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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

Applicant

FACTUM OF THE APPLICANT
(Sanction Order)

October 3, 2022

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Table of Contents

PART I – OVERVIEW[1]

1. This factum is filed in support of a motion by the Applicant for the following orders:

   (a) the Sanction Order that, among other things, sanctions the Plan pursuant to the CCAA;

   (b) the Unsealing Order that, at the Effective Time on the Plan Implementation Date, unseals the Sealed Exhibits to the Affidavit of Dr. Robert Haché sworn January 30, 2021; and

   (c) the Stay Extension Order that extends the Stay Period up to and including November 30, 2022.

2. The Plan is the result of extensive negotiations with stakeholders and paves the way for the emergence of LU from this CCAA Proceeding. The requisite majorities of Affected Creditors who voted at the Meeting approved the Plan, and the Monitor supports the Plan. If sanctioned by the Court and implemented, the Plan will provide a greater recovery for LU's creditors than any available alternative, while providing LU with a new foundation for long-term sustainability and future success by including post-implementation actions for further operational and governance transformation. Without the Plan, the Applicant would not be able to complete its restructuring and would likely need to cease its existing operations.

3. At the Meeting of the Affected Creditors held on September 14, 2022, the Plan was approved by 87.4% in number representing 68.9% in value of Affected Claims of the Affected Creditors that were present in person or by proxy at the Meeting. The vote in favour of the Plan satisfies the required "double majorities" test under the CCAA.

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[1] All capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to such terms in the Amended Plan of Compromise and Arrangement dated September 9, 2022, or in the Affidavit of Dr. Robert Haché sworn September 28, 2022 (the "**Sanction Order Affidavit**").

4. Before proceeding with implementation of the Plan, the next step is for the Plan to be sanctioned by the Court. It is respectfully submitted that the Court should sanction the Plan for the following reasons:

   (a) the Plan complies with the statutory requirements under the CCAA;

   (b) nothing has been done that is not authorized by the CCAA; and

   (c) the Plan is fair and reasonable in the circumstances.

5. In addition, the Applicant seeks the Unsealing Order and the Stay Extension Order. It is respectfully submitted that the Court should grant both orders for the following reasons:

   (a) **Unsealing Order:** At the outset of this CCAA Proceeding, the Sealed Exhibits were sealed from the public record, pending further Order of the Court. In sealing the Sealed Exhibits, the Court held that disclosure could be detrimental to any potential restructuring of LU and undermine the restructuring efforts being undertaken.[2] The Applicant is satisfied that the sensitivity associated with the correspondence is no longer be applicable once the Plan is implemented. LUFA and LUSU support the relief sought and MCU does not object. Accordingly, it is appropriate for the Sealed Exhibits to no longer be sealed at the Effective Time on the Plan Implementation Date; and

   (b) **Stay Extension Order:** The Applicant requires an extension of the Stay Period in order to satisfy all of the conditions under the Plan including, among other things, finalizing the Exit Financing Documentation.

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[2] *Laurentian University of Sudbury, Re*, 2021 ONSC 1453 (the "**February 26 Supplemental Endorsement**") at paras. 19 to 20.

PART II - FACTS[3]

Background

6. The Applicant is a publicly funded, bilingual and tricultural postsecondary organization operating in Sudbury, Ontario. The Applicant is an integral part of the economic fabric of Northern Ontario and serves as the primary postsecondary institution for a large geographic region.[4]

7. The Applicant commenced this CCAA Proceeding on February 1, 2021, when the Court granted the Initial Order. In granting the Initial Order at the Comeback Hearing on February 11, 2021, on the basis of an extensive record before it, the Court found*, inter alia*, that:

   (a) LU was a "debtor company" to which the CCAA applies;[5]

   (b) LU was "plainly insolvent and faces a severe liquidity crisis";[6]

   (c) absent additional financing, LU would be unable to meet payroll at the end of February 2021;[7]

   (d) the crisis was "real and immediate";[8] and

   (e) with the approval of the interim financing, LU would have liquidity for the duration of the Stay Period.[9]

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[3] The facts with respect to this motion are more fully set out in: (i) the Sanction Order Affidavit; and (ii) the Sixteenth Report of the Monitor dated September 28, 2022 (the "**Sixteenth Report**").
[4] Sanction Order Affidavit at para. 7, Motion Record of the Applicant dated September 28, 2022 ("**Motion Record**"), Tab 2; Sixteenth Report at para. 28.
[5] *Laurentian University of Sudbury, Re*, 2021 ONSC 659 (the "**February 1 Endorsement**") at para. 34.
[6] *Ibid* at para. 33.
[7] *Laurentian University of Sudbury, Re*, 2021 ONSC 1098 (the "**February 12 Endorsement**") at para. 73.
[8] February 26 Supplemental Endorsement at para. 18.
[9] February 12 Endorsement at para. 59.

8. Immediately after the Initial Order was granted, LU commenced a comprehensive operational, financial and academic restructuring to ensure that it could emerge from the CCAA Proceeding as a going concern and as a financially sustainable university.[10]

9. Most notably, LU immediately engaged in negotiations with the assistance of the Court-Appointed Mediator with respect to the various restructuring initiatives necessary for LU to achieve financial sustainability, including, among other things: (a) a full review and restructuring of its academic programs; (b) reducing its faculty complement based upon the academic restructuring; and (c) negotiating an end to, or terminating, LU's historic relationship with the Former Federated Universities. LU achieved agreement with several of the key parties who participated in the Mediation, including LUFA, LUSU and Huntington.[11]

10. In addition to entering into restructuring agreements with critical stakeholders, LU achieved the following key milestones during the CCAA Proceeding:[12]

(a) **Academic Restructuring:** LU completed a Senate-approved overhaul of its academic programs and courses, resulting in a revamping its program offerings to ensure that the offered programs are of interest to LU students and are financially sustainable.

(b) **LUFA Term Sheet:** After extensive negotiation, LU and LUFA entered into the LUFA Term Sheet. Among other things, a new five-year collective agreement was reached, 116 full-time faculty positions were eliminated, and certain benefit programs were terminated, resulting in a significant reduction to the annual expenses of LU. The LUFA Term Sheet was ratified by LUFA's members.

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[10] Sanction Order Affidavit at para. 25, Motion Record, Tab 2.
[11] Sanction Order Affidavit at para. 25, Motion Record, Tab 2.
[12] Sanction Order Affidavit at para. 32, Motion Record, Tab 2.

(c) **LUSU Term Sheet:** After extensive negotiation, LU and LUSU entered into the LUSU Term Sheet. Among other things, the LUSU collective agreement was extended to 2024, 42 staff positions were eliminated, and certain benefit programs were terminated, resulting in a further reduction in LU's annual expenses. The LUSU Term Sheet was ratified by LUSU's members.

(d) **Disclaimer of Federation Agreements with Former Federated Universities:** Following negotiations involving the Court-Appointed Mediator, LU disclaimed its relationships with each of the Former Federated Universities, reducing the amounts paid by LU on an annual basis by a further $7.7 million.

(e) **Cost Savings:** As a result of the milestones described above, LU achieved an annual reduction of expenses of approximately $40 million, representing approximately 25% of its overall annual operating expenses. These steps created a critically important foundation for future fiscal sustainability.

(f) **Pension Plan Amendments:** LU's Pension Plan was in a deficit position at the commencement of the CCAA proceeding and required special payments pursuant to applicable pension legislation. Pursuant to an agreement with LUFA and LUSU, amendments to the Pension Plan to enhance its financial health for the benefit of all beneficiaries were made, in addition to the cessation of further accruals to the pensions of employees of the Former Federated Universities.

(g) **Completion of Operational and Governance Reports:** Many of LU's operational and governance systems and practices were outdated, insufficient and inadequate to address complex and urgent issues. Following a comprehensive review undertaken by a third-party consultant (the Nous Group) retained with the assistance of the Monitor, key changes were identified as it relates to certain administrative functions within the university and extensive recommendations were made to bridge gaps and address issues in the operations of LU, and the governance of the Senate and the Board.

(h) **Completion of the Real Estate Review:** The Real Estate Review conducted by the Real Estate Advisor commenced in August 2021 and included a comprehensive review of LU's real estate portfolio. The work undertaken by LU through the Real Estate Advisor formed an important part of the discussions leading to the Plan Support Letter, which forms the basis for the distributions to be paid to Affected Creditors under the Plan.

(i) **Resolution of Grievances:** LU resolved 102 outstanding pre-filing grievances filed by LUFA during the Mediation. Following the resolution of the initial 102 grievances, LUFA filed additional grievances. As of January 20, 2022, there were 36 unresolved grievances filed by LUFA. As of September 27, 2022, all LUFA grievances subject to the Grievance Resolution Process Order are resolved. There are a few outstanding LUSU grievances that LU continues to attempt to resolve through the Grievance Resolution Process prior to implementation of the Plan.

(j) **Resolution of Claims:** Pursuant to the Claims Process Order, the Monitor received approximately 200 Proofs of Claim with an aggregate claim value in excess of $300 million. A further 937 individuals with aggregate claims of approximately $60 million were identified pursuant to the Compensation Claims Process Order. To date, 98.8% of all claims filed have been resolved. There are over 1,100 Affected Creditors.

The Meeting

11. On July 28, 2022, the Court accepted for filing the Plan and issued the Meeting Order authorizing LU to call, hold and conduct the Meeting.[13] No party objected to the granting of the Meeting Order authorizing the Plan to be presented to creditors.

12. In September, the Province advised that a three-year time period was sufficient to complete the purchase of the Designated Real Estate Assets. The Plan was amended on September 9, 2022 to reduce the time period for distributions to Affected Creditors from the Distribution Pool from four years to three. The amended Plan was served upon the Service List, filed with the Court and posted on the Monitor's website, all in accordance with the Meeting Order.[14]

13. The Meeting was held on September 14, 2022. The Meeting was attended in person or by proxy by 606 Affected Creditors and/or Unresolved Claimants, holding an aggregate value of $178,893,641 in Proven Claims. A total of 597 Affected Creditors voted by proxy or in person at the Meeting, holding an aggregate value of $62,937,935.[15]

14. The Plan was approved by 87.4% in number representing 68.9% in value of Affected Claims of the Affected Creditors that were present in person or by proxy at the relevant Meeting. The Monitor determined that the votes of Unresolved Claimants would not have impacted the outcome of the vote.[16]

15. The resolution to approve the Plan was carried by the Required Majority of Affected Creditors and the Plan was approved.[17]

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[13] Sanction Order Affidavit at para. 23, Motion Record, Tab 2.
[14] Sanction Order Affidavit at para. 46, Motion Record, Tab 2; Sixteenth Report at para. 40.
[15] Sixteenth Report at paras. 92-98.
[16] Sixteenth Report at paras. 99-100.
[17] Sanction Order Affidavit at para. 51, Motion Record, Tab 2, Sixteenth Report at para. 101.

The Plan

16. The aim of the Plan is to: (a) complete LU's restructuring and provide the opportunity for LU to operate as a going concern bilingual and tricultural post-secondary university in the City of Sudbury; (b) provide for a compromise of, and consideration for, Affected Claims that are Proven Claims; and (c) effect a release and discharge of all Affected Claims, Released Claims and the Huntington Released Claims.[18]

17. The salient terms of the Plan include:[19]

   (a) certain post-implementation steps that will be undertaken which are intended to better position LU from an operational and governance perspective;

   (b) the Unaffected Claims will remain unaffected by the Plan, subject to the treatment of the Unaffected Claims in the Plan;

   (c) a Guaranteed Minimum Plan Consideration Amount of $45.5 million from the sale of the Designated Real Estate Assets will be received by LU within three years of the Plan Implementation Date;

   (d) payment in full of all amounts owing to holders of CCAA Priority Claims, Secured Claims, and Vacation Pay Compensation Claims;

   (e) a *pro rata* distribution of the Distribution Pool remaining after the payments referred to above and any reimbursement to LU for amounts pre-funded into the Distribution Pool;

   (f) a full and final release of any Released Claims that may be made against the Released Parties, which is subject to a carve out for Non-Released Claims;

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[18] Sanction Order Affidavit at para. 57, Motion Record, Tab 2; Sixteenth Report at para. 41.
[19] Sanction Order Affidavit at para. 58, Motion Record, Tab 2; Sixteenth Report at paras. 42-54.

(g) an injunction against claims that may be asserted against any of the Released Parties, save and except as it relates to the Non-Released Claims; and

(h) a limited third-party release in favour of Huntington University regarding any claims that may be made against Huntington in respect of the discontinuance of the RHBP or the discontinuance of any academic programs or courses by Huntington.

18. The Plan is also subject to certain customary conditions to implementation of the Plan. Two conditions that are unique to the Plan are: (a) the resolution of all grievances that are subject to the Grievance Resolution process, and (b) the renewal of two senior management positions at LU (the President and Provost) prior to the Plan Implementation Date.[20]

Plan Releases

19. The Plan provides the Plan Releases in respect of the Released Claims in favour of LU, the CRO, EY, and each of their respective Representatives.[21]

20. Released Claims include all claims, obligations or liabilities in respect of the Released Parties existing or taking place at or prior to the Effective Time, or such later time as actions are taken to implement the Plan, that in any way relate to, or arise out of, or are in connection with:

(a) any Claims;

(b) any Claim that has been barred or extinguished by the Claims Process Order, the Compensation Claims Process Order or the Meeting Order, including any claim that has not been filed with the Monitor by the applicable Claims Bar Dates;

(c) any and all Pre-Filing Grievances, Restructuring Grievances, and Material Post-Filing Grievances by the Unions;

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[20] Sanction Order Affidavit at para. 59, Motion Record, Tab 2; Sixteenth Report at para. 53.
[21] Sanction Order Affidavit at para. 60, Motion Record, Tab 2; Sixteenth Report at para. 56.

(d) the assets, obligations, Business, property or affairs of the Applicant;

(e) the administration and/or management of the Applicant (including but not limited to the Pension Plan and the RHBP);

(f) the CCAA Proceeding or any matter or thing relating to or occurring in or in connection with the CCAA Proceeding, including but not limited to the terms of the Plan (but for greater certainty not any enforcement of the terms of the Plan against the Applicant); or

(g) matters in respect of implementation of the Plan, either on or after the Plan Implementation Date.[22]

21. Pursuant to the Huntington Transition Agreement, LU agreed to seek the Huntington Third Party Release if LU received a similar release in a future plan of compromise or arrangement.[23]

22. The Huntington Transition Agreement was approved by the Court as a key step in LU's restructuring and LU obtained certain benefits due to the consensual transition of arrangements following the disclaimer of the Federation Agreement with Huntington, the avoidance of litigation arising from the disclaimer and the resolution of shared services and the reimbursement for same by Huntington.[24]

23. The Plan Releases are limited by the Non-Released Claims.[25]

24. The Plan does not affect: (a) crown claims as described in section 6(3) of the CCAA, (b) employee-related payments as described in section 6(5) of the CCAA, or (c) pension claims as described in section 6(6) of the CCAA.[26]

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[22] Plan at section 1.1, Exhibit "A" to the Sanction Order Affidavit, Motion Record, Tab 2A.
[23] Sanction Order Affidavit at para. 62, Motion Record, Tab 2; Sixteenth Report at para. 57.
[24] Sanction Order Affidavit at paras. 63-64, Motion Record, Tab 2; Sixteenth Report at para. 58.
[25] Sanction Order Affidavit at para. 65, Motion Record, Tab 2; Sixteenth Report at para. 59.
[26] Sanction Order Affidavit at paras. 70-71, Motion Record, Tab 2.

Implementation of the Plan

25. It is LU's expectation that the Plan will be implemented by November 30, 2022 barring any unforeseen events.[27]

26. LU is currently negotiating with MCU regarding the terms of the Exit Financing Documentation. Subject to receipt of the requisite government approvals, LU will seek an Order from the Court on November 1, 2022 authorizing LU to enter into the Exit Financing Documentation.[28]

Plan Default

27. If the Guaranteed Minimum Plan Consideration Amount is not received by LU within three years of the Plan Implementation Date, the Plan Default is triggered. If the Plan Default is not cured during within one year, the Monitor will notify the Court and the Service List that the Plan is terminated. If this occurs, each Affected Creditor with a Proven Claim will have their claim reinstated against LU in an amount equal to the amount of their Proven Claim, less any distributions received under the Plan.[29]

PART III – ISSUES AND THE LAW

28. The issues to be considered on this motion are the following:

    (a) should the Court sanction the Plan?

    (b) should the Court grant the Unsealing Order?

    (c) should the Court grant the Stay Extension Order?

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[27] Sanction Order Affidavit at para. 72, Motion Record, Tab 2.
[28] Sanction Order Affidavit at para. 73, Motion Record, Tab 2.
[29] Sanction Order Affidavit at para. 58, Motion Record, Tab 2.

Issue 1: The Court Should Sanction the Plan

A. The Requirements for Plan Approval Have Been Met

29. Pursuant to section 6(1) of the CCAA, a Court has the discretion to sanction a plan if it has achieved the requisite "double majority" vote at any meeting of creditors held pursuant to section 4 of the CCAA.[30] Once a court sanctions a plan, the plan becomes binding on the debtor company and all of its creditors.[31]

30. The Plan was approved by the requisite double majority of Affected Creditors. The Plan was approved by 87.4% in number and 68.9% in value of the Affected Creditors that were present in person or by proxy at the relevant Meeting. Further, the scrutineers at the Meeting tabulated the votes of the Unresolved Claimants and the Monitor confirmed that such votes would not have had an impact on the results of the vote.[32]

31. Having satisfied the voting criteria, the issue before the Court is whether it should exercise its discretion to approve and sanction the Plan. The required criteria to be satisfied in seeking the Court's approval of a plan is well established:

(a) there must be strict compliance with all statutory requirements;

(b) all material filed and procedures carried out must be examined to determine if anything has been done or purported to be done which is not authorized by the CCAA; and

(c) the plan must be fair and reasonable.[33]

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[30] CCAA, ss. 4 and 6(1).
[31] CCAA, s. 6(1).
[32] Sanction Order Affidavit at paras. 51-52, Motion Record, Tab 2; Sixteenth Report at paras. 99-101.
[33] *CannTrust Holdings Inc., et al (Re)*, 2021 ONSC 4408 at para. 13.

(i) Compliance with all Statutory Requirements

32. When considering if the Applicant has complied with all statutory requirements under the CCAA, the Court will typically consider the following:

    (a) the applicant comes within the definition of a "debtor company" under section 2(1) of the CCAA;

    (b) the applicant has total claims in excess of $5 million;

    (c) the creditors were properly classified;

    (d) the notice of meeting was sent in accordance with the Meeting Order;

    (e) the meeting was properly constituted;

    (f) the voting was properly carried out; and

    (g) the plan was approved by the requisite majorities.[34]

33. Each of the above factors are factual issues, having been satisfied on the record. In particular:

    (a) the Court found that the Applicant qualified as a "debtor company" under the CCAA and that the Applicant's liabilities exceeded the $5 million threshold;[35]

    (b) the Affected Creditors were properly classified in the Meeting Order;[36]

    (c) prescribed notices of the Meeting were delivered to creditors and other interested persons within the timeframe and manner required by the Meeting Order;[37]

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[34] *Canwest Global Communications Corp.*, 2010 ONSC 4209 ["**Canwest Global**"] at para. 15.
[35] Initial Order of Chief Justice Morawetz dated February 1, 2021; Endorsement of Chief Justice Morawetz dated February 1, 2021 at paras. 33 – 34.
[36] Sanction Order Affidavit at para. 47, Motion Record, Tab 2; Meeting Order at para. 5.
[37] Sanction Order Affidavit at paras. 48-49, Motion Record, Tab 2; Sixteenth Report at paras. 85-88.

(d) the Meeting was properly constituted, and the voting was properly carried out in accordance with the Meeting Order; [38] and

(e) the Plan was approved by the requisite majorities of Affected Creditors under section 6(1) of the CCAA.[39]

34. The Monitor also specifically notes in the Sixteenth Report that the Applicant has strictly complied with all its statutory requirements.[40]

35. In addition, the Plan complies with the statutory requirements set out in sections 6(3), 6(5) and 6(6) of the CCAA, which provides that the Court may not sanction a plan of compromise and arrangement unless it contains certain specified provisions concerning certain Crown claims, employee claims, and pension claims.[41]

36. Based on the foregoing analysis, the Applicant submits that it has complied with all statutory requirements under the CCAA and this part of the test has been met.

(ii) No Unauthorized Steps Were Taken

37. With respect to determining whether anything has been done, or is purported to have been done, that is not authorized by the CCAA, the Court is entitled to rely on the reports of the Monitor.[42]

38. The Applicant has acted in good faith and with due diligence throughout the course of this proceeding, complying with the requirements of the CCAA and all Orders of the Court granted in this proceeding. The Applicant did not take any unauthorized steps and no unauthorized steps have alleged to have been taken in this CCAA Proceeding. The Applicant has provided stakeholders and the Court with many comprehensive affidavits

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[38] Sanction Order Affidavit at para. 50, Motion Record, Tab 2; Sixteenth Report at para. 92.
[39] Sanction Order Affidavit at para. 51, Motion Record, Tab 2; Sixteenth Report at para. 101.
[40] Sixteenth Report at para. 108.
[41] CCAA, ss. 6(3), 6(5), and 6(6).
[42] *Canwest Global* at para. 17.

providing an update on all key aspects of its restructuring. The Court has been apprised of all key issues facing the Applicant throughout the process.[43]

39. The Applicant is not aware of any basis for asserting that it has proceeded in a manner that is not authorized by the CCAA. The Applicant therefore respectfully submits that the second part of the plan sanction test has been met.

(iii) The Plan is Fair and Reasonable

40. Courts have emphasized that "perfection is not required" when assessing whether a plan is fair and reasonable.[44] Instead, a court should consider the relative degrees of prejudice that would flow from granting or refusing to grant the relief sought under the CCAA and whether the plan represents a reasonable and fair balancing of interests, in light of the other commercial alternatives available.[45] The discretion of the Court should be guided by the objectives of the CCAA – namely to "enable compromises to be made for the common benefit of the creditors and of the company, particularly to keep a company in financial difficulties alive and out of the hands of liquidators."[46]

41. In assessing whether a proposed plan is fair and reasonable, the Court will consider:

(a) whether the claims were properly classified and whether the requisite majorities of creditors approved the plan;

(b) what creditors would receive on bankruptcy or liquidation as compared to the plan;

(c) alternatives available to the plan and bankruptcy;

(d) oppression of the rights of creditors;

(e) unfairness to shareholders (inapplicable to LU); and

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[43] Sixteenth Report at paras. 107-109.
[44] *Abitibi Bowater Inc. (Re)*, 2010 QCCS 4450 at para. 33.
[45] *Re Canadian Airlines Corp.,* 2000 ABQB 442 ["**Canadian Airlines**"] at para. 3; *Canwest Global* at para. 19.
[46] *Northland Properties Ltd. v. Excelsior Life Ins. Co. of Can.*, 1989 CanLII 2672 (BC CA) at para. 17.

(f) the public interest.[47]

42. Each of these factors strongly supports approval of the Plan by this Court. In particular:

(a) Classification: The Affected Creditors of the Applicant were classified in a single class. In accordance with section 22(2) of the CCAA, the Affected Creditors were placed into a single class due to the commonality of interest of their claims against the Applicant. Affected Creditors will each receive a *pro rata* distribution from the Distribution Pool after all amounts owing to CCAA Priority Claims, Secured Claims, and Vacation Pay Compensation Claims are paid in full. The classification of Affected Creditors was supported by the Monitor[48] and approved in the Meeting Order without objection;[49]

(b) Creditor Approval: The Plan received significant support (87.4%) from the number of Affected Creditors who voted on the Plan by person or by proxy at the Meeting.[50] Such a significant level of support from the number of Affected Creditors in a case creates an inference that a plan is fair and reasonable because it demonstrates that assenting creditors believe that their interests are treated fairly and equitably under the plan.[51] This level of support of the Plan further reflects that a Plan need not be "perfect", that it is the product of significant negotiation with the Affected Creditors, and some Affected Creditors may still not support the Plan. This is the reason why the CCAA requires a double majority as a safeguard rather than a unanimous vote in favour of the Plan;

(c) Recovery on Bankruptcy: As set out in the Fourteenth Report of the Monitor dated July 22, 2022, the Monitor believes that if the Plan is not implemented, the most

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[47] *Canwest Global* at para. 21.
[48] Sixteenth Report at para. 89.
[49] Meeting Order at para 5.
[50] Sanction Order Affidavit at para. 51, Motion Record, Tab 2; Sixteenth Report at para. 99.
[51] *Canadian Airlines* at para. 97.

likely outcome is some form of liquidation of the Applicant's assets.[52] Under the Plan, the Monitor estimates that Affected Creditors with Proven Claims will recover approximately 14.1% to 24.2%. The liquidation analysis prepared by the Monitor indicates that recoveries for unsecured creditors could be between approximately 8.5% to 16.7% in a liquidation.[53] Accordingly, if the Plan is rejected, the creditors of the Applicant will be significantly worse off than under the Plan;

(d) Alternatives to the Plan: If the Plan is not sanctioned, the Applicant will not be able to successfully complete its restructuring and, likely LU would be required to cease operations and liquidate. In this scenario, students would be required to transfer to other universities and remaining faculty and staff would be terminated, other than a small group to assist with the transition of students. A liquidation would also give rise to significantly more claims due to, among others, increased termination and severance claims, and the wind-up of the Pension Plan with an actuarial deficit. The liquidation of LU would impact students, faculty, Indigenous communities, Francophones and Northern municipalities and businesses for years to come;[54]

(e) No Oppression of Creditors: Creditor treatment must be equitable, however, "equitable treatment is not necessarily equal treatment".[55] Case law makes clear that a plan can be fair and reasonable even if it does not provide exactly the same recoveries for all creditors, so long as there is sufficient rationale to explain any difference in treatment.[56] In the present case, the Plan treats all Affected Creditors equally in terms of treatment under the Plan and distributions under the Plan. The

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[52] Fourteenth Report of the Monitor dated July 22, 2022 ("**Fourteenth Report**") at para. 61.
[53] Fourteenth Report at para. 64; Sixteenth Report at paras. 115-116.
[54] Information Circular at page 42; Sanction Order Affidavit at para. 7, Motion Record, Tab 2; Sixteenth Report at para. 118.
[55] *Sammi Atlas Inc., Re*, 1998 CanLII 14900 (ON SC) at para. 4; *Air Canada (Re)*, 2004 CanLII 11700 (ON SC) at para. 9.
[56] *Canwest Global* at paras. 22-24.

only persons under the Plan that receive different treatment are the Unaffected Creditors who, due to the factual or legal nature of their claims, must be treated differently than the Affected Creditors in accordance with Applicable Laws, including the CCAA;[57]

(f) No Unfairness to Shareholders: The Applicant is a not-for-profit corporation without share capital. Accordingly, it does not have any shareholders and this aspect of the test is not applicable to LU;

(g) The Plan is in the Public Interest: The Plan will see LU continue as a going concern, as a bilingual and tri-cultural post-secondary university in the City of Greater Sudbury.[58] This will provide the opportunity for the thousands of students that attend LU each year to continue to attend LU and complete their degrees. Further, implementation of the Plan will preserve the employment of hundreds of faculty and staff members at LU. Finally, the continued existence of LU provides great economic benefit to the economy of the City of Greater Sudbury. For all of these reasons, sanctioning of the Plan is in the public interest.

B. The Plan Releases and Huntington Third Party Release are Appropriate

43. It is well established that courts have the jurisdiction to sanction plans of compromise and arrangement under the CCAA containing third party releases.[59] Courts will generally approve such third party releases where the releases are rationally tied to the resolution of the debtor's claims and will benefit creditors generally.[60]

[57] Plan, sections 3.4, to 3.7, 7.2 to 7.6, Exhibit "A" to the Sanction Order Affidavit, Motion Record, Tab 2A.
[58] Sanction Order Affidavit at para. 80, Motion Record, Tab 2.
[59] *Pacific Exploration & Production Corporation (Re)*, 2016 ONSC 5429 at para. 23 ["**Pacific Exploration**"]; *Lydian International Limited (Re)*, 2020 ONSC 4006 (CanLII) at para. 53 ["**Lydian**"].
[60] *Pacific Exploration* at para. 23; *Metcalfe & Mansfield Alternative Investments II Corp. (Re)*, 2008 ONCA 587 at para. 70.

44. The Court has provided the following list of factors that should be considered with respect to the approval of releases in CCAA proceedings, including third party releases:[61]

(a) whether the released claims are rationally connected to the purpose of the plan;

(b) whether the plan can succeed without the releases;

(c) whether the parties being released contributed to the plan;

(d) whether the releases benefit the debtors as well as the creditors generally;

(e) whether the creditors voting on the plan have knowledge of the nature and the effect of the releases; and

(f) whether the releases are fair, reasonable and not overly-broad.

45. It is not necessary for each of these factors to be satisfied in order for the release to be granted. Some factors may assume greater weight in one case than another.[62]

46. The Plan Releases are necessary and appropriate in the circumstances when the facts of this case are applied to the factors set out in *Lydian*:

(a) *Rational connection*: The Plan Releases are rationally connected to the purpose of the Plan. The object of the Plan Releases is to provide the Applicant with a fresh start so that it may continue to provide university education to thousands of students and employment to hundreds of people in the Greater Sudbury region and northern Ontario.

(b) *The Plan Requires the Releases*: The Plan cannot succeed without the Plan Releases. For the Applicant to continue operating and fulfilling the purpose of the Plan, it must have finality in respect of its obligations and liabilities moving

[61] *Lydian* at para. 54; cited with approval in *Green Relief Inc. (Re)*, 2020 ONSC 6837 at para. 27 ["**Green Relief**"].
[62] *Green Relief*, *ibid* at para. 28.

forward. That includes any claims over that may be made against the Applicant by any of the Released Parties, if they did not have the benefit of the Plan Releases.

(c) *Released Parties were Necessary and Essential*: The Released Parties were necessary and essential to the restructuring and contributed to the Plan. Throughout the CCAA Proceeding, the Applicant made monumental efforts to address its financial issues and proceed with the restructuring. Each of LU, the Monitor and the CRO, including their respective Representative were instrumental in advancing the restructuring and achieving approximately $40 million in annual savings. As disclosed in previous affidavits and reports of the Monitor, external Representatives of LU and the Monitor provided an extraordinary amount of assistance to LU over the course of the CCAA Proceeding, due to the limited resources within LU and an increased level of attrition experienced by LU. The D&Os of the Applicant were active and engaged in overseeing and making key strategic decisions leading to and during this complex restructuring. The D&Os also provided guidance and stability throughout the proceeding. The inclusion of all D&Os in the Plan Releases, including those who are not currently D&Os, gives effect to the claims bar date of July 31, 2021 approved by the Court in the Claims Process Order. Save and except for the Excluded D&O Claims, the Plan Releases provide finality with respect to no further claims being brought against the D&Os, which gives LU certainty as it relates to any claims for contribution and indemnity that might be asserted against LU. This rationale has been accepted by the Court as a compelling reason to grant such releases.[63] Courts have recognized the need to support directors and officers of CCAA debtors, court officers, and their respective representatives who have

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[63] *Skylink Aviation Inc., Re*, 2013 ONSC 2519 at para. 33.

assisted with and participated in the CCAA proceeding, and have also granted releases to these parties outside of a plan scenario to provide such protections.[64]

(d) *Releases Benefit the Debtor and its Creditors Generally*: The negotiation of the Plan by the Released Parties were and are critical to providing better recoveries to LU's creditors than what they would receive in an alternative scenario. The Plan Releases are a critical and integral part of the Plan, which provides LU with the path to emerge from this CCAA Proceeding and continue to offer university education in Northern Ontario. For these reasons, the Plan Releases benefit both LU and its creditors generally.

(e) *Creditors Aware of the Nature and Effect of the Releases*: Full disclosure of the Plan Releases was made to Affected Creditors in the Applicant's Motion Record dated July 21, 2022, in respect of the Meeting Order. Further, the Monitor provided the Meeting Materials (as defined in the Meeting Order) to over 1,100 Affected Creditors.[65] These materials included the Information Circular, which described the Plan Releases in detail. The Amended Plan (which did not alter the nature and effect of the Plan Releases) was served on the Service List on September 9, 2022, and uploaded to the Monitor's Website in accordance with the Meeting Order. At no point did any creditor or other stakeholder make any submissions on the scope of the Plan Releases or expressed any objection to the Plan Releases when LU sought the Meeting Order. The motion materials in support of the Sanction Order and the Monitor's 16th Report also provide clear information as to the nature of the Plan Releases.

[64] *Golf Town Canada Holdings Inc. et al.,* (29 March 2018) Toronto CV-16-11527-00CL (Ont. Sup. Ct. (Comm. List) CCAA Termination Order at para 14; *Cinram International Inc. et al.* (19 October 2012) Toronto CV-12-9767-00CL (Ont. Sup. Ct. (Comm. List) Administrative Reserve / Distribution / Transition Order at para. 29.
[65] Sixteenth Report at para. 85.

(f) *The Releases are Fair, Reasonable and not Overly Broad*: The Plan Releases apply to the extent permitted by law and expressly do not apply to liability for criminal, fraudulent, or other willful misconduct. The Non-Released Claims provide the appropriate carve outs to the Plan Releases to ensure that the Plan Releases are not overly broad.

47. For the foregoing reasons, the Plan Releases are fair, reasonable and rationally connected to the overall purpose of the Plan and should be approved by the Court.

48. The Huntington Third Party Release is also appropriate in the circumstances because:

(a) the Huntington Transition Agreement was a key step in the restructuring of LU and LU derived benefits from the Huntington Transition Agreement;

(b) the Huntington Released Claims include any claims that relate to the RHBP and the termination of the academic programs and courses by LU;

(c) the Huntington Transition Agreement requires LU to seek the Huntington Third Party Release in the event that the Plan contemplates the releases described above; and

(d) Huntington contributed in a tangible and meaningful way to LU's restructuring and the Plan and, in LU's view, the release of the Huntington Released Claims is appropriate and consistent with the terms reached in the Huntington Transition Agreement previously approved by the Court.[66]

49. For all of the foregoing reasons, the Applicant respectfully submits that it has complied with all of the requirements for the Court to sanction the Plan and requests that this Court grant the Plan Sanction Order.

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[66] Sanction Order Affidavit at para. 64, Motion Record, Tab 2; Sixteenth Report at para. 58.

Issue 2: The Court should grant the Unsealing Order

50. Pursuant to the Initial Order, the Sealed Exhibits were sealed from the public record pending further order of the Court.[67] This decision was appealed by certain parties, which leave to appeal was dismissed by the Ontario Court of Appeal on March 31, 2021.[68]

51. LUFA and LUSU requested that the Sealed Exhibits no longer be sealed at the appropriate time. All affected parties agreed that the appropriate time is at the Effective Time on the Plan Implementation Date because the sensitivity associated with the correspondence that gave rise to the sealing Order will no longer apply once the Plan has been implemented.[69] MCU has no objection to an unsealing of the Sealed Exhibits.[70]

Issue 3: The Court should grant the Stay Extension Order

52. The Applicant seeks an extension of the Stay Period up to and including November 30, 2022. Barring any unforeseen events, this is anticipated to be the last stay extension that is sought in the CCAA Proceeding.

53. Subject to the Court sanctioning the Plan, the final step to conclude the restructuring is to satisfy the conditions precedent to implementation of the Plan.[71] The Applicant is acting in good faith and with due diligence in pursuit of its restructuring goals.[72] The Monitor supports extending the Stay Period until November 30, 2022.[73] The Applicant will have sufficient liquidity to operate its business and meet its obligations to November 30, 2022.

54. For all of the foregoing reasons, the Applicant respectfully submits that this Court should extend the Stay Period up to and including November 30, 2022.

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[67] Initial Order at para. 44.
[68] Sanction Order Affidavit at paras. 85-86, Motion Record, Tab 2.
[69] Sanction Order Affidavit at paras. 87-89, Motion Record, Tab 2.
[70] Sanction Order Affidavit at para. 89, Motion Record, Tab 2.
[71] Sanction Order Affidavit at para. 93, Motion Record, Tab 2; Sixteenth Report at para. 143.
[72] Sanction Order Affidavit at para. 95, Motion Record, Tab 2; Sixteenth Report at para. 145(b).
[73] Sixteenth Report at para. 146.

PART IV – ORDER REQUESTED

55. The Applicant respectfully requests that this Court grant the relief requested and issue the proposed Sanction Order, Unsealing Order and Stay Extension Order substantially in the forms attached at Tabs 3, 4, and 5 of the Applicant's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of October, 2022

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SCHEDULE "A"

LIST OF AUTHORITES

1. *CannTrust Holdings Inc., et al (Re)*, 2021 ONSC 4408

2. *Canwest Global Communications Corp.*, 2010 ONSC 4209

3. *Abitibi Bowater Inc. (Re)*, 2010 QCCS 4450

4. *Re Canadian Airlines Corp., 2000 ABQB 442*

5. *Northland Properties Ltd. v. Excelsior Life Ins. Co. of Can.*, 1989 CanLII 2672 (BC CA)

6. *Sammi Atlas Inc., Re*, 1998 CanLII 14900 (ON SC)

7. *Air Canada (Re)*, 2004 CanLII 11700 (ON SC)

8. *Pacific Exploration & Production Corporation (Re)*, 2016 ONSC 5429

9. *Metcalfe & Mansfield Alternative Investments II Corp. (Re)*, 2008 ONCA 587

10. Lydian International Limited (Re), 2020 ONSC 4006 (CanLII)

11. *Green Relief Inc. (Re)*, 2020 ONSC 6837

12. *Skylink Aviation Inc., Re*, 2013 ONSC 2519

13. *Golf Town Canada Holdings Inc. et al.*, (29 March 2018) Toronto CV-16-11527-00CL (Ont. Sup. Ct. (Comm. List) CCAA Termination Order

14. *Cinram International Inc. et al.* (19 October 2012) Toronto CV-12-9767-00CL (Ont. Sup. Ct. (Comm. List) Administrative Reserve / Distribution / Transition Order

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Companies' Creditors Arrangement Act, RSC 1985, c C-36

Compromise with unsecured creditors

4 Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

Compromises to be sanctioned by court

6 (1) If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding

(a) on all the creditors or the class of creditors, as the case may be, and on any trustee for that class of creditors, whether secured or unsecured, as the case may be, and on the company; and

(b) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act* or is in the course of being wound up under the *Winding-up and Restructuring Act*, on the trustee in bankruptcy or liquidator and contributories of the company.

Court may order amendment

(2) If a court sanctions a compromise or arrangement, it may order that the debtor's constating instrument be amended in accordance with the compromise or arrangement to reflect any change that may lawfully be made under federal or provincial law.

Restriction — certain Crown claims

(3) Unless Her Majesty agrees otherwise, the court may sanction a compromise or arrangement only if the compromise or arrangement provides for the payment in full to Her Majesty in right of Canada or a province, within six months after court sanction of the compromise or arrangement, of all amounts that were outstanding at the time of the application for an order under section 11 or 11.02 and that are of a kind that could be subject to a demand under

(a) subsection 224(1.2) of the *Income Tax Act*;

(b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or

(c) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a province providing a comprehensive pension plan as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a provincial pension plan as defined in that subsection.

Restriction — default of remittance to Crown

(4) If an order contains a provision authorized by section 11.09, no compromise or arrangement is to be sanctioned by the court if, at the time the court hears the application for sanction, Her Majesty in right of Canada or a province satisfies the court that the company is in default on any remittance of an amount referred to in subsection (3) that became due after the time of the application for an order under section 11.02.

Restriction — employees, etc.

(5) The court may sanction a compromise or an arrangement only if

(a) the compromise or arrangement provides for payment to the employees and former employees of the company, immediately after the court's sanction, of

(i) amounts at least equal to the amounts that they would have been qualified to receive under paragraph 136(1)(d) of the *Bankruptcy and Insolvency Act* if the company had become bankrupt on the day on which proceedings commenced under this Act, and

(ii) wages, salaries, commissions or compensation for services rendered after proceedings commence under this Act and before the court sanctions the compromise or arrangement, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the company's business during the same period; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

Restriction — pension plan

(6) If the company participates in a prescribed pension plan for the benefit of its employees, the court may sanction a compromise or an arrangement in respect of the company only if

(a) the compromise or arrangement provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

(i) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,

(ii) if the prescribed pension plan is regulated by an Act of Parliament,

(A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that was required to be paid by the employer to the fund, and

(B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*,

(C) an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the *Pooled Registered Pension Plans Act*, and

(iii) in the case of any other prescribed pension plan,

(A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(B) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, if the prescribed plan were regulated by an Act of Parliament,

(C) an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the *Pooled Registered Pension Plans Act*; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

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

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

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

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

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