

**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**

**FACTUM OF THE
CANADIAN ASSOCIATION OF UNIVERSITY TEACHERS**

**CANADIAN ASSOCIATION OF
UNIVERSITY TEACHERS**

2705 Queensview Drive
Ottawa, ON K2B 8K2

Immanuel F. Lanzaderas, LSO No. L571700

Tel.: (613) 601-6304

Email: lanzaderas@caut.ca

Lawyer for the Canadian Association of
University Teachers

SERVICE LIST

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OF SUDBURY**

**SERVICE LIST
(as at January 17, 2022)**

THORNTON GROUT FINNIGAN LLP 100 Wellington St. West, Suite 3200 TD West Tower, Toronto-Dominion Centre Toronto, ON M5K 1K7 D.J. Miller Tel: 416-304-0559 Email: djmiller@tgf.ca Mitchell W. Grossell Tel: 416-304-7978 Email: mgrossell@tgf.ca Andrew Hanrahan Tel: 416-304-7974 Email: ahanrahan@tgf.ca Derek Harland Tel: 416-304-1127 Email: धारland@tgf.ca Lawyers for the Applicant	ERNST & YOUNG INC. 100 Adelaide Street West EY Tower Toronto, ON M5H 0B3 Sharon Hamilton Tel: 416-943-2153 Email: sharon.s.hamilton@ca.ey.com Michael Nathaniel Tel: 416-932-5837 Email: michael.nathaniel@ca.ey.com Court-appointed Monitor of the Applicant
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STIKEMAN ELLIOTT LLP 5300 Commerce Court West 199 Bay Street Toronto, ON M5L 1B9 Ashley Taylor Tel: 416-869-5236 Email: ataylor@stikeman.com Elizabeth Pillon Tel: 416-869-5623 Email: lpillon@stikeman.com Zev Smith Tel: 416-869-5260 Email: zsmith@stikeman.com Ben Muller Tel: 416-869-5543 Email: bmuller@stikeman.com Lawyers for the Monitor	LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP 130 Adelaide Street West, Suite 2600 Toronto, ON M5H 3P5 Peter J. Osborne Tel: 416-865-3094 Email: posborne@litigate.com David Salter Tel: 416-649-1818 Email: dsalter@litigate.com Lawyers for the Board of Governors of Laurentian University of Sudbury
MINISTRY OF THE ATTORNEY GENERAL McMurtry-Scott Building 720 Bay Street, 11th Floor Toronto, ON M7A 2S9 Michelle Pottruff Tel: 416-528-1235 Email: michelle.pottruff@ontario.ca Lawyer for the Ministry of Colleges and Universities	HICKS MORLEY LLP 77 King Street West 39th Floor Toronto, ON M5K 1K8 Michael J. Kennedy Tel: 416-864-7305 Email: michael-kennedy@hicksmorley.com Labour Counsel to the Applicant

FOGLER, RUBINOFF LLP 77 King Street West, Suite 3000 Toronto, ON M5K 1G8 Martin R. Kaplan Tel: 416-941-8822 Email: mkaplan@foglers.com Vern W. DaRe Tel: 416-941-8842 Email: vdare@foglers.com Joseph Fried Tel: 416-941-8836 Email: jfried@foglers.com Lawyers for the DIP Lender, Firm Capital Mortgage Fund Inc.	BLAKE, CASSELS & GRAYDON LLP 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9 Pamela L.J. Huff Tel: 416-863-2958 Email: pamela.huff@blakes.com Aryo Shalviri Tel: 416-863-2962 Email: aryo.shalviri@blakes.com Cristina Cataldo Tel: 514-982-6312 Email: cristina.cataldo@blakes.com Lawyers for Royal Bank of Canada
FASKEN MARTINEAU DUMOULIN LLP Bay-Adelaide Centre 333 Bay Street, Suite 2400 P.O. Box 20 Toronto, ON M5H 2T6 Stuart Brotman Tel: 416-865-5419 Email: sbrotman@fasken.com Dylan Chochla Tel: 416-868-3425 Email: dchochla@fasken.com Mitch Stephenson Tel: 416-868-3502 Email: mstephenson@fasken.com Lawyers for Toronto-Dominion Bank	CHAITONS LLP 5000 Yonge Street, 10th Floor, Toronto, ON M2N 7E9 George Benchetrit Tel: 416-218-1141 Email: george@chaitons.com Gary Feldman Tel: 416-218-1130 Email: gary@chaitons.com Lawyers for Bank of Montreal

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

WRIGHT HENRY LLP

200 Wellington Street West, Suite
602 Toronto, ON M5V 3C7

Tracey Henry

Tel: 416-306-8275
Email: thenry@wrighthenry.ca

Michael D. Wright

Tel: 416-306-8270
Email: mwright@wrighthenry.ca

Danielle Stampley

Tel: 416-306-8272
Email: dstampley@wrighthenry.ca

Brendan Scott

Tel: 416-306-8277
Email: bscott@wrighthenry.ca

Lawyers for Laurentian University Staff
Union (LUSU)

MCMILLAN LLP

Brookfield Place
181 Bay Street, Suite
4400 Toronto ON
M5J 2T3

Tushara Weerasooriya

Tel: 416-865-7890
Email: tushara.weerasooriya@mcmillan.ca

Stephen Brown-Okruhlik

Tel: 416-865-7043
Email: stephen.brown-okruhlik@mcmillan.ca

Lawyers for St. Joseph's Health
Centre of Sudbury and St. Joseph's
Continuing Care Centre of Sudbury

Wael Rostom

Tel: 416-865-7790
Email: wael.rostom@mcmillan.ca

Peter Giddens

Tel: 416-307-4042
Email: peter.giddens@mcmillan.ca

Guneev Bhinder

Tel: 416-307-4067
Email: guneev.bhinder@mcmillan.ca

Lawyers for Canada Foundation for
Innovation

**DELL FINANCIAL SERVICES CANADA
LIMITED**

155 Gordon Baker Road, Suite
501 North York, ON M2H 3N5

Gregory J. Segal, Legal Counsel

Tel: 416-758-3316

Email: gregory_segal@dell.com

KOSKIE MINSKY LLP

20 Queen Street
West Suite 900, Box
52 Toronto, ON M5H
3R3

Murray Gold

Tel: 416-595-2085

Email: mgold@kmlaw.ca

James Harnum

Tel: 416-542-6285

Email: jharnum@kmlaw.ca

Lawyers for Ontario Confederation
of University Faculty Associations

Andrew J. Hatnay

Tel: 416-595-2083

Email: ahatnay@kmlaw.ca

Sydney Edmonds

Tel: 416-595-2260

Email: sedmonds@kmlaw.ca

Demetrios Yiokaris

Tel: 416-595-2130

Email: dyiokaris@kmlaw.ca

Lawyers for Thorneloe

LENOVO FINANCIAL SERVICES

5035 South Service
Road Burlington, ON
L7R 4C8

**Randy Poulton, Regional Leasing
Manager**

Email: customerservice@lenovofs.ca

**DAVIES WARD PHILLIPS & VINEBERG
LLP**

155 Wellington Street
West 40th Floor
Toronto, ON M5V 3J7

Natasha MacParland

Tel: 416-863-5567

Email: nmacparland@dwpv.com

Natalie Renner

Tel: 416-367-7489

Email: nrenner@dwpv.com

Lender Counsel to the Applicant

BORDEN LADNER GERVAIS LLP

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

Alex MacFarlane

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

Lydia Wakulowsky

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

Charlotte Chien

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

Lawyers for Northern Ontario
School of Medicine

James W. MacLellan

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

Lawyer for Zurich Insurance Company

DENTONS CANADA LLP

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

Kenneth Kraft

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

Daniel Loberto

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

Lawyers for Queen's University

SHEPPARD & CLAUDE 202-1173 Cyrville Road Ottawa, ON K1J 7S6 André Claude Tel: 613-748-3333 Email: aclaude@sheppardclaud.ca Lawyer for University of Sudbury	CASSELS BROCK & BLACKWELL LLP 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2 Joseph Bellissimo Tel: 416-860-6572 Email: jbello@casells.com Jed Blackburn Tel: 416-860-6725 Email: jblackburn@casells.com Natalie Levine Tel: 416-860-6568 Email: nlevine@casells.com William Onyeaju Tel: 416-869-5498 Email: wonyeaju@casells.com Lawyers for Huntington University
SUDBURY NEUTRINO OBSERVATORY LABORATORY Creighton Mine #9 1039 Regional Road 24 Lively, ON P3Y 1N2 Tel: (705) 692-7000 Clarence Virtue Email: Clarence.Virtue@snolab.ca	MINING INNOVATION REHABILITATION AND APPLIED RESEARCH CORPORATION Cliff Fielding Building, Room CF203 935 Ramsey Lake Road Sudbury, ON P3E 2C6 Tel: (705) 675- 1151 Nadia Mykytczuk, Interim President and CEO Email: NX_Mykytczuk@laurentian.ca

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

BIANCHI PRESTA LLP 9100 Jane Street Building A, 3rd Floor Vaughan, ON L4K 0A4 Domenic Presta Tel: 905-738-1078 Ext. 2223 Email: dpresta@bianchipresta.com Lawyer for 1033803 Ontario Inc. o/a Forma- Con Construction and Forma Finishing and B.B.M. Excavation Company Limited	PARISÉ LAW OFFICE 58 Lisgar Street, Suite 200 Sudbury, ON P3E 3L7 Réjean Parisé Tel: 705-674-4042 Email: pariselaw@unitz.ca Lawyer for Interpaving Ltd.
DEDIANA, ELORANTA & LONGSTREET 219 Pine Street Sudbury, ON P3C1X4 James Longstreet Tel: 705-674-4289 Email: spisani@bellnet.ca Lawyer for Sandro Steel Fabrication	CANADIAN UNION OF PUBLIC EMPLOYEES 1378 Triole St Ottawa, ON K1B 3M4 Miriam Martin, In-House Counsel Tel: 613-212-4325 Email: mmartin@cupe.ca
MINDEN GROSS LLP 2200-145 King Street West Toronto, ON M5H 4G2 Rachel Moses Tel: 416-369-4137 Email: rmoses@mindengross.com Lawyer for Royal Trust Corporation of Canada	MINISTRY OF INFRASTRUCTURE 777 Bay Street, 5thFloor Toronto, ON M5G 2C8 Aryn Azzopardi, Chief of Staff Tel: 416-327-4412 Email: aryn.azzopardi@ontario.ca

SILVIA LAROCQUE 905 Cambrian Heights, Unit 36 Sudbury, ON P3C5R5 Tel: 705-675-1151 ext. 3804 Email: kennethlarocque@hotmail.com	ZAYO CANADA INC. 625, Rue Belmont Montreal, QC H3B 2M1 Derek Wilk, Associate General Counsel Tel: 416-644-6705 Email: dwilk@zayo.com
MINISTRY OF FINANCE 777 Bay Street College Park, 11th Floor Toronto, ON M5G 2C8 Anthony R. Golding, Senior Counsel Tel: 416-938-5069 Email: anthony.golding@ontario.ca	CLYDE & CO LLP 401 Bay Street Suite #2500 Toronto, ON M5H 2Y4 Barry Stork Tel: 647-789-4848 Email: barry.stork@clydeco.ca Roderic McLauchlan Tel: 647-789-4849 Email: roderic.mclauchlan@clydeco.com Mark Mandelker Tel: 647-789-4821 Email: mark.mandelker@clydeco.ca Lawyers for Canadian Universities Reciprocal Insurance Exchange (CURIE)
CANADIAN INSTITUTES OF HEALTH RESEARCH 160 Elgin Street, 10th Floor Address Locator 4809A Ottawa, ON K1A 0W9 Anita Ploj, Senior Corporate Advisor Email: anita.ploj@cihr-irsc.gc.ca	CANADA FOUNDATION FOR INNOVATION 55 Metcalfe Street, Suite 1100 Ottawa, ON K1P 6L5 Isabelle Henrie, Vice President Tel: 613-943-1123 Email: isabelle.henrie@innovation.ca

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

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

GOODMANS LLP Bay Adelaide Centre 333 Bay Street, Suite 3400 Toronto, ON M5H2S7 Gale Rubenstein Tel: 416-597-4148 Email: grubenstein@goodmans.ca Bradley Wiffen Tel: 416-597-4208 Email: bwiffen@goodmans.ca Michael Wilson Tel: 416-597-4130 Email: mwilson@goodmans.ca Lawyers for Financial Services Regulatory Authority	MCKENZIE LAKE LAWYERS LLP 140 Fullarton Street, Suite 1800 London, ON N6A 5P2 Michael J. Peerless Tel: 519-667-2644 Email: mike.peerless@mckenzielake.com Matthew D. Baer Tel: 519-667-2646 Email: matt.baer@mckenzielake.com Emily Assini Tel: 519-672-5666 Email: emily.assini@mckenzielake.com Lawyers for Sarah Connell
ATTORNEY GENERAL FOR ONTARIO Crown Law Office - Civil 720 Bay Street, 8th Floor, Toronto, ON M7A 2S9 Shahana Kar Tel: 416-571-2100 Email: shahana.kar@ontario.ca Jonathan Sydor Tel: 416-689-8279 Email: jonathan.sydor@ontario.ca Lawyer for Her Majesty the Queen in Right of Ontario	FRED TAYAR & ASSOCIATES PROFESSIONAL CORPORATION 65 Queen Street West Suite 1200 Toronto, ON M5H 2M5 Fred Tayar Tel: 416-363-1800 Email: fred@fredtayar.com Lawyers for Canadian Universities Reciprocal Insurance Exchange (CURIE)

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

FARBER GROUP INC. 150 York Street, Suite 1600 Toronto, ON M5H 3S5 Allan Nackan Tel: 416-496-3732 Email: anackan@farbergroup.com Hylton Levy Tel: 416-496-3070 Email: hlevy@farbergroup.com Financial advisors for Thorneloe	WEISZ FELL KOUR LLP 100 King Street West, Suite 5600 Toronto, ON M5X 1C9 Pat Corney Tel: 416-613-8287 Email: pcorney@wfkllaw.ca Lawyer for Weeneebayko Area Health Authority
UNITED STEELWORKERS Canadian National Office, legal Department 234 Eglinton Avenue East, 8th Floor Toronto, ON M4P 1K7 Robert Healey Tel: 416-544-5986 Email: rhealey@usw.ca Lawyers for the Respondent, United Steel, Paper and Forestry, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers)	OSLER, HOSKIN & HARCOURT LLP 1000 De La Gauchetière Street West, Suite 2100 Montréal, QC H3B 4W5 Julien Morissette Tel: 514-904-5818 Email: jmorissette@osler.com Lawyer for Canadian Research Knowledge Network
William Edward Oxley Tel: 249-878-3901 Email: bill.oxley1975@gmail.com 13 Levack Drive, Box 65 Levack, Ontario P0M 2C0 Self-represented person	MBC LAW PROFESSIONAL CORPORATION 265 Carling Avenue, Suite 500 Ottawa, ON K1S 2E1 James Alden Christian Tel: 613-564-3005 Email: achristian@mbclaw.ca Lawyer for CY Rheault Construction

SUPREME ADVOCACY LLP 340 Gilmour St., Suite 100 Ottawa, ON K2P 0R3 Eugene Meehan, Q.C. Tel: 613-695-8855 Email: emeehan@supremeadvocacy.ca Lawyer for Thorneloe University	ATTORNEY GENERAL OF CANADA Ontario Regional Office National Litigation Sector 120 Adelaide Street West, Suite #400 Toronto, ON M5H 1T1 Eric Peterson Tel: 647-256-7550 Email: eric.peterson@justice.gc.ca Mark Taggart Email: mark.taggart@canada.ca Shaun Harrington Email: shaun.harrington@canada.ca Lawyers for the Natural Sciences and Engineering Research Council of Canada and the Social Sciences and
MILBURN & ASSOCIATES 10 King Street East Suite 1202 Toronto, ON M5C 1C3 Kathryn Marshall Tel: 416-238-7865 Email: kmarshall@milburnlaw.ca Ane M. Lowe Tel: 647-728-8084 Email: alowe@milburnlaw.ca Lawyers for Shelley Watson	LOUIS PAGNUTTI Email: lou@pagnutti.ca Chief Redevelopment Officer

STOCKWOODS LLP

Toronto-Dominion
Centre TD North Tower,
Box 140
77 King Street West, Suite
4130 Toronto, ON M5K 1H1

Brian Gover

Tel: 416-593-2489
Email: briang@stockwoods.ca

Fredrick R. Schumann

Tel: 416-593-2490
Email: fredricks@stockwoods.ca

Regulatory Counsel to the Applicant

CONWAY BAXTER WILSON LLP

401-411 Roosevelt
Avenue Ottawa, ON
K2A 3X9

David Taylor

Tel: 613-691-0368
Email: dtaylor@conwaylitigation.ca

M. Alyssa Holland

Tel: 613-691-0373
Email: aholland@conwaylitigation.ca

Counsel for the Speaker of the
Legislative Assembly of Ontario

E-Service List

djmillar@tgf.ca; mgrossell@tgf.ca; धारलंद@tgf.ca; ahanrahan@tgf.ca; sharon.s.hamilton@ca.ey.com; michael.nathaniel@ca.ey.com; posborne@litigate.com; dsalter@litigate.com; ataylor@stikeman.com; lpillon@stikeman.com; bmuller@stikeman.com; michael-kennedy@hicksmorley.com; nmacparland@dwpv.com; nrenner@dwpv.com; pamela.huff@blakes.com; aryo.shalviri@blakes.com; sbrotman@fasken.com; dchochla@fasken.com; mstephenson@fasken.com; george@chaitons.com; gary@chaitons.com; dwright@rwbh.ca; sphilpott@goldblattpartners.com; csinclair@goldblattpartners.com; thenry@wrighthenry.ca; diane.winters@justice.gc.ca; mkaplan@foglers.com; vdare@foglers.com; jfried@foglers.com; richard.u.dupuis@desjardins.com; gregory_segal@dell.com; jbellissimo@cassels.com; jblackburn@cassels.com; wonyeaju@cassels.com; NX_Mykytczuk@laurentian.ca; dmorrison@cemi.ca; jcorsi@jcorsi.com; jlucato@fmcl.ca; georgecaufin@accelelectric.com; dpresta@bianchipresta.com; pariselaw@unitz.ca; spisani@bellnet.ca; aryn.azzopardi@ontario.ca; barry.stork@clydeco.ca; roderic.mclauchlan@clydeco.com; carolyn.dawe@greatersudbury.ca; mike.peerless@mckenzielake.com; emily.assini@mckenzielake.com; info@hughconnellylaw.com; yhameed@hameedlaw.ca; simon@diamondlaw.ca; murray.s.davidson@marsh.com; maeve.omalley@markel.com; evan.cobb@nortonrosefulbright.com; mwright@wrighthenry.ca; bscott@wrighthenry.ca; amacfarlane@blg.com; lwakulowsky@blg.com; sfairley@dllaw.ca; michelle.pottruff@ontario.ca; mmartin@cupe.ca; grubenstein@goodmans.ca; bwiffen@goodmans.ca; mwilson@goodmans.ca; dcontant@compellingcounsel.com; david.schell@devrylaw.ca; shahana.kar@ontario.ca; customerservice@lenovofs.ca; tushara.weerasooriya@mcmillan.ca; stephen.brown-okruhlik@mcmillan.ca; dwilk@zayo.com; mgold@kmlaw.ca; jharum@kmlaw.ca; cristina.cataldo@blakes.com; anthony.golding@ontario.ca; larmer@larmerstickland.com; aclaude@sheppardclaude.ca; president@thorneloe.ca; kenneth.kraft@dentons.com; daniel.loberto@dentons.com; isabelle.henrie@innovation.ca; wael.rostom@mcmillan.ca; peter.giddens@mcmillan.ca; guneev.bhinder@mcmillan.ca; ahatnay@kmlaw.ca; sedmonds@kmlaw.ca; jmaclellan@blg.com; mike.peerless@mckenzielake.com; matt.baer@mckenzielake.com; emily.assini@mckenzielake.com; cgodkewitsch@goldblattpartners.com; jonathan.sydor@ontario.ca; kennethlarocque@hotmail.com; mbaker@bakerlawyers.com; aluzhetskyy@bakerlawyers.com; anita.ploj@cihr-irsc.gc.ca; godwin@caut.ca; nlevine@cassels.com; virginie.gauthier@gowlingwlq.com; thomas.gertner@gowlingwlq.com; rmoses@mindengross.com; stephanie.grace@xerox.com; fpoulin@powerlaw.ca; cservanttheureux@powerlaw.ca; dstampley@wrighthenry.ca; sgraff@airdberlis.com; jyantzi@airdberlis.com; anackan@farberggroup.com; hlevy@farberggroup.com; pcorney@wfkaw.ca; rhealey@usw.ca; zsmith@stikeman.com; cchien@blg.com; jmorissette@osler.com; bill.oxley1975@gmail.com; dyiokaris@kmlaw.ca; achristian@mbclaw.ca;

emeehan@supremeadvocacy.ca; Clarence.Virtue@snolab.ca;
eric.peterson@justice.gc.ca; mark.taggart@canada.ca; shaun.harrington@canada.ca;
kmarshall@milburnlaw.ca; alowe@milburnlaw.ca; lou@pagnutti.ca;
briang@stockwoods.ca; fredricks@stockwoods.ca; fred@fredtayar.com;
mark.mandelker@clydeco.ca; dtaylor@conwaylitigation.ca;
aholland@conwaylitigation.ca

Court File No.: CV-21-00656040-00CL

**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**

1. The Canadian Association of University Teachers ("CAUT") supports the position of Ontario's Information and Privacy Commissioner ("IPC") in this motion. CAUT agrees with the IPC that the Stay Order should be amended so that it no longer suspends Laurentian University's ("Laurentian") statutory obligations under the *Freedom of Information and Protect of Privacy Act* ("FIPPA").
2. CAUT submits that the Stay Order should be amended in light of the following:
 - a. the principles of transparency and public accountability are too important for this Court to allow the stay order to continue as is; and,
 - b. the crisis moment for Laurentian has passed, such that compliance with freedom of information obligations cannot be reasonably expected to cause Laurentian to cease to be a going concern.

Transparency and Accountability for Publicly Funded Universities

3. Laurentian, unlike almost all other entities dealt with in the CCAA jurisprudence, is a publicly funded post-secondary education institution. As such, a large portion of its operating income comes from federal and provincial grants and payments for education and research.

4. As a national federation of academic staff associations, and the national voice of Canada's university and college educators, researchers, and librarians, CAUT is deeply concerned about the state of publicly funded post-secondary education in Canada. CAUT actively supports increased government funding for education and basic research. Government funding is critical to the quality of post-secondary education and research at all Canadian institutions of higher learning.

5. CAUT recognizes that government funding requires the responsible use of such funds. Governments are under public pressure to be judicious with spending. It is, therefore, important that universities strive to be as transparent and accountable as possible in their use of government funds. Transparent financial practices and public accountability are important to the public, and to CAUT's member associations.

6. CAUT's member associations, as bargaining agents for academic staff, rely on sound financial information in order to negotiate collective agreements. Often, this information can be obtained from the university or college employer by virtue of the governing labour laws. It is not uncommon, however, for academic staff associations and unions to have to resort to freedom of information requests to obtain specific information to support their bargaining and labour relations. See, for example, the following decisions: Nova Scotia Office of the Information and Privacy Commissioner's REVIEW

REPORT 21-02, January 29, 2021, *NSCAD University*¹; and paragraph 26 of *Laurentian University Faculty Association v. Laurentian University*, 2010 CanLII 32256 (ON LRB).

7. *FIPPA* is the most readily accessible route to obtain information that is not proactively disclosed. The statutory obligations found in *FIPPA* are important tools for collective bargaining, and for holding publicly funded universities and colleges accountable for their decisions. The Saskatchewan Court of Queen’s Bench recently articulated this with respect to the University of Regina: “The object and purpose of access to information legislation such as *LAFOIP* is to promote openness and transparency in public institutions, thereby enhancing accountability.”²

8. The stay is meant to be a temporary measure.³ Extending the stay period beyond this point risks creating an artificial status quo. Ongoing operations at Laurentian must take into account the institution’s statutory obligations as a publicly funded university.

9. Continuing intervention to shield a publicly funded university from freedom of information requests must be exercised carefully, taking into account the specific financial context of the institution and the broader context of transparency with public funds. The public has an interest in “...transparent and open governmental institutions”⁴, such as universities and colleges.

¹ Accessible at https://oipc.novascotia.ca/sites/default/files/reports/21-02%202021%2001%2029%20Review%20Report_0.pdf

² *Eaton v University of Regina*, 2021 SKQB 40 (CanLII), para 19.

³ *Montreal (City) c. Deloitte Restructuring Inc*, 2021 SCC 53, para. 50.

⁴ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31, [2014] 1 S.C.R. 674, para 66.

10. It is CAUT's submission that the factors weigh in favour of ending this immunization period. Laurentian has had one year of being able to ignore freedom of information requests.

Laurentian's Survival is Secure

11. As indicated in the CCAA, the scope and length of a stay order should be commensurate with what is needed to ensure the debtor company's ongoing existence – not what is preferred.

12. CAUT submits that this idea of necessity is at the heart of stay provisions in s. 11.02 of the CCAA. That section states:

11(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

13. The Supreme Court stated that the effect of a stay order is that it, "...creates a status quo period that stabilizes the debtor company's situation by shielding it from its creditors while the restructuring process is underway."⁵ This enables the debtor company to continue operating without, "...fear of being driven into bankruptcy by its

⁵ *Montreal (City) c. Deloitte Restructuring Inc.*, para 46.

creditors.”⁶ Again, the focus of the stay order is on ensuring survival and avoiding bankruptcy.

14. It is now over one year since the initial application was granted to Laurentian. Significant changes have taken place to ensure Laurentian’s continued survival. Laurentian currently enjoys much more stability and support than it did one year ago. The most important pillar of Laurentian’s stability is the emergence of increased funding from the Provincial Government.

15. The Province of Ontario will provide \$35 million in order to satisfy the debtor-in-possession loan – essentially becoming the debtor-in-possession. The Province is also providing \$6 million in COVID relief funding, and ongoing performance funding that will not be reduced despite the drop in enrollment and incoming student applications.⁷ All of this is to underwrite Laurentian’s ongoing survival. It is clear that the Province does not want Laurentian to close.

16. Courts must scrutinize the circumstances surrounding the request for the stay order. This is to ensure that the stay order is, “...restricted to what is reasonably necessary for the continued operations of the debtor company...” [emphasis added]⁸ CAUT encourages this Court to exercise such scrutiny in this instance.

17. There is no evidence before this Court that complying with its statutory obligations under *FIPPA* would jeopardize Laurentian’s survival. The only evidence we have is that responding to freedom of information requests will take work, and that many

⁶ *Ibid*, para 47.

⁷ *Tenth Report of the Monitor*, Motion Record of the IPC, Tab 12, para 97.

⁸ *Lydian International Ltd. (Re)*, 2019 ONSC 7473, para 32.

of the staff are already engaged with other tasks.⁹ Respectfully, this is always the case for public institutions when complying with freedom of information requests.

18. CAUT submits that concern about increased workload is not the threshold to issue or extend a stay under s. 11.02 of the CCAA. Considering that Laurentian is facing only four requests from the past year, any claim that Laurentian's survival would be undermined by responding to them lacks credibility.

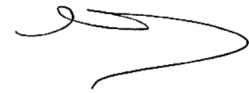
19. For the reasons articulated above, CAUT supports the IPC's motion to vary the Stay Order by removing the portions applicable to *FIPPA*.

20. CAUT does not seek costs, and asks that costs not be ordered against it.

All of which is respectfully submitted this 11th day of March, 2022.



Immanuel F. Lanzaderas



Sarah Godwin

Counsel for the Canadian Association of University Teachers

⁹ Haché Affidavit of August 20, 2021, Motion Record of the IPC, Tab 9, paras 99-100.

SCHEDULE “A”

LIST OF AUTHORITIES

1. Nova Scotia Office of the Information and Privacy Commissioner's REVIEW REPORT 21-02, January 29, 2021, *NSCAD University* - https://oipc.novascotia.ca/sites/default/files/reports/21-02%202021%2001%2029%20Review%20Report_0.pdf
2. *Laurentian University Faculty Association v. Laurentian University*, 2010 CanLII 32256 (ON LRB) - <https://www.canlii.org/en/on/onlrb/doc/2010/2010canlii32256/2010canlii32256.html?resultIndex=1#document>
3. *Eaton v University of Regina*, 2021 SKQB 40 (CanLII) - <https://www.canlii.org/en/sk/skqb/doc/2021/2021skqb40/2021skqb40.html?resultIndex=1#document>
4. *Montreal (City) c. Deloitte Restructuring Inc.*, 2021 SCC 53 - [https://www.canlii.org/en/ca/scc/doc/2021/2021scc53/2021scc53.html?autocompleteStr=Montreal%20\(City\)%20c.%20Deloitte%20Restructuring%20Inc%2C%202021%20SCC%2053&autocompletePos=1](https://www.canlii.org/en/ca/scc/doc/2021/2021scc53/2021scc53.html?autocompleteStr=Montreal%20(City)%20c.%20Deloitte%20Restructuring%20Inc%2C%202021%20SCC%2053&autocompletePos=1)
5. *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31, [2014] 1 S.C.R. 674 - [https://www.canlii.org/en/ca/scc/doc/2014/2014scc31/2014scc31.html?autocompleteStr=Ontario%20\(Community%20Safety%20and%20Correctional%20Services\)%20v.%20Ontario%20\(Information%20and%20Privacy%20Commissioner\)%2C%202014%20SCC%2031%2C%20%5B2014%5D%201%20S.C.R.%20674&autocompletePos=1](https://www.canlii.org/en/ca/scc/doc/2014/2014scc31/2014scc31.html?autocompleteStr=Ontario%20(Community%20Safety%20and%20Correctional%20Services)%20v.%20Ontario%20(Information%20and%20Privacy%20Commissioner)%2C%202014%20SCC%2031%2C%20%5B2014%5D%201%20S.C.R.%20674&autocompletePos=1)
6. *Lydian International Ltd. (Re)*, 2019 ONSC 7473 - <https://www.canlii.org/en/on/onsc/doc/2019/2019onsc7473/2019onsc7473.html?autocompleteStr=Lydian%20%2C%202019%20ONSC%207473&autocompletePos=1>

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

**FACTUM OF THE CANADIAN
ASSOCIATION OF UNIVERSITY
TEACHERS**

**CANADIAN ASSOCIATION OF
UNIVERSITY TEACHERS**

2705 Queensview Drive
Ottawa ON K2B 8K2

Immanuel F. Lanzaderas, LSO # L571700

Tel.: (613) 601-6304

Email: lanzaderas@caut.ca

Lawyer for the Canadian Association of
University Teachers