

**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

**FACTUM OF THE APPLICANT
(Claims Process and CRO Appointment)**

May 26, 2021

Thornton Grout Finnigan LLP
100 Wellington Street West
Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

D.J. Miller (LSO# 34393P)
Email: djmiller@tgf.ca

Mitchell W. Grossell (LSO# 69993I)
Email: mgrossell@tgf.ca

Andrew Hanrahan (LSO# 78003K)
Email: ahanrahan@tgf.ca

Derek Harland (LSO# 79504N)
Email: dkharland@tgf.ca

Tel: 416-304-1616
Fax: 416-304-1313

Lawyers for the Applicant

**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

FACTUM OF THE APPLICANT

PART I - OVERVIEW

1. On February 1, 2021, Laurentian University of Sudbury (“LU” or the “**Applicant**”) commenced proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”). This step was taken as a result of an extreme liquidity crisis forcing the Applicant to either: (i) commence insolvency proceedings in an effort to restructure and save the university; or (ii) close its doors, as the Applicant would otherwise be unable to meet payroll obligations during the month of February.
2. During the first phase of this CCAA proceeding, the Applicant has taken significant steps to restructure its operations in order to move toward financial sustainability. Ensuring the Applicant's survival as a going concern was the result of extraordinary efforts made by the Applicant and certain stakeholders to achieve agreement on several foundational aspects of the restructuring.
3. The relief sought on this motion seeks to continue to advance the Applicant's restructuring efforts. The Applicant seeks the following two Orders:

- (a) an Order appointing Mr. Louis (Lou) Pagnutti as Chief Redevelopment Officer of the Applicant and approving the terms of his engagement; and
 - (b) an Order approving the claims process established by the Applicant and the Monitor to identify the universe of potential claims that may exist against the Applicant, in order to allow the Applicant and the Monitor to address such claims in contemplation and formulation of a Plan of Compromise or Arrangement (“**Plan**”).
- 4. In addition, the Applicant requests that this Court grant an endorsement that amends paragraph 36 of the Amended and Restated Initial Order to increase the maximum amount of fees and disbursements of the Board of Governors’ (the “**Board**”) independent counsel (“**Board Counsel**”) that is permitted to be paid by the Applicant from \$250,000, plus HST, to a maximum amount of \$500,000, plus HST.
- 5. The Court is asked to grant the relief requested by the Applicant for the following reasons:
 - (a) **Appointment of CRO.** The proposed Chief Redevelopment Officer, Mr. Louis (Lou) P. Pagnutti (the “**CRO**”) has extensive experience in overseeing business functions in large and complex organizations and is also well-suited to assist the Applicant given his local ties to Sudbury and the university;
 - (b) **Claims Process.** The proposed Claims Process is a fair, efficient, and reasonable process for the determination and resolution of all Claims against the Applicant and its Directors and Officers. The Claims Process has been tailored to the specific context of this CCAA proceeding and provides for a cost-effective and streamlined adjudication of all Claims; and
 - (c) **Increase to Fees of Board Counsel:** Board Counsel has been busy throughout this CCAA proceeding to address and advise on issues relevant to the Board and as the

proposed Claims Process commences, it is expected that the Board will continue to require the advice of Board Counsel, necessitating an increase of the cap of fees incurred by Board Counsel.

PART II - FACTS

A. Background

6. The background of this CCAA proceeding is described in further detail in the Affidavit of Robert Haché sworn May 21, 2021 (the “**Haché CRO Affidavit**”), in support of the appointment of the CRO. All capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Haché CRO Affidavit or the draft Claims Process Order located at Tab 3 of the Motion Record of the Applicant (Claims Process) dated May 21, 2021 (the “**Claims Process Motion Record**”). All references to currency are in Canadian dollars unless otherwise noted.

B. Appointment of the Chief Redevelopment Officer

7. The relevant facts are set out in this section and are more fully described in the Haché CRO Affidavit.
8. As the Applicant embarks on the next phase of this restructuring, it has taken into consideration the feedback received from its stakeholders that it must review its governance and policies so that the Applicant can identify and implement best practices

going forward to avoid similar liquidity events precipitating this CCAA proceeding in the future.¹

9. In response to this feedback and consistent with its commitment to undertake a full governance review, including pursuant to the LUFA Term Sheet, the Applicant is of the view that retaining the services of an individual with a vast depth of experience in the operational and business functions of complex organizations is an opportunity for the Applicant to take significant strides in the review of its overall governance.²
10. In addition, the Applicant envisions that this Phase 2 of the CCAA proceeding will involve, among other things, the re-building of confidence and relationships with students, faculty, staff, donors, research-granting agencies, lenders and the communities served by the Applicant.³ The CRO will be instrumental in assisting the Applicant with the rebuilding of its relationships with these stakeholders.
11. Phase 2 of the restructuring will continue to proceed on a tight timeline to ensure that the main aspects can be completed over the summer and prior to the Applicant welcoming students back for the Fall semester in September 2021. The Applicant will be fully engaged in a comprehensive review of the university's governance, operations and business functions, which will be carried out in consultation with its numerous stakeholders.⁴

¹ Haché CRO Affidavit at para. 18, Motion Record of the Applicant dated May 21, 2021 (CRO Appointment) (the “**CRO Motion Record**”), Tab 2.

² Haché CRO Affidavit at para. 19, CRO Motion Record, Tab 2.

³ Haché CRO Affidavit at para. 19, CRO Motion Record, Tab 2.

⁴ Haché CRO Affidavit at paras. 20-21, CRO Motion Record, Tab 2.

12. In an effort to minimize disruption to the operations of the Applicant and obtain additional resources, expertise and strategic guidance, the Applicant seeks the appointment by the Court of the CRO who is experienced in the oversight of complicated business functions to assist with the Applicant's restructuring, provide strategic advice to the Applicant and support the Applicant's senior leadership team, including the President and Vice-Chancellor.⁵
13. The Applicant seeks to appoint the CRO as soon as possible in order to become acquainted with the business functions of the Applicant through discussions with, among others, the Board, the Applicant's leadership team, labour unions and other key stakeholders.⁶
14. The CRO represents a "new face" in this proceeding, who is unburdened by any history or by the difficult cost-cutting steps taken by the Applicant in Phase 1 of the restructuring. The Applicant is of the view that the CRO will provide a fresh perspective and assist the university in moving to a financially sustainable and successful future.⁷
15. Pursuant to the CRO engagement letter dated May 17, 2021 (the "**CRO Engagement Letter**"), the Applicant agreed to apply to the Court for an Order: (a) appointing the CRO, (b) approving the scope of duties set out in the CRO Engagement Letter and any others that may be contained in the Order; and (c) providing for the payment of the fees and expenses of the CRO and protections to be granted to the CRO.⁸

⁵ Haché CRO Affidavit at para. 23, CRO Motion Record, Tab 2.

⁶ Haché CRO Affidavit at para. 25, CRO Motion Record, Tab 2.

⁷ Haché CRO Affidavit at para. 26, CRO Motion Record, Tab 2.

⁸ Haché CRO Affidavit at para. 29, CRO Motion Record, Tab 2.

16. Compensation to the CRO is at an hourly rate of \$650/hour (up to a maximum of 80 hours each month) and the repayment of reasonable out-of-pocket expenses, plus applicable taxes. There is no additional “success fee” component to the CRO’s compensation.⁹
17. The Monitor has reviewed the proposed fees and disbursements set out in the CRO Engagement Letter and believes them to be fair and reasonable in the circumstances.¹⁰
18. The CRO is formerly from Sudbury, is well-known in the Sudbury community, and is an alumni and significant personal donor of the Applicant.¹¹
19. The CRO has extensive experience on the boards of both not-for-profit corporations and large business operations. The CRO was also previously a member of the Global Executive Board of Ernst & Young.¹²

C. Claims Process Order

20. The relevant facts are set out in this section and are more fully described in the Affidavit of Robert Haché (Claims Process) sworn May 21, 2021 (the “**Haché Claims Process Affidavit**”) and the Fourth Report of the Monitor, to be filed.
21. In order to permit the Applicant to continue with its restructuring efforts on an expedited basis, the Applicant seeks the approval of this Court to undertake a process to identify, determine and resolve certain claims of its creditors (the “**Claims Process**”).¹³

⁹ Haché CRO Affidavit at para. 29, CRO Motion Record, Tab 2.

¹⁰ Haché CRO Affidavit at para. 31, CRO Motion Record, Tab 2.

¹¹ Haché CRO Affidavit at para. 32, CRO Motion Record, Tab 2.

¹² Haché CRO Affidavit at paras. 33-34, CRO Motion Record, Tab 2.

¹³ Haché Claims Process Affidavit at para. 8, Claims Process Motion Record, Tab 2.

22. The Claims Process will be conducted in order to identify and determine for voting and/or distribution purposes the potential universe of claims that may exist against LU, to allow LU to deal with such claims and formulate a Plan.¹⁴
23. The Applicant's proposed Claims Process is embodied in the Claims Process Order located at Tab 3 of the Claims Process Motion Record, which has been prepared by the Applicant, in consultation with the Monitor and its counsel. The Monitor supports the proposed Claims Process Order.¹⁵

PART III - ISSUES

24. The following three issues must be determined on the motions brought by the Applicant:
- (a) Should this Court approve the CRO Engagement Letter and appoint Mr. Pagnutti as CRO of the Applicant?
 - (b) Should this Court approve the proposed Claims Process as reflected in the draft Claims Process Order included in the Applicant's Claims Process Motion Record?
 - (c) Should this Court increase the maximum amount of fees and disbursed that the Applicant is permitted to pay from \$250,000 to \$500,000?

PART IV - LAW AND ANALYSIS

Issue 1: This Court should approve the CRO Engagement Letter

25. The Applicant seeks an order approving the engagement of Mr. Pagnutti as CRO pursuant to the terms set out in the CRO Engagement Letter. The CRO Engagement Letter also sets

¹⁴ Haché Claims Process Affidavit at para. 8, Claims Process Motion Record, Tab 2.

¹⁵ Haché Claims Process Affidavit at para. 9, Claims Process Motion Record, Tab 2.

out the compensation to be received by the CRO for its services to be provided throughout these CCAA proceedings.

26. The Court has held that the appointment of a CRO is appropriate as such expertise will assist the debtor in achieving the objectives of the CCAA.¹⁶ The Court has the statutory jurisdiction to make any order appropriate in the circumstances pursuant to section 11 of the CCAA.¹⁷
27. The Applicant would greatly benefit from the CRO's expertise in order to successfully complete its restructuring and rebuild the Applicant's relationships with key stakeholders. The CRO's experience and expertise will also be invaluable to assist the Applicant while it undertakes a comprehensive review of its governance and policies and continues discussions with the Applicant's stakeholders, including unions, members of the Indigenous and Francophone communities, faculty, staff, students, donors, research-granting agencies, pre-filing lenders and the communities served by the Applicant.
28. The proposed CRO, Mr. Pagnutti, is experienced and has the skills necessary to assist with the Applicant's rebuilding efforts during the CCAA proceeding, which will require considerable work. The Applicant has determined it will benefit from the assistance of Mr. Pagnutti.
29. In addition to being a highly experienced business professional who has held senior leadership roles in Canada and globally, Mr. Pagnutti was born and raised in Sudbury and

¹⁶ [*Walter Energy Canada Holdings, Inc., Re*, 2016 BCCS 107 at para. 35; *JTI-MacDonald Corp., Re*, 2019 ONSC 1625 \[Commercial List\] at paras. 26-27.](#)

¹⁷ [*Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 \("CCAA"\), s. 11.](#)

is well-known in the Sudbury community. He is committed to the success of the Applicant's restructuring and is uniquely well-suited to understand the importance of the Applicant's role in Northern Ontario.

30. With the assistance of the CRO, management of the Applicant will be able to continue to focus on operations in the ordinary course and minimize disruption to its operations, ultimately maximizing value for its stakeholders.
31. The Monitor has reviewed the CRO Engagement Letter and supports the appointment of the CRO.

Issue 2: This Court should approve the proposed Claims Process Order

A. The Court has the Discretion to Approve the Claims Process Order

32. The Court's general power under section 11 of the CCAA includes the authority to approve a process to solicit claims against a debtor company. This authority is "well accepted" in CCAA proceedings.¹⁸
33. This Court routinely approves claims processes in connection with the CCAA restructuring process.¹⁹
34. The Court's jurisdiction to approve of a claims bar date arises from sections 11 and 12 of the CCAA. Section 12 of the CCAA provides that "the court may fix deadlines for the purposes of voting and for the purpose of distributions under a compromise or

¹⁸ [*ScoZinc Ltd., Re*, 2009 NSSC 136 \("*ScoZinc*"\) at para. 25.](#)

¹⁹ [*Re Toys "R" Us \(Canada\) Ltd.*, 2018 ONSC 609 \[Commercial List\] \("*Toys "R" Us*"\) at para. 8; *US Steel Canada Inc., Re*, 2017 ONSC 1967 at paras. 5-6.](#)

arrangement.”²⁰ This power has routinely been held by courts to enable a claims bar process.²¹

B. It is Appropriate for the Court to Approve the Claims Process Order

35. Claims processes assist organizations under the protection of the CCAA in determining the universe of claims against the debtor entity for the purposes of, among other things, voting on a Plan and/or determining potential distributions to creditors. A claims process provides certainty for the debtor and its stakeholders in making informed choices about restructuring options. These orders should be both flexible and expeditious.²²
36. The proposed Claims Process meets the purpose of claims processes generally, which is “to streamline the resolution of the multitude of claims against an insolvent debtor in the most time sensitive and cost-efficient manner”.²³
37. The proposed Claims Process is a fair, efficient, and reasonable process for the determination and resolution of all Claims against the Applicant and its Directors and Officers. The Claims Process has been tailored to the specific context of this CCAA proceeding and provides for the efficient, cost-effective, and streamlined adjudication of all Claims against the Applicant and its Directors and Officers.

²⁰ [CCAA, s. 12.](#)

²¹ [Toys “R” Us at para 8; Timminco Ltd., Re, 2014 ONSC 3393 \(“Timminco”\) at para. 40.](#)

²² [Timminco at para. 32; ScoZinc at para. 23.](#)

²³ [Canwest Global Communications Corp. \(Re\), 2011 ONSC 2215 at para. 40.](#)

C. It is Appropriate for Compensation Claims to be Excluded Claims at this Time to Permit the Applicant and the Monitor to more fully Develop the Compensation Claims Methodology

38. It is appropriate for this Court to direct the Applicant to establish a methodology for calculating Compensation Claims as part of the Claims Process Order. Separate procedures for specific categories of claims have been approved by this Court in a number of instances.²⁴
39. Most employees are not in a position to accurately value their potential Compensation Claims against the Applicant due to a lack of necessary information, the complexity of the calculations and that certain claims may require actuarial valuation. The Applicant anticipates a number of employee-related claims in this matter, including in respect of benefits and supplemental unregistered pension related issues.
40. In order to ensure a fair, consistent and efficient process for dealing with Compensation Claims, it is in the best interests of the employees and former employees for a methodology to be developed by the Applicant and the Monitor, in consultation with LUFA and LUSU, to govern the calculation of all such claims and for the Compensation Claims Methodology to be approved by the Court. The Applicant and the Monitor intend to bring the proposed methodology to the Court for approval by no later than July 30, 2021.
41. Given the timeline in which the Applicant is seeking to address its restructuring, this process will streamline the manner in which individual claims of a similar nature can be

²⁴ [*Sears Canada Inc., Re*, Order of Justice Hainey dated February 22, 2018 \(Employee and Retiree Claims Procedure Order\)](#); [*Target Canada Co., Re*, Order of Justice Morawetz dated October 21, 2015 \(Employee Trust Claims Procedure Order\)](#).

determined and adjudicated, if necessary. The establishment of a Compensation Claims Methodology that is approved by the Court represents a fair, efficient, and reasonable process for the establishment of the Compensation Claims Methodology and ultimately, the determination and resolution of all Compensation Claims against the Applicant and its Directors and Officers.

42. For all of the foregoing reasons, the Applicant respectfully requests that this Court approve the Claims Process Order.

Issue 3: This Court Should Approve the Maximum Amount of Fees that the Applicant is Permitted to Pay to Board Counsel

43. The Board has been extremely busy during the CCAA proceeding so far dealing with various issues that have arisen as a result of the CCAA proceeding. Since the commencement of the CCAA proceeding, the Board sought the advice of Board Counsel and took steps to put in place significantly enhanced financial controls and has worked vigorously to ensure that it is providing the appropriate oversight and direction to Dr. Haché and the senior management team to ensure that the Applicant's processes continue to improve.
44. At the same time, the Board has made efforts to stabilize relations with other external stakeholders and strategic partners such as student government leadership, the unions, the community of Sudbury, key and prospective donors and the provincial government, among others.
45. The Board and Board Counsel have been involved in the proposed appointment of the CRO and has dealt with several issues related to the Northern Ontario School of Medicine.

46. Finally, the Board is comprised completely of volunteer members. The Board remains deeply committed to the survival and viability of the Applicant. As a result, the Board expects that there remains a significant amount of work to be completed on behalf of the Board in the coming weeks to ensure that the momentum of the Applicant's restructuring continues for the benefit of all stakeholders.
47. For these reasons, the Applicant is of the view that an increase in the maximum amount of fees payable by the Applicant to Board Counsel should be increased from \$250,000 to \$500,000.

PART V - RELIEF REQUESTED

48. For all of the foregoing reasons, the Applicant requests that this Court grant the CRO Appointment Order and the Claims Process Order, located at Tab 3 of the CRO Motion Record and Tab 3 of the Claims Process Motion Record, respectively.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of May, 2021.

Thornton Grout Finnigan LLP

Thornton Grout Finnigan LLP

Counsel for the Applicant

SCHEDULE “A” – LIST OF AUTHORITIES

1. [Walter Energy Canada Holdings, Inc., Re, 2016 BCCS 107.](#)
2. [JTI-MacDonald Corp., Re, 2019 ONSC 1625 \[Commercial List\].](#)
3. [ScoZinc Ltd., Re, 2009 NSSC 136.](#)
4. [Re Toys “R” Us \(Canada\) Ltd., 2018 ONSC 609 \[Commercial List\].](#)
5. [US Steel Canada Inc., Re, 2017 ONSC 1967.](#)
6. [Timminco Ltd., Re, 2014 ONSC 3393.](#)
7. [Canwest Global Communications Corp, \(Re\), 2011 ONSC 2215.](#)
8. [Sears Canada Inc., Re, Order of Justice Hainey dated February 22, 2018 \(Employee and Retiree Claims Procedure Order\).](#)
9. [Target Canada Co., Re, Order of Justice Morawetz dated October 21, 2015 \(Employee Trust Claims Procedure Order\).](#)

SCHEDULE “B” – RELEVANT STATUTES

Companies’ Creditors Arrangement Act

Section 11

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Section 12

12 The court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.

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

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

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

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

Proceedings commenced at Toronto

**FACTUM OF THE APPLICANT
(Claims Process and CRO Appointment)**

Thornton Grout Finnigan LLP
3200 – 100 Wellington Street West
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

D.J. Miller (LSO# 34393P)
Email: djmiller@tgf.ca

Mitchell W. Grossell (LSO# 69993I)
Email: mgrossell@tgf.ca

Andrew Hanrahan (LSO# 78003K)
Email: ahanrahan@tgf.ca

Derek Harland (LSO# 79504N)
Email: dkharland@tgf.ca

Tel: 416-304-1616
Fax: 416-304-1313

Lawyers for the Applicant