

**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

**RESPONDING RECORD OF HUNTINGTON UNIVERSITY
(COMPENSATION CLAIMS PROCESS MOTION RETURNABLE APRIL 17, 2021)**

August 13, 2021

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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
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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

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

Applicant

**AFFIDAVIT OF DR. KEVIN MCCORMICK
(Sworn August 13, 2021)**

I, Dr. Kevin McCormick, of the City of Sudbury, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the President and Vice-Chancellor of Huntington University ("**Huntington**") and, as such, have knowledge of the matters contained in this Affidavit. Where I do not possess such personal knowledge, I have stated the source of my information and, in all such cases, believe the information to be true.
2. This Affidavit is sworn in connection with the motion by Laurentian University of Sudbury ("**Laurentian**"), returnable August 17, 2021, for an order approving a methodology to calculate certain employment-related claims and establishing a process for calculation and determination of such claims (the "**Compensation Claims Process Order**") in connection with Laurentian's ongoing proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA**").
3. All terms used in this Affidavit and not otherwise defined shall have the meaning given to them in the draft Compensation Claims Process Order included in Laurentian's motion record dated August 10, 2021.

4. Huntington takes no position on the proposed Compensation Claims Process Order with respect to the majority of the matters addressed in the proposed order that relate to Laurentian's employees and other parties.

5. However, Huntington opposes the relief sought and those portions of the proposed Compensation Claims Process Order addressing the treatment of RHBP-related claims of Huntington's employees and retirees.

6. As detailed further below, pursuant to a post-CCAA filing Transition Agreement (defined below) entered into between Huntington and Laurentian in connection with Laurentian's disclaimer of its federation agreement with Huntington, Huntington's employees and retirees must receive the same treatment as Laurentian's employees and retirees in respect of the RHBP.

7. The proposed Compensation Claims Process Order does not, however, treat the claims of Huntington's employees and retirees the same as the claims of Laurentian's employees and retirees, and is therefore contrary to Laurentian's post-filing obligations under the Transition Agreement.

8. Huntington therefore respectfully submits that the proposed Compensation Claims Process Order should be revised to reflect the terms of the Transition Agreement.

Background

9. Huntington was one of the three independent universities that operated in federation with Laurentian until these CCAA proceedings were commenced and Laurentian disclaimed the federation agreements pursuant to section 32 of the CCAA.

10. Huntington was incorporated in 1960 following the petition of the United Church of Canada, and Huntington continues to respect the United Church of Canada's traditions and its relationship with Huntington. Pursuant to *The Huntington University Act, 1960*, as amended,

Huntington is authorized and empowered to enter into federation or affiliation with other colleges or universities.

11. In 1960, the University of Sudbury, the Anglican Diocese of Algoma, and the United Church of Canada petitioned the Ontario government to establish Laurentian as a non-denominational, bilingual university to serve the Sudbury community. The enabling legislation specifically contemplates that Laurentian would enter into federation agreements with church-related universities or colleges.

12. On September 10, 1960, Laurentian and Huntington entered into federation with each other upon the terms and conditions of the agreement dated September 10, 1960 (the **“Federation Agreement”**).

13. On April 1, 2021, Laurentian delivered notice of disclaimer to Huntington seeking to disclaim the Federation Agreement and the related notices of terms of financial distribution (the **“Funding Notices”**).

The Transition Agreement and the RHBP

14. On April 16, 2021, Huntington and Laurentian entered into a Transition Agreement (the **“Transition Agreement”**) governing the terms of disentangling the relationship between Huntington and Laurentian post-disclaimer of the Federation Agreement. A copy of the Transition Agreement without schedules is attached hereto as **Exhibit “A”**.

15. Among other things, section 7.1(1)(c) of the Transition Agreement provides:

Huntington employees and retirees will receive the same treatment as Laurentian employees and retirees in respect of the RHBP, and claims in respect of the RBHP may be filed in any claims process under the CCAA. The RBHP has, or will be terminated within the CCAA Proceeding and no claims have or will be processed after February 1, 2021. No further Huntington contributions will be required to the RHBP after April 5, 2021. Laurentian will terminate the RHBP, including Huntington’s participation in the RHBP, no later than the Pension Effective Date. [emphasis added]

16. Section 10.3 of the Transition Agreement also provides that “[t]his Agreement shall constitute a post-filing obligation of Laurentian and not be subject to compromise under any CCAA plan of compromise or arrangement”.

17. On May 2, 2021, this Court granted an order which, among other things, approved the Transition Agreement. A copy of the May 2, 2021 order is attached hereto as **Exhibit “B”**.

RHBP Claim Methodology is Contrary to Transition Agreement

18. The Compensation Claims Process Order as proposed does not comply with terms of the Transition Agreement. Specifically, the “Compensation Claims Methodology” attached as Schedule “A” to the draft Compensation Claims Process Order contains, in Part III thereof, the claims methodology that is proposed to be applied in respect of RHBP-related claims.

19. The “RHBP Claim Methodology” set out therein provides that Laurentian retirees, active, and terminated employees (who meet certain eligibility requirements) are entitled to a claim that, in summary, is calculated based on the present value of the RHBP benefits over an assumed lifespan (see paragraphs 25-37 of the Compensation Claims Methodology).

20. However, Huntington employees and retirees are treated differently and the RHBP Claim Methodology provides that such claims must be made by Huntington on behalf of its employees and retirees and are limited to the amount of net contributions to the RHBP, less the distributions made from the RHBP prior to the CCAA filing date (see paragraphs 38-40 of the Compensation Claims Methodology).

21. The Monitor has not yet provided Huntington with a calculation of the quantum of the claim under the proposed RHBP Claim Methodology for Huntington employees and retirees, but I expect that the amount will be minimal and significantly less than the quantum of claims calculated using the methodology for Laurentian employees and retirees.

RHBP Claim Methodology is Administratively Unfair

22. In addition to the proposed RHBP Claim Methodology being contrary to the Transition Agreement, it also places an unfair administrative burden on Huntington to administer the claims and any resulting distributions which have resulted from Laurentian's unilateral decision to terminate the RHBP as part of its CCAA restructuring.

23. The proposed RHBP Claim Methodology would mandate that Huntington effectively act as a claims agent for current and former employees, including retirees, who are not represented in this proceeding.

24. All of the ordinary course administration of distributions of RHBP benefits were undertaken by Laurentian, not by Huntington. Retirees would make up the largest group of eligible Huntington claimants and Huntington does not have access to the information regarding the historical retiree distribution process.

25. In addition, Laurentian has access to, and the benefit of, the experience and expertise of the Monitor and the CCAA process in connection with making any claims distributions. Conversely, Huntington does not have the benefit of such expertise and resources, nor the structure afforded by CCAA process to administer these claims and any resulting distributions. Huntington is therefore not able to efficiently address any resulting distributions that may be made in respect of admitted RHBP claims in the CCAA process.

26. Given that that there would likely be less than 10 Huntington claimants that would be eligible for a claim using the methodology proposed for Laurentian claimants (and only 1-2 of

which would be in the non-retiree categories), it is unfair to impose upon Huntington the obligation to effectively runs its own out-of-court claim and distribution process as a result of Laurentian's termination of the RHBP when that can be very easily be administered within the CCAA process.

Conclusion

27. I am advised by Huntington's counsel that they raised the requirements of the Transition Agreement in writing to the Monitor and its counsel on July 28, 2021. In addition, attached hereto as **Exhibit "C"** is correspondence from counsel for Huntington dated August 12, 2021 again raising these issues with Laurentian and the Monitor and requesting that the proposed Compensation Claims Process Order be revised to reflect Laurentian's agreements in the Transition Agreement. I am advised by counsel to Huntington that, as of the swearing of this affidavit, Laurentian has not agreed to revise the Compensation Claims Process Order as requested by Huntington.

28. Huntington requests that the Compensation Claims Process Order be revised to treat RHBP claims of Huntington employees and retirees in the same manner as the claims of Laurentian employees and retirees.

SWORN BEFORE ME by
videoconference on August 13, 2021 in
accordance with O.Reg. 431/20:
Administering Oath or Declaration
Remotely. The deponent was located
in the City of Sudbury in the Province of
Ontario and I was located in the City of
Toronto in the Province of Ontario



Commissioner for Taking Oaths

Commissioner: Behnoosh Nasri
LSO#: P14845

Kevin R.E. McCormick
DR. KEVIN MCCORMICK

This is Exhibit "A" referred to in the affidavit of Dr. Kevin McCormick, sworn before me by videoconference on August 13, 2021 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Sudbury in the Province of Ontario and I was located in the City of Toronto in the Province of Ontario

.....
A Commissioner For Taking Affidavits

Commissioner: Behnoosh Nasri
LSO#: P14845

TRANSITION AGREEMENT

April 16, 2021

TRANSITION AGREEMENT

THIS AGREEMENT made and effective as of the 16th day of April, 2021,

BETWEEN:

LAURENTIAN UNIVERSITY OF SUDBURY, a corporation incorporated by *The Laurentian University of Sudbury Act*, 1960

(“**Laurentian**”)

- and -

HUNTINGTON UNIVERSITY, a corporation incorporated by Chapter 143 of the Statutes of Ontario, 1960

(“**Huntington**”)

RECITALS:

- A. Huntington was incorporated following the petition of the United Church of Canada, and Huntington continues to respect the United Church of Canada’s traditions and its relationship with Huntington. Pursuant to *The Huntington University Act, 1971*, Huntington is authorized and empowered to enter into federation or affiliation with other colleges or universities.
- B. Pursuant to *The Laurentian University of Sudbury Act*, 1960, c.151, Laurentian is authorized and empowered to admit into federation or affiliation with Laurentian, other colleges or universities.
- C. On September 10, 1960, Laurentian and Huntington (collectively, the “**Parties**”) entered into federation with each other upon the terms and conditions of the agreement dated September 10, 1960 (the “**Federation Agreement**”).
- D. On November 10, 1993, the Parties, in addition to the other Federated Universities (as defined below) entered into a Proposed Grant Distribution and Services Fees Agreement that provided for the terms for the distribution of tuition collected by Laurentian, operating grants and the allocation of certain fees for administrative services provided by Laurentian to the Federated Universities.
- E. On May 10, 2019, Laurentian delivered to Huntington a notice (the “**Financial Distribution Notice**”) that amended and superseded certain financial terms related to the allocation of grant funding, tuition fees and administrative services by and among the Parties and the Parties have been operating pursuant to the Financial Distribution Notice since that time.
- F. On February 1, 2021, Laurentian commenced proceedings (the “**CCAA Proceeding**”) under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”).
- G. On April 1, 2021, Laurentian delivered a notice of disclaimer (the “**Disclaimer**”) in respect of the Federation Agreement and the Financial Distribution Notice.

- H. Huntington has not and does not consent to or approve the Disclaimer. Upon execution of this Transition Agreement, Huntington agrees that it will not take any steps to cause the Approval Order sought by Laurentian to be opposed or not granted, and provided the Approval Order is granted, Huntington agrees not to oppose the Disclaimer.
- I. With the approval of its Board of Governors (in the case of Laurentian) and its Board of Regents (in the case of Huntington), the Parties wish to enter into this Agreement to address certain matters arising from the Disclaimer and the termination of the Federation Agreement and the Financial Distribution Notice.

In consideration of the above recitals, the mutual representations and covenants below and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows.

ARTICLE 1 INTERPRETATION

Section 1.1 **Defined Terms.**

As used in this Agreement, capitalized terms used and not otherwise defined herein shall have the following meanings:

“Agreement” means this Transition Agreement, including Schedule “A” hereto.

“Applicable Laws” means, with respect to any Person, property, transaction, event or other matter, (a) any foreign or domestic constitution, treaty, law, statute, regulation, code, ordinance, principle of common law or equity, rule, municipal by-law, order or other requirement having the force of law, (b) any policy, practice, protocol, standard or guideline of any Governmental Authority which, although not necessarily having the force of law, is regarded by such Governmental Authority as requiring compliance as if it had the force of law (collectively in the foregoing clauses (a) and (b), **“Law”**), in each case relating or applicable to such Person, property, transaction, event or other matter and also includes, where appropriate, any interpretation of Law (or any part thereof) by any Person having jurisdiction over it, or charged with its administration or interpretation.

“Approval Order” means an order of the Court approving this Agreement and authorizing Laurentian and Huntington to carry out the terms herein, which order shall be in form and substance acceptable to Laurentian and Huntington, each acting reasonably.

“Business Day” means any day of the year, other than a Saturday, Sunday or any day on which Canadian chartered banks are closed for business in Sudbury, Ontario.

“CCAA” has the meaning given to such term in the Recitals to this Agreement.

“CCAA Claims Process” has the meaning given to such term in Section 10.1(1)(a) of this Agreement.

“CCAA Proceeding” has the meaning given to such term in the Recitals to this Agreement.

“Court” means the Ontario Superior Court of Justice (Commercial List).

“Disclaimer” has the meaning given to such term in the Recitals to this Agreement.

“Effective Date” means May 1, 2021 or such other date agreed to between Huntington and Laurentian.

“Federated Universities” means collectively, Huntington University, Thorneloe University and the University of Sudbury.

“Federation Agreement” has the meaning given to such term in the Recitals to this Agreement.

“Financial Distribution Notice” has the meaning given to such term in the Recitals to this Agreement.

“Gerontology Program Transfer” has the meaning given to such term in Section 4.1(1) of this Agreement.

“Governmental Authority” means:

- (a) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal or local (whether administrative, legislative, executive or otherwise);
- (b) any agency, authority, ministry, department, regulatory body, court, central bank, bureau, board or other instrumentality having legislative, judicial, taxing, regulatory, prosecutorial or administrative powers or functions of, or pertaining to, government;
- (c) any court, tribunal, commission, individual, arbitrator, arbitration panel or other body having adjudicative, regulatory, judicial, quasi-judicial, administrative or similar functions; and
- (d) any other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange or professional association.

“Huntington” has the meaning given to such term in the preamble to this Agreement.

“Huntington Courses and Programs” means Huntington’s current courses and programs, including courses and programs in Gerontology, Communications Studies and Religious Studies.

“Huntington Lease” means the indenture between Huntington and Laurentian dated July 3, 1964.

“Laurentian” has the meaning given to such term in the preamble to this Agreement.

“Marketing Materials” has the meaning given to such term in Section 5.3(1) of this Agreement.

“Monitor” means Ernst & Young Inc., in its capacity as monitor of Laurentian in the CCAA Proceeding.

“Notice” has the meaning given to such term in Section 12.1 of this Agreement.

“Party” has the meaning given to such term in the Recitals to this Agreement.

“Pension Effective Date” has the meaning given to such term in Section 7.1(1) of this Agreement, being June 30, 2021 or such other date agreed to by Huntington and Laurentian.

“Pension Plan” means Retirement Plan of Laurentian University of Sudbury and its Federated and Affiliated Universities, Registration Number 0267013.

“Person” means an individual, partnership, limited partnership, limited liability partnership, corporation, limited liability company, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or governmental entity, and pronouns have a similarly extended meaning.

“Representatives” means the individuals who are employees, whether unionized or non-unionized, including supplemental employees and independent contractors under contract, agents and representatives of each of the Parties who are employed by each of the Parties to perform, or who otherwise perform, or are otherwise involved with the decision making or operations of each of the Parties.

“RHBP” means the retiree health benefits plan administered by Laurentian as in effect prior to February 1, 2021.

Section 1.2 References and Usage.

- (1) Any reference in this Agreement to gender includes all genders. Words importing the singular number only include the plural and vice versa.
- (2) The division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and do not affect its interpretation.
- (3) All references in this Agreement to dollars or to “\$” are expressed in Canadian currency, unless otherwise specifically indicated.
- (4) In this Agreement (i) the words “including”, “includes” and “include” mean “including (or includes or include) without limitation” and (ii) the words “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”. Unless otherwise specified, the words “Article”, “Section” and other subdivision followed by a number mean and refer to the specified Article, Section or other subdivision of this Agreement. In the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding”.
- (5) The schedules and exhibits attached to this Agreement form an integral part of it.
- (6) Any reference in this Agreement to a Person includes its legal representatives, successors and permitted assigns.

- (7) Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules and regulations made under it as it or they may have been, or may from time to time be, amended, re-enacted or replaced.
- (8) Whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment must be made or such action must be taken on or not later than the next succeeding Business Day.

ARTICLE 2 RECITALS

Section 2.1 Recitals

- (1) The Recitals to this Agreement are true and correct and shall form part of this Agreement.

ARTICLE 3 EFFECTIVENESS

Section 3.1 Effectiveness

- (1) Subject to the Court granting the Approval Order, this Agreement and the Disclaimer are deemed to be effective on the Effective Date.
- (2) Laurentian shall seek the Approval Order on or prior to April 29, 2021. If Laurentian fails to obtain the Approval Order on or before April 29, 2021 (subject to reserve), this Agreement shall not be effective and shall be void.
- (3) Notwithstanding anything else in this Agreement or the Disclaimer, in the event that the University of Sudbury, Thorneloe University, or any successor in interest to such universities, receives funding from Laurentian, directly or indirectly, to teach courses or programs, Huntington shall be entitled, at its election, to resume teaching all or some of the Huntington Courses and Programs and to receive similar equivalent compensation on a per student basis from Laurentian to teach such Huntington Courses and Programs.

ARTICLE 4 ACADEMIC PROGRAMS

Section 4.1 Termination of Academic Programs

- (1) Effective on the Effective Date, Huntington shall cease to have the ability or responsibility to deliver academic courses or programs as credit towards Laurentian courses and degrees and shall cease to have the ability or responsibility to admit new students into Laurentian. As of the Effective Date, Laurentian students will no longer be permitted to take elective courses through Huntington as credit for a Laurentian degree.
- (2) Huntington shall request that its faculty complete all work and satisfy all obligations in respect of all Huntington Courses and Programs during the ongoing Winter 2021 academic term, including marking of all final exams, essays or other student work to enable grades, marks and credits to be received by existing students in the ordinary course.

Section 4.2 Payment of Existing Obligations

- (1) Prior to the Effective Date, Laurentian shall pay to Huntington, in full, all tuition and grant funds allocable to Huntington for the period between February 1, 2021 to the Effective Date in the amount calculated in accordance with the existing funding formula under the Financial Distribution Notice and agreed to by Huntington and Laurentian.
- (2) Following the Effective Date, neither Laurentian nor Huntington shall be required to transfer any portion of any tuition fees, grants or other funding received by either of them from any source to the other, provided that this section shall not impact: (i) the obligations of Huntington to make payment for services provided by Laurentian in accordance with Article 6 below; or (ii) the obligations of Huntington to make the payments in accordance with Article 7 below.

Section 4.3 Transition of Students to Laurentian Programs

- (1) Laurentian and Huntington shall each advise students enrolled in Huntington Courses and Programs that, as of the Effective Date, the Huntington Courses and Programs, other than Gerontology, have been discontinued by Laurentian and that the Gerontology program has been acquired by Laurentian with the consent of Huntington.
- (2) Laurentian may offer such students enrollment in other courses or programs, as applicable, offered by Laurentian. Laurentian will provide pathways to degree completion for students enrolled in the Huntington Courses and Programs to provide an opportunity for such students to complete their degrees on their anticipated schedule without undue disruption, wherever possible.
- (3) Huntington shall not be responsible for any transition of such students to other Laurentian courses or programs, but it shall provide such reasonable assistance to Laurentian as may be requested or required in order to effect same. Huntington shall provide such information in its possession to Laurentian as may be reasonably required in order to permit Laurentian to facilitate the transfer of students to other programs at Laurentian and the recognition of their credits, grades and related information.
- (4) The Parties agree that Huntington shall have no responsibility or liability of any kind to Laurentian, students or other persons arising from the discontinuance or cancellation of the Huntington Courses and Programs (including any refund of tuition fees or grant funds received by Laurentian). Laurentian agrees that, to the extent that Laurentian receives a release in any CCAA plan of compromise or arrangement or order of the Court in the CCAA Proceeding in connection with claims arising from the discontinuation of any courses and programs, Laurentian shall seek to obtain a similar third-party release in favour of Huntington.
- (5) Other than as expressly provided for in Section 4.4 of this Agreement, Huntington will continue to retain ownership and control of the remaining Huntington Courses and Programs, including all rights to teach, lease, license or otherwise exploit the Huntington Courses and Programs and any related intellectual property in the future, regardless of mode of delivery.

Section 4.4 Transfer of Gerontology Program

- (1) Effective on the Effective Date, Huntington hereby transfers and assigns to Laurentian all of its rights relating to the Gerontology program (including any rights to any related course material, curriculum and library material), in order to permit Laurentian to continue to offer

the Gerontology program following the Effective Date (the “**Gerontology Program Transfer**”), all on an as, is where is basis, and without any representations, warranties, or obligations on the part of Huntington except as expressly provided herein. For greater certainty, the Gerontology Program Transfer is with respect to the program only and does not include any rights or obligations in respect of any Huntington faculty.

- (2) In consideration for the Gerontology Program Transfer, Laurentian hereby agrees to assume Huntington’s retiree wind-up liabilities under the Pension Plan which, as at the actuarial valuation as at January 1, 2020, are in the amount of \$599,000, and hereby releases Huntington from all such liabilities.
- (3) The Parties shall work cooperatively to transfer from Huntington to Laurentian all physical materials relating to the Gerontology program (such as library material) in the possession and control of Huntington.

ARTICLE 5 HUNTINGTON LEASE AND CONTINUED USE OF FACILITIES

Section 5.1 **Huntington Lease.**

- (1) Following the Effective Date, the Huntington Lease shall remain in full force and effect and shall continue on the existing terms set out therein. For greater certainty, neither the Disclaimer and the termination of the Federation Agreement and the Financial Distribution Notice, nor the execution and implementation of this Agreement shall trigger Laurentian's rights under section 6 of the Huntington Lease. Huntington shall remain responsible for all obligations under the Huntington Lease.

Section 5.2 **Continued Use of Facilities.**

- (1) Following the Effective Date, Huntington will continue to maintain its building and related facilities (including its residence and parking lot) for its own benefit and use, and Huntington will continue to offer residence and parking which will be operated independently of Laurentian.
- (2) Huntington shall be solely responsible for all buildings it owns and operates on Laurentian's land including all related facilities and activities conducted thereon. Laurentian shall not be liable or responsible in any manner whatsoever relating to Huntington's operation or use of its buildings, facilities or residence, and Huntington is solely responsible for all aspects of same. Huntington will maintain such insurance as a prudent owner of buildings would hold, including as it relates to any activities conducted in the buildings.

Section 5.3 **Advertisement of Residence in Marketing Materials**

- (1) For five academic years following the Effective Date (commencing with the academic year 2021-2022) subject to any renewal by agreement of the Parties, Laurentian will offer Huntington's residence on its website/student enrollment and marketing materials (the “**Marketing Materials**”) for first-year students. The Marketing Materials will specify that Huntington's residence is independently managed and operated by Huntington, and not Laurentian.

- (2) During the term provided for in subsection (1) above, Huntington will require first-year students electing to reside in Huntington's residence through the Laurentian enrollment process to opt into the Laurentian meal plan.

ARTICLE 6 SEPARATION OF OPERATIONS

Section 6.1 Shared Services

- (1) Schedule "A" hereto is a list of all services provided or managed by Laurentian for Huntington as of the date of this Agreement, with the corresponding portion of the cost attributable to Huntington (or, where such portion is not a defined amount, the method of calculating the portion). Schedule "A" shall be reviewed annually by the Parties on or before the anniversary of the Effective Date, to ensure that it reflects the correct methodology and amounts for such services.

Section 6.2 Services to be Discontinued or Transferred

- (1) Prior to the Effective Date, Huntington and Laurentian will identify and agree to those services that Huntington will no longer require from Laurentian following the Effective Date and such services shall be discontinued as of the Effective Date. Huntington and Laurentian will work cooperatively to transfer to Huntington complete responsibility and billing of Huntington's portion within three (3) months of the Effective Date where it is possible to do so at minimal cost to either Huntington or Laurentian.
- (2) For services which cannot be transferred on that basis or which Huntington and Laurentian mutually agree not to transfer, Laurentian will continue to provide the service and shall bill Huntington for Huntington's portion of such service at Laurentian's cost, with no additional fees.
- (3) Notwithstanding the foregoing, prior to the Effective Date, Huntington and Laurentian may mutually agree, each in their sole discretion, to an arrangement pursuant to which shared services continue to be provided by Laurentian to Huntington on the current basis for an all-in service fee payable by Huntington to Laurentian.

ARTICLE 7 PENSION AND BENEFITS

Section 7.1 Pension and Benefits

- (1) Effective on June 30, 2021 or such other date agreed to by Huntington and Laurentian (the "**Pension Effective Date**"):
- (a) Huntington will cease to be a "participating employer" in the Pension Plan and the RHBP.
- (b) All current Huntington employees will cease to accrue benefits under the Pension Plan effective on the Pension Effective Date or the date of their termination of employment, if earlier. Current and former Huntington employees shall be entitled to benefits from the Pension Plan calculated in accordance with the terms of Pension Plan, subject to any amendments to the Pension Plan that are implemented by Laurentian in the CCAA

Proceeding or otherwise. Huntington employees will be entitled to the same treatment as Laurentian employees under any amendment made to the Pension Plan. Huntington shall make normal cost contributions to the Pension Plan for benefits accruing by Huntington employees up to the Pension Effective Date. Huntington shall make special payments in respect of the going concern deficiency of the Pension Plan based upon the January 1, 2020 actuarial valuation for the period ending on the Pension Effective Date.

- (c) Huntington employees and retirees will receive the same treatment as Laurentian employees and retirees in respect of the RHBP, and claims in respect of the RBHP may be filed in any claims process under the CCAA. The RBHP has, or will be terminated within the CCAA Proceeding and no claims have or will be processed after February 1, 2021. No further Huntington contributions will be required to the RHBP after April 5, 2021. Laurentian will terminate the RHBP, including Huntington's participation in the RHBP, no later than the Pension Effective Date.
 - (d) No Huntington employees will continue to accrue future benefits under the Pension Plan or the RHBP for any period commencing on the Pension Effective Date.
 - (e) To the extent that Laurentian receives a release in any CCAA plan of compromise or arrangement or order of the Court in the CCAA Proceeding in connection with claims arising from the discontinuation of the RHBP, Laurentian shall seek to obtain a similar third-party release in favour of Huntington.
 - (f) On the Pension Effective Date, Huntington shall pay \$1,200,000 into the Pension Plan in respect of the Pension Plan's wind-up deficiency relating to active and deferred vested Huntington members only, which shall be held by the Pension Plan and notionally segregated for the benefit of the active and deferred vested Huntington members until such time as Huntington former members who elect to receive commuted value transfer payments receive their final installment of such commuted value payments.
 - (g) Subject to, and in consideration of Huntington's payment in accordance with subsection (f) above and the Gerontology Program Transfer, Huntington shall be released from all obligations related to the Pension Plan, including any required contributions, special payments or wind-up liabilities, and Huntington shall have no further obligations or responsibilities under the Pension Plan.
 - (h) Laurentian shall continue to administer the Pension Plan, including communications and administration of the Pension Plan in respect of Huntington employees and former employees.
 - (i) The Parties acknowledge and agree that Huntington's participation in the Pension Committee for the Pension Plan ceased on April 5, 2021.
- (2) Effective on the Pension Effective Date, Laurentian shall amend, or cause an amendment of, the Pension Plan, in form and substance acceptable to Huntington acting reasonably, to document Huntington's removal as a "participating employer" under the Pension Plan and such other consequential amendments as the Parties may mutually agree to give effect to the foregoing.

ARTICLE 8 REPRESENTATIONS AND WARRANTIES

Section 8.1 Representations and Warranties of Huntington

- (1) Organization and Corporate Power. Huntington is duly organized and validly exists under the laws of the jurisdiction in which it is organized. Huntington has the requisite corporate power and authority to enter into, deliver and perform its obligations pursuant to this Agreement;
- (2) Authorization; Binding Effect; No Breach.
 - (a) The execution, delivery and performance of this Agreement has been duly authorized by Huntington, including approval by its Board of Regents, at the time of its execution and delivery. Upon its due authorization, execution and delivery by Huntington, this Agreement constitutes a valid and binding obligation of Huntington enforceable against Huntington in accordance with its respective terms.
 - (b) The execution, delivery and performance by Huntington of this Agreement does not and will not conflict with or result in a breach of the terms, conditions or provisions of, constitute a default under, result in a violation of, or require any consent pursuant to (i) the articles, notice of articles, charter, by-laws or operating agreement of Huntington, (ii) any material contract or other document to which Huntington is a party or to which any of its assets is subject to, or (iii) any Applicable Laws.

Section 8.2 Representations and Warranties of Laurentian

- (1) Organization and Corporate Power. Laurentian is duly organized and validly exists under the laws of the jurisdiction in which it is organized. Subject to obtaining the Approval Order, Laurentian has the requisite corporate power and authority to enter into, deliver and perform its obligations pursuant to this Agreement;
- (2) Authorization; Binding Effect; No Breach.
 - (a) The execution, delivery and performance of this Agreement has been duly authorized by Laurentian, including approval by its Board of Governors, at the time of its execution and delivery and is subject only to Court approval. Upon its due authorization, execution and delivery by Laurentian and subject only to Court approval, this Agreement constitutes a valid and binding obligation of Laurentian enforceable against Laurentian in accordance with its respective terms.
 - (b) The execution, delivery and performance by Laurentian of this Agreement does not and will not conflict with or result in a breach of the terms, conditions or provisions of, constitute a default under, result in a violation of, or require any consent pursuant to: (i) the articles, notice of articles, charter, by-laws or operating agreement of Laurentian, (ii) any material contract or other document to which Laurentian is a party or to which any of its assets is subject to, or (iii) any Applicable Laws.

Section 8.3 Mutual Representations and Warranties

- (1) Except pursuant to Section 8.1 and Section 8.2, neither Laurentian, Huntington or any of their respective Representatives have made or shall be deemed to have made any other representation or warranty, express or implied, at law or in equity in respect of the transactions contemplated by this Agreement.

ARTICLE 9 COVENANTS

Section 9.1 Cooperation.

- (1) Upon the terms and subject to the conditions of this Agreement, and subject to any other term of this Agreement providing for an alternate standard of cooperation, each of the Parties shall use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, and cooperate with each other in order to do, all things necessary, proper or advisable under Applicable Laws to consummate the transactions contemplated hereby as soon as practicable, including Huntington's support for the Approval Order.

ARTICLE 10 RELEASES AND CCAA MATTERS

Section 10.1 Releases by Laurentian

- (1) In accordance with the terms of this Agreement, Laurentian hereby:
 - (a) in its personal capacity and its capacity as administrator under the Pension Plan, fully and finally releases and discharges Huntington from any and all obligations and responsibilities under the Pension Plan effective as of the Pension Effective Date subject to, and in consideration of, Huntington's payment in accordance with Section 7.1(1)(f) and the Gerontology Program Transfer;
 - (b) agrees that, to the extent that Laurentian receives a release in any CCAA plan of compromise or arrangement or order of the Court in the CCAA Proceeding in connection with claims arising from the discontinuation of the RHBP, Laurentian shall seek to obtain a similar third-party release in favour of Huntington.
 - (c) agrees that, to the extent that Laurentian receives a release in any CCAA plan of compromise or arrangement or order of the Court in the CCAA Proceeding in connection with claims arising from the discontinuation of any courses and programs, Laurentian shall seek to obtain a similar third-party release in favour of Huntington.

Section 10.2 CCAA Claims

- (1) Nothing in this Agreement shall:
 - (a) constitute Huntington's consent or agreement to the Disclaimer or an acknowledgement that such agreements/documents are capable of being disclaimed or preclude Huntington from filing a proof of claim for damages or losses arising from the Disclaimer, subject in all respects to any claims process approved by the Court in

the CCAA Proceeding (the “**CCAA Claims Process**”) and any determination of such claim in accordance with the CCAA Claims Process;

- (b) waive or limit the rights of Huntington or Huntington’s current or former employees and retirees from asserting any claims as creditors against Laurentian in any CCAA Claims Process in connection with the Pension Plan or RHBP, subject in all respects to any CCAA Claims Process and any determination of such claim in accordance with the CCAA Claims Process.

Section 10.3 Post-Filing Agreement

- (1) This Agreement shall constitute a post-filing obligation of Laurentian and not be subject to compromise under any CCAA plan of compromise or arrangement.

ARTICLE 11 CONFIDENTIALITY

Section 11.1 Confidential Information

Except as provided in Section 11.3 below, the terms of this Agreement are confidential and shall not be disclosed to any person (other than the Monitor) without the consent of both Parties.

Section 11.2 Public Communications.

The substance of any communications to the public regarding this Agreement and its subject matter is important to the Parties, and shall be made in a mutually-agreeable and coordinated fashion, each acting reasonably.

Section 11.3 Court Materials.

- (1) Laurentian shall be entitled to disclose this Agreement in connection with Laurentian seeking the Approval Order or as otherwise may be required in connection with the CCAA Proceeding, provided that such disclosure shall be on terms acceptable to both Parties, including sealing of certain terms of this Agreement in a form and manner acceptable to both Parties. For greater certainty, any provisions of this Agreement relating to the amount and terms of consideration paid shall not be publicly disclosed and shall be sealed.
- (2) Any Court or other materials disclosing or addressing this Agreement and its terms or the Disclaimer, including the portion of any court materials and the draft order to be sought in connection with the Approval Order, shall be provided to Huntington in draft form no later than three (3) Business Days in advance of filing or release and shall be in form and substance acceptable to Huntington, acting reasonably.

ARTICLE 12 MISCELLANEOUS

Section 12.1 **Notices.**

Any notice, direction or other communication given regarding the matters contemplated by this Agreement (each a “**Notice**”) must be in writing, sent by personal delivery, courier, facsimile or email and addressed:

- (a) to Laurentian at:

Laurentian University
935 Ramsey Lake Rd.
Sudbury, Ontario
P3E 2C6

Attention: Dr. Robert Haché
Email: rhpvc@laurentian.ca

- (b) to Huntington at:
Huntington University
935 Ramsey Lake Rd.
Sudbury, Ontario
P3E 2C6

Attention: Dr. Kevin McCormick
Email: kmccormick@huntingtonu.ca

A Notice is deemed to be given and received (i) if sent by personal delivery or courier, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day or (ii) if sent by email, when the sender receives an email from the recipient acknowledging receipt, provided that an automatic “read receipt” does not constitute acknowledgment of an email for purposes of this Section 12.1. A Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party’s address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a Party’s legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that Party. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a Party.

Section 12.2 **Time of the Essence.**

Time is of the essence in this Agreement.

Section 12.3 **Third Party Beneficiaries.**

Each Party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the Parties hereto and their successors and permitted assigns, and no Person, other than the Parties hereto and their successors and their permitted assigns shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum,

save and except in the event of any action, suit, proceeding, hearing or other forum as it pertains to matters of confidentiality and any particular Representative in connection therewith.

Section 12.4 No Authority to Bind.

Nothing contained in this Agreement shall be deemed or construed to create a joint venture, agency relationship or partnership between the Parties. Neither Party shall have any power to control the activities and/or operations of any other Party and no Party shall have any power or authority to bind or commit any other Party.

Section 12.5 Amendments.

This Agreement may only be amended, supplemented or otherwise modified by written agreement executed by each Party.

Section 12.6 Waiver.

No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right it may have.

Section 12.7 Entire Agreement.

This Agreement, including Schedule "A", collectively sets forth the entire understanding of the Parties relating to the subject matter thereof. All prior or contemporaneous understandings, agreements, representations and warranties, whether written or oral, are superseded by this Agreement and its Schedule "A", and all such prior or contemporaneous understandings, agreements, representations and warranties are hereby terminated.

Section 12.8 Further Assurances.

Each Party shall, at the reasonable request of another Party or Parties, take all such action and shall execute and deliver all such documents as is or are reasonably required to carry out the terms, intent and purpose of this Agreement.

Section 12.9 Successors and Assigns.

- (1) This Agreement becomes effective when executed by all of the Parties. After that time, it will be binding upon and enure to the benefit of the Parties and their respective successors, legal representatives and permitted assigns.
- (2) Neither this Agreement nor any of the rights or obligations under this Agreement, including any right to payment or access to services, may be assigned or transferred, in whole or in part, by any Party without the prior written consent of the other Party which consent may be withheld, in the sole discretion of such other Party. Any purported assignment or transfer without such written consent will be null and void and of no effect.

Section 12.10 Severability.

If any provision of this Agreement is determined to be illegal, invalid or unenforceable, by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

Section 12.11 Governing Law.

- (1) This Agreement is governed by, and will be interpreted and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- (2) Each Party irrevocably attorns and submits to the exclusive jurisdiction of the Ontario courts situated in the City of Toronto, and waives objection to the venue of any proceeding in such court or that such court provides an inconvenient forum.

Section 12.12 Counterparts.

This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed counterpart of this Agreement.

Section 12.13 No Strict Construction

The parties have participated jointly in the negotiation and drafting of this Agreement. In the event any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favouring or disfavours either Party by virtue of authorship of any provision of this Agreement.

[Remainder of page intentionally left blank. Signature pages follow.]

The Parties have executed this Agreement on the date first written above.

**LAURENTIAN UNIVERSITY OF
SUDBURY**

By:  _____
Authorized Signing Officer

HUNTINGTON UNIVERSITY

By: _____

By: _____

The Parties have executed this Agreement on the date first written above.

**LAURENTIAN UNIVERSITY OF
SUDBURY**

By: 
Authorized Signing Officer

HUNTINGTON UNIVERSITY

By: 

By: 

This is Exhibit "B" referred to in the affidavit of Dr. Kevin McCormick, sworn before me by videoconference on August 13, 2021 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Sudbury in the Province of Ontario and I was located in the City of Toronto in the Province of Ontario

.....
A Commissioner For Taking Affidavits

Commissioner: Behnoosh Nasri
LSO#: P14845

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE CHIEF	)	SUNDAY, THE 2ND
	)	
JUSTICE MORAWETZ	)	DAY OF MAY, 2021

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

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

Applicant

ORDER

(Extension of the Stay of Proceedings, Increase to DIP, Approval of Agreements)

THIS MOTION, brought by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") proceeded on April 29, 2021 by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavits of Dr. Robert Haché sworn January 30, 2021 (the "**First Haché Affidavit**") and April 21, 2021 (the "**Second Haché Affidavit**") and the Exhibits thereto; the Compendium of Transcripts, Exhibits and Answers to Undertakings, Under Advisements and Refusals of the Applicant, the Motion Record of Thorneloe University dated April 15, 2021, the Supplementary Motion Record of Thorneloe University dated April 19, 2021, the Joint Notice of Cross-Motion of Thorneloe University and the University of Sudbury dated April 22, 2021, the Second Supplementary Motion Record of Thorneloe University dated April 28, 2021, and the Compendium of Transcripts, Exhibits and Answers to Undertakings, Under Advisements and Refusals of Thorneloe University; the Third Report of Ernst & Young Inc. (the "**Monitor**") dated April 26, 2021; 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 with the Applicant's Motion Record as appears from the Affidavit of Service of Derek Harland sworn April 28, 2021,

AND UPON BEING SATISFIED that the Applicant has been and is acting in good faith for the purpose of section 11.02(3) of the CCAA;

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that service of the Applicant's Notice of Motion and the Applicant's Motion Record is hereby validated, so that its Motion is properly returnable today.
2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Amended and Restated Initial Order dated February 11, 2021 (the "**Amended and Restated Initial Order**").

EXTENSION OF STAY PERIOD

3. **THIS COURT ORDERS** that the stay period as referred to in the Amended and Restated Initial Order is extended until and including August 31, 2021 (the "**Stay Period**").

DIP AMENDMENT

4. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow an additional principal amount of \$10,000,000 under the credit facility (the "**Amended DIP Facility**") provided by Firm Capital Corporation, as assigned to Firm Capital Mortgage Fund Inc. (the "**DIP Lender**") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that total borrowings under such credit facility shall not exceed the aggregate principal amount of \$35,000,000, unless permitted by further Order of this Court.
5. **THIS COURT ORDERS** that the Amended DIP Facility shall be on the terms and subject to the conditions set forth in the Loan Amendment agreement between the Applicant and the DIP Lender dated April 20, 2021 (the "**Amended DIP Term Sheet**") attached as Exhibit "Z" to the Second Haché Affidavit, subject to such minor amendments as may be acceptable to the Applicant and the DIP Lender and approved by the Monitor.

6. **THIS COURT ORDERS** that the DIP Lender's Charge granted in the Amended and Restated Initial Order is increased to the maximum amount of \$35,000,000, maintains the same priority as provided for in the Amended and Restated Initial Order, and shall apply to the Amended DIP Term Sheet, the Amended DIP Facility, and all amounts advanced to the Applicant pursuant to the Amended DIP Facility.

7. **THIS COURT ORDERS** that, except as specifically amended herein, paragraphs 31(f) and 41-51 of the Amended and Restated Initial Order shall apply to the Amended DIP Term Sheet, the Amended DIP Facility, and the DIP Lender's Charge, as applicable.

APPROVAL OF RESTRUCTURING AGREEMENTS

8. **THIS COURT ORDERS** that the term sheet entered into between the Applicant and the Laurentian University Faculty Association ("**LUFA**") dated April 7, 2021 and attached as Exhibit "H" to the Second Haché Affidavit (the "**LUFA Term Sheet**"), together with all Schedules thereto, including but not limited to the Pension Term Sheet regarding the Retirement Plan of the Applicant and its Federated and Affiliated Universities, Registration No. 0267013 (the "**Pension Plan**"), is hereby approved *nunc pro tunc* and the Applicant is hereby authorized to take all steps and execute such additional documents as may be necessary or desirable to give effect to the LUFA Term Sheet.

9. **THIS COURT ORDERS** that the term sheet entered into between the Applicant and the Laurentian University Staff Union ("**LUSU**") dated April 5, 2021 and attached as Exhibit "I" to the Second Haché Affidavit (the "**LUSU Term Sheet**"), together with all Schedules thereto, including but not limited to the Pension Term Sheet regarding the Pension Plan, is hereby approved *nunc pro tunc* and the Applicant is hereby authorized to take all steps and execute such additional documents as may be necessary or desirable to give effect to the LUSU Term Sheet.

10. **THIS COURT ORDERS** that the Transition Agreement entered into between the Applicant and Huntington University ("**Huntington**") dated April 16, 2021 and attached as Exhibit "Q" to the Second Haché Affidavit (the "**Huntington Transition Agreement**") is hereby approved, and each of the Applicant and Huntington are hereby authorized to carry out the terms of the Huntington Transition Agreement. The Applicant and Huntington are hereby authorized to take such additional steps and execute such additional documents as may be

necessary or desirable for the completion of the Huntington Transition Agreement and the transactions contemplated therein.

11. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicant and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect the Applicant;

the terms of the Huntington Transition Agreement shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute nor deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

GENERAL

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

13. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative

body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, 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.



Chief Justice Morawetz

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

ORDER
(Extension of the Stay of Proceedings, Increase
to DIP, Approval of Agreements)

THORNTON GROUT FINNIGAN LLP
3200 – 100 Wellington Street West
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

D.J. Miller (LSO# 344393P)
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Derek Harland (LSO# 79504N)
Email: dkharland@tgf.ca

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

Lawyers for the Applicant

This is Exhibit "C" referred to in the affidavit of Dr. Kevin McCormick, sworn before me by videoconference on August 13, 2021 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Sudbury in the Province of Ontario and I was located in the City of Toronto in the Province of Ontario

.....
A Commissioner For Taking Affidavits

Commissioner: Behnoosh Nasri
LSO#: P14845



August 12, 2021

Via E-Mail to
DJMiller@tgf.ca; and
LPillon@stikeman.com

jbellissimo@cassels.com
tel: +1 416 860 6572
fax: +1 416 642 7150
file # 46981-14

Thornton Grout Finnigan LLP
TD West Tower
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON M5K 1K7

Attention: D. J. Miller

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Attention: Elizabeth Pillon

Dear Counsel:

Re: Transition Agreement with Huntington University – RHBP Claims

As you are aware, we are counsel to Huntington University (“**Huntington**”) in connection with the proceedings of Laurentian University of Sudbury (“**Laurentian**”) under the *Companies’ Creditors Arrangement Act* (the “**CCAA Proceeding**”). We are writing with respect to the terms of the proposed order (the “**Compensation Claims Process Order**”) that is being sought in Laurentian’s motion served on August 10, 2021 returnable on August 17, 2021.

In our email correspondence dated July 28, 2021 and telephone call with Ms. Pillon on August 10, 2021, we raised with the Monitor the fact that the Transition Agreement dated April 16, 2021 (the “**Transition Agreement**”) entered into between Huntington and Laurentian and approved by the Court in the CCAA Proceeding expressly provides that Huntington’s employees and retirees will receive the same treatment as Laurentian’s employees and retirees in respect of the RHBP.

Specifically, pursuant to section 7.1(1)(c) of the Transition Agreement, the parties agreed:

Huntington employees and retirees will receive the same treatment as Laurentian employees and retirees in respect of the RHBP, and claims in respect of the RBHP may be filed in any claims process under the CCAA. The RBHP has, or will be terminated within the CCAA Proceeding and no claims have or will be processed after February 1, 2021. No further Huntington contributions will be required to the RHBP after April 5, 2021. Laurentian

will terminate the RHBP, including Huntington's participation in the RHBP, no later than the Pension Effective Date. [emphasis added]

This provision was important to Huntington because termination of the RHBP was being unilaterally imposed by Laurentian and was outside of Huntington's control. In reliance on this agreement by Laurentian, Huntington advised LUFA that its employees and retirees would receive the same treatment as Laurentian employees and retirees in respect of the RHBP.

The Compensation Claims Process Order as proposed does not, however, comply with the agreements set out the Transition Agreement. The proposed Compensation Claims Methodology, attached as Schedule "A" to the draft Compensation Claims Process Order provides that Laurentian retirees, active, and terminated employees (who meet certain eligibility requirements) are entitled to a claim that is calculated based on the present value of the RHBP benefits over an assumed lifespan.

By contrast, the RHBP Claim Methodology provides that such claims of Huntington employees and retirees must be made by Huntington on behalf of its employees and retirees and are limited to the amount of net contributions to the RHBP, less the distributions made from the RHBP prior to the CCAA filing date.

The proposed RHBP Claim Methodology also procedurally disadvantages Huntington employees and retirees compared to Laurentian employees and retirees because it requires that Huntington employees and retirees' claims must be made by Huntington, creating an unnecessary additional layer of complication.

We also note that the proposed process for addressing RHBP claims of Huntington employees and retirees places an unfair burden on Huntington to administer the claims and any resulting distributions. All ordinary distribution of RHBP benefits was undertaken by Laurentian, not by Huntington. Retirees would make up the largest group of eligible Huntington claimants and Huntington does not have access to the information regarding the historical retiree distribution process. In addition, Laurentian has access to, and the benefit of, the experience and expertise of the Monitor and the CCAA process in connection with making any claims distributions. Conversely, Huntington does not have the benefit of such expertise and resources, or the structure afforded by CCAA orders governing distributions.

Given that we understand that there would likely be less than 10 Huntington claimants that would be eligible for a claim using the methodology proposed for Laurentian claimants (and only 1-2 of which would be in the non-retiree categories), it is unfair to impose upon Huntington the obligation to effectively run its own out-of-court claim and distribution process as a result of Laurentian's termination of the RHBP when that can be very easily be administered within the CCAA process without any real incremental cost, particularly where Laurentian and Huntington have already agreed that Laurentian would address these claim through its CCAA process.

August 12, 2021
Page 3

In light of the foregoing, please confirm that the proposed form of Compensation Claims Process Order will be revised to treat Huntington claimants the same as Laurentian claimants in respect of the RHBP claims. We are happy to discuss and coordinate appropriate drafting revisions to the form of order, which we do not anticipate would be difficult.

Please note that if Laurentian and the Monitor do not agree to a revised form of order to address these issues, Huntington intends to oppose Laurentian's motion at the August 17th hearing.

We look forward to hearing from you.

Yours truly,

Cassels Brock & Blackwell LLP

A handwritten signature in black ink, appearing to read 'J. Bellissimo', with a stylized flourish extending to the right.

Joseph J Bellissimo
Partner

cc. Sharon Hamilton, Ernst & Young Inc.
cc. Charles Sinclair, Goldblatt Partners LLP

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**

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT OF DR. KEVIN MCCORMICK
(Sworn August 13, 2021)**

CASSELS BROCK & BLACKWELL LLP

2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

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Lawyers for Huntington University

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**RESPONDING RECORD OF HUNTINGTON UNIVERSITY
(COMPENSATION CLAIMS PROCESS MOTION)**

CASSELS BROCK & BLACKWELL LLP

2100 Scotia Plaza
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Toronto, ON M5H 3C2

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Lawyers for Huntington University