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**

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

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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**

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PART I – OVERVIEW

1. The Information and Privacy Commissioner of Ontario ("IPC") brings this motion to vary the stay of proceedings[1] ("Stay Order") made under the *Companies' Creditors Arrangement Act*[2] ("*CCAA*") in the insolvency of Laurentian University of Sudbury ("Laurentian" or the "university"). In particular, the IPC seeks to remove the stipulation in the Stay Order that stays or suspends Laurentian's statutory obligations to respond to requests made to it under the *Freedom of Information and Protection of Privacy Act*[3] ("*FIPPA*"). This is a discrete aspect of the Stay Order.

2. Pursuant to section 11.02(3) of the *CCAA*, stay orders must only be granted where the circumstances make the order appropriate and where the insolvent has demonstrated good faith and due diligence. The onus is on Laurentian to establish that these conditions are met, including that it cannot continue its restructuring efforts without continuing the stay of its *FIPPA* obligations.

3. In this case, an additional relevant consideration is that the stay of Laurentian's *FIPPA* obligations suspends the important access to information rights guaranteed by *FIPPA*. Courts, including the Supreme Court of Canada, have recognized that these rights are quasi-constitutional and contribute to a robust democracy. The IPC submits that Laurentian has not met its onus and, in the circumstances, it is not appropriate to continue to stay these critical access to information rights.

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[1] Amended and Restated Initial Order (Court File No. CV-21-656040-00CL), IPC Motion Record, Tab 5, pp. 105-106, at para. 21
[2] R.S.C., 1985, c. C-36 ("*CCAA*")
[3] R.S.O. 1990, c. F. 31 ("*FIPPA*")

4. Nor should Section 11.02(2) be interpreted to allow for the stay of *FIPPA* access rights. Such an interpretation does not align with the objectives of the *CCAA*. Under *FIPPA*, any person can make a request for information and in so doing becomes a rights holder under *FIPPA*, not a creditor under the *CCAA*. *FIPPA* requests for information are not pecuniary in nature. The access to information rights guaranteed by *FIPPA* are therefore not analogous to the kinds of rights typically stayed by section 11.02(2) of the *CCAA*.

PART II – SUMMARY OF FACTS

Relevant History of the CCAA Proceedings

5. On February 10, 2021, Laurentian brought a motion to this Honourable Court seeking, among other things, the Stay Order. The Stay Order proposed by Laurentian included a stay or suspension of Laurentian's obligations under *FIPPA* to respond to requests for information (the "*FIPPA* stay").[4] The request was unusual and appears to be unprecedented. In support of its request for the *FIPPA* stay, Laurentian submitted a factum, but did not file any evidence. In its Notice of Motion, Laurentian speculated that it would, as a result of the *CCAA* proceedings, be subject to "an extraordinary influx of *FIPPA* requests"[5] and that responding to these requests would hinder its ability to restructure.

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[4] Amended and Restated Initial Order (Court File No. CV-21-656040-00CL), IPC Motion Record, Tab 5, pp. 105-106, at para. 21
[5] Notice of Motion, filed by Laurentian, February 3, 2021, IPC Motion Record, Tab 4, p.91, at para. 8

6. At that initial stage in the *CCAA* proceedings, Laurentian was in a precarious financial state and it was not known whether it would be able to continue to operate and provide academic programming for its current and prospective students.

7. The IPC, through her counsel, attended the hearing of Laurentian's motion. While the IPC did not take a position on Laurentian's request for the *FIPPA* stay, the IPC did provide some context to this Honourable Court, including information about *FIPPA* and the quasi-constitutional status of the access rights it guarantees.

8. On February 11, 2021, this Honourable Court granted Laurentian's request for an Amended and Restated Initial Order under the *CCAA* which included the Stay Order and its subordinate *FIPPA* stay:

> **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being **"Persons"** and each being a **"Person")** against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended, <u>including any existing, pending or future information requests made to the Applicant under the *Freedom of Information and Protection of Privacy Act*,</u> except with the written consent of the Applicant and the Monitor, or leave of this Court… [Emphasis added.][6]

9. In the accompanying endorsement, this Honourable Court found:

> With respect to whether the Amended and Restated Initial Order should provide that information requests made under the *FIPPA* be stayed, I accept the view expressed by the Applicant and the Monitor that the Applicant expects to receive a high volume of *FIPPA* requests at this time and the limited resources of the Applicant should not be diverted from its restructuring efforts. I also accept that the Monitor will, during this period, provide alternative means through which information can be obtained.
>
> However, I am unable to determine at this stage of the proceeding as to whether it would be appropriate to extend this specific provision of the stay for an indefinite period of time. I am prepared to continue the stay on the understanding that the Information and Privacy Commissioner can request that this issue be revisited in 30 days. Any request for reconsideration can

[6] Amended and Restated Initial Order (Court File No. CV-21-656040-00CL), IPC Motion Record, Tab 5, pp. 105-106, at para. 21

> be made through the Monitor and if the matter remains unresolved, a hearing on this issue can be expedited.[7]

10. Prior to the expiry of the Stay Order's April 30, 2021 deadline, Laurentian brought a motion to extend the Stay Order until August 31, 2021. The university did not file any evidence of its need to extend the *FIPPA* stay. The court granted the extension, but included the same condition permitting the IPC to request that the *FIPPA* stay be revisited:

> The Information and Privacy Commissioner took no position on the stay extension but did request that that the accommodation provided to the Commissioner at paragraph [61] of the endorsement of February 12, 2021 be maintained. This provision provides that the stay does apply to the Commissioner, but that the Commissioner can request reconsideration of the applicability of the stay at a future time. This request is most reasonable and is continued.[8]

11. On August 27, 2021, Laurentian sought a further extension of the Stay Order, including the *FIPPA* stay, until January 31, 2022. In support of its motion to extend the *FIPPA* stay, Laurentian filed an affidavit of its president, Dr. Robert Haché, which stated that Laurentian did not have the capacity to respond to its *FIPPA* requests.[9] Dr. Haché noted that there were three (3) requests made to the university that had been suspended by the *FIPPA* stay.[10]

12. This Honourable Court granted the extension, noting in its endorsement:

> …the Information and Privacy Commissioner of Ontario took no position on the stay extension but did request that the accommodation provided to the Commissioner at paragraph [61] of the Endorsement of February 12, 2021, be maintained. This provision provides that the Commissioner can request

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[7] *Laurentian University of Sudbury*, 2021 ONSC 1098 (CanLII), at paras. 60-61; also found in IPC Motion Record, Tab 6, p. 133, at paras. 60-61
[8] *Laurentian University of Sudbury*, 2021 ONSC 3545 (CanLII), at para. 48; also found in IPC Motion Record, Tab 8, p. 155, at para. 48
[9] Affidavit of Dr. R. Haché, sworn August 20, 2021 ("Dr. Haché affidavit"), IPC Motion Record, Tab 9, pp. 186-187, at paras. 99-101
[10] Dr. Haché affidavit, sworn August 20, 2021, IPC Motion Record, Tab 9, p. 185, at para. 96

> reconsideration of the applicability of the stay at a future date. This accommodation is to be maintained.[11]

13. On January 27, 2022, Laurentian brought another motion to this Honourable Court to extend the Stay Order, including the *FIPPA* stay, until May 31, 2022. This extension was granted.[12] The IPC, along with the Laurentian University Faculty Association, the Laurentian University Staff Union, and the Canadian Association of University Teachers opposed the extension of the *FIPPA* stay, but as no materials were filed in respect to these positions, the issue was not determined at the hearing.[13]

14. By the time of this most recent motion, the number of access to information requests suspended by the *FIPPA* stay increased by one, bringing to total number of requests to four (4). It appears that these four requests are typical of the kinds of requests made under *FIPPA*, i.e. requests for information about an institution's operations.[14]

15. It has been over a year since Laurentian entered into protection and restructuring under the *CCAA*. During this restructuring period, the university has continued to operate its educational programs and classes have continued without disruption.[15] Among other advances made in the insolvency, Laurentian, working with the Monitor, has made

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[11] Endorsement (*Laurentian University of Sudbury v. Huntington University*, 2021 ONSC 5771), IPC Motion Record, Tab 11, p. 207, at para. 17

[12] Order (Stay Extension and Preparing for Strategic Plan, January 27, 2022, IPC Motion Record, Tab 13, p. 259, at para. 3

[13] *Laurentian University of Sudbury*, 2022 ONSC 619 (CanLII), at para. 20; also found in IPC Motion Record, Tab 14, pp. 265-266, at para. 20

[14] Affidavit of Christian Aviles, sworn March 8, 2022 ("Aviles affidavit"), IPC Motion Record, Tab 2, p. 30, at para. 3

[15] Tenth Report of Ernst & Young Inc., in its capacity as the Monitor of Laurentian's restructuring, dated January 24, 2022 ("Monitor's Report"), IPC Motion Record, Tab 12, p. 215, at para. 27

"significant progress" in reviewing the approximately 200 proofs of claim filed by its creditors.[16]

16. Laurentian has also recently responded to a "very extensive request"[17] for information made to it by the Auditor General of Ontario ("Auditor General"), for which Laurentian was able to gather and provide a vast number of documents.[18]

***FIPPA*: Nature of Rights and Relevant Statutory Context**

17. *FIPPA* was enacted to achieve two fundamental purposes: to grant members of the public access to information under the custody or control of public institutions, and to protect the privacy of individuals with respect to their personal information held by those institutions.[19]

18. The right of access to information under *FIPPA* is quasi-constitutional in nature.[20] The Supreme Court of Canada found in the unanimous decision of *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*[21] that this right is derivative of the freedom of expression guaranteed under section 2(b) of the *Canadian Charter of Rights and Freedoms*. And as noted in the Supreme Court decision of *Dagg v. Canada (Minister of Finance)*, the overarching purpose of *FIPPA*'s access rights is to facilitate democracy.[22]

19. Any person is entitled to make a request for access to information under *FIPPA*. This right of access to information provides for transparency into the workings of

[16] Monitor's Report, IPC Motion Record, Tab 12, p. 228, at para. 91
[17] Monitor's Report, IPC Motion Record, Tab 12, p. 224, at para. 74
[18] Monitor's Report, IPC's Motion Record, Tab 12, p. 227, at para. 89
[19] *FIPPA*, s. 1
[20] *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25 (CanLII), [2011] 2 SCR 306, at para. 40
[21] 2010 SCC 23 (CanLII), [2010] 1 SCR 815, at para. 30
[22] *Dagg v. Canada (Minister of Finance)*, 1997 CanLII 358 (SCC), [1997] 2 SCR 403, at para. 61,

government and other public institutions. In this way, *FIPPA* allows for public scrutiny of and accountability for the activities of these institutions, including how they use and spend public resources.[23]

20. Access to information requests made to Laurentian under *FIPPA* do not create debts, liabilities or obligations that could give rise to a provable monetary claim in the *CCAA* restructuring. Rather, these requests, and the statutory obligation on Laurentian to respond to them, are part of the normal operations of a public institution.

21. *FIPPA* provides a presumptive right to access information held by public institutions, provided that the record sought is in the institution's custody or control. An institution may also refuse a request that it finds, on reasonable grounds, to be frivolous or vexatious:

> **10** (1) Subject to subsection 69 (2), every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,
>
> **…**
>
> (b) the head [of an institution] is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.[24]

22. In addition, while access to information is a broad right, *FIPPA* does provide for limited exclusions from its application[25], including the exclusion for records "respecting or associated with research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution."[26] Even where *FIPPA*

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[23] *Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner*, 2009 ONCA 20 (CanLII), at paras. 43-47
[24] *FIPPA*, s. 10
[25] *FIPPA*, s. 65
[26] *FIPPA*, s. 65(8.1)(a)

does apply, there are specific exemptions that may apply to deny the disclosure of certain types of information.[27]

23. Under *FIPPA*, an institution may also refuse to disclose a record or information that has already been published, is available to the public, or will soon be published:

> 22 A head [of an institution] may refuse to disclose a record where,
>
> (a) the record or the information contained in the record has been published or is currently available to the public; or
>
> (b) the head believes on reasonable grounds that the record or the information contained in the record will be published by an institution within ninety days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it.[28]

24. *FIPPA* provides that institutions are required to respond to requests for information within 30 days[29], but gives the institution the discretion to extend that time limit in certain circumstances:

> 27 (1) A head may extend the time limit set out in section 26 for a period of time that is reasonable in the circumstances, where,
>
> (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or
>
> (b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.[30]

25. *FIPPA* further recognizes that responding to requests for information requires institutions to expend resources. Accordingly, *FIPPA* gives institutions the authority to require requesters to pay prescribed fees for costs associated with responding to a request:

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[27] *FIPPA*, ss. 12-22
[28] *FIPPA*, s. 22
[29] *FIPPA*, s. 26
[30] *FIPPA*, s. 27

> 57 (1) A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,
>
> (a) the costs of every hour of manual search required to locate a record;
>
> (b) the costs of preparing the record for disclosure;
>
> (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
>
> (d) shipping costs; and
>
> (e) any other costs incurred in responding to a request for access to a record.[31]

FIPPA requests at Laurentian

26. At the hearing on February 11, 2021, which resulted in the *FIPPA* stay, the IPC provided some statistics to this Honorable Court regarding the number of *FIPPA* requests made to the university in past years. The IPC noted that Laurentian received 26 requests for information under *FIPPA* in 2019[32] and 25 requests in 2018[33]. At the time of the hearing, the 2020 statistics were not available, but since then the IPC has published that in 2020 Laurentian received 10 requests[34].

27. When Laurentian filed for protection under the *CCAA*, on or about February 1, 2021, there were two pending *FIPPA* requests. Since the university was granted *CCAA* protection, there have been only two further *FIPPA* requests that have been made to Laurentian.[35] These four (4) *FIPPA* requests have all been suspended by the *FIPPA*

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[31] *FIPPA*, s. 57
[32] *2019 Statistical Report, Office of the Information and Privacy Commissioner*: https://www.ipc.on.ca/wp-content/uploads/2021/06/ar-2019-stats-e.pdf
[33] *2018 Statistical Report, Office of the Information and Privacy Commissioner*: https://www.ipc.on.ca/wp-content/uploads/2017/06/ar-2018-stats-e.pdf
[34] *2018 Statistical Report, Office of the Information and Privacy Commissioner*: https://www.ipc.on.ca/wp-content/uploads/2021/06/ar-2020-stats-e.pdf
[35] Aviles affidavit, IPC Motion Record, Tab 2, p. 30, at para. 3

stay. As described further below, these requests appear to be of the usual kinds made under *FIPPA* that seek information about an institution's operations or work[36].

PART III – POSITION ON THE ISSUES RAISED

28. The IPC takes the following positions on the issues raised in this motion:

> A. Laurentian has not adduced sufficient evidence, as required under section 11.02(3) of the *CCAA*, to support the continuation of the *FIPPA* stay; and
>
> B. Section 11.02 of the *CCAA* should not be interpreted to permit a stay of Laurentian's *FIPPA* obligations

A. Insufficient evidence to support the continuation of FIPPA stay

29. Laurentian has not demonstrated that the continuation of the *FIPPA* stay satisfies the mandatory criteria set out in section 11.02(3) of the *CCAA*:

> 11.02(3) The court shall not make the [stay] 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

30. As recently affirmed by the Supreme Court of Canada in *Canada v. Canada North Group Inc.*:

> Keeping in mind the centrality of judicial discretion in the *CCAA* regime, our jurisprudence has developed baseline requirements of appropriateness, good faith and due diligence in order to exercise this power. The supervising judge must be satisfied that the order is appropriate and that the applicant has acted in good faith and with due diligence (*Century Services*, at para. 69). The judge must also be satisfied as to appropriateness, which is assessed by considering whether the order would advance the policy and remedial objectives of the *CCAA* (para. 70).[37]

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[36] Aviles affidavit, IPC Motion Record, Tab 2, p. 30, at para. 3
[37] *Canada v. Canada North Group Inc*., 2021 SCC 30 (CanLII), at para. 21

i. Circumstances do not support the continuation of the FIPPA stay

31. The IPC submits that the circumstances in this case do not support the continuation of the *FIPPA* stay.

32. The only evidence proffered by Laurentian in support of the "circumstances" that make the *FIPPA* stay appropriate is found in the affidavit of Dr. Haché, filed in support of Laurentian's motion to extend the *FIPPA* stay, served on August 27, 2021:

> 99. Given the significant amount of time that is required to be devoted by LU personnel during this restructuring and the limited resources at the university, LU continues to seek the stay of proceedings to extend to information requests under *FIPPA*.
>
> 100. In many instances, personnel at LU are working on multiple time-sensitive work streams (including the Auditor General audit, the FLSA investigation and responding to other stakeholder requests) and do not have further capacity to satisfy *FIPPA* requests. Further, many of the records kept by LU are in physical hard copy form only and would require someone to physically attend on campus and search through the books and records of LU. To the extent that any information request involves multiple departments at LU (for example, Facilities and Finance), personnel at LU who are knowledgeable about the location of such documentation would need to individually search those records.
>
> 101. Finally, any given information request under *FIPPA* could potentially involve the disclosure of a multitude of documents and require a considerable amount of time by LU personnel in order to locate and comply with the information request. Given the many ongoing and competing work streams as part of the *CCAA* restructuring and attrition of personnel during the *CCAA* proceeding, LU faces an extreme shortage of human capital. Continuing to suspend any existing, pending, or future information requests, including the appeals is only a temporary measure to allow LU the time and breathing space to restructure. As soon as LU emerges from the *CCAA* proceeding, it will continue to comply with its obligations under *FIPPA* and address *FIPPA* information requests in a timely and orderly manner.[38]

33. Dr. Haché's concerns are hypothetical at best and do not address the actual and specific *FIPPA* requests that have been stayed. His view that Laurentian does not have the resources required to respond to the (then) three *FIPPA* requests was based on

[38] Dr. Haché affidavit, IPC Motion Record, Tab 9, pp. 186-187, at paras. 99-101

speculation that *FIPPA* requests “could potentially involve the disclosure of a multitude of documents and require a considerable amount of time by [Laurentian] personnel in order to locate and comply with the information request.”[39]

34. The IPC submits that the following are relevant circumstances that should be considered when determining whether it is appropriate to continue the *FIPPA* stay.

35. There are only four (4) requests that have been suspended by the *FIPPA* stay. The IPC has been advised that two of the four requests deal with the university’s decision to close its swimming pool.[40] Of the remaining two requests, one concerns academic information or research while the other seeks information about the university’s nursing department.[41] There is no evidence that responding to any of these four requests would result in an unreasonable burden on Laurentian. The prediction made by Laurentian over a year ago -- that it would be deluged by *FIPPA* requests during the restructuring process -- has simply not come to pass. As noted above, the number of annual *FIPPA* requests for the past few years has been modest, ranging from only 10 to 26 requests. There is no reasonable basis to continue to fear that “there will be an extraordinary influx of *FIPPA* requests.”[42]

36. A year into its *CCAA* protection, Laurentian’s state of affairs is not the same as when the *FIPPA* stay was initially granted. Although there has been a reduction in the number of programs and courses it offers, Laurentian has continued to operate as a university and to provide post-secondary education to its students without interruption.

[39] Dr. Haché affidavit, IPC Motion Record, Tab 9, pp. 186-187, at para. 101
[40] Aviles affidavit, IPC Motion Record, Tab 2, p. 30, at para. 3
[41] Aviles affidavit, IPC Motion Record, Tab 2, p. 30, at para. 3
[42] Notice of Motion, filed by Laurentian, February 3, 2021, IPC Motion Record, Tab 4, p. 91, at para. 8

Moreover, during the restructuring, Laurentian was able to respond to the Auditor General's request for voluminous documents. It has been reported that Laurentian produced 3.8 million documents to the provincial government for the Auditor General's value-for-money audit.[43]

37. The provisions in *FIPPA* that apply to Laurentian when it responds to requests for information are additional circumstances relevant to whether the *FIPPA* stay should continue.

38. *FIPPA* gives Laurentian the discretion to extend the 30-day deadline for responding to a request for information in certain circumstances, including where "the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution."[44]

39. *FIPPA* also enables Laurentian to deny disclosure where it finds on reasonable grounds that a request is frivolous or vexatious, or where the information sought is outside of its custody or control. Certain categories of records are also excluded altogether from the application of *FIPPA*, including certain types of academic research.[45]

40. In addition, Laurentian is not required under *FIPPA* to respond to requests where the information sought has already been published or will soon be published.[46]

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[43] K. Rushowy, "*Laurentian University surrenders financial documents"*, Toronto Star: (28 February, 2022) online: https://www.thestar.com/politics/provincial/2022/02/28/laurentian-university-surrenders-financial-documents-to-province.html
[44] *FIPPA*, s. 27
[45] *FIPPA*, s. 65(8.1)
[46] *FIPPA*, s. 22

41. Further, *FIPPA* requires that requesters pay prescribed fees to institutions for their costs in responding to *FIPPA* requests. Laurentian can therefore recover its expenses such as labour costs for manual searching for records and preparation of records for disclosure to the requester.[47]

42. Finally, there should be due consideration of the nature of the rights at issue. As discussed above, access rights under *FIPPA* are not trivial, but are in fact quasi-constitutional in nature. The IPC respectfully submits that the quasi-constitutional nature of these access rights is a circumstance that weighs against continuing the *FIPPA* stay.

ii. Laurentian has not met its burden of demonstrating good faith and due diligence

43. While Laurentian may have acted in "good faith and with due diligence" with respect to its restructuring efforts, Laurentian should also bear the burden of establishing that it is acting in "good faith and with due diligence" specifically with respect to its obligations to respond to *FIPPA* requests. The IPC is not aware of any evidence of bad faith in this respect, but submits that Laurentian has not demonstrated due diligence.

44. Prior to entering into *CCAA* protection, Laurentian would have had staff whose duties included responding to *FIPPA* requests. Even if some or all those staff are no longer employed by the university, the onus is on Laurentian to show good faith and due diligence[48] in determining, for example, whether existing staff could process the four *FIPPA* requests, or whether other options exist.

45. Due diligence also requires that Laurentian consider the provisions of *FIPPA* described above. When asserting that it cannot comply with *FIPPA* requests because of

[47] *FIPPA*, s. 57(a) and (b)
[48] *CCAA*, s. 11.02(3)

lack of capacity, Laurentian has not provided any evidence that it has considered these provisions, for example its discretion to extend timelines for response in certain circumstances. Nor has the university adduced evidence that these provisions cannot address its resource concerns. While responding to *FIPPA* requests will undoubtedly require some effort by Laurentian's remaining workforce, that is the reality for all of Laurentian's normal operations.

46. Finally, the IPC notes that when the *FIPPA* stay was ordered, this Honourable Court did so with some reservation about the length of such a stay:

> However, I am unable to determine at this stage of the proceeding as to whether it would be appropriate to extend this specific provision of the stay for an indefinite period of time.[49]

47. The Court granted an accommodation to the IPC to request that this issue be revisited. Over the past year, the IPC has monitored whether there was a rationale to continue the *FIPPA* stay, balancing the progress of Laurentian's restructuring against the importance of *FIPPA*'s quasi-constitutional rights of access.

48. Allowing the *FIPPA* stay to continue in these circumstances would lead to an undesirable precedent that such stays would be routine in insolvency proceedings. As noted above, the request for the *FIPPA* stay appears to be unprecedented in *CCAA* jurisprudence. Any continuation of the *FIPPA* stay would impede the entitlement of requesters to access information about Laurentian's operations. Laurentian, as a publicly-funded body, must be transparent and accountable to the public by responding to *FIPPA* requests. The timely right to this information is fundamental. For at least two

[49] *Laurentian University of Sudbury*, 2021 ONSC 1098 (CanLII), at para. 61; also found in IPC Motion Record, Tab 6, p. 133, at para. 61

of the four requesters, they have been waiting for over a year for Laurentian to respond to their requests.

49. The IPC respectfully submits that it is appropriate for the Court to lift the *FIPPA* stay.

B. Section 11.02 of the CCAA should not be interpreted to permit a stay of Laurentian's FIPPA obligations

50. Further, and in the alternative, the IPC submits that access rights under *FIPPA*, a valid provincial law, should not be stayed by an order under section 11.02 of the *CCAA* which provides that:

> 2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,
>
> (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
>
> (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
>
> (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.[50]

51. While the authority to order a stay of proceedings under section 11.02 of *CCAA* is to be interpreted liberally and broadly, the interpretation must align with the context and purpose of this protection:

> The discretionary authority conferred by the *CCAA*, while broad in nature, is not boundless. This authority must be exercised in furtherance of the remedial objectives of the *CCAA*...[51]

52. As the Court of Appeal confirmed in *Sproule v. Nortel Networks Corporation*[52]:

> …the acknowledged purpose of the *CCAA* is to facilitate the making of a compromise or arrangement between an insolvent debtor company and its

[50] *CCAA*, s. 11.02(2)
[51] *9354-9186 Québec Inc. v. Callidus Capital Corp*., 2020 SCC 10 (CanLII), at para. 49
[52] 2009 ONCA 833 (CanLII), leave to appeal dismissed 2010 CanLII 14818 (SCC)

> creditors, to the end that the company is able to continue in business. The primary instrument provided by the *CCAA* to achieve its purpose is the power of the court to issue a broad stay of proceedings under s. 11.[53]

53. The context and purpose of *CCAA* stay orders includes a consideration of the category of persons whose rights are appropriately stayed:

> In our view, the broad discretion conferred on a court by ss. 11 and 11.02 of the *CCAA* allows it to stay rights held by creditors if the exercise of those rights could jeopardize the restructuring process.[54] [Emphasis added.]

54. Interpreting the stay powers as affecting *FIPPA* access rights does not further the general purposes of the *CCAA* nor the specific purpose of section 11.02. As explained above, persons who make requests for information under *FIPPA* to Laurentian are rights holders. They are not creditors by virtue of exercising their *FIPPA* access rights. A request for information is non-monetary and does not give rise to any provable claim in the insolvency proceeding.

55. Laurentian's compliance with its obligations under *FIPPA* to respond to access to information requests is distinguishable from cases where complying with a provincial law resulted in monetary claims or disruption of creditors' priorities. Processing *FIPPA* requests is analytically distinct from, for example, statutory duties to provide timely payments to terminated employees[55], or reimbursement to a province for remediation of environmental damages predating the insolvency.[56]

56. Responding to *FIPPA* requests is a usual and normal component of the university's operations, similar to other statutory duties imposed on ongoing businesses,

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[53] *Ibid*., at para. 16
[54] *Montréal (City) v. Deloitte Restructuring Inc*., 2021 SCC 53 (CanLII), at para. 54
[55] *Nortel Networks Corporation (Re)*, 2009 CanLII 31600 (ON SC), aff'd in *Sproule v. Nortel Networks Corporation*, *supra*, at note 52
[56] *Newfoundland and Labrador v. AbitibiBowater Inc*., 2012 SCC 67 (CanLII), [2012] 3 SCR 443

such as those required by the *Occupational Health and Safety Act*[57] or the *Human Rights Code*.[58] As the Ontario Court of Appeal found in *Indalex Limited (Re)*[59], valid provincial laws continue to apply to an insolvent under *CCAA* protection, unless an express finding of federal paramountcy is made.[60]

57. There has been no such finding made in these *CCAA* proceedings. There has been no finding that there is either an operational conflict between the access rights in *FIPPA* and the *CCAA*, or that the obligation imposed on Laurentian to respond to *FIPPA* requests frustrates the purpose of the *CCAA*.[61] Further, as a general matter, the onus of establishing paramountcy lies with any party who asserts it. This doctrine must be applied with restraint and courts should avoid "an expansive interpretation of the purpose of federal legislation which will bring it into conflict with provincial legislation."[62]

58. In its factum[63] filed in support of its initial request for the *FIPPA* stay, Laurentian relied on the British Columbia Supreme Court decision in *1077 Holdings Co-Operative (Re)*[64] ("*MEC*"). Laurentian argued that the *MEC* decision stands for the proposition that information requests can be subject to a stay order. The facts in *MEC* are clearly distinguishable from the facts of this case.

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[57] R.S.O. 1990, c. O.1
[58] R.S.O. 1990, c. H19
[59] 2011 ONCA 265 (CanLII), varied on other grounds, *Sun Indalex Finance, LLC v United Steelworkers* 2013 SCC 6 (CanLII), [2013] 1 SCR 271
[60] Ibid., at para. 177
[61] *Orphan Well Association v. Grant Thornton Ltd*., 2019 SCC 5 (CanLII), [2019] 1 SCR 150, at para. 65
[62] Ibid., at para. 66
[63] Laurentian factum, dated January 30, 2021, IPC Motion Record, Tab 3, p. 51, at paras. 55-56
[64] 2021 BCSC 42 (CanLII) ("*MEC*")

59. *MEC* does not stand for the principle that information requests made under *FIPPA* can or should be stayed by a *CCAA* stay order. *MEC* did not concern access to information legislation or quasi-constitutional rights. In addition, persons who make information requests to Laurentian under *FIPPA* do not, by virtue of those requests, become creditors in the insolvency.

60. In *MEC*, the British Columbia Supreme Court was addressing requests from certain individuals who were creditors and members of the insolvent co-operative (the "Members"), pursuant to their rights under the *Cooperative Association Act*[65]. While the Court found it had supervisory jurisdiction under the *CCAA* to consider whether the co-operative should respond to the Members' requests,[66] it made this finding in the context that allowing the rights at issue to be enforced would permit the Members to take steps to assert control and influence over the insolvent, which activity would potentially interfere with the monitor's efforts to advance the *CCAA* proceedings.[67] It was also significant that the insolvent was no longer continuing operations, had sold substantially all of its assets, and what remained was only the administration of the claims process.[68]

61. The IPC also respectfully submits that the quasi-constitutional nature of the access rights guaranteed by *FIPPA* is an important distinction in this case. Given the nature of the access rights, it is submitted that a higher threshold and more scrutiny should apply when determining whether they can or should be affected by a *CCAA* stay order. It is useful to compare this to the hypothetical use of section 11.02 to stay other

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[65] S.B.C. 1999, c. 28
[66] *MEC*, *supra* at note 63, at para. 62
[67] *Ibid.*, at para. 97
[68] *Ibid.*, at paras. 4-5, 93

quasi-constitutional rights, for example Laurentian's obligations to comply with *FIPPA* provisions to protect personal privacy[69], or Laurentian's obligations not to discriminate under the Ontario *Human Rights Code*[70]. These are not the kinds of rights that should be stayed by the *CCAA*.

62. The existence of a vital public interest should be considered when assessing whether *FIPPA* access rights should be stayed by section 11.02. When contemplating the importance of transparency, the Legislature sought fit to include not just government institutions, but certain publicly-funded institutions such as Laurentian in the *FIPPA* regime. The public is entitled to know how Laurentian operates, including how they spend those public funds. Consideration of public interest is contemplated elsewhere in the *CCAA*. For example, section 11.1(1)(3)(b) restricts section 11.02 stays from applying to regulatory investigations, action, suits or proceedings, but allows for exceptions if, among other conditions, it would not be contrary to the public interest.[71]

63. The obligations of public institutions such as Laurentian to respond to *FIPPA* requests should be at least on par with an insolvent's ongoing obligations to comply with other important statutory duties, such as legislated health and safety or environmental provisions. Stay orders, in general, do not allow insolvents to be exempt from these types of statutory duties, and the Stay Order in this case explicitly does not exempt Laurentian

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[69] *FIPPA*, Part III; *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII), at paras. 51-52

[70] R.S.O. 1990, c. H19; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)*; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, 2000 SCC 27 (CanLII), [2000] 1 SCR 665, at para. 27

[71] *CCAA*, s. 11.1(1)(3)(b)

from “compliance with any statutory or regulatory provisions relating to health, safety or the environment.”[72]

64. As found by the Ontario Court of Appeal when considering a stay of certain labour rights, “[w]hile flexibility is required to address the challenges in any particular insolvency proceeding, courts should not unduly inoculate insolvency proceedings against the legitimate exercise of labour rights simply because the assertion of those rights represents an inconvenience…”[73] The Court of Appeal found that the employees’ statutory labour rights in that case were “fundamental”[74] and interfering with their ability to exercise those rights caused clear prejudice. Similarly, staying *FIPPA* rights under section 11.02 results in clear and significant prejudice as it interferes with the ability of the public to exercise their fundamental rights of access to information.

PART IV – ORDER REQUESTED

65. The IPC respectfully requests that this Honourable Court vary the Stay Order by removing the *FIPPA* stay.

[72] Amended and Restated Initial Order (Court File No. CV-21-656040-00CL), IPC Motion Record, Tab 5, p. 106, at para. 21
[73] *Romspen Investment Corporation v. Courtice Auto Wreckers Limited*, 2017 ONCA 301 (CanLII), leave to appeal refused, [2017] S.C.C.A. No. 238, 2018 CanLII 11140 (SCC), at para. 37
[74] *Ibid.*, at para. 37

66. The IPC does not seek its costs in this motion. Given the novel nature of the issues, and the public interests engaged, the IPC asks that no costs be awarded against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9 day of March, 2022.

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Linda Hsiao-Chia Chen

Lawyer for the Moving Party
Information and Privacy Commissioner of Ontario

SCHEDULE A - LIST OF AUTHORITIES

1. *Laurentian University of Sudbury*, 2021 ONSC 1098 (CanLII)

2. *Laurentian University of Sudbury*, 2021 ONSC 3545 (CanLII)

3. *Laurentian University of Sudbury v. Huntington University*, 2021 ONSC 5771

4. *Laurentian University of Sudbury*, 2022 ONSC 619 (CanLII)

5. *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25 (CanLII)

6. *Ontario (Public Safety and Security) v. Criminal Lawyers' Association,* 2010 SCC 23 (CanLII)

7. *Dagg v. Canada (Minister of Finance)*, 1997 CanLII 358 (SCC)

8. *Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner*, 2009 ONCA 20 (CanLII)

9. *Canada v. Canada North Group Inc*., 2021 SCC 30 (CanLII)

10. *Laurentian University of Sudbury*, 2021 ONSC 1098 (CanLII)

11. *9354-9186 Québec Inc. v. Callidus Capital Corp*., 2020 SCC 10 (CanLII)

12. *Sproule v. Nortel Networks Corporation,* 2009 ONCA 833 (CanLII), leave to appeal dismissed 2010 CanLII 14818 (SCC)

13. *Montréal (City) v. Deloitte Restructuring Inc*., 2021 SCC 53 (CanLII)

14. *Nortel Networks Corporation (Re)*, 2009 CanLII 31600 (ON SC)

15. *Newfoundland and Labrador v. AbitibiBowater Inc*., 2012 SCC 67 (CanLII)

16. *Indalex Limited (Re),* 2011 ONCA 265 (CanLII)

17. *Sun Indalex Finance, LLC v. United Steelworkers,* 2013 SCC 6 (CanLII)

18. *Orphan Well Association v. Grant Thornton Ltd*., 2019 SCC 5 (CanLII)

19. *1077 Holdings Co-Operative (Re),* 2021 BCSC 42 (CanLII)

20. *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII)

21. *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)*; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, 2000 SCC 27 (CanLII)

22. *Romspen Investment Corporation v. Courtice Auto Wreckers Limited*, 2017 ONCA 301 (CanLII), leave to appeal refused, [2017] S.C.C.A. No. 238, 2018 CanLII 11140 (SCC)

Other Sources

23. K. Rushowy, "*Laurentian University surrenders financial documents"*, Toronto Star: (28 February, 2022) online:

https://www.thestar.com/politics/provincial/2022/02/28/laurentian-university surrenders-financial-documents-to-province.html

SCHEDULE B - LEGISLATION

Statutes

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

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- o **(a)** staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- o **(b)** restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- o **(c)** prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

- **Stays, etc. — other than initial application**

  (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

  - o **(a)** staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
  - o **(b)** restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
  - o **(c)** prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

- **Burden of proof on application**

  (3) The court shall not make the order unless

  - o **(a)** the applicant satisfies the court that circumstances exist that make the order appropriate; and
  - o **(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.

- **11.1 (1)** In this section, ***regulatory body*** means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.
- **Marginal note:Regulatory bodies — order under section 11.02**

  (2) Subject to subsection (3), no order made under section 11.02 affects a regulatory body's investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.
- **Marginal note:Exception**

  (3) On application by the company and on notice to the regulatory body and to the persons who are likely to be affected by the order, the court may order that subsection (2) not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court's opinion

  - **(a)** a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and
  - **(b)** it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02.

2. *Freedom of Information and Protection of Privacy Act,* R.S.O. 1990, c. F. 31

Purposes

1 The purposes of this Act are,

(a) to provide a right of access to information under the control of institutions in accordance with the principles that,

(i) information should be available to the public,

(ii) necessary exemptions from the right of access should be limited and specific, and

(iii) decisions on the disclosure of government information should be reviewed independently of government; and

(b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information. R.S.O. 1990, c. F.31, s. 1.

Right of access

10 (1) Subject to subsections (1.1) and 69 (2), every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,

(a) the record or the part of the record falls within one of the exemptions under sections 12 to 22; or

(b) the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious. 1996, c. 1, Sched. K, s. 1; 2010, c. 25, s. 24 (6); 2019, c. 7, Sched. 31, s. 1 (1).

Part III.1 records

(1.1) Subsection (1) does not apply to personal information collected under Part III.1 (Data Integration) or to records produced from that information under that Part that are not de-identified. 2019, c. 7, Sched. 31, s. 1 (2).

Severability of record

(2) If an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 12 to 22 and the head of the institution is not of the opinion that the request is frivolous or vexatious, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions. 1996, c. 1, Sched. K, s. 1.

EXEMPTIONS

Cabinet records

12 (1) A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,

(a) an agenda, minute or other record of the deliberations or decisions of the Executive Council or its committees;

(b) a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;

(c) a record that does not contain policy options or recommendations referred to in clause (b) and that does contain background explanations or analyses of problems submitted, or prepared for submission, to the Executive Council or its committees for their consideration in making decisions, before those decisions are made and implemented;

(d) a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;

(e) a record prepared to brief a minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council or its committees, or are the subject of consultations among ministers relating to government decisions or the formulation of government policy; and

(f) draft legislation or regulations. R.S.O. 1990, c. F.31, s. 12 (1).

Exception

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where,

(a) the record is more than twenty years old; or

(b) the Executive Council for which, or in respect of which, the record has been prepared consents to access being given. R.S.O. 1990, c. F.31, s. 12 (2).

Advice to government

13 (1) A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution. R.S.O. 1990, c. F.31, s. 13 (1).

Exception

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

(a) factual material;

(b) a statistical survey;

(c) a report by a valuator, whether or not the valuator is an officer of the institution;

(d) an environmental impact statement or similar record;

(e) a report of a test carried out on a product for the purpose of government equipment testing or a consumer test report;

(f) a report or study on the performance or efficiency of an institution, whether the report or study is of a general nature or is in respect of a particular program or policy;

(g) a feasibility study or other technical study, including a cost estimate, relating to a government policy or project;

(h) a report containing the results of field research undertaken before the formulation of a policy proposal;

(i) a final plan or proposal to change a program of an institution, or for the establishment of a new program, including a budgetary estimate for the program, whether or not the plan or proposal is subject to approval, unless the plan or proposal is to be submitted to the Executive Council or its committees;

(j) a report of an interdepartmental committee task force or similar body, or of a committee or task force within an institution, which has been established for the purpose of preparing a report on a particular topic, unless the report is to be submitted to the Executive Council or its committees;

(k) a report of a committee, council or other body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution;

(l) the reasons for a final decision, order or ruling of an officer of the institution made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment or scheme administered by the institution, whether or not the enactment or scheme allows an appeal to be taken against the decision, order or ruling, whether or not the reasons,

(i) are contained in an internal memorandum of the institution or in a letter addressed by an officer or employee of the institution to a named person, or

(ii) were given by the officer who made the decision, order or ruling or were incorporated by reference into the decision, order or ruling. R.S.O. 1990, c. F.31, s. 13 (2).

Idem

(3) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where the record is more than twenty years old or where the head has publicly

cited the record as the basis for making a decision or formulating a policy. R.S.O. 1990, c. F.31, s. 13 (3); 2016, c. 5, Sched. 10, s. 1.

Section Amendments with date in force (d/m/y)

Law enforcement

14 (1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,

(a) interfere with a law enforcement matter;

(b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

(c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

(d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

(e) endanger the life or physical safety of a law enforcement officer or any other person;

(f) deprive a person of the right to a fair trial or impartial adjudication;

(g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;

(h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;

(i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

(j) facilitate the escape from custody of a person who is under lawful detention;

(k) jeopardize the security of a centre for lawful detention; or

(l) facilitate the commission of an unlawful act or hamper the control of crime. R.S.O. 1990, c. F.31, s. 14 (1); 2002, c. 18, Sched. K, s. 1 (1); 2019, c. 7, Sched. 31, s. 2.

Idem

(2) A head may refuse to disclose a record,

(a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

(b) that is a law enforcement record where the disclosure would constitute an offence under an Act of Parliament;

(c) that is a law enforcement record where the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability; or

(d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority. R.S.O. 1990, c. F.31, s. 14 (2); 2002, c. 18, Sched. K, s. 1 (2).

Refusal to confirm or deny existence of record

(3) A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) apply. R.S.O. 1990, c. F.31, s. 14 (3).

Exception

(4) Despite clause (2) (a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency where that agency is authorized to enforce and regulate compliance with a particular statute of Ontario. R.S.O. 1990, c. F.31, s. 14 (4).

Idem

(5) Subsections (1) and (2) do not apply to a record on the degree of success achieved in a law enforcement program including statistical analyses unless disclosure of such a record may prejudice, interfere with or adversely affect any of the matters referred to in those subsections. R.S.O. 1990, c. F.31, s. 14 (5).

Section Amendments with date in force (d/m/y)

Civil Remedies Act, 2001

14.1 A head may refuse to disclose a record and may refuse to confirm or deny the existence of a record if disclosure of the record could reasonably be expected to interfere with the ability of the Attorney General to determine whether a proceeding should be commenced under the *Civil Remedies Act, 2001*, conduct a proceeding under that Act or enforce an order made under that Act. 2001, c. 28, s. 22 (1); 2002, c. 18, Sched. K, s. 2; 2007, c. 13, s. 43 (1).

Section Amendments with date in force (d/m/y)

Prohibiting Profiting from Recounting Crimes Act, 2002

14.2 A head may refuse to disclose a record and may refuse to confirm or deny the existence of a record if disclosure of the record could reasonably be expected to interfere with the ability of the Attorney General to determine whether a proceeding should be commenced under the *Prohibiting Profiting from Recounting Crimes Act, 2002*, conduct a proceeding under that Act or enforce an order made under that Act. 2002, c. 2, ss. 15 (1), 19 (4); 2002, c. 18, Sched. K, s. 3.

Section Amendments with date in force (d/m/y)

Relations with other governments

15 A head may refuse to disclose a record where the disclosure could reasonably be expected to,

(a) prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution;

(b) reveal information received in confidence from another government or its agencies by an institution; or

(c) reveal information received in confidence from an international organization of states or a body thereof by an institution,

and shall not disclose any such record without the prior approval of the Executive Council. R.S.O. 1990, c. F.31, s. 15; 2002, c. 18, Sched. K, s. 4.

Section Amendments with date in force (d/m/y)

Relations with Aboriginal communities

15.1 (1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,

(a) prejudice the conduct of relations between an Aboriginal community and the Government of Ontario or an institution; or

(b) reveal information received in confidence from an Aboriginal community by an institution. 2017, c. 8, Sched. 13, s. 1.

Definition

(2) In this section,

"Aboriginal community" means,

(a) a band within the meaning of the *Indian Act* (Canada),

(b) an Aboriginal organization or community that is negotiating or has negotiated with the Government of Canada or the Government of Ontario on matters relating to,

(i) Aboriginal or treaty rights under section 35 of the *Constitution Act, 1982*, or

(ii) a treaty, land claim or self-government agreement, and

(c) any other Aboriginal organization or community prescribed by the regulations. 2017, c. 8, Sched. 13, s. 1.

Section Amendments with date in force (d/m/y)

Defence

16 A head may refuse to disclose a record where the disclosure could reasonably be expected to prejudice the defence of Canada or of any foreign state allied or associated with Canada or be injurious to the detection, prevention or suppression of espionage, sabotage or terrorism and shall not disclose any such record without the prior approval of the Executive Council. R.S.O. 1990, c. F.31, s. 16; 2002, c. 18, Sched. K, s. 5.

Section Amendments with date in force (d/m/y)

Third party information

17 (1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

(c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

(d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute. R.S.O. 1990, c. F.31, s. 17 (1); 2002, c. 18, Sched. K, s. 6; 2017, c. 8, Sched. 13, s. 2.

Tax information

(2) A head shall refuse to disclose a record that reveals information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax. R.S.O. 1990, c. F.31, s. 17 (2).

Consent to disclosure

(3) A head may disclose a record described in subsection (1) or (2) if the person to whom the information relates consents to the disclosure. R.S.O. 1990, c. F.31, s. 17 (3).

Section Amendments with date in force (d/m/y)

Economic and other interests of Ontario

18 (1) A head may refuse to disclose a record that contains,

(a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;

(b) information obtained through research by an employee of an institution where the disclosure could reasonably be expected to deprive the employee of priority of publication;

(c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

(d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;

(e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario;

(f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;

(g) information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;

(h) information relating to specific tests or testing procedures or techniques that are to be used for an educational purpose, if disclosure could reasonably be expected to prejudice the use or results of the tests or testing procedures or techniques;

(i) submissions in respect of a matter under the *Municipal Boundary Negotiations Act* commenced before its repeal by the *Municipal Act, 2001*, by a party municipality or other body before the matter is resolved;

(j) information provided in confidence to, or records prepared with the expectation of confidentiality by, a hospital committee to assess or evaluate the quality of health care and directly related programs and services provided by a hospital, if the assessment or evaluation is for the purpose of improving that care and the programs and services. R.S.O. 1990, c. F.31, s. 18 (1); 2002, c. 17, Sched. F, Table; 2002, c. 18, Sched. K, s. 7; 2005, c. 28, Sched. F, s. 2; 2011, c. 9, Sched. 15, s. 1.

Exception

(2) A head shall not refuse under subsection (1) to disclose a record that contains the results of product or environmental testing carried out by or for an institution, unless,

(a) the testing was done as a service to a person, a group of persons or an organization other than an institution and for a fee; or

(b) the testing was conducted as preliminary or experimental tests for the purpose of developing methods of testing. R.S.O. 1990, c. F.31, s. 18 (2).

Section Amendments with date in force (d/m/y)

Information with respect to closed meetings

18.1 (1) A head may refuse to disclose a record that reveals the substance of deliberations of a meeting of the governing body or a committee of the governing body of an educational institution or a hospital if a statute authorizes holding the meeting in the absence of the public and the subject-matter of the meeting,

(a) is a draft of a by-law, resolution or legislation; or

(b) is litigation or possible litigation. 2005, c. 28, Sched. F, s. 3; 2010, c. 25, s. 24 (7).

Exception

(2) Despite subsection (1), the head shall not refuse to disclose a record under subsection (1) if,

(a) the information is not held confidentially;

(b) the subject-matter of the deliberations has been considered in a meeting open to the public; or

(c) the record is more than 20 years old. 2005, c. 28, Sched. F, s. 3.

Application of Act

(3) The exemption in subsection (1) is in addition to any other exemptions in this Act. 2005, c. 28, Sched. F, s. 3.

Section Amendments with date in force (d/m/y)

Solicitor-client privilege

19 A head may refuse to disclose a record,

(a) that is subject to solicitor-client privilege;

(b) that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation; or

(c) that was prepared by or for counsel employed or retained by an educational institution or a hospital for use in giving legal advice or in contemplation of or for use in litigation. 2005, c. 28, Sched. F, s. 4; 2010, c. 25, s. 24 (8).

Section Amendments with date in force (d/m/y)

Danger to safety or health

20 A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual. R.S.O. 1990, c. F.31, s. 20; 2002, c. 18, Sched. K, s. 8.

Section Amendments with date in force (d/m/y)

Personal privacy

21 (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

(a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

(b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;

(c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;

(d) under an Act of Ontario or Canada that expressly authorizes the disclosure;

(e) for a research purpose if,

(i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,

(ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and

(iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or

(f) if the disclosure does not constitute an unjustified invasion of personal privacy. R.S.O. 1990, c. F.31, s. 21 (1).

Criteria re invasion of privacy

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;

(b) access to the personal information may promote public health and safety;

(c) access to the personal information will promote informed choice in the purchase of goods and services;

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

(f) the personal information is highly sensitive;

(g) the personal information is unlikely to be accurate or reliable;

(h) the personal information has been supplied by the individual to whom the information relates in confidence; and

(i) the disclosure may unfairly damage the reputation of any person referred to in the record. R.S.O. 1990, c. F.31, s. 21 (2).

Presumed invasion of privacy

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

(a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

(b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

(c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;

(d) relates to employment or educational history;

(e) was obtained on a tax return or gathered for the purpose of collecting a tax;

(f) describes an individual’s finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

(g) consists of personal recommendations or evaluations, character references or personnel evaluations; or

(h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations. R.S.O. 1990, c. F.31, s. 21 (3).

Limitation

(4) Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

(a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution or a member of the staff of a minister;

(b) discloses financial or other details of a contract for personal services between an individual and an institution;

(c) discloses details of a licence or permit or a similar discretionary financial benefit conferred on an individual by an institution or a head under circumstances where,

(i) the individual represents 1 per cent or more of all persons and organizations in Ontario receiving a similar benefit, and

(ii) the value of the benefit to the individual represents 1 per cent or more of the total value of similar benefits provided to other persons and organizations in Ontario; or

(d) discloses personal information about a deceased individual to the spouse or a close relative of the deceased individual, and the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons. R.S.O. 1990, c. F.31, s. 21 (4); 2006, c. 19, Sched. N, s. 1 (2).

Refusal to confirm or deny existence of record

(5) A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy. R.S.O. 1990, c. F.31, s. 21 (5).

Section Amendments with date in force (d/m/y)

Species at risk

21.1 A head may refuse to disclose a record where the disclosure could reasonably be expected to lead to,

(a) killing, harming, harassing, capturing or taking a living member of a species, contrary to clause 9 (1) (a) of the *Endangered Species Act, 2007*;

(b) possessing, transporting, collecting, buying, selling, leasing, trading or offering to buy, sell, lease or trade a living or dead member of a species, any part of a living or dead member of a species, or anything derived from a living or dead member of a species, contrary to clause 9 (1) (b) of the *Endangered Species Act, 2007*; or

(c) damaging or destroying the habitat of a species, contrary to clause 10 (1) (a) or (b) of the *Endangered Species Act, 2007*. 2007, c. 6, s. 61.

Section Amendments with date in force (d/m/y)

Information soon to be published

22 A head may refuse to disclose a record where,

(a) the record or the information contained in the record has been published or is currently available to the public; or

(b) the head believes on reasonable grounds that the record or the information contained in the record will be published by an institution within ninety days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it. R.S.O. 1990, c. F.31, s. 22.

26 Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 25, the head of the institution to which it is forwarded or transferred, shall, subject to sections 27, 28 and 57, within thirty days after the request is received,

(a) give written notice to the person who made the request as to whether or not access to the record or a part thereof will be given; and

(b) if access is to be given, give the person who made the request access to the record or part thereof, and where necessary for the purpose cause the record to be produced. R.S.O. 1990, c. F.31, s. 26; 1996, c. 1, Sched. K, s. 3.

27 (1) A head may extend the time limit set out in section 26 for a period of time that is reasonable in the circumstances, where,

(a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or

(b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit. R.S.O. 1990, c. F.31, s. 27 (1).

Notice of extension

(2) Where a head extends the time limit under subsection (1), the head shall give the person who made the request written notice of the extension setting out,

(a) the length of the extension;

(b) the reason for the extension; and

(c) that the person who made the request may ask the Commissioner to review the extension. R.S.O. 1990, c. F.31, s. 27 (2).

Fees

57 (1) A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

(a) the costs of every hour of manual search required to locate a record;

(b) the costs of preparing the record for disclosure;

(c) computer and other costs incurred in locating, retrieving, processing and copying a record;

(d) shipping costs; and

(e) any other costs incurred in responding to a request for access to a record. 1996, c. 1, Sched. K, s. 11 (1).

(2) Repealed: 1996, c. 1, Sched. K, s. 11 (1).

Estimate of costs

(3) The head of an institution shall, before giving access to a record, give the person requesting access a reasonable estimate of any amount that will be required to be paid under this Act that is over $25. R.S.O. 1990, c. F.31, s. 57 (3).

Waiver of payment

(4) A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,

(a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);

(b) whether the payment will cause a financial hardship for the person requesting the record;

(c) whether dissemination of the record will benefit public health or safety; and

(d) any other matter prescribed in the regulations. R.S.O. 1990, c. F.31, s. 57 (4); 1996, c. 1, Sched. K, s. 11 (2).

Review

(5) A person who is required to pay a fee under subsection (1) may ask the Commissioner to review the amount of the fee or the head's decision not to waive the fee. R.S.O. 1990, c. F.31, s. 57 (5); 1996, c. 1, Sched. K, s. 11 (3).

Disposition of fees

(6) The fees provided in this section shall be paid and distributed in the manner and at the times prescribed in the regulations. 1996, c. 1, Sched. K, s. 11 (4).

Application of Act

65 (1) This Act does not apply to records placed in the archives of an educational institution or the Archives of Ontario by or on behalf of a person or organization other than,

(a) an institution as defined in this Act or in the *Municipal Freedom of Information and Protection of Privacy Act*; or

(b) a health information custodian as defined in the *Personal Health Information Protection Act, 2004. 2005, c. 28, Sched. F, s. 8 (1).*

(2) REPEALED: 2004, c. 3, Sched. A, s. 81 (7).

Idem

(3) This Act does not apply to notes prepared by or for a person presiding in a proceeding in a court of Ontario if those notes are prepared for that person's personal use in connection with the proceeding. R.S.O. 1990, c. F.31, s. 65 (3).

Same

(3.1) This Act does not apply to personal notes, draft decisions, draft orders and communications related to draft decisions or draft orders that are created by or for a person who is acting in a quasi-judicial capacity. 2019, c. 7, Sched. 60, s. 9.

Same

(4) This Act does not apply to anything contained in a judge's performance evaluation under section 51.11 of the *Courts of Justice Act* or to any information collected in connection with the evaluation. 1994, c. 12, s. 49.

Same

(5) This Act does not apply to a record of the Ontario Judicial Council, whether in the possession of the Judicial Council or of the Attorney General, if any of the following conditions apply:

1. The Judicial Council or its subcommittee has ordered that the record or information in the record not be disclosed or made public.
2. The Judicial Council has otherwise determined that the record is confidential.
3. The record was prepared in connection with a meeting or hearing of the Judicial Council that was not open to the public. 1994, c. 12, s. 49.

Same

(5.1) This Act does not apply to a record of a committee investigating a complaint against an associate judge under section 86.2 of the *Courts of Justice Act*, whether in the possession of the committee, the Chief Justice of the Superior Court of Justice, the Attorney General or any other person, if any of the following conditions apply:

1. The committee has ordered that the record or information in the record not be disclosed or made public.
2. The record was prepared in connection with the committee's investigation of the complaint and the complaint was not dealt with in a manner that was open to the public. 1996, c. 25, s. 6; 2002, c. 18, Sched. K, s. 11; 2021, c. 4, Sched. 3, s. 22.

Same

(5.2) This Act does not apply to a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed. 2006, c. 34, Sched. C, s. 11.

Same

(5.3) This Act does not apply to the ecclesiastical records of a church or religious organization that is affiliated with an educational institution or a hospital. 2010, c. 25, s. 24 (17).

Same

(5.4) This Act does not apply to records that relate to the operations of a hospital foundation. 2010, c. 25, s. 24 (17).

Same

(5.5) This Act does not apply to the administrative records of a member of a health profession listed in Schedule 1 to the *Regulated Health Professions Act, 1991* that relate to the member's personal practice. 2010, c. 25, s. 24 (17).

Same

(5.6) This Act does not apply to records relating to charitable donations made to a hospital. 2010, c. 25, s. 24 (17).

(5.7) REPEALED: 2017, c. 19, Sched. 2, s. 1 (1).

Same

(6) Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.
3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.
4. Meetings, consultations, discussions or communications about the appointment or placement of any individual by a church or religious organization within an institution, or within the church or religious organization.
5. Meetings, consultations, discussions or communications about applications for hospital appointments, the appointments or privileges of persons who have hospital privileges, and anything that forms part of the personnel file of those persons. 1995, c. 1, s. 82; 2010, c. 25, s. 24 (18).

Exception

(7) This Act applies to the following records:

1. An agreement between an institution and a trade union.
2. An agreement between an institution and one or more employees which ends a proceeding before a court, tribunal or other entity relating to labour relations or to employment-related matters.

3. An agreement between an institution and one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees.

4. An expense account submitted by an employee of an institution to that institution for the purpose of seeking reimbursement for expenses incurred by the employee in his or her employment. 1995, c. 1, s. 82.

Information relating to adoptions

(8) This Act does not apply with respect to the following:

1. Notices registered under section 48.3 of the *Vital Statistics Act* and notices and information registered under section 48.4 of that Act.
2. Disclosure vetoes registered under section 48.5 of the *Vital Statistics Act*.
3. Information and records in files that are unsealed under section 48.6 of that Act.
4. Revoked: 2017, c. 14, Sched. 4, s. 14 (1).

2005, c. 25, s. 34; 2016, c. 23, s. 49 (2); 2017, c. 14, Sched. 4, s. 14 (1).

Exception

(8.1) This Act does not apply,

(a) to a record respecting or associated with research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution;

(b) to a record of teaching materials collected, prepared or maintained by an employee of an educational institution or by a person associated with an educational institution for use at the educational institution;

(c) to a record respecting or associated with research, including clinical trials, conducted or proposed by an employee of a hospital or by a person associated with a hospital; or

(d) to a record of teaching materials collected, prepared or maintained by an employee of a hospital or by a person associated with a hospital for use at the hospital. 2005, c. 28, Sched. F, s. 8 (2); 2010, c. 25, s. 24 (19).

Note: Subsection 65 (8.1) was enacted as subsection 65 (8) in source law, Statutes of Ontario, 2005, chapter 28, Schedule F, subsection 8 (2). The subsection is renumbered in this consolidation to distinguish it from existing subsection 65 (8), enacted by Statutes of Ontario, 2005, chapter 25, section 34.

Exception

(9) Despite subsection (8.1), the head of the educational institution or hospital shall disclose the subject-matter and amount of funding being received with respect to the research referred to in that subsection. 2005, c. 28, Sched. F, s. 8 (2); 2010, c. 25, s. 24 (20).

Application of Act

(10) Despite subsection (8.1), this Act does apply to evaluative or opinion material compiled in respect of teaching materials or research only to the extent that is necessary for the purpose of subclause 49 (c.1) (i). 2005, c. 28, Sched. F, s. 8 (2).

Non-application of Act

(11) This Act does not apply to identifying information in a record relating to medical assistance in dying. 2017, c. 7, s. 3.

Interpretation

(12) In subsection (11),

"identifying information" means information,

(a) that relates to medical assistance in dying, and

(b) that identifies an individual or facility, or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify an individual or facility; ("renseignements identificatoires")

"medical assistance in dying" means medical assistance in dying within the meaning of section 241.1 of the *Criminal Code* (Canada). ("aide médicale à mourir") 2017, c. 7, s. 3.

Non-application of Act, provision of abortion services

(13) This Act does not apply to information relating to the provision of abortion services if,

(a) the information identifies an individual or facility, or it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify an individual or facility; or

(b) disclosure of the information could reasonably be expected to threaten the health or safety of an individual, or the security of a facility or other building. 2017, c. 19, Sched. 2, s. 1 (2).

Same, pharmacies

(14) A reference in subsection (13) to a facility includes reference to a pharmacy, hospital pharmacy or institutional pharmacy, as those terms are defined in subsection 1 (1) of the *Drug and Pharmacies Regulation Act*. 2017, c. 19, Sched. 2, s. 1 (2).

Related statistical information

(15) For greater certainty, this Act applies to statistical or other information relating to the provision of abortion services that does not meet the conditions of clause (13) (a) or (b). 2017, c. 19, Sched. 2, s. 1 (2).

Adjudicative records

(16) This Act does not apply to adjudicative records, within the meaning of the *Tribunal Adjudicative Records Act, 2019*, referred to in subsection 2 (1) of that Act. 2019, c. 7, Sched. 60, s. 9.

3. *Occupational Health and Safety Act,* R.S.O. 1990, c. O.1
4. *Human Rights Code,* R.S.O. 1990, c. H19
5. *Co-operative Association Act,* S.B.C. 1999, c. 28

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

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

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

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