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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

SUPPLEMENTARY MOTION RECORD
(Returnable May 16th, 2022)

Date: May 10th, 2022

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SUPPLEMENTARY AFFIDAVIT OF DEMETRA CHRISTAKOS

I, Demetra Christakos, of the City of Sudbury, in the Province of Ontario, **AFFIRM AND SAY**:

1. I am a Director and Curator of The Art Gallery of Sudbury | Galerie d'art de Sudbury (the "**AGS**") and, as such, have knowledge as to the matters which I hereinafter depose. To the extent I am recounting information provided to me by others, I have stated the source of that information and verily believe it to be true.

2. I am swearing this affidavit to provide additional facts and information that have come to light after I swore my first affidavit on April 8, 2022 ("**First Affidavit**"). Unless otherwise stated the defined terms in this affidavit are ascribed the same meaning as my First Affidavit.

3. Since the AGS served its motion record on April 11, 2022, AGS' within motion and the underlying issues with respect to the Assets, and in particular the Bell Mansion and Art Collection, have received significant media and community stakeholder attention, including numerous newspaper articles by multiple news agencies, including the CBC, Radio-Canada, and many local news outlets. These articles are provided herein to ensure that the Court is advised as to the stakeholder impact the course of action proposed by the Monitor will have if allowed by this Court. I have appended copies of these newspaper articles as separate exhibits for ease of navigation, which are more particularly described in the index to this supplemental motion record.

There are thirteen (13) articles appended. New articles continue to appear. The media has asked to be in attendance at the hearing of the motion.

4. Among other things, the articles feature interviews with, and quotes from, a number of individuals with first-hand knowledge of the history and legal complexities surrounding the Art Collection and Bell Mansion, and the history of the AGS.

5. While Laurentian has not filed any evidence in the pending motion, we note that Laurentian has, in response to the community outcry about this issue, stated publicly on May 3, 2022, that "The Bell Mansion building is the only asset the university has expressed the possible intention to sell. No decision has been made to sell any artwork." This is found in a Sudbury Star article at **Exhibit "9"** entitled "Cash Strapped Laurentian Says it Won't Sell Art Collection".

6. Based on my review of the articles, I believe that the media interest and quotes from interested parties highlight the legal complexities surrounding the Assets, and the importance of the Assets to the community.

7. Attached as **Exhibit "2"** is an op-ed penned by Mary Gordon, who was on the community-led team whose report informed the transition of the Art Collection and the Bell Mansion to the AGS when the AGS was originally created in 1996/1997. Ms. Gordon confirms that Laurentian intended that the Art Collection and the Bell Mansion be turned over to the AGS for the benefit of the community. As stated by Ms. Gordon in the op-ed:

> For some reason I'm not aware of, they [*Laurentian*] have not yet transferred the assets as promised in the agreement they negotiated for the transition. In those intervening years, the new managers [*AGS*] have flourished. They are now planning ahead for a new facility in the heart of downtown. They have proven their competence and vision. For both legal and moral reasons, the governors must now transfer those assets to the Art Gallery of Sudbury, before they are sold to the highest bidder. Anything less is a breach of their fiduciary duty.

8. Dieter Buse, a former board member of AGS and Laurentian history professor and expert in Northern Ontario history, expressed his opposition to the Bell Mansion being swept up in the CCAA. An excerpt from the article quoting Mr. Buse:

> He said $100,000 was spent in renovations before the property [*Bell Mansion*] was handed over to Laurentian in 1969 for $1.
>
> There were conditions attached to this transfer, however, "which I think the present CCAA process is avoiding," said Buse. "It said, very explicitly, that the renovated building is being given to Laurentian University for a cultural and arts centre. It has become the Art Gallery of Sudbury, but it was for cultural purposes."

This article is found at **Exhibit "1"**.

9. Annemarie Hagan and siblings, children of Frederick Hagan, celebrated Canadian artist and major art donor to the Art Collection have sent a letter to the Monitor, the Ontario government, Laurentian's Board of Governors, and other stakeholders in outrage to the possibility that their father's art would be, or could be, sold by Laurentian in the CCAA process. The letter also highlights the various trust and ethical issues raised by the notion of selling the Art Collection, including the representations made by Laurentian to Mr. Hagan (and likely other artists) that his donations, if sold, would be used for the specific purpose to purchase other works of art. Two quotes from that letter are as follows:

> The ongoing bankruptcy proceedings at Laurentian University treat the publicly owned art collection as every-day assets that can simply be sold off and dispersed to pay down debts. This is both unethical and a betrayal of every donor who contributed to this significant collection. And to every artist represented in it. And to the community.
>
> The International Council of Museums Code of Ethics states: "Museum collections are held in public trust and may not be treated as a realisable asset." And this is from the Canadian Museum Association Ethics Guidelines: "… it is clearly unethical for museums to dispose of collections in order to provide funds for purposes other than for the acquisition of, or direct care of, museum collections."

> The former Laurentian University Museum and Art Centre's Collections Policies respected these ethical guidelines. And their Deed of Gift – used for art donations - stated "Any proceeds arising from the sale, or collected as insurance in the event of the damage or destruction of the works of art shall be applied to the purchase of other works of art." Each Deed was signed and witnessed by both the donor and Laurentian staff.
>
> …
>
> As it stands right now, the University and the bankruptcy trustees are ignoring their ethical and legal obligations to the donors and artists who trusted Laurentian to hold their treasured artworks in public trust. Since 1997, when the University chose to step away from running an art gallery, the Art Gallery of Sudbury has done an exceptional job of caring for and managing the Laurentian University Art Collection.
>
> The University must now honor their original intent in 1997: to transfer the ownership and stewardship of the Laurentian University Art Collection to the Art Gallery of Sudbury. We can trust the Art Gallery of Sudbury's professional staff to appropriately care for this significant collection, and to share it with the community for decades to come. Which is what the original donors intended.

Attached hereto and marked as **Exhibit "14"** is a copy of the Hagans letter dated April 27, 2022.

10. On April 13, 2022, the Auditor General of Ontario released a preliminary perspective into Laurentian's CCAA process. I am not an expert in CCAA matters, but even to a lay person the report calls into question the basis upon which the CCAA process was commenced, and calls into question Laurentian's transparency throughout this entire process or whether the CCAA should have been used when less disruptive or less invasive processes were available. The potential use of the CCAA to expropriate the art and building from the AGS would be an additional unfair outcome, especially when Laurentian has said publicly that it does not intend to sell the art and it can only make very limited use of the Bell Mansion. Attached and marked as **Exhibit "15"** is a copy of the Auditor General's Preliminary Report.

11. The foregoing public outrage from the arts community in Sudbury is highly justified in my view. I share it. I see no reason why this matter should in any way be determined in the CCAA

process when there is nothing to demonstrate that the position being taken by the Monitor will make any impact on the CCAA restructuring or benefit Laurentian. It remains my view that the Monitor is seeking to use the CCAA process to extract a benefit for Laurentian which it could never have achieved outside of the CCAA. I hope the court will act to minimize any further collateral damage to the people of Sudbury and allow for the question of the future of the public use of the building and the art in Sudbury to be removed from the CCAA process.

12. I affirm this affidavit in support of the AGS' motion and for no other improper reason.

AFFIRMED REMOTELY BEFORE ME BY Demetra Christakos, her being from the Sudbury, and I being from the City of Ottawa, and us both from the Province of Ontario, on this 10th day of May 2022, in accordance with O.Reg. 431/20 Administering Oath or Declaration Remotely.	))))))	
A Commissioner for Taking Affidavits **Stephen Gaudreau**	)))))))	**Demetra Christakos**

This is Exhibit "1" referred to in the Supplementary Affidavit of Demetra Christakos sworn remotely on this 10th day of May 2022.

Stephen Gaudreau

Commissioner for Taking Affidavits (or as may be)

Stephen Gaudreau

Local Entertainment / Entertainment

Laurentian's restructuring snares Sudbury's art gallery

Gallery now is seeking to protect its assets as university looks to sell historic Bell Mansion

Jim Moodie The Sudbury Star
Apr 19, 2022 • April 20, 2022 • 8 minute read • Join the conversation

Art Gallery of Sudbury in Sudbury, Ont. on Tuesday April 19, 2022. John Lappa/Sudbury Star/Postmedia Network

The Art Gallery of Sudbury is seeking to protect its assets, including artwork, as Laurentian University looks to unload the historic building that has housed the gallery since the late 1960s.

STORY CONTINUES BELOW

The Bell Mansion itself is now well over 100 years old (it was built in 1907) and occupies a prime lot on John Street, overlooking Bell Park.

Laurentian acquired the stately stone structure and its leafy grounds for a token $1 in 1969.

The property would be worth far more today and is one of the holdings the cash-strapped school wants to sell as it restructures through the Companies' Creditors Arrangement Act.

"The monitor understands that LU intends on selling the Bell Mansion and may include it, or the proceeds of its sale(s), in the plan it will be presenting to its creditors," states the latest report from Ernst & Young, appointed as third-party observer in the CCAA proceedings.

"The monitor also understands that LU is considering all of its options with respect to the assets of the art collection."

The question of who owns which pieces of art, however, remains to be clarified, according to retired history professor and former AGS board member Dieter Buse.

"Some art was given to the gallery when it was the Laurentian University Museum and Arts Centre," he said. "Some art was bought by LUMAC. Some art was given to the Art Gallery of Sudbury when it became independent in 1996 and some was bought by the Art Gallery of Sudbury."

From his reading of the latest monitor's report, issued on April 13, "they've jumbled that all together, as if there is only one collection," said Buse. "That is inaccurate, illegal, and unethical."

Further complicating the issue is an honest mistake made by AGS in submitting a claim last year as one of numerous creditors impacted by the Laurentian insolvency.

The $6.4-million claim included the Bell Mansion and its grounds, valued at $1.3 million, and artwork worth more than $4.8 million. But after filing the claim in July, AGS was informed in February that the claim was disallowed.

“The disallowance not only disallowed our monetary claim in full, but also included the statement in each case that the AGS had no rights to the assets,” said AGS director Demetra Christakos in an April 8 affidavit. “However, I noted that in the monitor’s reasons for denying the claim that it did not provide any supporting documentation or direct evidence to support its position. The monitor also made no finding as to who owned the assets in question.”

Christakos said she was “very surprised” by the monitor’s response. “However, the disallowance made it clear that we had to file a reply within a short period of time and we did so, again out of fear that by not doing so we would lose our opportunity to maintain our rights.”

The organization now wants to withdraw from the claims process but not sacrifice its rights to its assets in the process.

“Having misunderstood the claims process order, the AGS, acting in good faith, filed the proof of claim as a pre-filing debt creditor,” a lawyer for the organization stated in an April 8 court filing. “Having only recently received legal counsel on this issue, it now realizes that its claim should be withdrawn.”

Kathy Browning's photographic exhibit of New Zealand was featured at the Art Gallery of Sudbury in Sudbury, Ont. John Lappa/Sudbury Star

Christakos said she understood "the monitor's position was that upon withdrawing the claim, the AGS lose not only the right to participate as a creditor in the plan, but all of its property rights in the assets which were referred to in that claim, even though Laurentian has at no time in recent memory taken any steps to contest the ownership of the assets."

She said she was submitting her affidavit "in support of our motion to allow for the AGS to withdraw their claims in the claims process without waiving its rights in or to any of the assets."

In its April 13 report, however, Ernst & Young said it was opposed to granting the request.

"It would be unfair to LU's stakeholders and contrary to the purpose of the CCAA to allow AGS to withdraw the AGS claim and maintain its ability to assert a claim against LU after LU emerges from CCAA protection," the firm wrote. "It is the monitor's position that the relief sought by AGS in the motion should be denied."

The monitor said it also "strongly refutes the suggestion in the Christakos affidavit that the application of the claims process to the AGS claim would somehow create a windfall for LU or that AGS has somehow compromised its rights (if any) to the assets by filing a proof of claim in the claims process."

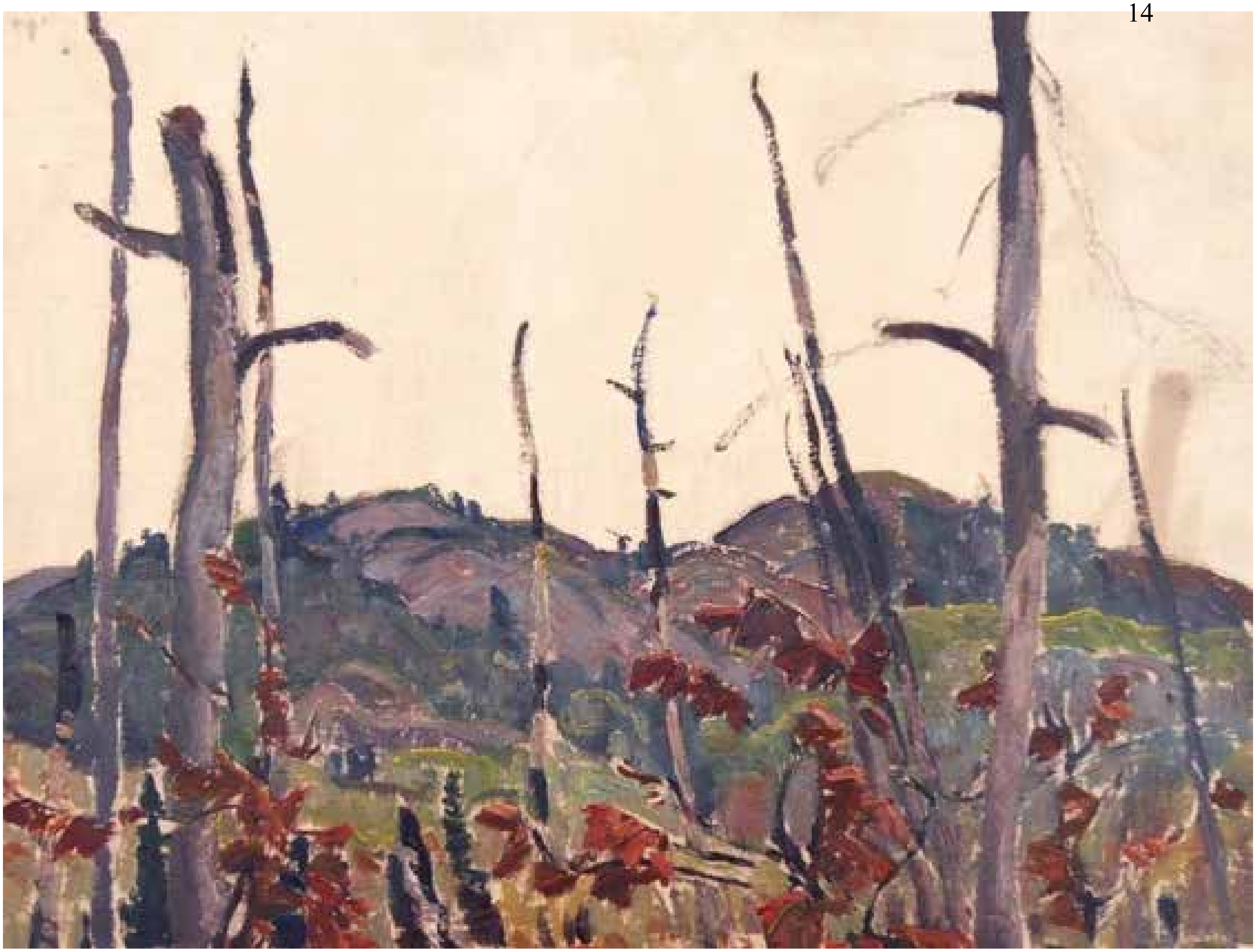
Ernst & Young was adamant that "no claimant loses its rights simply by filing a proof of claim."

The art gallery is still looking to withdraw from the process, however, and will be in court again on May 2 to make its case.

"As the matter is still before the courts, I'm not able to provide public comment right now," said Christakos, when contacted by The Star. "This isn't a situation that can be resolved without the judge's intervention."

Meanwhile, as the director noted in her affidavit, the gallery "is open to the public and the AGS continues to care for the assets in largely the same way as it had prior to the commencement of the Laurentian CCAA proceedings."

Apart from housing art, the building itself has cultural and architectural value.



An untitled oil-on-board painting by Franklin Carmichael from 1936. The artist's work was exhibited at the Art Gallery of Sudbury.

"The Bell Mansion is one of the few heritage building that we have," said Buse. "Not many people seem to know that in 1984 the city made it into an official heritage building, so it falls under the Ontario statutes that relate to that."

That means any new owner would not be allowed to alter the structure or its exterior appearance without the approval of city council. "If someone wants to buy it, they still have to follow the rules," he said.

Buse said he wrote to Laurentian president Robert Hache and the board of governors to remind them of this status but never received a reply, although he did get confirmation the letter had been received.

"So they are aware of this, and I'm sure the monitor in the CCAA process is also aware of it, because they have to have looked at the deed."

Buse said the Bell Mansion was not, as some assume, part of the covenant that allowed for the establishment of Bell Park.

"That parkland was all donated back in 1926 by the Bells to the City of Sudbury," he said. "That's different than the Bell building, because that wasn't given to anyone until Mrs. Bell died in 1954."

The mansion was initially gifted to Memorial Hospital, he said, and subsequently passed to the Masons, who tried to make it into a clubhouse. "That didn't work because they couldn't get it rezoned, so the Masons gave it the chamber of commerce, and they decided in 1966 to make it a centennial project for Sudbury to have a museum and cultural centre."

He said $100,000 was spent in renovations before the property was handed over to Laurentian in 1969 for $1.

There were conditions attached to this transfer, however, "which I think the present CCAA process is avoiding," said Buse. "It said, very explicitly, that the renovated building is being given to Laurentian University for a cultural and arts centre. It has become the Art Gallery of Sudbury, but it was for cultural purposes."

He said the relationship between Laurentian and the gallery is a "long and intricate one," something he learned first-hand when part of his role as an academic administrator was to act as liaison between the university and the art gallery. Buse also served for four-plus years on the AGS board.

He said it was always something of a challenge to get LU to pay for repairs and renovations. "That's illustrative of the problems," he said. "The university has not maintained the building, even though they own it."

If Laurentian's plan is to sell the building to a private developer keen on creating condominiums or something of that nature, this would run contrary to original promise, said Buse.

"As part of the deal in 1969, the contract says the university may do as it wishes, but they have to keep to the spirit in which the gift was given."

Buse fears the monitor in the CCAA proceedings and the lawyers for the university, being mostly non-Sudburians, have not fully taken this into account and may not care so much about the building's place in the community.

"They have not considered the community in their decision-making," he said. "Nor have the considered the spirit of the covenant, in this case. They have run roughshod over faculty rights and over the union, and now they are doing it with community property."

The long-term plan for the Art Gallery of Sudbury is to join a new central library and other potential partners, including the Sudbury Theatre Centre, in a proposed downtown facility the city has dubbed Junction East.

The goal is to have this structure, spanning some 62,000 square feet, built by 2024 in the parking lot next to the current STC building on Shaughnessy Street.

In the meantime, Buse feels the current home of the AGS is more than adequate.

"We have a very good art gallery," he said. "It's not necessarily in the best place, in terms of accessibility and safety, and it would be nice to have a bigger building, but it's not bad. People underestimate how well you can show art in the place, because it has two big exhibit rooms."

Should Laurentian choose to sell the building, Buse said it should go to an organization involved in art and culture, as was the intention from the get-go.

"I think Laurentian should do the decent thing and sell it to someone for the symbolic $1 it bought it for," he said. "I can't see it being rebuilt as condos, because it's a heritage building, but what could be a good use for it is if someone made a cultural centre out of it — say for Indigenous art for the region, or a place where amateur artists could sell their art, or more art education instead of exhibits. Those are possibilities if it's kept as a heritage building, but they haven't been examined."

jmoodie@postmedia.com

NEWS NEAR SUDBURY

THIS WEEK IN FLYERS

COMMENTS

This is Exhibit "2" referred to in the Supplementary Affidavit of Demetra Christakos sworn remotely on this 10th day of May 2022.

____
Commissioner for Taking Affidavits (or as may be)

Stephen Gaudreau

Column: Laurentian University has an obligation to turn over gallery, artwork

Millions of dollars are at stake here, every dollar of which belongs to the community

Special to The Sudbury Star
May 03, 2022 • 6 days ago • 2 minute read • Join the conversation

20

Art Gallery of Sudbury in Sudbury, Ont. on Tuesday April 19, 2022. John Lappa/Sudbury Star/Postmedia Network

By Mary Gordon

STORY CONTINUES BELOW

Three dea

It's been galling to watch the train wreck of Laurentian University's mismanagement over the past year. I'm old now, and not as polite as I once was, so let me just say "we told you so." This is a university that accepted the community-built art gallery in the Bell Mansion as a gift, vowing to manage it in the public interest. It was the community that created this gallery and handed it over to the new university. We trusted it.

In 1995, nearly 30 years later, Laurentian said they could no longer fund it. They wanted to get rid of it, but keep the property and the art collection. The arts community reacted. The university board tried to dismiss us. (One of its members, red-faced and fuming, once sputtered at me "You're nothing but a bunch of malcontents." We made up buttons with "Call Me Malcontent" in bright red. I still have mine.) There were meetings, petitions, research, art shows, and lots of media coverage.

Eventually, Laurentian's officials realized they needed a plan to get out of the gallery business, and they needed community support. At their invitation, I joined a short-term transition team on two conditions; that the process be open to the public, and that all assets (Bell Estate and permanent collection) be turned over to the community. The team delivered a report in July of 1996, and the transition began.

A new community-based board was created to manage the Art Gallery of Sudbury, with successive agreements hammered out to ensure the transfer of all assets to the new entity. The City of Sudbury stepped up with funding, provincial and federal governments provided grants, staff was hired, and the gallery took on new life.

And now, nearly 30 years after all that commotion, the credit monitor overseeing the so-called bankruptcy of the university is proposing to sell the assets. Let's be clear what those are: the Mansion itself and the lands around it, and a permanent collection of art, acquired over the 30 years that Laurentian owned it, and – get this – art that was acquired at no cost to the university, thanks to the acumen of the gallery's curator. Millions of dollars at stake here, every dollar of which belongs to the community.

Laurentian's relationship with the gallery is fiduciary in nature; they must act in the best interests of the community. This fact added to our public pressure, persuaded the board of governors back in 1996 to take a less drastic approach to the gallery's transition from university to community. For some reason I'm not aware of, they have not yet transferred the assets as promised in the agreement they negotiated for the transition. In those intervening years, the new managers have flourished. They are now planning ahead for a new facility in the heart of downtown. They have proven their competence and vision. For both legal and moral reasons, the governors must now transfer those assets to the Art Gallery of Sudbury, before they are sold to the highest bidder. Anything less is a breach of their fiduciary duty.

Mary Gordon is a former Sudbury resident who now lives in Peterborough.

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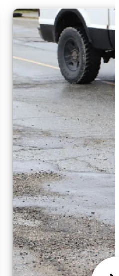
21 comments



Sudbu indicat

12

This is Exhibit "3" referred to in the Supplementary Affidavit of Demetra Christakos sworn remotely on this 10th day of May 2022.

Commissioner for Taking Affidavits (or as may be)

Stephen Gaudreau

Local Entertainment / Entertainment

Laurentian selling donated art would be 'unconscionable,' artist's family says

Frederick Hagan's work and those of others belongs to the Art Gallery of Sudbury, not the university, they say

Jim Moodie
Apr 28, 2022 • April 28, 2022 • 5 minute read • Join the conversation

Boy and His Shadow by Frederick Hagan. File photo

The family of an acclaimed Canadian painter are adamant works donated to Laurentian University should remain with the Art Gallery of Sudbury and not get treated as disposable assets.

"As it stands right now, the university and the bankruptcy trustees are ignoring their ethical and legal obligations to the donors and artists who trusted Laurentian to hold their treasured artworks in public trust," write Annemarie, Julie and Karl Hagan, whose father Frederick gifted a substantial number of his art pieces to Laurentian in the mid-1990s.

Hagan, who passed away in 2003, studied under Franklin Carmichael at the Ontario College of Art and began exhibiting with The Royal Canadian Academy at the age of 21. His career as a painter, lithographer and watercolourist spanned more than seven decades and his work has been exhibited in the National Gallery of Canada and the Art Gallery of Ontario, as well as the AGS in Sudbury.

In 1996, the painter "made a significant donation to Laurentian University," his children note in a letter sent Wednesday to Premier Doug Ford and Lisa MacLeod, minister of Tourism, Culture, and Sport. Also copied on the letter are Auditor General Bonnie Lysyk, Laurentian president Robert Hache and Ernst & Young, the firm appointed as monitor for the Companies' Creditors Arrangement Act proceedings concerning Laurentian's insolvency.

"We have the signed deed of gift for this donation, which included the Hagan Family Portfolio of 245 drawings, watercolours, and prints representing the scope of his career as an artist from 1939 to 1989," the Hagans write. “This portfolio was dad’s tribute to our mother Isabelle who died in 1989; she had been at his side throughout those 50 years.”

In the 1990s, Laurentian also purchased “the largest and perhaps most significant of Fred Hagan’s oil paintings, Homage,” his children note. “This complex, mural-like work explores his personal life journey and the Canadian artists and Northern Ontario landscapes that influenced him.”

Sudbury volunteers “fundraised specifically for the purpose of purchasing this work,” the family members add. “It is unconscionable that any artwork acquired with restricted funds raised in the community should be sold as part of this bankruptcy proceeding.”

The family said the AGS “has done an exceptional job of caring for and managing” the Laurentian art collection since the university opted to step away from running a gallery in 1997.

“The university must now honour their original intent in 1997: to transfer the ownership and stewardship of the Laurentian University art collection to the Art Gallery of Sudbury,” they argue. “We can trust the Art Gallery of Sudbury’s professional staff to appropriately care for this significant collection, and to share it with the community for decades to come — which is what the original donors intended.”

Lysyk stated in a recent auditor’s report that, in her view, “Laurentian did not have to file for CCAA protection,” the Hagans note. “And yet they did. Due to ‘poor management,’ according to Lysyk.”

Going the CCAA route has led to a “multitude of devastating repercussions on individuals, organizations and communities,” the letter writers contend.

That includes the Art Gallery of Sudbury, which could lose its building, and is also worried about the future of its collection, at least some of which could be claimed by Laurentian and potentially sold.

In a claim filed through the CCAA process last year, the gallery estimated the Bell Mansion it inhabits (and which the university owns, having acquired it for a token $1 in 1969) is worth $1.3 million, while the artwork is worth more than $4.8 million.

The Hagans said they want to ensure that the issue of the Laurentian University art collection is not forgotten.

“This art collection of over 1,400 works was carefully collected and curated by professional staff from 1967 to 1997,” they note. “It represents more than 400 Indigenous, regional, Canadian, and international artists. And the Laurentian University art collection is in peril.”

This is not hyperbole, they insist.

“The ongoing bankruptcy proceedings at Laurentian University treat the publicly owned art collection as everyday assets that can simply be sold off and dispersed to pay down debts,” the trio writes. “This is both unethical and a betrayal of every donor who contributed to this significant collection. And to every artist represented in it. And to the community.”

The Hagans cite a code of ethics from The International Council of Museums which states, “Museum collections are held in public trust and may not be treated as a realizable asset,” as well as ethics guidelines through the Canadian Museum Association that stipulate “it is clearly unethical for museums to dispose of collections in order to provide funds for purposes other than for the acquisition of, or direct care of, museum collections.”

The collections polices of the former Laurentian University Museum and Art Centre (which preceded the Art Gallery of Sudbury) respected such ethical guidelines, the Hagans say. Their deed of gift, used for art donations, stated: “Any proceeds arising from the sale, or collected as insurance in the event of the damage or destruction of the works of art, shall be applied to the purchase of other works of art.”

Each deed was signed and witnessed by both the donor and Laurentian staff, the Hagans point out.

In a press statement issued Wednesday, the Art Gallery of Sudbury said it is continuing to seek assurance that its assets, including artwork, are protected.

AGS submitted a claim through the CCAA proceedings in July "in order to ensure that the process did not have unintended consequences for the gallery, given our long-standing relationship with Laurentian University," said gallery director Demetra Christakos.

"To our surprise, the court-appointed monitor has used this proof of claim process to attempt to summarily assert that the art and our premises described therein should form part of the assets available to satisfy the creditors of Laurentian University."

The monitor's position "shows a complete misunderstanding of public art galleries, their role in the societies in which they function, the nature of their holdings and the history of this matter," according to the statement from AGS.

"As such, the gallery has now been forced to engage counsel and litigate to protect these assets from being unfairly and unnecessarily swept into the CCAA process."

The gallery said it has has proven itself to be fiscally responsible throughout its existence and "continues to grow and thrive." Its intent is to "continue this path now and into the future."

AGS said it is important to note that the artworks comprising the LUMAC collection represent a portion of the gallery's permanent collections.

"The board of directors at the gallery understands and values the importance and the vital role that these assets play in the community," said AGS in its statement.

"The gallery's goal is to protect the assets for the benefit of the public and continue to promote and fulfill its mandate of being an educational, cultural and tourism destination in Northeastern Ontario."

jmoodie@postmedia.com

MOST COMMENTED

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2 comments

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1 comment

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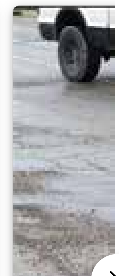

Sudbu indica

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NEWS NEAR SUDBURY

This is Exhibit “4” referred to in the Supplementary Affidavit of Demetra Christakos
sworn remotely on this 10th day of May 2022.

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Art gallery assets must be protected from LU insolvency, art council says

Reaction to the possible sale of Bell Mansion

Error exposes gallery to LU's insolvency process

Lyndsay Aelick
CTVNorthernOntario.ca Videojournalist

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Published April 20, 2022 7:25 p.m. EDT

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As first reported by CTV Northern Ontario, the Art Gallery of Sudbury learned recently its assets are in danger because of Laurentian University's insolvency process.

While the AGS has operated the gallery for decades, it is owned by Laurentian University, meaning the Bell Mansion that houses the gallery and the $4.8 million art collection could be used to pay creditors as the university works to emerge from insolvency.

While the gallery wants to separate its assets from the insolvency process, the court-appointed monitor of the process argues the assets are clearly owned by the university and are therefore part of the insolvency.

“If the relief sought by AGS on this motion were granted, it would have the effect of treating the AGS claim differently from claims filed by other parties in the claims process, including other trust or property claims,” says Ernst and Young accounting firm.

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The local arts council is not happy.

“Measured outrage would probably be the best way to describe it," said says Andrew Boyd, Sudbury Arts Council president.

"We have been concerned that this may be the worst-case scenario and it certainly seems to be unfolding that way. It is a travesty.”

Boyd said the collection held by the gallery is part of the community's fabric and is not something that should be part of the process.

“For a community of this size to have its collection essentially thrown down like a chip on a casino table during a receivership is not acceptable," he said.

"This would probably be the time for public dialogue and push back on this may be the only way that we can affect the outcome.”

Boyd said he believes it's not too late to turn things around and he’s encouraging the entire art community to contact local politicians to have their voices heard.

The dispute will be heard at a court hearing next month. Read the full court filing here.

This is Exhibit “5” referred to in the Supplementary Affidavit of Demetra Christakos sworn remotely on this 10th day of May 2022.

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Sudbury

Laurentian's plans to sell the Bell Mansion, 'worst possible outcome,' says Sudbury Arts Council

The Bell Mansion is home to the Sudbury Art Gallery and a $4.8 million collection

Jonathan Migneault · CBC News · Posted: Apr 20, 2022 6:00 AM ET | Last Updated: April 20

The Bell Mansion is home to the Art Gallery of Sudbury and a collection with an estimated value of more than $4.8 million. (Brandon Gray) comments

Laurentian University's plans to sell the Bell Mansion — home of the Sudbury Art Gallery — is "the worst possible outcome" from its planned real estate review, according to the Sudbury Arts Council.

In court documents submitted on April 13, the firm Ernst & Young said it understands Laurentian plans to sell the Bell Mansion and may include it in the plan it will present to its creditors.

Ernst & Young is the court-appointed monitor tied to Laurentian's insolvency proceedings.

"The monitor also understands that LU (Laurentian University) is considering all of its options with respect to the assets of the art collection," the document said.

"LU is at a critical stage in its restructuring and is in the process of formulating a plan to present to its creditors."

- **Laurentian board chair says concerns about green space sell-off taken seriously**

- AUDIO What Laurentian University might sell to get out of its financial hole

In February 2021, Laurentian filed for insolvency and has undergone a restructuring process under the Companies' Creditors Arrangement Act (CCAA). In April 2021 the Sudbury university cut 69 programs and fired more than 100 staff and faculty members to cut costs.

To pay its creditors, Laurentian has also reviewed its real estate assets, including the Bell Mansion, and could sell off that property.

"The absolute lack of public consultation in this case has produced this worst possible outcome," said Andrew Boyd, president of the Sudbury Arts Council, which promotes the arts in Greater Sudbury.

"It really could not have been handled in a more ham-fisted manner than it has."

Sudbury's Laurentian University filed for insolvency in February 2021, and could sell some of its real estate to pay back its creditors. (Jonathan Migneault/CBC)

In a claim filed on July 30, 2021, the Art Gallery of Sudbury estimated the value of the Bell Mansion and surrounding land at $1.3 million, and the value of its art collection at more than $4.8 million.

"It's a piece of our culture. It's a piece of our heritage, and it should not be thrown into this absolute mess," Boyd said about the collection, which features art from across northern Ontario.

The Sudbury Centennial Museum Society transferred the Bell Mansion to Laurentian in 1967.

The monitor's report on April 13 said the transfer on the title was registered in 1969, and Laurentian continues to be the registered owner of the property.

In 2004, Laurentian and the Art Gallery of Sudbury renewed a memorandum of understanding in which the art gallery would manage the space for the university.

"The MOU (memorandum of understanding) expressly provides for the retention of ownership of the assets by LU," said the monitor's report.

Laurentian property

The monitor's report concluded the Art Gallery of Sudbury has not provided documentation to support its claim of ownership of the Bell Mansion or the art collection.

"There was an intention by AGS (Art Gallery of Sudbury) to acquire the art collection and library, no documentation has been provided which suggests that LU agreed to this, and no documentation has been provided evidencing a transfer of these assets," the report said.

In a motion it submitted on April 8, 2022, the Art Gallery of Sudbury asked to withdraw its July 30, 2021 claim, which it said it made in error.

In the motion, the art gallery said it misunderstood the claims process, and had only recently received legal counsel that the claim should be withdrawn because Laurentian does not owe it any money.

As for the future of the Bell Mansion, and the art gallery, Boyd said it is unlikely the City of Greater Sudbury could purchase the property and assets.

"I do know that the city is constrained financially. I'm not sure that purchase is going to be a viable option," he said.

Boyd said the Sudbury Arts Council hopes to meet with other stakeholders to look at possible options for the gallery.

This is Exhibit "6" referred to in the Supplementary Affidavit of Demetra Christakos
sworn remotely on this 10th day of May 2022.

Commissioner for Taking Affidavits (or as may be)

Stephen Gaudreau

HERE Northern Ontario

The Art Gallery of Sudbury fears losing a collection of 1,400 works

Bell Rock Mansion is home to the Art Gallery of Sudbury.
PHOTO: RADIO-CANADA / MATHIEU ALLARD

Welcome Senga
April 14, 2022

New development in the insolvency of Laurentian University: the Art Gallery of Sudbury (GAS) fears losing approximately 1,400 works of art that it has kept for more than 25 years, following " misunderstanding" about the Companies' Creditors Arrangement Act.

The collection of the Center for the Arts and Museum of Laurentian University (CAMUL) and notably includes works by painters associated with the Group of Seven (Tom Thomson, Frederick H. Varley, AY Jackson, Arthur Lismer and JEH MacDonald) and artists renowned natives (Carl Beam, Daphne Odjig, and Norval Morrisseau).

In court documents available online (in English only), the gallery explains that on July 30, 2021, without having consulted a lawyer, it submitted a proof of claims « after discussions with Laurentian [University] » and « instructions received » from the firm Ernst & Young (EY), mandated by the Superior Court of Justice to oversee Laurentian University's restructuring process.

When an organization takes shelter from its creditors, as the University did in February 2021 , all creditors must submit proofs of claims specifying what said organization owes them, in the hope of obtaining a compensation.

The proof of claims submitted by theGAS amounted to nearly $6.4 million and included, among other things, the value of Bell Manor which houses the gallery — $1.3 million — and the value of a large collection of works of art. handled by the gallery since 1997 — valued at nearly $5 million.

The gallery's general manager, Demetra Christakos, indicates in her affidavit that « although she was unaware of any amount that Laurentian owed theGAS , [she] was concerned about the language used in the proof of claim forms » .

It is written there that anyone who did not submit a proof of claim before the deadline of July 30, 2021 would lose the right to do so thereafter.

« The proof of claims form did not allow the assertion of interests other than monetary claims against Laurentian. We included monetary values in the proof of claim because [the form] required values to be included for the claim to be valid » , writes Ms. Christakos.

> “ *Indeed, none of the amounts we claimed were due to theGAS neither then nor now.* »
>
> — *Excerpt from the affidavit of Demetra Christakos, Executive Director of the Art Gallery of Sudbury*

Demetra Christakos is the Executive Director of the Art Gallery of Sudbury.
PHOTO: CBC/ANGELA GEMMILL

On or about February 1, 2022, six months after the Proof of Claim was submitted, the Art Gallery of Sudbury received notice from Ernst & Young that its proof had been rejected.

« The notice not only denied our monetary claims in full, but also included a statement that theGAS had no rights to these assets » , the affidavit reads.

> *“ I am deeply disturbed by the assertion that a public art gallery, which operates for the benefit of the public, can suddenly and permanently lose rights, including property, which it owns and from which it occupied for over 25 years due to a misunderstanding in the operation of the Companies' Creditors Arrangement Act process. »*
>
> — *Excerpt from the affidavit of Demetra Christakos, Executive Director of the Art Gallery of Sudbury*

Read also :

- Laurentian University:a 'strategically planned ' creditor shelter
- "The wound is still alive" at Laurentian University, a year after the cuts

Several hundred works in play

Since its incorporation in 1997, theGAS preserves a collection of over 1400 works of art called the Center for the Arts and Museum of Laurentian University (CAMUL), which was operated from 1968 to 1997 by Laurentian University at Manoir Bell. Works from this collection are regularly exhibited at theGAS .

Court documents indicate that Laurentian University and theGAS had agreed from the outset that if the gallery could demonstrate the ability to secure its own financial stability, the property rights to the collectionCAMUL would eventually be transferred to it.

Copies of numerous electronic communications between theGAS and Laurentian University included in the documents submitted to the court demonstrate that this agreement has remained in place over the years.

TheGAS , which finally retained the services of a lawyer last March, will apply to the Superior Court of Justice on May 2 to ask for the official withdrawal of its proof of claims.

She says she now acknowledges that she « misunderstood the nature of the supervisor's role [EY] and that it is not the responsibility of the supervisor to provide legal advice to potential stakeholders such as theGAS about their rights » .

« "We thought the supervisor was an independent body that had obligations to creditors and debtors » ," the court documents read.

> *“ As a charity, theGAS has limited funds to spend on professional advisors and has not retained attorneys to assist in submitting its proof of claim. The Board of Directors is made up of volunteers. We were confident that Laurentian University shared our understanding of the status quo that had prevailed for several decades, we did not expect a conflict. »*
>
> — *Excerpt from the affidavit of Demetra Christakos, Executive Director of the Art Gallery of Sudbury*

In its notice of rejection of the proof of claim,EY does not clearly confirm that Laurentian University is the actual current owner of the assets that theGAS had declared.

On several occasions, the firm emphasizes that it has received documents confirming « the intention, by theGAS , to acquire these goods » , but« none confirming that Laurentian accepted it » .

A withdrawal of the proof of claims granted by the court « would not be a confirmation that theGAS [in] owns » , admits Ms. Christakos.

« We just need to be sure that theGAS reserves the right to discuss this elsewhere and on another date, if Laurentian chooses to raise this issue, which it has not yet done so far » , she writes.

« Complex laws »

Analyzing this situation, University of Ottawa law and management professor Gilles LeVasseur indicates that the case illustrates the need « to have the title deed to be able to confirm that there is a relationship between Laurentian and the Gallery » .

« This is the first thing that should have been done, because if we have not adequately identified the property or the fact that we have a right to the property, it becomes a little difficult to justify this in court » , affirms he.

Gilles LeVasseur is a professor of law and management at the University of Ottawa.
PHOTO: RADIO CANADA

He also emphasizes the importance of having recourse to a lawyer, especially in the context of legal proceedings such as those related to the Companies' Creditors Arrangement Act.

> *“ These are complex laws. The concept is great, but you have to understand all the ramifications and the court procedures and the mechanics involved. And very often, we will follow the advice of accounting firms [...], but there is also the need to consult at the legal level because there are often exceptions or pitfalls that we have not not planned. »*
>
> — *Gilles LeVasseur, professor of law and management at the University of Ottawa*

The General Manager and the President of the Board of Directors of theGAS declined interview requests from Radio-Canada, « as the matter is before the courts » .

Welcome Senga

This is Exhibit "7" referred to in the Supplementary Affidavit of Demetra Christakos
sworn remotely on this 10th day of May 2022.

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Commissioner for Taking Affidavits (or as may be)

Stephen Gaudreau

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Art Gallery of Sudbury assets must remain part of Laurentian insolvency process: court documents

Laurentian received the Bell Mansion in 1967, and operated the LU Museum and Art Centre (LUMAC) out of the mansion until 1996. (File)

Darren MacDonald
CTVNorthernOntario.ca Digital Content Producer
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Published April 18, 2022 1:54 p.m. EDT

Share

Art Gallery of Sudbury assets worth $6.39 million must remain part of the insolvency process at Laurentian University, say court documents filed by the monitor of the process.

The accounting firm Ernst & Young is the monitor, a role in which it acts as an independent observer in the process under the Companies' Creditors Arrangement Act (CCAA).

The AGS is heading to court next month in an attempt to sever its assets from the insolvency process. They include the Bell Mansion (valued at $1.3 million), the art collection (valued at $4.8 million), as well as funds held in trust (about $216,000) and the library ($20,000).

The fate of AGS assets is of particular importance right now, since Greater Sudbury is planning on spending roughly $50 million building a new art gallery and library in downtown Sudbury, a project known as Junction East.

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- Sudbury Art Gallery reopens for business

While the gallery said in an earlier court filing that it joined the LU claims process in error, Ernst & Young said AGS assets belong to the university and to sever them from the process would be unfair to other claimants.

Laurentian received the Bell Mansion in 1967 and operated the LU Museum and Art Centre (LUMAC) out of the mansion until 1996. That's when the AGS was created as a separate corporation, with the goal of eventually transferring ownership of all the assets to the AGS "upon satisfactory evidence that the new entity is able to ensure the continuing operation of the facility."

The gallery has operated under an agreement signed in 1999 in which the AGS operates the gallery for LU – but with the university retaining ownership.

Also at issue is a 1981 donation from Barbara A. McDonald, who gave two properties that were sold with the revenue earmarked solely for buying art or paying renovation costs at the gallery. If LU closes the museum, any remaining funds were to go to the Royal Ontario Museum (ROM). With interest, that fund should have about $216,000.

"However, the monitor notes that LU did not segregate the B.A. McDonald funds," the court documents said.

"These funds were deposited into LU's general operating bank account and utilized generally in operations."

In reviewing the claim, the monitor ruled that the AGS has no claim to the B.A. McDonald funds, because if the gallery ceases to operate, that money goes to the ROM. There is also no documentation that shows the AGS owns the building, the library or the art collection.

Owned by Laurentian

While the AGS wants to sever its assets from the process and withdraw its claim, the monitor argues the assets are clearly owned by LU and therefore part of the insolvency.

"If the relief sought by AGS on this motion were granted, it would have the effect of treating the AGS claim differently from claims filed by other parties in the claims process, including other trust or property claims," the monitor wrote.

"It would be unfair to LU's stakeholders and contrary to the purpose of the CCAA."

LU intends to sell the Bell Mansion, the monitor said, and use the revenue to help it emerge from bankruptcy.

"The monitor also understands that LU is considering all of its options with respect to the assets of the art collection," the court document said.

"LU is at a critical stage in its restructuring and is in the process of formulating a plan to present to its creditors. LU cannot do that unless it has certainty with respect to the quantum and nature of the claims against LU, and with respect to the property that is available for distribution to creditors."

The dispute will be heard at a court hearing next month. Read the full court filing here.

This is Exhibit “8” referred to in the Supplementary Affidavit of Demetra Christakos sworn remotely on this 10th day of May 2022.

Commissioner for Taking Affidavits (or as may be)

Stephen Gaudreau

sudbury.com

Laurentian intends to sell Bell Mansion as it settles up with creditors: report

Heidi Ulrichsen
Apr 18, 2022 2:45 PM
Updated Apr 29, 2022 9:48 AM

The Bell Mansion is owned by Laurentian University but operated by the Art Gallery of Sudbury as an art gallery. The property has become caught up in the Laurentian insolvency situation. (Supplied)

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00:06:20

Laurentian University intends on selling the Bell Mansion as it attempts to settle up with its creditors.

This information is included in a April 13 report by Ernst & Young, the firm that's acting as the court-appointed monitor of Laurentian's insolvency restructuring.

The 11th report of the monitor focuses on a dispute between Laurentian University and the Art Gallery of Sudbury, which occupies the Bell Mansion. The matter will be heard in court next month.

Laurentian University has been undergoing insolvency restructuring for more than a year after filing for insolvency restructuring under the Companies' Creditors Arrangement Act (or CCAA).

Yet to come is a plan of arrangement in which Laurentian comes up with a plan to pay off its creditors.

"The Monitor understands that LU intends on selling the Bell Mansion and may include it, or the proceeds of its sale(s), in the plan it will be presenting to its creditors," said the report by Ernst & Young.

"The Monitor also understands that LU is considering all of its options with respect to the assets of the art collection. LU is at a critical stage in its restructuring and is in the process of formulating a Plan to present to its creditors.

"LU cannot do that unless it has certainty with respect to the quantum and nature of the claims against LU, and with respect to the property that is available for distribution to creditors."

The Art Gallery of Sudbury says it mistakenly made a claim of nearly $6.4 million against Laurentian University with regards to a number of assets due to a misunderstanding of the CCAA process.

Those assets include the Bell Mansion and its grounds, funds bequeathed to support the gallery, and the art collection and library.

However, the art gallery said it only recently retained legal counsel, and now recognizes it should not have submitted a proof of claim last summer, as Laurentian doesn't actually owe it money.

An affidavit from Art Gallery of Sudbury director/curator Demetra Christakos said she is concerned that the gallery will lose "all of its property rights" if the AGS withdraws its claim against LU.

The art gallery's claim against Laurentian was denied by the monitor this past winter. The art gallery, in turn, issued a dispute notice, and the matter was referred to a claims officer for adjudication.

“The disallowance not only disallowed our monetary claim in full, but also included the statement in each case that the AGS had no rights to the assets,” Christakos said, in the affidavit.

“However, I noted that in the monitor’s reasons for denying the claim that it did not provide any supporting documentation or direct evidence to support its position. The monitor also made no finding as to who owned the assets in question.”

The AGS is asking that it be allowed to withdraw its proof of claim from the CCAA process “without prejudice to the AGS asserting rights to any of the assets described in the proof of claim.”

Christakos said Laurentian has yet to contest the art gallery’s rights to the aforementioned assets.

But the Ernst & Young report provides evidence that Laurentian owns the Bell Mansion and other assets tied to the art gallery.

The monitor’s report said that the Bell Mansion was transferred to LU from the Sudbury Centennial Museum Society in 1967.

Following the transfer, Laurentian operated a Museum and Art Centre (LUMAC, now known as the Art Gallery of Sudbury) from the Bell Mansion.

Then, in 1996, Laurentian’s board of governors approved a resolution to transfer operation of LUMAC from LU to a community-based organization, and eventually to transfer the assets (including the building and art collection) to the new corporation “upon satisfactory evidence that the new entity is able to ensure the continuing operation of the facility.”

In 1999, a five-year agreement was entered into between LU and the Art Gallery of Sudbury, whereby AGS was retained by LU to manage and operate the LUMAC. The agreement was renewed in 2004, but the monitor says it is unaware of any further renewal.

The monitor says that the memorandum of understanding between the two bodies “expressly provides for the retention of ownership of the assets by LU.”

In addition, the memorandum of understanding states that if the agreement is terminated “AGS is obligated to account for, return and deliver possession of the Bell Mansion and all related assets, including all works of art, to LU,” said the monitor’s report.

“No documentation has been provided by AGS to support its claim to ownership of the Bell Mansion,” added Ernst & Young.

“The documentation provided suggests that there was an intention by AGS to acquire the Bell Mansion. However, there is no documentation provided which suggests that LU agreed to this, and no documentation has been provided evidencing a transfer of the property.

“LU is the registered owner on title to the Bell Mansion and the MOU is clear that LU retains ownership of the Bell Mansion.”

In her affidavit, Christakos said she is “deeply troubled by the assertion that a public art gallery, which operates for the public good, can suddenly and permanently lose rights, including property, it has held and provided care for for over 25 years because of a misunderstanding in the operation of the CCAA process without the opposing party having to even explain or assert their rights to those assets.”

Ernst & Young, however, said if the Art Gallery of Sudbury’s court motion is granted, “it would have the effect of treating the AGS claim differently from claims filed by other parties in the claims process, including other trust or property claims.”

The monitor also said it strongly refutes the suggestion in the Christakos affidavit “that the application of the claims process to the AGS claim would somehow create a windfall for LU or that AGS has somehow compromised its rights (if any) to the assets by filing a proof of claim in the claims process.

“No claimant loses its rights simply by filing a proof of claim. On the contrary, the claims process provides a forum for parties who are of the view that they have a claim to assert it and have it determined in an efficient and effective fashion.”

Ernst & Young said it is their position that ”the relief sought by AGS in the within motion should be denied,” and that the matter instead be referred to a claims officer for adjudication.

This is Exhibit “9” referred to in the Supplementary Affidavit of Demetra Christakos sworn remotely on this 10th day of May 2022.

Commissioner for Taking Affidavits (or as may be)

Stephen Gaudreau

Cash-strapped Laurentian says it won't sell art collection

It may, however, sell Bell Mansion, home of the Art Gallery of Sudbury

Jim Moodie
May 02, 2022 • 1 week ago • 5 minute read • Join the conversation

Art Gallery of Sudbury (old Bell mansion) in Sudbury, Ont. on Tuesday June 15, 2021. John Lappa/Sudbury Star/Postmedia Network

Laurentian says it may sell the Bell Mansion but is not planning to put artwork on the block.

This position shared Monday comes amid much speculation regarding the future of the Art Gallery of Sudbury and the many valuable pieces it considers part of its collection.

"Laurentian University has always owned these assets and has made them available to the Art Gallery of Sudbury for display, consistent with the university's desire that they be accessible to, and enjoyed by, the public," the university said. "The Bell Mansion building is the only asset the university has expressed the possible intention to sell. No decision has been made to sell any artwork."

Last week AGS issued its own statement, expressing concern about the fate of numerous paintings and other artworks that Laurentian could claim as its own and potentially unload as part of its financial restructuring.

“It is important to note that the artworks comprising the Laurentian University Museum and Art Centre art collection represent a portion of the gallery’s permanent collections,” the gallery said.

AGS said its board “understands and values the importance and the vital role that these assets play in the community” and their goal is to “protect the assets for the benefit of the public.”

In a claim submitted this past summer as part of the Companies’ Creditors Arrangement Act process, the gallery valued the Bell Mansion and its grounds at $1.3 million, while pegging the artwork at more than $4.8 million.

AGS said it made the creditor filing “in order to ensure that the process did not have unintended consequences for the gallery,” given its long-standing relationship with Laurentian.

“To our surprise, the court-appointed monitor has used this proof of claim process to attempt to summarily assert that the art and our premises described therein should form part of the assets available to satisfy the creditors of Laurentian University,” the gallery said.

“In our view the position taken by the monitor shows a complete misunderstanding of public art galleries, their role in the societies in which they function, the nature of their holdings and the history of this matter.”

The gallery has now engaged legal counsel and is litigating “to protect these assets from being unfairly and unnecessarily swept into the CCAA process,” it said.

Laurentian acquired the Bell Mansion in 1969 for a mere $1. Many of the pieces that comprise the university’s art collection were donated over the years, while others were purchased.

“We are proud of the Laurentian University Art Collection, are grateful custodians of artwork that has been donated to the university and purchased by the university over the past 60 years,” the university said Monday. “(We) look forward to an appropriate resolution with the Art Gallery of Sudbury, or a determination of the art gallery’s claim, in order to resolve any uncertainty.”

In a report issued April 13, Ernst & Young — the firm appointed as third-party observer in the CCAA process — said it understood “LU intends on selling the Bell Mansion and may include it, or the proceeds of its sale(s), in the plan it will be presenting to its creditors. The monitor also understands that LU is considering all of its options with respect to the assets of the art collection.”

STORY CONTINUES BELOW

The question of who owns which pieces of art, however, remains to be clarified, according to retired history professor and former AGS board member Dieter Buse.

“Some art was given to the gallery when it was the Laurentian University Museum and Arts Centre,” he told The Star in late April. “Some art was bought by LUMAC. Some art was given to the Art Gallery of Sudbury when it became independent in 1996 and some was bought by the Art Gallery of Sudbury.”

From his reading of the latest monitor’s report, “they’ve jumbled that all together, as if there is only one collection,” said Buse. “That is inaccurate, illegal, and unethical.”

In a letter to The Star, Mary Gordon said she was part of the transition team created in the mid-1990s when “Laurentian realized they needed a plan to get out of the gallery business” and wanted community support. She said she joined on on two conditions: “that the process be open to the public; and that all assets (Bell Estate and permanent collection) be turned over to the community.”

The team delivered a report in July of 1996, she said, and the transition began.

“A new community-based board was created to manage the Art Gallery of Sudbury, with successive agreements hammered out to ensure the transfer of all assets to the new entity,” she wrote. “The City of Sudbury stepped up with funding, provincial and federal governments provided grants, staff was hired, and the gallery took on new life.”

Nearly 30 years later, the “credit monitor overseeing the so-called bankruptcy of the university is proposing to sell the assets,” said Gordon. “Let’s be clear what those are: the mansion itself and the lands around it, and a permanent collection of art, acquired over the 30 years that Laurentian owned it, and – get this — art that was acquired at no cost to the university, thanks to the acumen of the gallery’s curator. Millions of dollars at stake here, every dollar of which belongs to the community.”

Gordon contends Laurentian's relationship with the gallery is "fiduciary in nature" and "they must act in the best interests of the community."

That arrangement, combined with public pressure, persuaded the university's board of governors back in 1996 "to take a less drastic approach to the gallery's transition from university to community," writes Gordon. "For some reason I'm not aware of, they have not yet transferred the assets as promised in the agreement they negotiated for the transition."

She said the gallery has flourished under its current model and management, and could well find a new home in the downtown core, as part of the proposed Junction East project.

"They have proven their competence and vision," writes Gordon. "For both legal and moral reasons, the governors must now transfer those assets to the Art Gallery of Sudbury, before they are sold to the highest bidder. Anything less is a breach of their fiduciary duty."

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NEWS NEAR SUDBURY

THIS WEEK IN FLYERS

COMMENTS

This is Exhibit "10" referred to in the Supplementary Affidavit of Demetra Christakos
sworn remotely on this 10th day of May 2022.

Commissioner for Taking Affidavits (or as may be)

Stephen Gaudreau

Fate of Art Gallery of Sudbury still uncertain | Crisis at Laurentian University

Annemarie, Karl, and Julie Hagan, the three children of Frederick Hagan, sent a letter to the leaders of Laurentian University, asking that the works of art in the collection not be sold to pay off the debt of Laurentian University.

“Museum collections are held in public trust and should not be treated as realizable assets. It is clearly not ethically acceptable for a museum to sell collections in order to acquire funds for purposes other than the acquisition or maintenance of a museum’s collection.”reads the letter, which cites the Canadian Museums Association’s code of ethics.

The Art Gallery of Sudbury, which is housed in a building that belongs to Laurentian University, has been in limbo for a few weeks after learning that the building and its works could be sold as part of the restructuring process. of the University.

Laurentian and the Art Gallery of Sudbury are currently battling in court to determine who has responsibility for the trust and the right to dispose of the works.

According to Annemarie Hagan, the precarious situation in which her father’s works and all the others in the collection find themselves is unacceptable.

Annemarie Hagan is the daughter of painter Frederick Hagan.

Photo: Courtesy of Annemarie Hagan

“When an artwork is given as a gift in public trust, it is the responsibility of the institution to care for the artwork.”she laments.

The Frederick Hagan collection at the Art Gallery of Sudbury, which includes 254 works in various mediums, was donated in 1996, seven years before the artist’s death in 2003.

In their letter, the descendants of Frederick Hagan ask Laurentian “to honor their original wish at the time, namely to transfer ownership of the works to the Art Gallery of Sudbury”.

Bell Rock Mansion is home to the Art Gallery of Sudbury.

Photo: Radio-Canada / Mathieu Allard

Andrew Boyd, president of the Sudbury Arts Council, laments that works from the Art Gallery of Sudbury like those of Frederick Hagan find themselves mired in financial turmoil at Laurentian University.

The works are managed by a public trust in Sudbury, he explains, and “should not end up in Laurentian’s restructuring proceedings”.

“It would be illegal”he believes.

Frederick Hagan, a lover of the North

Born in Toronto and raised in the popular neighborhood of Cabbagetown, Frederick Hagan became a lifelong Northern Ontario fan after visiting family north of Sudbury as a young adult.

“I think he realized the contrast between the very densely populated life of Toronto and all the space in the North, and that’s when he realized he had found something, that he found his inner peace in the North”says Hagan.

Annemarie Hagan (right), with her father Frederick, helping her look after her twins.

Photo: Courtesy of Annemarie Hagan

For the rest of his life Frederick Hagan returned to the area regularly. “I believe he was going to spend some time up north at least once a year.”says Anne-Marie Hagan.

As a child, she remembers spending time near the water, including enjoying the French River in the Sudbury area.

“This is where he wanted his ashes to be scattered”she adds.

Mrs Hagan claims that her father “spent hours sketching northern landscapes in the summer, drawings he worked on all winter thereafter”.

Later in his life, he wanted to offer his work to a community in Northern Ontario, which is when his choice fell on Laurentian University and the Art Gallery of Sudbury.

The legal process continues

Representations in court to decide the fate of the Art Gallery of Sudbury’s works are continuing to determine whether the Bell Mansion, which houses the works and these, can be part of the restructuring process.

The next court hearing, which was scheduled for May 2, has been postponed to May 16.

The Art Gallery of Sudbury, through its lawyer David Ullmann, reiterates the organization’s position that the mansion and the artwork should not be part of the restructuring process.

In a press release, the Art Gallery of Sudbury indicated that Laurentian’s position “demonstrates a complete misunderstanding of public art galleries, their role in the societies in which they operat nature of their collections and the history of this case”.

Laurentian University did not respond to our interview requests on this subject.

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Published On April 30, 2022 By **Thecanadian**

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This is Exhibit "11" referred to in the Supplementary Affidavit of Demetra Christakos
sworn remotely on this 10th day of May 2022.

Commissioner for Taking Affidavits (or as may be)

Stephen Gaudreau

ICI Nord de l'Ontario

Le sort des oeuvres de la Galerie d'art de Sudbury toujours incertain

Frederick Hagan, en train de peindre sa toile nommée Homage, qu'on peut retrouver au campus de l'Université Laurentienne.
PHOTO : AVEC L'AUTORISATION D'ANNEMARIE HAGAN

Francis Beaudry
le 30 avril 2022

Les enfants du peintre Frederick Hagan, qui a donné 254 oeuvres de sa collection à la Galerie d'art de Sudbury en 1996, craignent de voir les oeuvres de leur père être liquidées en raison des problèmes financiers de l'Université Laurentienne.

Annemarie, Karl et Julie Hagan, les trois enfants de Frederick Hagan, ont envoyé une lettre aux dirigeants de l'Université Laurentienne, demandant que les oeuvres d'art de la collection ne soient pas vendues pour payer la dette de l'Université Laurentienne.

« Les collections des musées sont tenues en fiducie publique et ne doivent pas être traitées comme un actif réalisable. Il n'est manifestement pas éthiquement acceptable pour un musée de vendre des collections afin d'acquérir des fonds à des fins autres que l'acquisition ou l'entretien de la collection d'un musée », peut-on lire dans la lettre, qui cite le code d'éthique de l'Association des musées canadiens.

La Galerie d'art de Sudbury, qui est logée dans un bâtiment qui appartient à l'Université Laurentienne, est dans l'incertitude depuis quelques semaines, après avoir appris que le bâtiment et ses œuvres pourraient être vendus dans le cadre du processus de restructuration de l'université.

La Laurentienne et la Galerie d'art de Sudbury s'affrontent présentement devant les tribunaux pour déterminer qui a la responsabilité de la fiducie et le droit de disposer des oeuvres.

Selon Annemarie Hagan, la situation précaire dans laquelle se trouvent les oeuvres de son père et toutes les autres de la collection est inacceptable.

Annemarie Hagan est la fille du peintre Frederick Hagan.
PHOTO : AVEC L'AUTORISATION D'ANNEMARIE HAGAN

« Quand une oeuvre est donnée en cadeau en fiducie publique, c'est la responsabilité de l'établissement de prendre soin de l'oeuvre », déplore-t-elle.

La collection de Frederick Hagan de la Galerie d'art de Sudbury, qui compte 254 oeuvres de différents médiums, a été offerte en 1996, soit sept ans avant la mort de l'artiste en 2003.

Dans leur lettre, les descendants de Frederick Hagan demandent à la Laurentienne « d'honorer leur volonté originale de l'époque, soit de transférer la propriété des oeuvres à la Galerie d'art de Sudbury ».

Le manoir Bell Rock abrite la Galerie d'art de Sudbury.
PHOTO : RADIO-CANADA / MATHIEU ALLARD

Andrew Boyd, président du Conseil des arts de Sudbury, déplore que les oeuvres de la Galerie d'art de Sudbury comme celles de Frederick Hagan se retrouvent embourbées dans les troubles financiers de l'Université Laurentienne.

Les oeuvres sont gérées par une fiducie publique à Sudbury, explique-t-il, et « ne devraient pas se retrouver au sein de procédures de restructuration de la Laurentienne ».

« Ça serait illégal », croit-il.

À lire aussi :

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- Jean-Gilles Pelletier est le nouveau directeur général de la Place des Arts de Sudbury
- Le Nouveau Louvre de la Galerie du Nouvel-Ontario s'installe chez vous

Frederick Hagan, un amoureux du Nord

Né à Toronto et ayant grandi dans le quartier populaire de Cabbagetown, Frederick Hagan est devenu un grand amateur du Nord de l'Ontario au cours de sa vie après avoir visité de la famille au nord de Sudbury quand il était un jeune adulte.

« Je crois qu’il a réalisé le contraste entre la vie très densément peuplée de Toronto et tout l’espace dans le Nord, et que c’est à ce moment qu’il a compris qu’il avait trouvé quelque chose, qu’il a trouvé sa paix intérieure dans le Nord », explique Mme Hagan.

Annemarie Hagan (à droite), avec son père Frederick, en train de l'aider à s'occuper de ses jumeaux.
PHOTO : AVEC L'AUTORISATION D'ANNEMARIE HAGAN

Pendant le reste de sa vie, Frederick Hagan est revenu régulièrement dans la région. « Je crois qu’il allait passer du temps dans le Nord au moins une fois tous les ans », affirme Anne-Marie Hagan.

Elle se souvient comme enfant des moments passés près de l’eau, notamment à profiter de la rivière des Français, dans le secteur de Sudbury.

« C’est là qu’il voulait qu’on disperse ses cendres », ajoute-t-elle.

Mme Hagan affirme que son père « passait des heures à faire des croquis des paysages du Nord l’été, des dessins sur lesquels il travaillait tout l’hiver par la suite ».

Plus tard dans sa vie, il a voulu offrir son œuvre à une communauté dans le Nord de l’Ontario, c’est à ce moment que son choix s’est arrêté sur l’Université Laurentienne et la Galerie d’art de Sudbury.

Le processus judiciaire se poursuit

Les représentations devant le tribunal pour décider du sort des œuvres de la Galerie d’art de Sudbury se poursuivent afin de déterminer si le manoir Bell, qui abrite les œuvres et celles-ci, peut faire partie du processus de restructuration.

La prochaine audience devant le tribunal, qui devait se dérouler le 2 mai, a été reportée au 16 mai.

La Galerie d’art de Sudbury, par l'intermédiaire de son avocat David Ullmann, réitère la position de l’organisme : le manoir et les œuvres d’art ne devraient pas faire partie du processus de restructuration.

Dans un communiqué de presse, la Galerie d’art de Sudbury a indiqué que la position de la Laurentienne « démontre une incompréhension totale des galeries d'art publiques, de leur rôle dans les sociétés dans lesquelles elles fonctionnent, de la nature de leurs collections et de l'historique de cette affaire ».

L’Université Laurentienne n’a pas répondu à nos demandes d’entrevue à ce sujet.

Francis Beaudry

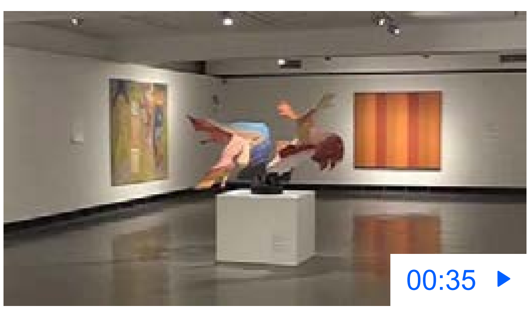
This is Exhibit “12” referred to in the Supplementary Affidavit of Demetra Christakos sworn remotely on this 10th day of May 2022.

Commissioner for Taking Affidavits (or as may be)

Stephen Gaudreau

NORTHERN ONTARIO | News

Error exposes $6.4M of Art Gallery of Sudbury assets to Laurentian's insolvency process



Error exposes gallery to LU's insolvency process

Laurentian review complete, changes recommended

Darren MacDonald
CTVNorthernOntario.ca Digital Content Producer
Follow | Contact

Updated April 12, 2022 7:32 p.m. EDT

Published April 12, 2022 2:15 p.m. EDT

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A failure to get legal advice has officials at the Art Gallery of Sudbury scrambling to protect its art collection, museum building and other assets.

The gallery is heading to court next month in an attempt to remove its estimated $6.4 million holdings from Laurentian University's insolvency process.

According to court documents, officials at the gallery misunderstood the process under the Companies' Creditor Arrangement Act (CCAA). Without getting legal advice, they added themselves to the list of creditors making a claim against the university when the school declared insolvency in 2021.

It consulted with the monitor of the CCAA process, Ernst & Young, to get advice on joining the list of creditors and made a claim in July 2021.

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- **Art Gallery of Sudbury exhibition features Group of Seven painter who loved La Cloche**

"We exchanged information on the assets that would eventually be listed in our proof of claim," AGS curator Demetra Christakos said in its court filing.

"The monitor advised that if the AGS believed that it had any rights to any assets it should file a claim or it might lose those rights. This was very concerning for us, and we came away from that meeting with the understanding that we had to file a claim or we would lose our rights to the assets."

At the time, Christakos said they didn't understand the role of the monitor.

"The AGS misunderstood the nature of the role of the monitor and that it is not up to the monitor to provide legal advice to potential stakeholders such as the AGS about the process or our rights," she said.

"We thought the monitor was an independent body with obligations to the creditor and debtor. Nonetheless, at the time we took the monitor's advice as definitive as to what we had to do."

The AGS filed a claim totalling $6,390,667.35, representing the value of all its assets, even though it wasn't actually owed that amount by LU.

"As a charitable organization, the AGS has limited funds to spend on professional advisors and did not retain legal counsel to assist it with filing its claim," Christakos wrote.

"Indeed, the board of directors is of itself made up of volunteers. We were confident that Laurentian shared our understanding of the status quo under which we had operated for several decades, we did not anticipate a dispute."

After filing the claim in July 2021, the gallery received a notice in February of this year that the claim was disallowed.

"The disallowance not only disallowed our monetary claim in full, but also included the statement in each case that the AGS had no rights to the assets," Christakos said.

"However, I noted that in the monitor's reasons for denying the claim that it did not provide any supporting documentation or direct evidence to support its position. The monitor also made no finding as to who owned the assets in question."

Concerned it would lose its assets, the gallery finally hired a lawyer in March, who met with officials from Ernst & Young to try and resolve the matter.

Now, the gallery is seeking to withdraw its claim as a creditor, saying LU doesn't owe it any money. While that wouldn't be a declaration that the gallery owns the assets, the AGS said that could be settled at a separate hearing if LU chooses to go that route.

For her part, Christakos said she is shocked at the idea the gallery could lose its collection because of an honest mistake.

"I am deeply troubled by the assertion that a public art gallery, which operates for the public good, can suddenly and permanently lose rights, including property, it has held and provided care for over 25 years, because of a misunderstanding in the operation of the CCAA process without the opposing party having to even explain or assert their rights to those assets," she wrote.

Read all the court documents here.

RELATED IMAGES

Art Gallery of Sudbury. Aug. 12/20 (Alana Pickrell/CTV Northern Ontario)

This is Exhibit “13” referred to in the Supplementary Affidavit of Demetra Christakos sworn remotely on this 10th day of May 2022.

Commissioner for Taking Affidavits (or as may be)

Stephen Gaudreau

Home > Art gallery >

ART GALLERY

Sudbury News: Art Gallery Of Sudbury Assets Must Remain Part Of Laurentian's Insolvency Process: Court Documents

By **Jessica D. Abney** On **Apr 18, 2022**

The Art Gallery of Sudbury's assets worth $6.39 million are to remain part of Laurentian University's insolvency process, according to court documents filed by the process monitor.

Accounting firm Ernst & Young is the monitor, a role in which it acts as an independent observer in the process under the Companies' Creditors Arrangement Act (CCAA).

The AGS will go to court next month to try to separate its assets from the insolvency process. They include the Bell Mansion (valued at $1.3 million), the art collection (valued at $4.8 million), as well as funds held in trust (approximately $216,000) and the library (20 $000).

The fate of AGS assets is of particular importance at this time, as Greater Sudbury plans to spend approximately $50 million to build a new art gallery and library in downtown Sudbury, a project known as the name of East Junction.

While the gallery said in an earlier court filing that it joined LU's claims process in error, Ernst & Young said the AGS assets belonged to the university and that separating them from the process would be unfair to the other applicants.

Laurentian received the Bell Mansion in 1967 and operated the LU Museum and Art Center (LUMAC) from the mansion until 1996. This was when AGS was created as a separate company, in the purpose of eventually transferring ownership of all assets to AGS. "on the basis of satisfactory evidence that the new entity is able to ensure the continued operation of the installation."

The gallery has operated under an agreement signed in 1999 in which AGS operates the gallery for LU – but the university retains ownership.

Also at issue is a 1981 donation from Barbara A. McDonald, who gave two properties that were sold, with the proceeds going only to purchase artwork or pay renovation costs to the gallery. . If LU closed the museum, all remaining funds were to go to the Royal Ontario Museum (ROM). With interest, this fund should have about $216,000.

"However, the Comptroller notes that LU did not segregate funds from BA McDonald," the court documents state.

"These funds were deposited into LU's general operating bank account and used generally in operations."

In reviewing the claim, the Comptroller ruled that the AGS had no right to BA McDonald's funds, because if the gallery goes out of business, that money will go to the ROM. There is also no documentation showing that the AGS owns the building, library or art collection.

Property of Laurentian

While AGS wishes to separate its assets from the process and withdraw its claim, the monitor argues that the assets clearly belong to LU and are therefore part of the insolvency.

"If the relief sought by AGS in this motion were granted, it would have the effect of treating the AGS Claim differently from claims filed by other parties in the Claims Process, including other trust or property," the controller wrote.

"It would be unfair to LU's stakeholders and contrary to the purpose of the CCAA."

LU intends to sell the Bell Mansion, the Monitor said, and use the proceeds to help it emerge from bankruptcy.

"The Comptroller also understands that LU is considering all of its options with respect to the art collection assets," the court document states.

"LU is at a critical stage of its restructuring and is in the process of formulating a plan to present to its creditors. LU cannot do this unless it is certain as to the amount and nature of the claims against LU, and as to the property which is available for distribution to creditors."

The dispute will be heard in a court hearing next month. Read the full court case here.

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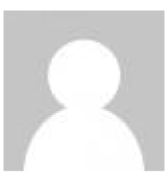

Jessica D. Abney

Comments are closed.

This is Exhibit “14” referred to in the Supplementary Affidavit of Demetra Christakos sworn remotely on this 10th day of May 2022.

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Commissioner for Taking Affidavits (or as may be)

Stephen Gaudreau

Date: Wednesday, April 27th, 2022

To: Doug Ford, Premier of Ontario
Lisa MacLeod, Ontario Minister of Tourism, Culture, and Sport
Bonnie Lysyk, Auditor General of Ontario
Robert Haché, President, Laurentian University
Sharon Hamilton, Companies' Creditors Arrangement Act Monitor, Ernst & Young

RE: Laurentian University Art Collection in peril due to Laurentian University's bankruptcy proceedings

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In her recent Preliminary Perspective on Laurentian University, Office of the Auditor General of Ontario, April 2022 , Bonnie Lysyk, Auditor General of Ontario states "We believe Laurentian did not have to file for CCAA protection." And yet they did. Due to "poor management" according to Lysyk.

This has had a multitude of devastating repercussions on individuals, organizations, and communities. Amid these many challenges, I am writing to ensure that the issue of the Laurentian University Art Collection is not forgotten. This art collection of over 1,400 works was carefully collected and curated by professional staff from 1967 to 1997. It represents more than 400 Indigenous, regional, Canadian, and international artists. And the Laurentian University Art Collection is in peril.

That might sound overly dramatic, but it is true. The ongoing bankruptcy proceedings at Laurentian University treat the publicly owned art collection as every-day assets that can simply be sold off and dispersed to pay down debts. This is both unethical and a betrayal of every donor who contributed to this significant collection. And to every artist represented in it. And to the community.

The International Council of Museums Code of Ethics states: "Museum collections are held in public trust and may not be treated as a realisable asset." And this is from the Canadian Museum Association Ethics Guidelines: "… it is clearly unethical for museums to dispose of collections in order to provide funds for purposes other than for the acquisition of, or direct care of, museum collections."

The former Laurentian University Museum and Art Centre's Collections Policies respected these ethical guidelines. And their Deed of Gift – used for art donations - stated "Any proceeds arising from the sale, or collected as insurance in the event of the damage or destruction of the works of art shall be applied to the purchase of other works of art." Each Deed was signed and witnessed by both the donor and Laurentian staff.

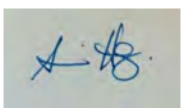
In 1996 our father, artist Frederick Hagan (1918-2003), made a significant donation to Laurentian University. We have the signed Deed of Gift for this donation, which included the Hagan Family Portfolio of 245 drawings, watercolours, and prints representing the scope of his career as an artist from 1939 to 1989. This Portfolio was Dad's tribute to our mother Isabelle who died in 1989; she had been at his side throughout those fifty years.

In the 1990s Laurentian also purchased the largest and perhaps most significant of Fred Hagan's oil paintings, *Homage*. This complex, mural-like work explores his personal life journey and the Canadian artists and northern Ontario landscapes that influenced him. Sudbury volunteers fundraised specifically for the purpose of purchasing this work. It is unconscionable that any artwork acquired with restricted funds raised in the community should be sold as part of this bankruptcy proceeding.

As it stands right now, the University and the bankruptcy trustees are ignoring their ethical and legal obligations to the donors and artists who trusted Laurentian to hold their treasured artworks in public trust. Since 1997, when the University chose to step away from running an art gallery, the Art Gallery of Sudbury has done an exceptional job of caring for and managing the Laurentian University Art Collection.

The University must now honor their original intent in 1997: to transfer the ownership and stewardship of the Laurentian University Art Collection to the Art Gallery of Sudbury. We can trust the Art Gallery of Sudbury's professional staff to appropriately care for this significant collection, and to share it with the community for decades to come. Which is what the original donors intended.

Sincerely,



Annemarie Hagan

P.O. Box #29
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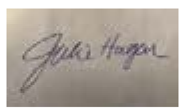
hagan.annemarie@gmail.com



Julie Hagan

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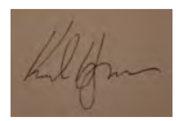

Karl Hagan

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cc: Andrea Horwath MPP, Leader Official Opposition
Steven del Luca, Leader Liberal Party
Mike Schreiner MPP, Leader Green Party
Jamie West MPP, Sudbury
Mark Surré MP, Nickel Belt
Viviane Lapointe MP, Sudbury
Charlie Angus MP, Timmins-James Bay
Paula Gouveia, Co-Chair, Art Gallery of Sudbury Board
Demetre Christakos, Curator, Art Gallery of Sudbury
Andrew Boyd, Chair, Sudbury Arts Council
Zainub Verjee, Executive Director, Ontario Galleries
Sandra Cruickshanks, Interim CEO, Ontario Arts Council
Massimo Bergamini, Executive Director, Canadian Museums Association
Marie Lalonde, Executive Director, Ontario Museums Association
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Wayne Gates, MPP Niagara Falls
Theresa Armstrong MPP, London-Fanshawe
Media: The Sudbury Star, Sudbury.com, CBC, CTV, The Globe and Mail, The Toronto Star

This is Exhibit “15” referred to in the Supplementary Affidavit of Demetra Christakos sworn remotely on this 10th day of May 2022.

Commissioner for Taking Affidavits (or as may be)

Stephen Gaudreau

Office of the Auditor General of Ontario

Preliminary Perspective on Laurentian University

April 2022

Office of the Auditor General of Ontario

To the Honourable Speaker of the Legislative Assembly

In my capacity as the Auditor General, I am pleased to submit to you our *Preliminary Perspective on Laurentian University* in accordance with section 12(1) of the *Auditor General Act*.

On April 28, 2021, the Standing Committee on Public Accounts requested, under section 17 of the *Auditor General Act*, that our Office conduct a value-for-money audit of Laurentian University's operations for the period of 2010 to 2020 and to answer questions of what led Laurentian University to seek creditor protection under the *Companies' Creditors Arrangement Act* (CCAA).

The Legislature will be dissolved within the next few weeks, as will the Standing Committee, in light of the upcoming election. As a result of Laurentian's consistent lack of co-operation and delays in allowing us our normal unfettered access to documents and people, it is unlikely we will be able to table our special audit report before the Legislature is dissolved.

Accordingly, we are providing this short perspective to assist the Standing Committee members who requested this work and the Legislature in obtaining a preliminary understanding of what led to the situation at Laurentian University. Our intent is to table the special audit report as soon as possible.

Bonnie Lysyk

Bonnie Lysyk, MBA, FCPA, FCA, LPA
Auditor General

April 2022
Toronto, Ontario

Ce document est également disponible en français.

ISBN 978-1-4868-6078-4 (PDF)

Cover photograph credit: Kristy May

Preliminary Perspective on Laurentian University

On February 1, 2021, Laurentian University (Laurentian) made an unprecedented and momentous announcement: the Sudbury-based institution declared it was financially insolvent and had filed for creditor protection. By declining government assistance and opting to file under the federal *Companies' Creditors Arrangement Act* (CCAA), the university became the first public university in Canada to seek to restructure its operations using a legal process designed as a last resort for private sector entities.

The repercussions were profound and stirred up strong reactions, especially in Sudbury, where the university is an important contributor to the social and economic fabric of the community. Laurentian eliminated 36% of its programs, affecting the academic and career plans of an estimated 932 students. It also terminated 195 staff and faculty with little notice and severance. And by opting for creditor protection under the CCAA, Laurentian was able to bypass provisions in its collective labour agreements, allowing the administration to effectively terminate more senior employees and clear a number of long-standing union grievances.

The longer-term implications of the CCAA filing are still playing out but may be no less severe. The loss of jobs and students will undoubtedly affect the economy of Sudbury, where Laurentian is one of the largest employers. The use of CCAA proceedings might make it more difficult for other universities to acquire debt, or to hire and retain faculty. Quantifying the long-term reputational damage to Laurentian will be more difficult to predict, but one development was telling: as of mid-January 2022, high school student applications to Laurentian had dropped by nearly 44%.

Hopefully Laurentian will emerge from the CCAA proceedings as soon as possible with a Plan of Arrangement and with a strengthened foundation it can use to attract and educate future students, recruit top educators and conduct world-class research. Conversations and efforts need to wholeheartedly focus on these goals. But as part of the effort to move forward, Ontarians also want and deserve answers to some tough questions. Among them: how did an Ontario university that is significantly taxpayer-funded and accountable to the public end up in a dire financial position? And was its use of the CCAA an appropriate response?

In light of these and other questions, the Standing Committee on Public Accounts (Committee) of the Legislative Assembly unanimously passed a motion on April 28, 2021 requesting that our Office conduct a special audit on Laurentian's operations for the 2010-2020 period. During discussion on the motion, the Committee indicated that it wanted our Office to examine what led Laurentian into the CCAA process, bring transparency to the situation, and identify lessons learned to "ensure something like this does not happen in another academic institution."

We initiated our audit work on May 14, 2021. Because Laurentian is a broader public sector institution that receives significant provincial government funding—about $80 million a year, representing over 40% of its revenue—there is an expectation from the public that it provide transparency and accountability about its finances and activities. Despite that, Laurentian's President and Board of Governors (Board), guided by external legal counsel, implemented unprecedented restrictions on our access to Laurentian's information. The senior administrators put in place protocols that discouraged staff from speaking freely with us or providing our Office with unfettered access to documents and information without fear of reprimand. These restrictive protocols created a culture of fear surrounding interactions with our Office that put further pressure on the university and its staff.

What's more, our Office faced an unprecedented legal pushback from Laurentian, including a challenge to the *Auditor General Act*. The university also resisted voluntarily complying with Speaker's Warrants, issued by the Legislative Assembly of Ontario in December 2021, compelling the release of information requested by the Standing Committee on Public Accounts.

In spite of these impediments, our Office consulted with many dedicated faculty and staff who provided us with whatever information they could to allow us to conduct our work. As a result of the Legislature's efforts, we were ultimately given access to thousands of university documents and emails. However, our ability to talk freely with certain past and present staff continues to be difficult. The delays have meant our Office continued to receive and review information from Laurentian into April 2022.

With additional questions that may still need to be answered and our inability to finalize our full report before the upcoming dissolution of the Legislature, we have decided to provide this preliminary perspective on what we've learned so far, in advance of tabling our formal special report on Laurentian. This is important given that the Standing Committee that requested this work will be dissolved when the upcoming election period begins on May 4, 2022.

Based on the information we have gathered to date, we have made the following preliminary observations:

- Although external factors such as tuition freezes and the COVID-19 pandemic impacted Laurentian, we determined that the primary cause of the university's financial deterioration from 2010 to 2020 was its pursuit of poorly considered capital investments. It proceeded with expansion projects without procedures in place requiring senior administrators to make a reasonable assessment of the value and viability of the plans, or to fully consider the risks associated with a rapid growth in debt. We also found there was poor management of the university's financial affairs and operations, exacerbating the situation.

- This poor management was allowed to continue in large part because of weak oversight by Laurentian's Board. It lacked key operational and governance practices and expertise, and allowed transparency to decline. For its part, the Ministry of Colleges and Universities (Ministry), which is the primary government ministry responsible for monitoring the financial health of post-secondary institutions, did not proactively intervene in a timely manner to provide guidance to help Laurentian slow—or ultimately respond to—its worsening financial deterioration.

- We believe Laurentian did not have to file for CCAA protection; it strategically planned and chose to take steps to file for creditor protection in the Ontario Superior Court of Justice on February 1, 2021. As Laurentian's financial situation grew increasingly dire, the university did not follow the normal broader public sector precedent by making comprehensive and clear efforts to seek financial assistance from the Ministry. It instead focused on advocating to elected officials and their staff, on the advice of external consultants. In August 2020, Laurentian raised the potential of CCAA to the Minister of Colleges and Universities but did not clearly define how much financial assistance was required from the province to avoid a CCAA filing. An explicit request for funding to the Ministry was not made until December 2020, at which point the ask was significant and the timeline for intervention was short. Had it sought to work earlier and more transparently with Ministry staff, had it not prematurely paid off and relinquished its line of credit in 2020, and had it accepted the temporary funding assistance that the province ultimately offered, Laurentian would have had sufficient time for its financial situation to be reviewed jointly with the province and a go-forward plan put in place.
- Nearly a year before Laurentian filed for CCAA protection, it had engaged lawyers and other consultants to explore strategic options, but the primary focus was on filing for CCAA protection. We believe that Laurentian's actions in this regard were significantly influenced by these external parties. As of March 3, 2022, the university had incurred legal and other financial consultant fees associated with its insolvency of more than $24 million.
- The university's contract with the Laurentian University Faculty Association (LUFA) contains a financial exigency clause, designed to deal with dire financial circumstances. Triggering this clause—which is in most university faculty labour contracts in Canada–would have required senior administration to work in partnership with LUFA to address Laurentian's financial situation. In 2020, LUFA requested that Laurentian's senior administration trigger this clause and provide it with additional information on the university's finances. Laurentian's senior management intentionally delayed providing information and did not trigger the clause. Instead, senior administration, with Board approval, chose to use CCAA protection, starting a process that diverted more money to external advisors through professional fees, was less transparent, and likely has had, and will continue to have, a greater impact on students, faculty, the community of Sudbury and the university's reputation.

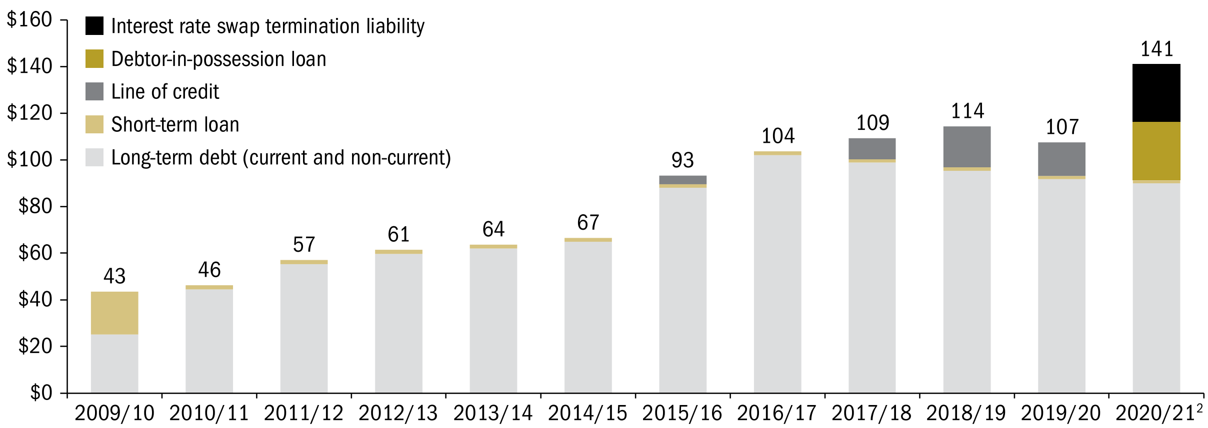
Laurentian's Financial Decline

Laurentian was showing clear signs of financial distress even before the 2010-2020 period. In response to accumulating deficits and projected difficulties in enrolment growth affecting all Northern Ontario universities, Laurentian's Board approved in February 2009 "A Plan for Regaining Sustainability at Laurentian University," which recommended that the university take reasonable steps to reduce costs.

However, under the leadership of its incoming President, Laurentian took a different tack later in 2009. It started what would become a modernization and expansion plan that led to the assumption of more than $87 million in additional long-term debt. Between 2009/10 and 2019/20, Laurentian's principal and interest payments on its long-term debt increased nearly fourfold to $7.9 million, accounting for $56 million in cash outflows over that 11-year period resulting in a net increase of $67 million in long-term debt by 2019/20.

Figure 1: Total Debt for the Years Ending April 30, 2009/10–2020/21 ($ million)[1]

Source of data: Laurentian University audited financial statements



1. This figure does not include liabilities other than debt.
2. Total debt in 2020/21 includes the following:
   - Items reclassified and recorded as a component of liabilities subject to compromise, which is a current liability:
     - $89.9 million (2019/20 – $91.7 million) of long-term debt;
     - $1.3 million (2019/20 – $1.4 million) of short-term loan with TD Canada Trust;
   - $25.0 million (2019/20 – $nil) in short-term loans owed to the debtor-in-possession lender as part of the *Companies' Creditors Arrangement Act* (CCAA) process, which increased to $35.0 million on May 2, 2021 after the end of the 2020/21 fiscal year; and
   - $24.7 million (2019/20 – $nil) of obligations for the termination of seven interest rate swaps triggered by the CCAA filing.

We found the university's senior management did not develop or work from a long-term plan that considered the risks associated with a rapid growth in debt. Nor did it gauge, before making large capital expenditures, to what extent the projects would increase revenues. Instead, it appears Laurentian took a risky "build it and they will come" approach.

In the face of growing debt, Laurentian amended its internal capital debt policy in 2010 to allow it to incur more debt for capital activities. In 2016, when its primary lender, Royal Bank of Canada, declined to provide more long-term debt, Laurentian sought short-term lines of credit to fund its capital expansion.

As access to funding decreased, the university ramped up the use of money designated for other purposes, such as employee health benefits and funds provided specifically for academic research projects. This strategy of using restricted funds was obscured by the fact the administration did not segregate the funds into separate bank accounts, and because it inappropriately labeled their use "internal financing." Amid the focus on new capital-project spending, and with little immediate return on its capital investments, Laurentian deferred needed repairs and upgrades on existing infrastructure. As of December 2020, Laurentian estimated that it had $135 million worth of required repairs that had not been addressed.

Rising Senior Administration Costs

Prior to its CCAA process, Laurentian suggested a significant cause of its financial decline was “excessive faculty costs.” But we found Laurentian’s overall faculty costs did not significantly surpass those of comparable universities.

In contrast, we found that it was high senior administrator salaries and expenses that negatively impacted Laurentian’s financial situation. From 2010 to 2020, the university’s senior administration costs grew by about 75%, peaking in 2018 at more than $4 million annually, and the relative size of its senior administration had been consistently larger than most other Ontario universities. Further, hiring practices for some positions lacked transparency and fairness—for instance, selected candidates were hired without a clearly documented rationale—and senior administrators’ salaries surpassed limits set through legislation intended to put a ceiling on executive pay in the broader public sector.

We determined that the senior administration did not work cooperatively with its faculty association and staff union to manage the university’s growing financial issues. Nor did it transparently provide the association and union with information on the extent of Laurentian’s financial situation in the months leading up to the CCAA process. At the same time, it was slow to address costly association and union grievances, including those alleging discrimination and harassment.

Governance Deficiencies

We found significant deficiencies in the activities and governance of Laurentian’s Board of Governors and its committees. For instance, the Board did not ensure the administration was providing it with adequate information to fully understand and assess issues affecting the financial sustainability of the university. These weaknesses diminished the Board’s ability to understand the impact of major capital projects on the university’s finances and potentially challenge senior administration’s plans.

The committees of the Board responsible for overseeing aspects of the financial sustainability of the university also failed to fulfil their roles. The Audit Committee, for example, did not perform its duty to ensure key financial risks were identified and managed. In its role overseeing external auditors, the committee did not ensure that the audited financial statements contained adequate information on the financial struggles facing the university—even in 2020 when Laurentian was deliberately preparing for the impending CCAA filing.

Further, the Board’s extensive use of in-camera meetings limited public transparency and accountability. We also learned that in some instances, Board members were involved in discussions and decisions that held personal or professional implications for them, raising conflict of interest concerns.

Planning for CCAA Protection

In our view, Laurentian could have avoided the widespread disruptions of the CCAA process. An external law firm that was working with the university on other business first introduced the concept of the creditor-protection process in 2019 to senior administration. We believe that serious consideration of the concept lay dormant until the spring of 2020, when Laurentian made the decision to actively pursue creditor protection.

By pursuing creditor protection under the CCAA, the university did not follow the normal broader public sector practice of first making efforts to work collaboratively and transparently with the Ministry to secure government-backed financial assistance. One example Laurentian could have emulated was Nipissing University in North Bay. In 2014, Laurentian's closest neighboring university cooperated with the Ministry when it was facing financial struggles that were by some measures worse than Laurentian's before it filed for CCAA creditor protection. Through the Ministry's intervention, Nipissing was able to take steps to ameliorate its declining enrolment trend and financial performance at that time.

For its part, Laurentian did not provide complete financial information or a comprehensive business case to the Ministry. In December 2020, less than two months before its announcement that it would initiate a CCAA proceeding, it made a sizeable financial request to the Ministry, with insufficient information. Guided by external legal counsel and other parties, Laurentian had earlier taken what can be called a political advocacy approach: it sought support for financial assistance directly from elected officials and their staff, rather than working transparently and directly with the Ministry's Deputy Minister, the Assistant Deputy Minister and their staff.

As noted, Laurentian also purposely avoided triggering the financial exigency clause in the faculty association's collective agreement. That process is intended to help ensure that job terminations during dire financial circumstances are done collegially and transparently. Because Laurentian had identified some of its financial issues during labour negotiations in April 2020, the association ultimately filed a grievance on October 30, 2020 requesting the administration use the financial exigency clause. Laurentian chose not to do so.

Instead, guided by external lawyers, external financial consultants and government-relations specialists, the President of Laurentian and certain Board members, strategically pursued restructuring under the CCAA. This chosen path appears to have enabled Laurentian to limit the full disclosure of financial and operational information to the public and other stakeholders, such as the faculty association and the staff union. It appears that Laurentian's external auditors were not made aware of the CCAA plans, and as such, Laurentian's financial statements ultimately did not clearly disclose to stakeholders the university's imminent financial risk.

The planning for and use of CCAA has come with additional costs for the financially strapped university. As of early March 2022, Laurentian had paid out more than $24 million to external lawyers and other consultants, including those who recommended and guided the CCAA restructuring process. The CCAA decision also triggered a series of large additional costs including a $24.7 million charge related to loan agreements with banks.

Weak Ministry Oversight

As noted, weaknesses in the Ministry's approach to overseeing universities in Ontario prevented officials from fully recognizing and addressing the serious financial issues facing Laurentian.

The acts that created Ontario's universities collectively lack many of the controls and oversight mechanisms found in provinces like British Columbia and Alberta. Unlike most other provinces, Ontario does not have legislated limits on university deficits, borrowing or major capital expenditures. Absent these restrictions, Laurentian was able to run successive annual deficits and acquire a substantial debt burden, deteriorating its financial position. As with all Ontario universities, the Ministry does have individual funding agreements with Laurentian. But these agreements do not include stipulations that Laurentian operate sustainably.

The Ministry did not start monitoring the financial condition of universities until 2014/15. Had these financial indicators been in place earlier, the Ministry could have flagged financial sustainability issues at Laurentian as early as 2009/10, as the university would have failed to meet most of the Ministry's financial-sustainability benchmarks. Even when the Ministry did begin to identify financial concerns at Laurentian, Ministry officials did not attempt to proactively intervene. However, even if it had wanted to, the Ministry does not have the clear legislative power to step in and unilaterally require changes to a university's operations, but can only influence the institution's choices, as it did with Nipissing.

OVERALL OBSERVATIONS

While the focus now should be on rebuilding Laurentian, it is also important to draw lessons from the experience that could help avoid a similar situation occurring elsewhere.

Universities are crucial institutions in democratic societies. They promote social and economic progress by reappraising societal assumptions, contributing to new knowledge and technologies and, most importantly, providing Ontario's students with the skills and education needed in the 21st century. Universities thrive when governments ensure they can maintain a high degree of academic independence; this is an important, centuries-old tradition that should be strenuously upheld in Ontario.

While, for these reasons, universities differ from other broader public sector institutions, they are also recipients of substantial support from the province and have specific transparency and accountability requirements. Mechanisms need to be set up that both respect universities' academic independence and prevent them from falling so deep into financial distress that the situation negatively affects students, faculty and staff.

When a university fails to meet certain financial sustainability metrics, the Ministry should be able to proactively intervene to more thoroughly assess the institution's finances and identify opportunities where it can help. The province should consider introducing legislation that formalizes the Ministry's prerogative to appoint a supervisor to help a university when there are serious sustainability concerns, and to set limits on deficits, borrowings and major capital expenditures.

Equally important, if a government or community imposes specific academic requirements or a tuition freeze on a university, public officials have a continuing responsibility to assess whether funding continues to be sufficient for the university both to fulfil those mandates and remain true to its core values. This is particularly true in Northern Ontario given the unique challenges facing Northern universities and their importance to the large regions they serve.

Ontario should consider the types of legislated limits on university deficits, borrowing and major capital expenditures found in other provinces. In Nova Scotia, for instance, the government introduced the *Universities Accountability and Sustainability Act* in 2015 in response to instances of post-secondary institutions experiencing financial difficulties. This act serves to identify and correct financial difficulties before they become emergencies.

Whatever model Ontario chooses, annual funding should be dependent on each university demonstrating to the Ministry that it has fully functioning governance structures in place. For instance, each board should have and follow clear ground rules on how it oversees its university's activities.

The word "paradigm" is important to think about in the Laurentian story. No one would have expected a broader public sector organization like a university to choose to use the CCAA process, including Laurentian's own external auditors and the lenders that held the university's unsecured or low-interest debt. Typically, a broader public sector organization facing financial distress works directly and transparently with its funding government ministry. In our view, there were many people hired by Laurentian who were more focused on laying the track that guided the train toward the CCAA process, and less on working co-operatively and with full transparency with the Ministry of Colleges and Universities and faculty and staff labour unions.

There is a strong argument that the CCAA, an important tool used in the private sector, is an inappropriate remedy for public entities. There are certain principles held high in the public sector—including transparency, accountability and the primacy of the public interest—that make the CCAA—court-ordered protection—a detrimental choice for public entities.

Sometimes, when faced with a crisis, it is difficult to discern the right thing to do, and then to do the right thing. In a situation where paradigms may be broken, it is important to ensure that actions taken are not contrary to those very public-sector principles that Ontarians rely upon and hold dear. Perhaps one guiding principle for an organization's board, senior management, external advisors and consultants should be that if one is doing the right thing for the public good, transparency comes easy.

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ONTARIO
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