: Counsel, your
12 questioning is finished, and I'm not sure where
13 you're going with that.

14 MR. HANRAHAN: Well, I wasn't going go
15 anywhere with it but Dr. Gibaut raised it. maybe
16 we'll just leave it at that.

17 --- Whereupon the cross-examination
18 concluded at 9:29 p.m.
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REPORTER'S CERTIFICATE

I, HELEN MARTINEAU, CSR, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were
taken before me at the time and date therein set
forth at which time the witness was put under
oath by me;

That the testimony of the witness and
all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
accurate transcript of my shorthand notes so
taken. Dated this day of 2020.



PER: HELEN MARTINEAU

CERTIFIED SHORTHAND REPORTER

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TAB 2(B)

Despite senate rulings, there's no money to restart cancelled Thorneloe programs, president says

May 26, 2020 11:00 AM By: Sudbury.com Staff



Thorneloe University president John Gibaut. (Supplied)

Rulings by the Laurentian University senate on two programs cancelled by Thorneloe University don't change the fact the school has no money to continue offering them, the institution's president, John Gibaut, said last week.

On April 23, Thorneloe University announced it was closing its theatre arts and motion picture arts programs over a lack of funding, and because the programs are the least attended of the programs offered by the school.

Like Huntington University and the University of Sudbury, Thorneloe is a federated university of Laurentian University. Students who attend Thorneloe earn Laurentian degrees.

Meeting May 19 on the decision, the Laurentian University Senate voted in favour of a resolution that in essence seeks to overturn Thorneloe's decision to close the programs. The first resolution will have the senate reiterate that Thorneloe University's theatre and motion picture arts programs be

to enter into negotiations with Laurentian to have the programs and staff at all federated universities brought into its Faculty of Arts and Faculty of Health, with an immediate freeze on the closing of the theatre and motion picture arts programs.

That's all well and good, but there is still no money, Thorneloe said in a news release.

"While Thorneloe acknowledges the jurisdictional parameters of the Laurentian University Senate to close an academic program for academic reasons, the Senate decision did not take into account the financial reality that Thorneloe University faces, resulting in part due to a significant change in the way Laurentian University funds the federated universities."

Gibaut explained the funding changes to Sudbury.com reporter Heidi Ulrichsen on May 1. [You can read that story here.](#)

"Thorneloe University, as an independent institution with its own autonomy, is solely responsible for the financial costs and operation of the programs which fall under the department of Theatre Arts and Motion Picture Arts. For that reason, the April 23, 2020 decision of the Thorneloe Board of Governors will stand, and programs and resources under the department of Theatre Arts and Motion Picture Arts will no longer operate at Thorneloe, effective June 30, 2020."

After the LU senate met and in spite of the motions it passed, Thorneloe's board met and unanimously reaffirmed the motion to close the department of Theatre Arts and Motion Picture Arts.

"Closure, in this sense, means closure in the human resources sense of the word," said Brian Koivu, chair of the Thorneloe University board. "We are not able to staff these programs because of financial constraints."

Comments ⁽⁴⁾

TAB 2(C)

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**

**REFUSALS AND UNDERTAKINGS CHART
CROSS-EXAMINATION FOR DISCOVERY OF JOHN GIBAUT, HELD APRIL 23, 2021**

UNDER ADVISEMENTS						
Under Advisements to questions made at the cross-examination of John Gibaut , dated April 23, 2021						
	Issue & relationship to pleadings or affidavit (Group the questions by issues.)	Q. No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
1.		243	63	To provide the last set of audited financial statements for Thorneloe.	Refused. All relevant information from them has been produced in Mr. Nackan's report. They are otherwise publicly available as Thorneloe is a publicly funded University. We also note that this question was not asked of Thorneloe's expert, Allan Nackan of Farber at his cross-examination on his April 19, 2021 report; nor was Mr. Nackan's review of that document or any reliance on same challenged or questioned at his cross-examination (certainly not in any material way). This question was asked at the very end of Mr. Gibaut's cross-examination, as an afterthought in your final clean up. Further, at his cross-examination, when asked, Mr. Hache did not dispute the financial data from Mr. Nackan's report.	

Refusals						
Refusals to answer questions on the cross-examination of John Gibaut , dated April 23, 2021						
	Issue & relationship to pleadings or affidavit (Group the questions by issues.)	Q. No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
2.		43	14	To assume that Mr. Hanrahan (counsel cross-examining) had two friends to dinner. To assume that one of them says "I hope to be there". To assume that one of them says "I agree I'll be there". To advise whether Mr. Hanrahan's expectations about what those two friends would do is different.	Refused. The question is not relevant, vague and overly broad. Issues with respect to friends coming for dinner is not relevant, hypothetical and speculative. Counsel asked questions with respect to the Federation Agreement and those questions were answered.	
3.		86	27	To provide what is in substance a legal interpretation of the Indenture/Lease agreement.	Refused. This is not a proper question for a non-lawyer and a fact witness. Regardless, Mr. Gibaut's opinion on the interpretation of the nuances of the wording in a lease signed in the 1960s by others is not relevant. Further, the affiant did not provide an opinion on the interpretation of this Indenture/Lease. In fact, it was attached to another affidavit. See pages 22 to 27 and questions 74 to 86.	

4.		214	55-56	To imagine a world where there was not any federated relationships and students could only have their choices to take. To answer questions regarding this hypothetical.	Refused. The question is not relevant, vague and overly broad. Issues with respect to imagining a world without federated relationships and where students could only have their choices to take is not relevant, hypothetical and speculative to the issues on the motion. Counsel asked questions with respect to actual student choice and satisfaction at Laurentian and Thorneloe, and those were answered.	

April 26, 2021

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

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

REFUSALS AND UNDERTAKINGS CHART

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TAB 3(A)

Laurentian CCAA

Allan Nackan
on Friday, April 23, 2021



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Court File No. CV-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
Applicant

--- This is the Cross-examination of ALLAN
NAKCAN, taken by Neesons, a Veritext Company,
via Zoom virtual platform, on the 23rd day of
April, 2021.

REPORTED BY: Helen Martineau, CSR

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I N D E X

PAGE

WITNESS: ALLAN NACKAN

Cross-examination by Mr. Hughes.....5

The following list of undertakings, advisements
and refusals is meant as a guide only for the
assistance of counsel and no other purpose.

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by
U/T and appear on the following page/line:
NONE.

INDEX OF ADVISEMENTS

The questions/requests taken under advisement
are noted by a U/A and appear on the following
page/line: NONE.

INDEX OF REFUSALS

The questions/requests refused are noted by R/F
and appear on the following page/line: 12/3;
15/8; 16/12; 29/12; 51/9.

INDEX OF EXHIBITS

NO./	DESCRIPTION	PAGE
A	Marked for identification:	23
	Exhibit K to the Affidavit of Dr.	
	Robert Haché sworn April 21,	
	2021.	

1 --- Upon commencing at 5:10 p.m.

2 ALLAN NACKAN: AFFIRMED.

3 CROSS-EXAMINATION BY MR. HUGHES:

4 1 Q. Mr. Nackan, I'd like to just sort
5 of briefly go through your qualifications. At
6 paragraph 3.3 of your report and at Appendix 2,
7 you state that you are capable of taking on
8 appointments as a Monitor and that you have
9 acted as a Monitor in the past, is that correct?

10 A. Correct. Yeah, we have -- we act
11 in a broad range of insolvency engagements,
12 correct.

13 2 Q. And you're familiar with the
14 duties of a Monitor generally?

15 A. I am.

16 3 Q. And you'll agree with me that one
17 of those duties is to ensure that the goals of
18 the CCAA are advanced?

19 A. Yes.

20 4 Q. And to generally assist
21 stakeholders in attempting to develop a plan of
22 arrangement to potentially avoid bankruptcy,
23 you'll agree with that?

24 A. The Monitor's role is essentially
25 to facilitate the process and help the parties

1 hopefully arrive at a successful plan.

2 5 Q. And that involvement includes
3 providing recommendations on plans of
4 arrangement, is that correct?

5 A. Yes.

6 6 Q. And part of that duty is
7 typically to compare -- involves comparing
8 potential recovery scenarios for the benefit of
9 stakeholders, you know, recovery scenarios in
10 the sense that one compares what a creditor
11 might receive with a successful plan of
12 arrangement versus what a creditor might receive
13 in bankruptcy or liquidation. Is that typically
14 one of the things that a Monitor does?

15 A. It is one of the things that the
16 Monitor would do, more typically at the plan
17 evaluation stage, but yes.

18 7 Q. So in terms of your expertise,
19 you're not an expert in terms of government
20 funding of universities?

21 A. No.

22 8 Q. Or the criteria that governments
23 employ in determining university funding?

24 A. No. This is my first experience
25 with a university of this nature.

1 9 Q. One of the subject matters of
2 your expert opinion involved the prospects of
3 making a viable CCAA plan. And I'd like to just
4 sort of look briefly at some of the elements
5 that typically go into determining those
6 prospects.

7 You'll agree with me that one of those
8 elements is that comparison that we just
9 discussed, that, you know, stakeholders and
10 creditors need to determine their likely
11 recovery in the liquidation bankruptcy versus
12 their likely recovery in a successful plan of
13 arrangement. That is one of the elements that
14 one considers, is that correct?

15 A. Yes.

16 MR. YIOKARIS: Counsel, I've given a
17 lot of leeway here. I'm just concerned about
18 the relevancy. He's giving an expert report
19 about the Notice of Disclaimer and the relative
20 financial hardship on Thorneloe versus
21 Laurentian.

22 I've given you a lot of leeway. I'm
23 not sure where this comes in.

24 MR. HUGHES: Well, I mean, the expert
25 is opining as to the prospects of making a

1 viable CCAA arrangement in his report. So what
2 I'm doing is I'm questioning him as to what
3 elements go into that determination.

4 MR. YIOKARIS: Yeah, and he's answered
5 that in a general sense.

6 MR. HUGHES: Yes. He's answered one
7 of the questions in a general sense, yes.

8 BY MR. HUGHES:

9 10 Q. So that's one of the elements
10 that typically, you know, one would consider in
11 determining that.

12 The second, I would suggest, is the
13 cooperation and the views of stakeholders and
14 creditors in terms of their trust in the
15 applicant, their risk appetite.

16 You'd agree with me that that would
17 come into play in a determination as to the
18 viability of a plan of arrangement?

19 A. I'm not sure I understand your
20 question.

21 11 Q. Certainly. I apologize.

22 A. Can you restate that? Yeah.

23 12 Q. I'll restate that.

24 So one of the elements in
25 determining -- in trying to determine the

1 viability of a plan of arrangement, we've
2 discussed the one, and that is the relative
3 recovery under a plan versus under a
4 liquidation.

5 And the second is the views of
6 stakeholders generally. If the stakeholders
7 don't support it, then it doesn't have a high
8 chance of succeeding. If the stakeholders do
9 support it, then it does. Would you agree with
10 that?

11 A. Yes.

12 13 Q. And I would suggest that the
13 third element that typically comes into play is
14 the ability and the access of a company to
15 interim cash.

16 If a company is not able to buy itself
17 enough time to even come up with a plan, then
18 there's very little chance of succeeding,
19 whereas if it does have access to cash to be
20 able to continue to propose a plan, then it
21 would have a prospect of succeeding. Would you
22 agree with that?

23 A. Yes.

24 MR. YIOKARIS: Counsel, hold on, hold
25 on. Again, I'm going to have to start refusing

1 this questioning about what all goes into the
2 theoretical or hypothetical viability of a plan,
3 especially -- that's not what his expertise is
4 gearing towards here. That's not what this
5 report is gearing towards.

6 MR. HUGHES: Well, it seems to me
7 that's exactly what his expertise is. It's
8 exactly what he's opined upon. I'll quote --

9 MR. YIOKARIS: He's saying it's going
10 to have -- he's saying it's going to:

11 "[...] have an immaterial impact
12 on overall costs reduction in
13 Laurentian's restructuring process and
14 is unlikely to enhance prospects of
15 Laurentian making a viable Plan in the
16 CCAA [...]"

17 BY MR. HUGHES:

18 14 Q. "[...] is unlikely to enhance
19 prospects of Laurentian making a
20 viable Plan in the CCAA [...]"

21 To make that conclusion, one needs to
22 know what are the aspects that enhance or don't
23 enhance the prospect of a company making a plan
24 in the CCAA. And that is what I'm asking him
25 about.

1 MR. YIOKARIS: Well, he's already
2 stated that given the size and operations of
3 Thorneloe as compared to Laurentian that he
4 believes it will have an immaterial impact.

5 Like, that's where his expert report
6 is going into. It's not going into a treatise
7 as to what's likely or unlikely to enhance ^ in
8 a broad sense. He's saying, this isn't going to
9 enhance the prospects of Laurentian making a
10 viable plan, given the size and operations of
11 Thorneloe as compared to Laurentian.

12 MR. HUGHES: I --

13 MR. YIOKARIS: I'm just confused.

14 MR. HUGHES: I'm confused. I don't
15 understand your objection. I mean, if he is
16 making a determination as to what does and does
17 not enhance the viable prospects of a company
18 making a plan in the CCAA, then, you know, one
19 would need to know what goes into that kind of
20 determination.

21 MR. YIOKARIS: Yeah. And --

22 MR. HUGHES: It's not simply -- it's
23 not simply that Mr. Nackan raises one issue, and
24 as a result, you know, all other issues that go
25 into making that determination, you know, are

1 not considered and are not relevant. I don't
2 understand your objection.

3 R/F MR. YIOKARIS: Well, he's not giving
4 an expert report as to everything that's going
5 to be making a viable plan in the CCAA
6 proceedings, and that's pretty overly broad.
7 His report is focused on --

8 MR. HUGHES: Well, he is. Well, he
9 is.

10 MR. YIOKARIS: -- ^termination of the
11 Federation Agreement --

12 MR. HUGHES: He's making a -- he's
13 actually making --

14 MR. YIOKARIS: ^-- serious financial
15 hardships to Thorneloe, and in comparison ^(ZOOM
16 AUDIO CUT OUT). Please continue, Mr. Hughes,
17 and I'll let you know if I've got another
18 refusal.

19 BY MR. HUGHES:

20 15 Q. Mr. Nackan, I'd like to take you
21 to your Appendix 3 at page 362.

22 A. Sorry, give me a moment. I'm
23 just calling it up. Okay. This is the list of
24 documents?

25 16 Q. Yes. So here you cite the

1 sources of your information. You have three
2 different columns. There's "Documents and
3 Information", "Websites", and "Legal Statutes".

4 And that is the totality of your
5 sources of information, is that correct?

6 A. These are the documents that I
7 relied on in drafting this report.

8 17 Q. So other than -- I mean, you
9 refer to:

10 "Information received pursuant to
11 discussion with Thorneloe management
12 and staff".

13 So other than your discussions with
14 Thorneloe, you've not been engaged in any
15 discussions with Laurentian's creditors or
16 stakeholders, have you?

17 A. Throughout -- we were engaged as
18 financial advisor at the beginning of the
19 proceeding. I've had interaction with the
20 Monitor.

21 I've had interaction with the other
22 stakeholders through the mediation process, but
23 I'm not sure that that's pertinent to what we're
24 discussing on this report.

25 18 Q. Okay.

1 MR. YIOKARIS: And, of course,
2 anything discussed at mediation I don't want
3 Mr. Nackan to be divulging, and I'm sure that
4 you probably don't want that either, Mr. Hughes.

5 BY MR. HUGHES:

6 19 Q. No.

7 So you've not been engaged in
8 discussions with Laurentian's DIP Lender?

9 A. We've had no contact with the DIP
10 Lender, nor has any other stakeholder that I'm
11 aware of.

12 20 Q. So, Mr. Nackan, as an insolvency
13 practitioner, I'd like to just take you through
14 a hypothetical scenario, and it's a scenario
15 where you've been appointed Monitor over a
16 company.

17 Let's call the company Acme Widgets.
18 And, you know, Acme Widgets produces a million
19 widgets a year at the cost of \$1 a widget. It
20 contracts out some of its widget production to,
21 let's call it, ABC Widgets. ABC Widgets makes
22 100,000 widgets a year also at a cost of a
23 dollar a widget.

24 You determine that Acme has additional
25 production capacity, and it could make those

1 100,000 widgets itself at no additional cost or
2 at a small additional cost.

3 Now, all other things being equal,
4 you'll agree with me that it would be
5 commercially sensible for Acme to disclaim its
6 contract with ABC and produce those widgets
7 itself?

8 R/F MR. YIOKARIS: And that's a refusal,
9 Counsel. I'm not going to have him answer
10 hypothetical questions. If you want to ask
11 questions about this file, his expert report,
12 that's fine, but I'm not going to have him
13 answer hypothetical questions.

14 MR. HUGHES: But he's an expert
15 witness.

16 MR. YIOKARIS: Correct, and you can
17 ask him about his expert report, or you can ask
18 him about actual fact experiences that have
19 happened in this file, but I'm not going to
20 allow him to answer hypothetical questions.

21 MR. HUGHES: That's typically what
22 experts -- I mean, facts are put to experts
23 hypothetically, and experts answer those
24 questions based on their expertise. I mean,
25 that's how experts --

1 MR. YIOKARIS: You have my position,
2 Counsel. Thank you.

3 BY MR. HUGHES:

4 21 Q. If you are a Monitor acting for a
5 company and you determine that the company ought
6 to disclaim a contract for, say, \$100,000, and
7 the company had expenses of a million dollars
8 and it did that to save \$100,000, would you not
9 agree that whether that \$100,000 contract is in
10 one contract or ten contracts for \$10,000, the
11 result ought to be the same?

12 R/F MR. YIOKARIS: Again, the same
13 refusal, Counsel. If you want to ask him about
14 the fact scenario in this case, I'm happy to let
15 him answer, but I'm not going to let him answer
16 random hypotheticals.

17 BY MR. HUGHES:

18 22 Q. All right. Mr. Nackan, I'd like
19 to go to your conclusions first regarding
20 Laurentian at page 347 of your report.

21 A. Sorry, I'm not looking at the
22 Motion Record, so can you give me the page in my
23 report?

24 23 Q. Certainly. Paragraph 2.1,
25 really, at page 347.

1 A. So the summary conclusions?

2 24 Q. Yes.

3 A. Sure.

4 25 Q. So in respect of Thorneloe, you
5 make, really, two conclusions in respect of a
6 disclaimer. You conclude that the termination
7 of the Federation Agreements will have an
8 immaterial impact on the overall cost reduction
9 in Laurentian's restructuring process. That's
10 one conclusion, is that correct?

11 A. Correct.

12 26 Q. And then you make a second
13 conclusion: The termination of the Federation
14 Agreement is unlikely to enhance the prospects
15 of Laurentian making a viable plan in the CCAA
16 proceeding, is that correct?

17 A. Correct.

18 27 Q. So let's turn to each of those
19 conclusions first starting with the
20 immateriality of the overall cost reduction.

21 I'd like to turn you to page 356, and
22 then we'll get you the equivalent in your
23 report. It is page 11.

24 A. Okay. I have it.

25 28 Q. So there you have a chart, and it

1 charts out, among other things, the grants and
2 tuition fees received and compares Thorneloe to
3 Laurentian. The Thorneloe number is the, you
4 know, 1,847,272, and then the Laurentian number
5 is next to that?

6 A. Correct.

7 29 Q. And your report shows that it
8 represents -- that the Thorneloe amount
9 represents 1.35 percent of the total grants and
10 tuitions received?

11 A. Yes.

12 30 Q. And that, among the others, are
13 the amounts that you state are immaterial?

14 A. That is correct.

15 31 Q. So I'd like to refer you to, and
16 I sent this to your counsel earlier today, to
17 Mr. Haché's exhibit in his affidavit, Exhibit K,
18 which is at page 340 of the Motion Record.

19 A. 340. Okay. Got it.

20 32 Q. And those are -- those are
21 Mr. Haché's numbers that set out ^Thorneloe,
22 Huntington, and University of Sudbury comparing
23 the grants and the tuitions?

24 A. Right.

25 33 Q. Tuition amounts. I'd like you to

1 look at the Huntington number, which shows a
2 cost saving of \$2.1 million.

3 In your -- I mean, you have concluded
4 that the \$1.8 million and change, which is
5 1.35 percent, you've concluded that that is
6 immaterial in terms of cost reductions for
7 Laurentian University. Would you take the same
8 position on the Huntington number of
9 \$2.1 million?

10 A. Most of my focus has been on the
11 Thorneloe number, but in comparable numbers,
12 it's on the same scale of materiality.

13 I just would like to correct your
14 question though. You said the costs of
15 Huntington. This schedule doesn't technically
16 represent the costs. These are funds that were
17 flowed through Laurentian to the Federated
18 Universities, not technically costs.

19 34 Q. Well, if they flow through
20 Laurentian to the Federated Universities, then
21 they are costs to Laurentian. But --

22 A. Well, they are grants and tuition
23 that was earned in respect of courses delivered
24 by the feds. The mechanism is that it passes
25 through Laurentian, that it's technically not --

1 it's not technically Laurentian's revenue
2 stream.

3 35 Q. Well, I mean, we will get to that
4 aspect of your evidence shortly, but okay.

5 So the amount paid by Laurentian to
6 Huntington, so you're -- so in terms of the
7 University of Sudbury, then that is
8 approximately \$3.7 million paid to University of
9 Sudbury from Laurentian. Would your view be
10 that that amount is immaterial?

11 A. Yeah, I mean, all of this needs
12 to be judged in the context of the whole. And
13 I -- you know, I'm not sure where they're -- you
14 know, how close they are or not to their target.

15 It's in the same range of materiality
16 as the other two.

17 36 Q. So you say, "judged in the
18 context" --

19 A. Yeah.

20 37 Q. -- "of the whole" because what's,
21 in fact, being disclaimed --

22 A. Yeah, you're talking 2,
23 \$3 million of revenue, you know, in the context
24 of \$136 million total revenue. So those are
25 small numbers.

1 38 Q. Yeah. So when we're talking 1 to
2 8 in terms of -- 1.8 approximately for
3 Thorneloe, 2.1 for Huntington, 3.7 or more for
4 University of Sudbury, and the total is over
5 7.7 million?

6 A. Yes.

7 39 Q. And you say we need to discuss
8 them in the whole, and, you know, we would agree
9 with that because what we are dealing with is a
10 disclaimer of the Federation Agreement and the
11 financial distribution notices for all three?

12 A. It's not my understanding that
13 it's necessarily all three. I'm focused on
14 Thorneloe, and, you know, my understanding of
15 the facts on the ground is that the University
16 of Sudbury and Huntington have both indicated
17 that they're -- that they're probably
18 terminating here. So all that really remains is
19 the Thorneloe piece.

20 40 Q. So would your view be that in
21 terms of all three, the \$7.7 million, would your
22 view be that that is an immaterial cost
23 reduction?

24 A. I mean, I didn't -- I haven't
25 turned my mind specifically to that. Obviously

1 you can say in absolute terms it's a bigger
2 number, but it's still relatively small in the
3 big picture of Laurentian.

4 41 Q. So, I mean, what level of cost
5 reduction would you say is material?

6 A. It's -- I mean, there's -- I
7 can't give you a scientific number. I mean, you
8 can say -- I mean, you know, in total they are,
9 what -- I don't have my calculator with me, but,
10 you know, they're well under 10 percent.
11 That's -- you know, in -- I can't give you a
12 specific answer to that.

13 42 Q. So your evidence is that a
14 10 percent cost reduction would also be
15 immaterial?

16 A. I'm not saying -- I'm saying
17 that, you know, if -- I mean, I just picked
18 10 percent for illustrative purposes, but
19 probably if it's in -- if it's below 10 percent,
20 it is -- it may be immaterial.

21 But I can't put that out as a
22 benchmark and say that's the number, that's the
23 threshold.

24 MR. YIOKARIS: Yeah, Counsel, in
25 fairness to the witness, he's already said that

1 he hasn't turned his mind to what that number
2 would be, that -- once it starts to turn to
3 materiality.

4 He's saying the Thorneloe numbers
5 certainly aren't material, but he hasn't -- he's
6 already answered that he hasn't said what that
7 actual threshold would be.

8 MS. MILLER: Has that document been
9 marked as an exhibit in this exam?

10 MR. HUGHES: Could we mark -- it's in
11 evidence in Mr. Haché affidavit. Could we mark
12 that as an Exhibit for identification purposes?
13 It's Exhibit K to Mr. Haché's April 21st
14 affidavit.

15 THE WITNESS: I'm not sure if you're
16 asking me or the lawyers, but --

17 EXHIBIT NO. A: Marked for
18 identification: Exhibit K to the
19 Affidavit of Dr. Robert Haché sworn
20 April 21, 2021.

21 BY MR. HUGHES:

22 43 Q. So your evidence -- yes. So if
23 we're talking not simply about -- so your
24 evidence is that Thorneloe's amount here, the
25 1.8 percent is immaterial.

1 What if there were two Thorneloes?
2 What if there were two elements of cost
3 reductions that would be 1.8 and 1.8? Would
4 that also be immaterial?

5 A. Maybe. I mean, I haven't seen --
6 I haven't seen the business plan going forward.
7 I haven't seen forecast, cash flows going
8 forward, so, you know, I'm -- you know, I
9 can't -- I can't -- I can't say without seeing
10 the complete plan.

11 I do know that Laurentian has been
12 successful in implementing some significant
13 restructuring steps over the last couple of
14 months. They have reduced their faculty costs
15 substantially.

16 I don't have the numbers, and I don't
17 know how close they are to the line and then
18 whether adding a second university is going to
19 push it over the line and make it not viable. I
20 can't imagine it's that close, but...

21 44 Q. But my question is, I mean,
22 you're saying that the 1.8 million here for
23 Thorneloe, for example, is immaterial?

24 A. That's what I'm saying.

25 45 Q. But if we were talking about more

1 than just Thorneloe being disclaimed, if it were
2 a larger number, certainly there must be a point
3 at which, in your expert opinion, it moves from
4 being immaterial to being material?

5 A. As I said, I didn't specifically
6 turn my mind to that point when I drafted the
7 report.

8 46 Q. So you turned your mind to this
9 being immaterial, but you did not turn your mind
10 to what would be material, is that correct?

11 A. I looked at the impact on
12 Thorneloe and Thorneloe's contribution or -- and
13 how it fits in within the Laurentian
14 infrastructure. I didn't consider specifically
15 the -- all three of the feds.

16 As I said, knowing the direction the
17 other two are going, I would suggest that
18 it's -- it's less relevant because, you know,
19 they -- as I said, they have indicated that they
20 are terminating or considering terminating.

21 47 Q. But surely if a company has
22 multiple contracts with a counterparty --

23 A. Uhm-hmm.

24 48 Q. -- and each of those contracts
25 seen in isolation is a small number, surely

1 there's a point at which the multiple contracts,
2 the numbers add up, and they move from being
3 immaterial to being material. Would you agree
4 with that?

5 A. Potentially.

6 49 Q. So one can't simply look at one
7 of those contracts in isolation when there are
8 multiple contracts and conclude that that one
9 contract ought not to be terminated, ought not
10 to be disclaimed because it, viewed entirely in
11 isolation, is immaterial?

12 A. The question I was asked is the
13 impact on Thorneloe, you know, the impact on
14 Thorneloe and, as I said, the impact of that on
15 the Laurentian restructuring.

16 MR. YIOKARIS: Yeah, Counsel, he's
17 answered this question a few times in a number
18 of different ways.

19 MR. HUGHES: I don't think he has. I
20 mean, the first time I tried to ask it with a
21 hypothetical I was interrupted, so I don't think
22 he really has.

23 BY MR. HUGHES:

24 50 Q. I mean, the question is, you
25 know, we can't take one contract in isolation

1 and say that seen on its own, it is immaterial,
2 because if one had ten contracts that were
3 \$2 million each and then looked at each one
4 individually and said, well this is immaterial,
5 this is immaterial, this is immaterial, surely
6 the collective effect of those at some point
7 moves from being immaterial to being material.

8 So my question is, at what point does
9 this become material?

10 MR. YIOKARIS: And, Counsel, you've
11 asked that several times, and he's given the
12 answer several times.

13 BY MR. HUGHES:

14 51 Q. What is the answer?

15 MR. YIOKARIS: You can go back to the
16 record, but what I understood his answer to be
17 is that his report was on the Thorneloe number,
18 and he never specifically did the analysis to
19 let you know what the precise number is the
20 second it turns material.

21 And he also commented that he doesn't
22 have a number of the reports or modelling. And
23 he also commented, from what I recall, I don't
24 want to be putting words in his mouth, that the
25 University of Sudbury will not be -- going

1 forward, is looking, as I understand it, to be
2 running themselves, and Huntington, it appears,
3 won't be going forward. He's addressed these a
4 number of times.

5 Now, again, his answer is what his
6 answer is. Don't take my paraphrasing. Go back
7 to what his answers are. But he's answered this
8 a number of different ways.

9 MR. HUGHES: So you're not prepared to
10 commit to a position as to what would be
11 material, what number would be material?

12 MR. YIOKARIS: That's correct. He's
13 -- you've asked him, and he's answered that a
14 few times, so please move along.

15 BY MR. HUGHES:

16 52 Q. So, Mr. Nackan, you know what is
17 immaterial but not what would be material, is
18 that your evidence?

19 A. I'm not saying that. There comes
20 a point, as you say, if you cumulatively --
21 there is a point that it may be material.
22 That's not what I was charged to look at in this
23 report.

24 And as I said, I don't -- the
25 university has not shared any financial

1 projections going forward of what the
2 restructured university looks like. We are
3 still waiting for that.

4 53 Q. Well, I guess it's the old
5 expression of watch the pennies and the dollars
6 take care of themselves. I mean, to say that a
7 number -- an item of cost savings is small and
8 incremental, if those small and incremental
9 amounts add up, it can move from being
10 immaterial to being material. Would you agree
11 with that?

12 R/F MR. YIOKARIS: Counsel, again, you've
13 asked that question a number of times. Please
14 move on.

15 BY MR. HUGHES:

16 54 Q. So, Mr. Nackan, your next
17 conclusion is that the cost savings associated
18 with disclaiming the Thorneloe Federation
19 Agreement and financial distribution notices,
20 that those cost savings are unlikely to enhance
21 the prospects of making a viable plan.

22 Above, we -- you know, earlier on we
23 discussed the typical factors that go into a
24 determination of, you know, what can make a plan
25 viable, and we discussed that one of those is a

1 comparison of recovery scenarios.

2 And you'll agree with me that in
3 considering recovery scenarios, that those
4 numbers can be incremental, that a creditor --
5 it could be that in the liquidation scenario,
6 the bankruptcy scenario, a creditor might have a
7 potential recovery of a million dollars, and in
8 a planned scenario, it might be \$1,000,001.

9 That's possible, isn't it? Those are
10 two possible recovery scenarios?

11 A. It's a very theoretical position,
12 but yes, it is.

13 55 Q. And it might well be that these
14 small numbers, that as it turns out, when one
15 gets to the stage of determining the recovery
16 scenarios, it might well be that the numbers
17 turn on small numbers, isn't that correct?

18 A. I think it's all highly
19 speculative at the moment. I mean, I have no
20 idea what a plan might look like.

21 You know, based on the financial
22 position that Laurentian is presenting, I'm not
23 hopeful that there's going to be a significant
24 pool of funds available so -- and, you know, nor
25 have we studied the relative plans of every

1 other creditor.

2 So I can't -- it's difficult to
3 evaluate without seeing the claims pool,
4 understanding what's at stake in the plan. You
5 know, it's hard to imagine how Thorneloe's claim
6 will move the needle.

7 56 Q. Well, I mean, you said some
8 important things there, and one is that it is
9 speculative, and you are speculating, are you
10 not?

11 A. I'm -- I mean, what I'm saying is
12 that, you know, Laurentian -- that the net
13 benefit that Laurentian gets from terminating
14 Thorneloe is not -- does not appear to be
15 material in the big picture, and I don't think
16 it will move the needle on whether they can put
17 forward a viable plan.

18 57 Q. But, I mean, your evidence is
19 effectively, we don't know where that needle is
20 or will be?

21 A. No. I mean, if our client -- if
22 -- not our client, but, you know, if Thorneloe
23 was a -- had \$100 million claim, you know, I
24 think it's -- it may be different. But we're
25 talking about a claim -- a much smaller claim.

1 58 Q. But you'll agree with me that
2 it's different in increments. It might not
3 be -- it might not be different in quality.
4 It's different in quantity.

5 I mean, we are speculating. We don't
6 know how ultimately, you know, the numbers are
7 going to shake down. And clearly, the larger
8 the cost savings the more difference it will
9 make; the smaller the cost savings the less
10 difference it will make.

11 But to say that at some point it
12 becomes material or immaterial, that's difficult
13 to say at this point, isn't it?

14 MR. YIOKARIS: ^Counsel, he's already
15 answered the immaterial versus material question
16 a number of times. And I've asked you, I think,
17 now three or four times to move on from that.

18 BY MR. HUGHES:

19 59 Q. And this is a different question.
20 I mean, what we're going through is, you know,
21 we had discussed and your client had agreed that
22 in one of the elements that goes into
23 determining whether a plan is viable or not
24 viable is the potential recovery scenarios for
25 creditors and stakeholders.

1 So my question is that, you know,
2 we're talking about an annual reduction, cost
3 reduction of, according to your client's
4 numbers, over \$4.6 million a year.

5 So, you know, my question is -- and we
6 are speculating, but I have to speculate because
7 your client's report speculates -- that when it
8 comes to looking at that comparison, a cost
9 savings of over \$4.6 million a year might well
10 be the cost savings that turns the dial, is that
11 not correct?

12 MR. YIOKARIS: Well, he has already
13 disputed the premise -- a few issues with the
14 premise of that question about whether this is
15 cost savings or not.

16 And he's already said in terms of the
17 dial, he's already expressed what he's talked
18 about is immaterial and that he can't tell you
19 when that point of materiality, that precise
20 point of materiality happens.

21 So I'm not sure what you're getting at
22 if you're not getting at that question again.

23 BY MR. HUGHES:

24 60 Q. Well, I think I'm getting at just
25 that. He can't determine the point of

1 materiality. That is his evidence?

2 MR. YIOKARIS: ^No. He can tell you
3 what -- he can tell you that Thorneloe's numbers
4 are not material. He can certainly tell you
5 that, and he has told you that a number of
6 times. But he can't tell you when materiality
7 triggers into effect, when that line is.

8 At least that's how I understood his
9 evidence, and certainly he's answered that a
10 number of times, and I'm not going to allow him
11 to answer it again.

12 BY MR. HUGHES:

13 61 Q. But, Mr. Nackan, I think your
14 evidence is that -- I mean, it's premature to
15 determine that, those recovery scenarios, is it
16 not?

17 A. We're not at the plan stage yet.
18 You know, based on where we are right now and my
19 understanding of what Laurentian is trying to
20 achieve, the small amount of money that gets --
21 you know, that Thorneloe earns for the services
22 that they provide don't appear to be material in
23 the big picture. And I -- you know, I don't --
24 it's my considered opinion that it won't move
25 the needle.

1 Now, of course, if at some point I --
2 you know, when there's a plan and there's
3 something tangible for me to look at, I can look
4 at it, but that's my view today.

5 62 Q. That it's entirely speculative?

6 A. I didn't say "speculative".

7 63 Q. That you're unable to say the
8 extent to which --

9 A. No. I said based on where
10 Laurentian finds itself in the restructuring
11 process today and the cost savings they seem to
12 be wanting to achieve, you know, this is a small
13 number.

14 64 Q. But your evidence isn't simply
15 that it's a small number. Your evidence is that
16 it's an immaterial number in the sense that it
17 won't make any difference?

18 A. That's -- yes, correct.

19 65 Q. But it's premature to determine
20 whether it will make any difference, is it not?

21 A. I'm -- I'm not -- it's -- if the
22 question is regarding the cost savings to
23 Laurentian or the revenue that Laurentian wishes
24 to scoop from this university, I think it's
25 immaterial as we look at it right now.

1 The impact of the plan I will assess
2 when we have a plan and more facts.

3 66 Q. But ultimately, as we discussed
4 earlier in determining the viability of a plan
5 and the prospects, that that weight of recovery
6 in a liquidation scenario versus a plan scenario
7 is one of the factors.

8 And the other is the decisions of
9 creditors and the appetites of creditors and the
10 will of creditors. And determining that is also
11 premature, is it not?

12 A. We're not at the plan stage yet.

13 67 Q. And you haven't had discussions
14 with any of the creditors, and you don't know
15 what their appetite is?

16 A. I don't.

17 68 Q. But at a certain -- it might well
18 be that at a certain number the views of
19 creditors are influenced, the views are tipped?

20 MR. MEEHAN: Mr. Meehan here speaking
21 for Thorneloe. That question is also -- "it
22 might well be", the word "might" is
23 hypothetical.

24 If you could please direct your
25 questions to Mr. Nackan's report, not

1 hypotheticals, as to whether this might be or
2 that might be. We're not talking about that.
3 We're talking about this, this report, not what
4 might be.

5 MR. HUGHES: Well, this report is
6 speculation, and it is hypothetical.

7 MR. MEEHAN: That's not his evidence.
8 That's your supposition. Please ask questions
9 that do not have the word "might" in it.

10 BY MR. HUGHES:

11 69 Q. So saying that a certain number
12 is immaterial in the sense that it will not
13 impact the viability of a plan in the future,
14 that's not speculative?

15 MR. YIOKARIS: Well, Counsel,
16 regardless of that, he's -- has been asked and
17 answered these questions for the past 20, 25
18 minutes.

19 MR. MEEHAN: Mr. Hughes, the evidence
20 from the expert is that -- to give an analogy,
21 he's telling you this pile of wood is a small
22 pile of wood, and you're asking him to define
23 what a pile of wood is. That's a hypothetical.

24 MR. HUGHES: No --

25 MR. MEEHAN: And he's simply telling

1 you -- I haven't finished. He's simply telling
2 you that this is a small pile of wood, and you
3 are pushing him to define what a pile of wood
4 is. That's a hypothetical question here.

5 MR. HUGHES: Well, no, it's --

6 MR. MEEHAN: He's telling you this is
7 a small pile of wood. That's his evidence.

8 MR. HUGHES: Well, his evidence is not
9 that it's a small pile of wood.

10 MR. MEEHAN: Yes, it is.

11 MR. YIOKARIS: ^It is. It is.

12 BY MR. HUGHES:

13 70 Q. Okay. So it's not --

14 MR. MEEHAN: You just haven't -- you
15 just haven't ^^ say so.

16 BY MR. HUGHES:

17 71 Q. So your evidence is not that this
18 is an immaterial amount. Your evidence is that
19 this is simply a small amount?

20 A. This is a small amount and is
21 immaterial in the greater picture of Laurentian.

22 72 Q. So it's not simply a small pile
23 of wood. It's not a pile of wood?

24 A. Sorry?

25 73 Q. I mean, Mr. Nackan, if your

1 evidence is that, you know, these numbers are
2 what they are, and they're small, and they might
3 -- because they are so small, they are likely to
4 have a lesser impact on, you know, the
5 likelihood or success or failure of a plan
6 compared to a big number. That's one thing.

7 It's quite another to jump from that
8 and to say that this is a small number, this is
9 a big number, and the small number is immaterial
10 because it's small?

11 MR. YIOKARIS: Well, no, no, no, he's
12 saying it's small and immaterial.

13 MR. HUGHES: Exactly.

14 MR. YIOKARIS: He's been very -- it's
15 immaterial.

16 BY MR. HUGHES:

17 74 Q. Exactly. They're two different
18 things. It's not simply a small pile of wood.
19 It's not simply a small -- I mean, the number is
20 what it is. The numbers are what they are, and
21 that's not the point.

22 A. I mean --

23 75 Q. The point is that Mr. Nackan --
24 the point is Mr. Nackan is saying this will not
25 make any difference. That's the point.

1 A. The truth is that the -- people
2 will probably evaluate the plan more on what is
3 proposed by Laurentian than by the claims pool.

4 76 Q. But what is proposed by
5 Laurentian is influenced by the numbers, is it
6 not?

7 A. Not necessarily. They may only
8 have X to give towards the creditors regardless
9 of the size of the claims pool.

10 77 Q. Yes, but that amount is relevant
11 to creditors, is it not?

12 A. The amount that they're proposing
13 to the creditors is relevant, of course.

14 78 Q. And the bigger the number the
15 more likely it is that creditors will accept it,
16 is that not correct?

17 A. That's a motherhood statement.
18 Yes. I mean, obviously the more that you offer
19 the more likely it is that creditors will find
20 it acceptable.

21 It comes back to -- my central point
22 is, you know, is the \$1.8 million of revenue
23 that's earned by Thorneloe going to
24 substantially change people's views?

25 I mean, it's a -- you've got to look

1 at it in a broader, more balanced way. You
2 can't -- you know, it's -- we're oversimplifying
3 the discussion here.

4 79 Q. So, I mean, you're not in the
5 heads of creditors, and neither am I, and
6 neither of us know, you know, what the creditors
7 will not accept. Do you agree with that?

8 A. Correct.

9 80 Q. And neither of us know how the
10 recovery scenarios will play out?

11 A. Correct.

12 81 Q. So, I mean, because of that,
13 because we don't know, you know, we don't know
14 what numbers will influence the creditors, you
15 know, we don't know how these numbers will all
16 play out, how can you be in a position to say
17 that a \$4.6 million annual cost reduction will
18 not influence the prospects of a viable plan?

19 A. Sorry, where are you getting the
20 \$4.6 million from?

21 82 Q. That is your numbers added up,
22 page 11 of your report, your chart. That's the
23 net grants and tuition fees, ancillary revenue,
24 salaries and benefits.

25 Obviously I didn't add the 7 because

1 that's people, not dollars.

2 A. No, no, the annual recurring
3 impact is \$2.5 million of revenue that we would
4 be -- that Thorneloe would be losing.

5 Included in the 4.6 is -- are these
6 one-time impact that they would suffer as a
7 result of termination.

8 83 Q. Okay.

9 A. So it's the 2.5.

10 84 Q. The 2.5. Okay. So, I mean, that
11 doesn't change the question.

12 A. Sorry, can you repeat the
13 question?

14 85 Q. Sure. The question is, without
15 being in the heads of the creditors and knowing
16 their preferences and without knowing how the
17 recovery scenarios will play out, I mean, we're
18 not in a position to know if this amount -- or
19 any amount of cost savings will tip the balance
20 in favour of creditor approval or creditor
21 rejection?

22 A. You know, I'm not speculating on
23 that. I'm just -- it's my opinion that this --
24 that the -- that the Thorneloe impact will not
25 move the needle in a material way.

1 86 Q. But that's inconsistent with your
2 conclusion in your report, what you just said?

3 A. No, it's not.

4 87 Q. So your conclusion in your report
5 is that:

6 "[...] termination of the
7 Federation Agreement [...] is unlikely
8 to enhance prospects of Laurentian
9 making a viable Plan in the CCAA
10 Proceedings."

11 And my question was if we don't know
12 what's in the heads of the creditors and we
13 don't know how the recovery scenarios will play
14 out, we are not in a position to know whether or
15 not this amount or that amount and that swing
16 will change the -- will enhance the prospects of
17 Laurentian making a viable plan of arrangement?

18 MR. MEEHAN: Mr. Hughes, you've
19 indicated in the question that we do not know.
20 If you do not know, then why are you asking such
21 an obviously hypothetical question? You've said
22 yourself we do not know. If you do not know,
23 then why ask a question that --

24 MR. HUGHES: I'm not giving evidence.
25 I'm not saying that I do know. Mr. Nackan is.

1 MR. MEEHAN: But you're asking
2 hypothetical questions.

3 BY MR. HUGHES:

4 88 Q. No, I'm not. Mr. Nackan is --
5 Mr. Nackan is making a statement that the:

6 "[...] termination of the
7 Federation Agreement will have an
8 immaterial impact on overall costs
9 reduction in Laurentian's
10 restructuring process [...]"

11 That's conclusion 1, that the:

12 "[...] termination of the
13 Federation Agreement [...] is unlikely
14 to enhance prospects of Laurentian
15 making a viable Plan in the CCAA
16 Proceedings."

17 I'm not saying that I know that it
18 will not. I'm not giving evidence.

19 MR. MEEHAN: Then why are you saying,
20 we do not know? Why are you prefacing the
21 question by saying, we do not know?

22 BY MR. HUGHES:

23 89 Q. Let me ask the question again.

24 We are not in the heads of the
25 creditors. We don't know what they will accept

1 or reject. Mr. Nackan has agreed with me with
2 that proposition.

3 We don't know how the recovery
4 scenarios will ultimately play out. Mr. Nackan
5 has agreed with that proposition.

6 Since we don't know ^one or two, my
7 question is, we are -- how are we in a position
8 to say whether or not X amount of savings or Y
9 amount of savings could tip the balance in
10 favour or against the prospects of a successful
11 CCAA plan? We're not in a position to know that
12 yet, are we, Mr. Nackan?

13 MR. MEEHAN: Mr. Hughes, again, you
14 have -- you have prefaced -- you have given
15 three hypotheticals, one after the other.
16 You've said, we do not know A, we do not know B;
17 therefore, we do not know C.

18 MR. HUGHES: Those were -- those were
19 not hypotheticals. Those were questions. And
20 Mr. Nackan agreed with those statements of fact.

21 MR. MEEHAN: Those are not questions
22 of fact. How can it be a question of fact when
23 you just said in two prefaced questions, where
24 we do not know?

25 That's an inherent contradiction. If

1 you do not know, then do not transpose that into
2 a question of fact. It is clearly not a
3 question of fact.

4 MR. HUGHES: It is. The fact is that
5 we are not in the minds of the creditors, and we
6 don't know what positions they will take. That
7 is a fact. It's a fact with which Mr. Nackan
8 has agreed.

9 MR. MEEHAN: You being in somebody
10 else's mind is not a fact, with respect.

11 MR. HUGHES: But we are not in their
12 minds. We do not know what their preferences
13 are. Mr. Nackan has conceded that he has not
14 had discussions with any of them, so he does not
15 know what their preferences are or will be.
16 That is a fact. It is a fact that's been
17 admitted.

18 MR. YIOKARIS: Right. But he has told
19 you that given the amounts, and at this point in
20 time, it's clearly immaterial, and he doesn't
21 see it shifting the dial, and he said that over
22 and over and over and over again.

23 MR. HUGHES: That's not what he has
24 said. That's not his conclusion. Shall we go
25 back and repeat his conclusion again?

1 MR. YIOKARIS: Please go ahead and ask
2 your next question.

3 MR. HUGHES: Well, I didn't get an
4 answer or an objection to that question.

5 MR. YIOKARIS: Sorry, what exactly is
6 your question?

7 THE WITNESS: ^What is the question?
8 Yeah.

9 BY MR. HUGHES:

10 90 Q. Mr. Nackan, you concluded that
11 Laurentian disclaiming the Thorneloe agreements
12 is unlikely to enhance the prospects of
13 Laurentian making a viable plan in the CCAA
14 proceedings?

15 A. Yes.

16 91 Q. That is your conclusion?

17 A. Yes.

18 92 Q. And you've conceded that you've
19 not had discussion with creditors?

20 A. Yes.

21 93 Q. And you do not know what the
22 creditors' preferences are or will be at this
23 point?

24 A. I don't know at this stage.

25 94 Q. And you do not know how

1 ultimately the recovery scenarios will play out?

2 A. I don't know that, but it's still
3 my opinion that the -- that the relative quantum
4 of what we're dealing with in Thorneloe is
5 not -- is not likely to change the outcome of
6 any plan.

7 95 Q. But without knowing the views of
8 creditors and without knowing how the scenarios,
9 the financial scenarios will play out, you do
10 not know that, though, do you?

11 A. I can't --

12 MR. MEEHAN: Mr. Hughes, not knowing
13 A, not knowing B clearly is a hypothetical.

14 MR. HUGHES: That's not my question,
15 Mr. Meehan. That wasn't my question.

16 MR. MEEHAN: But your question was
17 prefaced by two hypotheticals.

18 MR. HUGHES: No, it was not.

19 MR. MEEHAN: Not knowing A and not
20 knowing B.

21 BY MR. HUGHES:

22 96 Q. It was prefaced by two facts with
23 which Mr. Nackan agreed. Those are two
24 premises. They're two premises and two facts,
25 and Mr. Nackan agreed with both of those facts.

1 A. If this was a \$200 million claim,
2 we're speaking about a whole different
3 situation. We're talking about a small claim, a
4 tiny claim in a large claims pool.

5 97 Q. It's a bigger pile of wood.

6 A. That's...

7 98 Q. But it's still wood.

8 A. Okay. It's still wood.

9 99 Q. So we don't know, standing here,
10 whether or not -- we're not in a position to say
11 whether --

12 A. None of us know definitively, but
13 I can tell you based on my experience that I
14 don't think this will have a -- you know, I
15 don't think this will significantly enhance the
16 prospect of Laurentian making a viable plan.

17 100 Q. But that's slightly different
18 from your conclusion, though, in your report?

19 A. No, that's exactly my conclusion.
20 If anything, I was --

21 101 Q. But your conclusion is that it's
22 -- first of all that it's immaterial?

23 A. Correct. I -- that's still my
24 conclusion.

25 102 Q. Isn't that different from saying

1 it's not -- it won't -- it won't make a
2 significant difference? An immaterial --

3 A. I think you're just parsing
4 words. It's -- I'm saying the same thing, and I
5 if I'm being imprecise, I'm sorry.

6 103 Q. So in terms of the three things
7 that we discussed that go into influencing
8 whether or not a plan of arrangement is viable,
9 I mean, the first one was that financial
10 comparison, and we don't know how that's going
11 to play out?

12 A. Okay.

13 104 Q. The second one is the cooperation
14 of stakeholders. And your evidence is that
15 you've not spoken to Laurentian's creditors or
16 stakeholders other than Thorneloe and other than
17 your participation --

18 A. Yeah, I mean, I've had some
19 interaction with the other creditors within the
20 mediation, but that's it.

21 105 Q. So for all that you know, there
22 might be no plan that the creditors accept?

23 A. Correct.

24 106 Q. And for all that you know, they
25 might accept any plan? I mean, it might well be

1 they don't want to be seen as bankrupting a
2 university, and they will accept a plan
3 notwithstanding their financial interest. That
4 might well be the case too, correct?

5 A. Unlikely, but possible.

6 107 Q. And it might well be that a small
7 difference in cost in recovery scenarios is what
8 changes their views?

9 R/F MR. YIOKARIS: Counsel, you've asked
10 that question now about a dozen times, and he
11 keeps giving you the same answer, so I'm not
12 going to allow him to answer the question again.

13 BY MR. HUGHES:

14 108 Q. And your evidence is that you've
15 not had discussions with Laurentian's DIP
16 Lender?

17 A. Correct.

18 109 Q. So the same principle applies in
19 the sense that you don't know what numbers
20 Laurentian's DIP Lender is prepared or not
21 prepared to agree with?

22 A. I don't know other than the
23 statement that I've seen in Haché's affidavit.
24 But nothing has been -- has entered so far in
25 these proceedings. I haven't seen a DIP budget.

1 I -- you know, I just know what's on the record.

2 110 Q. So I'd like to turn to your
3 conclusions, some of your evidence regarding
4 Thorneloe at page 347, and let me find the
5 equivalent.

6 A. Which page is that?

7 111 Q. Page 2.

8 A. Okay.

9 112 Q. So these are just some of the
10 conclusions, and one conclusion is:

11 "[...] Thorneloe will no longer
12 be eligible to receive government
13 grants [...]"

14 That's one of your conclusions?

15 A. Yes.

16 113 Q. Thorneloe --

17 MR. YIOKARIS: Sorry, Counsel, what
18 section are you at?

19 MR. HUGHES: This is the introduction,
20 so top of the page at 347.

21 MR. YIOKARIS: In Section 1.2 or
22 something? 1.1?

23 THE WITNESS: 2.1, I think.

24 MR. HUGHES: Yes, that's correct.

25 2.1.

1 MR. YIOKARIS: 2.1, thank you.

2 BY MR. HUGHES:

3 114 Q. And one of the other conclusions
4 you make is Thorneloe will have to resort to a
5 formal insolvency process if these agreements
6 are disclaimed?

7 A. Yes.

8 115 Q. So starting with the first, that
9 Thorneloe will no longer be eligible to receive
10 government grants, you know, we've gone through
11 your area of expertise, and it's not in
12 government funding.

13 A. Correct.

14 116 Q. At paragraph 5.4 of your report,
15 you state that:

16 "The federation arrangement
17 allowed Thorneloe to access provincial
18 grant funding that would be paid to
19 Thorneloe through Laurentian [...]"?

20 A. Right.

21 117 Q. And then referencing Appendix 5
22 of your report, Appendix 5 you attach -- this is
23 the Financial Distribution Notice?

24 A. Yes.

25 118 Q. And at page 372, the first full

1 paragraph at the top --

2 A. Sorry, which page on my report?

3 119 Q. Oh, sorry, this is page 2 of
4 Appendix 5 to your report.

5 A. Page 2 of Appendix 5. I don't
6 have the appendix in front of me, but this is
7 the distribution agreement, right?

8 120 Q. It is, yes.

9 A. Distribution Notice.

10 121 Q. Would you like a moment to --

11 A. Yeah, I can pull it up. Hold on.
12 I have to go to the EY website.

13 122 Q. Well, I don't think it's -- I'm
14 just trying to think if any of these are
15 particularly controversial, and I don't think
16 they are, but if at any point you would like a
17 moment to pull them up, I'm happy to --

18 A. Okay.

19 MR. YIOKARIS: Yeah, Counsel, if
20 you're going to be asking him about a document,
21 I'd rather him be able to pull it up if he wants
22 to pull it up.

23 MR. HUGHES: That's fine. That's
24 fine.

25 MR. YIOKARIS: So take a minute,

1 Mr. Nackan, and pull it up.

2 THE WITNESS: Yeah. Just trying to
3 go. Give me a moment. Sorry, what page was it
4 of the Motion Record?

5 BY MR. HUGHES:

6 123 Q. Page 372 of the Motion Record.

7 A. Right. Got it. 371. Okay.

8 124 Q. So at the top of page 372 it
9 states that:

10 "The Federated Universities do
11 not receive funding directly from the
12 government. Laurentian University has
13 historically transferred a portion of
14 the funding it receives from the
15 government to each Federated
16 University according to a set formula,
17 unless otherwise instructed by the
18 government."

19 So turning to your paragraph 5.4,
20 there's a slight inconsistency in saying that it
21 would be paid to Thorneloe through Laurentian.
22 In fact, according to the Revenue Sharing
23 Agreement, it is paid to Laurentian, and
24 Laurentian pays it to Thorneloe?

25 A. I mean, as I understand it, and

1 as you said, I'm not an expert on government
2 funding, but these Federated Universities,
3 Thorneloe in particular, would not be eligible
4 to receive these grants directly.

5 And that is structurally the very
6 reason for the federation, and that has been the
7 mechanism throughout the history whereby funds
8 are -- you know, are paid over to them, subject
9 to this formula or that formula.

10 125 Q. So you say that would be paid.
11 On what basis would it be paid?

12 A. The current arrangement would be
13 this financial distribution notice that we --
14 that we're looking at at the moment.

15 126 Q. Okay. So it's not that they
16 would be paid. It's that, in fact, Laurentian
17 is paid the money, and Laurentian pays the money
18 to Thorneloe, correct?

19 A. Laurentian is paid the money in
20 respect of courses that are being delivered by
21 Thorneloe. So, again, it's -- my understanding,
22 it's the channel whereby the payment is made.

23 But it's not like Laurentian is
24 dipping into their own pockets to pay Thorneloe.

25 127 Q. Well, you agree with the

1 statement set out at page 372 that it is
2 Laurentian that pays Thorneloe?

3 A. That's how the funding flows,
4 yes.

5 128 Q. Yes. Okay. And then at
6 paragraph 5.4, you refer to this relationship --
7 sorry, 5.4 of your report, page 3.

8 A. Uhm-hmm.

9 129 Q. Sorry, that's where you said that
10 it would be paid. Paragraph 6.6, rather.

11 A. Yeah.

12 130 Q. You state that:

13 "Thorneloe does not qualify for
14 government grants and without receipt
15 of income from government grants and
16 tuition fees for programs/courses
17 offered to Laurentian students,
18 Thorneloe cannot sustain its
19 operations or continue paying its
20 ongoing costs and liabilities."

21 Again there you're referring to this
22 funding model where Laurentian receives the
23 money, and then Laurentian pays the money to
24 Thorneloe, correct?

25 A. Yes, I mean, the grants and

1 tuition are their primary source of income that
2 sustains them and allows them to pay their
3 expenses, and it flows through Laurentian.

4 MR. YIOKARIS: Counsel, is this maybe
5 a good time to take a five-minute break? We've
6 been going for a good hour and 15 minutes.

7 MR. HUGHES: Actually, I think I could
8 finish this point, I think, fairly quickly in
9 probably under five minutes.

10 BY MR. HUGHES:

11 131 Q. Paragraph 6.5, you state:

12 "Thorneloe will also no longer be
13 eligible to receive government grants
14 [...]"

15 And having regard to what we just
16 discussed, that's not exactly correct, is it?
17 It's not that they will no longer be eligible --

18 A. But they won't because --

19 132 Q. They won't, and they are not
20 currently eligible?

21 A. As I understand it, the current
22 status is they are not eligible to receive it
23 directly.

24 133 Q. Okay. So it's -- so it's a --
25 we're perhaps nitpicking a little bit here, but

1 it's incorrect to say they're no longer eligible
2 because they are not now eligible?

3 A. Yeah, I mean, I think the point
4 I'm trying to make is termination will cut off
5 their grant funding, ^as said in my English.

6 134 Q. But you agree with me that they
7 are not currently eligible to receive government
8 funding?

9 A. They do not -- my understanding
10 is that they're not -- that they cannot
11 independently receive the funding. That's the
12 reason for the federation.

13 135 Q. Right. And you make a similar
14 statement at paragraph 2.1 where, you know, you
15 use the language:

16 "If terminated, Thorneloe will no
17 longer be eligible [...]?"

18 A. That's how I understand the facts
19 to be. Are you picking apart my wording, "no
20 longer"?

21 136 Q. Yes, because "no longer" implies
22 that they are eligible now, and termination will
23 result in them no longer being eligible. But in
24 fact, they are not eligible now, correct?

25 A. What I'm saying is termination

1 will result in a cessation of them receiving
2 grants.

3 And, you know, you're asking me a
4 slightly different question I think. I mean,
5 these grants are being earned in respect of --
6 or paid by the government in respect of
7 Thorneloe services, courses. Yeah, I'm not sure
8 what -- "no longer be eligible".

9 137 Q. Meaning that they are currently
10 eligible, which is incorrect?

11 A. Well, they are -- they're
12 eligible because of the structure that exists.

13 138 Q. They're -- well, they're
14 receiving it -- they're receiving it via
15 Laurentian. They are not eligible to receive
16 government grants directly, correct?

17 A. That's my understanding.

18 139 Q. I think that was probably --
19 there's one more point, I think, on this. Just
20 turning back to Appendix 5.

21 A. That's the --

22 140 Q. That's page 370 of the Motion
23 Record.

24 A. The Federation Agreement, right?

25 No --

1 141 Q. That is the notice. That is the
2 Federation Distribution Notice.

3 A. Got it.

4 142 Q. Page 3. There there's a
5 reference made to any modifications by the
6 province in the grant structure --

7 A. Sorry, where -- oh, right, at the
8 last paragraph.

9 143 Q. Last paragraph starting around
10 the middle:

11 "Any modification by the Province
12 in the grant structure or through
13 regular negotiation with the Province
14 through the Strategic Mandate
15 Agreements (SMA) or otherwise with
16 Laurentian University will be
17 correspondingly reflected in the grant
18 allocation calculations by Laurentian
19 University with each of the Federated
20 Universities."

21 I take it you have not -- it's not
22 listed in your documents reviewed. I take it
23 you have not reviewed the strategic mandate
24 agreements?

25 A. I don't think I have. That

1 doesn't ring any bells with me. So if it's not
2 appended to this agreement, then no.

3 MR. HUGHES: Okay. I think that's
4 probably a good time to take a break.

5 MR. YIOKARIS: Counsel, in fairness to
6 the witness, have those documents been produced
7 in any of the Motion Records?

8 MR. HUGHES: I mean, I believe that's
9 publicly available. I wasn't making any
10 judgments. I was simply asking if Mr. Nackan
11 had reviewed it or had not reviewed it.

12 MR. YIOKARIS: Yeah, no, and that's
13 why I'm asking because if it's part -- if it's
14 part of one of the Motion Records, he probably
15 has then.

16 MR. HUGHES: Okay.

17 MS. MILLER: No, it's publicly
18 available through the, you know, Ministry
19 website, that type of thing.

20 THE WITNESS: If that's the only
21 source, I haven't seen it.

22 MR. HUGHES: All right. Thank you.

23 -- RECESSED AT 6:42 P.M. --

24 -- RESUMED AT 6:49 P.M. --

25

1 BY MR. HUGHES:

2 144 Q. Just a few more points to go
3 over, Mr. Nackan.

4 A. Sure.

5 145 Q. I'd like to refer you to page 347
6 of your report.

7 A. Okay. Can you --

8 146 Q. Page -- it's your -- sorry, which
9 is your page 2.

10 A. Okay.

11 147 Q. You state the following:

12 "Termination of the Federation
13 Agreement will cause serious financial
14 hardship to Thorneloe as a consequence
15 of which Thorneloe itself will have to
16 resort to a formal insolvency
17 process."

18 So I take it you're referring to
19 either the BIA or the CCAA?

20 A. Correct.

21 148 Q. And you'll agree that they would
22 apply to Thorneloe if Thorneloe were to do that?

23 A. That's my working assumption.

24 149 Q. Okay. And I take it you make
25 this conclusion absent any intervening events,

1 is that correct?

2 A. What do you mean specifically by
3 "intervening events"?

4 150 Q. Well, for example, Thorneloe
5 might agree to some type of arrangement with
6 Laurentian as Huntington has, for example?

7 A. It's a bilateral -- it would have
8 to be an agreement that made sense to both
9 parties because termination essentially is a
10 terminal event for Thorneloe, you know, unlike
11 Huntington who seem to have another plan.

12 The agreement that has been proposed
13 to Huntington is not going to work for
14 Thorneloe. It's not going to be their
15 salvation, you know.

16 151 Q. I think -- what I'm getting is I
17 think your implication, as all other -- as the
18 economists would say, ceteris paribus, all other
19 things being equal, this is -- you conclude
20 that, is that correct?

21 A. Yeah. My conclusion is if
22 there's -- you know, if this -- if this
23 agreement is terminated, the effect will be that
24 essentially, that their -- that their business
25 will no longer be viable.

1 And there will be a -- a number of
2 consequences that flow from that. They're going
3 to have to terminate their employees. There's
4 potential large exposure under the pension
5 liability, even though that hasn't been
6 quantified, but it's a big number.

7 And there are other costs that flow
8 from that that -- you know, I've set it out in
9 my table, so there was a Table 1 on -- Table 1
10 at 6.18 of our report.

11 152 Q. Okay. And not to get too far off
12 topic, because it's not -- it wasn't intended to
13 be a controversial question.

14 A. Yeah.

15 153 Q. But simply to say, you know,
16 absent any other intervening events, such as
17 some sort of acceptable deal being reached,
18 private funding from another party, government
19 funding, that kind of thing, absent any changes
20 from your current knowledge, that's your
21 conclusion --

22 A. Yes. I'm not aware of any such
23 white knight or -- there is nothing like that at
24 the moment. So of course, yes, you know, absent
25 anything changing, this looks like the reality

1 they're staring down.

2 154 Q. All right. That's fine. I have
3 no further questions.

4 --- Whereupon the examination was
5 completed at 6:54 p.m.

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REPORTER'S CERTIFICATE

I, HELEN MARTINEAU, CSR, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were
taken before me at the time and date therein set
forth at which time the witness was put under
oath by me;

That the testimony of the witness and
all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
accurate transcript of my shorthand notes so
taken. Dated this day of 2020.



PER: HELEN MARTINEAU
CERTIFIED SHORTHAND REPORTER

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Yeah 5:10 8:4, 22 11:21 20:11, 19, 22 21:1 22:24 26:16 47:8 50:18 54:11, 19 55:2

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46:18 47:1, 5
51:9 52:17, 21
53:1 54:19, 25
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Zoom 1:18
12:15

TAB 3(B)

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**

**REFUSALS AND UNDERTAKINGS CHART
CROSS-EXAMINATION FOR DISCOVERY OF ALLAN NACKAN, HELD APRIL 23, 2021**

Refusals						
Refusals to answer questions on the cross-examination of Allan Nackan , dated April 23, 2021						
	Issue & relationship to pleadings or affidavit (Group the questions by issues.)	Q. No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
1.		9-14	7-12	To advise and comment on all of the factors that may go into making a viable plan in a hypothetical CCAA.	Refused. The question is not relevant and/or overly broad and vague. The expert is retained by Thorneloe and provided a report concluding that the termination of the Federation Agreement will have an immaterial impact on overall costs reduction in Laurentian's restructuring process, and that the termination of the Federation Agreement will cause serious financial hardship to Thorneloe. The expert did not opine on all the factors that may make a viable plan in a hypothetical CCAA. Further, questions about certain factors were asked and answered repeatedly.	
2.		20	15	To assume that Mr. Nackan acts as a Monitor over Acme Widgets. To assume that Acme Widgets produces a million widgets a year at the cost of \$1 a widget. To assume Acme Widgets contracts out some of its widget production to ABC Widgets. To assume ABC Widgets makes 100,000 widgets a year also at a cost of a dollar a widget. To assume that Mr. Nackan determines that Acme has additional production capacity and could make those	Refused. The question is not relevant and/or overly broad and vague. Further, Mr. Nackan is retained by Thorneloe and his conduct is not in question. As such, this question is not appropriate. Farber's expert report was based on actual financial data. The questions put to Farber seeks answers to hypothetical questions involving hypothetical facts. These are not alternate facts being argued by Laurentian in these proceedings. Laurentian is a public university and is not akin to a generic company making widgets. The financial data allowed Mr. Nackan to arrive at the opinion that the termination of the Federation Agreement will have an immaterial impact on overall costs reduction in Laurentian's restructuring process, and that the termination	

				100,000 widgets itself at no additional cost or at a small additional cost. To advise whether Mr. Nackan would agree that it would be commercially sensible for Acme to disclaim its widget contract with ABC and produce those widgets itself.	of the Federation Agreement will cause significant financial hardship to Thorneloe. Further, Farber is retained by Thorneloe and is not the actual Monitor appointed under the CCAA in Laurentian's restructuring, but an independent expert retained to provide an opinion.	
3.		21	16	To assume that Mr. Nackan acts as Monitor for a company. To assume Mr. Nackan determines that the company out to disclaim a contract for \$100,000. To assume the company had expenses of a million dollars. To assume it did that to save \$100,000. To advise if Mr. Nackan agrees that whether the \$100,000 contract is in one contract or ten contracts for \$10,000, the result ought to be the same.	Same as above.	
4.		53	29	To advise at what point does the impact become material.	The question was repeatedly asked and answered. See questions 25 to 53.	
5.		51	107	To advise whether a small difference in cost in recovery scenarios may change the views of creditors when they vote on a plan in the CCAA.	The question was repeatedly asked and answered. Further, it is highly speculative. See for example pages 30-51. For example: 55 Q. And it might well be that these small numbers, that as it turns out, when one gets to the stage of determining the recovery scenarios, it might well be that the numbers turn on small numbers, isn't that correct? A. I think it's all highly speculative at the	

					moment. I mean, I have no idea what a plan might look like. You know, based on the financial position that Laurentian is presenting, I'm not hopeful that there's going to be a significant pool of funds available so -- and, you know, nor have we studied the relative plans [claims] of every other creditor. So I can't -- it's difficult to evaluate without seeing the claims pool, understanding what's at stake in the plan. You know, it's hard to imagine how Thorneloe's claim will move the needle. ... 56 A. I'm -- I mean, what I'm saying is that, you know, Laurentian -- that the net benefit that Laurentian gets from terminating Thorneloe is not -- does not appear to be material in the big picture, and I don't think it will move the needle on whether they can put forward a viable plan. ... 61 A. We're not at the plan stage yet. You know, based on where we are right now and my understanding of what Laurentian is trying to achieve, the small amount of money that gets -- you know, that Thorneloe earns for the services that they provide don't appear to be material in the big picture. And I -- you know, I don't -- it's my considered opinion that it won't move the needle. Now, of course, if at some point I -- you know, when there's a plan and there's something tangible for me to look at, I can look at it, but that's my view today. ...	

					65. A. I'm -- I'm not -- it's -- if the question is regarding the cost savings to Laurentian or the revenue that Laurentian wishes to scoop from this university, I think it's immaterial as we look at it right now. The impact of the plan I will assess when we have a plan and more facts. ... 67 Q. And you haven't had discussions with any of the creditors, and you don't know what their appetite is? A. I don't.	

April 26, 2021

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

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

REFUSALS AND UNDERTAKINGS CHART

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TAB 4(A)

Laurentian CCAA

Pierre Riopel
on Saturday, April 24, 2021



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File No. CV-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
Applicant

--- This is the Cross-examination of PIERRE
RIOPEL, taken by Neesons, a Veritext Company,
via Zoom virtual platform, on the 24th day of
April, 2021.

REPORTED IN ENGLISH BY: Helen Martineau, Csr
REPORTED IN FRENCH BY: Manuel Garand, S.O.
FRENCH LANGUAGE INTERPRETER : Reuben Wright

A P P E A R A N C E S:

D.J. MILLER, Esq., for the Applicant
& ANDREW HANRAHAN, Esq.,
& FRASER HUGHES, Esq.

ANDRÉ CLAUDE, Esq. for University
& RON CAZA, Esq. of Sudbury

EUGENE MEEHAN, Q.C. for Thornloe
& DEMETRIOS YIOKARIS, Esq. University
& ANDREW J. HATNAY, Esq.

ASHLEY JOHN TAYLOR for the Monitor

Also Present:

Sharon Hamilton (Court-appointed Monitor of the
Applicant), Sara Kunto

I N D E X

PAGE

WITNESS: PIERRE RIOPEL

Cross-examination by Mr. Hanrahan.....7

The following list of undertakings, advisements
and refusals is meant as a guide only for the
assistance of counsel and no other purpose.

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by
U/T and appear on the following page/line:
53/6; 65/23; 129/11; 129/17; 130/25; 138/6;
139/18; 140/25; 141/7; 142/6.

INDEX OF ADVISEMENTS

The questions/requests taken under advisement
are noted by a U/A and appear on the following
page/line: 87/16; 88/18; 118/13.

INDEX OF REFUSALS

The questions/requests refused are noted by R/F
and appear on the following page/line: 73/5;
117/21; 125/20; 126/7; 135/3; 143/13.

1	INDEX OF EXHIBITS	
2	NO. / DESCRIPTION	PAGE
3		
4	NONE MARKED .	
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1 --- Upon commencing at 9:16 a.m.

2 MR. CLAUDE: Mr. Wright, I think what
3 we established that Mr. Riopel will be able to
4 receive the question in English without the need
5 for interpretation, that will cut your work down
6 by a good margin.

7 But, however, other counsel will wish
8 to have the benefit from French to English. So
9 I don't think you're going to be needing to do
10 from English to French throughout this whole
11 examination.

12 THE INTERPRETER: Okay.

13 MR. CLAUDE: So Ms. Miller, if you
14 will allow me? The correction is this, it
15 relates to the affidavit of Mr. Riopel contained
16 in the motion record, delivered to you on
17 April 14, although the affidavit contained in
18 that motion record refers to three federation
19 documents, which include the lease, attached as
20 Exhibits A, B and C, during the document
21 assembly process, I inserted the first page only
22 as a reminder of what the document was that I
23 wished to include entirely in the affidavit and,
24 by inadvertence, I've omitted to add the
25 remaining pages of those exhibits.

1 So Mr. Riopel did have those
2 documents -- was aware of those documents in the
3 process of preparing that affidavit, but
4 throughout -- through the omission we're missing
5 documents. And the full documents correspond to
6 Exhibits J, K, and L from the applicant's
7 record -- sorry, the application record at
8 Volume 1 of 4.

9 So I thought I'd get that straight
10 because clearly the affidavit refers to
11 documents. I think there are even excerpts from
12 those documents, but clearly you only have
13 page 1 attached as exhibits, and that is my
14 mistake. And we'll correct that as soon as
15 possible either with a new motion record, Fresh
16 as Amended, we'll find -- we'll find the correct
17 way to put before the court the full document.

18 MS. MILLER: Thank you.

19 MR. HANRAHAN: Just to clarify, so the
20 witness does have the full versions of the
21 documents in front of him today?

22 MR. CLAUDE: Yes, I believe he has,
23 which are the Exhibits J, K and L from the
24 application record, so if you wish to refer to
25 the page numbers of the application record, or

1 whatever reference you wish to make, I believe
2 those documents are before Mr. Riopel for this
3 morning's purposes.

4 MR. HANRAHAN: Okay. Thank you. Is
5 there anything else you wanted to mention?

6 MR. CLAUDE: No, that would be it,
7 thank you.

8 PIERRE RIOPEL: AFFIRMED.

9 [Testifying through a French language
10 interpreter for giving his answers
11 only.]

12 CROSS-EXAMINATION BY MR. HANRAHAN.

13 1 Q. Good morning, Mr. Riopel.

14 A. Bonjour. Good morning.

15 2 Q. Mr. Riopel, you understand that
16 you're here today to answer questions regarding
17 three affidavits, that you swore on this
18 proceeding, in support of the University of
19 Sudbury's motion opposing the Notice of
20 Disclaimer that was delivered by Laurentian
21 University?

22 A. Oui.

23 [Yes].

24 3 Q. And those affidavits were an
25 affidavit sworn April 14th, 2021, a second

1 affidavit sworn April 18th, 2021, and a third
2 affidavit sworn April 23rd, 2021?

3 A. Oui, c'est ça.
4 [Yes, that's correct.]

5 4 Q. And do you have a copy of your
6 affidavits in front of you today?

7 A. Oui, devant moi.
8 [Yes, before me.]

9 5 Q. And have you had a chance to
10 review those affidavits again before you
11 appeared here today?

12 A. Oui.
13 [Yes].

14 6 Q. And other than what your counsel
15 just mentioned a moment ago, are there any other
16 changes or corrections to your affidavits that
17 you'd like to make?

18 A. Pas à ma connaissance, non.
19 [Not that I'm aware of, no.]

20 7 Q. So you stand by the contents of
21 your affidavit today?

22 A. Oui.
23 [Yes.]

24 8 Q. And you're sworn to tell the
25 truth today?

1 A. Oui, tout à fait.

2 [Yes, exactly.]

3 9 Q. And if we turn to your
4 April 14th affidavit the signature on page 14 is
5 yours, correct?

6 A. Oui, c'est ma signature.

7 [Yes, that's my signature.]

8 10 Q. And your April 18th affidavit, on
9 page 4, that's your signature?

10 A. C'est également ma signature,
11 oui.

12 [Yes, that's my signature.]

13 11 Q. And on page 5 of your April 23rd
14 affidavit, that's your signature?

15 A. Oui.

16 [Yes.]

17 12 Q. Okay. And just before we get
18 going, I'll just clarify for the record, so your
19 first affidavit was submitted in English, your
20 second affidavit of April 18th was submitted in
21 French, and we received, from your counsel, a
22 rough translation of that document, which is
23 where I'll be working from today.

24 And your April 23rd affidavit, that we
25 received yesterday, was also in French and I'm

1 working off a rough translation that we have had
2 created for us. But to the extent anything I
3 refer to in those does not accurately reflect
4 how you understand what's expressed in your
5 affidavit please feel free to correct me.

6 A. Je ferai de mon mieux.

7 [I'll do my best.]

8 13 Q. Mr. Riopel, did your lawyer draft
9 the affidavits for you?

10 A. Oui.

11 [Yes.]

12 14 Q. And then you reviewed them before
13 signing?

14 A. Absolument.

15 [Absolutely.]

16 15 Q. And in addition to your
17 affidavits do you have a copy of the motion
18 record that University of Sudbury has submitted
19 in front of you?

20 A. Je crois que oui.

21 [I believe so.]

22 16 Q. So that would be the motion
23 record dated April 14th. I have two tabs, the
24 Notice of Motion and your affidavit, is that
25 what you have?

1 A. Ce que j'ai devant moi, c'est mon
2 affidavit. Mon affidavit puis un document
3 intitulé « application record ».

4 [I have in front of me my affidavit
5 and a document titled "Application of Record".]

6 MR. CLAUDE: Counsel, maybe I can
7 help? If you will allow me?

8 Monsieur Riopel, ce serait « motion
9 record of the University of Sudbury ».

10 Mr. Riopel it's the motion record of
11 the University of Sudbury.

12 THE WITNESS: Je l'ai en format
13 électronique, oui.

14 [No translation provided.]

15 MR. CLAUDE: Et ça contient la date du
16 14 avril, et votre affidavit du 14 avril se
17 trouve à l'intérieur de ce cahier-là.

18 It's dated the 14th of April your
19 affidavit is included.

20 THE WITNESS: Oui, j'ai le document en
21 format électronique.

22 [Yes, I have that document in a
23 digital format.]

24 BY MR. HANRAHAN:

25 17 Q. You mentioned the "application

1 record", is that the application record that
2 Laurentian filed? Is that what you're referring
3 to?

4 A. Je pense que oui.

5 [I believe so.]

6 MR. CLAUDE: Mr. Hanrahan, just so you
7 understand, the three exhibits drawn from the
8 application record have the front vague, "Volume
9 1 of 4" with the three exhibits J, K and L
10 attached to that one document. So that those
11 three exhibits are in one PDF document with the
12 front page that refers or reminds, I guess, the
13 person looking at that document that's it's
14 drawn from Volume 1 of 4 of the applicant's
15 application record.

16 MR. HANRAHAN: Okay. But does he have
17 the full application record in front of him?

18 MR. CLAUDE: I don't believe so.
19 We'll let the witness answer but what I believe
20 the document he was referring to is specifically
21 so that when you refer to Exhibits A, B and C of
22 his affidavit he has that document with that
23 front page of the applicant's application record
24 with J, K and L attached.

25 BY MR. HANRAHAN:

1 18 Q. And how about the
2 April 21st motion record that the applicant
3 filed? Do you have that in front of you?

4 A. Non, je n'ai pas ce document-là.
5 [No, I do not have that document. Oh
6 attends une minute.]

7 J'ai l'affidavit du docteur Haché daté
8 du 21 avril 2021.

9 [Oh, just a minute. I have a document
10 the affidavit of Dr. Haché dated...]

11 Le 21 avril 2021.

12 [... the 21st of April, 2021.]

13 19 Q. And do you have the exhibits to
14 that affidavit there as well?

15 A. Non.

16 [No.]

17 20 Q. Do you have access to those
18 exhibits electronically?

19 MR. CAZA: Mr. Hanrahan, we can do one
20 of two things. We could bring it on the screen,
21 if you want to refer to any of the exhibits.
22 You can bring it on the screen, or we could
23 bring it on the screen, whichever way you want
24 to proceed.

25 Or if you have specific documents or

1 specific exhibits you're referring to they can
2 maybe be forwarded to the witness so he can
3 actually have them to look at them. We are in
4 your hands.

5 MR. HANRAHAN: I am fine with
6 forwarding them. Why don't we take it as it
7 goes and see what documents we get to and need
8 to refer to and if we need to get something to
9 him we can take a break and make sure he has it.

10 BY MR. HANRAHAN:

11 21 Q. Mr. Riopel, you're aware that
12 Dr. Gibaut from Thorneloe University was cross
13 examined yesterday?

14 A. Oui.

15 [Yes.]

16 22 Q. Did you speak to anyone about the
17 contents of his examination since that took
18 place?

19 A. Non.

20 [No.]

21 23 Q. Could you describe for me your
22 post-secondary educational background?

23 A. Je déttiens un baccalauréat
24 spécialisé en histoire, concentration en
25 sciences politiques de l'Université d'Ottawa.

1 [I have obtained a Baccalaureate with
2 a specialization in history and political
3 science from the University of Ottawa.]

4 J'ai également un baccalauréat en
5 éducation de l'Université d'Ottawa, obtenu en
6 1990.

7 [I have a Baccalaureate -- or an
8 education from the University of Ottawa obtained
9 in 1991 -- no, 1990.]

10 THE INTERPRETER: L'interprète a perdu
11 l'année. Sorry, the interpreter missed the year.

12 THE WITNESS: Je détiens également
13 une maîtrise en éducation de l'Université de
14 Toronto obtenue...

15 [I also have a Master's degree in
16 Education from the University of Toronto,
17 obtained...]

18 ... en 1996.

19 [... in 1996.]

20 BY MR. HANRAHAN:

21 24 Q. And you're currently the Chair of
22 the Board of Regents at the University of
23 Sudbury?

24 A. Oui, je le suis.

25 [Yes, I am.]

1 25 Q. And when did you assume that
2 role?

3 A. Au mois d'octobre 2017.
4 [Month of October 2007.]
5 2017.
6 [2017.]

7 26 Q. And were you appointed to that
8 position?

9 A. J'ai été élu par mes pairs.
10 [I was elected.]

11 27 Q. And by whom were you elected?

12 A. Par les membres du conseil.
13 [By the committee members.]

14 28 Q. Which committee is that?

15 A. Le conseil des régents de
16 l'Université de Sudbury.

17 THE INTERPRETER: Pouvez-vous répéter
18 s'il vous plait pour l'interprète? Il y a des
19 problèmes de son. Can you repeat that for the
20 interpreter please? The sound is not great.

21 THE WITNESS: Le conseil des régents
22 de l'Université de Sudbury.

23 [The members of the council of the
24 University of Sudbury.]

25 BY MR. HANRAHAN:

1 29 Q. And what does the job of the
2 Chair of the Board of Regents entail?

3 A. Essentiellement de présider les
4 rencontres du conseil, offrir des conseils au
5 recteur ou à la rectrice, et assumer un
6 leadership au sein du conseil des régents.

7 [Essentially council meetings,
8 offering advice to the Rector, or female Rector,
9 and assume the leadership for the Council of
10 Regions.]

11 30 Q. Is that a full-time position or
12 are you otherwise employed?

13 A. Je suis à la retraite. Et le
14 poste de président du conseil d'administration,
15 c'est un poste bénévole.

16 [I'm retired. And the post of
17 President at Board of Directors...]

18 C'est un poste bénévole.

19 It's a volunteer position.

20 31 Q. And did you have any role with
21 the University of Sudbury prior to the being
22 appointed in October 2017?

23 A. J'étais membre du conseil depuis
24 le mois de février 2012.

25 [I've been a member of the council

1 starting in the month of February 2012.]

2 32 Q. Mr. Riopel, you're aware that
3 Laurentian and the University of Sudbury have
4 been in a federation since 1960?

5 A. Oui.

6 [I am.]

7 33 Q. And that arrangement is pursuant
8 to a Federation Agreement between Laurentian and
9 the University of Sudbury, correct?

10 A. C'est ce que je comprends.

11 [That's what I understood.]

12 34 Q. And that's an agreement that was
13 executed in 1960?

14 A. À ma connaissance.

15 [That I am aware of, yes.]

16 35 Q. And you just told me a moment ago
17 that you first joined or had taken a role with
18 the University of Sudbury in February 2012,
19 correct?

20 A. Hum, hum. Oui.

21 [Yes.]

22 36 Q. So at the time the Federation
23 Agreement was signed you weren't at the
24 University of Sudbury in any capacity?

25 A. Je n'étais pas au monde, monsieur

1 Hanrahan.

2 [No, I was not even in the world, no.]

3 37 Q. Fair enough. So given that you'd
4 agree with me that other than reading the words
5 of the agreement you have no personal knowledge
6 about the agreement itself?

7 A. Des circonstances de signature,
8 non.

9 [The situation surrounding its
10 signature? No.]

11 38 Q. So could we pull up the
12 Federation Agreement, which was Exhibit A to
13 your affidavit? And do you have that in front
14 of you?

15 A. Est-ce qu'on parle de l'entente
16 de 1960 ici?

17 [Are you speaking of the agreement of
18 1960?]

19 39 Q. Correct. September 1960,
20 September 10.

21 MR. CLAUDE: Perhaps, Mr. Hanrahan,
22 Mr. Liopel, that would be referring to Exhibit
23 K, I believe, from Volume 1 of 4 from the
24 application record.

25 THE WITNESS: J'ai le document devant

1 moi.

2 [I have the document in front of me.]

3 MR. HANRAHAN: And Mr. Claude, feel
4 free to provide those because I don't have the
5 corresponding references to the application
6 record.

7 BY MR. HANRAHAN:

8 40 Q. And before I actually get into
9 the Federation Agreement, could we actually pull
10 up your April 14th affidavit? And if you could
11 pull up paragraph 13?

12 A. Oui.

13 [Yes.]

14 41 Q. So if we look at paragraph 13 of
15 your April 14th affidavit you say:

16 "The Federation Agreement was
17 intended to be permanent and
18 perpetual. There is no provision for
19 its termination and the parties never
20 intended for there to be the
21 possibility of a unilateral
22 termination of the federation
23 relationship."

24 Do you see that?

25 A. Oui.

1 [Yes.]

2 42 Q. Now, when you say that the
3 parties intended the relationship to permanent
4 or that they never intend a unilateral
5 termination, you the don't actually know what
6 the parties intended, do you?

7 A. Je n'étais pas présent, non.

8 [No, I wasn't present.]

9 43 Q. You weren't part of the
10 negotiations of the agreement, right?

11 A. De l'entente de 1960? Non.

12 [To the agreement of 1960? No.]

13 44 Q. Thank you. So you agree with me
14 that in interpreting this document you'd need to
15 look at the words on the page, correct?

16 A. Oui.

17 [Yes.]

18 45 Q. So let's look at the agreement.
19 Turn to the actual Federation Agreement now.
20 And could you turn to paragraph 17 of the
21 agreement?

22 A. C'est beau.

23 All right.

24 46 Q. And if we look at paragraph 17 it
25 say:

"Both Laurentian University and
Sudbury university declare and express
the firm hope and conviction that the
relationship between the universities,
established by this agreement, will be
a permanent one."

Do you see that?

A. Oui.

[I do.]

47 Q. You'd agree with me that
expressing a hope to do something is not the
same agreeing to do something, correct?

A. Si je comprends bien la
distinction, oui.

[If I understand the distinction
correctly, yes.]

Mais j'ajouterais que dans la même
phrase, il y a le mot « conviction »,
conviction. Alors ça aussi, je pense qu'il faut
regarder le plein portrait.

[But I would also add that in the same
sentence the word "conviction" appears so I
believe that that would need to be included.]

48 Q. Fair enough. And would you agree
that there's still a distinction between a

1 "hope" and "conviction" and an "agreement"?

2 A. Je ne suis pas avocat et je ne
3 suis pas linguiste, mais il y a une distinction
4 à faire.

5 [I'm neither a lawyer nor a linguist
6 but the distinction is clear.]

7 49 Q. And the distinction is that one
8 is a commitment and one is on aspiration, right?

9 MR. CAZA: I have an objection. I
10 want to make sure -- is your position that what
11 he thinks and his opinion on the interpretation
12 of this contract is relevant to the motion or
13 the application? I just -- because if it's not
14 you shouldn't continue with these questions, and
15 if it is I just want you to state it on the
16 record.

17 MR. HANRAHAN: Well, he's put in his
18 affidavit an understanding of what this means
19 and I'm testing his understanding of that.

20 MR. CAZA: Okay, that's fine.

21 BY MR. HANRAHAN:

22 50 Q. Madam Court Reporter, can you
23 read back the question to the witness.

24 [Question read back.]

25 A. C'est ce que je comprends.

1 [It is to -- what I understand, yes.]

2 51 Q. Let's take a look at paragraph 3
3 of the agreement. So if we look at paragraph 3
4 it says:

5 "Laurentian University agrees to
6 continue all faculties, schools,
7 institutes, departments and chairs now
8 established in Sudbury University,
9 except these in theology and
10 philosophy, in accordance with the
11 provisions of the Act and Corporation
12 of Laurentian University."

13 Do you see that?

14 A. Oui.

15 [Yes.]

16 52 Q. And you would agree with me that
17 this provision here is a particularly important
18 term in the Federation Agreement, correct?

19 A. Je dirais que oui.

20 [I would say so, yes.]

21 53 Q. And in that case, taking into
22 account that this is an important provision the
23 parties have used the language "agrees", right?

24 A. C'est ce que je lis, mais je ne
25 suis pas un avocat, moi.

1 [That's what I read, but I'm not a
2 lawyer.]

3 54 Q. If we look at paragraph 12, I
4 won't read the whole paragraph because it's
5 lengthy, but it starts:

6 "Laurentian university shall
7 allocate and reserve land within its
8 campus, which Sudbury University may
9 acquire [...]."

10 And it goes on from there. So here we
11 have used language "shall". And you'd agree
12 with me that again we've used the language
13 "shall" do something rather than "hope" to do
14 something, right?

15 A. Shall » exprime un engagement,
16 pour moi.

17 [For me "shall" expresses a
18 commitment.]

19 55 Q. I would agree with that. And if
20 we look at paragraph 7, 8, 9, those each begin
21 with the language -- those each use the language
22 "agrees". Do you see that?

23 A. Oui.

24 56 Q. So you'd agree with me that where
25 the parties intended to express a commitment --

1 an agreement or a commitment to do something
2 they used the language "agrees" or "shall",
3 right?

4 A. C'est ce que le document semble
5 indiquer, mais...

6 [That's what the document would appear
7 to indicate, but...]

8 57 Q. I wasn't sure from the
9 interpretation whether that was the end of the
10 answer?

11 A. C'est la fin de ma réponse.
12 [That's the end of my answer.]

13 58 Q. Now, in addition to the
14 Federation Agreement, Laurentian and Sudbury
15 also have an Indenture Agreement in which the
16 University of Sudbury leases land from
17 Laurentian, correct?

18 A. C'est ce que je comprends, oui.
19 [That's what I have understood, yes.]

20 59 Q. And can we take a look at that
21 document, which I believe is Exhibit B to your
22 affidavit?

23 A. J'ai le document devant moi.
24 [I have the document in front of me.]

25 60 Q. And so this document sets out the

1 terms under which the University of Sudbury
2 leases the land from Laurentian, correct?

3 A. C'est ce que je comprends.

4 [That's what I can understand, yes.]

5 61 Q. And like the Federation Agreement
6 we were just looking at, this document is from
7 the 1960s so I think it's a safe assumption from
8 me to say that you were not involved in the
9 drafting or the negotiation of this, correct?

10 A. Le 9 avril 1965, j'étais au
11 monde, mais je n'étais pas là à la signature de
12 ce document.

13 [The 9th of April 1965 I was a member
14 but I was not there for the signature.]

15 62 Q. Sorry, can you repeat the
16 interpretation? I didn't catch the answer.

17 THE INTERPRETER: I don't have the
18 transcript before me so the answer will need to
19 be repeated.

20 THE WITNESS: Le 9 avril 1965, j'étais
21 au monde, mais je n'étais pas présent à la
22 signature de ce document.

23 [The 9th of April 1965 I was a member
24 but I was not present at the signature.]

25 BY MR. HANRAHAN:

1 63 Q. Sorry, when you say you were a
2 "member" what do you mean by that?

3 A. J'étais au monde.
4 [I was in the world.]

5 64 Q. In the world, I get it.

6 THE INTERPRETER: Sorry, the sound is
7 not great.

8 BY MR. HANRAHAN:

9 65 Q. And can we take a look at
10 paragraph 6 of the indenture? Do you have that
11 in front of you?

12 A. Je crois que oui, je n'ai pas le
13 paragraphe numéroté, par contre.
14 [I believe I do but I don't have the
15 paragraph number.]

16 66 Q. It should be on page 2 of the
17 indenture?

18 A. Est-ce qu'on parle du 6, ici?
19 [Are you speaking about paragraph 6
20 here?]

21 67 Q. Yes.

22 A. À la page 2 du document, j'ai les
23 paragrapes 2, 3, 4 et 5.

24 [On page 2 of the document I have
25 paragraphs 2, 3, 4, and 5.]

68 Q. And the document I'm looking at
there is a paragraph 6 that begins right near
the bottom of the page.

A. Il me manque ces phrases-là. Je
pense que la différence, c'est que le document
original, c'est un foolscap. Moi, j'ai en 8 et
demi par 11.

[I believe the difference is the
original document is a foolscap.]

69 Q. So the bottom didn't print, is
that what you mean?

A. C'est ce que je pense.

[That's what I believe.]

70 Q. Is there an electronic version
that you can access to look at?

MS. MILLER: André, would you like me
to send and copy you and Mr. Caza with the
agreements? Let me know, or if you have it
handy?

MR. CAZA: Do you have an objection --
we can do it that way but do you have an
objection to putting it up on the screen?

MS. MILLER: I think it's hard to do
on the screen because we lose the image and
stuff with people and the witness.

1 MR. CAZA: That's sound familiar.
2 Can we take a minute just to send it
3 over? Send a copy?

4 MS. MILLER: Well do that.

5 THE WITNESS: Ah je l'ai.

6 MR. CAZA: I think Mr. Riopel just
7 stated that he found it.

8 BY MR. HANRAHAN:

9 71 Q. So you can now see the paragraph
10 6 that I was referring to?

11 A. Oui, j'ai ma copie électronique
12 devant moi.

13 [Yes, I have my electronic copy in
14 front of me.]

15 72 Q. Thank you. So if we look at
16 paragraph 6 it says:

17 "Provided that this lease, and
18 any renewal thereof, shall, at the
19 option of the lessor, cease and be
20 void if at any time during the term
21 hereby granted the lesee shall
22 withdraw from federation with the
23 lessor."

24 Do you see that?

25 A. Oui.

1 [Yes.]

2 73 Q. So you would agree with me that
3 this provision says that the lease can be void
4 if Sudbury withdraws from the federation?

5 A. Je ne suis pas avocat, donc c'est
6 difficile pour moi de répondre.

7 [I'm not a lawyer so it's difficult
8 for me to answer.]

9 Sauf que je peux vous dire que depuis
10 que je suis au conseil, en 2012, j'ai toujours
11 compris que l'entente de la Fédération était
12 véridiquement permanente et perpétuelle. Ça, je
13 peux vous l'affirmer.

14 [But I can say, since I've been a
15 member on the council, since 2012, I have
16 understood that the Federation Agreement was
17 perpetual and permanent. That I can confirm to
18 you.]

19 74 Q. Well, I just want to focus on the
20 paragraph we're looking at right now. And
21 without -- I'm not asking for a legal
22 interpretation because I appreciate that you're
23 not a lawyer. But this provision at least
24 contemplates a scenario where the University of
25 Sudbury withdraws from the federation, correct?

1 A. J'imagine qu'elle soulève la
2 possibilité, oui.

3 [I imagine that that brings up the
4 possibility, yes.]

5 75 Q. So, in other words, this document
6 is contemplating a scenario that the Federation
7 Agreement might not be permanent, right?

8 A. J'imagine si un des partis
9 choisit de se retirer de la Fédération.

10 [Yes. I imagine if one of the parties
11 decides to withdraw from the agreement.]

12 Mais le souhait, c'est que justement,
13 cette Fédération soit permanente et perpétuelle.

14 [But the desire is indeed that this
15 Federation Agreement be perpetual and
16 permanent.]

17 76 Q. Mr. Riopel, there is also a
18 Financial Distribution Notice that is in effect
19 between Laurentian University and the University
20 of Sudbury, is that direct?

21 A. Oui.

22 [Yes.]

23 77 Q. And that notice sets out the
24 terms for the distribution of operating grants
25 and tuition from Laurentian to the University of

1 Sudbury, correct?

2 A. C'est ce que je comprends.

3 [According to what I understand.]

4 78 Q. And the financial distribution
5 notice has been in effect since May 2019, is
6 that right?

7 A. 1er mai 2019, oui

8 [April 2019, yes.]

9 Le 1er mai.

10 [The 1st of May.]

11 79 Q. Could we turn to paragraph 26 of
12 your April 14th affidavit?

13 A. Oui, paragraphe 26.

14 [Yes, paragraph 26.]

15 80 Q. And you say in that paragraph:

16 "USudbury was not asked to and
17 did not consent to Laurentian
18 unilaterally revising or replacing
19 1993 funding agreement, through the
20 Financial Distribution Notice, or
21 otherwise, by purporting to revise the
22 allocation of revenues on its own
23 without consultation or discussion
24 with USudbury. Laurentian was not
25 acting within the guiding principles

1 of the Federation Agreement or in good
2 faith."

3 Do you see that?

4 A. Oui.

5 [Yes.]

6 81 Q. And could we now look at
7 paragraph 3 of your April 23rd affidavit?

8 A. Oui.

9 [Yes.]

10 82 Q. In that paragraph 3 of your
11 April 23rd affidavit you describe being present
12 for an April 2019 meeting with the president of
13 Laurentian regarding the new funding formula,
14 correct?

15 A. Oui, c'était le 30 avril.

16 [Yes, it was on the 13th of April --
17 30th of April.]

18 Merci.

19 Thank you.

20 83 Q. So in the paragraph we looked at
21 from your April 14th affidavit when you said
22 Laurentian revised the formula without
23 discussion with USudbury, that wasn't quite
24 accurate, was it?

25 A. Non, c'est juste.

1 [No, that's correct.]

2 84 Q. Well, you're describing there
3 being a meeting in paragraph 3 of your
4 April 23rd affidavit, where this was discussed?

5 A. Il n'y a pas eu de discussion le
6 30 avril.

7 [There was no discussion the 30th of
8 April.]

9 85 Q. Well, there was a meeting right?

10 A. Nous étions dans la même salle,
11 mais il n'y a pas eu de discussion. On nous a
12 placés devant un fait accompli.

13 [We were in the room on the 30th but
14 there was no discussion. We were placed before
15 a fait accompli.]

16 86 Q. When you say "there was no
17 discussion" you didn't say anything during the
18 meeting?

19 A. Maître Hanrahan, on nous a
20 présenté une document signé par le recteur de
21 l'Université Laurentienne, le docteur Zundel.

22 [Your Honour -- Hanrahan, we were
23 presented with a document signed by the Rector
24 of Laurentian, Dr. Zundel.]

25 Il n'y a pas eu de discussion. Nous

1 n'avons signé aucun document.

2 [There was no discussion. We signed no
3 document.]

4 Nous avons réagi. Nous avons posé des
5 questions mais c'était des fins de non-recevoir
6 de la part des membres du conseil et de
7 l'administration de l'Université Laurentienne.

8 [We did react and we did ask questions
9 but it was from the members of Laurentian and
10 the administration of Laurentian that we
11 received this.]

12 87 Q. But you don't consider that to be
13 a discussion.

14 A. Pas du tout.

15 [Not at all.]

16 88 Q. In any event, both Laurentian and
17 Sudbury have been operating under the terms of
18 the notice since May 1st, 2019, correct?

19 A. Oui.

20 [Yes.]

21 89 Q. And the notice itself, if we look
22 at it in schedule B?

23 A. Hum, hum.

24 [Uhm-hmm.]

25 90 Q. Schedule B provides that:

"All tuition revenue collected from students for course registrations at the Federated Universities is transferred by Laurentian to the Federated Universities."

Correct? That's in the second paragraph of schedule B.

A. À quelle page?

[On which page?]

91 Q. I believe it's page 7 of the document, and it's titled "Schedule B Tuition Revenue Distribution"?

A. Oui, c'est ce que je comprends.

[Yes. That's what I understand.]

92 Q. Now, Mr. Riopel, students who take programs through the Federated Universities, including the University of Sudbury, those are Laurentian University students, correct?

A. Alors c'est une grande question. Ces étudiants suivent les programmes à l'Université de Sudbury, mais ils obtiennent des grades de l'Université Laurentienne. Ça, c'est l'entente à ce que j'en comprends.

[That's the -- that's a very good

question. These students follow their courses at the University of Sudbury but they obtain a degree from Laurentian University, that's what's in the agreement.]

93 Q. And students who take a program offered through the University of Sudbury, when they're applying they apply to Laurentian, right?

A. Je ne suis pas au courant des détails du Bureau du registraire, mais c'est ce que je comprends.

[I am not aware of the details involved in the Registrar's office but that's what I would understand.]

94 Q. And admissions decisions are made by Laurentian rather than the University of Sudbury?

A. Je ne suis pas au courant de ces détails-là.

[I'm not aware of these details.]

95 Q. Does the University of Sudbury have a Registrar?

A. Un secrétaire-général, oui.

[A General Secretary, yes.]

96 Q. And I think you said a moment ago

1 that at the end of their program the students
2 will graduate with a degree from Laurentian
3 rather than a degree from the University of
4 Sudbury, correct?

5 A. C'est ce que je comprends.

6 [That's what I've understood.]

7 Maintenant, j'ajouterais, pour avoir
8 assisté à des collations de grades à
9 l'Université Laurentienne...

10 [Now, I would add, having attended the
11 hmm (sic) at Laurentian...]

12 Des cérémonies de remise de diplômes,
13 des collations de grades à l'Université
14 Laurentienne.

15 [...this graduation and awarding of
16 diplomas for Laurentian, a ceremony...]

17 Il y a une mention dans le
18 programme...

19 [...there is a mention, a comment in
20 the program...]

21 ... du rattachement ou du lien de cet
22 étudiant-là ou cette étudiante-là avec
23 l'Université de Sudbury.

24 [...there is a mention on those
25 programs of this -- the attachment of this

1 student to the university.]

2 97 Q. Their degree and their diplomas
3 it says "Laurentian University", right?

4 A. C'est ce que je comprends.
5 [That's what I've understood.]

6 98 Q. Can we turn to paragraph 27 of
7 your April 14th affidavit? So in this paragraph
8 you're referring to grant money that's provided
9 by the provincial government and you say:

10 "Laurentian receives funding
11 based on the number of students
12 enrolled at the Federated Universities
13 for purposes of the provincial funding
14 formula, but does not pay the
15 Federated Universities the full amount
16 for each student."

17 Do you see that?

18 A. Oui.

19 [Yes.]

20 99 Q. But isn't it true that the
21 province doesn't actually allocate money
22 specifically for the Federated Universities?

23 A. Ce que je comprends, c'est en
24 vertu de notre entente, nous recevons ou
25 l'Université Laurentienne reçoit du financement

1 pour les étudiants inscrits à nos programmes.

2 [Well, from what I understand it's in
3 virtue of the agreement that Laurentian
4 University receives funding for students
5 registered in the program.]

6 Et j'ajouterais, je crois que
7 l'Université de Sudbury également reçoit du
8 financement pour les étudiants qui choisissent
9 des cours au choix.

10 [And I would add that I believe the
11 University of Sudbury receives funding for
12 students who choose elective classes.]

13 Voilà.

14 [There you are.]

15 100 Q. There are no provincial funding
16 grants provided specifically in respect of the
17 Federated Universities, correct?

18 A. Ce que je comprends du ministère
19 des Collèges et des Universités, à l'exception
20 de l'Université de Hearst qui reçoit directement
21 son financement, et c'est une exception, alors
22 que toutes les autres universités fédérées
23 reçoivent leur financement via l'établissement
24 universitaire principal, je vais dire ça comme
25 ça.

1 [I understand, according to the
2 Ministry of Colleges and Universities with the
3 exception of the University of Hearst that
4 receives its funding directly, and that's the
5 exception, while all the other Federated
6 Universities receive their funding via the
7 principal or main institution or university,
8 I'll say it that way.]

9 Et à ce que je comprenne, c'est la
10 même chose pour l'Université de Western Ontario,
11 l'Université de Waterloo, l'Université de
12 Toronto, qui ont des formules semblables.

13 [And from what I understand that's the
14 same way it works for University of Western,
15 University of Waterloo, University of Toronto,
16 they have the same set-up.]

17 101 Q. So what I think you're saying is
18 that the provincial grant money that goes to
19 Laurentian is provided in respect of Laurentian,
20 is that right?

21 A. En principe, oui, c'est ce que je
22 comprends.

23 [In principle, yes, that's what I
24 understood.]

25 102 Q. And Laurentian only transfers

1 grant funds to the Federated Universities as a
2 result of the Financial Distribution Notice,
3 correct?

4 A. C'est ce qui est en vigueur
5 depuis le 1er mai 2019.

6 [That's what's been in vigour (sic)
7 since the first (sic) of 2019.]

8 103 Q. Now, I just want to talk about
9 the University of Sudbury's operations for a
10 minute. It's fair to say the University of
11 Sudbury operates independently in many ways, is
12 that correct?

13 A. Je dirais que oui.

14 [I would say, yes.]

15 104 Q. It's managed by its own
16 independent Board of Regents?

17 A. Oui.

18 [Yes.]

19 Petite précision. C'est que le conseil
20 des régents ne gère pas, nous assurons la
21 gouvernance de l'établissement.

22 [I'd like to specify. We are the
23 regents, we don't --]

24 THE INTERPRETER: Can you repeat that?
25 Répétez, s'il vous plaît.

1 THE WITNESS: Oui. Nous ne gérons pas,
2 nous assurons la gouvernance de l'université.

3 [We don't manage the University of
4 Sudbury, we ensure the governance.]

5 BY MR. HANRAHAN:

6 105 Q. Fair enough. And the University
7 of Sudbury operates its own buildings?

8 A. Oui, nous avons un édifice
9 administratif et une résidence.

10 [Yes. We have administrative and
11 residence.]

12 En fait, l'édifice administratif,
13 c'est aussi l'édifice des salles de classe.

14 [In fact the administer part is the
15 classrooms.]

16 106 Q. And you have your own
17 administrative staff?

18 A. Oui.

19 [Yes.]

20 107 Q. And your own faculty?

21 A. Oui.

22 [Yes.]

23 108 Q. And they have their own labour
24 union separate from the Laurentian labour union?

25 A. En fait, l'unité syndicale avec

1 qui nous négocions s'appelle LUFA, l'Association
2 des professeurs de l'Université Laurentienne,
3 parenthèses, l'Université de Sudbury.

4 [In fact the union with whom we
5 negotiate is called the "LUFA", the Association
6 for the Federation of the University of
7 Laurentian, and in brackets University of
8 Sudbury.]

9 Donc le même syndicat est comme un
10 groupe un peu à part, autonome.

11 [So the same union but a different
12 part, a different group apart.]

13 109 Q. Right, it has its own chapter?

14 A. C'est ça. C'est ce que je pense.

15 [That's right. That's what I
16 believe.]

17 110 Q. And the staff and faculty of the
18 University of Sudbury are employed by the
19 University of Sudbury?

20 A. Exact.

21 [Exactly.]

22 111 Q. And paid by the University of
23 Sudbury?

24 A. Exact.

25 [Exactly.]

1 112 Q. And the University of Sudbury has
2 its own bank account?

3 A. Oui.

4 [Yes.]

5 113 Q. It's own financial statements?

6 A. Oui.

7 [Yes.]

8 114 Q. So the University of Sudbury
9 currently offers five different programs, is
10 that correct?

11 A. Je crois que oui.

12 [I believe so, yes.]

13 115 Q. And those are Indigenous Studies,
14 Philosophy, Religious Studies, études
15 journalistiques, and Folklore and Ethnology,
16 correct?

17 A. Oui. Quelques précisions,
18 ethnologie et folklore, c'est en français.

19 [Yes. Some precisions, Folklore and
20 Ethnology is in French...]

21 Études journalistiques, exclusivement
22 en français aussi.

23 [... and journalistic studies
24 exclusively in French as well.]

25 Études religieuses et philosophie sont

1 des programmes bilingues.

2 [Religion and philosophy are bilingual
3 programs.]

4 Et indigenous studies, c'est un
5 programme en anglais mais offrant des cours en
6 français

7 [And Indigenous Studies is an
8 Anglophone course but offering French classes.]

9 116 Q. And in terms of student
10 headcount, for fall 2020 there were 69 full-time
11 equivalent students enrolled in the University
12 of Sudbury's programs, is that right?

13 A. Ça, je peux pas vous l'assurer.
14 Moi, j'ai entendu des chiffres aussi à 80, 100,
15 110, donc je peux pas confirmer vraiment de
16 façon certaine.

17 [I can't confirm it for you. I've
18 heard numbers around 80, 110, so I can't confirm
19 that perfectly.]

20 117 Q. Does it sound in the ball park of
21 what you would expect?

22 MR. CAZA: Objection. Mr. Riopel, we
23 don't wanted you to be making any guesses. And
24 I don't think that's what counsel is expecting.
25 So if you don't know the answer don't guess and

1 if you do know the answer please provide the
2 answer.

3 THE WITNESS: I don't know the answer.

4 Je ne sais pas la réponse

5 [I don't know the answer.]

6 BY MR. HANRAHAN:

7 118 Q. No, I don't want you to guess,
8 but I guess my question was just, if I told you
9 that there was 69 full-time equivalent students
10 that doesn't sound out of line with your
11 expectation?

12 A. Je peux pas vous l'affirmer, je
13 ne sais vraiment pas.

14 [I can't confirm that for you because
15 I really don't know.]

16 119 Q. Now, if we look at paragraph 32
17 of your April 14th affidavit, do you have that
18 in front of you?

19 A. Oui.

20 [Yes.]

21 120 Q. So in paragraph 32 you refer to
22 University of Sudbury having a full student
23 course equivalent enrollment of 2,228. Do you
24 see that?

25 A. Oui.

1 [Yes.]

2 121 Q. And individual registrations in
3 all courses of 4,080 students. Do you see that
4 as well?

5 A. Oui.

6 [Yes.]

7 122 Q. Now, when you say in this
8 paragraph "full student course equivalent
9 enrollment", what does that mean?

10 A. C'est de l'information qui m'a
11 été fournie par, via mon avocat ou l'avocat de
12 l'Université de Sudbury, de l'information qui a
13 été fournie par notre équipe administrative. Je
14 ne connais pas les précisions, là,
15 terminologiques, ici.

16 [There is information provided to me
17 by the lawyers, or the lawyers of Sudbury. This
18 information is provided to me by the
19 administrative team so I don't know the details
20 of that information.]

21 123 Q. So you don't understand what that
22 number represents?

23 A. Moi, je fais confiance à l'autre
24 équipe.

25 [I trust the other team on that.]

1 124 Q. Did you have any questions about
2 that before you signed this affidavit?

3 A. Je n'ai pas demandé de
4 précisions. Je me fie à cette équipe.

5 [I did not ask for specification. I
6 trust that team.]

7 125 Q. You didn't indicate in the
8 affidavit that you were relying on information
9 from someone else for those numbers, did you?

10 A. Je pensais que oui, au tout
11 début. Au paragraphe 1.

12 [I believe so, at the very beginning.
13 Paragraph 1.]

14 126 Q. Let's take a look at paragraph 1.
15 Paragraph 1 says:

16 "Where I do not have personal
17 knowledge of the facts set out in this
18 affidavit I state the source of that
19 information and verily believe the
20 information to be true."

21 Now, if you look at -- back at
22 paragraph 32 again, there's no reference to
23 another source for that information that you're
24 relying on, is there?

25 A. Moi, ce que je peux vous

1 partager, c'est qu'on m'a toujours indiqué que
2 nous desservions approximativement, au grand
3 total, 2 000 étudiants, peu importe l'année.

4 [What I can indicate to you is that we
5 would offer services to students at a very
6 maximum of around 2,000 students.]

7 Donc c'est peut-être pour cette
8 raison-là que je n'ai pas questionné ce
9 paragraphe-là.

10 [So it's perhaps for that reason I
11 hadn't questioned that paragraph.]

12 127 Q. Did you not think it would be
13 necessary to check on the figures you're citing
14 in our affidavit? You've sworn them to be true,
15 right?

16 A. Oui. Et on m'avait déjà indiqué
17 que nous desservions approximativement 2 000
18 étudiants.

19 [Yes. And I had already indicated
20 that we serve approximately 2,000 students.]

21 128 Q. So what you're saying is that
22 there's approximately 2,000 students who take
23 courses as the University of Sudbury, is that
24 your evidence?

25 A. J'ai déjà entendu ça, oui.

1 [We've already heard that, yes.]

2 129 Q. But you're not sure exactly what
3 that number refers to?

4 A. Non.

5 [No.]

6 130 Q. And the next number in that
7 paragraph, individual registrations in all
8 courses of 4,080 students. Do you see that?

9 A. Oui.

10 [Yes.]

11 131 Q. Do you know what that number
12 refers to?

13 A. Encore, je fais confiance à
14 l'équipe administrative qui me fournit ces
15 données-là.

16 [Again, I'm confident in the team that
17 provides me these informations.]

18 132 Q. And do you understand what the
19 distinction between the two numbers is, 2,228
20 versus 4,080?

21 A. Je comprends les mots, mais je ne
22 comprends pas nécessairement toutes les
23 implications à l'intérieur de l'organisation.

24 [I understand the words but I perhaps
25 don't understand all the details within the

1 organization structure.]

2 133 Q. Counsel, can we have an
3 undertaking for an explanation of how these
4 numbers were calculated and what they represent?

5 U/T MR. CAZA: Yes, we will provide you
6 with that undertaking.

7 MR. HANRAHAN: Thank you.

8 BY MR. HANRAHAN:

9 134 Q. Now, I think you said a moment
10 ago that your understanding was there was about
11 2,000 students who take courses through the
12 University of Sudbury, is that right?

13 A. C'est l'information que j'ai eue
14 la dernière fois qu'on m'a fourni quelque chose,
15 très informellement.

16 [That's the information I received the
17 last time someone provided me information very
18 formally.]

19 135 Q. And we just talked a few minutes
20 ago about the fact that there's roughly 69
21 full-time equivalent students at the University
22 of Sudbury?

23 A. Bien, c'est vous qui le dites,
24 oui.

25 [You're the one saying that, yes.]

1 136 Q. Well, and I thought that you told
2 me that was within -- that was the number that
3 you thought was within the range of
4 reasonableness without committing to that
5 figure?

6 A. Bien moi, je n'ai pas ces
7 informations-là pour confirmer ou infirmer.

8 [I don't have this information in
9 front of me to either confirm or not confirm.]

10 137 Q. Okay. Is it fair to say that
11 most of the 2,000 or so students who are taking
12 the courses at University of Sudbury are
13 enrolled in Laurentian University programs?

14 A. Je dirais que oui.

15 [I would say that, yes.]

16 138 Q. And so when we were discussing
17 earlier about the Financial Distribution Notice,
18 if a student is enrolled in a program through
19 Laurentian but they take an elective course
20 through the University of Sudbury, the tuition
21 revenue for that course is then paid from
22 Laurentian to the University of Sudbury,
23 correct?

24 A. C'est ce que j'ai toujours
25 compris.

1 [That's how I've always understood
2 it.]

3 139 Q. And did you review Dr. Haché's
4 April 21st affidavit?

5 A. Rapidement, oui.

6 [Quickly, yes.]

7 140 Q. And you submitted an affidavit in
8 response that Dr. Haché affidavit, right?

9 A. Par la suite, oui.

10 [Just afterwards, yes.]

11 141 Q. And do you recall in Dr. Haché's
12 affidavit that he provided the amount, specific
13 amounts of money transferred from Laurentian to
14 the Federated Universities?

15 A. Pas comme ça, mais c'est à quel
16 paragraphe?

17 [What paragraph is that in again?]

18 142 Q. That is paragraph 152 and 153.

19 A. J'ai le paragraphe devant moi.

20 [I have the paragraph in front of me.]

21 143 Q. And Dr. Haché in those paragraphs
22 refers to:

23 "In fiscal year 2020 the amount
24 of tuition and grants and fee
25 transferred to the Federated

1 Universities, net of the service fee
2 paid to Laurentian, was 7.7 million."
3 Do you see that?

4 A. Oui.

5 [Yes.]

6 144 Q. . Now, if the same roughly 2,000
7 students we were talking about earlier, who take
8 courses through the University of Sudbury, took
9 all of their electives solely through Laurentian
10 University, all the tuition revenue for those
11 students would stay within Laurentian, correct?

12 [I'm far from being an expert in the
13 financial affairs of the university so it's hard
14 for me to answer you on that.]

15 145 Q. Well, if a student doesn't take
16 any courses through the University of Sudbury is
17 there any reason that tuition money would be
18 transferred to the University of Sudbury for
19 that student?

20 A. Bien, si on offre un programme et
21 si on offre des cours, ça veut dire qu'il faut
22 payer nos professeurs. Donc c'est notre source
23 de financement, là

24 [Yes. If a course is offered then we
25 have to pay a professor to teach that course, so

1 that's our funding for that.]

2 Ça m'apparaît logique, hein.

3 [It's logical.]

4 146 Q. I'm asking a slightly different
5 question, which is, if there's a student who
6 doesn't take any courses at the University of
7 Sudbury, he only takes courses through
8 Laurentian, is there any reason that any tuition
9 money in respect of that student would be
10 transferred to the University of Sudbury?

11 A. Encore une fois, je ne suis pas
12 un expert, là, puis je ne connais pas toutes les
13 subtilités du financement, mais ce que vous
14 dites me semble logique. Mais je ne suis pas
15 sûr, là.

16 [Again, I'm not an expert on the
17 financial -- the subtleties of financial affairs
18 but, again, what you say seems to be correct.
19 Seems to be logical.]

20 Et ce que je comprends, c'est que
21 l'Université de Sudbury et les deux autres
22 universités fédérées reçoivent du financement,
23 justement, pour les cours au choix, hein. C'est
24 ce que je comprends, ainsi que pour nos
25 étudiants qui sont inscrits à nos programmes.

1 [From what I understood the University
2 of Sudbury and the other two Federated
3 Universities receive funding for elective
4 courses.]

5 147 Q. It's fair to say that every time
6 one of those 2,000 students, who is a student
7 taking a program offered by Laurentian, takes an
8 elective course offered through the University
9 of Sudbury, that would represent lost tuition
10 for Laurentian, correct?

11 A. Si on voit les deux
12 établissements comme étant très distincts et en
13 fonction de la formule de financement, c'est
14 l'Université Laurentienne qui achète ce
15 service-là. Je ne le vois pas comme étant une
16 perte. C'est un achat de service, hein.

17 [If we look at the two institutions as
18 being distinct one from the other this financial
19 set up is no more that Laurentian purchases the
20 services from the university. So it's not an
21 actual loss it's a purchase of services.]

22 148 Q. But if a student took all of
23 their classes within Laurentian then there
24 wouldn't be any money transferred to the
25 University of Sudbury, right?

1 A. Parce qu'implicitement, il n'y a
2 pas d'achat de service, hein. On n'offre pas,
3 l'étudiant a choisi de ne pas suivre de cours à
4 Thorneloe, Huntington, ou l'Université de
5 Sudbury, donc il n'y a pas de raison d'avoir à
6 ce moment-là, selon...

7 [Because implicitly if a student
8 doesn't take the courses then they are not
9 offering courses at Huntington, Thorneloe...]

10 149 Q. Did our interpreter freeze?

11 MR. CAZA: No, I don't think there was
12 a question.

13 BY MR. HANRAHAN:

14 150 Q. Well, there was a question. He
15 was giving the interpretation.

16 Mr. Riopel, can you turn to tab --
17 your April 23rd affidavit. So if we can look at
18 paragraph 5 of your April 23rd affidavit?

19 A. Oui.

20 [Yes.]

21 151 Q. And in this paragraph you say
22 that:

23 "Because the University of
24 Sudbury pays all of its teachers,
25 support staff, and the maintenance of

1 its buildings, I question the
2 assertion that there will be a real
3 benefit of 7.7 million for Laurentian
4 if it succeeds in terminating the
5 federation."

6 Do you see that?

7 A. Oui.

8 [Yes.]

9 152 Q. Can you just explain what you
10 meant by that?

11 A. Je reviens au concept de l'achat
12 de services.

13 [I'm going return to the concept of
14 purchasing services.]

15 Les étudiants vont suivre des cours
16 d'une façon ou d'une autre. Quand on les suit à
17 l'Université de Sudbury, il y a un coût, il y a
18 un coût d'entretien de l'édifice. Il y a un coût
19 de payer notre personnel, de payer nos profs.
20 Ça, c'est clair. Mais ces mêmes étudiants, s'ils
21 étaient inscrits ailleurs, il y aurait des
22 dépenses semblables, alors j'ai du mal à
23 comprendre l'idée d'un gain véritable de 7.7
24 pour l'Université Laurentienne.

25 [If students are following a course

1 they're going to be following one way or
2 another. If these students and -- at the
3 University of Sudbury is going to have a cost we
4 have to pay our person, our staff, we have to
5 pay our teachers. And if those students were to
6 enroll elsewhere there would not really be a
7 benefit for them anywhere.]

8 153 Q. So is your suggestion that the
9 7.7 million that that just represents all of
10 your costs for teacher, support staff and
11 maintenance of the building?

12 A. Je dirais que c'est
13 principalement ça.

14 [I would say it's mainly that.]

15 Mais il faut pas oublier, je pense que
16 le chiffre de 7.7, on parle des trois
17 universités fédérées.

18 [But don't forget when we're talking
19 about this amount we're speaking of the three
20 Federated Universities.]

21 154 Q. This would be a good time for a
22 break.

23 -- RECESSED AT 10:35 A.M. --

24 -- RESUMED AT 10:50 A.M. --

25 BY MR. HANRAHAN:

1 155 Q. Mr. Riopel, can you turn to your
2 April 18th affidavit?

3 A. Oui.

4 [Yes.]

5 156 Q. And just looking at paragraph 3.
6 In paragraph 3 you say:

7 "I could never have imagined a
8 time when the urgency was as great as
9 it is now for the University of
10 Sudbury to make the shift toward
11 becoming a homogenous Francophone
12 university."

13 Do you see that?

14 A. Oui.

15 [Yes.]

16 157 Q. And then you go on to say in
17 paragraph 11:

18 "As Chair of the Board of
19 Regents, I can say we are working with
20 great diligence to build the
21 University of Sudbury by and for
22 Francophone, with the support of the
23 Francophone community in the Sudbury
24 area."

25 Do you see that?

1 MR. CAZA: Just for the purposes of
2 the transcript, he actually doesn't see that
3 because you are reading a translation. He's
4 actually looking at the French, the original
5 affidavit.

6 BY MR. HANRAHAN:

7 158 Q. Fair enough. And is what I read
8 to you -- it captures what you're saying in that
9 paragraphs?

10 A. Je m'en souviens pas, et je suis
11 loin d'être un traducteur.

12 [I don't remember exactly and I'm far
13 from being a translator.]

14 159 Q. Would you prefer that we have the
15 translator translate what I'm saying to you in
16 French.

17 MR. CAZA: I can tell you that just
18 for the purposes of what you're reading I'll let
19 you know if I have any disagreements with what
20 you're reading in English.

21 The translation you prepared, as
22 compared to the original, from what you've told
23 me today it's quite close to what -- it's
24 exactly quite accurate as to what was in French.

25 I am not doing that with anything, and

1 André and I, and Pierre better not be doing
2 that, with respect to any of the interpretation
3 that's going on at this hearing. I'm not even
4 listening to it.

5 So I will be doing that for your
6 document so there's no need to have that
7 translated.

8 BY MR. HANRAHAN:

9 160 Q. And from the paragraph I just
10 read you're fine with --

11 MR. CAZA: I am fine. From what
12 you've read I'm fine. It's accurate.

13 BY MR. HANRAHAN:

14 161 Q. Is it fair to say, in the two
15 paragraphs we just looked at, you're expressing
16 the goal for the University of Sudbury to be an
17 independent, French-language university?

18 A. Le 11 mars, au moment de
19 l'adoption de la résolution à cet effet, nous
20 avons mandaté le recteur de l'Université de
21 Sudbury de faire toutes les démarches avec cet
22 objectif en tête.

23 [On the 11th of March, the date of the
24 adoption of this resolution, we mandated the
25 Rector, a principal of the University of

1 Sudbury, to apply this.]

2 162 Q. Sorry, to "apply" this? Maybe
3 it's a translation issue. When you say "to
4 apply this" what do you mean?

5 A. Ce que je veux dire, c'est de
6 faire en tout en son autorité pour la mise en
7 oeuvre d'une université de langue française.

8 [When I say that it's to put
9 everything in its power to implement a French
10 university.]

11 163 Q. And you mentioned that there was
12 a resolution passed by the Board of Regents to
13 that effect?

14 A. Oui.

15 [Yes.]

16 164 Q. And you may have said this, what
17 was the date of that resolution?

18 A. Adoptée le 11 mars 2021.

19 [Adopted on the 11th of March 2021.]

20 165 Q. Counsel, can we have an
21 undertaking for production of that resolution?

22 U/T MR. CAZA: Yes, we will undertake to
23 provide you with a copy of that resolution.

24 BY MR. HANRAHAN:

25 166 Q. Thank you.

1 Mr. Riopel, when did the University of
2 Sudbury start having serious discussions about
3 transitioning to a unilingual French school?

4 A. Moi je vais vous dire que ça ne
5 date pas d'hier. On en parle comme ça depuis des
6 années, en fait, où l'Université de Sudbury a
7 été, la suggestion a été faite que l'Université
8 de Sudbury pourrait devenir un établissement de
9 langue française, un établissement autonome de
10 langue française.

11 [I can say that that's not -- you
12 know, it didn't come up. It wasn't just
13 yesterday. We've been hearing this kind of
14 suggestion, the idea that the University of
15 Sudbury suggests becoming its own independent,
16 autonomous, French-language university for
17 years.]

18 Maintenant, pour votre bénéfice, je
19 veux vous expliquer que l'Université de Sudbury
20 a existé en tant qu'établissement autonome de
21 langue française de 1957 à 1960.

22 [And now, for your benefit I would
23 like to explain that the University of Sudbury
24 has existed as an independent institution of
25 French language learning between the years of

1 1957 and 1960.]

2 J'ai devant moi le grade, le
3 baccalauréat en arts de mon père reçu au mois de
4 juin 1960

5 [I have before me the degree, my
6 father's degree, received on the date of
7 June 1960.]

8 Et c'est par la suite, avec la
9 création de la Fédération Laurentienne, avec la
10 création de l'Université Laurentienne qu'on a
11 établi cette entente de la Fédération, en 1960.

12 [And it's after the creation of the
13 Laurentian University that this accord or
14 agreement was established.]

15 Et je peux vous dire que la
16 communauté franco-ontarienne parle d'un
17 établissement, d'une université autonome de
18 langue française depuis des années.

19 [And I can tell you the
20 Franco-Ontarian people are speaking about an
21 autonomous, French-language university since
22 quite some time.]

23 167 Q. But since the Federation
24 Agreement has been in effect the University of
25 Sudbury has been a bilingual institution,

1 correct?

2 A. Oui.

3 [Yes.]

4 168 Q. And you said that it's been under
5 discussion for years converting to a unilingual,
6 French university?

7 A. La discussion est revenue à
8 maintes reprises.

9 [The discussion's come back several
10 times.]

11 169 Q. And who are those discussion
12 amongst?

13 A. Les individus, formellement, au
14 conseil. Informellement, il y a eu plusieurs
15 discussions. Écoutez, la question d'une
16 université de langue française à Sudbury remonte
17 à des générations. Alors c'est difficile de
18 cerner et d'identifier spécifiquement des
19 moments où on a eu cette discussion-là.

20 [Formally there have been with
21 individuals at the council, in conversations
22 informally, with -- there have been several
23 discussions. Listen, the question about Sudbury
24 having a Francophone-language university dates
25 back generations.]

1 Ça résume à peu près, oui

2 [That's it. Yes.]

3 170 Q. It's fair to say that more
4 recently those discussion became more serious?

5 A. Face à tout ce qui se passe à
6 l'Université Laurentienne, oui.

7 [That's everything that happens at
8 Laurentian University, yes.]

9 171 Q. And is it fair to say that you
10 decided recently that this transition was
11 necessary because you don't think that
12 Francophone interests can be met in a bilingual
13 university like Laurentian?

14 A. Maître Hanrahan, j'ai vécu et
15 j'ai obtenu des grades dans deux de ces
16 universités bilingues. Moi, ce que je peux vous
17 dire, ça, c'est mon expérience personnelle,
18 c'est que ça ne se vit pas bien sa francophonie
19 dans un établissement bilingue, O.K.?

20 [Mr. Hanrahan, I can tell you that
21 from my personal experience I've obtained -- I
22 lived both things. I've received degrees in
23 bilingual universities. I can speak of my
24 personal experience that one's Francophone
25 culture is not lived well in a bilingual

1 institution.]

2 Et je peux vous assurer, encore une
3 fois, de façon anecdotique, les gens à qui je
4 parle dans la communauté franco-ontarienne
5 m'indiquent exactement la même chose.

6 [And I can assure you in an anecdotal
7 way that the people with whom I've spoken in
8 Franco-Ontarian communities feel the same way.]

9 Pour votre bénéfice, la communauté
10 franco-ontarienne, de façon générale, désigne
11 maintenant l'établissement en question de
12 « Laurentian University ». Les francophones ont
13 arrêté de l'appeler « l'Université
14 Laurentienne », tellement on a perdu confiance.

15 [Or -- and for your benefit, the
16 Franco-Ontarians -- generally Franco-Ontarians
17 designate this institution as Laurentian
18 University not as the University of Laurentian.
19 So much the Francophone community has lost
20 faith.]

21 Mais je veux faire la distinction, et
22 je veux que ce soit très très clair...

23 MR. CAZA: Excusez, Pierre, je veux
24 juste corriger la traduction.

25 I just need to, if I may,

1 Mr. Hanrahan, can I make a comment on the
2 interpretation?

3 MR. HANRAHAN: Sure.

4 MR. CAZA: Okay. Just so -- in fact
5 what Mr. Riopel said is that the Francophone
6 community no longer -- refers to the institution
7 as "Laurentian University" and does not refer to
8 it as "Université Laurentienne". So what he's
9 saying is they don't refer to it by its
10 Francophone denomination. And it's hard to
11 translate that and keep -- because if you're
12 translating it you're taking it away. I just
13 wanted to that to be clear on the record.

14 THE INTERPRETER: Thank you.

15 BY MR. HANRAHAN:

16 172 Q. Thank you for the clarification.

17 Now, Mr. Riopel, the announcement and
18 resolution of Sudbury's intention to become an
19 independent Francophone university, that was
20 made several weeks before the Notice of
21 Disclaimer was issued by Laurentian, right?

22 A. La résolution a été adoptée le 11
23 mars, et puis l'avis, nous l'avons reçu le 1er
24 avril.

25 [The resolution was adopted

1 11th March...]

2 THE INTERPRETER: Pouvez-vous répéter
3 la dernière partie?

4 THE WITNESS :

5 Et l'avis de dissolution de la
6 Fédération, nous l'avons reçu le 1er avril.

7 [And the life of the dissolution was
8 the 1st of April.]

9 THE INTERPRETER: Sorry. That's a lot
10 of information. C'est beaucoup d'informations.

11 THE WITNESS: Voilà, O.K.

12 [There you go.]

13 BY MR. HANRAHAN:

14 173 Q. Sorry, I wasn't sure if there was
15 more in the translation or that was it?

16 So, in other words, Sudbury's plan to
17 leave the federation and become an independent
18 French university was already in motion before
19 Laurentian issued the disclaimer, correct?

20 R/F MR. CAZA: I'm sorry, objection. The
21 premise you've given has not in any way been the
22 evidence that was provided by Mr. Riopel.

23 BY MR. HANRAHAN:

24 174 Q. Which part is not in evidence?

25 MR. CAZA: Can I ask Ms. Martineau to

1 read back or repeat the question you just gave
2 to the witness?

3 THE COURT REPORTER: Yes:

4 "So, in other words, Sudbury's
5 plan to leave the federation and
6 become an independent French
7 university was already in motion
8 before Laurentian issued the
9 disclaimer, correct?"

10 MR. CAZA: Can you repeat that?

11 THE COURT REPORTER: Ye:

12 ""So, in other words, Sudbury's
13 plan --"

14 MR. CAZA: Where did you get that?

15 That is grossly misinterpreting the evidence
16 provided by the witness.

17 BY MR. HANRAHAN:

18 175 Q. Why don't we clarify that with
19 the witness?

20 MR. CAZA: I want to -- where did you
21 get -- did you hear that evidence to date? I'm
22 just wondering because if you have I need to
23 know. I'm taking notes and I need to know if
24 Mr. Riopel said that.

25 MS. MILLER: Mr. Caza, I'm taking note

1 as well and we've just heard the witness say
2 that that has been in discussion for years. And
3 he's just given evidence that there was a
4 resolution passed by the Board of Regents on
5 March 11th.

6 MR. CAZA: To leave the federation?

7 MS. MILLER: Is that the nature of the
8 objection? Because the reference to the leaving
9 the federation was part of the objection?

10 MR. CAZA: So if you did rephrase your
11 question we can maybe take it from there?

12 BY MR. HANRAHAN:

13 176 Q. I will rephrase the question.

14 Mr. Riopel, is it fair to say that
15 Sudbury's plan to become an independent French
16 language university was already set in motion
17 long before Laurentian issued its Notice of
18 Disclaimer?

19 A. Je répondrais non, dans la mesure
20 que le conseil des régents, ce n'est pas une
21 planification depuis des années. C'est que la
22 communauté en parle depuis des années. Je pense
23 qu'il y a une nuance excessivement importante
24 ici. Et puis j'ajouterais que la résolution du
25 11 mars mandate le recteur de faire ses devoirs

1 en vue de cette possible éventualité.

2 [I answer very no, in the measure that
3 the Board of Regents does not have a formal
4 plan, but that the community has been speaking
5 about this for quite a while. It's something
6 that is very important here.

7 And that the dissolution, dated
8 11th March, mandates or directs the principal to
9 do their duty before this eventuality, in front
10 of this eventuality.]

11 177 Q. So I think you've told me that
12 this conversion to a French-language university
13 has been under discussion for years. You issued
14 this resolution and made an announcement on
15 March 11th, and the Notice of Disclaimer was
16 issued on April 1st.

17 So given that timeline isn't it a fact
18 that your decision was already made and in
19 motion long before Laurentian issued the Notice
20 of Disclaimer?

21 A. Je n'irai pas à ce point-là. Très
22 honnêtement, je n'irai pas à ce point-là.

23 [I would not go as far as to say that.
24 Honestly, I would not go so far as to say that.]

25 Maintenant, l'autre élément aussi,

1 nous avons reçu ce avis-là le 1er avril, oui.

2 [Now the other element we have on
3 April 1st, yes.]

4 Moi, j'ai lu l'affidavit du docteur
5 Haché, qui a été déposé le 1er février.

6 [I've read Dr. Haché's affidavit that
7 was disposed on February 1st.]

8 Et maintenant, je sais lire entre les
9 lignes, par contre, et puis le docteur Haché
10 semblait signaler, et ça, c'est mon
11 interprétation, semblait signaler son intention
12 de dissoudre la Fédération.

13 [And I can now -- now I can read
14 between the lines, and I'll signal that that's
15 my interpretation of this affidavit, that the
16 Dr. Haché had in his intention to dissolve.]

17 178 Q. So you understood Dr. Haché's
18 January 30th affidavit to be saying that the
19 federation would be dissolved?

20 A. Bien disons qu'il y avait des
21 signaux assez clairs.

22 [Let's say that there was some signals
23 were clear enough.]

24 179 Q. But ultimately your decision, and
25 when I say "your" the University of Sudbury's

1 decision, to announce that it would become an
2 independent, French-language university was made
3 before Laurentian officially issued a Notice of
4 Disclaimer?

5 A. Nous avons mandaté le recteur de
6 l'Université de Sudbury de faire tout ce qui
7 était requis pour que l'Université de Sudbury
8 devienne une université gérée par la
9 francophonie ontarienne. C'est le texte.
10 Maintenant, c'est ce que je peux partager avec
11 toi, c'est ce que j'ai, c'est ce que j'ai comme
12 information.

13 [The university -- we mandated the
14 director of the University of Sudbury to do -
15 inaudible (sic) - so that the university will
16 become an Franco-Ontarian. That's what the text
17 says. Now that's what I'm able to share with
18 you. That's the information I have.]

19 180 Q. And that was done before there
20 was a Notice of Disclaimer from Laurentian,
21 right?

22 A. Je répète, nous avons adopté le
23 11 mars et puis nous avons reçu l'avis le
24 1er avril.

25 [I repeat, we adopted it the 11th of

1 March and received the hmm (sic) the 1st of
2 April.]

3 181 Q. So I would like to take a look at
4 a letter that your counsel sent to my firm on
5 April 12th, it was attached to Dr. Haché's most
6 recent affidavit, April 21st, affidavit. Is
7 that something you have available or should we
8 get a copy of that to you?

9 A. J'ai la réponse.

10 [I have the response...]

11 Mais je n'ai pas la lettre originale.

12 [... but I don't have my original
13 letter.]

14 182 Q. I ask if your counsel has access
15 it's Exhibit R to the Haché affidavit from
16 April, is that something we can provide the
17 witness?

18 MR. CAZA: Sir, are you okay if we --
19 Mr. Claude sends a copy to Mr. Riopel?

20 MS. MILLER: Yes, I understood
21 Mr. Riopel saying that he had all of the
22 exhibits to Mr. Haché's affidavit?

23 MR. CLAUDE: I don't recall that he
24 said he had exhibits, definitely the affidavit.
25 But the letter in question is that dated

1 April 12th?

2 MS. MILLER: Yes.

3 THE WITNESS: Oui, je l'ai.

4 [I have it. Yes.]

5 MR. CLAUDE: Because I believe that
6 same exhibit is part of one of the -- possibly
7 the April 18th affidavit of Mr. Riopel.

8 BY MR. HANRAHAN:

9 183 Q. Okay.

10 A. J'ai les copies des deux lettres.

11 [I have a copy of -- copies of both
12 those.]

13 MR. CLAUDE: And Mr. Hanrahan, the
14 original letter written from my office is in
15 French but I believe you have a translation of
16 the letter. Once again, I guess to the extent
17 where you're reading from an English version and
18 he's looking at a French version we just want to
19 be sure we're clear that the translation is
20 necessarily appropriate.

21 MS. MILLER: Just to be clear, the
22 translation of the English version of the letter
23 from your office was provided by your office.
24 That's not a translation we did. You provided
25 us with both a French and an English version of

1 that letter.

2 MR. CLAUDE: Yes, but I'm not sure
3 that the witness has the English version of the
4 letter before him.

5 MS. MILLER: That's fine. As long as
6 you can assure your client that the English
7 version that you provided to us is consistent
8 with the French version that you prepared or
9 provided to him then I think we're good.

10 BY MR. HANRAHAN:

11 184 Q. Mr. Riopel, do you have a copy of
12 the letter in front of you?

13 A. J'ai une copie des deux lettres,
14 oui.

15 [I have a copy of both letters, yes.]

16 185 Q. And when you say "both letters"
17 you're referring to the April 12th letter from
18 Mr. Claude and the response from Ms. Miller?

19 A. Oui.

20 [Yes.]

21 186 Q. Now, this letter that was sent
22 from Mr. Claude, was this letter sent at your
23 request?

24 A. J'en ai discuté avec maître
25 Claude, et puis il a été convenu d'en envoyer.

1 Je suis en CC à la lettre.

2 [I spoke with Mr. Claude about the
3 letter.]

4 187 Q. And did you review the letter
5 before it was sent?

6 A. Ça, je me souviens pas.

7 [I don't recall that.]

8 188 Q. Did you discuss the contents of
9 the letter with him before it was sent?

10 A. Oui.

11 [Yes.]

12 189 Q. And you agreed with the content?

13 A. De façon générale, oui.

14 [In a general way, yes.]

15 190 Q. Can we just turn to the second
16 paragraph of the letter? And again, I'm reading
17 from a translated copy provide by Mr. Claude,
18 which says:

19 "As you know, the University of
20 Sudbury announced on Friday,
21 March 12th that it was becoming a
22 Francophone university. It has
23 already begun its transition to
24 achieve this new mission quickly."
25 Do you see that?

1 A. Oui.

2 [Yes.]

3 191 Q. What has the University of
4 Sudbury already done to begin the transition?

5 A. Le conseil des régents de
6 l'Université de Sudbury a créé un groupe ad hoc
7 en vertu de la résolution adoptée le 11 mars, en
8 vue de l'établissement d'une université de
9 langue française.

10 [The regional committee of the
11 University of Sudbury has created an ad hoc
12 committee with the vision of the 11th March
13 resolution, with the vision of creating a French
14 language university.]

15 A également été créé un comité ad hoc
16 avec les mêmes objectifs pour la communauté
17 autochtone.

18 [And they also equally made an ad hoc
19 committee for the indigenous community.]

20 Maintenant, le comité ad hoc...

21

22 [Technical issues.]

23

24 THE COURT REPORTER: I dropped off
25 there, I did not get that.

1 BY MR. HANRAHAN:

2 192 Q. Mr. Riopel, maybe if you can
3 repeat your answer for the court reporter?

4 A. Le conseil des régents a procédé
5 à la création d'un comité ad hoc pour piloter le
6 dossier de l'université de langue française.

7 [The regional (sic) committee of the
8 University of Sudbury proceeded with the
9 creation of an ad hoc committee to pilot the
10 creation of a French-language university.]

11 Simultanément, nous avons créé un
12 comité ad hoc pour le dossier des indigenous
13 studies

14 [Simultaneously we created an ad hoc
15 committee for the case of Indigenous studies.]

16 Maintenant, le groupe francophone
17 s'est entouré d'un comité de travail et ce
18 comité s'est rencontré au début avril.

19 [Now, the French group is surrounded
20 by a work committee, a work team and this
21 committee met the beginning of April.]

22 Et nous sommes à élaborer un plan
23 d'affaires en...

24 [And we drafted a business -- we
25 drafted a business plan - inaudible.]

1 THE COURT REPORTER: Pardon M. Riopel,
2 je n'ai pas entendu la dernière partie de votre
3 réponse, après « plan d'affaires ».

4 THE INTERPRETER: I didn't understand
5 the last sentence after business plan.

6 THE WITNESS: Bien, je crois, « en vue
7 de l'établissement de l'université de langue
8 française ».

9 [With an eye toward creating a
10 French-language university.]

11 BY MR. HANRAHAN:

12 193 Q. Mr. Riopel, I think you just
13 mentioned, and I just want to clarify, that
14 there is an ad hoc committee and then a work
15 committee. Are those two separate committees?

16 A. Oui, parce que le comité ad hoc,
17 c'est le comité du conseil des régents.

18 [Yes, because to ad hoc committee is a
19 part of the Federation of Regents.]

20 194 Q. And who is on the work committee?

21 A. Je fais partie du comité.

22 [I'm part of the committee.]

23 Le vice-président du conseil des
24 régents. Donald Dennie, professeur émérite de
25 l'Université Laurentienne. Johanne Gervais, de

1 l'ACFO du Grand Sudbury. Gisèle Chrétien,
2 l'ancienne présidente du Collège Boréal. Parmi
3 d'autres.

4 [The vice-president of the regional.
5 Donald Dennie, emeritus professor at the
6 university of hmm (sic). Joanne hmm (sic)
7 Sudbury. Gisèle Chrétien. And the previous
8 president of Collège Boréal. Among others.]

9 195 Q. There are others? How many
10 people are on the committee?

11 A. On est huit ou dix, je me
12 souviens pas.

13 [Eight or ten, I can't say exactly.]

14 BY MS. MILLER:

15 196 Q. For the record, Mr. Caza is on
16 the committee?

17 A. Oui, je crois que oui.

18 [Yes, I believe so.]

19 BY MR. HANRAHAN:

20 197 Q. And what is the difference in
21 responsibility between the work committee and
22 the ad hoc committee?

23 A. Le comité ad hoc relève du
24 conseil des régents.

25 [The ad hoc committee lifts up the

1 regent committee.]

2 N'ayant pas toutes les expertises
3 nécessaires au dossier, nous avons pensé bon de
4 créer un comité de travail.

5 [Not having all the necessary
6 expertise we thought it was a good idea to
7 create a work team.]

8 198 Q. And do both the ad hoc committee
9 and the work committee report to the Board of
10 Regents?

11 A. Le comité ad hoc se rapporte au
12 conseil des régents, le comité de travail se
13 rapporte au comité ad hoc. Les membres du comité
14 ad hoc sont membres du comité de travail.

15 [The ad hoc reports to the regents --
16 to the ad hoc they are a member.]

17 Le comité de travail se rapporte au
18 comité ad hoc.

19 [The work committee reports to the ad
20 hoc committee.]

21 199 Q. I think you mentioned a moment
22 ago that the work committee had drafted a
23 business plan as part of the --

24 A. Nous sommes dans ce processus-là.
25 [We're in this process of that.]

1 200 Q. So it's currently being drafted?

2 A. C'est ça.

3 [That's right.]

4 201 Q. Is there a draft at the moment?

5 A. Oui, mais un document de travail.

6 [Yes, but a working document.]

7 202 Q. Counsel, can I have an
8 undertaking for the draft business plan?

9 MR. CAZA: Sorry, an undertaking to
10 obtain what?

11 BY MR. HANRAHAN:

12 203 Q. The draft business plan that we
13 were just discussing.

14 U/A MR. CAZA: I will take that under
15 advisement. Can you explain the relevance of
16 that? It will just assist me in determining
17 whether we will provide it. What would be the
18 relevance of that to the motion?

19 MR. HANRAHAN: Well, he's told us that
20 the business plan is in relation to the
21 University of Sudbury becoming an independent,
22 French-language institution.

23 MR. CAZA: Right. And what's the
24 relevance of that to the motion?

25 MR. HANRAHAN: Well, you're opposing a

1 disclaimer that we've issued in relation to the
2 Federation Agreement.

3 The University of Sudbury has
4 indicated it intends to become an independent,
5 French-language university and we'd like to
6 understand the planning around that.

7 MR. CAZA: Sorry, I never understood
8 that they would become independent of the
9 federation. I'm sorry, is that what you've
10 understood?

11 MR. HANRAHAN: Yes, and I've asked
12 several questions to that effect.

13 MR. CAZA: Yes, but nowhere has there
14 been any evidence that they were looking to
15 become independent of the federation.

16 U/A Anyway, I'll take under advisement
17 the business plan. I can tell you that all the
18 under advisements or the undertakings we want to
19 get the answers to you today. I'm just telling
20 you we're getting those as we speak and we'll
21 get those to you before the end of the day.

22 And this under advisement, if we
23 accept to provide it, we will provide it to you
24 before the end of the day, to both you and
25 Ms. Miller.

1 MR. HANRAHAN: Appreciate that, thank
2 you.

3 BY MR. HANRAHAN:

4 204 Q. Coming back to the work committee
5 we were discussing, have there been meetings of
6 the work committee?

7 A. Nous avons eu une rencontre.
8 [We've had one meeting.]

9 205 Q. And when was that meeting?

10 A. Le 7 ou le 8 avril.

11 [The 7th or 8th of April.]

12 206 Q. And how about the ad hoc
13 committee? Have there been meetings of that
14 committee?

15 A. La journée précédente pour
16 préparer le travail, le travail du groupe de
17 travail.

18 [The day prior to talk about the work
19 of the work team.]

20 207 Q. Sorry, when you say "the day
21 prior" you mean the day prior to the work
22 committee meeting?

23 A. C'est ça, c'est ça, exact.
24 [That's exactly, yeah.]

25 208 Q. And are there minutes from those

1 meetings?

2 A. Non.

3 [No.]

4 209 Q. Do you take notes from the
5 meetings?

6 A. Pas copieuses, non.

7 [Not copious, no.]

8 210 Q. But you have some notes of the
9 meeting?

10 A. J'ai probablement la date, les
11 gens qui étaient présents, les grandes lignes de
12 la discussion.

13 [I would probably have the date, the
14 people present and the overarching subjects.]

15 211 Q. And the ad hoc committee meeting
16 that you mentioned, is that the only meeting of
17 that committee that's taken place?

18 A. À date, oui.

19 [To date? Yes.]

20 212 Q. Is there another meeting planned?

21 A. Je crois, nous essayons pour
22 mardi de la semaine prochaine.

23 [I believe we're trying for Tuesday of
24 next week.]

25 213 Q. What's on the agenda, what are

1 the next steps for the ad hoc committee?

2

3 A. Pour le comité ad hoc et le
4 comité de travail, c'est le plan d'affaires.

5 [For the ad hoc committee and the work
6 committee it's the business plan.]

7 214 Q. You want to be discussing
8 comments to the business plan, is that what you
9 mean?

10 A. C'est ce que j'ai compris, oui.
11 [According to what I've understood,
12 yes.]

13 215 Q. Can we just turn back to the
14 letter we were looking at a few minutes ago?
15 The April 12th, letter? We looked at the third
16 paragraph of the letter.

17 And in the English translation I'm
18 looking at it says --

19 MR. CAZA: Sorry, the third paragraph
20 on the second page? It would be of the letter?
21 That's fine I'm there. Sorry.

22 BY MR. HANRAHAN:

23 216 Q. Yes, the paragraph starting, "To
24 this end".

25 So in that paragraph it says:

1 "[...] the University of Sudbury
2 is calling for all programs, courses
3 and services offered in French at
4 Laurentian University as well as
5 facilities and related resources."

6 Do you see that?

7 A. Oui.

8 [Yes.]

9 217 Q. So in this letter you're
10 requesting that Laurentian transfer to the
11 University of Sudbury all of its French language
12 programming?

13 A. C'est clair.

14 [That's clear.]

15 218 Q. What consideration was the
16 University of Sudbury intending to pay in
17 exchange for those programs?

18 A. Je ne me souviens pas que la
19 discussion se soit rendue là.

20 [I don't recall the discussion getting
21 to that.]

22 219 Q. Do you expect that there would be
23 consideration paid if this type of transaction
24 were to happen?

25 A. On m'a déjà, on m'a parlé de

1 l'exemple de Cambrian College et le Collège
2 Boréal où il y avait eu un transfert d'argent,
3 semblable à ce que vous suggérez.

4 [I've heard speak about the example of
5 Cambrian College and Collège Boréal where
6 transfer of money was made, something similar to
7 that effect.]

8 Maintenant, dans la phrase qu'on est
9 en train de lire, on parle du transfert des
10 programmes, des cours et des services, ainsi que
11 des installations et des ressources afférentes.
12 Ça, ça veut dire des subventions
13 gouvernementales aussi, là.

14 [Now, the sentence that we're reading
15 refers to the transfer of programs,
16 installations, all related things, and that
17 would also refer to governments -- money given
18 by the government subventions (sic).]

19 220 Q. Sorry, government what?

20 A. Des subventions gouvernementales.

21 [Money given by the government.]

22 MR. CLAUDE: I think it's government
23 grants.

24 THE WITNESS: C'est ça.

25 [Great.]

1 MR. CAZA: There's other parts of the
2 letter that actually answer that question. I'm
3 sorry, let me know if you want me otherwise I'll
4 wait.

5 BY MR. HANRAHAN:

6 221 Q. And you mentioned it would also
7 include transfer of government grants. Is it
8 your understanding that the University of
9 Sudbury is eligible to receive those grants?

10 A. Ce que j'ai compris, il y a une
11 annonce faite par le ministre des Collèges et
12 des Universités.

13 [According to what I have understood
14 there is an announcement made by the Ministry of
15 Colleges and Universities.]

16 Monsieur Romano, qui aurait dit que
17 l'Université de Sudbury pourrait recevoir du
18 financement, possiblement, si elle devenait
19 francophone, il y avait aussi l'aspect de
20 confessionnalité, alors confessionnel ou pas
21 confessionnel.

22 [Mr. Hmm (sic) also spoke about the
23 University of Sudbury being able to receive
24 funding with the possibility of becoming a
25 Francophone institution, with a confessional

1 aspect.]

2 222 Q. But that's not possible under the
3 current legislation, is it?

4 A. Pas à ma connaissance.

5 [Not that I'm aware of.]

6 223 Q. Now, we talked a little bit
7 earlier about the headcount of students at the
8 University of Sudbury, and I think I suggested
9 to you that there were 69 full-time equivalent
10 student. You said you weren't sure if that
11 number is correct.

12 And we also talked about the fact that
13 the University of Sudbury has five academic
14 programs that it offers right now, is that fair?

15 A. C'est ça.

16 [Yes.]

17 224 Q. Now, are you aware that as of
18 fall 2020 Laurentian had 1,256 full-time
19 equivalent, French-language students?

20 A. J'ai entendu le chiffre 1 300,
21 mais vos chiffres sont peut-être plus précis.

22 [I had heard the number 1,300 but
23 perhaps your numbers are more precise.]

24 225 Q. So my numbers are taken from
25 Dr. Haché's affidavit, but it sounds like we're

1 talking in the same ballpark number.

2 Now, are you also aware that following
3 the recent academic restructuring at Laurentian,
4 Laurentian will have 38 French-language
5 programs?

6 A. Je n'ai pas fait le calcul.
7 [I haven't calculated it exactly.]

8 226 Q. Well, that is also referenced in
9 Dr. Haché's affidavit where he references the
10 restructuring.

11 So for the University of Sudbury to
12 assume all of Laurentian's French-language
13 programs, as your letter is suggesting, by my
14 math that would mean a 1700 percent increase in
15 the full-time equivalent students at the
16 University of Sudbury, and a 600 percent
17 increase in the number of programs. How is that
18 in any way realistic for the University of
19 Sudbury to do?

20 A. La communauté franco-ontarienne a
21 relevé des défis équivalents, sinon supérieurs
22 dans notre histoire. Tout est possible à mon
23 avis. Si j'ai bien compris, l'Université
24 Laurentienne risque, je ne sais pas, c'est ce
25 que j'entends, risque d'avoir des pieds carrés

1 de disponibles.

2 [The Franco-Ontarian community has
3 raised itself to many challenges either
4 equivalent to or beyond so anything is possible.

5 I don't know but I heard there is a
6 risk that there might be some square footage
7 available.]

8 227 Q. But you don't currently have the
9 facilities to undertake this plan, do you?

10 A. Nous avons quand même un édifice
11 administratif, et des salles de classe et une
12 résidence, mais au moment où on se parle, non.
13 Mais tel que j'ai mentionné, Laurentian
14 University risque d'avoir beaucoup d'édifices ou
15 beaucoup de pieds carrés de disponibles.

16 [Presently we have an administrative
17 board, we have classrooms, we have a residence.
18 We don't have it now at present but, as I
19 mentioned, Laurentian University risks having
20 available square footage available.]

21 228 Q. The facilities you currently have
22 would not be able to accommodate more than a
23 thousand full-time equivalent students,
24 French-language students at Laurentian?

25 A. Ça, je n'ai pas cette

1 expertise-là pour savoir combien de pieds carrés
2 j'ai besoin pour 1 000 élèves, ou 1 000
3 étudiants. Mais ne pourrait-il pas, et je pose
4 la question, ne pourrait-il pas y avoir des
5 ententes entre cette nouvelle université de
6 langue française et Laurentian University en ce
7 qui a trait à la location de pieds carrés, si
8 c'était nécessaire?

9 [I don't have the expertise to say
10 what the square footage required would be to
11 have a thousand students but, again, I would say
12 it could be possible that there would be a
13 rental agreement between the university and
14 Laurentian University to rent the facilities.]

15 Écoutez, on l'a fait avant dans les
16 écoles secondaires, au collégial. Donc ce n'est
17 pas impossible. Et puis moi, je suis convaincu
18 que la communauté franco-ontarienne saura
19 relever le défi s'il lui est présenté.

20 [We did it before with the secondary
21 schools and college school. So I think it's a
22 possibility and the Franco-Ontarian community is
23 able to meet the challenge.]

24 229 Q. But that type of rental
25 arrangement has never been proposed or suggested

1 as a possibility by Laurentian, right?

2 A. C'est moi qui l'envisage comme
3 possibilité. C'est moi qui avance ça comme
4 suggestion.

5 [It's me that has mentioned that as a
6 possibility, it's me that is putting that
7 forward as a suggestion.]

8 MR. CAZA: Sorry, did you want -- did
9 you want an undertaking for us to provide you
10 with a document to explain how this could be
11 done.

12 MS. MILLER: No. We're not looking
13 for your evidence, Mr. Caza, we're looking for
14 your clients.

15 MR. CAZA: I'm just asking if you
16 wanted an undertaking my client would could have
17 prepared that.

18 BY MR. HANRAHAN:

19 230 Q. And in fact Laurentian has
20 explicitly told you they're not interested in an
21 arrangement that would transfer their
22 French-language programming to the University of
23 Sudbury, right?

24 A. C'est ce que je comprends par la
25 réponse.

1 That's what I've understood, yes, by
2 their answer.

3 231 Q. So while you may imagine a
4 scenario where this could be workable, there's
5 nothing to suggest that that's a realistic
6 possibility, is there?

7 A. C'est toujours une possibilité
8 réelle.

9 [It's always a real possibility.]

10 232 Q. A realistic possibility?

11 A. Oui.

12 [Yes.]

13 233 Q. Well, how can you say it's a
14 realistic possibility when Laurentian's never
15 made an offer along the lines of what you're
16 talking about, and has never even indicated that
17 it would be amenable to discussing that type of
18 arrangement?

19 A. On n'a jamais eu la discussion.
20 On a eu des échanges de lettres.

21 [We've never had any discussion, we've
22 had letter exchange.]

23 234 Q. And the letter was quite clear
24 that Laurentian was not interested in that type
25 of arrangement, right?

1 A. C'est ce que j'ai compris.
2 Maintenant... well, now I'm gonna stop there.
3 [That's what I understood. But --
4 well, now I'm going stop there.]

5 235 Q. If the University of Sudbury did
6 proceed with the type of plan you're talking
7 about with the transfer of French language
8 programs from Laurentian, would the University
9 of Sudbury be intending to employ all the
10 faculty that currently teach those courses at
11 Laurentian?

12 A. On n'est pas rendu là dans nos
13 réflexions. Ça, c'est vraiment dans du détail.
14 [That would depend on our reflection.
15 You're going into great detail there.]

16 236 Q. Well, you would need to go into
17 great detail if you were going to do this,
18 wouldn't you?

19 A. Mais au moment où on se parle,
20 l'idée, ou le projet d'une université de langue
21 française, c'est vraiment un projet. Je vous
22 dirais qu'on a à en discuter et préciser nos
23 pensées sur ces questions-là.

24 [But I'm saying, at the time of
25 speaking the idea of French Laurentian

1 university we're speaking about...]

2 237 Q. Sorry, I'm afraid I didn't
3 understand that answer.

4
5 [TECHNICAL ISSUES]

6
7 238 Q. Mr. Riopel, just before we had
8 technical difficulties, we were talking about
9 your plans about the transfer of French language
10 programming to the University of Sudbury, and
11 whether the University of Sudbury would then be
12 taking on the faculty that teaches those
13 programs currently at Laurentian.

14 And I think you told me you hadn't
15 fully thought that through and didn't have a
16 decision, is that right?

17 A. Oui.

18 [Yes.]

19 239 Q. So it's possible you may not take
20 on all those faculty, is that fair?

21 A. C'est vraiment prématuré pour
22 répondre à cette question-là.

23 [It's actually very premature to pose
24 that question.]

25 240 Q. Well, is it premature? Because

1 you have made an announcement that you intend to
2 become a French-language university. You've
3 asked Laurentian to transfer all of its
4 programming to you. Have you not thought about
5 what faculty would teach that programming?

6 A. On est encore devant une
7 situation vraiment de projet et une situation
8 hypothétique. Alors on n'est pas rendu là dans
9 notre réflexion, tout simplement.

10 [We are actually just in front of a
11 project or a situation that's hypothetical and
12 so we haven't gone into that much detail.]

13 L'autre chose que j'ajouterais aussi,
14 c'est que le regroupement des Professeurs
15 francophones, le RPF, a fait une sortie
16 publique comme quoi ils appuyaient le projet de
17 l'Université de Sudbury, mais il n'y a eu aucune
18 discussion concernant la question que vous
19 soulevez.

20 [I'd like to add that the French
21 teaching staff made a public statement
22 supporting the University of Sudbury's decision,
23 but there was no discussion about that.]

24 241 Q. I'm not sure that that answered
25 my question, but you've made an announcement and

1 requested programs from Laurentian University.
2 And that -- what you're proposing would
3 potentially impact more than 1200 full-time
4 equivalent French-language students. Don't you
5 think it's important to have thought through how
6 this would work and who would teach the programs
7 and how that transition would go?

8 A. Nous sommes dans ce processus-là.
9 [We're in that process. We're in that
10 very process.]

11 242 Q. And if you assume the faculty
12 from Laurentian to teach these programs, would
13 you also be assuming obligations related to
14 those faculty? Vacation pay, pension plan
15 obligations, those type of things?

16 A. On n'est vraiment pas rendu là
17 dans notre analyse de la situation.

18 [We haven't really gone into the
19 detail and analysis of that.]

20 243 Q. It's fair to say you haven't
21 really fully thought this plan through?

22 A. Le plan est en processus
23 d'élaboration. On n'a pas abordé la question que
24 vous posez.

25 [The plan is in the process of being

1 drafted. We have not addressed your -- those
2 kinds of questions you're putting forth.]

3 244 Q. Do you think it would have been a
4 good idea to think through these types of things
5 in the plan before making a public announcement
6 about your plan?

7 A. Le plan d'affaires est en
8 processus d'élaboration, tout simplement, et on
9 n'a pas abordé cette question-là. C'est tout.

10 [The business plan is in the process
11 of being drafted, we haven't addressed those
12 questions there, that's all.]

13 Il ne veut pas dire que dans les jours
14 ou dans les semaines qui viennent, qu'on
15 n'abordera pas cette question-là.

16 [That does not mean that in the coming
17 weeks we won't address those questions.]

18 245 Q. I think we talked earlier about
19 the programs that are currently offered at the
20 University of Sudbury, and we said there's three
21 of those programs are either English language or
22 bilingual programs and two of the them are fully
23 Francophone, correct?

24 A. Oui.

25 [Yes.]

1 246 Q. And so in terms of the programs
2 that are English-language programs your
3 announcement that you're going to become a
4 French-language university effectively means
5 you're telling the students in the English
6 language programs that their programs are being
7 terminated, correct?

8 A. Ce n'est pas ma compréhension.
9 [That's not my understanding -
10 inaudible.]

11 Puisque la résolution du 11 mars
12 aborde également la question, la question du
13 programme autochtone, le indigenous studies.

14 [Since my resolution of 11 March also
15 addresses questions around Indigenous studies
16 programs.]

17 247 Q. And in what ways does it address
18 Indigenous studies programs?

19 A. Nous avons mandaté le recteur
20 avec le même mandat, pour ce qui est de la
21 création éventuelle et possible d'un
22 établissement d'enseignement supérieur pour la
23 communauté autochtone.

24 [We have mandated in that same mandate
25 the eventual creation of a secondary school for

1 the Indigenous.]

2 MS. MILLER: Can I ask, Mr. Caza, that
3 you turn your video off because when you shake
4 your hand "no", in answer to a question that
5 Mr. Hanrahan asks, it is a signal to your
6 client.

7 MR. CAZA: I will do that. Sorry
8 about that.

9 MS. MILLER: Thank you.

10 BY MR. HANRAHAN:

11 248 Q. Okay. I want to come back to the
12 Indigenous studies program in a minute. But
13 before we get there, let's just talk about the
14 other two programs that I think you said are
15 bilingual, Philosophy and Religious Studies.

16 Students taking those programs in
17 English, based on your announcement, that would
18 mean those students have their programs
19 terminated, right?

20 A. Je n'ai pas les détails à ce
21 niveau-là, c'est une question beaucoup plus...
22 beaucoup plus administrative, à mon avis.

23 [I don't have the exact information at
24 that level. In my opinion it is a question at a
25 more administrative level.]

1 Je pense que c'est important aussi de
2 préciser et de répéter qu'on a mandaté le
3 recteur d'entrevoir ces deux possibilités-là,
4 une université de langue française et un
5 établissement équivalent pour la communauté
6 autochtone.

7 [But I think that it would be -- I
8 think it's necessary to specify and repeat that
9 we've mandated the director to undertake the
10 creation of two programs, a French program and
11 an Indigenous Studies.]

12 249 Q. But I'm speaking right now about
13 Philosophy and Religious Studies. And I don't
14 think it's an administrative question, I think
15 it's a question of you've announced that you're
16 going to become a unilingual, French-language
17 university. So how would it be the case -- how
18 would it not be the case that students taking
19 their programs in English would be having their
20 programs terminated? You won't continue to
21 offer courses in English, right?

22 A. Moi, ce que j'ai compris de
23 l'entente qui met fin à la Fédération, c'est
24 qu'à partir du 1er mai, il n'y a aucun programme
25 qui sera offert à l'Université de Sudbury, parce

1 que l'Université Laurentienne...

2 [Once -- what I have understood from
3 the agreement is that starting at the 1st of May
4 there will be no programs offered by the
5 University of Sudbury.]

6 Parce que l'Université Laurentienne ne
7 reconnaîtrait pas les cours et les programmes
8 offerts à l'Université de Sudbury. Donc il y
9 aura comme techniquement, le 1er mai, ce que je
10 comprends de la situation, c'est qu'on ne
11 pourrait même pas offrir, qu'ils soient en
12 français ou en anglais, des cours. C'est ce que
13 je comprends.

14 [So because the Laurentian University
15 would no longer recognize courses or programs
16 offered by the University of Sudbury,
17 technically starting from the 1st of May, that's
18 how I've understood that. We couldn't even
19 offer language -- courses either in French or
20 English.]

21 250 Q. But you're speaking in respect of
22 the effect of the Notice of Disclaimer that was
23 issued April 1st, right?

24 A. C'est ce que je comprends.

25 [That's what I understood.]

1 251 Q. And I'm talking about a decision
2 that was made several weeks earlier, with your
3 announcement on March the 11th, that you would
4 be becoming a unilingual, French-language
5 university.

6 That decision was made first, and the
7 effect of that decision would mean that English
8 language students in Philosophy and Religious
9 Studies would have their programs terminated,
10 right?

11 A. À la lumière de l'annonce de
12 Laurentian University du 1er avril.

13 [At the announcement of the Laurentian
14 University on the 1st of April.]

15 Maintenant, la résolution du 11 mars,
16 c'est que nous exprimons notre intention de le
17 devenir. Nous ne pouvons pas nous autoproclamer
18 une université de langue française, donc on a
19 mandaté le recteur de mettre la machine en
20 branle pour arriver à ça, mais on ne pouvait pas
21 s'autoproclamer.

22 [No, that's for the 1st of April. The
23 resolution of the 11th of March is that we were
24 expressing our intention to be a self-proclaimed
25 French-language university. And we're mandating

1 the Rector, the director, to undertake the
2 actions toward that goal.]

3 252 Q. And if you achieve that goal that
4 was expressed in the resolution of March 11th,
5 the goal is to become a unilingual,
6 French-language university that would no longer
7 offer courses in English, in Philosophy or
8 Religious Study, right?

9 A. C'est ce que je comprends.

10 [That's what I understood.]

11 253 Q. And the effect of that is that
12 students enrolled in those programs are having
13 their program terminated.

14 A. Au même titre que l'université,
15 que la Laurentian University a annulé, question
16 de financement j'imagine, a annulé son programme
17 de philosophie. Le programme de philosophie est
18 un programme conjoint.

19 [In the same way I imagine Laurentian
20 University cancelled its funding for the
21 Philosophy program.]

22 Le programme de philosophie, c'est un
23 programme conjoint. Il faut pas l'oublier, ça.

24 [The Philosophy program is a shared
25 program.]

1 Et si ma mémoire est bonne, le
2 programme d'études religieuses est également un
3 programme conjoint avec nos deux partenaires
4 fédérés.

5 [And if memory serves me right, the
6 hmm (sic) class is also a shared program.

7 Le programme en question, c'était
8 études religieuses, religious studies.]

9 [The Religious Study is the one in
10 question, Religious Studies.]

11 254 Q. And so those programs would no
12 longer be available?

13 A. C'est une possibilité existante,
14 oui.

15 [That's a possibility that exists,
16 yes.]

17 255 Q. And have you communicated that
18 possibility to any of the students currently
19 enrolled in those programs?

20 A. Je ne sais pas, parce que ça,
21 c'est une question administrative de communiquer
22 avec les étudiants.

23 [I don't know because that is
24 administrative question of -inaudible (sic).]

25 256 Q. Let me just repeat. It's an

1 administrative question of what, Mr. Riopel?

2 A. La communication avec les
3 étudiants, pour moi, c'est l'administration de
4 l'université qui fait ça.

5 [Communication with these students,
6 it's administrative task.]

7 257 Q. That's not something that you
8 would be concerned with?

9 A. Je me fie à mes administrateurs,
10 c'est pour ça qu'on a un recteur.

11 [I trust my administrators, it's for
12 that reason I'm a director.]

13 258 Q. And have you spoken with any of
14 them about whether this was communicated to
15 students?

16 A. Je sais... non, pas précisément à
17 ce point-là.

18 [No, not precisely to that point, no.]

19 259 Q. Well, it's probably fair to say
20 that a student in Philosophy or Religions
21 Studies might be concerns about the possibility
22 of their program being cancelled, wouldn't they?

23 A. Je dirais que oui. Et si je me
24 fie à nos étudiants, ils ont probablement
25 communiqué avec le bureau du secrétaire-général

1 pour avoir plus d'informations. Ça aussi, c'est
2 une possibilité.

3 [I would say yes. And if I trust my
4 students will probably say I have made their
5 concerns known to the General Secretary.]

6 260 Q. And wouldn't you think it would
7 be important to communicate with students to
8 explain to them how this will impact them and
9 what plans there might be for how they can move
10 forward?

11 A. Absolument. Et encore une fois,
12 je me fie au secrétaire-général et au recteur de
13 faire ces démarches-là.

14 [Absolutely, and I trust my General
15 Secretary and the director to do the necessary
16 thing in that regard.]

17 261 Q. But as far as you know that
18 hasn't happened yet?

19 A. Je ne le sais vraiment pas.

20 [I really don't know.]

21 Et encore une fois, je fais confiance
22 à cette équipe administrative pour faire ce
23 genre de démarches.

24 [But I trust this administrative team
25 to realize those administrative processes.]

1 262 Q. So that being the case, if your
2 administration -- administrators hadn't had
3 these communications with students you would
4 think they were not sufficiently doing their
5 job?

6 A. Répétez la question? C'est
7 vraiment pas clair, là.

8 [Can you repeat the question? It's
9 really not clear.]

10 263 Q. Sure. If your administrators
11 hadn't communicated with students, who might be
12 having their programs terminated, like we were
13 just discussing, you would consider that to not
14 be fulfilling the responsibilities of their job?

15 A. Je ne m'imagine pas tirer cette
16 conclusion. Il m'apparaît très très très
17 improbable que l'équipe administrative n'ait pas
18 communiqué avec les étudiants.

19 [I don't believe that. It seems to
20 me, very, very, very improbable that the
21 administrative team did not communicate that to
22 students.]

23 264 Q. Well my question though was, if
24 they hadn't would you consider that they had
25 missed an obligation of their job?

1 A. Situation hypothétique, à mon
2 avis.

3 [In my opinion that's a hypothetical
4 situation.]

5 265 Q. Well, it's not hypothetical, it's
6 a possibility, right? Because you told us you
7 don't know whether they've had those
8 communications.

9 A. C'est une question hypothétique
10 parce que vous avez commencé votre question avec
11 « si ».

12 [It's a hypothetical question because
13 you begun your question with the word "if".]

14 266 Q. Well, I had to begin my question
15 because you told us you don't know what has
16 happened.

17 MR. CLAUDE: I have to object,
18 Mr. Hanrahan, to this question. It hasn't been
19 established that communications did not take
20 place, therefore, the whole discussion about is
21 there some legal implication or consequence that
22 results from that, is entirely hypothetical.

23 So perhaps we can establish, if you
24 wish, whether or not communications have been
25 made with the students, and then from there,

1 which the witness is not able to answer today,
2 and from there we'll be able to answer your
3 hypothetical question. Because perhaps it's not
4 hypothetical we just don't have the basis for
5 it.

6 BY MR. HANRAHAN:

7 267 Q. Well, I'm not the one who can
8 establish whether those communications have
9 happened. I've asked the witness if they did,
10 he's told me he doesn't know. So I'm asking
11 him -- there's two possibilities, based on what
12 he's told me: The communication happened or it
13 didn't.

14 And I'm asking him in the scenario
15 where it didn't would he consider that to be a
16 failure to comply with an obligation of his
17 administrative employee's job? That's not a
18 legal question.

19 R/F MR. CLAUDE: No. We do object and so
20 please duly note the objection and move on to
21 your next question.

22 MS. MILLER: So will you give an
23 undertaking to make inquiries, since he's not
24 informed on that issue today, make inquiries and
25 determine if communications have been issued to

1 students and if so provide us with copies of
2 them.

3 MR. CLAUDE: Could you make your
4 request more clear? Inquiries of what exactly?

5 MS. MILLER: To students with respect
6 to the effect of the announcement of
7 March 11th to become a Francophone university,
8 on the existing English language programs and
9 bilingual programs that are offered through the
10 University of Sudbury.

11 U/A MR. CAZA: I think we can take that
12 under advisement.

13 MS. MILLER: Thank you.

14 BY MR. HANRAHAN:

15 268 Q. Mr. Riopel, how many of the
16 existing University of Sudbury faculty teach in
17 the English language program?

18 A. Je sais que nous avons treize
19 professeurs, mais je ne pourrais pas préciser
20 qui enseigne dans quel département, et qui a
21 quelles compétences linguistiques. Ça, j'ai
22 vraiment pas ces détails-là.

23 [I know we have thirteen professors,
24 but I couldn't specify who works in what
25 department and who possesses specific linguistic

1 skills or not. I don't have those details.]

2 269 Q. But it's fair to say that several
3 of them teach in the English language?

4 A. Bien, ça dépend de ce qu'on veut
5 dire par « several », mais je compterais
6 probablement cinq ou six de ces profs-là, mais
7 je ne sais vraiment pas.

8 [It depends on what you mean to say by
9 "several", but I would say five or six.]

10 270 Q. And will those faculty be
11 terminated when the University of Sudbury
12 becomes exclusively Francophone?

13 A. Ce que je comprends, maître
14 Hanrahan, c'est que nous sommes en négociation
15 présentement avec LUFA à partir du 1er mai à
16 cause de l'avis de résiliation de la Fédération.
17 Pratiquement tous nos employés seront mis à pied
18 puisque nous n'avons plus de revenus.

19 [From what I understand, Mr. Hanrahan,
20 is that we are in negotiations with LUFA now,
21 starting from the 1st of May, because of the
22 federation's resolution, and that practically
23 all of our staff will be laid off because
24 there's no funding.]

25 Et j'ajouterais que ce n'est pas

1 l'effet de la déclaration du 11 mars qui nous
2 amène à ce point-là.

3 [And I would like to add and specify
4 that it is not the announcement of the 11th of
5 March that brought us to that situation.]

6 271 Q. Well, I'm speaking in respect of
7 the impacts of your March 11th announcement.
8 Setting aside the disclaimer from Laurentian
9 University, as we have discussed, you made this
10 announcement that you would be converting to a
11 unilingual, French-language institution. You
12 wouldn't have any need for professors that teach
13 in the English language if that were to go
14 forward, right?

15 A. Le 11 mars, nous avons déclaré
16 notre intention d'aller vers ça. Les effets sur,
17 parce qu'on est vraiment en phase exploratoire,
18 on n'a peut-être pas procédé à cette analyse-là.

19 [Our 11th March -- on the 11th of
20 March we expressed our intention to move towards
21 that, but the effect on -- because we're really
22 in an exploratory phase of that we haven't gone
23 into the details.]

24 Maintenant, l'effet de l'annonce, si
25 vous me permettez de poursuivre, c'est que

1 l'effet de l'annonce du 1er avril de Laurentian
2 University fait en sorte que le 1er mai, et je
3 parle à titre de président de conseil et membre
4 de ce conseil-là, on n'a plus de revenus, là. Et
5 puis on va se retrouver dans une situation
6 financière excessivement difficile. Donc c'est
7 pour cette raison-là qu'on est en train de
8 négocier avec nos syndicats, une situation qui
9 est vraiment, vraiment très difficile et très
10 urgente.

11 [And so now the effect, if you allow
12 me to continue what I was saying, the
13 announcement of Laurentian on the 1st of April
14 makes it so that many -- as of the 1st of May we
15 will no longer have any -- we are not receiving
16 any money, which puts us in a financial
17 situation which is too difficult, and that's why
18 we're in negotiations with the unions, because
19 we're in an urgent and difficult situation.]

20 Donc les mises à pied qui s'en
21 viennent, là, il n'y a aucun, à ma connaissance,
22 il n'y a aucun lien avec la résolution du 11
23 mars, mais c'est tout en lien avec l'annonce de
24 la résiliation de la Fédération qui nous a été
25 présentée par Laurentian University.

1 [So all of the layoffs that -- all of
2 the coming layoffs have no link with the
3 resolutions of the 11th of March but they all
4 have to do with the -- Laurentian's
5 announcement.]

6 272 Q. Again, I'm speaking in respect of
7 the effects of your March 11th announcement.
8 And if -- without there being a disclaimer from
9 Laurentian University, you had announced that
10 you would become a unilingual French-language
11 university, that necessarily means once that
12 happens you would no longer have a need for
13 English language professors, right?

14 A. J'imagine que oui.

15 [I imagine, yes.]

16 273 Q. And so they would be terminated?

17 A. Je peux pas me prononcer
18 là-dessus parce qu'on est encore dans une phase
19 de planification.

20 [I can't answer that because we're
21 still in a planning stage, in the planning
22 stages.]

23 274 Q. Well, is there a scenario that
24 you would continue to employ faculty who don't
25 teach courses?

1 A. On ne s'est pas rendu là dans nos
2 discussions.

3 [We haven't got into that in our
4 solution.]

5 MR. CAZA: Sorry, I think it was
6 discussions.

7 BY MR. HANRAHAN:

8 275 Q. Can you think of a reason that
9 you would want to continue employing five or six
10 faculty members who teach in English when you
11 offer courses exclusively in French?

12 A. Encore, je n'ai vraiment aucune
13 idée, mais j'imagine que les profs anglophones
14 ne pourraient pas continuer à enseigner en
15 français dans un établissement autonome de
16 langue française.

17 [I have no idea, again, but I would
18 imagine that an English professor could not
19 teach a French class in a French school.]

20 276 Q. Madam Court Reporter, I don't
21 know if this is a good time for a break. We've
22 been going for a little while.

23 -- RECESSED AT 12:25 P.M. --

24 -- RESUMED AT 12:38 P.M. --

25 BY MR. HANRAHAN:

1 277 Q. So Mr. Riopel, we've been
2 discussing a fair bit today the University of
3 Sudbury's intention to convert to a unilingual
4 French language institution, right?

5 A. Oui.

6 [Yes.]

7 278 Q. So I wonder if I could ask you to
8 turn back to the Federation Agreement that we
9 were looking at earlier? And if you could turn
10 to paragraph 17? And if you look about half way
11 through paragraph 17 it's speaking about
12 Laurentian and Sudbury University. And it says:

13 "[...] they and the other
14 universities and colleges, which
15 become federated or affiliated with
16 Laurentian University, will work
17 together to fulfill the objects of the
18 active incorporation of Laurentian
19 University, and to build a great
20 institution of learning which shall
21 forever be bilingual and
22 nondenominational in its character."

23 Do you see that?

24 A. Oui.

25 [Yes.]

1 279 Q. And you agree with me that the
2 plan that the University of Sudbury has
3 announced is not consistent with that plan of
4 the Federation Agreement, right?

5 A. À la lumière du fait que
6 Laurentian University a très mal rempli le
7 mandat de bilinguisme, moi je ne suis pas
8 inconfortable avec ce qu'on a fait.

9 [Right. In light of the fact that
10 Laurentian University has very badly fulfilled
11 their bilingual obligation I'm completely
12 comfortable with what I've done.]

13 280 Q. Let's set aside what Laurentian
14 University has done for a moment, and I'm just
15 speaking about your announcement, it's not
16 consistent with that provision of the Federation
17 Agreement, is it?

18 R/F MR. CAZA: That's a legal question and
19 item objecting and directing the client, the
20 witness not to answer.

21 BY MS. MILLER:

22 281 Q. Can we ask the question this way,
23 Mr. Riopel. That is, if Laurentian complied
24 with the letter that Mr. Claude sent requesting
25 that all French language programs and courses be

1 transferred to the University of Sudbury, would
2 that be consistent with the language of
3 paragraph 17 of the Federation Agreement, which
4 says that Laurentian shall forever be bilingual?
5 R/F MR. CAZA: Same objection. I can
6 provide, just for the purposes of the
7 transcript, because I believe when I give an
8 objection to provide a reason.

9 What I can tell you is, the bilingual
10 aspect, when it says "bilingual", our position
11 is what they really mean is there definitely has
12 to be French being offered. In no way is that
13 any protection to ensure that courses are
14 offered in English.

15 MS. MILLER: And to be clear, the
16 context for the question that's just been asked
17 is in the context of Laurentian University being
18 recognized under the French Language Services
19 Act as a specifically bilingual university.

20 And so I'll just put that on the
21 record and we don't need to debate it, but we
22 have your objection.

23 BY MR. HANRAHAN:

24 282 Q. Mr. Riopel, can I ask you to turn
25 to paragraph 39 of your April 14th affidavit?

1 A. C'est beau.

2 [I'm good.]

3 283 Q. And this paragraph 39, you're
4 talking about what you say are -- is the likely
5 significant financial hardship to the University
6 of Sudbury that would result from the disclaimer
7 of the Federation Agreement, correct?

8 A. C'est ça.

9 [Yes.]

10 284 Q. And if we look at paragraph 2,
11 specific items that you break out. And I'd like
12 to look at the first one, which is under numeral
13 (a) which says:

14 "[...] the layoff costs for its
15 employees, which could amount to
16 \$4 million."

17 Do you see that?

18 A. Oui.

19 [Yes.]

20 285 Q. Is that a figure that you
21 calculated?

22 A. Non, ça, c'est le personnel
23 administratif de l'université qui l'a fait.

24 [No, that's the university's
25 administrative staff that did that.]

1 286 Q. And how did they go about
2 calculating that \$4 million figure?

3 A. Je n'ai aucune idée. C'est en
4 collaboration avec une avocate des ressources
5 humaines et puis notre personnel au sein de
6 l'université.

7 [I really have no idea. Again that's
8 a collaboration with a lawyer, human resources
9 and the university staff.]

10 287 Q. Do you have an understanding of
11 what -- what the costs are that are included in
12 that \$4 million?

13 A. J'ai une petite idée, à la
14 lumière de mon expérience personnelle dans ce
15 genre de dossier.

16 [I have a small idea due to my
17 personal information in this kind of case.]

18 288 Q. And what's your understanding of
19 what's included in that number?

20 A. Bien, c'est des mises à pied.
21 Donc on doit, s comprends bien, là, c'est qu'on
22 doit aux employés un certain montant d'argent en
23 fonction de lois et de règlements, et puis
24 d'avis, aussi, là-dedans. C'est ce que j'en
25 connais.

1 [Well, I know that there will be
2 certainly layoffs and we are required to pay a
3 certain amount, in accordance with laws and
4 regulations and notice.]

5 289 Q. Counsel, can we have an
6 undertaking for an explanation of how this
7 number was calculated, and the numbers that went
8 into it?

9 U/T MR. CAZA: Yeah. What we will do is
10 we will give you an undertaking to provide you
11 with the analysis, okay, Mr. Hanrahan, that led
12 to this number.

13 MS. MILLER: I think we're looking for
14 the calculation not the analysis.

15 U/T MR. CAZA: And the -- I guess what I
16 meant by the analysis, so that you can
17 understand, what was taken into consideration to
18 arrive at that number. So that's the
19 undertaking we'll provide.

20 BY MR. HANRAHAN:

21 290 Q. Thank you.

22 And then if we move on to number (b),
23 you refer to the annual upkeep of its buildings
24 on the leased lands of approximately \$400,000.
25 Do you see that?

1 A. Oui.

2 [I do.]

3 291 Q. Those upkeep costs on the
4 buildings that you're referring to, those are
5 costs that Sudbury is already responsible for,
6 right?

7 A. À ce que je sache, oui.

8 [To my knowledge, yes.]

9 292 Q. And are those costs that you pay
10 every year and have paid for every year for a
11 number of years?

12 A. Ça, je pourrais pas me prononcer.

13 [I couldn't give you an answer to
14 that.]

15 293 Q. So who calculated the annual
16 upkeep amount of \$400,000?

17 A. Le personnel d'administration
18 d'université.

19 [The university's administrative
20 staff.]

21 294 Q. And could we have an undertaking
22 from the same explanation of those costs?

23 U/T MR. CAZA: Yes, we'll provide you with
24 that undertaking.

25 BY MR. HANRAHAN:

1 295 Q. Now, these upkeep costs in the
2 buildings, you said those are costs already --
3 those are already something that the University
4 of Sudbury is responsible for. So it's fair to
5 say that those are not costs that are a result
6 of the disclaimer, right?

7 A. Ce que je comprends, c'est que
8 c'est des coûts actuels de l'entretien de ces
9 édifices-là.

10 [From what I understand those are the
11 actual costs of the - inaudible (sic).]

12 296 Q. Sorry, you broke up there,
13 Mr. Riopel at the end of your answer.

14 A. C'est les coûts, à ce que je
15 sache, de l'entretien de ces édifices-là, de
16 façon annuelle.

17 [To my knowledge that's the cost that
18 the maintenance and upkeep of these buildings
19 cost annually.]

20 297 Q. And that's not a result of the
21 disclaimer, those are costs that you've been
22 paying to date?

23 A. À ce que je sache.

24 [That I'm aware of, yes.]

25 298 Q. Can we turn to paragraph 22 of

1 your April 14th affidavit?

2 A. Oui.

3 [Yes.]

4 299 Q. And you will see there's a
5 heading just above paragraph 22 that says "Lack
6 of Good Faith", do you see that?

7 A. Oui.

8 [Yes.]

9 300 Q. And then in paragraph 22, it
10 says:

11 "The proposed disclaimer is
12 unfortunately not the first time
13 Laurentian has attempted to
14 unilaterally terminate or materially
15 alter the Federation Agreement."

16 Do you see that?

17 A. Oui.

18 [Yes.]

19 301 Q. Other than the disclaimer that
20 was issued on April 1st, when has Laurentian
21 attempted to unilaterally terminate the
22 Federation Agreement?

23 A. À ce que je sache, il y a eu des
24 échanges de lettres, même avant que j'arrive au
25 conseil, possiblement après 2012, où la

1 Laurentienne voulait mettre fin à la Fédération.

2 [To my knowledge that was an exchange
3 of letters before my arrival on the committee
4 after 2012, wherein Laurentian wanted to put an
5 end to the federation.]

6 Et nous avons, à ce moment-là,
7 répondu, je ne me souviens pas si c'était par
8 l'entremise d'un avocat ou non, nous avons
9 répondu que nous avons une entente qui était
10 signée en 1960, renouvelée en 1993, qui faisait
11 en sorte qu'on ne pouvait pas dissoudre la
12 Fédération.

13 [And we responded at that time, I
14 can't remember whether it was through the --
15 with the help of a lawyer, but we responded that
16 there was a signed agreement dating -- signed in
17 1960 and renewed in 1993 that did not allow for
18 a dissolution?]

19 302 Q. So the letters you're referring
20 to you're saying that they discuss the
21 possibility of ending the federation?

22 A. C'est très vague dans mon esprit,
23 mais il me semble que c'était l'essentiel des
24 échanges à ce moment-là.

25 [It's very vague, in my mind, but the

essential of it seemed -- it's in that vein.]

303 Q. But there wasn't actually an attempt to terminate the Federation Agreement, right?

A. Ce que j'ai compris, c'est que la correspondance qu'on a reçue de la part de Laurentian University, c'était justement de mettre fin à la Fédération, et nous avons répondu que nous croyions, à ce moment-là, être sur du terrain solide légalement en ce qui a trait à la Fédération.

[What I understand that that was the concept. It was Laurentian's -- sorry.

What I understand is that it was in this correspondence from Laurentian that it was their intent to put an end to the relation. And our response at that time was to -- that we believed we were -- to be on legal solid ground.]

304 Q. Could we turn to paragraph --

MS. MILLER: Just before we leave that, can we please have an undertaking to produce the correspondence that you're referring to, in respect of paragraph 22, that you have just given evidence on?

1 R/F MR. CAZA: Actually, we won't give you
2 that undertaking.

3 But may I just ask Mr. Riopel
4 questions about how we could get a hold of that
5 letter, if he can?

6 MS. MILLER: No, he's just given
7 evidence about communications and correspondence
8 that he's saying support the statement in his
9 affidavit that this is not the first time that
10 Laurentian has attempted to terminate the
11 Federation Agreement.

12 So he's referred to correspondence
13 that he's received, he's given evidence on that.
14 And he's indicated there's been responses to
15 that. And he's purported to give evidence on
16 what the contents of that are. And we're asking
17 for him to produce the communications and
18 correspondence that he has no personal knowledge
19 of but that he's giving evidence on.

20 MR. CAZA: I have to tell you that his
21 evidence is that he recalls having read a letter
22 in the past, after 2012. We can't give you an
23 undertaking now to go through all that
24 correspondence to find the letter.

25 That's why I was going to ask

1 Mr. Riopel, and I mean you can object. I'm
2 asking him now, object if you want to.

3 Mr. Riopel, is this correspondence
4 that you could find quite easily.

5 BY MS. MILLER:

6 305 Q. But before you answer that,
7 Mr. Riopel, you've just sworn an affidavit, and
8 you've clearly had information to swear an
9 affidavit under oath, and you've put in a
10 reference in an affidavit to this exchange, that
11 Mr. Caza refers to as being impossible or
12 difficult to put your hands on.

13 And I'm just asking, how did you
14 inform yourself, other an anecdotal hearsay, you
15 know, exchange of correspondence at a time that
16 doesn't sound like it involved you, in order to
17 inform yourself to be able to swear this
18 affidavit.

19 MR. CAZA: I'm sorry, where does it
20 say in the affidavit that he had an exchange of
21 correspondence?

22 MS. MILLER: He's just given evidence
23 on that.

24 MR. CAZA: You just said in his
25 affidavit. He didn't say that in his

1 affidavit.

2 MS. MILLER: His affidavit says -- he
3 makes an assertion, under oath, that it's not --
4 unfortunately it's not the first time that
5 Laurentian has attempted to do it.

6 He's referenced correspondence.

7 MR. CAZA: Right.

8 MS. MILLER: And we'd like to see what
9 correspondence he's relying on in making that
10 assertion?

11 MR. CAZA: He's referenced
12 correspondence in the evidence he's given now.
13 He didn't reference it in his affidavit.

14 You have asked to have that
15 documentation produced. I've asked him, is that
16 something you can easily obtained? That's why
17 I've asked him. Because if he says "yes", then
18 we'll be able to give you the undertaking. If
19 he says "no", we can't give you the undertaking.

20 And if you don't want him to answer
21 the question, I've attempted to see if I can
22 answer the undertaking and we can move on.

23 BY MS. MILLER:

24 306 Q. Mr. Riopel, what's the answer to
25 that question?

1 A. Je ne saurais pas par où
2 commencer.

3 [I wouldn't know where to begin.]

4 U/T MR. CAZA: Why don't we do this: We
5 will undertake for Mr. Riopel to take a look,
6 just to take a look, if he's able to, and
7 usually we use the word "reasonable efforts".

8 Mr. Riopel, I guess -- how much
9 time -- do you think if you spent like an hour
10 you think you might be able to find it? Or that
11 wouldn't help?

12 THE WITNESS: Je peux vérifier, voir
13 ce que j'ai dans le dossier, mais je peux rien
14 garantir.

15 [I have to check and see what I have
16 in my files, but I can't guarantee anything on
17 that regard.]

18 MR. CAZA: Do you have your files with
19 you? Est-ce que vous les avez avec vous?

20 THE WITNESS: Oui.

21 [Yes.]

22 MR. CAZA: Are we in a position to
23 give an undertaking that you will review your
24 files to see if those letters are there?

25 THE WITNESS: Sure.

1 MS. MILLER: I think we've established
2 that he wasn't a party to the letters. He's
3 seen them, in some source, through University of
4 Sudbury.

5 So he's swearing an affidavit on
6 behalf of the University of Sudbury so it's not
7 limited to his files, he's swearing it on behalf
8 of the University of Sudbury so it includes
9 their files.

10 MR. CAZA: You know, we're going
11 through COVID, and getting files and having
12 access to documentation and everything is a
13 nightmare so I'm looking at the undertaking.

14 I'm going to say this in English just
15 to save work for Mr. Wright.

16 U/T So the -- what he's told us is he
17 might have that in his files. So he's got his
18 files with him. We're ready to give you an
19 undertaking. He'll look at the files.

20 We will make inquiries and give you
21 that undertaking. We will make some inquiries
22 to see if we are able to locate those letters.
23 We'll make a couple -- we'll make some phone
24 calls and if we are able to get those letters
25 we'll provide them to you.

1 BY MS. MILLER:

2 307 Q. Including to the President of
3 University of Sudbury and to the administrative
4 staff to see if they have it.

5 MR. CAZA: Well, I don't know to what
6 extent we can communicate with all of the
7 administrative staff but we will do -- now, the
8 president -- he's president now but he wasn't
9 president at the relevant time.

10 But we will inquire of the president
11 if he's aware of those letters; and if he is and
12 he can find them without sort of -- acting
13 reasonably, we will obtain those and provide
14 them to you.

15 I don't know who else, Mr. Riopel, we
16 could ask. Is there anybody else we can inquire
17 of?

18 THE WITNESS: Je peux pas penser à
19 personne d'autre. Ça serait dans les dossiers
20 dans le bureau du recteur.

21 [I can't think of anybody else. That
22 would be in the Director's files.]

23 U/T MR. CAZA: So we're prepared to give
24 you the undertaking.

25

1 BY MS. MILLER:

2 308 Q. Did you say you are or you are
3 not?

4 MR. CAZA: Yes, I am.

5 MS. MILLER: Thank you.

6 U/T MR. CAZA: Just so it's clear on the
7 record, Mr. Riopel will verify his files at his
8 office or where he's at. If he's got them we
9 will produce them.

10 We will communicate with the president
11 of the university, or the present Rector, at the
12 present. We will ask him if he has access? If
13 he's able to find those? Has he heard of these?
14 Can he get them?

15 And if he says he can, with exercising
16 reasonable efforts in all of the circumstances,
17 we will ask him to do so. And if we obtains
18 those letters we'll provide them to you. That's
19 the undertaking.

20 BY MS. MILLER:

21 309 Q. Thank you. And the one thing I
22 would ask you to add to that is to include the
23 administrative assistance to the president as
24 part of that.

25 MR. CAZA: I don't know who the

1 Executive Assistant is. Is that somebody,
2 Pierre, that we can write to.

3 THE WITNESS: Yes. She's not on
4 campus though.

5 U/T MR. CAZA: Okay. But we will make the
6 inquiry of her also.

7 MS. MILLER: Thank you.

8 BY MR. HANRAHAN:

9 310 Q. Okay. So if we could turn to
10 paragraph 29 of your affidavit?

11 A. Oui.

12 [Yes.]

13 311 Q. And I'm looking at the last
14 sentence of the paragraph. And you say:

15 "By seeking to terminate the
16 agreements rather than attempting to
17 negotiate new terms for financial
18 allocation of revenues and expenses,
19 Laurentian is acting contrary to the
20 principles agreed to and enunciated in
21 the Federation Agreement and in bad
22 faith."

23 Do you see that?

24 A. Oui.

25 [Yes.]

1 312 Q. You're aware that Laurentian and
2 the Federated Universities just concluded an
3 intensive, two-month mediation process?

4 A. C'est ce que je comprends.
5 [That's -- from what I understand,
6 yes.]

7 313 Q. So it's not the case, as you say
8 here, that Laurentian is terminating the
9 agreement rather than attempting to negotiate,
10 there was just a two-month long negotiation with
11 intensive mediation sessions, right?

12 R/F MR. CAZA: I'm objecting. We have no
13 evidence and there is no evidence as to what
14 went on at those mediations, what was said.

15 We tried to discuss that issue in the
16 cross-examination and it was clearly said none
17 of that can be brought forward. We don't see
18 how that can be referred to or even considered
19 by Mr. Riopel.

20 MR. HANRAHAN: I'm not getting into
21 any of the substance of the mediation and I
22 don't want anyone to discuss. I'm simply
23 referring to the existence of the mediation and
24 the fact that it happened. I don't think that's
25 confidential. It's in the court materials that

1 the mediation happened. That's all I'm
2 referring to.

3 MR. CAZA: My objection is it's
4 irrelevant. Because that mediation we don't
5 know, maybe nothing happened. Maybe nothing was
6 said. Maybe Laurentian University showed up and
7 said, We don't want to even talk to you. How
8 can it be relevant, the fact that there was
9 actual mediation, that nobody can discuss what,
10 if anything, was discussed in the context of
11 that mediation? So we're objecting to that
12 question.

13 BY MS. MILLER:

14 314 Q. Well, that's clearly argument,
15 but you can reserve that argument and make that
16 argument.

17 You're suggesting you don't want your
18 client to answer the question as to whether
19 University of Sudbury participated in the court
20 mediation process pursuant the February 5th
21 court order?

22 MR. CAZA: Sorry, is that the
23 question? That's not the question. Is the
24 question only, was the University of Sudbury a
25 participant in that mediation? Yes, Mr. Riopel,

1 you can answer that.

2 THE WITNESS: C'est ce que j'ai
3 compris. Oui.

4 [Yes, according to what I've up
5 understand.]

6 BY MS. MILLER:

7 315 Q. And did the University of Sudbury
8 deliver a mediation brief in the context of that
9 mediation?

10 A. Je n'ai aucune idée.

11 [I have no idea.]

12 MR. CLAUDE: And entering into that
13 area is to, I believe, cross the line in terms
14 of the breach of the confidentiality agreement.
15 What was said, what documents were filed, are
16 sealed, as far as the mediation order is
17 concerned.

18 MS. MILLER: Yeah, and there's no
19 intention to get into the documents. And if you
20 prefer I'm happy to strike that and have it not
21 appear as part of the transcript.

22 MR. CAZA: Actually you can't strike.
23 We're not in the United States, we don't strike
24 anything from the record.

25 I think you may have waived,

1 presently, the confidentiality pertaining to
2 those mediation briefs, because I guess now we
3 need to look at everybody's mediation briefs
4 since you've raised that as an issue, the fact
5 that -- I wasn't present, from what you've
6 advised mediation briefs were filed.

7 MS. MILLER: Clearly we're not
8 waiving, and unless you are, we are not waiving.
9 And the reference to the fact that, you know,
10 that the mediation took place, in accordance
11 with and as set out in a February 5th court
12 order, is a matter of public knowledge.

13 So we're not getting into anything to
14 do with the mediation other than stating that it
15 happened. So to be clear we are not getting
16 into the details of anything relating to
17 mediation. We are not waiving anything relating
18 to the confidentiality of the mediation, and
19 we're not asking the witness to speak to any
20 aspect of the mediation.

21 MR. CLAUDE: But you just did,
22 Ms. Miller. You just did. You asked the
23 witness if the University of Sudbury had filed a
24 mediation brief. If you've opened that door,
25 and we believe that you have, then it should be

1 opened for us to then file the documentation
2 that went -- that went forth during the
3 mediation. You've opened this door.

4 MR. HANRAHAN: Just to be clear, the
5 confidentiality is not something that can be
6 waived, the confidentiality is by court order so
7 it's not for a party to waive.

8 MR. CAZA: This is what's going on,
9 you're actually relying, and you've done this,
10 and you did this yesterday, on this mediation
11 process and that confidentiality to say, Well,
12 no, because of things that nobody can discuss
13 that happened we've done everything we have to
14 do.

15 And now you've actually opened the can
16 of worms by -- you're the ones that have
17 basically, I would argue, waived -- they will
18 need to speak to the court and advise the court
19 that in all of these circumstances, and the
20 position you're taking, and how you've made the
21 mediation briefs relevant to the issues
22 discussed, that the court needs to overrule, or
23 whatever, waive the confidentiality so that it
24 can obtain these briefs.

25 Unless, and I guess the only thing is

1 you're telling us that it is totally irrelevant.
2 And the university cannot and does not rely on
3 the mediation process for any of the issues that
4 are being discussed at the -- at your motion, at
5 the motion we brought to --

6 MS. MILLER: To be clear that is the
7 case. We are not relying on anything to do with
8 the mediation, or anything that was dealt with
9 in the mediation for the motion, that is
10 absolutely clear.

11 But let me just finish, Mr. Caza,
12 because I allowed you to finish.

13 Through the cross-examination of our
14 client yesterday you went into details,
15 including whether he participated in the
16 mediation? Who he was discussing with? And
17 which ones he attended? Did he attend this one?
18 So we didn't object to that. We let you ask
19 those questions and we didn't raise objections
20 to it on the basis that, you know, nobody is
21 getting into discussions about what took place
22 and all the rest of it.

23 But we showed leeway in terms of
24 establishing whether he was there or not. The
25 concept of the participation of the parties in

1 the mediation, in and of itself, is not
2 confidential. The participation of the parties
3 is not confidential.

4 So I think we've established, and we
5 can confirm on the record if that's what you
6 would like to hear, there's no aspect of the --
7 anything that occurred in that mediation that
8 forms part of, or will be discussed, or
9 addressed, or relied upon in respect of the
10 motions that are proceeding on the 29th and the
11 30th, I can confirm that unequivocally.

12 MR. CAZA: I can advise you that
13 yesterday during the cross-examination of
14 Mr. Haché when I asked him to give me any
15 evidence he had that basically there had been
16 discussions, he said it was at the mediation.

17 So he's basically -- so if what you're
18 telling me, and this is what I want to be clear,
19 at the motion later next week, Laurentian
20 University is not at all going to be saying, any
21 obligation we had to enter into discussion
22 before attempting to bring this contract to an
23 end, that we met those obligations in the
24 mediation. If you're saying that then we are
25 entitled to the mediation brief.

1 And if you're not saying that, and
2 basically any -- that that had nothing to do --
3 it's irrelevant to meeting the obligations. If
4 Laurentian met those obligations it would have
5 had to have been elsewhere and not in the
6 process or in participating in this mediation.
7 Well then I may, and I'll have to seek
8 instructions, I think we may need to -- it may
9 be a situation where the mediation briefs may
10 not be relevant.

11 MS. MILLER: I don't understand what
12 you just said, but I appreciate that you were
13 not involved, and I don't want to get into this
14 on the record more than we have.

15 But you know, you're co-counsel here
16 were. So I don't want to talk about what -- I
17 don't want to talk about materials, and so on,
18 that you may not have, your co-counsel does.

19 So let's please not delve into an
20 issue. You've raised an issue of concern.
21 You're inviting a discussion on the record to
22 delve further into an issue that we think is not
23 appropriate to get into. So I'd suggest that we
24 just park this whole discussion right here.
25 Leave it where it is.

1 I've been clear, we are not waiving
2 any confidentiality. We are not asking your
3 client to waive any confidentiality. And, as
4 Mr. Hanrahan points out, that confidentiality is
5 pursuant a court order, it's not a contractual
6 agreement of the parties it's pursuant to a
7 court order.

8 I think we should just move on from
9 that. I think we understand each other's
10 positions, let's move on.

11 MR. CAZA: Actually, no, you've told
12 me you do not understand my position so I just
13 want to be clear. And I'm not going to refer at
14 all to the mediation. So this is what I want to
15 be clear.

16 Laurentian University, our position
17 is, before proceeding to file that disclaimer
18 had an obligation to enter into discussions,
19 let's leave it at that. That's going to be our
20 position.

21 Now, my understanding of the answers
22 yesterday was, part of the response of
23 Laurentian University is that the answer or
24 proof that they did exercise that obligation, or
25 they respected that obligation was the

1 mediation, okay? I don't want do get into it
2 I'm just saying that's what we were told.

3 What I'm hearing now is, no, the whole
4 mediation is irrelevant to all the issues that
5 are going to be discussed later this week.
6 That's what I'm hearing.

7 So I will not hear you, counsel for
8 Laurentian university, in answering allegations
9 we will bring forward, that Laurentian
10 University did not meet the conditions, or its
11 obligations, its legal obligations in bringing
12 this -- in attempting to end this disclaimer,
13 that their participation in the mediation was
14 part of it. If I'm hearing that from you that
15 that's the clarification I want.

16 MS. MILLER: We're speaking at
17 cross-purposes Mr. Caza. The existence of the
18 mediation, all of the evidence of Laurentian
19 University and what Laurentian intends to rely
20 on is clearly set out in Dr. Haché's affidavit.
21 I am not going to paraphrase it, I'm not going
22 to restate it. You cross-examined him on it
23 yesterday.

24 That affidavit sets out Laurentian's
25 position and that is the evidence that we're

1 going to be using for the motion. I'm not going
2 to add to it, I'm not going to try and explain
3 it. It is what it is.

4 And you've stated a position. You
5 know, we're not agreeing or disagreeing with
6 your position. We understand you'll make
7 whatever arguments you want to make. The
8 Laurentian University's position is set out in
9 Dr. Haché's affidavit.

10 I don't think we're going to do any
11 good in continuing to go back and forth and
12 debating this. We have are our positions on the
13 record and let's leave it at that.

14 MR. CAZA: I agree. What I can tell
15 you is, once we get the transcripts we'll review
16 the transcripts and we'll bring any motions or
17 take any -- anything we need to do we'll do it
18 once we receive the transcript. I agree we can
19 move on.

20 BY MR. HANRAHAN:

21 316 Q. Mr. Riopel, you're aware that in
22 fact Laurentian made an open offer of settlement
23 to the University of Sudbury on April 14th
24 seeking a resolution of the issues between
25 Laurentian and the University of Sudbury,

1 correct?

2 A. Hum, non. Dans quel document?

3 [No, in which document?]

4 317 Q. It was attached as Exhibit T to
5 Dr. Haché's most recent affidavit. It was
6 provided to the University of Sudbury's counsel
7 on April 14th.

8 MR. CLAUDE: Mr. Hanrahan, did you
9 want to point to where we can find that
10 document? If it's only contained in Dr. Haché's
11 affidavit it may take a moment.

12 BY MR. HANRAHAN:

13 318 Q. It's Exhibit T to that affidavit.
14 I'm happy to have him pull it up if he wants,
15 I'm just asking him if he's aware of that offer?

16 A. Honnêtement, je m'en souviens
17 pas.

18 [I don't remember.]

19 319 Q. Did you counsel provide you the
20 offer at the time it was made?

21 A. Probablement, là, mais j'ai
22 beaucoup de textes ici et je ne le retrouve pas.

23 [Probably, but I have a lot of papers
24 there - inaudible (sic).]

25 Et je ne le trouve pas.

1 [And I don't find it.]

2 320 Q. Do you remember receiving it?

3 A. Je ne me souviens pas.

4 [I don't remember.]

5 MR. CLAUDE: So either, Mr. Hanrahan,
6 it's important to get the document or it's not.
7 If we're going to take a moment or you want to
8 send it by email, or whatnot, then we go on.

9 BY MR. HANRAHAN:

10 321 Q. That's fine, I don't think it's
11 necessary.

12 Mr. Riopel, the University of Sudbury
13 hadn't responded to that offer, has it?

14 A. Je ne sais même pas de quelle
15 offre il s'agit, là.

16 [I don't know. I don't know about
17 that.]

18 MR. CAZA: In fairness to the witness,
19 Mr. Hanrahan, you've referred to a document;
20 it's before -- it's in the motion materials. He
21 doesn't have a copy. We must -- I'm insisting
22 that he be provided with a copy and be able to
23 review it so he can answer your question.

24 BY MR. HANRAHAN:

25 322 Q. Well, I just said a minute ago

1 I'm happy to have him pull it up if he'd like to
2 see it.

3 MR. CAZA: Sorry, I thought you were
4 saying forget it. I thought Mr. Claude asked
5 and you said no.

6 BY MR. HANRAHAN:

7 323 Q. Mr. Claude asked and I said I
8 didn't think it was necessary but if he'd like
9 to see it before answering the questions I'm
10 happy to have him pull it up.

11 MR. CAZA: Yeah, I think I would.

12 I just want to make sure with
13 Mr. Claude. You have no objection that we send
14 a copy to Pierre Riopel?

15 BY MR. HANRAHAN:

16 324 Q. Is that question for me or
17 Mr. Claude?

18 MR. CAZA: For you, Mr. Hanrahan. Are
19 you okay with that?

20 MS. MILLER: I thought he had all the
21 exhibits to Mr. Haché's affidavit?

22 MR. CAZA: You've said that earlier
23 and we answered that that wasn't the case.
24 Mr. Claude, can you send Exhibit T to
25 Mr. Haché's second affidavit.

1 MS. MILLER: I can send it, if you
2 like. I'll send it to you, André, as a separate
3 stand-alone.

4 MR. CLAUDE: Yes, please, because
5 otherwise the only copy I would have is within
6 the huge file, the PDF file, the motion record.

7 MS. MILLER: That's what I was
8 concerned about.

9 MR. CLAUDE: Did you receive the mail,
10 Mr. Riopel?

11 THE WITNESS: Oui, je viens de le
12 recevoir.

13 [Yes, I did.]

14 MR. CLAUDE: Tu peux l'imprimer, ça
15 serait peut-être utile, c'est neuf pages
16 seulement.

17 You may want to print it, it's useful,
18 it's just nine pages.

19 THE WITNESS: O.K., donnez-moi deux
20 secondes, je vais... J'ai le document.

21 [I have the document.]

22 BY MR. HANRAHAN:

23 325 Q. So Mr. Riopel, you now have in
24 front of you the open offer from Laurentian
25 University that was attached as Exhibit T to

1 Dr. Haché's April 21st, affidavit, correct?

2 A. Bien, j'ai le document qu'on
3 vient de m'envoyer, là. Je sais pas à quoi il
4 était joint.

5 [I have the document that you just
6 sent me. I don't know what it was attached to.]

7 326 Q. Well, I will represent to you
8 that that's the document that we provided to
9 you.

10 Do you remember -- now that you have
11 it in front of you do you remember seeing this
12 document before?

13 A. Possiblement, mais... assurément,
14 non.

15 [It's possible but not with
16 certainty.]

17 327 Q. And this document is what
18 Dr. Haché describes in his affidavit as:

19 "[...] an effort to consensually
20 resolve determination of Laurentian's
21 Federation Agreements".

22 And if we look at the document under
23 the heading "Purpose" it says:

24 "This document constitutes a
25 transition agreement between USudbury

1 and Laurentian following Laurentian's
2 disclaimer of the Federation Agreement
3 between USudbury and Laurentian, dated
4 November 10th, 1960, and the Financial
5 Distribution Notice between USudbury
6 and Laurentian dated May 1st, 2019."
7 And it goes on to say:

8 "The terms set out herein
9 represent an offer by Laurentian to
10 USudbury which are open for acceptance
11 until the commencement of the motion
12 brought by Laurentian, which is
13 returnable on April 29th, 2021."

14 Do you see that?

15 A. Oui.

16 [Yes.]

17 328 Q. And you're not aware, and to the
18 best of your knowledge, the University of
19 Sudbury has not responded to this offer, right?

20 A. Pas à ma connaissance.

21 [Not to my knowledge.]

22 329 Q. I think I'm just about done. Can
23 we take five minutes so I can look at my notes?

24 -- RECESSED AT 1:25 P.M. --

25 -- RESUMED AT 1:31 P.M. --

1 BY MR. HANRAHAN:

2 330 Q. So subject to any undertaking,
3 under advisements and refusals, those are my
4 questions. Thank you, Mr. Riopel.

5 MR. CAZA: Thank you, Mr. Hanrahan.

6 Mr. Riopel, and counsel, we need
7 another five minutes, okay, to review our notes.
8 We don't think there's going to be a
9 re-examination; if there is it's going to be one
10 question. We are just reviewing our notes to
11 see if we need to do that. So if we can come
12 back at 13:36.

13 -- RECESSED AT 1:31 P.M. --

14 -- RESUMED AT 1:36 P.M. --

15 MR. CAZA: Mr. Hanrahan, two points.

16 First, we had taken under advisement your
17 request that we provide you with the most recent
18 draft of the business plan. So we are
19 withdrawing the under advisement, we are -- it's
20 going to be an undertaking. We are going to
21 provide it to you.

22 So we do not have any re-examination
23 of Mr. Riopel.

24 I would like to take the opportunity,
25 Mr. Wright Mr. Garad, thank you so much for

1 being here on a Saturday, it's much, much
2 appreciated. Same to you, Madam Martineau, much
3 appreciated that you are here to assist us to
4 get this done during the weekend. It's over and
5 the call of duty. We have no further questions.

6 MR. HANRAHAN: I just echo that as
7 well. Thank you to all of you. I appreciate
8 it. I know we've gone longer than we told you
9 this week so many, many thanks.

10 --- Whereupon the examination was
11 completed at 1:40 p.m.

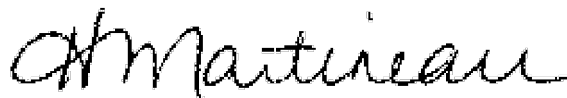
REPORTER'S CERTIFICATE

I, HELEN MARTINEAU, CSR, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were
taken before me at the time and date therein set
forth at which time the witness was put under
oath by me;

That the testimony of the witness and
all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
accurate transcript of my shorthand notes so
taken. Dated this 25th day of April, 2020.



PER: HELEN MARTINEAU

CERTIFIED SHORTHAND REPORTER

Je soussigné, Manuel Garand,
sténotypiste officiel, dûment assermenté comme

1 tel, certifie sous mon serment d'office que les
2 pages qui précèdent sont et contiennent en
3 langue française la transcription exacte et
4 fidèle de mes notes recueillies au moyen de la
5 sténotypie, le tout conformément à la Loi.

6 Et j'ai signé,

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8 

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10 _____
11 Manuel Garand, s.o.
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TAB 4(B)

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**

UNDERTAKINGS CHART

(Cross-Examination of Pierre Riopel of April 24, 2021)

April 26, 2021

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ENGAGEMENTS DONNÉS / UNDERTAKINGS GIVEN					
	No. de Question	No. de Page	Question	Réponse/Answer	Onglet/Tab
1.	133	53	Provide an explanation of how the numbers in paragraph 34 of the affidavit were calculated and what they represent.	Voir Annexe A See Sch. A	A
2.	165	65	Provide a copy of the resolution passed by the Board of Regents, adopted March 11, 2021.	Voir Onglet B See Tab B	B
3.	203	87-88	Provide the University of Sudbury's draft business plan.	Voir Onglet C See Tab C	C
4.	289-290	129	Provide what was taken into consideration to arrive at the \$4M dollar number in paragraph 2.	Voir Annexe A See Sch. A	A
5.	294	130	Provide an explanation of the \$400,000 annual upkeep of buildings and leased lands amount.	Voir Annexe A See Sch. A	A
6.	308	134-141	Best efforts to verify Mr. Riopel's records to locate correspondence from Laurentian regarding discussions for an end to the Laurentian Federation. Make inquiries of the President of the University. Provide a copy of the letter, if, exercising reasonable efforts, it can be located.	Voir Annexe A See Sch. A	A
7.	309	142	Ask the executive assistant to the President of the University the same questions relating to such correspondence.	Aucun document retrouvé/ No documents have been found	

ENGAGEMENTS PRIS EN DÉLIBÉRÉ					
	No. de Question	No. de Page	Question	Réponse ou raison pour refus de répondre	Onglet
8.	267	118	Make inquiries and determine if communications have been issued to students with respect to the effect of the announcement of March 11 th to become a Francophone university, on the existing English language programs and bilingual programs that are offered through the University of Sudbury.		

REFUS					
	No. de Question	No. de Page	Question refusée / engagement refusé	Raison pour refus de répondre	Onglet
9.	173	72	Was Sudbury's plan to leave the federation and become an independent French university already in motion before Laurentian issued the disclaimer?	Répondue plus tard après reformulation de la question.	
10.	267	117	Would Mr. Riopel consider that to not have communicated with students who might be having their programs terminated is a failure to comply with an obligation of the University administrative employees' job?	Question hypothétique. Un engagement en délibéré (voir #8, ci-dessus) a été donné par rapport à cette question.	
11.	280-281	125-126	Is the announcement consistent with paragraph 17 of the Federation Agreement? If Laurentian complied with the request to transfer all French programs to the University of Sudbury, would that be consistent with paragraph 17 of the Federation Agreement?	Question juridique.	
12.	304	135	Provide correspondence from Laurentian regarding putting an end to the Federation Agreement.	Un engagement (voir #6, ci-dessus) a été donné par rapport à cette question.	
13.	313	143	It's not the case that Laurentian is terminating the agreement rather than attempting to negotiate given the two-month long negotiation with intensive mediation sessions, right?	Pas pertinent.	

ANNEXE / SCHEDULE
“A”

Engagement Undertaking #	Réponse / Answer
1.	Per USudbury Registrar, Paul Laverdure: A full-course equivalent for 2019-2020, according to its own statistics, was 2228 FSCE, i.e., there were the equivalent of 2228 students enrolled in 6 credits (i.e., a single full-year course). Some students were only taking 3 credits or a half-year. These were added to other 3-credit students to create a FSCE (full student course equivalent). In other words, since many of our courses are 3-credit courses, USudbury had approximately 4456 3-credit course enrolments. This is an approximation because many students take more than a single 3-credit course at USudbury. Some take all 10 courses at USudbury in a year, or a combination of 3 and 6-credit courses. Per USudbury President, John Meehan, he says the equivalent number of full-time students is close to 140.
4.	The \$4M figure is a combination of statutory notice costs and severance payable to USudbury employees pursuant to the Employment Standards Act, worth approximately \$800,000. The balance of the figure is a rounded liability estimate for additional compensation claimed by employees which may be owed pursuant to collective bargaining agreements as a result of permanent loss of employment.
5.	The \$400,000 figure is comprised of an estimate of the annual costs for building maintenance and repairs, including a figure for minimal staff salaries and benefits. This figure is based on USudbury not delivering any courses to Laurentian students, meaning no student and faculty and no operation of the residences.
6.	Mr. Riopel states: "I had the opportunity to check my files, but I made a mistake, past discussion had been about financial distribution issues, not termination of the federation <i>per se</i>." The President, John Meehan, could find no correspondence. Legal counsel for USudbury made inquiries of the former Board of Regents Chair, Senator Josée Forest-Niesing, about the undertaking, and she could recall discussions and initiatives by Laurentian back in 2011 or thereabouts intended to reduce the influence of the federated universities

	within Laurentian. She described discussion about reductions in Laurentian board seats and at its senate as part of Laurentian's review its governance structure. Financial distribution has been a longstanding issue between Laurentian and its federated universities, she said.

ONGLET/ TAB B

ATTENDU QUE l'Université Laurentienne est insolvable et qu'elle a demandé d'être placée sous la protection de de la *Loi sur les arrangements avec les créanciers des compagnies*, LRC 1985, c C-36, et vu les conséquences probables de cette demande sur l'existence de l'Université de Sudbury ;

IL EST RÉSOLU QUE :

1. Le Conseil des régents mandate le recteur de l'Université de Sudbury de prendre toutes les démarches requises pour que l'Université de Sudbury devienne, dans les meilleurs délais, une université gérée et contrôlée par et pour la francophonie ontarienne :

- a) dont la programmation et les services sont offerts en français ;
- b) dont la langue de travail est le français ;
- c) qui assume toutes les responsabilités découlant de la désignation partielle de l'Université de Sudbury en vertu de la *Loi sur les services en français* et qui sollicitera la pleine désignation en vertu de cette loi ;
- d) dont l'un des objectifs soit la formation des professionnels requis pour mettre en œuvre l'article 23 de la *Charte canadienne des droits et libertés* en Ontario ; et
- e) d'explorer s'il est souhaitable de développer des partenariats avec d'autres institutions postsecondaires.

2. Le Conseil des régents mandate le recteur de l'Université de Sudbury de prendre toutes les démarches requises pour que soit créée une nouvelle université gérée et contrôlée par et pour les communautés autochtones du Nord de l'Ontario au sens de l'article 35 de la *Loi constitutionnelle de 1982*.

WHEREAS Laurentian University is insolvent and has applied for protection under the *Companies' Creditors Arrangement Act*, LRC 1985, c-36, and, given the likely consequences of this application on the future of the University of Sudbury;

IT IS RESOLVED THAT:

1. The Board of Regents mandates the President of the University of Sudbury to undertake all necessary steps to ensure that the University of Sudbury becomes, as soon as possible, a university administered and governed by and for the Ontario Francophone community:
 - a) whose programming and services are offered in French;
 - b) whose working language is French;
 - c) who assumes all the responsibilities arising from the partial designation of the University of Sudbury under the *French Services Act* and who will seek full designation under the said Act;
 - d) ensures one of its objectives is the training of professionals required to implement section 23 of the *Canadian Charter of Rights and Freedoms* in Ontario;
 - e) to explore whether it is desirable to develop partnerships with other post-secondary institutions.
2. The Board of Regents mandates the President of the University of Sudbury to take all necessary steps to create a new university administered and governed by and for the Indigenous communities of Northern Ontario within the meaning of section 35 of the *Constitution Act 1982*.

ONGLET/ TAB C

Canevas plan d'affaires

**Université francophone
de Sudbury (UFS)**

Avril 2021





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Note: Le présent canevas a été développé sous un angle « optimal ». Sa forme finale et le contenu du plan dépendront de la disponibilité de l'information requise et des échanges avec l'équipe de gestion de l'Université de Sudbury quant aux orientations qui seront jugées comme souhaitables et à leurs incidences anticipées sur les opérations de l'UFS

INTRODUCTION

L'Université de Sudbury a annoncé le vendredi, 12 mars dernier, qu'elle devient une université francophone. Elle a déjà entamé sa transition en vue de réaliser rapidement cette mission renouvelée.

La situation actuelle, suite aux diverses annonces faites par l'Université Laurentienne dans les dernières semaines est particulièrement alarmante compte tenu des torts sans précédents qui sont infligés à la communauté franco-ontarienne. Cette situation désastreuse trouve sa source, d'une part, dans le désintérêt affiché par l'Université Laurentienne depuis maintenant plus d'un décennie face au besoin de durablement asseoir le succès de l'enseignement universitaire en français dans le Moyen-Nord et, d'autre part, dans l'incertitude entourant l'avenir de la Laurentienne, particulièrement en ce qui regarde la continuité d'une programmation universitaire de qualité en français, une programmation essentielle à la communauté francophone.

C'est dans ce contexte que la transformation de l'Université de Sudbury s'avère critique pour permettre la pérennisation de l'offre de service en français aux étudiants francophones dans le Moyen-Nord.

La création d'une université francophone à Sudbury rapatriant, sous les auspices de l'Université de Sudbury, l'ensemble des programmes universitaires en français offerts dans la région s'impose en effet comme la seule option crédible et réaliste pour sortir de la crise.

Ce n'est pas pour rien que cette option génère un engouement sans précédent au sein de la communauté, non seulement à Sudbury mais aussi dans l'ensemble de la francophonie ontarienne et canadienne et que les signaux envoyés par différents partenaires clés (différents paliers de gouvernement, communauté institutionnelle et d'affaires de Sudbury, milieux académiques de divers horizons, etc.) sont des plus encourageants.

Ce soutien consensuel est une condition essentielle au succès de l'entreprise. Cependant, l'Université de Sudbury est pleinement consciente que ce n'est pas suffisant. Un tel projet exige une rigueur absolue sur le plan de la planification et de la gestion. La modèle à mettre en place, même s'il s'inscrit dans une volonté de continuité, se devra d'être piloté de manière radicalement différente de l'approche ayant mené à la situation actuelle.

Forte de l'excellence de sa gestion actuelle, l'Université de Sudbury est en train de se doter des moyens indispensables à la réussite du projet, et ce à tous les niveaux :

- Renouvellement de la Charte et du cadre de gouvernance;
- Ajustement de l'offre académique;
- Renforcement des équipes professionnelles, tant sur le plan académique qu'administratif;
- Adaptation des systèmes de gestion;
- Démarchage financier pour élargir la base des ressources disponibles, etc.

Un des premiers jalons posés par l'Université de Sudbury, pour démontrer son engagement, son sérieux et sa rigueur a été de mandater le développement d'un Plan d'affaires ayant pour but

d'identifier les besoins – et les possibles enjeux – liés au projet, de documenter le « plan de match » approprié et de s'assurer que le projet repose sur des bases à la fois solides et saines.

L'élaboration d'un tel Plan est un travail intensif et de longue haleine. Il est en cours de développement.

Avec ce plan, l'Université de Sudbury sera à même de démontrer que la création de l'Université francophone de Sudbury (UFS) n'est pas seulement un modèle souhaité, mais souhaitable et viable, la seule option présentant un haut potentiel de valeur pour l'ensemble des parties prenantes, incluant les créditeurs de l'Université Laurentienne.

A cet égard, il est des plus significatif de souligner que les ressources nécessaires au développement du Plan ne proviennent pas uniquement des fonds propres de l'Université de Sudbury mais que divers acteurs-clés de la communauté, convaincus du bien-fondé du projet UFS et de la capacité de l'Université à le mener à bien, se sont mobilisés pour y contribuer.

Par ailleurs, consciente des investissements considérables du gouvernement dans le système d'éducation postsecondaire ontarien, l'Université a entamé des pourparlers avec divers partenaires du milieu afin de voir comment pourraient s'établir d'éventuelles passerelles académiques pour enrichir l'offre de cours et retenir le plus grand nombre possible d'étudiants et étudiantes francophones dans le Nord ontarien.

SOMMAIRE EXÉCUTIF

Outre un sommaire exécutif, le plan d'affaires est présenté en cinq sections :

- 1. Le contexte**
- 2. Le modèle d'affaire – vision, objectifs et caractéristiques principales**
- 3. Prévisions financières**
- 4. Facteurs de succès et de risques**
- 5. Feuille de route**

Le contexte actuel de la situation financière de l'Université Laurentienne crée une problématique sans précédent à laquelle il convient d'apporter de toute urgence une solution pérenne pour éviter de perdre la clientèle étudiante présente et future, perte qui risquerait de fragiliser davantage la communauté francophone et de renforcer le phénomène d'assimilation.

La transformation de l'Université de Sudbury en une université francophone constitue la clé de voute d'une telle solution, permettant de préserver l'accès, pour les francophones du moyen-Nord et d'ailleurs, à l'éducation post-secondaire en français..

L'Université de Sudbury est toute désignée pour reprendre la relève comme pilier de la communauté, grâce à une gestion financière responsable et saine, et à l'atteinte de ses objectifs année après année.

Le plan d'affaires présentera la vision et les objectifs de l'Université de Sudbury et démontrera par l'information financière la faisabilité de la proposition et la viabilité du projet.

La section Facteurs de succès et de risques démontre que l'Université de Sudbury aura identifié les différents facteurs nécessaires à la réussite et pris les mesures nécessaires pour faire face aux risques.

La feuille de route décrira les étape-clés. Ce faisant, elle renforcera la crédibilité de l'Université de Sudbury quant à sa capacité de mener à bien le projet.

Finalement, une annexe sera présentée, proposant une comparaison d'indicateurs-clés émergents du plan d'affaires avec ceux observables au sein d'universités comparable.

LE CONTEXTE

1) Le contexte spécifique – La problématique

a. Le besoin impérieux de capacité d'enseignement post-secondaire en français dans le Moyen-Nord

- i. Rupture potentielle de l'offre de service – incluant la problématique des étudiants ayant de possibles problèmes pour terminer les études entreprises
- ii. Pertes d'emplois
- iii. Réduction de l'attractivité de Sudbury comme pôle d'attraction
- iv. Développement éducatif social, culturel et économique du Moyen-Nord et du Nord de l'Ontario et répercussions attendues sur l'ensemble de la francophonie ontarienne (ex : des formations en français dans des domaines où il y a une pénurie de professionnels offrant des services en français) et sur le développement économique de la province
- v. Accroissement du taux d'assimilation
- vi. Impacts attendus sur la communauté francophone du Moyen-Nord, une communauté déjà aux prises à un phénomène d'exode

b. La mise « hors-jeu » de l'Université Laurentienne, tant du point de vue de la contribution à la francophonie que de la saine gestion Le besoin impérieux de capacité d'enseignement post-secondaire en français dans le Moyen-Nord

2) La justification de l'option Université Francophone de Sudbury (« UFS »)

a. D'un point de vue communautaire

- i. Historique

Fondée par les Jésuites francophones en 1913 en tant que collège privé français et catholique (Collège du Sacré-Cœur). Institution demeurée franco-dominante pendant plusieurs années qui a fondé l'École normale de Sudbury en 1963 afin d'offrir un accès à la formation en enseignement, en français, dans le Nord-Est de l'Ontario. L'Université de Sudbury fut le premier établissement d'enseignement postsecondaire dans le Nord de l'Ontario, et longtemps le seul. De 1957 à 1960, l'Université décernait ses grades universitaires. À partir de 1960, l'Université de Sudbury s'est joint à la fédération avec l'UL et a dû suspendre ses pouvoirs de délivrance de diplômes selon les termes de l'entente de la fédération.

ii. Adoption d'une nouvelle charte

Le renouvellement de la Charte de l'Université de Sudbury sera l'occasion d'instaurer une gouvernance francophone et laïque.

iii. Conformité avec les orientations des états généraux sur le postsecondaire et au besoin urgent du parachèvement de l'éducation en langue française en Ontario.

iv. Une solution conforme avec la requête historique de la communauté franco-ontarienne: une gouvernance par et pour les francophones, respectant les 5 piliers de la gouvernance universitaire de langue française, soient la gestion du financement, des activités académiques, de l'administration, des installations physiques et de l'expérience étudiante.

v. Une solution qui bâtit sur des actifs existants au sein de la communauté et qui jouit d'un soutien consensuel et explicite de celle-ci.

b. D'un point de vue de bon gestionnaire

i. L'Université de Sudbury est reconnue pour l'excellence de sa gestion

Par exemple :

Au niveau des objectifs

- Atteinte des objectifs fixés dans le plan stratégique
- Croissance des effectifs
- Taux de diplomation
- Satisfaction des étudiants
- Relations de travail saines
- Etc.

Au niveau de la gestion financière

- Budget équilibré et surplus
- Benchmarking éventuel sur certains indicateurs (ex : budget/étudiant; niveau de financement public, financement/étudiant, etc.)
- Etc.

Au niveau des autres dimensions de gestion

- TI
- Bâtiments
- Services aux élèves
- Etc.

ii. L'Université de Sudbury est consciente de l'ampleur de la transformation (l'UFS sera environ 10x plus grande que l'Université de Sudbury actuelle) et met en place les mesures pour continuer son excellent bilan en matière de gestion

Par exemple :

- Donner quelques exemples de mesures (TI, RH, gestion, gouvernance, etc.)

- iii. L'UFS continuera d'être gérée selon les principes et valeurs ¹qui ont fait sa réputation et son succès et qui va lui permettre d'éviter les écueils rencontrés par l'Université Laurentienne et, donc, d'assurer la pérennité de l'institution.

Par exemple :

- Focus ciblé sur recrutement d'étudiants francophones/désireux de faire leur apprentissage en français
- Gestion positive et constructive des programmes et services aux étudiants et étudiantes francophones par des francophones
- Relations de travail harmonieuses et transparentes
- Gestion prudente et conservatrice des actifs
- Maximisation de l'utilisation des installations
- Engagement de la communauté
- Développement de partenariats

¹ On parle ici des principes et valeurs de base, particulièrement en matière de gestion, et non des valeurs morales et religieuses puisque le changement à la Charte implique le transfert à une institution laïque.

LE MODÈLE D'AFFAIRES - VISION, OBJECTIFS ET CARACTÉRISTIQUES PRINCIPALES

Vision:

L'Université francophone de Sudbury (« UFS ») : une université francophone, laïque et indépendante, garante de l'offre de programmes universitaires en français dans le Nord de l'Ontario. Elle est un des lieux névralgiques du développement de la jeunesse et du futur leadership de la province.

L'UFS se veut, avant tout, un instrument de développement de l'identité francophone, apportant à la communauté des solutions d'apprentissage tangibles arrimées concrètement avec les besoins et réalités tant en matière identitaire que de marché de l'emploi. Elle ne veut pas une Université dont la raison d'être se limite à offrir en français une programmation académique donnée. .

Cette université visera à rejoindre une clientèle francophone provenant, avant tout de la province, mais sera universelle et ouverte à l'ensemble de la Francophonie. Sa mission première en sera une de formation de citoyens du monde. Comme l'Université de Sudbury l'est aujourd'hui, elle continuera à être un lieu inspirant de formation des leaders à l'image d'une société dynamique, résolument inclusive et tournée vers l'avenir. Elle s'inspirera de valeurs fondamentales axées, entre autres, sur l'excellence, l'intégrité et la transparence.

Profil et éléments distinctifs :

Par exemple :

- La plus grande université francophone dans la province et la seule dans le Nord de l'Ontario
- Campus concentré sur un seul lieu
- Masse critique d'étudiantes
- Offre de services variée avec programmes « à gros volumes » et d'autres plus pointus par le biais d'ententes d'articulation
- Positionnement stratégique sur l'offre générale de programmes post-secondaires dans la province et arrimé avec les besoins économiques (ex : programme x) et sociétaux (ex : formation des enseignants)
- Opportunité unique pour acquisition/transfert d'actifs sans devoir bâtir à neuf
- Financement existant pour la livraison des programmes qui étaient déjà subventionnés à l'Université Laurentienne
- Continuité sur historique de l'Université de Sudbury
- Congruence (complémentarité) avec les autres services post-secondaires en français en Ontario et dans le Moyen-Nord (Hearst, UOF, Boréal, – voire Université d'Ottawa/Université St Paul et la Cité, ainsi que York University/le Collège Glendon) - potentiel d'articulations entre les divers programmes de différentes institutions

- Congruence avec les objectifs gouvernementaux provinciaux, sur le plan de :
 - La programmation :
 - Différenciation (à élaborer)
 - Inclusion d'une dimension spécialisation (à élaborer)
 - Complémentarité avec les partenaires du système universitaire et collégial en Ontario et avec les autres provinces.
 - La gestion :
 - Accroître la confiance et la responsabilisation grâce à la transparence et à l'amélioration du rendement et des résultats dans le système d'éducation postsecondaire de l'Ontario
 - Réduire les formalités administratives en trouvant le juste équilibre entre la responsabilisation et la présentation d'information, grâce à des processus simplifiés et à un nombre réduit de mesures
 - Encourager les collèges et les universités à réorienter leurs ressources et à investir dans des projets aux retombées économiques positives
 - Mettre en adéquation l'éducation postsecondaire et les résultats sur le marché du travail
 - Réaliser des économies en encourageant la différenciation et la spécialisation
- Congruence avec les objectifs gouvernementaux fédéraux :
 - Développement identitaire, communautés linguistiques en situation minoritaire, etc.

Objectifs/cibles visés :

- Effectifs ciblés ?
- Corps professoral et personnel administratif?

Offre académique et de services:

Programme :

- A court terme
- A moyen terme

Incluant liste des programmes et les modes de livraison (en personne et à distance)

En faisant éventuellement référence aux cinq étapes du mandat stratégique incluses dans la première mouture du plan d'affaires), avec un horizon temporel pour l'élargissement de l'offre

La liste des programmes ciblés actuellement est comme suit ²:

Facultés - Université Laurentienne	Programmes
<i>Faculté de la santé</i>	Éducation physique et santé, kinésiologie, leadership, activités physiques et plein air, orthophonie, profession de sage-femme, promotion de la santé, psychologie du sport, santé publique, science de l'activité physique, sciences infirmières, service social
<i>Faculté des arts</i>	Criminologie, droit et justice, environnement et développement durable, équité, diversité et droits de la personne, études en éthique, études françaises, études interdisciplinaires, études journalistiques, folklore et ethnologie, français langue seconde, géographie, histoire, philosophie, psychologie, science économique, science politique, sciences religieuses
<i>Faculté de l'éducation</i>	Éducation (B.Ed), Éducation (concomitante)
<i>Faculté des sciences, de génie et d'architecture</i>	Bachelor of Engineering – génie chimique (bilingue) ³ , Bachelor of Engineering – génie mécanique (bilingue), Bachelor of engineering – Génie minier (bilingue), biochimie, biologie, biologie médicale, Génie bilingue, chimique, mécanique, minier (bilingue), mathématique, sciences pluridisciplinaires, zoologie
<i>Faculté de gestion</i>	Administration des affaires, comptabilité, entrepreneurship, gestion des opérations, gestion internationale, marketing, ressources humaines, commerce (B.Com.)

Services :

Par exemple :

- ✓ Archives
- ✓ Bibliothèques
- ✓ Services à la réussite des étudiants
- ✓ Services sociaux
- ✓ Services en matière de sport, de culture et de loisirs
- ✓ Services de registraire
- ✓ Etc.

Besoin de définir le mode de prestation de ces services (ex : services offerts par l'UFS uniquement, services offerts conjointement avec une autre institution, services acquis par un fournisseur tiers, etc.)

² Cette liste est une liste initiale. Elle pourrait être modifiée selon la viabilité des programmes

³ Seulement la partie francophone des programmes bilingues est ciblée. L'UFS a l'intention d'offrir ces programmes entièrement en français.

Recherche:

Besoin de définir, à haut niveau du moins, le type de recherche que l'UFS entrevoit soutenir (ou pas...) et d'identifier les incidences sur le modèle d'affaires.

Marchés :

- Clientèle(s) (locale et internationale)
 - Effectifs visés
 - Par programme
 - Premier cycle/maitrise/doctorat
 - Étudiants canadiens/Étudiants étrangers
 - Taux de croissance des inscriptions (sur base des programmes/cours existant puis de l'horizon temporel de l'élargissement des programmes/cours identifiés à la section de l'offre académique)
(Note : les taux de croissance doivent pouvoir tenir la comparaison avec les données des autres universités – Ces taux de croissance sont relativement faibles)

Niveau des frais d'inscriptions et frais auxiliaires

- Concurrence/partenariats

Positionnement stratégique/Vente/Marketing :

Par exemple :

Le premier objectif est de conserver la clientèle étudiante existante, les rassurant sur la continuité de leurs études, l'obtention de leur diplôme. Rassurer la communauté et les futurs étudiants de la viabilité de l'UFS comme choix d'institution pour l'éducation post-secondaire en français.

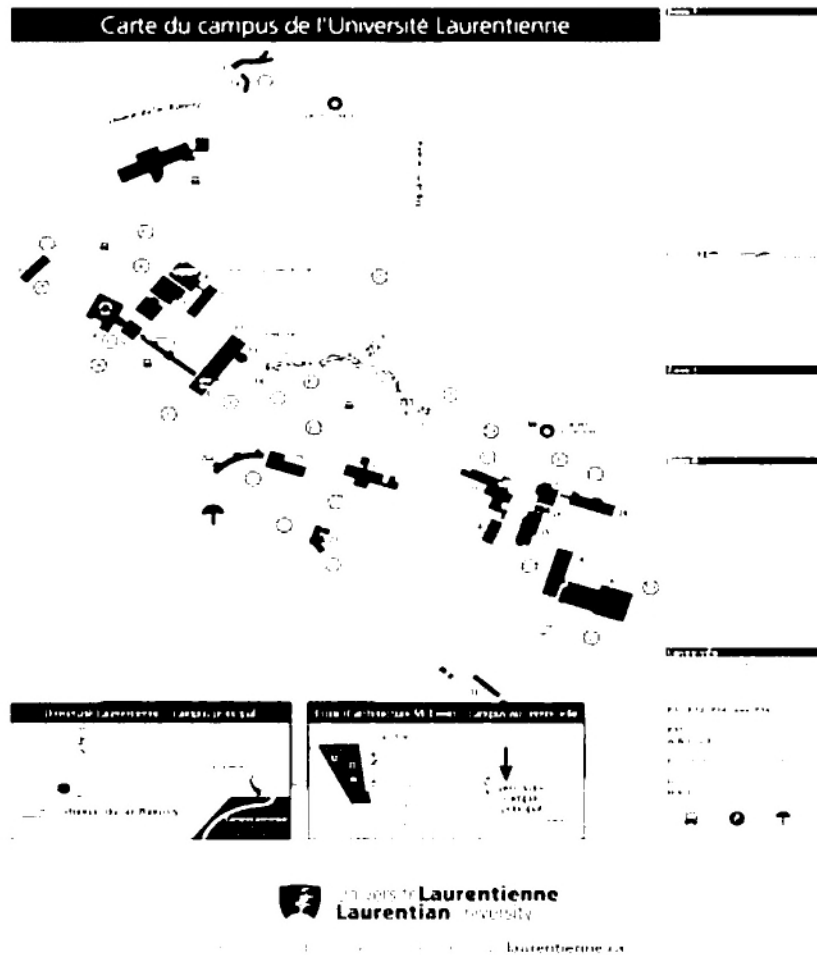
Par après, un démarchage pro-actif sera entrepris pour maintenir et accroître le bassin d'étudiants

Actifs principaux :

- Infrastructure (selon scenarios)

Actuellement, l'Université de Sudbury souhaiterait discuter des conditions d'occupation/transfert/achat touchant le centre étudiant et diverses résidences (immeubles 14 et 15, 16, 17, 18, 19), les bâtiments actuellement occupés par l'Université de Sudbury (immeubles 20 et 20 a), le Pavillon Alphonse-Raymond (immeuble 23), l'École d'architecture McEwen (immeuble 32) ainsi que divers stationnements (S, divers stationnements réservés et divers

stationnements par horodateur/parcomètre). Cette liste pourrait varier selon l'évaluation de l'état des bâtiments et de leur prix.



- Équipe de gestion et systèmes
- Partenaires stratégiques

Gouvernance :

- Une gouvernance autonome et francophone pour les francophones avec un Conseil des régents restructuré.

PRÉVISIONS FINANCIÈRES⁴

1) Investissements initiaux – Liste et estimation

- Achat d'un « catalogue de cours »
- Infrastructure et immobilisation
 - Liste de bâtiments, espaces (ex : stationnements) et autres actifs majeurs (ex : matériel de laboratoire, flotte de véhicules/matériel roulant)
- Mise à niveau de la bibliothèque et des centres de ressources aux étudiants
- Mise à niveau des services aux étudiants
- Acquisition et mises à niveau des systèmes informatiques
- Bibliothèque et centre de ressources
- Mise à niveau des ressources humaines (incluant ajustement des conventions collectives)
- Recrutement étudiant suite à la phase « d'hibernation »
- Marketing, promotion et rayonnement communautaire
- Acquisition et mises à niveau des systèmes informatiques
- Mise à niveau des mesures relatives à la *Loi sur les services en français*
- Mise à niveau du cadre de gouvernance, des textes fondateurs et des politiques
- Frais professionnels afférents
- Mise en place de mesures / équipements sanitaires liés à la COVID

2) États financiers (revenus/dépenses) provisionnels

- *Période de transition*
 - *En se basant éventuellement sur des cas similaires dans le domaine de l'éducation post-secondaire (ex : Algonquin/La Cité, Cambrian/Boréal, UOF, etc.)*
- *Période de croisière*

Dépenses

- Infrastructure (Immobilisation, amortissements, locations, entretien et réparations)
- Systèmes
- Masse salariale (salaires, bénéfices et avantages)
 - Recteur
 - Administrateurs principaux (vice-recteur, doyens, etc.)
 - Personnel enseignant (titulaires, agrégés, adjoints, etc.)
 - Autre personnel enseignant et bibliothécaires (chargés de cours, invités, etc.)
 - Autre personnel (administration, admission, registraire, services aux étudiants, RH, IT, communications, gestion et entretien des bâtiments, service aux logements, etc.)
 - Ratio étudiants/professeurs (actuel et projeté (note entre 17 :1 et 25 :1)
 - Ratio administratif/académique

⁴ Le contenu de cette section dépendra de l'information disponible ainsi que des données et orientations qui seront transmises par l'équipe de gestion de l'Université de Sudbury

- Bourses
- Frais de fonctionnement (ex : Électricité, contrats d'entretien, gaz naturel, réparation et entretien sous contrat, location hors campus, l'eau, taxes municipales, assurances, récupérations diverses)

Revenus

- Droits d'inscription

Estimation des revenus d'inscription afférents, par exemple : frais d'inscription actuels à l'Université de Sudbury et à l'Université Laurentienne et appliquer un taux de croissance annuel. Pour rester conservateur, la prémisse est qu'après 2020-2021, on pourrait faire l'hypothèse que les frais augmenteront en moyenne de 1,5 % par année jusqu'en 2027-2028. Alternativement, on pourrait établir les frais de scolarité de 2020-2021 en calculant la moyenne des frais de scolarité de 10 universités ontariennes en 2019-2020, soit environ 6,900 \$/par année, diminué de 10 %, 700 \$/année, pour un montant d'environ 6 200 \$)

- Subventions et contrats de recherche (subvention de programmes)
- Ventes et services (incluant revenus de location)
- Dons et autres revenus propres
- Subventions gouvernementales de base (subvention institutionnelle)

3) Stratégie de financement

Financement initial pour le maintien de l'Université de Sudbury

Financement de transition vers l'UFS

- Fonds de roulement de départ
- Inventaire de départ
- Terrain et aménagement (Superficie, prix d'achat, servitudes, aménagement du terrain, etc.)
- Bâtisse et améliorations locatives (Prix d'achat, superficie de la bâtisse, possibilités d'agrandissement, rénovations, etc.)
- Équipements (équipement de production, de bureau, neufs ou usagés)
- Équipements informatiques (de gestion; logiciels requis)
- Matériel roulant (achat, location/achat, d'un transfert d'actifs)
- Frais de démarrage : (dépenses de démarrage incluses au projet telles que frais d'incorporation, permis, licences, assurances, installation des systèmes (téléphonique, comptable, etc.), fournitures de bureau d'ouverture, publicité et promotion d'ouverture, honoraires professionnels d'ouverture, matériel de vente (catalogues, etc.), coûts de déménagement, dépenses de formation.
- Dépenses en recherche et développement (Frais de recrutement et d'embauche de personnel)
- Acquisition de technologie (licences, frais d'installation)
- Divers et imprévus

Financement de croisière de l'UFS

FACTEURS DE SUCCÈS ET DE RISQUES

Conditions nécessaires au succès de l'UFS

Quels sont les facteurs de succès impératifs, ou, de manière un peu plus négative, quelles sont les dynamiques à éviter et qui ont mené à la débandade de l'Université Laurentienne?

Dans l'évaluation des facteurs nécessaires à la réussite de l'UFS, une liste de facteurs pourrait être développée ou chaque facteur sera quantifié quant au niveau de risque, et sera surveillé, afin d'éviter le même sort que celui de l'Université Laurentienne. Par exemple, certains facteurs à surveiller qui auront une instance sur le succès sont:

- L'envergure des programmes offerts, viabilité et pertinence vis-à-vis des besoins du marché du travail
- Gestion de l'infrastructure
- Clientèle ciblée
- Relations de travail
- Relations avec la communauté
- Relations avec les partenaires

Facteurs de risque

Exemple :

- Risques stratégiques
- Risques organisationnels
- Risques financiers
- Risques opérationnels
- Risques réglementaires
- Risques réputationnels

Exemples de questions à explorer :

- *Quels sont les risques en matière d'équipe de gouvernance et de, gestion?*
- *Quels sont les concurrents ?*
- *Quelles seraient les conséquences d'une baisse de la demande étudiante?*
- *Quels sont les risques inhérents à la livraison des programmes?*
- *Quels sont les risques liés au plan de marketing proposé?*
- *Quelles seraient les conséquences de l'échec d'une campagne publicitaire?*
- *Quels sont les risques en matière de ressources humaines?*
- *Quelles seraient les conséquences de la démission d'un groupe ou d'un employé ?*
- *Quels risques pour l'environnement soulèvent le projet?*

FEUILLE DE ROUTE

Les étapes à suivre pour la transition:

(À développer en fonction de la stratégie retenue et du choix des programmes)

Par exemple :

- *Étape 1* : Sécurisation de la forme actuelle
- *Étape 2* : Mise en place des mesures pour permettre de « ne pas laisser tomber les étudiants francophones » du moyen-Nord, en reprenant les programmes de la Laurentienne (du moins ceux que l'on peut rendre viables dans une période de 3/5 ans)
- *Étape 3* : Développement et arrimage avec les autres institutions francophones/bilingues, universitaires et collégiales.

Chantiers prioritaires

(Un visuel pourrait être développé pour exprimer les étapes et liens entre les chantiers de manière temporelle)

- Transfert des programmes et services
- Transfert du personnel
- Transfert des étudiants, puis recrutement de nouveaux étudiants
- Transfert des immeubles et équipements
- Transfert / maintien / mise à niveau des services de soutien aux étudiants (service sociaux, aide à la réussite, bibliothèque, etc.)
- Transfert / maintien / mise à niveau des systèmes ancillaires et de gestion
- Transformation du modèle de gouvernance et mise à niveau des politiques et textes juridiques
- Partenariats stratégiques (communautaires, universitaires/collégiaux, scolaires, gouvernementaux, etc.)
- Démarchage financier
- Communication, engagement et relations publiques pour positionner et ancrer l'UFS

ANNEXES

États financiers (3 ans au moins)

Benchmarking avec des référents comparables ⁵

Par exemple :

- Hearst
- Brock
- UOF
- Collège Boréal

- Université Ste Anne (Nouvelle-Écosse)
- Université de St Boniface (Manitoba)

⁵ Le benchmarking pourrait se retrouver sous forme d'annexe ou encore dans le cœur du document, selon les thèmes couverts

TAB 5(A)

From: André Claude <aclaude@sheppardclaud.ca>
Sent: April 26, 2021 8:24 AM
To: Ashley Taylor
Cc: sharon.s.hamilton@ca.ey.com; Andrew J. Hatnay; Demetrios Yiokaris; Sydney Edmonds; Eugene Meehan Q.C.; D. J. Miller; Andrew Hanrahan; Ben Muller; Fraser Hughes; Ronald Caza; Elizabeth Pilon
Subject: RE: In the Matter of the CCAA Proceedings of Laurentian University of Sudbury - Court File No. CV-21-656040-00CL

Request to Court Monitor

Dear Ashley:

Further to the scheduling Endorsement made by Chief Justice Morawetz last week (Apr. 21), we submit to you the following requests:

1. We ask the DIP Lender whether it will consider extending from April 30 until May 31, 2021 as the effective date for the disclaimer of the Federated Agreements between Laurentian and University of Sudbury. If it will not grant such an extension, we require the DIP Lender's detailed reasons and explanation for its refusal. In particular, we seek to understand what prejudice the DIP Lender sees to its position in this matter if it were to grant the requested extension especially given that University of Sudbury has cancelled delivery of its courses to Laurentian students for the upcoming Spring session.
2. We understand the DIP Lender has approved that Laurentian be allowed until May 31, 2021 to dispose of numerous union grievances. Assuming our first request for an extension is denied, we ask for the DIP Lender's reasons and explanation for approving an extension to Laurentian to deal with its grievances, while denying the same extension to the University of Sudbury on account of the Federated Agreements.

We require these answers on or before 4 p.m. today.

These requests are independent of undertakings, advisements and refusals given during Robert Haché's cross-examination pertaining to the DIP Loan.

Regards,

André Claude
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TAB 5(B)

Veronica De Leoz

From: DaRe, Vern W. <vdare@foglers.com>
Sent: April 26, 2021 3:49 PM
To: Ashley Taylor
Cc: sharon.s.hamilton@ca.ey.com; Andrew J. Hatnay; Demetrios Yiokaris; Sydney Edmonds; Eugene Meehan Q.C.; André Claude; D. J. Miller; Andrew Hanrahan; Ben Muller; Fraser Hughes; Ronald Caza; Elizabeth Pillon
Subject: RE: In the Matter of the CCAA Proceedings of Laurentian University of Sudbury - Court File No. CV-21-656040-00CL

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We are counsel for Firm Capital Mortgage Fund Inc. (the “**DIP Lender**”) in this matter. We acknowledge receipt of your email below, in which you forward certain inquiries made by Mr. Andre Claude, as counsel for the University of Sudbury (“**U of S**”). As you know, following a case conference in this matter on April 20, 2021, Chief Justice Morawetz issued a written Endorsement on April 21, 2021 that provided, among other things, if Thorneloe University (“**Thorneloe**”) or U of S had questions in respect of the DIP Loan that they could be directed to the Monitor. Further to the Court’s direction, we are responding to the inquiries.

Regarding the first question, the DIP Lender will not consider extending from April 30, 2021 until May 31, 2021 as the effective date for the disclaimers of the Federation Agreements for several reasons. Firstly, the DIP Lender has already advanced \$25M to Laurentian University (“**LU**”) to be used within a timeline that required immediate cost-savings to be achieved by April 30, 2021. The April 30, 2021 date was not random or arbitrary, and the reasons for that time period were outlined in the materials filed by LU in support of the Initial Order. It was a critical date tied to the need to obtain immediate cost savings; was based on the academic calendar year of LU, the end of Winter term and the commencement of the Spring term of classes; took into account the decisions that first year applicants to LU would need to make for acceptance of offers based on the prospect of continued operations beyond the current Winter term; reflected the setting of the academic program and course calendar for Fall 2021 and faculty allocations for such courses; and other similar factors. In short, it was based on the nature of what LU does and the time period within which those things would have to be achieved. Those remain equally relevant.

Secondly, in making its decision as to whether to advance further funds to LU, the DIP Lender does not view this one disclaimer with U of S in isolation or alone; it is tied together with the disclaimer of the other Federation Agreements to be effective as of May 1, 2021. While U of S may have cancelled its Spring courses, Thorneloe has not. LU has deferred the collection of tuition for the Spring term pending satisfaction of the Conditions to Funding under the Amended DIP, and the Disclaimers becoming effective. LU has entered into an Agreement with Huntington (subject to court approval on April 29) which provides for certain things to occur, and is based on the Disclaimers becoming effective as of May 1, 2021. Subject to that occurring, LU is scheduled to teach the Gerontology courses starting on May 3 that it purchased from Huntington. If the Disclaimers were not effective as of May 1, 2021, the Huntington Agreement would also be affected. Thirdly, the DIP Lender has made a business decision that these disclaimers are a necessary component to LU’s financial sustainability. It therefore requires that this Condition to Funding be satisfied by May 1, 2021.

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Regards,

Vern



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 Main: 416.864.9700
 Toll Free: 1.866.861.9700
 Fax: 416.941.8852
 Email: vdare@foglers.com
foglers.com

From: Ashley Taylor [<mailto:ATAYLOR@stikeman.com>]

Sent: Monday, April 26, 2021 8:39 AM

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Subject: RE: In the Matter of the CCAA Proceedings of Laurentian University of Sudbury - Court File No. CV-21-656040-00CL

Vern,

Please see the inquiries below from M. Claude, counsel to University of Sudbury.

Ash.

Ashley Taylor

Mobile: +1 416 450 6627
 Email: ataylor@stikeman.com

From: André Claude <aclaude@sheppardclaud.ca>

Sent: Monday, April 26, 2021 8:24 AM

To: Ashley Taylor <ATAYLOR@stikeman.com>

Cc: sharon.s.hamilton@ca.ey.com; Andrew J. Hatnay <ahatnay@kmlaw.ca>; Demetrios Yiokaris <dyiokaris@kmlaw.ca>; Sydney Edmonds <sedmonds@kmlaw.ca>; Eugene Meehan Q.C. <emeehan@supremeadvocacy.ca>; D. J. Miller <DJMiller@tgf.ca>; Andrew Hanrahan <AHanrahan@tgf.ca>; Ben Muller <BMuller@stikeman.com>; Fraser Hughes <FHughes@tgf.ca>; Ronald Caza <rcaza@plaideurs.ca>; Elizabeth Pillon <LPillon@stikeman.com>

Subject: RE: In the Matter of the CCAA Proceedings of Laurentian University of Sudbury - Court File No. CV-21-656040-00CL

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1. We ask the DIP Lender whether it will consider extending from April 30 until May 31, 2021 as the effective date for the disclaimer of the Federated Agreements between Laurentian and University of Sudbury. If it will not grant such an extension, we require the DIP Lender's detailed reasons and explanation for its refusal. In particular, we seek to understand what prejudice the DIP Lender sees to its position in this matter if it were to grant the requested extension especially given that University of Sudbury has cancelled delivery of its courses to Laurentian students for the upcoming Spring session.
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We require these answers on or before 4 p.m. today.

These requests are independent of undertakings, advisements and refusals given during Robert Haché's cross-examination pertaining to the DIP Loan.

Regards,

André Claude
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Stikeman Elliott LLP Barristers & Solicitors

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TAB 5(C)

KOSKIE MINSKY

April 27, 2021

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2819
ahatnay@kmlaw.ca

Via E-Mail

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1A9

Attention: Ashley Taylor

Dear Mr. Taylor:

**Re: Laurentian University CCAA
Questions for DIP Lender
Motions to oppose disclaimers under s. 32(2) of the CCAA
Court File No.: CV-21-656040-00CL**

We are writing further to the email sent today from counsel to DIP Lender Firm Capital Corporation (the "**DIP Lender**"), who we have copied.

As you know, we wrote to counsel to the DIP lender yesterday asking for his client to consensually attend an oral examination given the shortness of time before the motion hearings this week. He has not agreed to do so. A copy of the email exchange is attached.

In the circumstances, at this time, we are sending questions to the DIP Lender via the Monitor.

We ask for responses as soon as possible, including the requested productions, which were initially made at the cross-examination of Robert Haché ("**Haché**") on Friday April 23, 2021 of Laurentian, and which were refused.

Our questions in respect of the DIP loan, directed to both the Monitor and DIP Lender are as follows:

1. **For the Monitor and the DIP Lender: To produce all correspondence between Laurentian and its lawyers (or the Monitor) that were exchanged with the DIP Lender or any of its representatives.**

Brief Background: Other than the written term sheet produced in the Laurentian Motion Record according to Haché at his cross-examination, there has been no direct communication between Haché and the DIP Lender. Communications have all gone

KOSKIE MINSKY

through counsel. Haché has not spoken to the DIP Lender via zoom or the telephone, does not believe he has exchanged emails directly with the DIP Lender, and does not believe he has seen emails exchanged between Laurentian's lawyer and the DIP Lender. Despite this, Laurentian refused at cross-examinations to produce any correspondence between Laurentian's lawyers (or the Monitor) exchanged with the DIP Lender or any of its representatives. See **Refusal – Page 198, question 519 (see generally, p. 196-199, q 510-519, and p. 289, q. 752)**

2. **For the DIP Lender: To produce a copy of the correspondence from Jonathan Mair of the DIP Lender supporting Haché's evidence at paragraph 189 of his second affidavit that Jonathan Mair made clear to him that the Agreements with the Federated Universities must be terminated by May 1, 2021.**

Brief Background: At paragraph 189 of his second affidavit, Haché writes "I am advised by Jonathan Mair of the DIP Lender, and do verily believe, that the DIP Lender has made clear that the satisfaction of this Condition to Funding is essential to the DIP Lender's willingness to advance further funds under the Amended DIP Facility."

At his cross-examination, Haché stated that there has been no direct communication between himself and the DIP Lender. Communications have all gone through counsel. He has not spoken to the DIP Lender via zoom or the telephone, does not believe he has exchanged emails directly with the DIP Lender. Further, at pages 197-198, question 518, Haché indicated that he does not believe he has seen emails exchanged between Laurentian's lawyer and the DIP Lender. Despite that evidence, Haché later on in his cross-examination indicated that also believes that Jonathan Mair of the DIP Lender wrote a letter to him through counsel confirming the evidence at paragraph 189 of his second affidavit. See **Refusal (originally a U/A) – page 288, question 749 (see generally, p. 286-288, q. 744 to 749; and p. 196-199, q 510-519; and p. 289, q. 752)**

3. **For the Monitor and the DIP Lender: To produce a copy of any and all draft term sheets and correspondence and documents relating to the negotiation of the original DIP, including the conditions, and the new conditions for the amended DIP.**
4. **For the Monitor: To produce a copy of any and all draft term sheets and correspondence and documents relating to the negotiation of the DIP with any other potential DIP Lenders, including the three referenced in the material.**
 - a) **For the Monitor: To advise if the other potential DIP Lenders that were approached expressly required the termination of the Federated Universities;**

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and if so, to provide a copy of any and all documents memorializing and related to same.

Brief Background: As indicated in Haché's Affidavit and the Monitor's First Report, Laurentian's counsel approached four potential DIP Lenders regarding providing a DIP Loan. At cross-examination Haché did not know if the other DIP Lenders expressly required the termination of the Federated Agreements. See **Refusal - Pages 335-336, questions 871-873**

5. **For the Monitor: To provide any information, particulars, documents and/or correspondence you have regarding any attempts by Laurentian or the Monitor to consult or canvass other potential DIP Lenders with respect to replacing the present DIP Lender, and/or securing the additional \$10M financing.**

6. **For the DIP Lender: To produce any modelling of detailed financial analysis prepared by the DIP Lender as to why the termination of the Federated Agreements was now essential to the DIP extension and increase.**

Brief Background: At his cross-examination, Haché did not see any modelling of detailed financial analysis from the DIP Lender as to why the termination was suddenly now essential to the extensions. See pg. 340, q. 885.

7. **For the DIP Lender: To advise exactly how the new condition now imposed by the DIP Lender was arrived at with respect to termination of the Federated Universities. To produce all financial analysis and/or modelling (including drafts), data, correspondence and documents relating to same. To also advise of any discussions between the DIP Lender, the Monitor and or Laurentian concerning these new conditions.**

Brief Background: At his cross-examination, Haché indicated that he had no knowledge as to how the conditions imposed by the DIP Lender were arrived to "They are conditions that are imposed by the DIP Lender. Exactly how they got to that, I'm not fully aware". See p. 282, q. 729-732.

8. **For the DIP Lender and Monitor: The DIP Agreement required a revised cash flow forecast and multiyear budget to be provided to the DIP Lender demonstrating that Laurentian is financially sustainable. When did the DIP Lender receive a copy of the revised cash flow forecast and a multiyear budget, and any drafts? To produce a copy of any and all drafts and communications regarding same.**

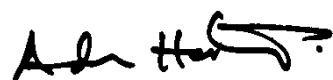
KOSKIE MINSKY

Brief Background: In his responses to refusals, Laurentian refused to produce a multi-year forecast. Worse yet, even though admitting a draft was prepared and provided to the DIP Lender Laurentian refused to provide the draft to the Federated Universities. See pp. 190-192, q. 499-501 and Laurentian's Responses to Under Advisements and Refusals, #2 and #3.

We look forward to your timely response. Thank you for your consideration of this matter.

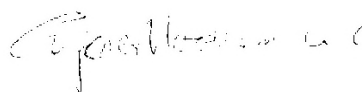
Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay

SUPREME ADVOCACY LLP



Eugene Meehan, Q.C.

- c. D.J. Miller, *Thornton Grout Finnigan LLP*, counsel to Laurentian
 Ashley Taylor, *Stikeman Elliot LLP*, counsel to the Monitor
 Sharon Hamilton, *Ernst & Young LLP*, the Monitor
 André Claude, *Sheppard & Claude*, counsel to University of Sudbury
 Demetrios Yiokaris, Sydney Edmonds, *Koskie Minsky LLP*
 Allan Nackan, *Farber Group*
 Vern DaRe, *Foglers*

From: DaRe, Vern W. [mailto:vdare@foglers.com]

Sent: April-27-21 10:09 AM

To: Ashley Taylor

Cc: sharon.s.hamilton@ca.ey.com; Demetrios Yiokaris; Sydney Edmonds; Eugene Meehan Q.C.; André Claude; D. J. Miller; Andrew Hanrahan; Ben Muller; Fraser Hughes; Ronald Caza; Elizabeth Pillon; Andrew J. Hatnay

Subject: RE: In the Matter of the CCAA Proceedings of Laurentian University of Sudbury - Court File No. CV-21-656040-00CL

Mr. Taylor,

I received the email below on behalf of counsel for Thorneloe University and the University of Sudbury yesterday evening at 9:32 p.m. requesting that I make my client, the DIP Lender, or more specifically, Mr. Jonathan Mair of Firm Capital Mortgage Fund Inc., available for cross-examination at 2 p.m. today.

During the Case Conference before Chief Justice Morawetz on April 20, 2021, counsel for Thorneloe University and/or counsel for the University of Sudbury requested, among other things, to cross-examine the DIP Lender. In my submissions, I refused or rejected such an examination on the grounds that the DIP Lender had not sworn or filed any affidavits in the proceedings and was akin or similar to an accommodation party to Laurentian University in providing DIP financing. In his written Endorsement on April 21, 2021, Chief Justice Morawetz held that if Thorneloe University or University of Sudbury have questions in respect of the DIP Loan, they can be directed to the Monitor. His Honour also approved the litigation timetable proposed by Laurentian. It specifically allows for cross-examinations by Thorneloe University and University of Sudbury of Laurentian's affiant. There is no express authorization or direction by the Court to cross-examine the DIP Lender. Instead, questions in respect of the DIP Loan can be directed to the Monitor pursuant to the Endorsement of Chief Justice Morawetz. Accordingly, any questions regarding the DIP Loan should be directed to the Monitor or its counsel.

Regards,

Vern

fogler
rubinoff

Vern W. DaRe
Partner
Fogler, Rubinoff LLP
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Main: 416.864.9700
Toll Free: 1.866.861.9700
Fax: 416.941.8852
Email: vdare@foglers.com
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Subject: RE: In the Matter of the CCAA Proceedings of Laurentian University of Sudbury - Court File No. CV-21-656040-00CL

Vern, this note is being sent jointly by counsel to the University of Sudbury and counsel to Thorneloe University.

The statements in your note below raise many more questions and do not cover other areas that we need to ask a representative of the DIP lender under oral examination. It appears that Jonathan Mair of Firm Capital Mortgage Fund Inc. would be a suitable person to examine as he is identified in the affidavit of Robert Hache as a person Dr. Hache spoke with, or at least was "advised by", although under cross-examination last Friday Dr. Hache said that he has not spoken with anyone with Firm Capital. Also, counsel to Laurentian has refused to produce copies of the correspondence with Firm Capital about the DIP, which we also require to have a proper record before the court on the motions.

Given the shortness of time in the schedule and the hearings this week, there is insufficient time to engage in submitting additional written questions and awaiting prepared answers, especially in relation to the DIP loan and the new condition(s) recently inserted that are central to Laurentian's argument to uphold the disclaimers against our clients.

We ask that you make Mr. Mair available for an oral examination tomorrow at 2:00 pm ET. We will make the arrangements for the examination.

Please let us know.

Regards,
 AJH



Andrew J. Hatnay
Partner

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Regards,

Vern



Vern W. DaRe
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Subject: RE: In the Matter of the CCAA Proceedings of Laurentian University of Sudbury - Court File No. CV-21-656040-00CL

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Ash.

Ashley Taylor

Mobile: +1 416 450 6627

Email: ataylor@stikeman.com

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Sent: Monday, April 26, 2021 8:24 AM

To: Ashley Taylor <ATAYLOR@stikeman.com>

Cc: sharon.s.hamilton@ca.ey.com; Andrew J. Hatnay <ahatnay@kmlaw.ca>; Demetrios Yiokaris <dyiokaris@kmlaw.ca>; Sydney Edmonds <sedmonds@kmlaw.ca>; Eugene Meehan Q.C. <emeehan@supremeadvocacy.ca>; D. J. Miller <DJMiller@tgf.ca>; Andrew Hanrahan <AHanrahan@tgf.ca>; Ben Muller <BMuller@stikeman.com>; Fraser Hughes <FHughes@tgf.ca>; Ronald Caza <rcaza@plaideurs.ca>; Elizabeth Pillon <LPillon@stikeman.com>

Subject: RE: In the Matter of the CCAA Proceedings of Laurentian University of Sudbury - Court File No. CV-21-656040-00CL

Request to Court Monitor

Dear Ashley:

Further to the scheduling Endorsement made by Chief Justice Morawetz last week (Apr. 21), we submit to you the following requests:

1. We ask the DIP Lender whether it will consider extending from April 30 until May 31, 2021 as the effective date for the disclaimer of the Federated Agreements between Laurentian and University of Sudbury. If it will not grant such an extension, we require the DIP Lender's detailed reasons and explanation for its refusal. In particular, we seek to understand what prejudice the DIP Lender sees to its position in this matter if it were to grant the requested extension especially given that University of Sudbury has cancelled delivery of its courses to Laurentian students for the upcoming Spring session.
2. We understand the DIP Lender has approved that Laurentian be allowed until May 31, 2021 to dispose of numerous union grievances. Assuming our first request for an extension is denied, we ask for the DIP Lender's

reasons and explanation for approving an extension to Laurention to deal with its grievances, while denying the same extension to the University of Sudbury on account of the Federated Agreements.

We require these answers on or before 4 p.m. today.

These requests are independent of undertakings, advisements and refusals given during Robert Haché's cross-examination pertaining to the DIP Loan.

Regards,

André Claude

Sheppard & Claude

202 – 1173, chemin Cyrville Road

OTTAWA ON K1J 7S6

Tél./Tel. 613-748-3333, x7

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ATTENTION

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TAB 5(D)

(Applicant's Position on) Responses to Thorneloe University's Questions for the DIP Lender

1. **For the Monitor and the DIP Lender: To produce all correspondence between Laurentian and its lawyers (or the Monitor) that were exchanged with the DIP Lender or any of its representatives.**

Response: The Applicant relies on para 34 of the Amended & Restated Initial Order (the “**Confidentiality Provision**”) in claiming confidentiality over most of what is being requested by counsel for Thorneloe as it relates to negotiations, correspondence and drafts of documents leading to a final, signed Agreement. The Applicant objects to the Monitor producing correspondence that it may have had with the Applicant or the DIP Lender (with a similar objection to the DIP Lender producing same), including with respect to any drafts or negotiations leading to the DIP Amendment. Without waiving the Confidentiality Provision referenced above, and in an effort to be responsive to the specific issue raised, the Applicant does not object to the DIP Lender disclosing that a condition relating to the Disclaimers becoming effective has been included since the first draft of the DIP Amendment was sent to the Applicant’s counsel on April 12, 2021. That condition was: “The termination of the Borrower’s affiliation with the federated universities (Huntington, Thorneloe and University of Sudbury) is to be completed.”

2. **For the DIP Lender: To produce a copy of the correspondence from Jonathan Mair of the DIP Lender supporting Haché's evidence at paragraph 189 of his second affidavit that Jonathan Mair made clear to him that the Agreements with the Federated Universities must be terminated by May 1, 2021.**

Response: The Applicant relies on the Confidentiality Provision and does not waive it in any respect. Expressly subject to that, the Applicant does not object to the DIP Lender producing the email in question. Attached is the Applicant counsel’s side of the email sent by counsel to the Applicant to the DIP Lender, wherein Jonathan Mair of the DIP Lender is asked on April 20, 2021 if he is able to confirm whether language reflecting the DIP Lender’s position that was drafted for inclusion in Dr. Hache’s second affidavit [being para 189 in the sworn Affidavit] is accurate. By email confirmation sent April 21, 2021 at 10:40 am, such confirmation is provided by Mr. Mair. Dr. Hache’s affidavit was then served at 3:32 pm on April 21, 2021. The Applicant is agreeable to the Monitor providing a copy of this email exchange, and to the DIP Lender similarly producing its copy of the email exchange.

3. **For the Monitor and the DIP Lender: To produce a copy of any and all draft term sheets and correspondence and documents relating to the negotiation of the original DIP, including the conditions, and the new conditions for the amended DIP.**

Response: The Applicant relies on the Confidentiality Provision in objecting to the Monitor or DIP Lender producing “any and all draft term sheets and correspondence and documents” as requested above, relating to the negotiation of the original DIP, or in respect of the amended DIP.

4. **For the Monitor: To produce a copy of any and all draft term sheets and correspondence and documents relating to the negotiation of the DIP with any other potential DIP Lenders, including the three referenced in the material.**

(a) **For the Monitor: To advise if the other potential DIP Lenders that were approached expressly required the termination of the Federated Universities and if so, to provide a copy of any and all documents memorializing and related to same.**

Response: The Applicant relies on the Confidentiality Provision in objecting to the Monitor or DIP Lender providing disclosure of details, negotiations or communications with the existing DIP Lender or any other prospective DIP Lenders prior to the CCAA filing. Information in that regard is included in the Initial Application Record filed by the Applicant, the Monitor's Pre-Filing Report and its First Report to the Court leading to the approval of the DIP pursuant to the Amended and Restated Initial Order.

5. **For the Monitor: To provide any information, particulars, documents and/or correspondence you have regarding any attempts by Laurentian or the Monitor to consult or canvass other potential DIP Lenders with respect to replacing the present DIP Lender, and/or securing the additional \$10M financing.**

Response: The Applicant advises that the DIP Agreement includes a right of first refusal in favour of the DIP Lender for any additional funding. Subject to the Confidentiality Provision, the Applicant's position is that the pre-filing process of finding a DIP Lender and having them undertake the due diligence with respect to this unique lending situation and the special purpose nature of the myriad of real estate parcels involved, is set out in the Monitor's Reports and the Initial Hache Affidavit. Given the time required by prospective DIP lenders during that process and the work involved in satisfying inquiries as part of the due diligence, and that any replacement DIP would involve a repayment of the existing \$25 million DIP loan in order to enjoy first priority, it was not possible or practical to undertake that process at this time in connection with a further \$10 million DIP advance.

6. **For the DIP Lender: To produce any modelling of detailed financial analysis prepared by the DIP Lender as to why the termination of the Federated Agreements was now essential to the DIP extension and increase.**

Response: The Applicant has not received any financial analysis or modeling done by the DIP Lender and would request same in advance in order to review it and confirm if the Applicant asserts confidentiality, prior to it being provided to other parties.

7. **For the DIP Lender: To advise exactly how the new condition now imposed by the DIP Lender was arrived at with respect to termination of the Federated Universities. To produce all financial analysis and/or modelling (including drafts), data, correspondence and documents relating to same. To also advise of any discussions between the DIP Lender, the Monitor and or Laurentian concerning these new conditions.**

Response: The Applicant relies on the Confidentiality Provision in objecting to the Monitor or DIP Lender providing disclosure of details or discussions, negotiations, documents or communications with the Applicant leading to the execution of the DIP Amendment, other than the information provided in #1 above.

8. **For the DIP Lender and Monitor: The DIP Agreement required a revised cash flow forecast and multiyear budget to be provided to the DIP Lender demonstrating that Laurentian is financially sustainable. When did the DIP Lender receive a copy of the revised cash flow forecast and a multiyear budget, and any drafts? To produce a copy of any and all drafts and communications regarding same.**

Response: The Applicant relies on the Confidentiality Provision in objecting to the Monitor or DIP Lender providing disclosure of details or discussions or drafts of any documents that were prepared or provided on that basis. The Applicant does not object to the Monitor and DIP Lender confirming the date on which the DIP Lender received a first draft of the cash flow forecast in support of the requested additional DIP advance, and confirming whether it is substantially similar to the cash flow forecast attached to the Monitor's Third Report to the Court.

TAB 5(E)

Derek Harland

From: Jonathan Mair <JMair@firmcapital.com>
Sent: Wednesday, April 21, 2021 10:40 AM
To: Derek Harland
Cc: D. J. Miller; DaRe, Vern W.; Robert Hache
Subject: Re: LU - Information to Advise Dr. Hache

Hi. Confirmed.

Sent from my iPhone

On Apr 20, 2021, at 9:28 PM, Derek Harland <DHarland@tgf.ca> wrote:

Hello Jonathan,

We are finalizing the Affidavit for Rob Haché to swear. For those things that are not within his own direct knowledge, we have to identify in the Affidavit that he is being advised by someone who has that information. For the following information in the Affidavit, that would be you. Can you please confirm for Rob (by way of "reply all" on this email with a response that says "I can advise you of this") that the following information is accurate:

The DIP Amendment contains a number of Conditions to Funding that must be satisfied before additional funds will be made available under the Amended DIP Facility. One of those Conditions to Funding is that each of the Notices of Disclaimer with respect to the Federated Universities become effective, binding, and final on May 1, 2021 (30 days after they were issued in accordance with the relevant time period under the CCAA). The satisfaction of this Condition to Funding is essential to the DIP Lender's willingness to advance further funds under the Amended DIP Facility.

As we are finalizing the Affidavit tonight, we would appreciate it if you could respond by email as soon as possible. Thank you.

Best,
Derek



Derek Harland | | DHarland@tgf.ca | Direct Line +1 416 304-1127 | Suite 3200, TD West Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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TAB 5(F)



1999

Fogler, Rubinoff LLP
Lawyers

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TD Centre North Tower
Toronto, ON M5K 1G8
t: 416.864.9700 | f: 416.941.8852
foglers.com

April 28, 2021

Reply To: Vern W. DaRe
Direct Dial: 416.941.8842
E-mail: vdare@foglers.com
Our File No. 210476

VIA EMAIL

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Attention: Ashley Taylor

Dear Mr. Taylor:

**Re: Laurentian University of Sudbury ("LU") CCAA Proceedings
Questions for Firm Capital Mortgage Fund Inc. (the "DIP Lender")
Motions to oppose disclaimers under s.32(2) of the CCAA
Court File No. CV-21-626040-00CL**

We are lawyers for the DIP Lender in the above-noted matter. The DIP Lender is not a litigant in the above motions. Counsel for the DIP Lender did not attend the cross-examinations of the relevant parties regarding these motions. The DIP Lender has not filed affidavit evidence in these CCAA proceedings. Notwithstanding, counsel for Thorneloe University and the University of Sudbury have now made two attempts to cross-examine the DIP Lender or a representative of the DIP Lender. The first was before Chief Justice Morawetz at a Case Conference on April 20, 2021, in which His Honour generally held "no" on April 21, 2021; and directed the parties if they have any questions regarding the DIP loan to ask them via the Monitor or its lawyer; and the second time, notwithstanding the Chief Justice's direction, was in an email to DIP Lender's counsel on April 26, 2021 asking him to make the DIP Lender available for cross-examination the next day, in which DIP Lender's counsel generally replied "no", and confirmed that questions regarding the DIP loan should be asked via Monitor's counsel. This gave rise to the first round of questions from counsel for the University of Sudbury, in which the DIP Lender answered (as set out below). The DIP Lender is now being presented with a second round of questions from counsel for Thorneloe University, which it will attempt to answer below. The DIP Lender does not know how many more rounds of questions it has to provide answers too regarding these two opposition to disclaimer motions but please note that as a non-litigant that has not filed affidavit evidence in these motions, the DIP Lender questions why it is being drawn into this litigation. It has already advanced \$25M to LU and the bigger, more timely and important question from the DIP Lender's perspective, is whether or not it will advance another \$10M, which LU desperately needs on a going forward basis.

As to the first round of questions from counsel for the University of Sudbury to the DIP Lender, here were the answers provided by the DIP Lender or its counsel in an email dated April 26, 2021:

"Dear Mr. Taylor,

We are counsel for Firm Capital Mortgage Fund Inc. (the "**DIP Lender**") in this matter. We acknowledge receipt of your email below, in which you forward certain inquiries made by Mr. Andre Claude, as counsel for the University of Sudbury ("**U of S**"). As you know, following a case conference in this matter on April 20, 2021, Chief Justice Morawetz issued a written Endorsement on April 21, 2021 that provided, among other things, if Thorneloe University ("**Thorneloe**") or U of S had questions in respect of the DIP Loan that they could be directed to the Monitor. Further to the Court's direction, we are responding to the inquiries.

Regarding the first question, the DIP Lender will not consider extending from April 30, 2021 until May 31, 2021 as the effective date for the disclaimers of the Federation Agreements for several reasons. Firstly, the DIP Lender has already advanced \$25M to Laurentian University ("**LU**") to be used within a timeline that required immediate cost-savings to be achieved by April 30, 2021. The April 30, 2021 date was not random or arbitrary, and the reasons for that time period were outlined in the materials filed by LU in support of the Initial Order. It was a critical date tied to the need to obtain immediate cost savings; was based on the academic calendar year of LU, the end of Winter term and the commencement of the Spring term of classes; took into account the decisions that first year applicants to LU would need to make for acceptance of offers based on the prospect of continued operations beyond the current Winter term; reflected the setting of the academic program and course calendar for Fall 2021 and faculty allocations for such courses; and other similar factors. In short, it was based on the nature of what LU does and the time period within which those things would have to be achieved. Those remain equally relevant.

Secondly, in making its decision as to whether to advance further funds to LU, the DIP Lender does not view this one disclaimer with U of S in isolation or alone; it is tied together with the disclaimer of the other Federation Agreements to be effective as of May 1, 2021. While U of S may have cancelled its Spring courses, Thorneloe has not. LU has deferred the collection of tuition for the Spring term pending satisfaction of the Conditions to Funding under the Amended DIP, and the Disclaimers becoming effective. LU has entered into an Agreement with Huntington (subject to court approval on April 29) which provides for certain things to occur, and is based on the Disclaimers becoming effective as of May 1, 2021. Subject to that occurring, LU is scheduled to teach the Gerontology courses starting on May 3 that it purchased from Huntington. If the Disclaimers were not effective as of May 1, 2021, the Huntington Agreement would also be affected. Thirdly, the DIP Lender has made a business decision that these disclaimers are a necessary component to LU's financial sustainability. It therefore requires that this Condition to Funding be satisfied by May 1, 2021.

As to the second question, the DIP Lender does not view the resolution of the union grievances as having a potential significant financial impact on LU and therefore the DIP Lender was willing to extend the resolution of the grievances to May 30, 2021. Any pre-filing grievances with a monetary component will be treated as claims in the CCAA process.

Regards,

Vern "

As to the second round of questions, from counsel of Thorneloe University to the DIP Lender, the answers are provided below by the DIP Lender. The DIP Lender has reviewed the responses that were provided by LU yesterday to the same questions and incorporated most of them below as part of its answers, adding its own answers or responses as underlined and highlighted comments :

1. **For the Monitor and the DIP Lender: To produce all correspondence between Laurentian and its lawyers (or the Monitor) that were exchanged with the DIP Lender or any of its representatives.**

Response: LU relies on para 34 of the Amended & Restated Initial Order (the “**Confidentiality Provision**”) in claiming confidentiality over most of what is being requested by counsel for Thorneloe as it relates to negotiations, correspondence and drafts of documents leading to a final, signed Agreement. LU objects to the Monitor producing correspondence that it may have had with LU or the DIP Lender (with a similar objection to the DIP Lender producing same), including with respect to any drafts or negotiations leading to the DIP Amendment. Without waiving the Confidentiality Provision referenced above, and in an effort to be responsive to the specific issue raised, LU does not object to the DIP Lender disclosing, and the DIP Lender so discloses, that a condition relating to the Disclaimers becoming effective has been included since the first draft of the DIP Amendment was sent to LU’s counsel on April 12, 2021. That condition was: “The termination of the Borrower’s affiliation with the federated universities (Huntington, Thorneloe and University of Sudbury) is to be completed.”

2. **For the DIP Lender: To produce a copy of the correspondence from Jonathan Mair of the DIP Lender supporting Haché's evidence at paragraph 189 of his second affidavit that Jonathan Mair made clear to him that the Agreements with the Federated Universities must be terminated by May 1, 2021.**

Response: LU relies on the Confidentiality Provision and does not waive it in any respect. Expressly subject to that, LU does not object to the DIP Lender producing the email in question and the DIP Lender has so produced it. Attached is LU counsel’s side of the email sent by counsel to LU to the DIP Lender, wherein Jonathan Mair of the DIP Lender is asked on April 20, 2021 if he is able to confirm whether language reflecting the DIP Lender’s position that was drafted for inclusion in Dr. Hache’s second affidavit [being para 189 in the sworn Affidavit] is accurate. By email confirmation sent April 21, 2021 at 10:40 am, such confirmation is provided by Mr. Mair. Dr. Hache’s affidavit was then served at 3:32 pm on April 21, 2021.

3. **For the Monitor and the DIP Lender: To produce a copy of any and all draft term sheets and correspondence and documents relating to the negotiation of the original DIP, including the conditions, and the new conditions for the amended DIP.**

Response: LU relies on the Confidentiality Provision in objecting to the Monitor or DIP Lender producing “any and all draft term sheets and correspondence and documents” as requested above, relating to the negotiation of the original DIP, or in respect of the amended DIP.

4. **For the Monitor: To produce a copy of any and all draft term sheets and correspondence and documents relating to the negotiation of the DIP with any other potential DIP Lenders, including the three referenced in the material.**
 - a. **For the Monitor: To advise if the other potential DIP Lenders that were approached expressly required the termination of the Federated Universities and if so, to provide a copy of any and all documents memorializing and related to same.**

Response: LU relies on the Confidentiality Provision in objecting to the Monitor or DIP Lender providing disclosure of details, negotiations or communications with the existing DIP Lender or any other prospective DIP Lenders prior to the CCAA filing.

5. **For the Monitor: To provide any information, particulars, documents and/or correspondence you have regarding any attempts by Laurentian or the Monitor to consult or canvass other potential DIP Lenders with respect to replacing the present DIP Lender, and/or securing the additional \$10M financing.**

Response: N/A

6. **For the DIP Lender: To produce any modelling of detailed financial analysis prepared by the DIP Lender as to why the termination of the Federated Agreements was now essential to the DIP extension and increase.**

Response: The DIP Lender did not do its own modelling and reviewed information provided by LU and by reviewing that information was able to ascertain or determine that the termination of the Federated Agreements would save costs in the millions of dollars.

7. **For the DIP Lender: To advise exactly how the new condition now imposed by the DIP Lender was arrived at with respect to termination of the Federated Universities. To produce all financial analysis and/or modelling (including drafts), data, correspondence and documents relating to same. To also advise of any discussions between the DIP Lender, the Monitor and or Laurentian concerning these new conditions.**

Response: LU relies on the Confidentiality Provision in objecting to the Monitor or DIP Lender providing disclosure of details or discussions, negotiations, documents or communications with LU leading to the execution of the DIP Amendment, other than the information provided in #1 above.

8. **For the DIP Lender and Monitor: The DIP Agreement required a revised cash flow forecast and multiyear budget to be provided to the DIP Lender demonstrating that Laurentian is financially sustainable. When did the DIP Lender receive a copy of the revised cash flow forecast and a multiyear budget, and any drafts? To produce a copy of any and all drafts and communications regarding same.**

Response: LU relies on the Confidentiality Provision in objecting to the Monitor or DIP Lender providing disclosure of details or discussions or drafts of any documents that were prepared or provided on that basis. LU does not object to the Monitor and DIP Lender confirming the date on which the DIP Lender received a first draft of the cash flow forecast in support of the requested additional DIP advance, and confirming whether it is substantially similar to the cash flow forecast attached to the Monitor's Third Report to the Court. Subject to LU's rights and protections under the Confidentiality Provision, the DIP Lender received a first draft of the cash flow forecast in support of the requested additional DIP advance on April 8, 2021, in which the forecast showed an amount of \$12M needed as additional funding for LU with a maturity date to August 31, 2021. Upon reviewing the cash flow forecast, the DIP Lender agreed to advance \$10M as additional funding subject to several conditions. That is, LU asked for an additional \$12M and the DIP Lender only agreed to advance \$10M subject to several conditions.

Yours truly,

FOGLER, RUBINOFF LLP

Vern W. DaRe

(electronically-generated signature)

Vern W. DaRe
VWD/mp

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**COMPENDIUM OF TRANSCRIPTS, EXHIBITS,
RESPONSES TO UNDERTAKINGS, UNDER
ADVISEMENTS AND REFUSALS
OF THORNELOE UNIVERSITY**

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Lawyers for Thorneloe University

2004

Tab 19

CITATION: Laurentian University of Sudbury, 2021 ONSC 2983

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

DATE: 2021-04-21

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

DIRECTIONS

[1] A case conference was requested by counsel to Thorneloe University ("Thorneloe") to schedule a motion opposing a disclaimer served by Laurentian University ("Laurentian"). The case conference was held yesterday on Zoom.

[2] The University of Sudbury ("U Sudbury") also seeks to schedule a motion opposing a disclaimer served by Laurentian. U Sudbury has requested a bilingual hearing.

[3] The parties have been unable to agree on a schedule.

[4] The CCAA proceedings commenced on February 1, 2021. Materials filed at that time emphasized that it was important, for the future operation of Laurentian, to complete significant aspects of the restructuring by April 30, 2021.

[5] Thorneloe, U Sudbury, and Laurentian provided litigation timetables for the motions. The timetable proposed by Thorneloe and U Sudbury provides for a hearing on May 31, 2021. The timetable proposed by Laurentian provides for a hearing on April 29, 2021.

[6] The court is left with the unenviable task of picking one timetable.

[7] For the following reasons, I have determined that it necessary to schedule the motions on the timetable proposed by Laurentian.

[8] First, issues relating to the impact of the CCAA proceedings on the Federated Universities were identified in the Affidavit of Dr. Robert Haché, filed at the time the Initial Relief was granted on February 1, 2021.

[9] Second, the parties acknowledged, during the case conference, that issues relating to the impact of the CCAA proceedings on the Federated Universities were discussed, at some point, in the judicial mediation conducted by Dunphy J.

[10] Third, the motions filed by both Thorneloe and U Sudbury describe, in detail, the grounds for challenging the disclaimers. The level of detail contained in the motions is such that I am satisfied that Thorneloe and U Sudbury are well aware of the issues to be addressed on the return of the motions and both Thorneloe and U Sudbury have already formulated the legal basis of their opposition to the disclaimers.

[11] Fourth, the stay of proceedings is in effect until April 30, 2021. The DIP Loan matures on May 1, 2021. The determination of the Thorneloe and U Sudbury motions may impact on the positions being taken by parties on any motion to extend the stay of proceedings and any motion to extend the DIP Facility and to provide additional DIP financing.

[12] Fifth, the timetable proposed by Laurentian provides time for cross-examination of all affiants, as well as the delivery of facts, in advance of the hearing date.

[13] Sixth, the timetable proposed by Thorneloe and U Sudbury extends well beyond the existing stay of proceedings and maturity of the DIP Loan and brings increased risk and uncertainty to the CCAA proceedings, both of which are not desirable.

[14] In my view, the timetable proposed by Laurentian, although not ideal, is preferable to that proposed by Thorneloe and U Sudbury, as it reduces the risks and uncertainty referred to above.

[15] If Thorneloe or U Sudbury have questions in respect of the DIP Loan, they can be directed to the Monitor.

[16] Accordingly, the Thorneloe motion opposing the disclaimer will be heard by me on April 29, 2021.

[17] With respect to the U Sudbury motion, the Commercial List Office will advise the parties as to when a bilingual hearing can be scheduled.



Chief Justice Morawetz

Date: April 21, 2021

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**

**LITIGATION TIMETABLE PROPOSED BY LAURENTIAN UNIVERSITY
FOR THORNELOE UNIVERSITY AND
UNIVERSITY OF SUDBURY DISCLAIMER MOTIONS**

Step	Date
USudbury served a Motion Record opposing the Disclaimer	April 14, 2021
Thorneloe served a Motion Record opposing the Disclaimer	April 15, 2021
USudbury served a supplemental affidavit (French-language version only)	April 18, 2021 at 10:30 p.m.
Thorneloe served a Supplemental Motion Record	April 19, 2021
Laurentian to serve Motion Record (which will be on all aspects of the relief for the April 29 motion. The Affidavit will also serve as the responding materials to the Thorneloe and USudbury motions on the Disclaimers)	April 20, 2021 (evening) or morning of April 21, 2021
Thorneloe and USudbury reply materials, if any	April 22, 2021 (by noon)

Cross-examinations by Thorneloe and USudbury of Laurentian's affiant	April 23, 2021 (starting at 8 am, for as long as needed)
Cross-examination by Laurentian of Thorneloe and of USudbury's affiants	April 23, 2021 (afternoon / evening)
Expedited Transcripts received from examinations	April 25, 2021
Facta delivered by moving parties (Thorneloe and USudbury) at same time as responding party Laurentian	April 26, 2021
Hearing date**	April 29, 2021

** As we understand that USudbury's counsel will be requesting a bilingual hearing of his motion on the Disclaimer, we submit the following for the disclaimer motions to be heard on April 29 at the same time as the relief sought by Laurentian on its motion:

1. Simultaneous translation (French/English) with the hearing of all relief to be before Chief Justice Morawetz including the motions relating to the other two federated universities (Huntington and Thorneloe) where lead counsel does not speak French.
2. If USudbury's counsel does not wish to have its motion heard with the others by way of simultaneous translation for all parties before Chief Justice Morawetz, and wishes to proceed in French, the motion brought by USudbury (only) will proceed before Justice Gilmore in French, with simultaneous translation for all other counsel.
3. The other motions will proceed first before Chief Justice Morawetz involving all other parties and counsel (some of whom are also involved in the USudbury motion) followed by USudbury's motion before Justice Gilmore.

Tab 20

SUPERIOR COURT OF JUSTICE -ONTARIO, COMMERCIAL LIST

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

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

**DANS L'AFFAIRE DE LA LOI SUR LES ARRANGEMENTS AVEC LES
CRÉANCIERS DES COMPAGNIES, LRC 1985, c c-36**

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

**DANS L'AFFAIRE D'UN PLAN DE TRANSACTION OU D'ARRANGEMENT DE
L'UNIVERSITÉ LAURENTIENNE DE SUDBURY**

RE: Laurentian University of Sudbury, Applicant

-and-

L'Université de Sudbury

BEFORE: C. Gilmore, J.

COUNSEL: D.J. Miller, Mitch W. Grossen, Andrew Hanrahan and Derek Harland counsel for
the Applicant/Demandeur, Laurentian University of Sudbury.

Ashley Taylor, Elizabeth Pillon and Ben Muller for the Court-appointed Monitor,
Ernst & Young Inc.

Vern W. DaRe for the DIP Lender

Ron Caza and André Claude avocats de l'Université de Sudbury

HEARD: le 30 avril, 2021

ENDORSEMENT/INSCRIPTION

- [1] The Applicant is in financial crisis and has been under the protections of the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 (*"the CCAA"*) since February 1, 2021. On April 1, 2021 after failed negotiations with its federated universities, Thornloe University (*"Thornloe"*), Huntington University and University of Sudbury (*"SU"*) (*"the Federation"*), the Applicant issued Notices of Disclaimer pursuant to section 32 of the CCAA.

- [2] Huntington University has come to a settlement with the Applicant on the disclaimer issue. Thomloe and SU each brought motions opposing the Disclaimer Notices and seeking to have them set aside on the basis of financial hardship and other grounds.
- [3] Thomloe's motion was heard on April 29, 2021 by Chief Justice Geoffrey Morawetz. I heard SU's motion on April 30, 2021 which was conducted by way of a bilingual hearing.
- [4] The stay in this matter expires on May 2, 2021 at 11:00 p.m. SU brought up many important issues in its request to have the Disclaimer Notice set aside all of which this court intends to address.
- [5] In the interim, and in keeping with the constraints of the stay, I have determined to dismiss SU's motion.
- [6] Detailed reasons will follow including an official French translation of those reasons.

Traduction inofficielle de l'Inscription

- [7] Le demandeur traverse une crise financière et il est sous la protection de la Loi sur les arrangements avec les créanciers des compagnies, L.R.C. 1985, c. C-36 (la " CCAA ") depuis le 1er février 2021. Le 1er avril 2021, après l'échec des négociations avec ses universités fédérées, l'Université Thornloe ("Thornloe"), l'Université Huntington et l'Université de Sudbury ("SU") ("la Fédération"), le demandeur a émis des avis de résiliation conformément à l'article 32 de la CCAA.
- [8] L'Université Huntington a conclu un accord avec le demandeur sur la question de la résiliation. Thornloe et SU ont chacun présenté une motion pour s'opposer aux avis de résiliation et pour chercher à les faire annuler en raison de difficultés financières et d'autres motifs.
- [9] La motion de Thornloe a été entendue le 29 avril 2021 par le juge en chef Geoffrey Morawetz. J'ai entendu la motion de SU le 30 avril 2021, par le biais d'une audience bilingue.
- [10] Le sursis dans cette affaire expire le 2 mai 2021 à 23 h. SU a soulevée de nombreuses questions importantes dans sa demande d'annulation de l'avis de résiliation que la Cour a l'intention d'aborder.
- [11] Dans l'intervalle, et conformément aux contraintes du sursis, j'ai décidé de rejeter la motion de SU.
- [12] Des motifs détaillés suivront, y compris une traduction française officielle de ces motifs.

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A handwritten signature in black ink, appearing to read "C. Gilmore, J.", is positioned above a horizontal line.

C. Gilmore, J.

Date: le 2 mai, 2021

Tab 21

CITATION: Laurentian University v. Sudbury University, 2021 ONSC 3392

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

DATE: 20210507

SUPERIOR COURT OF JUSTICE – 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

RE: Laurentian University of Sudbury, Applicant/Responding Party

AND:

University of Sudbury, Moving Party

BEFORE: C. Gilmore, J.

COUNSEL: *D.J. Miller, Mitchell Grossell, Andrew Hanrahan and Derek Harland*, Counsel for the Applicant/Responding Party

Ashley Taylor, Elizabeth Pillon and Ben Muller for the Court-appointed Monitor, Ernst & Young

Vern W. DaRe for the DIP Lender

André Claude and Ronald W. Caza for University of Sudbury Counsel for the Moving Parties

HEARD: April 30, 2021

ENDORSEMENT

OVERVIEW

[1] Laurentian University (“LU”) experienced a financial crisis and sought protection under *Companies’ Creditors Arrangement Act*, RSC 1985, c.C-36, (“CCAA”) on February 1, 2021. The CCAA protection included a stay of proceedings to February 10, 2021. The stay was subsequently extended to April 30, 2021. On April 29, 2021, the stay was extended to May 2, 2021 at 11:00 p.m. On May 2, 2021, the stay was extended to August 31, 2021.

[2] Since February 1, 2021, LU has undergone an overhaul of its entire financial and operational structure in order to create a sustainable operational future for the delivery of academic services. One component of the restructuring involved LU terminating its relationship with its three Federated Universities: the University of Sudbury (“SU”), Thornloe University (“Thornloe”) and Huntington University (“Huntington”) (together “the Federated Universities”). On April 1,

2021, LU issued a Notice of Disclaimer (“the Disclaimer”) pursuant to s. 32 of the CCAA, in order to disclaim certain contracts between LU and the Federated Universities and in furtherance of the termination of the relationship with the Federated Universities.

[3] Huntington has come to an agreement with LU as to how to dissolve its partnership. Both Thornloe and SU proceeded with their motions to set aside the Disclaimer. Thornloe’s motion was heard on April 29, 2021 by Chief Justice Morawetz. He extended the stay to May 2, 2021 at 11:00 p.m. and subsequently to August 31, 2021. I heard SU’s motion on April 30, 2021. On May 2, 2021, Justice Morawetz and I released a brief endorsement dismissing both motions. In those endorsements it was indicated that detailed reasons for the dismissals would follow. These are the reasons on the dismissal of SU’s motion.

BACKGROUND FACTS

[4] LU has been experiencing financial problems for many years. The crisis peaked in the spring of 2020 when LU’s liabilities reached \$322M. In August 2020, LU retained Ernst & Young to assist with its financial restructuring. On February 1, 2021, LU sought CCAA protection.

[5] LU sought and received Court approval for DIP financing of \$25M. After Thornloe and SU filed their motions opposing the Disclaimer, LU filed a motion for an extension of the stay to April 30, 2021. LU sought additional DIP funding of \$12M. The DIP lender agreed to provide additional funding of \$10M; however, the Disclaimer of the agreements with Federated Universities was a pre-condition of the second advance.

[6] Under CCAA protection, LU’s Senate passed a resolution in April 2021 approving its academic restructuring. This included the closure of 38 English-language and 27 French-language undergraduate programs and 11 graduate programs (4 in French and 7 in English) as they were identified as unsustainable.

[7] On April 7, 2021, LU signed agreements with its labour partners which included terminations, declarations that 116 positions were redundant, salary decreases and unpaid furlough days.

[8] LU operates within a federated structure whereby it has contracts with the three Federated Universities. Each of Thornloe, Huntington and SU is a separate legal entity with its own Board of Governors. Programs for all of the Federated Universities are offered through LU and receive credits towards a degree that is granted by LU. As of the Fall 2020 academic term, there were 69.6 full-time equivalent students at SU.

[9] LU entered into its Federation Agreement with SU on September 10, 1960. The Federation Agreements are substantially similar and include the following important terms:

- a. Each of the Federated Universities agreed to suspend its degree-conferring powers (with certain limited exceptions) in favour of LU;
- b. LU agreed to distribute to each Federated University a portion of the revenue it received for each student as reflected in the Financial Distribution Notice;

- c. LU reserved certain land on its campus for the Federated Universities and the allocation was completed pursuant to indentures.

[10] Each of the Federation Agreements contains the following aspirational statement:

Both Laurentian University and [Sudbury University] declare and express the firm hope and conviction that the relationship between the Universities established by this agreement will be a permanent one ... and to build a great institution of learning which shall forever be bilingual and non-denominational in its character.

[11] Each of the Federated Universities leases land from LU on which they have constructed their own buildings. The lease terms are for 99 years from September 1, 1963 with the possibility of further renewal. The indentures are not the subject of the Disclaimer.

[12] SU has two buildings on the LU campus; a main building for administration and a residence. The buildings were constructed at a cost of \$5M

[13] Pursuant to the Financial Distribution Notices, LU transfers to each of the Federated Universities a portion of the revenue it receives from the provincial government. The Financial Distribution Notices also provide that LU is permitted to assess a 15% administrative service fee (“the service fee”) on grant and tuition revenue received. The net amount is then passed on to the Federated Universities. The service fee relates to LU’s provision of central computing services, administration of pension and employee benefits, security and student support services.

[14] In 2020, LU transferred \$7.7M to the Federated Universities, net of the service fee. According to the Monitor, LU requires this amount as part of its restructuring plan. That is, LU seeks to have the former students of LU, Thornloe and Huntington as part of its student body so that it is no longer required to transfer that revenue to the Federated Universities.

[15] Discussions with the Federated Universities about LU’s financial crisis began in June 2020. According to the evidence of Dr. Robert Haché, the President and Vice-Chancellor of LU, he informed the Federated Universities from the start of negotiations that all options were on the table including ending the existing agreements with the Federated Universities.

THE ISSUES

Issue #1 - Discretion under the CCAA and the Duty of Good Faith

[16] Where a party seeks an order disallowing a Notice of Disclaimer, s. 32(4) of the CCAA requires the Court to consider the following list of non-exhaustive factors when deciding whether or not to permit or reject the disclaimer of an agreement:

- a. First, whether the Monitor approved the proposed Disclaimer;
- b. Second, whether the Disclaimer would enhance the prospects of a viable compromise or arrangement being made in respect of the company; and

- c. Third, whether the Disclaimer would likely cause significant financial hardship to a party to the agreement.

[17] Other relevant provisions in the CCAA include a requirement to act in good faith pursuant to s. 18.6:

18.6 (1) Any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings.

(2) If the court is satisfied that an interested person fails to act in good faith, on application by an interested person, the court may make any order that it considers appropriate in the circumstances.

[18] Further, relief granted under the CCAA is limited to what is “reasonably necessary for the continued operations of the debtor company” as per section 11.001:

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.

[19] SU argues that the duty of good faith in s.18.6 extends to Disclaimer Notices. SU relies on 9354-9186 *Québec Inc. v. Callidus Capital Corp.*, 2020 SCC 10, a recent decision of the Supreme Court of Canada. The Court reiterated, at para. 49, that “the discretionary authority conferred by the CCAA...is not boundless” and that the Applicant (in this case LU) bears the burden of demonstrating that the order it seeks is appropriate in the circumstances, and that it has acted in good and with due diligence.

[20] The Court in *Callidus* goes on to explore the fairness element required in CCAA proceedings and that the Court must exercise its discretion to control the process if a party is acting in a manner that runs counter to the objectives of the CCAA or is acting for an “improper purpose”: at para. 70.

[21] In the *Re Dallas/North Group Inc.* (2001), 148 OAC 288 (C.A.), the Court was critical of certain non-parties who brought bankruptcy proceedings against two debtors for an improper purpose. The Court was clear that the bankruptcy process cannot be used for such a collateral purpose.

[22] SU argues that LU has acted in bad faith by attempting to disclaim the Federation Agreement. Specifically, SU alleges that LU seeks to use the CCAA restructuring process for a collateral and improper purpose by effectively destroying a competitor. This is an abuse of process.

[23] In support of its position, SU referred to the case of *Dimples Diapers Inc. v. Paperboard Industries Corp.*, 1992 CarswellOnt 192 (Gen. Div.), at para 34, the Court quotes L. W. Houlden and C. H. Morawetz, *Bankruptcy Law of Canada*, 3rd. (Toronto: Carswell, 1989) at p. 2-45:

When the effect of an agreement between the petitioning creditor and some non-creditors was to embroil the petitioning creditor in an improper objective of the purchasers of a business who as non-creditors had no status in the bankruptcy proceedings and were intermeddling in it, and the objective was to bring about the bankruptcy of the debtors, held — the whole proceeding was tainted and the petition must be dismissed: *Re Pappy's Good Eats Ltd.* (1985), 56 C.B.R. (N.S.) 304 (Ont. S.C.).

[24] SU submits that it is false to say that students of SU are all students of LU. They are students of the Federation. The fact that they enrol and receive their diplomas through LU is only because of the agreed upon structure of the Federation. SU has existed as an independent entity since 1910 and is on the same level as LU.

[25] SU claims that LU is attempting to use the CCAA for an illegitimate purpose. Using the bankruptcy system for an illegitimate purpose has been met with disapproval. In *Nova Metal Products Inc. v. Comiskey (Trustee of)* (1990), 1 O.R. (3d) 289 (C.A.), the Court held that the CCAA should not be used by a debtor company for any purpose other than a “legitimate reorganization” and not for an “improper purpose”: at para. 84.

[26] At its most basic level, the disclaimer or termination of a contract must be “fair, appropriate, reasonable, and must have been issued after good faith negotiations”: *Re Allarco Entertainment Inc.*, 2009 ABQB 503, at para. 59. SU argues that LU could have but did not attempt alternate solutions, such as a renegotiation of its service fee with LU. It did not enter into the required good faith negotiations with SU.

[27] Further, the financial arguments advanced by LU in support of the disclaimer are not borne out. The expectation was that LU would charge a service fee sufficient to cover its administrative costs resulting in no net cost for LU for administering the enrolment of SU students. Terminating such a “net net” arrangement is contrary to LU’s obligation to act in the best interest of the Federated Universities.

[28] Dr. Haché did not agree that there was no cost to LU for the administration of SU’s students. His evidence on cross-examination was that having students take courses at SU resulted in a loss of potential revenue to LU. SU’s position was that LU had provided no research or modeling to justify or confirm that this was the case. LU has already saved \$30M with its restructuring. Destroying the Federated Universities over unproven revenues of \$7M does not justify the resulting devastation to SU.

Analysis

[29] I do not agree that LU has sought a Disclaimer of the Federation Agreements for a collateral, improper or illegitimate purpose. This is not a matter of putting a competitor out of

business, it is simply a matter of putting an end to an unsustainable financial model within the context of difficult and urgent circumstances.

[30] It is important to review several facts which go to the core of this Disclaimer:

- a. All of the students who attend SU are LU students;
- b. SU currently has the equivalent of 108 students whereas LU has 9,000 students.
- c. The Federation Agreements can be legitimately disclaimed pursuant to s. 32 of the CCAA.
- d. The Disclaimer is approved by the Monitor. This recommendation is given significant weight under the statute.
- e. Disallowing the Disclaimer would seriously diminish the prospects of a viable plan to be put to creditors. That is, a plan which includes funds that continue to flow away from LU is not viable.
- f. Without the Disclaimer proceeding, the DIP lender will not make the additional \$10M advance which would remove the ability of LU to file a proposal.
- g. LU has been able to achieve significant costs savings, but this only places them at a break even point and without resources to pay its creditors.
- h. The Federation Agreements contain only an aspirational clause with respect to their permanency.
- i. There is nothing in the business plan which would preclude SU from independently providing religious or francophone-based offerings. It would simply no longer be possible to obtain an LU degree there.
- j. In 2019, LU did try a new arrangement, with respect to its service fees, with the Federated Universities. Unfortunately, that was insufficient to overcome its financial distress.
- k. With respect to its duty to consult SU, LU attempted negotiations with the Federated Universities as far back as the spring of 2020. The negotiations were only partially successful. As LU is now under the supervision of a Monitor in a Court proceeding, such negotiations are still available through the Court-appointed mediator who has worked hard and achieved good results with Huntington and the various employment stakeholders.
- l. I reject the submission by SU that the Disclaimer came “out of the blue.” As indicated by Dr. Haché, the concept of a termination of the Federation has always been on the table since LU’s financial situation turned to crisis mode. As early as his affidavit of January 30, 2021, Dr. Haché deposed:

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** [Emphasis added];...

m. I do not find that LU has a legal duty to act in the interests of the Federation. LU's most significant duty at this time is to its creditors. As mentioned above, LU engaged in two months of intensive mediation with all of its stakeholders. It achieved positive results with Huntington and its unions. I agree with counsel for LU that failing to achieve a resolution with Thornloe and SU does not mean that LU was not making good faith attempts at resolution.

[31] SU provided a significant amount of case law to the Court. Unfortunately, none of it related to bad faith or an improper purpose in the context of Disclaimer Notice under s. 34 of the CCAA.

[32] Further, and contrary to SU's assertions, Dr. Haché's evidence was that LU has evolving modeling which includes the ending of the Federations Agreements.

[33] In summary, I find that the Disclaimer meets the requirements of s. 34(2) (a) and (b) in that the Monitor has approved the Disclaimer and that without the additional revenue from SU and the other Federated Universities, LU will not be able to put forward a viable plan for its creditors and will jeopardize further necessary DIP funding.

Issue #2 – Financial Hardship to SU and the DIP Lender Issue

[34] SU submits that termination of its employees will cost \$4M and that the cost of maintaining its buildings is \$400,000 per year. Without student tuition revenue it has no resources to pay these amounts.

[35] Mr. Pierre Riopel is the Chair of the Board of Regents of SU. In his cross-examination on April 24, 2021, he was asked about the \$4M cost relating to employee terminations. He was frank in conceding he had no idea where that number came from but advised it was a collaboration with a lawyer, human resources and university staff.

[36] An undertaking was given to provide an analysis of that number. The answer to the undertaking is set out below:

The \$4M figure is a combination of statutory notice costs and severance payable to USudbury employees pursuant to the *Employment Standards Act*, worth approximately \$800,000. The balance of the figure is a rounded liability estimate for additional compensation claimed by employees which may be owed pursuant to collective bargaining agreements as a result of permanent loss of employment.

[37] With respect to the \$400,000 annual amount to maintain the SU buildings, Mr. Riopel also had no personal information as to how that number was arrived at, other than by university administrative staff. An undertaking was given to provide an explanation of those costs. The answer to the undertaking is set out below:

The \$400,000 figure is comprised of an estimate of the annual costs for building maintenance and repairs, including a figure for minimal staff salaries and benefits. This figure is based on USudbury not delivering any courses to Laurentian students, meaning no student and faculty and no operation of the residences.

[38] I find that the answers to the undertakings do not provide any form of reliable financial analysis as to the actual amounts for which SU submits it will be liable. They appear to be estimates only.

[39] There is no doubt that SU will suffer financial consequences as a result of the Disclaimer. However, the evidence provided by SU is insufficient to meet the threshold of a “significant financial consequence” required to disallow a disclaimer under the CCAA. Further, any financial consequences suffered by SU must be balanced with the overall financial considerations in the restructuring which go far beyond SU’s speculations of insolvency.

[40] SU submits that the Court is put in a difficult position. The Disclaimer is an abuse of process; yet, without it, the DIP Lender will not advance funds. SU adds that it was not permitted to cross-examine the DIP Lender or access communication between the DIP Lender and LU. Insolvencies under the CCAA should be pursued in accordance with the relevant law and not at the whim of the DIP Lender.

[41] I do not agree with SU that the DIP Lender is running this process or, as it submits, that the DIP Lender has “ousted the jurisdiction of the Superior Court.” First, the terms of the original DIP financing of \$25M in February 2021, including its expiry on May 1, 2021, was well known to all stakeholders and approved by the Court. The funds were advanced at a critical time when instructors were being allocated for the 2021/22 academic year and offers being made to Grade 12 students. That is, it was critical that planning and resources for the Fall 2020 term be in place.

[42] The DIP Lender made submissions at the motion. While SU seemed concerned that such submissions were permitted, I saw no reason for the concern. Not surprisingly, the DIP Lender simply confirmed what was already widely known; the DIP Lender is a stranger to LU and was not a pre-filing lender. It is an arm’s length commercial lender who has risk in a novel lending situation where its security is over a public institution. It has already advanced a significant amount and has specific conditions on advancing more. One of those conditions is that the Disclaimers are in place such that LU can increase its revenues.

[43] SU complained that it was not given access to information as between LU and the DIP Lender so that it could satisfy itself that the Disclaimer was truly an essential term of the second advance. SU was given the opportunity to submit written questions but was dissatisfied with the answers.

[44] More importantly, however, it is LU who is under CCAA protection and not SU. The only way for LU to put forward a viable plan for its creditors is to temporarily increase its liabilities. It is bound to comply with the terms of the DIP Lender who advised the Court, through its counsel, that it had done a financial analysis which indicated that the Disclaimer of the Federated Agreements was essential for an increased revenue stream for LU.

[45] The Court also heard from the Monitor. The Monitor was of the view that the Disclaimer was necessary for LU to make a viable proposal to its creditors. The Monitor provided pre and post restructuring projections for the next five fiscal years, starting with 2021/22. Without any restructuring, LU is forecasted to have an operating deficit of \$42M in 2021/22 and approximately \$25M per year in the following four years. That is without accounting for any payments to the DIP Lender or other creditors.

[46] The post restructuring projections include a DIP facility of \$35M, an assumption that the Notices of Disclaimer become effective on May 1, 2021 and that the claims of other creditors will be paid over time. That projection will result in a deficit of \$12.5M in 2021/22 and an average surplus of \$14M over the next four years. However, from this surplus must come the repayment of the DIP Lender at \$4 to \$10M per year and payments to creditors from a large claims pool (pre-filing lenders are owed over \$100M).

[47] There is no reason not to accept the financial projections presented by the Monitor. They were not challenged by SU. The projections make it clear that the revenue gained by LU from the Disclaimer is essential for its survival in this restructuring. It is an unavoidable and somewhat stark reality.

Issue #3 – The Disclaimer’s Effect on French Language Programming and Services

[48] SU makes the following arguments with respect to French Language rights and the effect of the Disclaimer on those rights:

- a. SU is a designated “public service agency” within the meaning of the *French Language Services Act*, R.S.O. 1990, c. F.32. As such, the public has the right to receive services from it in French and the Province of Ontario must provide funding to ensure this.
- b. Under s. 23 of the *Charter of Rights and Freedoms*, the Province of Ontario must implement institutional measures to give effect to the Franco-Ontarian community’s right to receive an educational experience in French including the allocation of appropriate resources to entities such as the SU.

[49] Given the above considerations, LU must take the needs of the Franco-Ontarian community into account within the context of CCAA proceedings. SU submits that the Franco-Ontario community is concerned about the impact of these proceedings, including a disproportionate effect on French programs, courses and services. As SU points out, in the affidavit of the President of LU in support of the CCAA proceeding, he does not once mention French language rights.

[50] SU is concerned about the lack of French used in this proceeding and LU's failure to honour its commitments to French-language programs, courses and services. Those failures have been brought to LU's attention in the past by the Franco-Ontarian community.

[51] For several years, the Franco-Ontario community has expressed a desire for a university by and for francophones. A "bilingual" institution is not enough as English tends to be the dominant language in such institutions.

[52] On March 11, 2021, in consultation with the *Assemblée de la Francophonie de l'Ontario* ("AFO"), francophone stakeholders from Sudbury and other northern Ontario communities announced a resolution to become a university controlled by and for the Franco-Ontarian community.

[53] SU offered to take over all of LU's French courses to attain this goal. LU refused. SU submits that if the Disclaimer is permitted to proceed, LU will not be in a position to fulfill its obligations to the francophone community. Those obligations were already in jeopardy before the restructuring. With 40% fewer courses available for LU students this fall, it is simply a slap in the face to the francophone community to permit the Disclaimer to proceed.

Analysis

[54] It is clear from SU's resolution made in March 2021 (and prior to the Disclaimer being delivered) that SU found itself incompatible with the current bilingual and tri-cultural mandate of the Federated Universities. Indeed, the language in the agreement between LU and SU, dated September 10, 1960, is mandatory in that it requires SU and LU to work together to build an institution of learning "which shall forever be bilingual and non-denominational in character": at para. 17.

[55] Given SU's clear dissatisfaction with bilingual programming, and its criticisms of LU's commitment to the provision of French-language courses and services, it is hard to understand why SU is objecting to the Disclaimer.

[56] On the contrary, the March 2021 resolution sets out a completely different path for LU. That resolution specifically states that SU is to immediately take steps toward a university managed and controlled by Ontario francophones to offer courses and services in French, that the working language at SU will be French, that SU assumes the responsibilities of a designated service provider under the *French Language Services Act*, provides training for its instructors as required under the *Charter*, and develops partnerships with other (presumably francophone) post-secondary institutions.

[57] Following the March 2021 resolution, SU commissioned a business plan, dated April 2021, for the "Université francophone de Sudbury" which charted the transition for SU to reach its new goal. Its vision included the establishment of an independent secular university that offered French language programs to develop leadership, while preserving a francophone identity and offering a practical curriculum which was not constrained solely by academics. This is a laudable and important goal which it is hoped that SU can achieve in the near future.

[58] Finally, it would not benefit the francophone community if LU is forced into bankruptcy. That would no doubt result in no educational offerings to the francophone community at all. LU has made a firm commitment to continuing as a bilingual and tri-cultural institution. Indeed, much of its funding is tied to compliance with those goals. The current restructuring will ensure that the number of students currently enrolled in French courses (43 programs) is maintained.

[59] Previously, the majority of courses offered by SU were in English. Post Disclaimer, SU is free to re-invent itself as a francophone university and without the constraints of the Federation Agreements. Indeed, providing such an option to the northern community would be desirable and would not be impeded by LU's restructuring.

SUMMARY AND ORDERS

[60] It is this Court's view that a bankruptcy for LU must be avoided in keeping with the objectives of the CCAA. The bankruptcy for LU will displace students and faculty, and will have a detrimental effect on stakeholders, suppliers and service providers in the Sudbury community. Avoidance of a bankruptcy and all of its deleterious effects on LU and its community means, amongst other consequences, a dissolution of the Federation Agreements. Difficult decisions must sometimes be made with unpleasant consequences. This is one of those decisions.

[61] Given all of the above, I make the following orders:

- a. The motion brought by the University of Sudbury is dismissed.
- b. Costs of this motion are to be discussed amongst counsel. If no resolution can be reached, I can be spoken to by way of a scheduled Case Conference.
- c. La traduction officielle en français suivra.



C. Gilmore, J.

Date: May 7, 2021

RÉFÉRENCE : Université Laurentienne c. Université de Sudbury, 2021 ONSC 3392

NUMÉRO DU DOSSIER DU GREFFE : CV-21-656040-00CL

DATE : 07-05-2021

COUR SUPÉRIEURE DE JUSTICE DE L'ONTARIO

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

**ET DANS L'AFFAIRE D'UN PLAN DE COMPROMIS OU D'ARRANGEMENT DE
L'UNIVERSITÉ LAURENTIENNE DE SUDBURY**

ENTRE : L'Université Laurentienne de Sudbury, requérante/partie intimée

ET :

L'Université de Sudbury, auteure de la motion

DEVANT : La juge C. Gilmore

AVOCATS : *D. J. Miller, Mitchell Grossell, Andrew Hanrahan, Fraser Hughes et Derek Harland*, pour la requérante/partie intimée

Ashley Taylor, Elizabeth Pillon et Ben Muller, pour le contrôleur nommé par la Cour, Ernst & Young

Vern W. DaRe, pour le prêteur du débiteur-exploitant

André Claude et Ronald W. Caza pour l'Université de Sudbury, auteure de la motion

Demetrios Yiokaris et Eugene Meehan, pour l'Université Thorneloe

Francis Poulin et Charlotte Servant-L'Heureux pour l'Assemblée de la francophonie de l'Ontario

Charles Sinclair, pour l'Association des professeures et professeurs de l'Université Laurentienne

Tracey Henry et Danielle Stampley, pour le Syndicat des employé(e)s de l'Université Laurentienne

Peter J. Osborne et David Salter, pour le Conseil des gouverneurs de l'Université Laurentienne

Aryo Shalviri et Cristina Cataldo, pour la Banque royale du Canada

Dylan Chochla, pour la Banque Toronto-Dominion

Virginie Gauthier, pour l'Université Lakehead

Natalie Levine, pour l'Université Huntington

Donia Hashem, pour la Fondation canadienne pour l'innovation

Sarah Godwin et *Immanuel Lanzaderas*, pour l'Association canadienne des professeures et professeurs d'Université

Mark G. Baker et *Andre Luzhetskyy*, pour l'Association Générale des Étudiants de l'Université Laurentienne

DATE DE L'AUDIENCE : le 30 avril 2021

INSCRIPTION

APERÇU

[1] L'Université Laurentienne a connu une crise financière et a demandé la protection de la *Loi sur les arrangements avec les créanciers des compagnies*, L.R.C. (1985), ch. C-36 (la « LACC ») le 1^{er} février 2021. La protection en vertu de la LACC comprenait un sursis des procédures en vigueur jusqu'au 10 février 2021. Le sursis a ensuite été prolongé jusqu'au 30 avril 2021. Le 29 avril 2021, le sursis a été prolongé jusqu'au 2 mai 2021 à 23 h. Le 2 mai 2021, le sursis a été prolongé jusqu'au 31 août 2021.

[2] Depuis le 1^{er} février 2021, l'Université Laurentienne a procédé à un remaniement de l'ensemble de sa structure financière et opérationnelle pour que, à l'avenir, elle puisse exercer ses activités de façon viable, notamment aux fins de la prestation de l'enseignement. Pour mener à bien cette restructuration, l'Université Laurentienne souhaitait mettre fin à sa relation avec les trois universités formant la Fédération de l'Université Laurentienne, à savoir l'Université de Sudbury, l'Université Thorneloe et l'Université Huntington (ensemble, « les universités fédérées »). Le 1^{er} avril 2021, l'Université Laurentienne a émis un avis de résiliation (la « résiliation ») en vertu de l'article 32 de la LACC, afin de résilier certains contrats conclus entre elle et les universités fédérées et en vue de mettre fin à la relation qui l'unissait aux universités fédérées.

[3] L'Université Huntington et l'Université Laurentienne sont parvenues à un accord quant aux modalités de rupture de leur partenariat. L'Université Thorneloe et l'Université de Sudbury ont présenté leurs motions en vue de faire annuler la résiliation. La motion de l'Université Thorneloe a été entendue le 29 avril 2021 par le juge en chef Morawetz. Ce dernier a prolongé le sursis des procédures jusqu'au 2 mai 2021 à 23 h, et par la suite jusqu'au 31 août 2021. J'ai entendu la motion de l'Université de Sudbury le 30 avril 2021. Le 2 mai 2021, le juge Morawetz et moi-même avons publié une brève inscription rejetant les deux motions. Dans ces inscriptions, il était indiqué que les motifs détaillés des rejets suivraient. Voici les motifs du rejet de la motion de l'Université de Sudbury.

CONTEXTE

[4] L'Université Laurentienne connaît des problèmes financiers depuis de nombreuses années, mais ils ont culminé au printemps 2020, lorsque le passif de l'établissement a atteint 322 000 000 de dollars. En août 2020, l'Université Laurentienne a retenu les services d'Ernst & Young pour l'aider dans sa restructuration financière. Le 1^{er} février 2021, l'Université Laurentienne s'est placée sous la protection de la LACC.

[5] L'Université Laurentienne a demandé et obtenu l'approbation du tribunal pour un financement de débiteur-exploitant d'un montant de 25 000 000 \$. Après que l'Université Thorneloe et l'Université de Sudbury ont déposé leurs motions d'opposition à la résiliation, l'Université Laurentienne a déposé une motion de prolongation du sursis des procédures jusqu'au 31 août 2021. L'Université Laurentienne a demandé un financement de débiteur-exploitant supplémentaire de 12 000 000 \$. Le prêteur du débiteur-exploitant a accepté de fournir un financement supplémentaire de 10 000 000 \$. Toutefois, la résiliation des ententes conclues par l'Université Laurentienne avec les universités fédérées constituait une condition préalable au versement de la deuxième avance.

[6] Sous la protection de la LACC, le Sénat de l'Université Laurentienne a adopté, en avril 2021, une résolution approuvant sa restructuration de l'enseignement. Celle-ci comprenait la fermeture de 38 programmes de premier cycle en anglais et 27 programmes de premier cycle en français, ainsi que de 11 programmes de deuxième cycle (quatre en français et sept en anglais), lesquels étaient jugés non viables.

[7] Le 7 avril 2021, l'Université Laurentienne a inscrit, dans ses ententes conclues avec ses partenaires syndicaux, des licenciements, des déclarations indiquant que 116 postes étaient superflus, en plus de baisses de salaire et de jours de congé sans solde.

[8] L'Université Laurentienne exerce ses activités au sein d'une structure fédérée dans laquelle elle a conclu des contrats avec les trois universités fédérées. Chacune de ces trois universités fédérées constitue une entité juridique distincte dotée de son propre conseil d'administration. Les programmes des trois universités fédérées sont offerts par l'Université Laurentienne et donnent droit à des crédits en vue de l'obtention d'un diplôme délivré par l'Université Laurentienne. À la session d'automne 2020, l'Université de Sudbury comptait 69,6 étudiants équivalents temps plein.

[9] L'Université Laurentienne a conclu son entente de fédération avec l'Université de Sudbury le 10 septembre 1960. Les ententes de fédération sont pour l'essentiel similaires et comprennent les modalités importantes que voici :

- a. Chacune des universités fédérées a accepté de suspendre ses pouvoirs de délivrer des diplômes (avec certaines exceptions limitées) au profit de l'Université Laurentienne;
- b. L'Université Laurentienne a accepté de distribuer à chaque université fédérée une partie des revenus qu'elle a perçus pour chaque étudiant, comme il est indiqué dans l'avis de distribution financière;

- c. L'Université Laurentienne a réservé certains terrains de son campus aux universités fédérées, et la répartition a été effectuée en vertu d'actes.

[10] Chacune des ententes de fédération contient l'énoncé de principe suivant :

[TRADUCTION] L'Université Laurentienne et [l'Université de Sudbury] déclarent et expriment le ferme espoir et la ferme conviction que la relation entre les universités établie par la présente entente sera permanente... et qu'elles créeront une grande institution d'apprentissage qui sera toujours bilingue et non confessionnelle dans son esprit.

[11] Chacune des universités fédérées loue à l'Université Laurentienne un terrain sur lequel elle a construit ses propres édifices. Les baux sont d'une durée de 99 ans à compter du 1^{er} septembre 1963, avec possibilité de renouvellement. Les actes ne sont pas assujettis à la résiliation.

[12] L'Université de Sudbury possède deux édifices sur le campus de l'Université Laurentienne : un édifice principal destiné à l'administration et une résidence. Les édifices ont été érigés au coût de 5 000 000 \$.

[13] En vertu des avis de distribution financière, l'Université Laurentienne transfère à chacune des universités fédérées une partie des revenus qu'elle reçoit du gouvernement provincial. Les avis de distribution financière précisent également que l'Université Laurentienne est autorisée à imposer des frais de service administratif de 15 % (les « frais de service ») sur les subventions et les frais de scolarité perçus. Le montant net est ensuite transmis aux universités fédérées. Les frais de service se rapportent à la fourniture par l'Université Laurentienne de services informatiques centraux, à l'administration des pensions et des avantages sociaux, à la sécurité et aux services de soutien aux étudiants.

[14] En 2020, l'Université Laurentienne a transféré 7 700 000 \$ aux universités fédérées, déduction faite des frais de service. Selon le contrôleur, l'Université Laurentienne réclame ce montant dans le cadre de son plan de restructuration. En d'autres termes, l'Université Laurentienne cherche à intégrer les anciens étudiants de l'Université de Sudbury, de l'Université Thorneloe et de l'Université Huntington à son corps étudiant, afin de ne plus avoir à transférer ces revenus aux universités fédérées.

[15] Les discussions avec les universités fédérées au sujet de la crise financière de l'Université Laurentienne ont commencé en juin 2020. Dans son témoignage, le D^r Robert Haché, président et vice-chancelier de l'Université Laurentienne, indique qu'il a informé les universités fédérées, dès le début des négociations, que toutes les hypothèses pouvaient être envisagées, y compris la fin des ententes existantes entre l'Université Laurentienne et les universités fédérées.

LES QUESTIONS EN LITIGE

Question en litige n° 1 – Pouvoir discrétionnaire en vertu de la LACC et obligation de bonne foi

[16] Lorsqu'une partie demande une ordonnance de rejet d'un avis de résiliation, le paragraphe 32(4) de la LACC exige que le tribunal tienne compte des facteurs non exhaustifs suivants lorsqu'il décide d'autoriser ou de rejeter la résiliation d'un contrat :

- a. l'acquiescement du contrôleur au projet de résiliation, le cas échéant;
- b. la question de savoir si la résiliation favorisera la conclusion d'une transaction ou d'un arrangement viable à l'égard de la compagnie;
- c. le risque que la résiliation puisse vraisemblablement causer de sérieuses difficultés financières à une partie au contrat.

[17] D'autres dispositions pertinentes de la LACC font état de l'obligation d'agir de bonne foi, conformément à l'article 18.6 :

18.6 (1) Tout intéressé est tenu d'agir de bonne foi dans le cadre d'une procédure intentée au titre de la présente loi.

(2) S'il est convaincu que l'intéressé n'agit pas de bonne foi, le tribunal peut, à la demande de tout intéressé, rendre toute ordonnance qu'il estime indiquée.

[18] De plus, les mesures de redressement accordées en vertu de la LACC sont limitées aux « redressements normalement nécessaires à la continuation de l'exploitation de la compagnie débitrice », conformément à l'article 11.001 :

Redressements normalement nécessaires

11.001 L'ordonnance rendue au titre de l'article 11 en même temps que l'ordonnance rendue au titre du paragraphe 11.02(1) ou pendant la période visée dans l'ordonnance rendue au titre de ce paragraphe relativement à la demande initiale n'est limitée qu'aux redressements normalement nécessaires à la continuation de l'exploitation de la compagnie débitrice dans le cours ordinaire de ses affaires durant cette période.

[19] L'Université de Sudbury soutient que l'obligation de bonne foi prévue à l'article 18.6 s'étend aux avis de résiliation. Elle s'appuie sur *9354-9186 Québec Inc. c. Callidus Capital Corp.*, 2020 CSC 10, une décision récente de la Cour suprême du Canada. La Cour a réitéré, au par. 49, que « le pouvoir discrétionnaire conféré par la LACC [...] n'est pas sans limites » et que le demandeur (en l'espèce, l'Université Laurentienne) a le fardeau de démontrer que l'ordonnance qu'il demande est indiquée et « qu'il a agi de bonne foi et avec la diligence voulue ».

[20] Dans l'arrêt *Callidus*, la Cour poursuit en explorant l'élément d'équité requis dans les procédures de la LACC. Elle indique que la Cour doit exercer son pouvoir discrétionnaire pour

contrôler le processus si une partie agit d'une manière qui va à l'encontre des objectifs de la LACC ou agit dans un « but illégitime » (par. 70).

[21] Dans *Re Dallas/North Group Inc.* (2001), 148 OAC 288 (C.A.), la Cour a critiqué certains tiers qui ont introduit des instances en faillite contre deux débiteurs dans un but illégitime. La Cour a été explicite quant au fait que le processus de faillite ne peut être utilisé à des fins accessoires.

[22] L'Université de Sudbury soutient que l'Université Laurentienne a agi de mauvaise foi en tentant de résilier l'entente de fédération. Elle allègue plus particulièrement que l'Université Laurentienne cherche à utiliser le processus de restructuration de la LACC à des fins accessoires et illégitimes, en détruisant, en réalité, un concurrent. Il s'agit, selon elle, d'un abus de procédure.

[23] À l'appui de sa thèse, l'Université de Sudbury a cité fait l'affaire *Dimples Diapers Inc. v. Paperboard Industries Corp.*, 1992 CarswellOnt 192 (Div. gén.). Au paragraphe 34, la Cour cite l'ouvrage de L. W. Houlden et C. H. Morawetz, *Bankruptcy Law of Canada*, 3^e éd. (Toronto : Carswell, 1989), à la p. 2-45 :

[TRADUCTION] Lorsque l'effet d'un contrat entre le créancier requérant et certains non-créanciers était d'impliquer le créancier requérant dans un objectif illégitime des acheteurs d'une entreprise qui, en tant que non-créanciers, n'avaient aucunement qualité dans la procédure de faillite alors qu'ils s'en mêlaient, et que l'objectif était de causer la faillite des débiteurs, la procédure entière est entachée et la requête doit être rejetée : *Re Pappy's Good Eats Ltd.* (1985), 56 C.B.R. (N.S.) 304 (C.S. Ont.).

[24] L'Université de Sudbury soutient qu'il est faux d'affirmer que ses étudiants sont tous des étudiants de l'Université Laurentienne. Ils sont des étudiants de la Fédération. Le fait qu'ils s'inscrivent à l'Université Laurentienne et reçoivent leurs diplômes par l'intermédiaire de cette dernière est uniquement dû à la structure convenue de la Fédération. L'Université de Sudbury existe en tant qu'entité indépendante depuis 1910, et est sur un pied d'égalité avec l'Université Laurentienne.

[25] L'Université de Sudbury soutient que l'Université Laurentienne tente d'utiliser la LACC à des fins illégitimes. L'utilisation du système de faillite à des fins illégitimes a été désapprouvée. Dans l'affaire *Nova Metal Products Inc. v. Comiskey (Trustee of)* (1990), 1 O.R. (3d) 289 (C.A.), la Cour a statué qu'une compagnie débitrice devrait utiliser la LACC uniquement à des fins de [TRADUCTION] « réorganisation légitime », et non à des [TRADUCTION] « fins illégitimes » (au par. 84).

[26] À son niveau le plus élémentaire, la résiliation d'un contrat doit être [TRADUCTION] « équitable, légitime, raisonnable, et doit avoir été exécutée après des négociations de bonne foi » : *Re Allarco Entertainment Inc.*, 2009 ABQB 503, au par. 59. L'Université de Sudbury soutient que l'Université Laurentienne aurait pu tenter de trouver d'autres solutions, comme la renégociation de ses frais de service, par exemple, mais qu'elle ne l'a pas fait. Elle n'a pas entamé les négociations avec l'Université de Sudbury avec la bonne foi requise.

[27] De plus, les arguments d'ordre financier avancés par l'Université Laurentienne à l'appui de la résiliation ne sont pas confirmés. On s'attendait à ce que l'Université Laurentienne perçoive des

frais de service suffisants pour couvrir ses frais administratifs, de façon que cette dernière n'ait aucun coût net à assumer pour l'administration de l'inscription des étudiants de l'Université de Sudbury. La résiliation d'un tel arrangement « à coûts nets » est contraire à l'obligation de l'Université Laurentienne d'agir dans le meilleur intérêt des universités fédérées.

[28] Le D^r Haché n'a pas convenu que l'Université Laurentienne n'avait pas de coûts à supporter pour l'administration des étudiants de l'Université de Sudbury. Selon son témoignage en contre-interrogatoire, le fait que des étudiants suivent des cours à l'Université de Sudbury a entraîné une perte de revenus éventuels pour l'Université Laurentienne. La thèse de l'Université de Sudbury était que l'Université Laurentienne n'avait fourni aucune recherche ou modélisation pour justifier ou confirmer que c'était le cas. L'Université Laurentienne a déjà économisé 30 000 000 \$ grâce à sa restructuration. Détruire les universités fédérées pour des revenus non prouvés de 7 000 000 \$ ne justifie pas la destruction consécutive de l'Université de Sudbury.

Analyse

[29] Je suis en désaccord avec l'affirmation selon laquelle l'Université Laurentienne a cherché à résilier les ententes de fédération dans un but accessoire, inapproprié ou illégitime. Il ne s'agit pas de mettre un concurrent en faillite, mais simplement de mettre fin à un modèle financier non viable dans le contexte de circonstances difficiles et urgentes.

[30] Il est important de passer en revue plusieurs faits qui sont au cœur de cette résiliation :

- a. Tous les étudiants qui fréquentent l'Université de Sudbury sont des étudiants de l'Université Laurentienne.
- b. L'Université de Sudbury compte actuellement l'équivalent de 108 étudiants, tandis que l'Université Laurentienne en compte 9 000.
- c. Les ententes de fédération peuvent être légitimement résiliées en vertu de l'article 32 de la LACC.
- d. La résiliation est approuvée par le contrôleur. Cette recommandation a un poids important au regard de la loi.
- e. Refuser la résiliation diminuerait grandement les chances qu'un plan viable soit présenté aux créanciers. En d'autres termes, un plan qui implique que l'Université Laurentienne ne perçoive toujours pas de fonds n'est pas viable.
- f. Sans la procédure de résiliation, le prêteur du débiteur-exploitant ne versera pas l'avance supplémentaire de 10 000 000 \$, ce qui enlèverait à l'Université Laurentienne la possibilité de déposer une proposition.
- g. L'Université Laurentienne a pu réaliser d'importantes économies de coûts, mais cela ne fait que la placer au seuil de rentabilité et la laisse sans ressources pour payer ses créanciers.

- h. Les ententes de fédération ne contiennent qu'un énoncé de principe quant à leur permanence.
- i. Il n'y a rien dans le plan d'affaires qui empêcherait l'Université de Sudbury d'offrir de façon indépendante une formation en sciences religieuses ou en français. Il ne serait tout simplement plus possible d'y obtenir un diplôme de l'Université Laurentienne.
- j. En 2019, l'Université Laurentienne a tenté un nouvel arrangement, en ce qui concerne ses frais de service, avec les universités fédérées. Malheureusement, cela n'a pas suffi pour qu'elle surmonte sa détresse financière.
- k. En ce qui concerne son obligation de consulter l'Université de Sudbury, l'Université Laurentienne a tenté de négocier avec les universités fédérées dès le printemps 2020. Ces négociations n'ont été que partiellement couronnées de succès. Dans la mesure où l'Université Laurentienne est maintenant sous la supervision d'un contrôleur dans le cadre d'une procédure judiciaire, de telles négociations sont toujours possibles par l'intermédiaire du médiateur nommé par la Cour qui a travaillé dur et obtenu de bons résultats avec l'Université Laurentienne et les différentes parties prenantes en matière d'emploi.
- l. Je rejette l'observation de l'Université de Sudbury selon laquelle la résiliation est « tombée du ciel. » Comme l'a indiqué le D^r Haché, l'hypothèse d'une dissolution de la Fédération a toujours été envisagée depuis que la situation financière de l'Université Laurentienne est devenue critique. Dans son affidavit qui remonte au 30 janvier 2021, le D^r Haché a déclaré ceci :

[TRADUCTION] Le cadre de l'Université Laurentienne 2.0 vise à mener à bien les objectifs susmentionnés en :

(a) Restructurant le modèle d'enseignement par la rationalisation de la programmation et la prestation de l'enseignement en réduisant le nombre de programmes, en restructurant les soutiens éducatifs et en mettant fin aux ententes et aux relations avec les universités fédérées;
[nous soulignons]

- m. Je conclus que l'Université Laurentienne n'a pas l'obligation légale d'agir dans l'intérêt de la Fédération. À l'heure actuelle, l'obligation la plus importante de l'Université Laurentienne est celle qu'elle a envers ses créanciers. Comme il a été mentionné plus haut, l'Université Laurentienne s'est engagée dans deux mois de médiation intensive avec toutes ses parties prenantes. Elle a obtenu des résultats positifs avec l'Université Huntington et ses syndicats. Je suis d'accord avec les avocats de l'Université Laurentienne que le fait de ne pas parvenir à une résolution avec l'Université Thorneloe et l'Université de Sudbury ne signifie pas que l'Université Laurentienne n'a pas tenté, de bonne foi, de parvenir à une résolution.

[31] L'Université de Sudbury a fourni une quantité importante de jurisprudence à la Cour. Malheureusement, aucune de ces décisions n'a trait à la mauvaise foi ou au concept de « but illégitime » dans le contexte de l'avis de résiliation en vertu de l'article 32 de la LACC.

[32] De plus, et contrairement aux affirmations de l'Université de Sudbury, la preuve du D^r Haché était que l'Université Laurentienne dispose d'une modélisation évolutive qui inclut la fin des ententes de fédération.

[33] En résumé, je conclus que l'avis de résiliation répond aux exigences des alinéas 32(4)a) et b), en ce sens que le contrôleur a approuvé l'avis de résiliation, et que, sans les revenus supplémentaires de l'Université de Sudbury et des autres universités fédérées, l'Université Laurentienne ne sera pas en mesure de présenter un plan viable à ses créanciers et mettra en péril le financement supplémentaire nécessaire du débiteur-exploitant.

Question en litige n°2 – Difficultés financières de l'Université de Sudbury et situation du prêteur du débiteur-exploitant

[34] L'Université de Sudbury soutient que le licenciement de ses employés coûtera 4 000 000 \$ et que le coût d'entretien de ses bâtiments s'élève à 400 000 \$ par année. Sans les revenus des frais de scolarité des étudiants, elle ne dispose pas des ressources financières nécessaires pour payer ces montants.

[35] M. Pierre Riopel est le président du Conseil des régents de l'Université de Sudbury. Lors de son contre-interrogatoire du 24 avril 2021, on lui a posé des questions sur le coût de 4 000 000 \$ lié au licenciement des employés. Il a été franc en concédant qu'il n'avait aucune idée de l'origine de ce chiffre, mais il a indiqué qu'il s'agissait d'une collaboration avec un avocat, les ressources humaines et le personnel de l'université.

[36] Il s'est engagé à fournir une analyse expliquant ce chiffre. La voici :

[TRADUCTION] Le chiffre de 4 000 000 \$ est une combinaison des coûts prévus par la loi et des indemnités de départ payables aux employés de l'Université de Sudbury en vertu de la *Loi sur les normes d'emploi*, d'une valeur d'environ 800 000 \$. Le reste du montant correspond à une estimation arrondie du passif résultant de l'indemnisation supplémentaire réclamée par les employés, qui pourrait être due en vertu des conventions collectives par suite des pertes d'emploi permanentes.

[37] En ce qui concerne le montant annuel de 400 000 \$ pour l'entretien des édifices de l'Université de Sudbury, M. Riopel n'avait également pas accès personnellement à des renseignements sur la façon dont ce chiffre avait été établi, si ce n'est par le personnel administratif de l'Université. Il s'est engagé à fournir une explication quant à ces coûts. La voici :

[TRADUCTION] Le chiffre de 400 000 \$ comprend une estimation des coûts annuels pour l'entretien et la réparation des édifices, dont un montant au titre des salaires et des avantages sociaux minimaux du personnel. Ce chiffre est fondé sur le fait que l'Université de Sudbury ne dispense aucun cours aux étudiants de

l'Université Laurentienne, ce qui signifie qu'il n'y a pas d'étudiants ni de professeurs et que les résidences ne sont pas exploitées.

[38] Je conclus que les réponses aux engagements ne fournissent aucun modèle d'analyse financière fiable quant aux montants réels dont l'Université de Sudbury soutient être responsable. Les analyses des montants fournis ne semblent être que des estimations.

[39] Il ne fait aucun doute que l'Université de Sudbury subira des conséquences financières par suite de la résiliation. Cependant, la preuve fournie par l'Université de Sudbury est insuffisante pour atteindre le seuil exigé par la LACC pour rejeter une résiliation, c'est-à-dire la démonstration de « sérieuses difficultés financières ». De plus, toute conséquence financière subie par l'Université de Sudbury doit être évaluée en fonction des considérations financières globales de la restructuration, qui vont bien au-delà des spéculations d'insolvabilité de l'établissement.

[40] L'Université de Sudbury soutient que la Cour se trouve dans une position difficile. La résiliation constitue un abus de procédure, mais, sans elle, le prêteur du débiteur-exploitant n'avancera pas de fonds. L'Université de Sudbury ajoute qu'elle n'a pas été autorisée à contre-interroger le prêteur du débiteur-exploitant ou à accéder aux communications entre le prêteur du débiteur-exploitant et l'Université Laurentienne. Les insolvabilités en vertu de la LACC devraient être poursuivies conformément à la loi pertinente et non selon le caprice du prêteur du débiteur-exploitant.

[41] Je suis en désaccord avec l'Université de Sudbury lorsqu'elle affirme que le prêteur du débiteur-exploitant dirige cette procédure ou, comme elle le soutient, qu'il a [TRADUCTION] « supplanté la compétence de la Cour supérieure ». Premièrement, les conditions du financement du débiteur-exploitant initial d'un montant de 25 000 000 \$ en février 2021, y compris son expiration le 1^{er} mai 2021, étaient bien connues de toutes les parties prenantes et approuvées par la Cour. Les fonds ont été avancés à un moment critique où les professeurs étaient affectés à l'année scolaire 2021-2022 et où des offres étaient faites aux étudiants de 12^e année. En d'autres termes, il était essentiel que la planification et les ressources pour la session d'automne 2021 soient en place.

[42] Le prêteur du débiteur-exploitant a formulé des observations dans le cadre de la motion. L'Université de Sudbury semblait préoccupée par le fait que de telles observations aient été autorisées, mais je n'ai rien trouvé qui puisse justifier cette préoccupation. Comme on pouvait s'y attendre, le prêteur de débiteur-exploitant a simplement confirmé ce qui était déjà largement connu, à savoir que le prêteur du débiteur-exploitant est étranger à l'Université Laurentienne et n'est pas un prêteur avant le dépôt. Il s'agit d'un prêteur commercial sans lien de dépendance qui a pris des risques dans une situation de prêt inédite où sa garantie porte sur une institution publique. Il a déjà avancé un montant important et a posé des conditions spécifiques pour en avancer un autre. L'une de ces conditions est que les résiliations soient exécutées de façon que l'Université Laurentienne puisse accroître ses revenus.

[43] L'Université de Sudbury s'est plainte de ne pas avoir eu accès aux informations que partageaient l'Université Laurentienne et le prêteur du débiteur-exploitant, de telle sorte qu'elle puisse s'assurer que la résiliation était effectivement une condition essentielle au versement de la

deuxième avance. L'Université de Sudbury a eu l'occasion de soumettre des questions écrites, mais les réponses fournies ne l'ont pas satisfaite.

[44] Plus important encore : c'est bien l'Université Laurentienne qui est placée sous la protection de la LACC, et non l'Université de Sudbury. La seule façon pour l'Université Laurentienne de présenter un plan viable à ses créanciers est d'augmenter temporairement son passif. Elle est tenue de se conformer aux conditions du prêteur du débiteur-exploitant, qui a informé la Cour, par l'entremise de son avocat, qu'il avait effectué une analyse financière indiquant que la résiliation des ententes de fédération était essentielle à l'accroissement des revenus de l'Université Laurentienne.

[45] La Cour a également entendu le contrôleur. Celui-ci était d'avis que la résiliation était nécessaire pour que l'Université Laurentienne puisse faire une proposition viable à ses créanciers. Le contrôleur a fourni des projections avant et après la restructuration pour les cinq prochains exercices financiers, en commençant par l'année 2021-2022. Sans aucune restructuration, l'Université Laurentienne devrait accuser un déficit d'exploitation de 42 000 000 \$ en 2021-2022 et d'environ 25 000 000 \$ par an au cours des quatre années suivantes, et ce, sans tenir compte des paiements au prêteur du débiteur-exploitant ou à d'autres créanciers.

[46] Les projections après restructuration comprennent un financement du débiteur-exploitant d'un montant de 35 000 000 \$, une hypothèse qui suppose que les avis de résiliation entrent en vigueur le 1^{er} mai 2021 et que les réclamations des autres créanciers soient payées au fil du temps. Cette projection entraînera un déficit de 12 500 000 \$ en 2021-2022 et un excédent moyen de 14 000 000 \$ au cours des quatre années suivantes. Cependant, de cet excédent doit provenir le remboursement du prêteur du débiteur-exploitant à raison de 4 à 10 000 000 \$ par an et les paiements aux créanciers à partir d'un grand regroupement des réclamations (les prêteurs avant dépôt doivent ont des créances de plus de 100 000 000 \$).

[47] Il n'y a aucune raison de ne pas accepter les projections financières présentées par le contrôleur. L'Université de Sudbury ne les a pas contestées. Les projections montrent clairement que les revenus gagnés par l'Université Laurentienne grâce à la résiliation sont essentiels à sa survie dans cette restructuration. C'est la réalité brutale et crue de la situation.

Question en litige n°3 – Les conséquences de la résiliation sur la programmation et les services en français

[48] L'Université de Sudbury présente les arguments suivants en ce qui concerne les droits linguistiques des francophones et les conséquences de la résiliation sur ces droits :

- a. L'Université de Sudbury est un « organisme de services publics » désigné au sens de la *Loi sur les services en français*, L.R.O. 1990, chap. F.32. À ce titre, le public a le droit de recevoir des services en français de sa part et la province de l'Ontario doit fournir des fonds pour s'en assurer.
- b. En vertu de l'article 23 de la *Charte des droits et libertés*, la province de l'Ontario doit mettre en œuvre des mesures institutionnelles pour donner effet au droit de la communauté franco-ontarienne de recevoir une expérience éducative en français, y

compris l'allocation de ressources appropriées à des entités telles que l'Université de Sudbury.

[49] Compte tenu de ce qui précède, l'Université Laurentienne doit tenir compte des besoins de la communauté franco-ontarienne dans le cadre des procédures de la LACC. L'Université de Sudbury soutient que la communauté franco-ontarienne est préoccupée par l'impact de ces procédures, y compris quant à la possibilité de conséquences disproportionnées sur les programmes, les cours et les services en français. Comme l'Université de Sudbury le souligne, le président de l'Université Laurentienne, dans son affidavit à l'appui de la procédure de la LACC, ne mentionne pas une seule fois les droits linguistiques des francophones.

[50] L'Université de Sudbury s'inquiète de l'absence d'usage du français dans la présente procédure et du manquement de l'Université Laurentienne à ses engagements en matière de programmes, de cours et de services en français. Ces manquements ont été portés à l'attention de l'Université Laurentienne dans le passé par la communauté franco-ontarienne.

[51] Depuis plusieurs années, la communauté franco-ontarienne a exprimé le désir d'avoir une université créée par les francophones et destinée à eux. L'existence d'une institution « bilingue » ne saurait être suffisante, car l'anglais tend à y être la langue dominante.

[52] Le 11 mars 2021, en consultation avec l'Assemblée de la Francophonie de l'Ontario (l'« AFO »), les intervenants francophones de Sudbury et d'autres collectivités du nord de l'Ontario ont annoncé une résolution visant à former une université contrôlée par la communauté franco-ontarienne et destinée à celle-ci.

[53] L'Université de Sudbury a offert de reprendre tous les cours en français de l'Université Laurentienne pour atteindre cet objectif. L'Université Laurentienne a refusé. L'Université de Sudbury soutient que si la résiliation est autorisée, l'Université Laurentienne ne sera pas en mesure de remplir ses obligations envers la communauté francophone. Ces obligations étaient déjà en péril avant la restructuration. Avec 40 % de cours en moins pour les étudiants de l'Université Laurentienne cet automne, c'est tout simplement une gifle administrée à la communauté francophone que de permettre l'exécution de la résiliation.

Analyse

[54] La résolution adoptée par l'Université de Sudbury en mars 2021 (avant que la résiliation ne soit prononcée) montre clairement que cette dernière se trouvait dans une situation incompatible avec le mandat bilingue et triculturel actuel des universités fédérées. En effet, le libellé de l'entente entre l'Université Laurentienne et l'Université de Sudbury, datée du 10 septembre 1960, est obligatoire, en ce sens qu'il exige que l'Université de Sudbury et l'Université Laurentienne travaillent ensemble à la création d'une institution d'apprentissage [TRADUCTION] « qui sera toujours bilingue et non confessionnelle » (au par. 17).

[55] Compte tenu de l'insatisfaction manifeste de l'Université de Sudbury à l'égard de la programmation bilingue et de ses critiques à l'égard de l'engagement de l'Université Laurentienne à offrir des cours et des services en français, il est difficile de comprendre pourquoi l'Université de Sudbury s'oppose à la résiliation.

[56] Au contraire, la résolution de mars 2021 trace une voie complètement différente pour l'Université de Sudbury. Cette résolution stipule expressément que l'Université de Sudbury doit immédiatement prendre des mesures pour qu'une université gérée et contrôlée par des francophones de l'Ontario offre des cours et des services en français, que la langue de travail de l'Université de Sudbury soit le français, que l'Université de Sudbury assume les responsabilités d'un fournisseur de services désigné en vertu de la *Loi sur les services en français*, qu'elle offre une formation à ses professeurs comme l'exige la *Charte*, et qu'elle établisse des partenariats avec d'autres établissements postsecondaires (logiquement, francophones).

[57] À la suite de la résolution de mars 2021, l'Université de Sudbury a commandé un plan d'affaires, daté d'avril 2021, pour « l'Université francophone de Sudbury », qui trace la voie à suivre pour que l'Université atteigne son nouvel objectif. Sa vision comprend l'établissement d'une université laïque indépendante qui offre des programmes de langue française pour développer le leadership, tout en préservant une identité francophone et en offrant un programme d'études pratiques qui ne soit pas limité à l'enseignement classique. Il s'agit d'un objectif louable et important que l'Université de Sudbury devrait pouvoir atteindre dans un proche avenir.

[58] Enfin, il ne serait pas dans l'intérêt de la communauté francophone que l'Université Laurentienne soit acculée à la faillite. Cela se traduirait évidemment par une absence totale d'offres éducatives pour la communauté francophone. L'Université Laurentienne s'est fermement engagée à demeurer une institution bilingue et triculturelle. En effet, une grande partie de son financement est liée au respect de ces objectifs. La restructuration actuelle permettra de maintenir le nombre d'étudiants actuellement inscrits à des cours en français (43 programmes).

[59] Auparavant, la majorité des cours offerts par l'Université de Sudbury étaient dispensés en anglais. Après la résiliation, l'Université de Sudbury sera libre de se réinventer en tant qu'université francophone et sans les contraintes des ententes de fédération. En effet, offrir une telle option à la collectivité du nord serait souhaitable et ne serait pas entravé par la restructuration de l'Université Laurentienne.

RÉSUMÉ ET ORDONNANCES

[60] La Cour est d'avis que la faillite de l'Université Laurentienne doit être évitée afin de respecter les objectifs de la LACC. La faillite de l'Université Laurentienne entraînera le déplacement d'étudiants et de professeurs, et aura un effet néfaste sur les intervenants, les fournisseurs et les prestataires de services de la collectivité de Sudbury. Le fait d'éviter une faillite et tous ses effets délétères sur l'Université Laurentienne et sa collectivité signifie, entre autres conséquences, la résiliation des ententes de fédération. Des décisions difficiles aux conséquences désagréables doivent parfois être prises. Celle-ci en fait partie.

[61] Compte tenu de tout ce qui précède, je rends les ordonnances suivantes :

- a. La motion présentée par l'Université de Sudbury est rejetée.
- b. Les dépens de cette motion doivent être discutés entre les avocats. Si aucune solution n'est trouvée, on pourra me parler dans le cadre d'une conférence relative à la cause.



La juge C. Gilmore

Date de la décision : 7 mai 2021

Tab 22

Re: Laurentian University of Sudbury

M52472

Directions of Case Management Judge

May 17, 2021

Case Management Judge: Hoy J.A.

Parties:

PARTY	COUNSEL
Moving Party, Thornloe University	Andrew Hatnay ahatnay@kmlaw.ca Demetrios Yiokaris dyiokaris@kmlaw.ca
Responding Party, Laurentian University	DJ Miller djmillier@tgf.ca Scott McGrath smcgrath@tgf.ca Sara Kunto, general counsel for Laurentian University SKunto@laurentian.ca
Responding Party, court-appointed receiver, Ernst & Young Inc.	Ashley Taylor ataylor@stikeman.com Ben Muller bmuller@stikeman.com Sharon Hamilton sharon.s.hamilton@ca.ey.com
Responding Party, for the Firm Capital Corporation, the DIP Lender	Vern DaRe vdare@foglers.com

DIRECTIONS:

The following was agreed at today's Zoom case conference regarding Thornloe's application for leave to appeal the May 2, 2021 decision of Morawetz C.J.:

1. Thornloe to file its application for leave to appeal by May 25, 2021;
2. Responding materials to be filed by June 4, 2021;
3. Reply materials, if any, to be filed by June 8, 2021;
4. If leave to appeal is granted, the materials filed on the leave application will be placed before the panel hearing the appeal (which is intended to be composed of the judges who hear the leave application) and constitute part of the appeal record. Thornloe will file any further materials it wishes to file to supplement the materials filed on the leave application within 7 days of the release of decision on the leave application; and the respondents will file any supplementary materials they wish to file within 7 days after Thornloe files its materials.

This schedule was established having regard to Thornloe's advice that in order to be in a position to restart its operations for the academic term commencing in January 2022, it would need a decision from the Court of Appeal by the end of the summer/ beginning of September.

Tab 23

COURT OF APPEAL FOR ONTARIO

CITATION: Laurentian University of Sudbury (Re), 2021 ONCA 199

DATE: 20210331

DOCKET: M52287

Hoy, Pepall and Zarnett JJ.A.

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

Murray Gold and James Harnum, for the moving party the Ontario Confederation
of University Faculty Associations

Susan Philpott and Charles Sinclair, for the moving party the Laurentian
University Faculty Association

Miriam Martin, for the moving party the Canadian Union of Public Employees

D.J. Miller, Scott McGrath and Derek Harland, for the responding party
Laurentian University of Sudbury

Ashley Taylor, Elizabeth Pillon and Zev Smith, for the responding party Ernst &
Young Inc., acting as the Monitor

Heard: in writing

Motion for leave to appeal from the order of Chief Justice Geoffrey B. Morawetz
of the Superior Court of Justice, dated February 26, 2021.

REASONS FOR DECISION

[1] Laurentian University of Sudbury (“Laurentian”) is a publicly funded, bilingual and tricultural post-secondary institution, serving domestic and international undergraduate and graduate students. Due to recurring operational deficits, it has encountered a liquidity crisis and is insolvent.

[2] Laurentian sought and obtained protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C.36 (“CCAA”), to permit it to restructure, financially and operationally, in order to emerge as a sustainable university for the benefit of all stakeholders. Among the stated reasons for Laurentian’s CCAA application was what it described as unsustainable “academic costs”, which Laurentian attributes in part to the terms of its collective agreement with its faculty members.

[3] Two unions representing Laurentian employees - the Laurentian University Faculty Association (“LUFA”) and the Canadian Union of Public Employees (“CUPE”) - and the Ontario Confederation of University Faculty Associations (“OCUFA”), an umbrella organization representing faculty associations, seek leave to appeal the decision of the CCAA judge, dated February 26, 2021, which continues a sealing order over two documents that Laurentian filed on its application for CCAA protection.

[4] Having reviewed the written submissions of the parties and the sealed documents, we refuse leave for the reasons that follow.

Background

[5] On February 1, 2021, the CCAA judge made an order (the “Initial Order”), granting Laurentian initial relief under the CCAA.

[6] Four days later, on February 5, 2021, the CCAA judge made an order appointing Dunphy J. as mediator to conduct a confidential mediation among Laurentian’s key stakeholders. The mediation is intended to address various issues concerning Laurentian’s restructuring, including a new collective agreement with LUFA, which represents 612 Laurentian faculty, accounting for 60% of the university’s payroll. LUFA supported the appointment of the mediator.

[7] The Initial Order contained a sealing provision. At the comeback hearing, there was opposition to it. The CCAA judge continued the sealing provision in the Amended and Restated Order, dated February 11, 2021, on an interim basis, pending a supplementary endorsement.

[8] The sealing provision, which was identical in both orders, covers two exhibits (Exhibits “EEE” and “FFF”) to the affidavit by Dr. Robert Haché, which was filed in support of Laurentian’s request for the Initial Order. Dr. Haché is the President, Vice-Chancellor and CEO of Laurentian.

[9] The sealing provision states that the Exhibits “are hereby sealed pending further order of the Court, and shall not form part of the public record”. Both the

Initial Order and the Amended and Restated Order provide that any interested party may apply on seven days' notice to vary or amend the order.

[10] The sealed Exhibits consist of two letters. Exhibit "EEE" is a letter from the Ministry of Colleges and Universities ("Ministry") to Laurentian, dated January 21, 2021. Exhibit "FFF" is a letter from Laurentian to the Ministry, dated January 25, 2021. Laurentian has described the letters as containing "information with respect to [Laurentian] and certain of its stakeholders, including various rights or positions that stakeholders or [Laurentian] may take either inside or outside of these CCAA proceedings, the disclosure of which could jeopardize [Laurentian's] efforts to restructure."

[11] None of the moving parties sought to cross-examine Dr. Haché on his affidavit or the communications between Laurentian and the Ministry.

[12] The CCAA judge released his supplementary endorsement on February 26, 2021, continuing the sealing provision. The effect of the sealing provision is that both the broader public and the parties to the CCAA proceeding are prevented from accessing the Exhibits.

[13] The CCAA judge held that the sealing provision was authorized under s. 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and by the application of the principles in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002

SCC 41, [2002] 2 S.C.R. 522. According to *Sierra Club*, at para. 53, a confidentiality or sealing order should only be granted when:

(a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably 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 CCAA judge summarized the evidence in Dr. Haché's affidavit and noted that he had reviewed the Exhibits in detail. He indicated that the evidence, as contained in Dr. Haché's affidavit, outlines that there has been continuous communication between Laurentian and the Ministry with respect to Laurentian's financial crisis, and that the government is well aware that a real-time solution must be found if Laurentian is to survive. He noted that "the role, if any, that the Ministry will play is at this moment uncertain."

[15] Considering the first branch of the *Sierra Club* test, he concluded that disclosure of the Exhibits, "at this time, could be detrimental to any potential restructuring of [Laurentian]" (emphasis added). Accordingly, "the risk in disclosing the Exhibits is real and substantial and poses a serious risk to the

future viability of [Laurentian].” He also noted that “it is speculative to conclude that the Exhibits contain information that is not helpful to [Laurentian’s] position.”

[16] He found that the commercial interest was that of the entire Laurentian community, including the faculty, students, employees, third-party suppliers and the City of Greater Sudbury and the surrounding area; that it is of paramount importance to these groups that all efforts to restructure Laurentian be explored; and that it is necessary to maintain the confidentiality of the Exhibits in order to do so. He reiterated that “[t]he disclosure of the Exhibits, at this time, could undermine the restructuring efforts being undertaken by [Laurentian]” (emphasis added).

[17] He was not satisfied that there were any reasonable alternatives to a sealing order over the Exhibits. Stakeholders were involved in the mediation and the negotiations could or could shortly be at a sensitive stage. It would not be appropriate to implement any alternative to a confidentiality order. To do so could negatively impact the mediation efforts.

[18] Turning to the second branch of the *Sierra Club* test, the CCAA judge was also satisfied, based on the evidence, that the salutary effects of the sealing provision outweighed its deleterious effects, including the public interest in accessing the Exhibits.

Leave Test

[19] Section 13 of the CCAA provides that any person dissatisfied with an order or a decision made under the CCAA may appeal from the order or decision with leave. Leave to appeal in CCAA proceedings is to be granted sparingly and only where there are serious and arguable grounds that are of real and significant interest to the parties. This cautious approach is a function of several factors.

[20] First, a high degree of deference is owed to discretionary decisions made by judges supervising CCAA proceedings, who are “steeped in the intricacies of the CCAA proceedings they oversee”. Appellate intervention is justified only where the “supervising judge erred in principle or exercised their discretion unreasonably”: 9354-9186 *Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, 78 C.B.R. (6th) 1, at paras. 53 to 54.

[21] Second, CCAA proceedings are dynamic. It is often “inappropriate to consider an exercise of discretion by the supervising judge in isolation of other exercises of discretion by the judge in endeavouring to balance the various interests”: *Edgewater Casino Inc. (Re)*, 2009 BCCA 40, 51 C.B.R. (5th) 1, at para 20.

[22] Third, CCAA restructurings can be time sensitive. The existence of, and delay involved in, an appeal can be counterproductive to a successful restructuring.

[23] In addressing whether leave should be granted, the court will consider four factors, specifically whether:

- (a) the proposed appeal is *prima facie* meritorious or frivolous;
- (b) the points on the proposed appeal are of significance to the practice;
- (c) the points on the proposed appeal are of significance to the action; and
- (d) whether the proposed appeal will unduly hinder the progress of the action.

See: *Nortel Networks Corp. (Re)*, 2016 ONCA 332, 130 O.R. (3d) 481, at para. 34.

Leave is Not Warranted

[24] As we will explain, we refuse to grant leave because the proposed appeal is not *prima facie* meritorious, granting leave would unduly hinder the progress of the action, and the proposed appeal is not of significance to the action. This is not an appropriate case for this court to explore issues of significance to the practice relating to the granting of sealing orders in the CCAA context.

Leave Not *Prima Facie* Meritorious

[25] The moving parties raise three questions for determination on their proposed appeal, which we paraphrase as follows:

1. Did the CCAA judge err in focussing solely on Laurentian's assertion of an important commercial interest without balancing the various competing interests applicable to a sealing order?

2. Did the CCAA judge err in granting the sealing provision without a sufficient evidentiary foundation?

3. Did the CCAA judge err in concluding that the sealing provision was justified as a result of speculative concerns about the impact that disclosure of the Exhibits that were sealed would have on the CCAA restructuring process?

[26] A significant plank of the moving parties' argument is that the sealing provision denies access to the sealed documents to parties to the CCAA process on the ostensible ground that the documents might have an impact on the positions those parties choose to take vis-à-vis the restructuring. They argue that the importance of the documents to the formulation of their positions is the exact reason why they should have access to the documents, not a justification for denying access to them.

[27] We note that one of the moving parties, OCUFA, is not a creditor of Laurentian and is apparently not participating in the court-ordered mediation, the aim of which is a consensual restructuring. It is not clear in what sense OCUFA is a party to the CCAA proceeding or is in any different position than any other member of the public who may be interested in the court-filed materials. Yet the moving parties do not differentiate, in their proposed appeal questions or in the relief they propose to seek, between the entitlements of OCUFA to obtain the documents and those of the other moving parties. In other words, although reference is made to the denial of access to "litigants", the underlying theory of

the moving parties actually starts and stops with the proposition that there should be no sealing order at all.

[28] We are not persuaded that the proposed appeal, challenging what is a discretionary order, is *prima facie* meritorious.

[29] The CCAA judge set out the *Sierra Club* test in his reasons. Contrary to the submissions of the moving parties, he was well aware that *Sierra Club* required him to balance the deleterious effects of the sealing order.

[30] In earlier reasons, the CCAA judge noted that if the restructuring is to be successful, it will have to be largely completed by the end of April 2021. The timeline is exceptionally short. In exercising his discretion, the CCAA judge concluded that the risk to the potential restructuring of Laurentian within this extremely tight timeframe if the Exhibits were disclosed outweighed other relevant interests.

[31] The moving parties were (and are) concerned that they understand the Ontario government's position in relation to the restructuring, yet they did not seek to cross-examine Dr. Haché. The CCAA judge, who reviewed the Exhibits, strove to address that concern, carefully signaling that "the role, if any, that the Ministry will play is at this moment uncertain." Alive to concerns about fairness, he also signaled to the parties that it would be "speculative to conclude that the Exhibits contain information that is not helpful to [Laurentian's] position."

[32] The moving parties have expressed particular concern that the sealing order creates an informational imbalance that may hurt them in the mediation process. Nothing before us suggests that the moving parties who are participating in the court-ordered mediation (which appears to be only LUFA) have been hampered by any informational imbalance. The judicial mediator, who was appointed by the CCAA judge, is a bulwark against unfair treatment in the mediation. Should the judicial mediator have concerns that the moving parties have been hampered in the mediation by an informational imbalance or a perceived informational imbalance, it is open to him to raise them with the CCAA judge within the parameters of the February 5, 2021 order appointing the mediator.

[33] Nor do we see anything in the sealing provision that would prevent a party from making a request to the CCAA judge, at the appropriate time, for relief on appropriate terms. As noted, the sealing provision is expressly subject to “further order of the Court”. The CCAA judge in his reasons of February 26 said only that an alternative to the sealing provision was not appropriate “at this time”.

[34] In seeking leave, the moving parties have raised questions about how s. 2(d) of the *Charter of Rights and Freedoms* comes into play, as one of the purposes of the mediation is to conclude a new collective agreement with LUFA. But they do not dispute Laurentian’s submission that this issue was not argued

below. It is difficult to fault the CCAA judge for not weighing a competing interest that was not asserted before him.

[35] The moving parties also say that the CCAA judge failed to advert to the impact his ruling would have on freedom of expression. We are satisfied he did take that factor into account, as he mentions it in setting out the test and later says that the deleterious effects include “the public interest in accessing the Exhibits.”

[36] The second and third questions raised by the moving parties ask the court to revisit an issue raised before the CCAA judge. He described the essence of the submissions made to him by those opposing the sealing order as there being no evidence that the sealing order was necessary to protect a valid commercial interest.

[37] The CCAA judge was satisfied that there was a sufficient evidentiary basis. He based his conclusion that disclosing the Exhibits posed a serious risk to the restructuring on his review of the Exhibits and Dr. Haché’s evidence. The moving parties are correct that Dr. Haché did not opine in his affidavit that disclosure of the Exhibits posed a serious risk to the viability of the restructuring. But Dr. Haché’s evidence describes something of the dynamics at play and is clear as to Laurentian’s dire position and the timeframe within which the restructuring must be completed, if it is to be successful. It provided the foundation on which the

Monitor, an officer of the court, supported Laurentian's position that disclosure posed a serious risk, and the CCAA judge, who has extensive experience in CCAA restructurings, concluded that disclosure posed a serious risk. The CCAA judge exercised his judgment, based on an evidentiary record.

[38] The fact the proposed appeal is not *prima facie* meritorious weighs significantly against granting leave.

Appeal Would Hinder Progress of the Action

[39] As we have said, this restructuring is on an exceptionally short timeline. We are told that the mediation is ongoing, with sessions occurring daily. There is urgency to being able to reach a successful restructuring by the end of April, in light of Laurentian's financial position and the need for certainty regarding the next academic year. There is too great a risk that an appeal would be a distraction from restructuring efforts and thus would unduly hinder the progress of the action, which also weighs significantly against granting leave.

No Significance to the Action

[40] Given the involvement of a court-appointed mediator and that it is open to the CCAA judge to revisit the sealing provision and possibly revoke it or limit its impact by allowing the parties to the CCAA proceeding to access the sealed documents, the significance of the proposed appeal to the action is insufficient to justify leave.

Significance to the Practice

[41] The facts of this case highlight some novel and interesting questions about the application of the *Sierra Club* test in the CCAA context. These include questions about granting sealing orders over information filed in support of the application for protection under the CCAA, the granting of sealing orders where interests under s. 2(d) of the *Charter* are arguably at play, and about the application of sealing orders to parties and stakeholders involved in the restructuring efforts. However, given our view of the merits of the proposed appeal and the other factors, this is not the appropriate case in which to explore these issues.

Disposition

[42] Leave to appeal is refused. In the circumstances, there shall be no order as to costs.

Deborah M.

Stefan M.

B. B. v. A.

**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

Court of Appeal File No. M52471
Superior Court File No.: CV-21-656040-00CL

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

**MOTION RECORD OF THE MOVING PARTY
(VOLUME 2 OF 2)
(Motion by Thorneloe University
for Leave to Appeal)**

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