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**

Applicant

MOTION RECORD
(CRO Appointment: Returnable May 28, 2021)

May 21, 2021

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NOTICE OF MOTION
(CRO Appointment)

Laurentian University of Sudbury (the "**Applicant**" or "**LU**") will make a motion to Chief Justice Morawetz of the Ontario Superior Court of Justice on Friday, May 28, 2021, at 8:30 A.M. (Eastern Time), or as soon after that time as the motion can be heard, via Zoom videoconference due to the COVID-19 pandemic.

PROPOSED METHOD OF HEARING:

This motion is to be heard via Zoom videoconference, the details of which are attached at Schedule "**A**".

THIS MOTION IS FOR:

1. An Order (the "**Order**") substantially in the form attached at Tab 3 of the Motion Record of the Applicant dated May 21, 2021 that, among other things:

    (a) approves the engagement letter between the Applicant and Mr. Louis (Lou) P. Pagnutti dated May 17, 2021 (the "**CRO Engagement Letter**");

(b) appoints Mr. Louis (Lou) P. Pagnutti as Chief Redevelopment Officer (in such capacity, the "**CRO**") of the Applicant, an officer of the Court and not a director, officer or employee of the Applicant;

(c) authorizes the Applicant to pay the fees and disbursements of the CRO in accordance with the terms of the CRO Engagement Letter; and

(d) extends the stay of proceedings to the CRO.

2. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

Overview

3. On February 1, 2021, the Applicant sought and received an initial order (the "**Initial Order**") granting it protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and approving a stay of proceedings for the initial 10-day period (the "**Stay Period**") and certain Court ordered super-priority charges.

4. On February 10, 2021, the Court held a comeback hearing which resulted in the issuance of an amended and restated initial order (the "**Amended and Restated Initial Order**") which, among other things, approved a debtor-in-possession interim financing arrangement in the amount of $25 million (the "**DIP Facility**") and extended the Stay Period to April 30, 2021.

5. On April 29 and 30, 2021, the following motions were heard by the Court:

(a) the Applicant's motion requesting the following relief: (i) an extension of the Stay Period up to and including August 31, 2021, (ii) the approval of a DIP amendment agreement (the "**DIP Amendment**") and increase to the DIP Facility and (iii) the approval of the term sheets entered into with LUFA and LUSU and the Huntington Transition Agreement (the "**Stay Extension and Approval Motion**");

(b) a joint cross motion by Thorneloe University and University of Sudbury opposing the approval of the DIP Amendment;

(c) a motion by Thorneloe University seeking to set aside the Notice of Disclaimer of the Federation Agreement and the Financial Distribution Notice between LU and Thorneloe University; and

(d) a motion by University of Sudbury seeking to set aside the Notice of Disclaimer of the Federation Agreement and the Financial Distribution Notice between LU and the University of Sudbury.

6. On May 2, 2021, Chief Justice Morawetz and Justice Gilmore independently released brief endorsements that: (i) granted the Stay Extension and Approval Motion, and (ii) dismissed the respective motions of Thorneloe University and University of Sudbury.

7. On May 7, 2021, the Court issued an Order (dated May 2, 2021) granting the relief sought by the Applicant at the Stay Extension and Approval Motion.

8. Throughout these CCAA proceedings, the Applicant has operated in accordance with the Amended & Restated Initial Order, as amended by the Stay Extension and Approval

Motion, and has attempted to minimize the impact of these CCAA proceedings on students and other stakeholders, recognizing that a restructuring of this nature creates uncertainty and some disruption.

Appointment of the CRO

9. As the Applicant embarks on the next phase of its restructuring, the Applicant has taken into consideration the feedback received from its stakeholders that the Applicant must review its governance and policies so that the Applicant can identify potential issues at an early stage and take action to address any issues swiftly and decisively. Such changes to the Applicant's governance and policies are to be a safeguard to prevent the need to take drastic action, such as this CCAA proceeding, in the future.

10. In response to this feedback and as an initial step, the Applicant has identified that it will be beneficial to seek the appointment of an individual with a vast depth of experience in the operations and business functions of complex organizations with many stakeholders holding different interests.

11. The Applicant envisions that the next phase of the CCAA proceeding will involve, among other things:

    (a) the re-building of confidence and relationships with students, faculty, staff, donors and research-granting agencies, lenders, the communities served by the Applicant and all other stakeholders of the Applicant;

(b) the arbitration of certain remaining collective agreement provisions with the Laurentian University Faculty Association ("**LUFA**");

(c) the resolution of numerous pre-filing LUFA grievances;

(d) finalization and implementation of amendments made to the Applicant's pension plan;

(e) commencement of and/or continuation of a consultation process with l'Assemblée de la francophonie de l'Ontario, the Applicant's pre-filing lenders and other stakeholders;

(f) commencement of a claims process to identify and solicit pre-filing and restructuring claims against the Applicant;

(g) a review of existing assets of the Applicant and consultations with stakeholders with respect to monetization of same for the benefit of creditors and future efficiencies;

(h) consideration and negotiations as to all available sources of cash to fund a plan of compromise and arrangement (a "**Plan**") for the benefit of the Applicant's creditors;

(i) the formulation of a Plan or framework of a Plan;

(j) a review of internal governance and operations in order to identify and implement best practices for the future; and

(k) taking all appropriate steps to preserve and strength the bilingual and tricultural mandate of the Applicant,

(collectively, the "**Phase 2 Objectives**").

12. Phase 2 of the CCAA restructuring (covering the period May 1 to August 31, 2021) will require a comprehensive review of the university's governance, operations and business functions. This will involve the engagement of and input from many personnel of the Applicant who are knowledgeable in their specific departments, including the gathering and sharing of information, and consultation with numerous stakeholders.

13. Phase 2 of the restructuring will also involve 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. This will help to ensure that any disruption to students is minimized, and all LU personnel involved in the restructuring can once again focus entirely on the needs of students and the LU community in September, 2021.

14. 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 a CRO who is experienced in the oversight of complicated business functions to assist with phase 2, provide strategic advice, support the senior leadership team of the Applicant, and ultimately assist the Applicant with finalizing and exiting from the CCAA proceeding.

15. The Applicant proposes that the CRO be appointed as an officer of the Court. The CRO will not be a director, officer or employee of the Applicant.

Necessity of the CRO

16. The Applicant requests that the CRO be appointed as soon as possible in order to become acquainted with the business functions of the Applicant through discussions with, among others, the Applicant's: (i) Board of Governors; (ii) leadership team; (iii) labour unions; and (iv) other key stakeholders.

17. The CRO grew up in Sudbury and attended LU for his undergraduate degree, however, he is wholly independent and not yet familiar wit the details of the Applicant's operations and the interests of its many stakeholders.

18. As previously mentioned, the Applicant views the appointment of the CRO as a first step towards the review and implementation of best practices for the Applicant's internal governance and policies. The CRO will be able to lend his independent expertise to expedite and assist with the overall operational restructuring. The CRO will be able to provide a fresh perspective.

19. The CRO will be available to supplement and support discussions with numerous stakeholders of the Applicant, including the Applicant's: (i) labour partners; (ii) pre-filing lenders, (iii) representatives of the Indigenous and Francophone communities; (iv) the Provincial and Federal governments and various ministries thereof, (v) the City of Sudbury; and (vi) the broader community, donors, alumni and research-granting agencies, among others.

20. The CRO's duties will include supporting the President and Vice-President of the Applicant in: (a) the review of the Applicant's current operations, (b) engagement with the

Applicant's stakeholders regarding the Applicant's current operations and improvements, (c) the strategic direction of the university, (d) the review, expansion or improvements to internal policies and procedures, and (e) the execution and implementation of all of the above.

The CRO Engagement Letter

21. Pursuant to 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.

22. Compensation to the CRO includes an hourly rate of $650/hour (up to a maximum of 80 hours each month) and the repayment of reasonable expenses. There is no "success fee" component to the CRO's compensation.

23. The Applicant and the Monitor have reviewed the proposed fees and disbursements set out in the CRO Engagement Letter and believe them to be fair and reasonable in the circumstances.

Credentials of the CRO

24. The CRO is formerly from Sudbury, is well-known in the Sudbury community, is an alumni of the Applicant with an Honours Bachelor of Commerce degree and a significant personal donor of the Applicant.

25. The CRO is an experienced professional who has experience in managing and overseeing business functions in a complex operational environment

26. The CRO has previously served on the boards of non-profits, including Pathways to Education, which is a program dedicated to helping high school students from low-income and under-represented groups complete high school and pursue post-secondary education). The CRO is currently a director on the Board of BCE, Bell Canada, DLA Piper International LLP and DLA Piper Global.

27. Prior to his corporate director roles, the CRO was a member of the Global Executive Board of Ernst & Young ("**EY**") where he was responsible for EY's business functions around th globe, including strategy and execution for all functions.

28. Given the CRO's experience, the CRO has the requisite skills and experience necessary to complete the duties and obligations set out in the CRO Engagement Letter and to facilitate the achievement of the Phase 2 Objectives.

Other Grounds

29. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court; and

30. Such further and other grounds as counsel may advise and this Court may permit.

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

1. The Affidavit of Dr. Robert Haché sworn May 21, 2021 and the Exhibits attached thereto;

2. The Fourth Report of the Monitor, to be filed; and

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

May 21, 2021

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Schedule "A"
Conference Details to Join Motion via Zoom

Join Zoom Meeting
https://ca01web.zoom.us/j/64211525654?pwd=Q2RJSmUyckN6NGxZZWNTZ3JoV01GZz09

Meeting ID: 642 1152 5654
Passcode: 240794
One tap mobile
+16473744685,,64211525654#,,,,*240794# Canada
+17789072071,,64211525654#,,,,*240794# Canada

Dial by your location
+1 647 374 4685 Canada
+1 778 907 2071 Canada
+1 204 272 7920 Canada
+1 438 809 7799 Canada
+1 587 328 1099 Canada
+1 613 209 3054 Canada
855 703 8985 Canada Toll-free
Meeting ID: 642 1152 5654
Passcode: 240794
Find your local number: https://ca01web.zoom.us/u/gCmyJ4NGH

Join by SIP
64211525654@zmca.us

Join by H.323
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
Meeting ID: 642 1152 5654
Passcode: 240794

Schedule "B"

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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-21-00656040-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

NOTICE OF MOTION
(CRO Appointment)

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TAB 2

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**

Applicant

AFFIDAVIT OF DR. ROBERT HACHÉ
(sworn May 21, 2021)

I, Dr. Robert Haché, of the City of Sudbury, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS**:

I. INTRODUCTION

1. I am the President and Vice-Chancellor of Laurentian University of Sudbury ("**LU**" or the "**Applicant**") and a member of the Board of Governors (the "**Board**") of LU, having served in this role since July 2019. As such, I have knowledge of the matters hereinafter deposed to, save where I have obtained information from others. Where I do not possess personal knowledge, I have stated the source of my information and belief and, in all such cases, believe such information to be true.

2. This affidavit is sworn in support of LU's motion pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**" and such proceedings, the "**CCAA Proceedings**"), for an order appointing Mr. Louis (Lou) P. Pagnutti as the Chief Redevelopment Officer of LU (in such capacity, the "**CRO**").

II. BACKGROUND

3. As detailed in my Affidavit sworn January 30, 2021 (the "**Initial Haché Affidavit**"), LU is a non-share capital corporation that was incorporated pursuant to *An Act to Incorporate Laurentian University of Sudbury*, S.O. 1960, c. 151 C. 154 (the "**Act**"). LU is also a registered charity pursuant to the *Income Tax Act*.

4. Since its inception, LU has operated in Sudbury, Ontario as a publicly-funded, bilingual and tricultural postsecondary institution. LU is an integral part of the economic fabric of Northern Ontario and serves as the primary postsecondary institution for a large geographic region. LU was the first bilingual university in Ontario to be recognized under the *French Languages Services Act*, R.S.O. 1990, c. F.32 (the "**FLSA**") and is proud of its bilingual and tricultural mission.

5. LU primarily focuses on undergraduate programming, with approximately 8,200 total domestic and international undergraduate students (approximately 6,250 full-time equivalents) enrolled in the 2020-21 Fall semester. LU also has a strong graduate program, with approximately 1,100 total domestic and international graduate students (approximately 830 full-time equivalents) enrolled during the 2020-21 fall semester.

6. Of the approximately 6,250 full-time undergraduate students enrolled in the 2020-21 Fall semester, 1,256 full-time equivalent ("**FTE**") students, or approximately 20% are enrolled in French language programs offered at LU. Over 12% of the student population at LU self-identifies as Indigenous.

7. Although LU's overall enrolment numbers for FTE undergraduate students has decreased over the past several years, LU's track record in attracting French-speaking students has

steadily increased. For example, in the 2016 Fall Term, there were 1,037 full-time equivalent undergraduate students enrolled in French-language programs. That number has increased to 1,256 in the 2020 Fall Term. The increase has been steady over several years, meaning that this particular year's enrolment was not a one-off aberration.

8. LU's governance structure is bi-cameral. The Board and the President and Vice-Chancellor generally have powers over the operational and financial management of LU, whereas the Senate of LU (the "**Senate**") is responsible for the academic policy of LU.

III. THE CCAA PROCEEDINGS

9. On February 1, 2021, Chief Justice Morawetz granted an initial order (the "**Initial Order**") that, among other things, appointed Ernst & Young Inc. as monitor (the "**Monitor**") of LU in these CCAA Proceedings, approved a stay of proceedings for the initial 10-day period (the "**Stay Period**") and granted certain Court ordered super-priority charges. Attached hereto as **Exhibit "A"** is a copy of the Initial Order and the related Endorsement issued by Chief Justice Morawetz.

10. On February 10, 2021, the comeback hearing on notice to all affected parties was held, which resulted in the issuance of an amended and restated initial order (the "**A&R Initial Order**") that, among other things, approved a debtor-in-possession interim financing arrangement in the amount of $25 million (the "**DIP Facility**") and extended the Stay Period to April 30, 2021. Attached hereto as **Exhibit "B"** is a copy of the A&R Initial Order and the related Endorsements issued by Chief Justice Morawetz.

11. On March 17, 2021, the Applicant brought a motion for an order (the "**Pension Order**") that, among other things: (i) provided the opportunity for certain members of the pension

plan who had recently elected to receive a lump-sum of 100% of the commuted value transfer to elect or confirm their election to either receive a commuted value transfer payment at the transfer ratio (65.8%) or to receive a deferred or immediate monthly pension benefit payable from the pension plan, and (ii) confirmed that LU's payment in respect of an assessment owing to the Pension Benefits Guarantee Fund were pre-filing obligations and stayed under the A&R Initial Order.

12. On April 29 and 30, 2021, the following motions were heard by the Court:

(a) the Applicant's motion requesting the following relief: (i) an extension of the Stay Period up to and including August 31, 2021, (ii) the approval of the DIP Amendment and increase to the DIP Lender's Charge and (iii) the approval of the term sheets entered into with LUFA and LUSU and the Huntington Transition Agreement (the "**Stay Extension and Approval Motion**");

(b) a joint cross motion by Thorneloe University and University of Sudbury opposing the approval of the DIP Amendment;

(c) a motion by Thorneloe University seeking to set aside the Notice of Declaimer of the Federation Agreement and the Financial Distribution Notice between LU and Thorneloe University; and

(d) a motion by University of Sudbury seeking to set aside the Notice of Disclaimer of the Federation Agreement and the Financial Distribution Notice between LU and the University of Sudbury.

13. Following the conclusion of the motions on April 29 and 30, 2021, the Court reserved its decision, but granted a brief extension of the Stay Period up to and including May 2, 2021.

On May 2, 2021, Chief Justice Morawetz and Justice Gilmore separately released brief initial endorsements (collectively, the "**May 2 Endorsements**"), with reasons to follow that:

(a) granted the entirety of the Applicant's motion, including extending the Stay Period up to and including August 31, 2021, and dismissed the joint cross motion;

(b) dismissed the motion of Thorneloe University; and

(c) dismissed the motion of University of Sudbury.

Attached hereto as **Exhibits "C"**, **"D"** and **"E"** are copies of the May 2 Endorsements.

14. On May 7, 2021, Chief Justice Morawetz and Justice Gilmore released their full reasons with respect to the dismissal of the motions by Thorneloe University and University of Sudbury. Attached hereto as **Exhibits "F"** and "**G**" are copies of the reasons of Chief Justice Morawetz and Justice Gilmore.

15. On May 7, 2021, an Order was issued (dated May 2, 2021) following the Stay Extension and Approval Motion, a copy of which is attached hereto and marked as **Exhibit "H".**

16. On May 14, 2021, Chief Justice Morawetz issued his reasons regarding the Stay Extension and Approval Motion, a copy of which is attached hereto and marked as **Exhibit "I"**.

17. Throughout these CCAA Proceedings, LU has operated in accordance with the A&R Initial Order, as amended by the Stay Extension and Approval Motion, and has attempted to minimize the impact of these CCAA Proceedings on students and other stakeholders, recognizing that a restructuring of this nature creates uncertainty and some disruption.

IV. APPOINTMENT OF THE CHIEF REDEVELOPMENT OFFICER

18. As LU embarks on the next phase of this restructuring, LU has taken into consideration the feedback received from its stakeholders that LU must review its governance and policies so that LU can identify potential issues at an early stage and take action to address any issues swiftly and proactively.

19. In response to this feedback and consistent with its commitment to undertake a full governance review, LU has identified that it will be beneficial to retain the services of an individual with a vast depth of experience in the operations and business functions of complex organizations with many stakeholders holding different interests. For clarity, LU envisions that the next phase of the CCAA Proceeding will involve, among other things:

    (a) beginning to re-build the confidence and relationships with students, faculty, staff, donors and research-granting agencies, lenders, the communities served by LU and all other stakeholders of LU;

    (b) the arbitration of certain remaining collective agreement provisions with LUFA, with the assistance of a labour arbitrator, Mr. William Kaplan;

    (c) the resolution of numerous pre-filing LUFA grievances, with the assistance of Mr. Kaplan;

    (d) finalization and implementation of the pension amendments;

    (e) commencement of and/or continuation of a consultation process with LU's pre-filing lenders and other stakeholders and interested parties, likely both with and without the assistance of the court-appointed Mediator, Justice Sean Dunphy;

(f) commencement of a claims process to identify and solicit pre-filing and restructuring claims against LU;

(g) a review of existing assets at LU and consultations with stakeholders with respect to any opportunities for monetization of particular assets for the benefit of creditors and to ensure future efficiencies;

(h) consideration and negotiations as to all available sources of cash to fund a plan of compromise and arrangement (a "**Plan**") for the benefit of LU's creditors;

(i) the formulation of a Plan or framework of a Plan;

(j) a review of internal governance and operations in order to identify and implement best practices for the future; and

(k) all appropriate steps to preserve and strengthen the bilingual and tricultural mandate of LU,

(collectively, the "**Phase 2 Objectives**").

20. The first phase of the CCAA restructuring (February 1 to April 30, 2021) was very intense from a timing and execution perspective, given the short window within which significant cost savings had to be achieved in order to determine if LU could continue its operations beyond April 30, 2021. Phase 1 of the CCAA restructuring required total dedication by a small group of personnel from LU, its advisors and certain key stakeholders. However, phase 2 of this CCAA restructuring (covering the period May 1 to August 31, 2021) will require a comprehensive review of the university's governance, operations and business functions. This will involve the engagement of and input from many personnel of LU who

are knowledgeable in their specific departments, including the gathering and sharing of information, and consultation with numerous stakeholders.

21. Phase 2 of the restructuring will also involve a tight timeline, to ensure that the main aspects can be completed over the summer and prior to LU welcoming students back for the Fall semester in September 2021. This will help to ensure that any disruption to students is minimized, and all Laurentian personnel involved in the restructuring can once again focus entirely on the needs of students and the Laurentian community in September, 2021.

22. As the university is a complex organization with departments that must interact with each other within a newly-restructured organization with leaner administrative support, phase 2 will require the coordination of many parties and interests, both internal at LU and external.

23. In an effort to minimize disruption to the operations of the Applicant and obtain additional resources, expertise and strategic guidance, LU seeks the appointment by the Court of a CRO who is experienced in the oversight of complicated business functions to assist with phase 2, provide strategic advice to LU, support the senior leadership team including myself as President, create a platform for the governance review that LU has committed to undertake, and ultimately assist LU with finalizing and exiting from the CCAA proceeding.

24. For clarity, it is proposed that the CRO be appointed as an officer of the Court. The CRO will not be a director, officer or employee of LU. This type of appointment is consistent with the fact that the CRO will be supporting the senior leadership team at LU as a consultant for a limited period only.

A. Necessity of the CRO

25. LU requests that the CRO be appointed as soon as possible in order to become acquainted with the business functions of LU through discussions with, among others, the Board of Governors, the leadership team at LU, the labour unions of LU and other key stakeholders. Although the CRO grew up in Sudbury and attended LU for his undergraduate degree, he is wholly independent and not yet familiar with the details of LU's operations and the interests of its many stakeholders.

26. As previously mentioned, LU views the appointment of the CRO as an important step in the review and implementation of best practices for LU's internal governance and policies. The CRO will be able to lend his independent expertise to expedite and assist with the overall operational restructuring. Further, the CRO represents a "new face" who is not burdened by any history, by the difficult steps taken by LU in phase 1 of the restructuring, or any pre-filing existing practices or procedures at LU. He will be able to provide a fresh perspective and bring his expertise to assist LU as it attempts to navigate a path towards a sustainable and successful future. This is also a tangible way in which LU can demonstrate its commitment to conduct a review of all aspects of its governance and operations and rebuild its relationship with its stakeholders previously mentioned, and any others.

27. It is expected that the CRO will be available to supplement and support discussions with numerous stakeholders of LU, including LU's labour partners, the pre-filing lenders, representatives of the Indigenous and Francophone communities, the Provincial and Federal governments and various ministries thereof, the City of Sudbury and the broader community, donors, alumni and research granting agencies, amongst others.

28. From an operational perspective, the CRO's experience overseeing the strategy and execution of various business functions such as finance, development, risk management, shared services, talent and technology provides LU with a new, additional resource who has a wealth of knowledge that LU can benefit from. For example, the CRO's duties will include supporting: (a) the review of LU's current operations, (b) engagement with LU's stakeholders regarding LU's current operations and improvements, (c) the strategic direction of the university, (d) the review, expansion or improvements to internal policies and procedures, and (e) the execution and implementation of all of the above.

B. The CRO Engagement Letter

29. Pursuant to the CRO engagement letter dated May 17, 2021 (the "**CRO Engagement Letter**"), LU 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. 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 expenses. There is no additional "success fee" component to the CRO's compensation. A copy of the CRO Engagement Letter is attached hereto as **Exhibit "J"**.

30. LU proposes that the CRO be appointed to work with and support the President and Vice-Chancellor of LU, the executive team of LU, and the Monitor, with respect to the following:

(a) consult with the Board of Governors with respect to LU's strategic direction;

(b) engage in meaningful consultations with any and all stakeholders of LU;

(c) consult with LU and its advisors, and discuss with the Monitor, with respect to (i) the business functions of LU to identify areas of strength, weaknesses, opportunities and threats in the current operations of LU and to provide guidance and recommendations for the implementation of best practices; and (ii) LU's existing internal policies and procedures;

(d) consult with LU and its advisors regarding the development of the Plan;

(e) assist LU and its management team with respect to complying with information requests, communications with faculty, staff and students and all stakeholders;

(f) provide such other assistance and services as are consistent with the role of Chief Redevelopment Officer and/or the above-described services to achieve the Phase 2 Objectives; and

(g) any other duties, tasks or actions that are necessary, or may be necessary, as mutually agreed, to assist LU and facilitate the remainder of its CCAA restructuring.

31. LU and the Monitor have reviewed the proposed fees and disbursements set out in the CRO Engagement Letter and believe them to be fair and reasonable in the circumstances.

C. The Credentials of the CRO

32. The CRO is formerly from Sudbury, is well-known in the Sudbury community, is an alumni of LU with an Honours Bachelor of Commerce degree and a significant personal donor of LU. As evidenced from his *curriculum vitae*, which is attached hereto as **Exhibit "K"**, the CRO is an experienced professional who has experience in managing and overseeing business functions in a complex operational environment.

33. The CRO has previously served on the boards of Sunnybrook Hospital Foundation and Pathways to Education (a program dedicated to helping high school students from low-income and under-represented groups complete high school and pursue post-secondary education). The CRO is currently a director on the Board of BCE and Bell Canada and DLA Piper International LLP and DLA Piper Global.

34. Prior to his corporate director roles, the CRO was a member of the Global Executive Board of EY where he was responsible for EY's business functions across the globe, including strategy and execution for all functions, including technology, finance, risk management, legal, shared services and procurement. The CRO has not had an active role in EY Canada since 2010 or in EY Global since September 2020.

35. been an employee or partner of EY Canada since 2010 and has not been an employee of EY Global since June 2020.

36. Given the CRO's experience, the CRO has the requisite skills and experience necessary to complete the duties and obligations set out in the CRO Engagement Letter. I am very pleased that the CRO's personal commitment to the future success of LU has caused him to consider taking on this role.

D. Consultation with Stakeholders and the Monitor

37. During the weeks beginning May 10, 2021 and May 17, 2021, LU together with the Board of Governors and the Monitor socialized the appointment of the CRO with certain stakeholders of LU through conference calls and a meeting with Justice Dunphy. These communications with stakeholders were led by the advisors of LU and the Chair of the Board of Governors, and with the support of the Monitor and its counsel. During this

process, stakeholders were provided with the CRO's *curriculum vitae* and were given the opportunity to ask questions and provide feedback.

38. Prior to service of the Applicant's motion record, certain stakeholders requested drafts of the CRO Engagement Letter and the court materials being prepared in support of this motion. I have been advised by D.J. Miller at Thornton Grout Finnigan LLP ("**TGF**"), insolvency counsel to LU, that either TGF or the Monitor have provided drafts to counsel for the pre-filing lenders, the DIP Lender, LUFA and LUSU.

39. Finally, I have been advised by Sharon Hamilton of the Monitor that, at the request of LUFA and LUSA, the CRO has held separate short meetings with representatives of LUFA and LUSU, with the Monitor and its counsel, but without any representatives of LU or its counsel present.

40. Finally, LU has also advised the Ministry of Colleges and Universities ("**MCU**") of the intended motion for the appointment of the CRO by the Court. Representatives of MCU indicated that this step created no concerns from their perspective.

V. CONCLUSION

41. LU seeks an Order under the CCAA, in the proposed form of order attached at Tab 3 in LU's Motion Record.

42. This affidavit is sworn in support of LU's motion for, among other things, an Order appointing the CRO, and for no other or improper purpose.

SWORN before me via videoconference by ROBERT HACHÉ located in the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 21st day of May, 2021, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.	**DR. ROBERT HACHÉ**
Commissioner for Taking Affidavits Derek Harland LSO#: 79504N	

This is Exhibit "A" referred to in the Affidavit of Dr. Robert Haché sworn by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 21, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

DEREK HARLAND

Court File No. CV-21-___656040___________________-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE CHIEF	)	MONDAY, THE 1ST
	)	
JUSTICE MORAWETZ	)	DAY OF FEBRUARY, 2021

SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

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

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

Applicant

INITIAL ORDER

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

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

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Haché Affidavit.

NON-APPLICANT STAY PARTY

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

APPLICATION

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

POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

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

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

(a) all outstanding and future wages, salaries, employee and retiree benefits (including, without limitation, employee medical, dental, vision, insurance and similar benefit plans or arrangements), amounts owing under corporate credit cards issued to management and employees of the Applicant, ordinary course pension benefits or contributions, vacation pay, expenses and any director fees and expenses, payable on or after the date of this Order, in each case for costs incurred in the ordinary course of business and consistent with existing practices, compensation policies and arrangements for current and future employees (but not including any payments to former employees or retirees in respect of the SuRP and the RHBP, as such terms are defined in the Haché Affidavit, or termination or severance payments, which are hereby stayed), and all other payroll processing and servicing expenses;

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

(c) all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts payable to students in respect of student scholarship, bursary or grants; and

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

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

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

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

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

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

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

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

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

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

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

RESTRUCTURING

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

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

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

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

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

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

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

LIMITED STAY IN RESPECT OF THE NON-APPLICANT STAY PARTY

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

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

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

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

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

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

NO INTERFERENCE WITH RIGHTS

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

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

CONTINUATION OF SERVICES

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

NON-DEROGATION OF RIGHTS

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

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

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

APPOINTMENT OF MONITOR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

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

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

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

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

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

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

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

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

SERVICE AND NOTICE

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

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

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

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

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

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

SEALING PROVISION

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

GENERAL

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

46. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

47. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative

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

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

49. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order, and is enforceable without any need for entry and filing.

CHIEF JUSTICE G.B. MORAWETZ

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

FEB 0 1 2021

PER / PAR:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **LAURENTIAN UNIVERSITY OF SUDBURY**

Court File No.: CV-21-____________-00CL

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

INITIAL ORDER

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

SUPERIOR COURT OF JUSTICE - ONTARIO

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

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

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *D.J. Miller, Mitch W. Grossell, Andrew Hanrahan* and *Derek Harland*, for the Applicant

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

Peter J. Osborne, for the Board of Governors

Natasha MacParland, Lender Counsel to the Applicant

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

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

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

Michael Kennedy, Labour Counsel for the Applicant

George Benchetrit, for Bank of Montreal

HEARD: February 1, 2021

ENDORSEMENT

Introduction

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

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

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

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

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

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

Overview of the Applicant

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

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

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

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

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

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

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

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

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

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

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

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

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

Assets and Liabilities

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

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

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

LU's Liquidity Crisis and Insolvency

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

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

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

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

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

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

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

Objective of CCAA Filing

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

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

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

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

(d) Identification of opportunities for future revenue generation;

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

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

Law and Analysis

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

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

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

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

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

Insolvency

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

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

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

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

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

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

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

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

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

Stay of Proceedings

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

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

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

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

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

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

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

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

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

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

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

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

Pre-Filing and Post-Filing Payments

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

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

(b) pay all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts payable to students in respect of student scholarship, bursary or grants.

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

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

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

The Administration Charge

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[52] The proposed Monitor supports the requested relief.

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

The Directors' Charge

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

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

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

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

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

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

[58] The proposed Monitor supports the relief requested.

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

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[17] CCAA, section 11.51.

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

Sealing Provision

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

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

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

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

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

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

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

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

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

The Requested Relief Sought is Reasonably Necessary

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

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

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

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

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

Disposition

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

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

Court-Appointed Mediator

[72] Finally, LU is also seeking an Order for the appointment of a mediator by the Court (the "Court-Appointed Mediator") to oversee negotiations with respect to the various restructuring initiatives necessary for the Applicant to achieve a successful restructuring.

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

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

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

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

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

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

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

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

CHIEF JUSTICE G.B. MORAWETZ

Date: February 1, 2021

This is Exhibit “B” referred to in the Affidavit of Dr. Robert Haché sworn by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 21, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

DEREK HARLAND

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE CHIEF	)	THURSDAY, THE 11TH
	)	
JUSTICE MORAWETZ	)	DAY OF FEBRUARY, 2021

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

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

Applicant

AMENDED AND RESTATED INITIAL ORDER

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

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

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Haché Initial Affidavit.

NON-APPLICANT STAY PARTY

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

APPLICATION

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

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

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

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

(a) all outstanding and future wages, salaries, employee and retiree benefits (including, without limitation, employee medical, dental, vision, insurance and similar benefit plans or arrangements), amounts owing under corporate credit cards issued to management and employees of the Applicant, ordinary course pension benefits or contributions, vacation pay, expenses and any director fees and expenses, payable on or after the date of this Order, in each case for costs incurred in the ordinary course of business and consistent with existing practices, compensation policies and arrangements for current and future employees (but not including any payments to former employees or retirees in respect of the SuRP and the RHBP, as such terms are defined in the Haché Initial Affidavit, or termination or severance payments, which are hereby stayed), and all other payroll processing and servicing expenses;

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

(c) all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts payable to students in respect of student scholarship, bursary or grants; and

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

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

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

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

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

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

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

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

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

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

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

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

PENSION PLAN

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

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

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

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

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

RESTRUCTURING

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

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

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

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

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

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

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

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

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

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

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

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

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

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

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

provided that nothing in this Order shall:

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

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

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

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

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

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

LIMITED STAY IN RESPECT OF THE NON-APPLICANT STAY PARTY

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

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

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

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

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

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

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

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

NON-DEROGATION OF RIGHTS

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

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

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

APPOINTMENT OF MONITOR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DIP FINANCING

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

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

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

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

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

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

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

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

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

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SERVICE AND NOTICE

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

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

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

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

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

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

SEALING PROVISION

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

GENERAL

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

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

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

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

61. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

62. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

64. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order, and is enforceable without any need for entry and filing.

CHIEF JUSTICE G.B. MORAWETZ

Schedule "A"
Real Property

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

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **LAURENTIAN UNIVERSITY OF SUDBURY**

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

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

AMENDED AND RESTATED INITIAL ORDER

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

SUPERIOR COURT OF JUSTICE - ONTARIO

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

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

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *D.J. Miller, Mitch W. Grossell, Andrew Hanrahan* and *Derek Harland*, for the Applicant

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

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

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

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

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

Michael Kennedy, Labour Counsel for the Applicant

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

David Wright, Labour Counsel for LUFA

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

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

Daniel Loberto, for Queen's University

André Claude, for University of Sudbury

Joseph Bellissimo, for Huntington University

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

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

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

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

George Benchetrit, for Bank of Montreal

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

Guneev Bhinder, for Canada Foundation for Innovation

James MacLellan, for Zurich Insurance Company Ltd.

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

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

HEARD: February 10, 2021

DETERMINED: February 11, 2021

REASONS: February 12, 2021

ENDORSEMENT

Background

[1] On February 1, 2020, an Initial Order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C–36, as amended (the "CCAA") was granted, the effect of which was to provide Laurentian University of Sudbury ("LU" or the "Applicant") protection under the CCAA.

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

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

[4] The facts to support the requested relief for the Initial Order and for the comeback hearing were set out in the Affidavit of Dr. Robert Haché, sworn January 30, 2021 (the "Haché Affidavit").

Additional evidence was provided in the form of the Report of the Proposed Monitor dated January 30, 2021, and the First Report of the Monitor dated February 7, 2021.

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

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

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

iii. the Applicant is insolvent;

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

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

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

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

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

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

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

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

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

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

[7] The Endorsement of February 1, 2021, also referenced that LU sought an order for the appointment of a Mediator by the Court (the "Court-Appointed Mediator") to oversee negotiations with respect to the various restructuring initiatives necessary for the Applicant to achieve a successful restructuring.

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

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

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

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

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

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

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

[11] In addition, the Applicant has commenced communications with its various stakeholders. It has launched a website to provide further information to stakeholders, including a detailed list of frequently asked questions and answers, contact information for support services for students, faculty and staff, and a method to contact LU by email for other information.

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

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

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

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

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

Stay Extension

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

a. the extension will provide comfort to LU students that the Applicant will continue in the ordinary course for the duration of the winter semester;

b. the Applicant requires the extension in order to conduct a mediated negotiation with its stakeholders; and

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

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

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

Pension and Benefit Plans

[20] The Applicant administers three employee pension and benefit plans: (a) a registered defined benefit pension plan (the "DB Pension Plan"); (b) a supplementary unfunded retirement plan (the "SURP"); and (c) a retirement health benefits plan (the "RHBP").

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

[22] The Monitor reports that while the Applicant will have access to funding through the DIP Facility, that funding is limited and is only projected to be sufficient to fund operations through to the end of the current academic term. Given the Applicant's overall liquidity constraints, the Monitor is of the view that permitting a stay of special payments to the DB Pension Plan during the stay period is appropriate and reasonable.

Freedom of Information and Protection of Privacy Act

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

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

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

Super Priority Charges

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

a. first, the Administration Charge (up to a maximum amount of $1.25 million);

b. second, the Directors' Charge (up to a maximum amount of $2 million);

c. third, the DIP Lender's Charge (up to a maximum of $25 million); and

d. fourth, the Directors' Charge (up to an additional $3 million for a total maximum Directors' Charge amount of $5 million).

[27] The Applicant's secured creditors are primarily comprised of subcontractors who registered construction liens and equipment lessors. These parties have been served with notice of the comeback motion and the relief sought at the comeback motion will provide for the Charges to rank in priority to these potential claims.

[28] The Administration Charge and the proposed Amended and Restated Initial Order provide for a charge up to $1.25 million in favour of counsel and advisors to the Applicant, the Monitor, the Monitor's independent counsel and independent counsel to the Board as security for the professional fees and disbursements incurred prior to and after the commencement of the CCAA proceedings.

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

DIP Lender's Charge

[30] In addition to the approval of the DIP Term Sheet, the proposed Amended and Restated Initial Order provides for the creation of a super priority charge in the amount of $25 million to match the maximum allowable borrowing amount proposed in the DIP Term Sheet. The DIP Lender's Charge will be secured by all Property (as defined in the Amended and Restated Initial Order) of the Applicant.

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

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

Directors' Charge

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

[34] The Directors and Officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any insurance policy.

[35] The DIP Term Sheet provides that a Directors' Charge may only rank ahead of the DIP Lender's Charge to a maximum of $2 million. Accordingly, the Applicant proposes that $2 million of the Directors' Charge rank behind the Administration Charge and ahead of the DIP Lender's Charge, with the balance of $3 million ranking behind the DIP Lender's Charge.

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

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

Conclusions of the Monitor

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

Oral Submissions

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

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

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

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

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

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

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

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

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

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

[49] Mr. McFarlane, on behalf of the Northern Ontario School of Medicine, submitted that all references to timing provisions in the proposed Initial Restated Order at paragraphs 59, 60 and 61 should be deleted. He reasoned that restructurings are unpredictable and issues may arise at the last moment.

[50] Counsel on behalf of CUPE supported the position put forth by Mr. Sinclair, counsel to LUFA, that there is gratuitous language in paragraph 20 of the proposed Amended and Restated

Order. In particular, counsel objected to the inclusion of the words ("including pursuant to any collective agreement") which addresses the stay of proceedings. The inclusion of these words is not necessary. The jurisprudence establishes that a stay of proceedings is to be broadly interpreted. Paragraph 20 is broad enough and is interpreted as establishing that the stay of proceedings includes any actions taken in respect of any collective agreement.

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

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

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

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

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

LAW AND ANALYSIS

Stay Period and Scope of Stay

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

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

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

[59] In arriving at this conclusion, I have taken into account that the key stakeholders are participating in a mediation with a Court-Appointed Mediator, which mediation will focus on the key aspects of any proposed restructuring. It is both necessary and important that the Applicant should focus on its proposed restructuring If this restructuring is to be successful, it will have to be largely completed by the end of April 2021. With the approval of the DIP Facility, the Applicant will have liquidity to the end of this period. It is my expectation that the Monitor will file periodic reports with the Court and these reports will provide updates to interested stakeholders. To the

extent that any party is of the view that issues relating to the Stay Period should be brought to the attention of the Court, they can schedule such an attendance. The ability to schedule such an attendance addresses the concerns raised by Mr. Gold to the effect that the Stay Period should not extend beyond the end of February, 2021.

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

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

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

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

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

[65] I am satisfied that the requested relief is not inconsistent with the provisions of s. 33 of the CCAA. The Applicant has addressed this issue at paragraphs 74 – 75 of its factum. Nor is it inconsistent with the provisions of section 18(b) of *An Act to incorporate Laurentian University of Sudbury*, S.O. 1960, c. 151, which provides that the Board has the sole discretion to terminate faculty (Application Record – Vol. 2A, Tab 8A, p. 251).

<u>Special Payments</u>

[66] The Applicant requests that the Amended and Restated Initial Order stay any outstanding pre-filing special payments to the pension plan. I am satisfied that the liquidity crisis facing LU

and restrictions on the use of the DIP Facility is such that it is necessary to stay any outstanding pre-filing or post-filing special payments to the pension plan. This will assist the Applicant with its severe liquidity crisis. This stay is limited to the special payments and does not apply to the Applicant's regular (ordinary course) contributions to the pension plan.

The CCAA Charges

Administration Charge

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

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

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

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

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

c. whether there is an unwarranted duplication of roles;

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

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

f. the position of the monitor.

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

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

DIP Facility and DIP Charge

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

interests in the Property of the Applicant, save and except properly perfected purchase money security interest on specific equipment.

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

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

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

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

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

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

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

<u>Directors' Charge</u>

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

[81] Section 11.51 of the CCAA provides the court with the jurisdiction to grant a directors' charge in an amount the court considers appropriate, provided notice is given to the secured creditors likely to be affected by it. In order to grant a directors' charge, the court must be satisfied of the following factors:

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

b. the amount is appropriate;

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

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

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

Confidential Exhibits – Sealing Order

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

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

Provisions in the Draft Order Relating to the Objection Deadline

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

INITIAL AND RESTATED ORDER

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

CHIEF JUSTICE G.B. MORAWETZ

Date: February 12, 2021

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

SUPERIOR COURT OF JUSTICE - ONTARIO

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

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

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *D.J. Miller, Mitch W. Grossell, Andrew Hanrahan* and *Derek Harland*, for the Applicant

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

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

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

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

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

Michael Kennedy, Labour Counsel for the Applicant

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

David Wright, Labour Counsel for LUFA

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

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

Daniel Loberto, for Queen's University

André Claude, for University of Sudbury

Joseph Bellissimo, for Huntington University

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

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

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

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

George Benchetrit, for Bank of Montreal

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

Guneev Bhinder, for Canada Foundation for Innovation

James MacLellan, for Zurich Insurance Company Ltd.

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

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

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

SUPPLEMENTARY ENDORSEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) LU is insolvent;

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

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

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

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

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

[17] I have reviewed the Exhibits in detail.

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

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

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

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

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

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

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

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

<u>Disposition</u>

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

CHIEF JUSTICE MORAWETZ

Date: February 26, 2021

This is Exhibit "C" referred to in the Affidavit of Dr. Robert Haché sworn by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 21, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

DEREK HARLAND

CITATION: Laurentian University of Sudbury, 2021 ONSC 3271
COURT FILE NO.: CV-21-656040-00CL
DATE: 2021-05-02

SUPERIOR COURT OF JUSTICE - ONTARIO

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

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LAURENTIAN UNIVERSITY OF SUDBURYSUPERIOR COURT OF JUSTICE - ONTARIO

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *D.J. Miller, Mitch W. Grossell, Andrew Hanrahan and Derek Harland*, for the Applicant

Ashley Taylor, Elizabeth Pillon and Ben Muller, for the Court-appointed Monitor Ernst & Young Inc

Vern W. DaRe, for the DIP Lender

Susan Philpott, Charles Sinclair and David Sworn, Insolvency Counsel for LUFA

Tracey Henry and Danielle Stampley, for Laurentian University Staff Union (LUSU)

Aryo Shalviri and Pamela Huff, for the Royal Bank of Canada

Andrew Hatnay, Demetrios Yiokaris and Sydney Edmonds, for Thorneloe University

Dylan Chochla and Stuart Brotman, for the Toronto Dominion Bank

André Claude, for the University of Sudbury

Donia Hashem, for the Canada Foundation for Innovation

Virginie Gauthier, for Lakehead University

George Benchetrit, for the Bank of Montreal

Joseph Bellissimo and Natalie Levine, for Huntington University

Gale Rubenstein and Bradley Wiffen, for the Financial Services Regulatory Authority

Sarah Godwin, for the Canadian Association of University Teachers

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

Rachel Moses, for Royal Trust

Mark G. Baker and Andre Luzhetskyy, for Laurentian University Students' General Association

Michelle Pottruff, for the Ministry of Colleges and Universities

Charlotte Servant-L'Heureux, for the Assemblée de la francophonie de l'Ontario

HEARD: April 29, 2021

RELEASED: May 2, 2021

ENDORSEMENT

[1] Laurentian University of Sudbury ("Laurentian" or the "Applicant") brings this motion for an Order (the "Order") substantially in the form attached at Tab 3 of the Motion Record of the Applicant dated April 21, 2021 that, among other things:

(a) extends the Stay Period to and including August 31, 2021;

(b) approves the Term Sheet entered into between the Applicant and the Laurentian University Faculty Association ("LUFA"), together with all Schedules;

(c) approves the Term Sheet entered into between the Applicant and the Laurentian University Staff Union (LUSA"), together with all Schedules;

(d) approves the Transition Agreement entered into between the Applicant and Huntington University dated April 16, 2021;

(e) approves an Amendment (the "DIP Amendment") to the Applicant's DIP facility that, among other things, increases the principal amount available under the DIP Facility by an additional $10 million; and

(f) increases the DIP Lender's Charge granted in the Amended and Restated Initial Order dated February 11, 2021 to a maximum principal amount of $35 million.

[2] The motion was heard via Zoom on April 29, 2021.

[3] This endorsement should be read in conjunction with my earlier endorsement of May 2, 2021 and the endorsement of Gilmore J, also dated May 2, 2021.

[4] For reasons to follow, this motion is granted and an Order shall issue substantially in the form attached at Tab 3 of the Motion Record.

Chief Justice Geoffrey B. Morawetz

Date: May 2, 2021

This is Exhibit "D" referred to in the Affidavit of Dr. Robert Haché sworn by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 21, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

DEREK HARLAND

CITATION: Laurentian University of Sudbury, 2021 ONSC 3230
COURT FILE NO.: CV-21-656040-00CL
DATE: 2021-05-02

SUPERIOR COURT OF JUSTICE - ONTARIO

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

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LAURENTIAN UNIVERSITY OF SUDBURYSUPERIOR COURT OF JUSTICE - ONTARIO

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *D.J. Miller, Mitch W. Grossell, Andrew Hanrahan and Derek Harland*, for the Applicant

Ashley Taylor, Elizabeth Pillon and Ben Muller, for the Court-appointed Monitor Ernst & Young Inc

Vern W. DaRe, for the DIP Lender

Susan Philpott, Charles Sinclair and David Sworn, Insolvency Counsel for LUFA

Tracey Henry and Danielle Stampley, for Laurentian University Staff Union (LUSU)

Aryo Shalviri and Pamela Huff, for the Royal Bank of Canada

Andrew Hatnay, Demetrios Yiokaris and Sydney Edmonds, for Thorneloe University

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André Claude, for the University of Sudbury

Donia Hashem, for the Canada Foundation for Innovation

Virginie Gauthier, for Lakehead University

George Benchetrit, for the Bank of Montreal

Joseph Bellissimo and Natalie Levine, for Huntington University

Gale Rubenstein and Bradley Wiffen, for the Financial Services Regulatory Authority

Sarah Godwin, for the Canadian Association of University Teachers

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

Rachel Moses, for Royal Trust

Mark G. Baker and Andre Luzhetskyy, for Laurentian University Students' General Association

Michelle Pottruff, for the Ministry of Colleges and Universities

Charlotte Servant-L'Heureux, for the Assemblée de la francophonie de l'Ontario

HEARD: April 29, 2021

RELEASED: May 2, 2021

ENDORSEMENT

[1] Thorneloe University ("Thorneloe") brings this motion under section 32(2) of the *Companies' Creditors Arrangement Act* ("CCAA") for an order that the following two agreements in the Notice of Disclaimer of Laurentian University of Sudbury ("Laurentian") dated April 1, 2021 are not to be disclaimed or resiliated:

a. the Federation Agreement between Laurentian and Thorneloe, dated 1962 (the "Federation Agreement"); and,

b. the Financial Distribution Notice between Laurentian and Thorneloe dated May 1, 2019, amending the Proposed Grant Distribution and Services agreement between Laurentian, the University of Sudbury, Thorneloe University, and Huntington University dated November 10, 1993 (the "Financial Distribution Notice") (collectively, the "Agreements");

and, for an order amending the Loan Amendment Agreement dated April 20, 2021 (the "DIP Amendment Agreement"), to delete the following condition:

4. The Disclaimers of the Borrower's Federation Agreements and Financial Distribution Notices with each of Huntington University, Thorneloe University and the University of Sudbury (collectively, the "Federated Universities") issued on April 1, 2021 shall become effective, binding and final on May 1, 2021 (the "New Disclaimer Term").

[2] This motion was heard via Zoom on April 29, 2021.

[3] The University of Sudbury also brought a motion pursuant to section 32(2) of the CCAA with respect to a Federation Agreement between Laurentian and the University of Sudbury. This motion was heard via Zoom on April 30, 2021 by Gilmore J.

[4] This endorsement is being released concurrently with the endorsement of Gilmore J.

[5] For reasons to follow, Thorneloe's motion is dismissed.

Chief Justice G.B. Morawetz

Date: May 2, 2021

This is Exhibit “E” referred to in the Affidavit of Dr. Robert Haché sworn by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 21, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

DEREK HARLAND

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'UNIVERSITE LAURENTIENNE DE SUDBURY

RE: Laurentian University of Sudbury, Applicant

-and-

L'Université de Sudbury

BEFORE: C. Gilmore, J.

COUNSEL: D.J. Miller, Mitch W. Grossell, 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 Andre 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. Thornloe 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] Thornloe'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 LACC.

[8] L'Université Huntington a conclu un accord avec le demandeur sur la question de la résiliation. Thornloe et SU ont chacun presenté 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 soulevé 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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C. Gilmore, J.

Date: le 2 mai, 2021

This is Exhibit "F" referred to in the Affidavit of Dr. Robert Haché sworn by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 21, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

DEREK HARLAND

CITATION: Laurentian University of Sudbury, 2021 ONSC 3272
COURT FILE NO.: CV-21-656040-00CL
DATE: 2021-05-07

SUPERIOR COURT OF JUSTICE - ONTARIO

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

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

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *D.J. Miller, Mitch W. Grossell, Andrew Hanrahan and Derek Harland*, for the Applicant

Ashley Taylor, Elizabeth Pillon and Ben Muller, for the Court-appointed Monitor Ernst & Young Inc

Vern W. DaRe, for the Firm Capital Corporation, the DIP Lender

Susan Philpott, Charles Sinclair and David Sworn, Insolvency Counsel for Laurentian University Faculty Association (LUFA)

Tracey Henry and Danielle Stampley, for Laurentian University Staff Union (LUSU)

Aryo Shalviri and Pamela Huff, for the Royal Bank of Canada

Andrew Hatnay, Demetrios Yiokaris and Sydney Edmonds and Eugene Meehan, Q.C., for Thorneloe University

Dylan Chochla and Stuart Brotman, for the Toronto Dominion Bank

André Claude, for the University of Sudbury

Donia Hashem, for the Canada Foundation for Innovation

Virginie Gauthier, for Lakehead University

George Benchetrit, for the Bank of Montreal

Joseph Bellissimo and Natalie Levine, for Huntington University

Gale Rubenstein and Bradley Wiffen, for the Financial Services Regulatory Authority

Sarah Godwin, for the Canadian Association of University Teachers

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

Rachel Moses, for Royal Trust

Mark G. Baker and Andre Luzhetskyy, for Laurentian University Students' General Association

Michelle Pottruff, for the Ministry of Colleges and Universities

Charlotte Servant-L'Heureux, for the Assemblée de la francophonie de l'Ontario

Linda Chen, for the Information and Privacy Commissioner of Ontario

HEARD: April 29, 2021

DECISION RELEASED: May 2, 2021

REASONS: May 7, 2021

ENDORSEMENT

[1] On Sunday, May 2, 2021, the following endorsement was released:

> [1] Thorneloe University ("Thorneloe") brings this motion under section 32(2) of the *Companies' Creditors Arrangement Act* ("CCAA") for an order that the following two agreements in the Notice of Disclaimer of Laurentian University of Sudbury ("Laurentian") dated April 1, 2021 are not to be disclaimed or resiliated:
>
> > (a) the Federation Agreement between Laurentian and Thorneloe, dated 1962 (the "Federation Agreement"); and,
> >
> > (b) the Financial Distribution Notice between Laurentian and Thorneloe dated May 1, 2019, amending the Proposed Grant Distribution and Services agreement between Laurentian, the University of Sudbury, Thorneloe University, and Huntington University dated November 10, 1993 (the "Financial Distribution Notice") (collectively, the "Agreements");
>
> and, for an order amending the Loan Amendment Agreement dated April 20, 2021 (the "DIP Amendment Agreement"), to delete the following condition:
>
> > 4. The Disclaimers of the Borrower's Federation Agreements and Financial Distribution Notices with each of Huntington

> University, Thorneloe University and the University of Sudbury (collectively, the "Federated Universities") issued on April 1, 2021 shall become effective, binding and final on May 1, 2021 (the "New Disclaimer Term").

> [2] This motion was heard via Zoom on April 29, 2021.
>
> [3] The University of Sudbury also brought a motion pursuant to section 32(2) of the CCAA with respect to a Federation Agreement between Laurentian and the University of Sudbury. This motion was heard via Zoom on April 30, 2021 by Gilmore J.
>
> [4] This endorsement is being released concurrently with the endorsement of Gilmore J.
>
> [5] For reasons to follow, Thorneloe's motion is dismissed.

[2] These are my reasons.

BACKGROUND

[3] In 1960, Thorneloe, Huntington University ("Huntington"), and the University of Sudbury ("U Sudbury") (collectively, the "Federated Universities"), were established by the Anglican, United and Roman Catholic churches, respectively. As religiously affiliated institutions, they were not eligible for government funding. The Province of Ontario passed an *Act to Incorporate Laurentian University of Sudbury*, S.O. 1960, c. 151, and Laurentian was established. On September 10, 1960, U Sudbury and Huntington entered into Federation Agreements with Laurentian and in 1962, Thorneloe entered into a Federation Agreement with Laurentian (collectively, the "Federation Agreements").

[4] The Federated Universities agreed to suspend degree-granting authority (other than Theology, in the case of Thorneloe and Huntington) and effectively operate as a single university. The Federated Universities would teach courses to students for credit at Laurentian. Funding from the provincial government was provided to the Federated Universities, through Laurentian.

[5] The arrangement among the Federated Universities to distribute government grants is set out in the Proposed Grant Distribution and Services Fees Agreement dated November 10, 1993.

[6] The funding arrangement was changed commencing in the 2019 – 2020 academic year, per the Financial Distribution Notice.

[7] Laurentian wants to disclaim the Federation Agreements and the Financial Distribution Notice with respect to Thorneloe and U Sudbury.

[8] As referenced in the Third Report of the Monitor, the Federated Universities do not admit or register their own students, nor do they grant their own degrees (with the exception of Theology

at Huntington and Thorneloe). All Federated University programs and courses are offered through Laurentian, and all students apply for admission to Laurentian. Students who enroll in a program at Laurentian may take elective courses at any or all of the Federated Universities as well as Laurentian. Students enrolled in programs, courses, majors and minors that are administered by the Federated Universities are students of Laurentian, and these courses are credited towards a degree from Laurentian. Laurentian provides certain services to the Federated Universities, however, each of the Federated Universities is separately governed and manages its finances separately from Laurentian and each other.

[9] The Monitor also reported that as all students are students of Laurentian regardless of whether they are enrolled in programs or take courses at one of the Federated Universities, the Federated Universities do not directly bill or collect tuition. Laurentian manages admission. Students are billed tuition by Laurentian. Students then choose courses from a Laurentian course catalogue which includes courses offered through the Federated Universities.

[10] While Laurentian does not receive grant revenue or tuition revenue that is directly intended for the benefit of the Federated Universities, Laurentian and the Federated Universities have certain financial agreements in place pursuant to which Laurentian receives, allocates and distributes a portion of Laurentian's revenue to the Federated Universities in accordance with the funding formula (the "Federated Funding Formula"). Through this Federated Funding Formula, Laurentian compensates the Federated Universities for delivering programs and services to Laurentian students. The key terms of the Federated Funding Formula include the following:

(a) A portion of provincial grants received by Laurentian are distributed to the Federated Universities based on the proportion of students enrolled in the Federated Universities' programs;

(b) A portion of tuition fees received by Laurentian are distributed to the Federated Universities based upon student enrolment and courses offered through the Federated Universities; and

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

[11] As of the fall 2020 academic term, there were 417 students enrolled in full-time and part-time programs through the three Federated Universities (271 full-time equivalents). This includes 91 full-time and part-time students of Thorneloe (62.8 full-time equivalents), 108 full-time and part-time students at U Sudbury (69.6 full-time equivalents), and 163 full-time and part-time students at Huntington (103.2 full-time equivalents). The remaining students are enrolled in programs jointly offered by the Federated Universities.

[12] Students who enrolled at Laurentian have had the ability to take elective courses at any or all of the Federated Universities, as well as at Laurentian. The main activity of both U Sudbury

and Thorneloe is to offer elective courses through the Faculty of Arts for students enrolled in the Applicant’s programs.

[13] Each of the Federation Agreements contains an aspirational statement which addresses the Federated relationship:

> [B]oth Laurentian University and [the Federated University] declare and express the firm hope and conviction that the relationship between the Universities established by this agreement will be a permanent one… [a]nd to build a great institution of learning which shall forever be bilingual and nondenominational in its character.

[14] Laurentian has Indenture Agreements with each of the Federated Universities, pursuant to which the Federated Universities lease land owned by Laurentian and on which they have constructed their own buildings. Each indenture provides for lease terms of 99 years, with the possibility of further renewal.

[15] The indentures contain termination provisions which allow for the termination of the indenture if the relevant Federated University withdraws from the Federation with the Applicant. No notice of disclaimer was issued by Laurentian in respect of any of the indentures and the indentures are not the subject matter of this motion.

[16] Laurentian takes the position that the main activity of the Federated Universities is offering elective courses that are administered for Laurentian’s students. Each time a Laurentian student takes an elective course through the Federated Universities, rather than an elective through Laurentian, that represents lost tuition revenue to Laurentian.

[17] Laurentian takes the position that in fiscal year 2020, as a result of Laurentian students’ enrolment in programs and courses through the Federated Universities, Laurentian transferred to the Federated Universities approximately $3.5 million in total grants, $5.3 million in net tuition and $0.3 million in material fees, for a total of $9.1 million. That amount was offset by the administrative services fee of approximately $1.4 million, for a net transfer from Laurentian to the Federated Universities of approximately $7.7 million in fiscal year 2020.

[18] Laurentian has approximately 9,300 undergraduate and graduate students. Laurentian asserts that its Faculty of Arts has the ability and capacity to offer a range of alternative electives to its students, such that there is no need for Laurentian to lose revenue because its students take elective courses offered through the Federated Universities. Since students enrolled in programming offered by the Federated Universities can otherwise be accommodated and enrolled in programs offered by Laurentian, Laurentian asserts that a substantial portion of the grant revenue represents lost revenue for Laurentian. Laurentian and the Monitor concede that Laurentian will not be able to accommodate 100% of the displaced students but anticipate that it will be able to accommodate most of them.

[19] Laurentian also asserts that approximately 70% of its revenues in 2019-2020 is comprised of tuition and grant funding, and, due to the freeze of tuition fees, Laurentian cannot increase

revenue through tuition fees. Thus, the only opportunity for Laurentian to fully utilize the revenue it receives in respect of its students is for them to be enrolled in programs and courses at Laurentian.

[20] Thorneloe presents the facts from its viewpoint. It considers that the funds flow through Laurentian to Thorneloe pursuant to the Financial Distribution Notice. The funds do not belong to Laurentian and the funds do not represent a subsidy. As set out in the Financial Distribution Notice, Laurentian charges Thorneloe an additional 15% of Thorneloe's earned government grants and tuitions.

[21] Thorneloe also points out that it is a small component of the Laurentian Federation, employing a total workforce of 28, including seven full-time faculty members, 12 sessional faculty members, six staff and three casual staff.

[22] Notwithstanding its small size, Thorneloe contends that it has a big impact. In 2019-2020, Thorneloe taught 2861 Laurentian students, representing 297 full-time equivalents ("FTEs"). In 2020-2021, Thorneloe taught slightly fewer (2477) Laurentian students, after it made the decision to close underperforming programs.

[23] Thorneloe also contends that the financial problems of Laurentian are not attributable to Thorneloe or the Federation model.

CCAA PROCEEDINGS

[24] Laurentian obtained an initial stay of proceedings under the CCAA on February 1, 2021. The objective of the CCAA filing was the subject of comment in the affidavit of Dr. Robert Haché, sworn January 30, 2021, filed in support of the initial application. Section VIII covers the "Proposed Restructuring of Laurentian", the "Evaluation of the Federated Universities Model" and the "Restructuring of Program Offerings".

[25] Paragraph 295 of the affidavit reads as follows:

> The Laurentian 2.0 framework seeks to accomplish the foregoing through:
>
> (a) **Restructuring the Academic Model** by streamlining academic programming and delivery through the reduction of number of programs, restructuring academic supports and terminating the agreements and relationship with the Federated Universities; and
>
> (b) **Restructuring the Business Model** by updating business operations, restructuring existing obligations through a compromise in the CCAA and ultimately balancing the budget.

[26] Paragraph 298 reads, in part, as follows:

> [298] More particularly, during this CCAA proceeding, LU ("Laurentian") intends to:
>
> …
>
> (b) re-evaluate the Federated Universities model in such a way that the historic significance of the Federated Universities can be preserved while ensuring that the relationships reflect the current realities of each organization;

[27] Paragraphs 299 – 301 read as follows:

> [299] In 2019, LU provided notice of a change in the funding agreement between LU and each of the Federated Universities. While this amendment was necessary to make the funding arrangements consistent with metrics in respect of tuition and grants from the Province, further work is required. LU estimates that the Federated Universities model costs LU approximately $5 million each year.
>
> [300] Currently, the Federated Universities have duplicate organizational infrastructure, functions and services. Although LU respects the autonomy of the Federated Universities, the Federated Universities also have financial challenges. One successful outcome of this CCAA proceeding may be the remolding of the Federated Universities model in such a way that creates economies of efficiency for LU and the Federated Universities while maintaining the historical significance and identities of the Federated Universities.
>
> [301] This Court-supervised proceeding will assist LU in focusing its discussions and negotiations with leadership of the Federated Universities to arrive at a compromise and solution that is acceptable and, more importantly, ensures the long-term sustainability of LU. If necessary, LU may utilize the proposed mediation to address and resolve the Federated Universities model.

[28] The Honourable Justice Sean Dunphy conducted a judicial mediation to address a number of issues facing Laurentian. Although the contents of any discussions have not been made public, it is apparent that the issues as between Laurentian and the Federated Universities were discussed but were not resolved.

[29] On April 1, 2021, Laurentian gave Notice to Disclaim or Resiliate an Agreement with Thorneloe and with U Sudbury. The notice covered both the Federation Agreements and the Financial Distribution Notice.

[30] The Monitor approved the Notices of Disclaimer.

[31] On April 15, 2021, Thorneloe delivered a Motion Record opposing the Notice of Disclaimer issued to Thorneloe.

[32] U Sudbury also delivered a Motion Record opposing the Notice of Disclaimer. The motion was the subject of a bilingual hearing before Gilmore J.

ISSUE

[33] Thorneloe submits there is one issue to be determined on this motion: should the court prohibit the disclaimer?

ANALYSIS

[34] Section 32 of the CCAA addresses the disclaimer or resiliation of agreements.

[35] The debtor company may, on notice to the other parties to an agreement and the monitor, disclaim or resiliate an agreement to which the company is a party at the commencement of the CCAA proceedings: s. 32(1). The monitor must approve the proposed disclaimer or resiliation. Otherwise, the debtor is required to make an application to the court for an order that the agreement be disclaimed or resiliated: ss. 32(1) and (3). The counterparty has 15 days to make an application to the court opposing the disclaimer or resiliation: s. 32(2). In deciding whether to make the order, the court is to consider, among other things, the factors set out in s. 32(4), which read as follows:

> **Factors to be considered**
>
> (4) In deciding whether to make the order, the court is to consider, among other things,
>
> (a) whether the monitor approved the proposed disclaimer or resiliation;
>
> (b) whether the disclaimer or resiliation would enhance the prospects of a viable compromise or arrangement being made in respect of the company; and
>
> (c) whether the disclaimer or resiliation would likely cause significant financial hardship to a party to the agreement.

[36] Thorneloe makes the following arguments in opposition to the disclaimer:

(a) Thorneloe did not cause Laurentian’s financial problem;

(b) The disclaimer will result in significant financial hardship for Thorneloe and result in Thorneloe having to make an insolvency filing pursuant to the CCAA or the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;

(c) Thorneloe is immaterial to Laurentian’s financial situation and therefore, the disclaimer would not result in a material improvement to Laurentian’s restructuring;

(d) The relationship between Laurentian and Thorneloe is not a commercial relationship to which the disclaimer provisions of the CCAA were intended to apply; and

(e) Laurentian is acting in bad faith contrary to s. 18.6 of the CCAA.

[37] The Monitor approved the disclaimer for reasons set out in the Third Report as follows:

> 169. … [I]t is the Monitor's view that the Notices of Disclaimer will enhance the prospects of a viable compromise or arrangement being made in respect of the Applicant. In fact, it is the Monitor's view that without the Notices of Disclaimer, the Applicant is unlikely to be able to complete a viable plan of compromise or arrangement.
>
> …
>
> 172. While the net estimated savings achieved to date is significant and addresses the Applicant's operational deficit, it is unlikely to be sufficient to cover among other items: (a) the repayment of the DIP Facility (even if refinanced over time) and (b) payment of distributions to creditors pursuant to a plan of compromise or arrangement in connection with the compromise of their claims.
>
> 173. As a not-for-profit, LU is unable to issue equity to creditors. It has no or limited ability to service additional debt beyond the refinancing of the DIP. As set out above, LU has limited opportunity to drive increased revenue. Therefore, LU must, through its restructuring, generate sufficient savings to provide for the ability to make payments over time to its creditors in partial satisfaction of their claims. The savings generated to date through the LUFA Term Sheet, LUSU Term Sheet and non-union employee savings represent a significant component of the required savings, but not the entirety.
>
> 174. The Federated Universities model represents a significant cost to LU. In Fiscal 2020, LU transferred approximately $7.7 million to the Federated Universities as a result of LU students taking programs and courses offered through the Federated Universities. This included the transfer of approximately $3.5 million of grants received by LU, $5.3 million in net tuition collected from LU students and $0.3 million in material fees in respect of Federated Universities courses all offset by a 15% service fee of approximately $1.4 million. …
>
> 175. The Monitor understands that the majority of the funds transferred to the Federated Universities relates to the delivery by the Federated Universities of

> elective courses taken by students enrolled in LU programs as opposed to students enrolled in programs offered through the Federated Universities.
>
> 176. In conducting its review of its academic offerings and operational restructuring model, LU determined that it has the ability and capacity to offer a comprehensive list of programs and courses to LU students from the suite of programs and courses delivered by LU faculty in the absence of continuing the Federated Universities relationship. As a result, LU determined that it could retain the vast majority of the funds transferred to the Federated Universities and continue to support students without incurring those incremental costs.
>
> 177. As a result, LU is of the view that savings estimated in the range of $7.1 to $7.3 million annually can be generated through the disclaimer of the Federated Universities as part of this restructuring.
>
> 178. The Monitor recognizes the potential financial hardship that the Notices of Disclaimer may have for the Federated Universities. However, given the additional savings required for LU to have a reasonable opportunity to put forward a viable plan of compromise or arrangement and effect a successful restructuring, the Monitor is of the view that the disclaimer of the Federated Universities agreements is necessary.

[38] To counter the submissions of Laurentian and the views and recommendations expressed by the Monitor, Thorneloe filed a Report on Financial Impact of Termination of Federated Agreement and Financial Distribution Agreement on Thorneloe University. The Report was prepared by Mr. Allan Nackan, a partner with A. Farber & Partners Inc. Mr. Nackan has been identified as an expert for the purposes of providing his opinion. I am satisfied that Mr. Nackan is an expert in the area of insolvency and restructuring. However, Mr. Nackan acknowledged in cross-examination that he is not an expert in terms of government funding of universities and that he has no prior experience in determining university funding. His lack of industry-specific experience has to be taken into account when considering his report and conclusions.

[39] It is also necessary to acknowledge the expertise of Ernst & Young Inc., the court-appointed Monitor. The Monitor is an officer of the court, with a duty to be neutral and objective: *Bell Canada International Inc. (Re)*, [2003] CarswellOnt No. 4537 (S.C.). The principals of Ernst & Young Inc., including Sharon Hamilton, who signed the Monitor's Third Report, are widely acknowledged as being experts in the field of insolvency and restructuring. Moreover, the Monitor has been involved since the proceedings began and has extensive knowledge of the Applicant's operations and restructuring efforts.

[40] Farber was retained to provide an opinion on whether the termination of the Federated Agreement and the Financial Distribution Notice would result in significant financial hardships to Thorneloe, and whether or not the termination would enhance Laurentian's prospects of a viable compromise or arrangement.

[41] Farber concludes the termination of the Federated Agreement will cause serious financial hardship to Thorneloe as a consequence of which Thorneloe will have to resort to a formal insolvency process.

[42] Farber also concludes that the termination of the Federated Agreement will have an immaterial impact on overall costs reduction in Laurentian's restructuring process and is unlikely to enhance prospects of Laurentian making a viable plan.

[43] In a supplementary report, Farber concludes that:

- Laurentian is not facing an immediate liquidity crisis on May 1, 2021;
- there is no compelling reason that would necessitate termination of the federated arrangement with Thorneloe on May 1, 2021;
- from a financial perspective, Laurentian and the DIP Lender have not provided information to support the need for a Disclaimer Deadline of May 1, 2021.

[44] A consideration of the s. 32(4) factors requires a balancing of interests. The subsection is silent with respect to the relative importance of any one of the factors to be considered and is not restricted to the listed factors. The test does, however, require the court to balance the benefit of the proposed disclaimer for Laurentian against the detrimental impact on Thorneloe. The disclaimer of a contract must be fair, appropriate and reasonable in all the circumstances. Ultimately, it is a discretionary decision to determine whether the disclaimer should be upheld. This discretion is exercised by weighing the competing interests and prejudice to the parties and assessing whether the disclaimer or resiliation is fair and reasonable.

[45] In my view, the considerations in the Third Report of the Monitor reflect a proper balancing of the competing interests of Laurentian and all stakeholders, including Thorneloe. The Third Report discusses the financial challenges facing Laurentian and proposes solutions that could enhance the prospects of a viable plan of compromise or arrangement, while acknowledging the potential financial hardship on the Federated Universities. The Farber Report and the Supplementary Farber Report focuses of the impact of the disclaimer on Thorneloe and the short term DIP Financing requirements. In narrowing its focus, the Farber Report does not take into account that in order to enhance the prospects of a viable plan of compromise or arrangement, it is often necessary to take into account the potential compromises that will have to be made by all stakeholder groups. For this reason, I have concluded that the Third Report of the Monitor has to be given greater weight than the Farber Report and the Supplementary Farber Report.

[46] Laurentian submits that the Courts have identified guiding principles for the analysis:

(a) the recommendation of the Monitor is afforded significant weight in CCAA proceedings (see *Nortel Network Corp. Re*, 2018 ONSC 6257 at para. 27; *Aralez*

Pharmaceuticals Inc., Re, 2018 ONSC 6980 at para. 36; and *Aveos Fleet Performance Inc.*, 2012 QCCS 4074 at para. 50(f);

(b) the disclaimer does not need to be essential to the restructuring, it only need be advantageous and beneficial (see *Timminco Ltd., Re*, 2012 ONSC 4471 at para. 54 ("*Timminco*"); see also *Homberg Invest Inc.*, 2011 QCCS 6376 at para. 103);

(c) the threshold to establish "significant financial hardship" in opposing a disclaimer is high. There must be specific evidence of financial hardship. Mere loss or damage is not sufficient, and it must be likely that the hardship is caused by the disclaimer (see *Target Canada Co. Re*, 2015 ONSC 1028 at para. 26);

(d) the test to establish "significant financial hardship" is subjective and depends on an examination of the individual characteristics and circumstances of the counterparty (see *Timminco* at para. 60); and

(e) the Court should take into consideration the effect that the disclaimer will have on the outcome for all other unsecured creditors and be an equitable result that is dictated by the guiding principles of the CCAA (see *Timminco* at para. 62).

[47] There is no doubt that Laurentian has significant financial challenges. There is also no doubt that, if a successful restructuring is to be achieved, it must be done on an expedited basis. If Laurentian is to successfully restructure its affairs, it is essential that it maintain continuity of operations. The spring term commences May 3, 2021 and extends until the latter part of July 2021. The fall term commences at the beginning of September 2021. If the restructuring is to succeed, Laurentian must be in a position to provide assurances to both its students and faculty that it has a viable plan that will ensure continued operations for both the spring term, the fall term and beyond.

[48] Laurentian, with the assistance of the Monitor, identified a number of areas in which a financial restructuring was required. These include a downsizing of the number of programs being offered by Laurentian and also the necessity to arrive at new, sustainable collective agreements with LUFA and LUSA. These requirements and accommodations are set out in the motion to extend the stay of proceedings.

[49] Laurentian also identified, at the outset of the CCAA proceedings, that it would be necessary to have a fundamental readjustment or realignment with the Federated Universities.

[50] Although Thorneloe is of the view that its relationship with Laurentian has only a minor impact on the financial position of Laurentian, it seems to me that this view is far too narrow in scope. Laurentian has identified that if the disclaimers involving Thorneloe and U Sudbury are upheld, together with the revised agreement with Huntington, this will result in $7.7 million of additional funds remaining with Laurentian on an annual basis. This calculation has been identified by the Monitor and, in my view, represents a real source of annual financial relief for Laurentian.

[51] Thorneloe counters by indicating that it is only one of three Federated Universities; the $7.7 million figure cannot be attributed, in total, to Thorneloe. At first glance, this is an attractive

and persuasive argument. It does not, however, take into account that Huntington, in negotiating its settlement with Laurentian, has included what is known colloquially as a "most favoured nation" clause. Quite simply, if Thorneloe is able to negotiate a better alternative than the agreement negotiated by Huntington, Huntington is in a position to reopen negotiations with Laurentian to obtain similar treatment. Therefore, it seems to me that although there are three Federated Universities involved, their positions are interlinked and interrelated to such a degree that the $7.7 million calculation is relevant to take into account on this motion.

[52] The Notices of Disclaimer are, in my view, central to the Applicant's restructuring. The Disclaimer will result in millions of dollars of additional tuition and grant revenue remaining within Laurentian. As noted in both the affidavit of Dr. Haché and the Monitor's Report, each time a Laurentian student takes an elective course offered through Thorneloe, revenue associated with that course is transferred from Laurentian to Thorneloe. Because the Applicant has the capacity to independently offer students the vast majority of all necessary programs and electives within its existing cost structure, each course taken by a Laurentian student through Thorneloe represents lost revenue for Laurentian.

[53] The Applicant contends that it simply cannot afford to continue its relationship with the Federated Universities. In order to right-size the University, Laurentian cannot continue paying for programs and courses supplied by the Federated Universities that it does not require and are revenue negative for Laurentian.

[54] The Applicant submits that it cannot simply "balance its budget" in order to achieve financial sustainability. It submits that it must generate positive cash flow from operations on an annual basis, prior to the funding of expenses, to achieve financial sustainability. In my view, this submission is consistent with the objective and necessity of achieving long-term sustainability.

[55] Laurentian has also submitted that the savings to be realized from the disclaimer are necessary for the purposes of submitting a viable plan. The Monitor is in agreement with this submission.

[56] Although the savings realized from the disclaimer do not, in isolation, represent a significant amount, in my view, that is not the end of the inquiry. In order to enhance the prospects of a viable plan of reorganization being put forward, it is necessary to assess the totality of what Laurentian is attempting to achieve in this restructuring.

[57] Laurentian suggests that savings have to be realized from a number of sources, including the Federated Universities. Without the total amount of savings being realized, Laurentian submits that it will been unable to put forward the basis of a plan that will be acceptable to its various constituents.

[58] It is necessary to take into account another factor, namely that there is evidence that Laurentian has achieved other milestones in its attempt to put forward a viable plan of reorganization. These include the revised relationships with LUFA and LUSA, the reduction in the number of courses, and the reduction in the number of staff. None of these milestones were realized without significant compromise and hardship being experienced by faculty, students and

the greater Sudbury community. Without such compromises, Laurentian will not be able to survive.

[59] It is also necessary to take into account the position of the DIP Lender. The DIP Lender has put forth a condition for its continued support and for increased financing. That condition is that the Disclaimer with respect to Thorneloe and U Sudbury had to be finalized by May 1, 2021, subject to any reserved decision of the court.

[60] Thorneloe challenges the position of the DIP Lender for two reasons. First, the condition relating to the Disclaimer was not a condition of the original DIP and was inserted only after the Notice of Disclaimer was issued. Second, the analysis performed by Farber indicates that the increased DIP Loan is not required until the latter part of June at the earliest.

[61] There is, in my view, no basis to question the legitimacy of the DIP Lender nor question the conditions that the DIP Lender has put forth with respect to any request to extend the DIP Loan and to increase the amount of the DIP Financing. The DIP Lender is entitled to take into account commercial reality in assessing its options.

[62] The DIP Lender is not a pre-existing lender to Laurentian, nor is there any evidence that the DIP Lender is engaged in a "loan to own strategy". These facts distinguish this DIP Lender from a number of DIP lenders that have been involved in the cases referenced by counsel to Thorneloe, as referenced in Rostom and Fell, "Recent Trends in DIP Financing" (2016) 5-4 IIC Journal; *Essar Steel Algoma (Re)*, Endorsement of Newbould J. dated November 16, 2015; and *Great Basin Gold Ltd. (Re)*, 2012 BCSC 1459.

[63] It is also relevant to remember that this is not a situation where the Court is being asked to approve DIP financing with this DIP Lender. These approvals were granted in February 2021 with no party objecting and with no appeals being filed. It was a competitive process and the DIP Lender was one of eight potential DIP lenders identified at the outset of the proceedings.

[64] Thorneloe also takes issue with respect to the reluctance of a representative of the DIP Lender to be cross-examined or to answer any questions with respect to the DIP Financing.

[65] In response, Laurentian takes the position that the terms for the continued DIP were negotiated as part of a process of achieving a viable long-term plan. Second, although the increased DIP may not be necessary until mid-June, it is a requirement for any extension of the stay to provide a cash flow statement that takes into account the entirety of the Stay Period, and it is necessary to provide the necessary assurances to faculty and students that Laurentian will be able to operate for the next academic term, which commences May 3, 2021 and extends towards the middle to the latter part of July 2021. It is simply not feasible, from its standpoint, to operate without the continued DIP Facility and the certainty that the DIP Facility will be available throughout the entirety of the academic term and the Stay Period.

[66] With respect to the cross-examination of the DIP Lender, I note that no affidavit has been filed in these proceedings by a representative of the DIP Lender. In addition, the DIP Lender is not a pre-existing lender. The DIP Lender is not involved in any of the pre-CCAA DIP contractual

relationships. It is up to the debtor, with the assistance of the Monitor, to negotiate the terms of the DIP Financing. There is no evidence that the DIP Lender has any ulterior motive in negotiating the condition to extend additional financing and to extend the term.

[67] Thorneloe also raises the concern that the Disclaimer will result in significant financial hardship for Thorneloe and result in Thorneloe having to make insolvency filings pursuant to the CCAA or the *Bankruptcy and Insolvency Act*.

[68] There is no doubt that this is a legitimate point being raised by Thorneloe. The impact of the disclaimer on Thorneloe is significant. The consequence of the disclaimer is such that Thorneloe will be unable to operate in its current form. However, Thorneloe was offered alternatives. The form of the Huntington Transition Agreement was offered to Thorneloe but was not accepted. More importantly, it is also necessary to take into account that if Laurentian's restructuring does not succeed and it ceases operations, Thorneloe, as conceded by its counsel, will also be unable to continue operations.

[69] Thorneloe also contests the disclaimers on the basis that the relationship between Laurentian and Thorneloe is not a commercial relationship to which the disclaimer provisions of the CCAA were intended to apply. In my view there is no merit to this submission. The CCAA proceedings were commenced on February 1, 2021. The Initial Order declares that Laurentian is insolvent and is a company to which the CCAA applies. The disclaimer provisions in s. 32 are available to a debtor company. The exceptions set out in s. 32(9) have no application in the circumstances. Laurentian is entitled to utilize the disclaimer provisions in accordance with s. 32.

[70] Thorneloe also takes the position that Laurentian is acting in bad faith contrary to s. 18.6 of the CCAA which provides:

> **Good faith**
>
> **18.6** (1) Any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings.
>
> **Good faith – powers of court**
>
> (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.

[71] In support of this argument, Thorneloe points to Laurentian's attempt to terminate its relationship with Thorneloe, knowing that the disclaimer will result in Thorneloe's insolvency, and to Laurentian's persistence in the face of evidence that termination will not materially assist its restructuring. Thorneloe also submits that Laurentian has consistently and continually wanted to terminate its relationship with Thorneloe and thereby failed to engage in good faith negotiations.

[72] I do not accept that Laurentian has acted in bad faith. Restructurings are not easy and often result in treatment that a party can consider to be extremely harsh. However, that does not

necessarily mean that the other party has not been acting in good faith. In its Third Report, the Monitor makes specific reference to the bad faith argument being raised by Thorneloe. It is significant that the Monitor makes no statement that would suggest in any way that Laurentian has been acting in bad faith. The Monitor ultimately recommends at paragraph 206 of its Third Report that the court grant the relief sought by the Applicant, which includes the disclaimer and also an extension of the stay of proceedings.

[73] Section 11.02(3) of the CCAA addresses the burden of proof on an application for an extension of the stay of proceedings other than the initial application. This includes a requirement that the applicant satisfy the court that it has acted, and is acting, in good faith and with due diligence. By supporting the application for the extension and upholding the disclaimer, it can be inferred that the Monitor does not support the argument of Thorneloe to the effect that Laurentian has been acting in bad faith.

[74] My summary of the factors set out in s. 32(4) of the CCAA is as follows:

(a) the Monitor approved the proposed disclaimer;

(b) the Disclaimer will enhance the prospects of a viable compromise or arrangement being made in respect of Laurentian;

(c) the Notice of Disclaimer will have financial consequences to Thorneloe, but this is not a sufficient reason to disallow the Notice of Disclaimer. Thorneloe was offered an alternative, similar to Huntington, which was not accepted.

[75] In addition, it seems to me that, in the circumstances of this case, it is necessary to consider the broader implication of disallowing the Notice of Disclaimer – namely the potential demise of Laurentian.

[76] The dilemma facing the court is clear. If Thorneloe's motion succeeds, with the result that the Disclaimer is not effective, it could lead to an unraveling of Laurentian's restructuring plan and the collapse of Laurentian. This in turn would have significant impact on all faculty, students and the greater Sudbury community. It would also result in the financial collapse of Thorneloe. Obviously, this is not a desirable outcome.

[77] If the Notices of Disclaimer are upheld, I acknowledge that this could lead to the cessation of operations of Thorneloe. I do not lightly discount the impact on faculty, employees and students at Thorneloe, but the impact is significantly less than if Laurentian and Thorneloe are both forced to suspend or cease operations.

[78] Given these two undesirable options, the better choice or to put it another way, the least undesirable choice, is to uphold the Notices of Disclaimer.

DISPOSITION

[79] In the result, the motion brought by Thorneloe to invalidate the Notice of Disclaimer is dismissed.

Chief Justice G.B. Morawetz

Date: May 7, 2021

This is Exhibit "G" referred to in the Affidavit of Dr. Robert Haché sworn by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 21, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

DEREK HARLAND

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, Fraser Hughes* 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

Demetrios Yiokaris and *Eugene Meehan* for Thorneloe University

Francis Poulin and *Charlotte Servant-L'Heureux* for the Assemblée de la francophonie de l'Ontario

Charles Sinclair for the Laurentian University Faculty Association

Tracey Henry and *Danielle Stampley* for the Laurentian University Staff Union

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

Aryo Shalviri and *Cristina Cataldo* for Royal Bank of Canada

Dylan Chochla for Toronto-Dominion Bank

Virginie Gauthier for Lakehead University

Natalie Levine for Huntington University

Donia Hashem for the Canada Foundation for Innovation

Sarah Godwin and *Immanuel Lanzaderas* for Canadian Association of University Teachers

Mark G. Baker and *Andre Luzhetskyy* for Laurentian University Students' General Association

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 August 31, 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 SU, 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. 32 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. 32(4) (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 2021 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 SU. 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