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**

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(Motion for Approval of Monitor's Activities and Fees)

October 7, 2022

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

FACTUM OF THE MONITOR

PART I - OVERVIEW

1. Ernst & Young Inc., in its capacity as Monitor of Laurentian University of Sudbury, brings this motion for approval of: (a) the Tenth Report, Eleventh Report, Thirteenth Report (collectively, the "**Reports**") and the Seventeenth Report, and the conduct and activities of the Monitor referred to therein; and (b) the fees and disbursements of: (i) the Monitor; (ii) EY FAAS; and (iii) Stikeman, for the period from January 1, 2022 to July 1, 2022 (the "**Period**").

2. The remuneration of Court officers is approved when it is fair and reasonable, judged by reference to certain factors enshrined in the jurisprudence, including the time and effort involved, the complexity of the matter, the responsibilities assumed, and the results achieved. These factors support the approval of the accounts of the Monitor, EY FAAS and Stikeman.

3. This CCAA Proceeding marks the first time that a public university in Canada commenced proceedings under the CCAA. This CCAA Proceeding is unprecedented in terms of the legal, operational, governance, regulatory and practical issues involved. As a result of the complexity of the issues involved and the lack of internal resources at LU, the Monitor was required to engage in far more aspects of the restructuring than in most other proceedings.

4. The activities of the Monitor and its counsel during the Period included significant claims administration, including the participation in the grievance resolution process and the dispute and resolution of claims filed pursuant to the various claims processes approved in the CCAA Proceeding, continuing to support the Applicant in implementing certain critical restructuring actions and assisting the Applicant in preparing the Plan and related materials.[1]

5. The efforts of the Monitor and its counsel during the Period have contributed to the completion of several critical steps in the Applicant's restructuring including:

(a) completing the review of substantially all of the unique and complex Claims, Grievances and Compensation Claims;

(b) supporting LU in responding to several regulatory investigations including those of the MFA, the Privacy Commissioner, Integrity Commissioner, the AGO and the Committee;

(c) liaising with many stakeholders, including creditors, active and former employees, students, community members, the Province and others;

(d) reviewing, strategizing and assisting the Applicant with the development of the Plan and the Information Circular;

(e) preparing a Liquidation Analysis to assist with the review of the Plan;

(f) consulting with the Applicant's counsel with respect to the development of the Meeting Order and preparing the related Meeting Materials and notices; and

(g) preparing to call, hold and conduct the virtual meeting of Affected Creditors.[2]

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[1] Seventeenth Report of the Monitor dated October 5, 2022 (the "**Seventeenth Report**") at paras. 40 and 42, Motion Record of the Monitor, Tab 2.
[2] Seventeenth Report at para. 101; Motion Record of the Monitor, Tab 2.

6. The fees and disbursements of the Monitor, EY FAAS and Stikeman resulting from the work described herein are a function of the complex circumstances of this CCAA Proceeding and the effort required to advance the interests of the Applicant and its stakeholders, maximize the amount available for distribution to the Applicant's creditors pursuant to the Plan, and advance the CCAA Proceeding toward a successful conclusion.[3]

7. The work performed by the Monitor and its counsel has been extensively reported to the Court and stakeholders in 17 reports filed over the course of the CCAA Proceeding, and four reports filed during the Period. The fees and disbursements of the Monitor, EY FAAS and Stikeman for the Period have been set out in the cash flow forecasts and reporting of actual cash flow results included within previously filed Reports.[4] The Monitor served its motion materials on Wednesday, October 5, 2022, including the Seventeenth Report summarizing the activities of the Monitor, EY FAAS and Stikeman during the Period, as well as two affidavits detailing the fees.

8. In the circumstances of this CCAA Proceeding, the fees and disbursements of the Monitor, EY FAAS and Stikeman for the Period are fair and reasonable. In addition, the Monitor has carried out its activities in a manner consistent with the Initial Order and as prescribed by the CCAA. It is respectfully submitted that this Court should approve (a) the Reports and the Seventeenth Report and the activities of the Monitor referred to therein, and (b) the fees and disbursements of the Monitor, EY FAAS and Stikeman.

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[3] Seventeenth Report at para. 102; Motion Record of the Monitor, Tab 2.
[4] Seventeenth Report at para. 44; Motion Record of the Monitor, Tab 2.

PART II - FACTS

9. The facts with respect to this motion are more fully set out in the Seventeenth Report. Capitalized terms used within this factum but not otherwise defined have the meanings ascribed to them in the Seventeenth Report. Unless otherwise stated all monetary amounts contained herein are expressed in Canadian dollars.

A. Parties to the CCAA Proceeding

10. On February 1, 2021, LU filed for and obtained protection under the CCAA.[5] Pursuant to the Initial Order, Ernst & Young Inc. was appointed as Monitor in this CCAA Proceeding.[6] The Monitor engaged Stikeman as its legal counsel prior to the commencement of the CCAA Proceeding.[7] Paragraph 37 of the Initial Order requires the Monitor and its counsel to seek Court approval of their fees and expenses incurred during the CCAA Proceeding.

B. Overview of the Fees and Disbursements

11. In support of this motion, the Monitor delivered its Seventeenth Report, which provides a detailed summary of the activities of the Monitor, EY FAAS and Stikeman throughout the Period, together with a detailed breakdown of the fees and disbursements of the Monitor, EY FAAS and Stikeman.[8] The Seventeenth Report supplements the Reports that were filed during the Period, detailing the activities of the Monitor, EY FAAS and Stikeman.

12. In addition, affidavits filed by lead professionals of the Monitor and Stikeman provide a comprehensive listing of the accounts sought to be approved, including summaries of each

[5] Seventeenth Report at para. 1; Motion Record of the Monitor, Tab 2.
[6] Seventeenth Report at para. 2; Motion Record of the Monitor, Tab 2.
[7] Seventeenth Report at para. 41; Motion Record of the Monitor, Tab 2.
[8] Seventeenth Report at Appendix "B", "C" and "E"; Motion Record of the Monitor, Tab 2.

account, individual professionals who have worked on the matter, each of their positions, average hourly billing rates, total number of hours worked and total associated professional fees.[9] Stikeman's accounts have been redacted to remove privileged, confidential, and sensitive information.[10]

13. The aggregate accounts of the Monitor, EY FAAS and Stikeman for the Period are set out below.[11]

	Fees	**Disbursements**	**HST**
EY Monitor	2,294,720.00	-	298,313.60
EY FAAS	438,448.50	-	56,998.31
Stikeman	1,991,905.95	5,630.92	259,638.23

14. This is the second time that the Court is being asked to approve the fees and disbursements of the Monitor, EY FAAS and Stikeman in this CCAA Proceeding. The Court previously approved the fees and disbursements of the Monitor, EY FAAS and Stikeman in this CCAA Proceeding for the period from February 1, 2021 to December 31, 2021.[12]

15. The accounts have been paid by the Applicant in the normal course since the commencement of the CCAA Proceeding as authorized by the Initial Order.[13] The Monitor, EY FAAS and Stikeman billed amounts at each firm's standard/regular hourly rates, which are consistent with the hourly rates charged by other firms in the Toronto market for the provision of similar services regarding significant complex commercial restructuring and accounting matters.[14]

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[9] Affidavit of Sharon Hamilton sworn October 5, 2022 (the "**Hamilton Affidavit**"); Motion Record of the Monitor, Tab 2, Appendix A; Affidavit of Elizabeth Pillon sworn October 5, 2022 (the "**Pillon Affidavit**"); Motion Record of the Monitor, Tab 2, Appendix D.
[10] Seventeenth Report at para. 55; Motion Record of the Monitor, Tab 2.
[11] Seventeenth Report at para. 44; Motion Record of the Monitor, Tab 2.
[12] Seventeenth Report at para. 15; Motion Record of the Monitor, Tab 2.
[13] Seventeenth Report at para. 54; Motion Record of the Monitor, Tab 2.
[14] Hamilton Affidavit at para. 5; Motion Record of the Monitor, Tab 2, Appendix A; Pillon Affidavit at para. 10; Motion Record of the Monitor, Tab 2, Appendix D.

In the Monitor's professional judgement, the accounts requested to be approved on this motion are fair and reasonable in the circumstances of this CCAA Proceeding.[15]

C. The Monitor and EY FAAS

16. Sharon Hamilton, Senior Vice President with Ernst & Young Inc., is the Monitor's lead professional on this mandate.[16] Her affidavit in support of this motion (the "**Hamilton Affidavit**") provides this Court with a detailed summary of information about the activities of the Monitor, EY FAAS and Stikeman throughout the Period.

17. In addition to the Seventeenth Report and the Reports, the Monitor has provided a: (a) comprehensive listing of its accounts for the Period, including each account date and amount;[17] (b) summary table which identifies the individual professionals of the Monitor who have worked on the matter for 20 hours or more during the Period together with their position, average hourly billing rates, total number of hours worked, total associated professional fees and the significant work stream(s) in the CCAA Proceeding in which the professional has been involved;[18] and (c) summary table which identifies the individual professionals of the EY FAAS team that provided Accounting Assistance for 20 hours or more during the Period, together with their position, average hourly billing rate, total number of hours worked and total associated professional fees.[19]

D. Counsel to the Monitor

18. Stikeman has represented the Monitor in all aspects of this CCAA Proceeding. The affidavit of Elizabeth Pillon, Partner and a lead lawyer on this mandate (the "**Pillon Affidavit**"),

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[15] Seventeenth Report at para. 103; Motion Record of the Monitor, Tab 2.
[16] Seventeenth Report at para. 38; Motion Record of the Monitor, Tab 2.
[17] Hamilton Affidavit at Exhibit "A"; Motion Record of the Monitor, Tab 2.
[18] Seventeenth Report at Appendix "B"; Motion Record of the Monitor, Tab 2.
[19] Seventeenth Report at Appendix "C"; Motion Record of the Monitor, Tab 2.

provides further details in respect of Stikeman's accounts in addition to those set out in the Seventeenth Report. That detail includes: (a) copies of Stikeman's accounts for the Period[20]; (b) a summary table that identifies the date, fees, disbursements and HST of each account[21]; and (c) a summary table that identifies the individual Stikeman professionals that have worked on the matter, their position, average hourly billing rate during the Period, total number of hours worked and total associated professional fees.[22]

19. The accounts submitted for the Period by Stikeman have been reviewed by the Monitor as and when received, authorized and paid by the Monitor and billed to the Applicant in the normal course as authorized by the Initial Order.[23]

E. The Activities of the Monitor, EY FAAS and Stikeman

20. During the Period (January 1 – July 1, 2022), the Monitor fulfilled the role of Monitor as such role is described in the Initial Order and prescribed by the CCAA.[24] The more significant matters that the Monitor has undertaken to assist the Applicant include: (a) continuing to resolve claims through the Claims Process and Compensation Claims Process; (b) assisting in the preparation of cash-flow forecasts and disbursement review; (c) reporting to the Court on the status of the CCAA Proceeding; (d) assisting the Applicant in connection with responding to information requests and liaising with significant stakeholders; and (e) assisting the Applicant in preparing the Plan and related materials, including drafting the Meeting Order.[25]

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[20] Pillon Affidavit at Exhibit "A"; Motion Record of the Monitor, Tab 2, Appendix D.
[21] Pillon Affidavit at Exhibit "B"; Motion Record of the Monitor, Tab 2, Appendix D.
[22] Pillon Affidavit at Exhibit "C"; Motion Record of the Monitor, Tab 2, Appendix D.
[23] Seventeenth Report at para. 58; Motion Record of the Monitor, Tab 2.
[24] Seventeenth Report at para. 40; Motion Record of the Monitor, Tab 2.
[25] Seventeenth Report at para. 40; Motion Record of the Monitor, Tab 2.

21. The Monitor's counsel has represented the Monitor in all aspects of the CCAA Proceeding during the Period, including in connection with: (a) at least eight motions, Court hearings and case conferences; (b) participating in the Grievance Resolution Process; (c) the review, dispute and resolution of disputed claims filed pursuant to the various claims procedures approved in the CCAA proceedings; (d) responding to information requests and liaising with significant stakeholders; and (e) assisting the Applicant in preparing the Plan and related materials.[26]

22. The following provides a description and overview of the primary activities undertaken by the Monitor and Stikeman in connection with the significant workstreams during the Period:[27]

Description of Significant Workstreams during the Period: January 1- July 1, 2022	
Work Stream	**Description of Work Performed**
Claims Process and Grievance Resolution Process	• Continuing to resolve the remaining outstanding Claims in connection with the over 200 Proofs of Claim with an aggregate asserted claim value in excess of $300 million filed by creditors for voting and distribution purposes in relation to the Plan. • Consulting with the Applicant and the Inspector Group in respect of each Material Claim, and administering the vote by the Inspector Group on the recommendation of the Monitor on the proposed treatment of Material Claims in accordance with the Claims Process Order. • Preparing and issuing notices of revision and disallowance, in consultation with the Applicant through its counsel. • Engaging in discussions and negotiations with respect to disputed Claims, Insured Claims and Court motions regarding Claims. • Participating in hearings in respect of disputed Claims before a Claims Officer, including preparing submissions and responding materials.

[26] Seventeenth Report at para. 42; Motion Record of the Monitor, Tab 2.
[27] Seventeenth Report at paras. 65-94, 101; Motion Record of the Monitor, Tab 2.

Description of Significant Workstreams during the Period: January 1- July 1, 2022	
Work Stream	**Description of Work Performed**
	• Participating in the Grievance Resolution Process, which entailed reviewing, negotiating and/or adjudicating various Grievances filed post-filing and Disputed Compensation Claims. • Administering the Claims Process database which includes detailed claim information, documentation, correspondence and claim status by individual claim.
The Plan	• Assisting LU with formulating the Plan, including the modelling of potential options, and preparing the Liquidation Analysis. • Reviewing and commenting on the Plan and the Information Circular. • Negotiating with and discussing the Plan with certain major stakeholders. • Discussing the preparation of the Meeting Order with the Applicant. • Preparing the Meeting Materials, including Notice to Creditors, Registration Form, Proxy Form and Creditor Information Statements.
CCAA Reporting	• Preparing for and attending at least eight motions or attendances in Court within the CCAA Proceeding. • Preparing four reports filed during the Period.
Cash Flow Reporting and Disbursement Approval	• Assisting the Applicant in the preparation of weekly cash flow reporting and related analysis. • Assisting the Applicant with the ongoing monitoring and reconciliation of restricted funds, including research grants and restricted donations deposited to the segregated cash accounts and reviewing and reconciling disbursements in connection with restricted funds. • Reviewing critical research spending requests, tuition billing, student refunds and deposits.

Description of Significant Workstreams during the Period: January 1- July 1, 2022	
Work Stream	**Description of Work Performed**
	• Assisting the Applicant with the preparation of cash flow forecasts and reporting in connection with stay extension motions in the CCAA Proceeding.
CCAA Administration	• Maintaining a website for the CCAA Proceeding where relevant documents, including all court documents, were made available for stakeholders to access. • Responding to significant volumes of inquiries from the Applicant's students, suppliers, creditors and other stakeholders and interested parties. • Assisting the Applicant in its public communications and communications with stakeholders, including students and suppliers.
Auditor General of Ontario	• Assisting LU in responding to the AGO's extensive information requests. • Participating in a motion before the Court in respect of certain warrants issued by the Committee. • Assisting LU with establishing a document review process to review documents for materials subject to the confidentiality provisions of the Mediator Appointment Order, including reviewing voluminous documentation identified for production by LU to the AGO and/or the Committee.
Liaison with MCU / Government	• Participating in numerous discussions with the Ministry of Francophone Affairs, the Privacy Commissioner and others. • Participating in numerous discussions with MCU, including regular calls with MCU, its advisor and legal counsel and representatives of LU along with numerous ad hoc calls as requested by MCU from time to time. • Assisting the Applicant with the provision of cash flow reporting to MCU in its capacity as DIP Lender, the preparation of supplementary cash flow related information requested by the DIP Lender and responding to the DIP Lender's questions from time to time.

Description of Significant Workstreams during the Period: January 1- July 1, 2022	
Work Stream	**Description of Work Performed**
Operational Matters	• Supporting LU's management in dealing with various operational matters including Labour related issues and other HR related matters. • Participating in regular meetings with Management to provide support in managing day-to-day issues. • Providing assistance to Management and various functional teams to mitigate the resource constraints arising from vacancies and increased workload from the CCAA Proceeding and governmental investigations.
Board, Board-Sub-Committee and Senate Meetings	• Preparing for and attending numerous meetings with LU's Board, Board Sub-Committees and selected Senate meetings, providing updates to the Board on CCAA matters and debriefing after these meetings.
Multi Year Projections	• Developing and updating various projection scenarios, including revised enrollment forecasts and proposed restructuring of academic programming and cost reduction measures, in connection with the 5-year financial projection that the Monitor assisted LU in preparing. • Discussing the 5-year financial projection with key stakeholders.
Liaison with Major Creditors including Lenders and Unions	• Engaging in various discussions with representatives of the Lenders, LUFA and LUSU and the other major creditors with respect to the Claims Process and the Compensation Claims processes. • Engaging in discussions with the Lenders, LUFA and LUSU with respect to the status of the real estate review and operational and governance review and in connection with the Plan. • Responding to numerous and extensive questions and information requests made by major creditors
Accounting Assistance	• See description at paras. 23-24, below

23. Due to the limited resources within the Applicant's finance team and numerous competing demands, the Applicant requested EY FAAS' assistance with the preparation of LU's annual financial statements. Starting in October 2021, and continuing into the Period, EY FAAS provided LU with Accounting Assistance, including: (a) advising Management on certain accounting policies and accounting alternatives, and their impact on LU's financial statements; (b) advising Management in respect of certain accounting analysis, and new or revised accounting policies; (c) assisting in the preparation of detailed account reconciliations for endowments and providing comments and observations on reconciliations prepared by Management; and (d) assisting with drafting financial statements with disclosure notes.[28]

24. EY FAAS did not provide a professional opinion on the application of accounting principles pursuant to the Canadian standards for not-for-profit organizations and the procedures performed in connection with the Accounting Assistance do not constitute an audit conducted in accordance with Canadian generally accepted auditing standards or other assurance, review or related services in accordance with the standards established by the Chartered Professional Accountants of Canada.[29]

PART III - ISSUES

25. This motion presents the following issues:

(a) Should this Court approve the fees and disbursements of the Monitor, EY FAAS and Stikeman?

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[28] Seventeenth Report at paras. 96-97; Motion Record of the Monitor, Tab 2.
[29] Seventeenth Report at para. 99; Motion Record of the Monitor, Tab 2.

(i) Does this Court have the jurisdiction to pass the accounts of the Monitor, EY FAAS and Stikeman?

(ii) Are the accounts of the Monitor, EY FAAS and Stikeman fair and reasonable?

(b) Should this Court approve the Reports and the Seventeenth Report, and the conduct and activities referred to therein?

PART IV - LAW AND ANALYSIS

A. Jurisdiction of this Court to Pass the Accounts

26. The jurisdiction of this Court to pass the accounts is confirmed in the Initial Order, which directs: "the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice".[30] The Initial Order reflects a practical consideration, as a judge who has managed the proceedings and has heard the various motions brought within the proceedings is best situated to determine the appropriate quantum of fees.[31]

B. The Fair and Reasonable Test for Approval of Accounts

27. The role of the Court on a motion to pass accounts is to evaluate them based on the "overriding principle of reasonableness".[32] The overall value contributed by the Monitor and its counsel is the predominate consideration in assessing the reasonableness of the accounts.[33] The

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[30] Initial Order at para. 37 (Monitor's Website).
[31] *Nortel Networks Corp. (Re)*, 2017 ONSC 673 at para. 17 [***Nortel***], cited with approval in *Laurentian University of Sudbury,* 2022 ONSC 2927 at para. 9 [*First Fees Endorsement*] (Monitor's Website).
[32] *First Fees Endorsement* at para. 9
[33] *Nortel* at paras. 15, 21; *Ibid*.

Court does not engage in a docket-by-docket or line-by-line assessment of the accounts as minute details of each element of a professional's services may not be instructive when looked at in isolation.[34] The Ontario Court of Appeal provides the following guidance: "The focus of the fair and reasonable assessment should be on what was accomplished, not on how much time it took".[35]

28. In this case, it is not necessary or desirable for the Court to engage in a review of each individual entry to determine whether the Monitor's, EY FAAS' and Stikeman's accounts are fair and reasonable. There has been considerable disclosure of the activities of the Monitor and Stikeman in the Reports and the Seventeenth Report and throughout the CCAA Proceeding. Based on the record filed in support of the motion and the degree of Court oversight and involvement throughout these proceedings, it is respectfully submitted that the Court can and should determine that the Monitor's, EY FAAS' and Stikeman's accounts are fair and reasonable.

C. The Factors to Be Considered

29. As mentioned, the test to be applied in determining whether to approve the Monitor's and Stikeman's fees is whether they are fair and reasonable. Any challenges to a court officer's accounts are evaluated based on specific objections as "without some specified principled objection, it would be inappropriate to reduce the fees of Court officers based on the suggestion that they are too high".[36]

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[34] *First Fees Endorsement* at para. 9.
[35] *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at para. 45 [***Diemer***], cited with approval in *First Fees Endorsement* at para. 9.
[36] *Tiger Brand Knitting Co., Re*, 2006 CarswellOnt 9983 at paras. 14-15 (Ont. S.C.).

30. To aid in the determination of whether a court-appointed officer's fees are fair and reasonable, the Ontario Court of Appeal have recognized certain factors as a useful guideline.[37] These factors are not intended to be an exhaustive list and other factors may be material in any particular case.[38] These factors include:

(a) the nature, extent and value of the assets being handled;

(b) the complications and difficulties encountered;

(c) the degree of assistance provided by the company, its officers or its employees;

(d) the time spent;

(e) the Monitor's knowledge, experience and skill;

(f) the diligence and thoroughness displayed;

(g) the responsibilities assumed;

(h) the results achieved; and

(i) the cost of comparable services when performed in a prudent and economical manner.

(i) Nature, extent and value of the assets being handled

31. The Applicant's governance structure is complex, and its constituents are vast. LU is a publicly funded, bilingual and tri-cultural post-secondary institution. Its operations are located in the City of Greater Sudbury, Ontario and it has consistently been one of the largest employers in Sudbury. LU's operations include its academic teaching operations, academic research and the provision of certain ancillary services, including student residences and food services.[39] At the

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[37] *Confectionately Yours Inc., Re* (2002), 36 C.B.R. (4th) 200 at para. 51 (Ont. C.A.), cited with approval in *First Fees Endorsement* at para. 10; *Diemer* at para. 33.
[38] *Nortel* at para. 14.
[39] Pre-Filing Report of the Proposed Monitor dated January 30, 2021 at paras. 27 and 30, (Monitor's Website).

time that the CCAA Proceeding commenced, the book value of LU's assets exceeded $350,000,000, consisting primarily of its investments and capital assets.[40] LU's capital assets are comprised of buildings, equipment and furnishing, site improvements, and land. While LU is a not-for-profit, non-share capital corporation, Courts have expressly rejected the fact that an entity was a non-profit federation as a basis for reducing a Court-officer's fees.[41]

(ii) Complications and difficulties encountered

32. These proceedings are unprecedented in terms of the novel legal, operational, governance, regulatory and practical issues confronted. From the outset, these proceedings have been highly contentious and scrutinized by creditors and the public alike. These proceedings represent the first time in Canada that a publicly funded educational institution has filed for creditor protection under the CCAA.

33. The CCAA Proceeding has involved complex issues and a multitude of competing interests from various groups of stakeholders. Significant complex issues include the formulation and negotiation of the Plan, the negotiation of the replacement of the DIP Lender with the Province of Ontario, the resolution and review of the complex legal and factual issues contained within the over 200 Proofs of Claim that were filed with an aggregated asserted claim value in excess of $300 million (excluding Compensation Claims) and the resolution of various motions involving complicated and novel legal issues, including in respect of s. 19(2) claims and the *Freedom of Information and Protection of Privacy Act*.

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[40] Affidavit of Dr. Robert Haché sworn January 30, 2021 at paras. 203 and 204 (Monitor's Website).
[41] *Confectionately Yours Inc., Re* (2002), 36 C.B.R. (4th) 200 at para. 53 (Ont. C.A.), citing *Chartrand v. De la Ronde*, 139 Man.R. (2d) 36 (Q.B.).

34. The Applicant's stakeholders are numerous, and the Monitor was challenged with coordinating, negotiating and liaising with many unique stakeholders that do not typically feature in a conventional CCAA proceeding. During the Period, the CCAA Proceeding received significant stakeholder involvement from MCU, the AGO, the Committee, the Lenders, the MFA, the Privacy Commissioner, Integrity Commissioner, and LUFA and LUSU.

35. The efforts of the Monitor and its counsel in assisting the Applicant have had a material, positive impact on advancing the interests of the Applicant and its stakeholders, maximizing the amount available for distribution to the Applicant's creditors pursuant to the Plan, and advancing the CCAA Proceeding toward a successful conclusion. For example, as of the date of the Seventeenth Report, the Monitor has resolved over 99% of the Claims and all October 14 Grievances. The progress during the Period, and thereafter, in formulating a Plan which has received the support of stakeholders is critical to the Applicant's successful emergence from the CCAA.

36. Furthermore, the Court has approved a new DIP Facility which, among other things, replaces the existing DIP Lender with the Province of Ontario. These extraordinary achievements have laid the groundwork by which LU could negotiate and develop the Plan during the Period.

(iii) Degree of assistance provided by the company, its officers or its employees

37. In light of its size and mandate, the Applicant's internal resources were strained even at the start of the CCAA Proceeding. As at December 30, 2020, the Applicant employed only 111 administrative and professional staff.[42] Since the CCAA filing on February 1, 2021, several key

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[42] Pre-Filing Report of the Proposed Monitor dated January 30, 2021 at para. 75, (Monitor's Website).

personnel have departed from LU, leaving a large number of administrative positions vacant, many of which remained vacant throughout the Period.[43] This has negatively impacted the ability of the remaining LU personnel to manage both their day-to-day ordinary course duties as well as advancing many of the additional and time intensive aspects of the CCAA Proceeding.

38. Significantly complex issues, a multitude of competing interests from varied groups of stakeholders, the state of LU's books and records and its past practices, and lack of internal resources have resulted in the Monitor undertaking a scope of work that is beyond the typical role of a monitor in a CCAA Proceeding.[44] Given the financial circumstances of LU and the limited resources within the finance team at LU, this scope of work included assisting with day-to-day operations and, at the Board's request, the provision of accounting personnel from EY FAAS to assist the LU finance team with, among other things: (a) advising Management on certain accounting policies as well as accounting alternatives and their impact on LU's financial statements; (b) advising Management in respect of certain accounting analysis, and new or revised accounting policies; and (d) assisting with drafting financial statements with disclosure notes.[45]

(iv) Time spent

39. The Monitor and its counsel have named the individual professionals[46] who have performed the necessary work along with their position, hourly billing rate, total number of hours

[43] Seventh Report of the Monitor dated August 24, 2021 at para. 34, (Monitor's Website); Twelfth Report of the Monitor dated April 29, 2022 at para. 133 (Monitor's Website); Seventeenth Report at para. 87; Motion Record of the Monitor, Tab 2.
[44] Seventeenth Report at para. 100; Motion Record of the Monitor, Tab 2.
[45] Seventeenth Report at paras. 96-97; Motion Record of the Monitor, Tab 2.
[46] Individual professionals of the Monitor working less than 20 hours have been aggregated in a single line item.

worked, total associated professional fees and the work stream(s) in the CCAA proceeding in which the professional has been involved.

40. The time spent, and thus the fees and disbursements of the Monitor and Stikeman resulting from their activities, are commensurate with the significant role and responsibilities and activities undertaken. The work has been undertaken with a view to advancing the interests of the LU estate having regard to the complications and challenges that have confronted the Monitor, to maximize the amounts available for distribution to creditors, and to best position LU to emerge from this CCAA Proceeding as a going concern.

41. In addition to this Court's direct knowledge of the Monitor's and Stikeman's activities, the information necessary for this Court to assess the reasonableness of the time spent and the fees and disbursements of the Monitor and Stikeman during the Period has been detailed in the Seventeenth Report and the Reports.

(v) Monitor's knowledge, experience and skill

42. The Monitor and Stikeman have significant knowledge, experience and skill in complex restructuring matters. The Monitor and its counsel have acted in this capacity in some of Canada's largest and most complicated restructuring mandates. The lead professionals involved are all highly regarded and possess significant expertise in complex and special situations.

(vi) Diligence and thoroughness displayed

43. The breadth of matters detailed in the Seventeenth Report demonstrate the diligence and thoroughness displayed by the Monitor, EY FAAS and Stikeman.

(vii) Responsibilities assumed

44. The Monitor, with the assistance of Stikeman, carried out extensive activities during the Period. These activities are detailed in the Seventeenth Report and the Reports, and a summary table as been provided at para. 22, above. A summary table that details the hours allocated to each workstream can be found at paragraph 64 of the Seventeenth Report.

45. The more significant responsibilities that the Monitor has assumed include: (a) continuing to resolve claims through the Claims Process and Compensation Claims Process; (b) assisting in the preparation of cash-flow forecasts and disbursement review; (c) reporting to the Court on the status of the CCAA Proceeding; (d) assisting the Applicant in connection with responding to information requests and liaising with significant stakeholders; and (e) assisting the Applicant in preparing the Plan and related materials.[47]

(viii) Results achieved

46. The efforts of the Monitor and its counsel during this Period of the CCAA Proceeding were integral to advancing LU's restructuring and moving LU closer to a position where it could present the Plan to its creditors for a vote. The Monitor's contribution to the completion of several critical steps in LU's restructuring including reviewing, strategizing and assisting the Applicant with the development of the Plan and the Information Circular.[48]

47. The Monitor and its counsel also successfully achieved the resolution of various contentious motions of a complex, novel and high-profile nature, including in respect of s. 19(2) claims, the AGS, and the FIPPA motion. The Monitor's activities were essential to advancing a

[47] Seventeenth Report at para. 40; Motion Record of the Monitor, Tab 2.
[48] Seventeenth Report at para. 101; Motion Record of the Monitor, Tab 2.

claims process and completing the review of substantially all of the over 200 Proofs of Claim filed, many of which contain legally and factually complex issues, with an aggregate asserted claim value in excess of $300 million (excluding Compensation Claims). The efforts of the Monitor and its counsel during the Period also resulted in the resolution of Compensation Claims and the majority of grievances.[49]

48. When the fees and disbursements of the Monitor, EY FAAS and Stikeman are viewed in the context of the significant results achieved, it is respectfully submitted that the accounts are fair and reasonable.

(ix) The cost of comparable services when performed in a prudent and economical manner

49. The Monitor's and Stikeman's professional fees and disbursements are comparable to the rates charged by other professional firms in the Toronto market for the provision of similar services regarding significant complex commercial restructuring matters.

D. Conclusion on Fairness and Reasonableness

50. It is respectfully submitted that a consideration of the factors articulated by the courts supports the conclusion that the remuneration of the Monitor, EY FAAS and Stikeman is fair and reasonable and their fees and disbursements for the Period should be approved.

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[49] Seventeenth Report at paras. 67, 101; Motion Record of the Monitor, Tab 2.

E. Monitor's Reports and Activities

51. In *Re Target Canada Co.,* Morawetz R.S.J. (as he then was) stated that a request to approve a monitor's report "is not unusual"[50] and that:

> there are good policy and practical reasons for the court to approve of Monitor's activities and providing a level of protection for Monitors during the CCAA process…
>
> Specifically, Court approval:
>
> (a) allows the Monitor to move forward with next steps in the CCAA proceedings;
>
> (b) brings the Monitor's activities before the Court;
>
> (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
>
> (d) enables the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;
>
> (e) provides protection for the Monitor not otherwise provided by the CCAA; and
>
> (f) protects the creditors from the delay and distribution that would be caused by:
>
> i. re-litigation of steps taken to date, and
>
> ii. potential indemnity claims by the Monitor.[51]

52. The form of the proposed order, with respect to approval of the Monitor's Reports and activities, is consistent with the language used in *Target*[52] and subsequent proceedings[53], including this CCAA Proceeding.[54]

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[50] *Re Target Canada Co.*, 2015 ONSC 7574 at paras. 2 [***Target***], cited with approval in *First Fees Endorsement* at para. 13.
[51] *Target* at para. 22.
[52] *Target* at paras. 7 and 26.
[53] See, for example: *Re Clover Leaf Foods* (29 September 2020), Toronto CV-20-00641220-00CL (Ont Sup Ct [Commercial List]) Order (Re Approval of Monitor's Activities and Fees and for Stay Extension) at para. 3 (Monitor's Website).
[54] *Re Laurentian University of Sudbury* (11 May 2022), Toronto CV-21-656040-00CL (Ont Sup Ct [Commercial List]) Order (Re Approval of Monitor's Activities and Fees) at para. 3 (Monitor's Website).

53. In the present case, the Monitor's Reports and the Seventeenth Report, and the conduct and activities of the Monitor referred to therein should be approved. The Monitor was asked specifically to place its fees and activities before the Court for approval on a timely basis, instead of waiting for approval later in the CCAA Proceeding. The Monitor responded to this request by seeking approval of its fees on May 11, 2022, and now again on October 12, 2022. The Monitor has acted responsibly and carried out its activities in a manner consistent with the provisions of the CCAA and in compliance with the Initial Order. No party has put forward evidence to the contrary. It is respectfully submitted that in the circumstances, the Court should avoid second-guessing the good faith decisions of the Monitor made in the course of the highly complex and fast-paced CCAA Proceeding.

PART V - RELIEF SOUGHT

54. For the foregoing reasons, the Monitor requests an Order approving (a) the Reports and the Seventeenth Report, and the conduct and activities of the Monitor referred to therein, and (b) the fees and disbursements incurred during the period January 1, 2022 through to and including July 1, 2022, being:

(a) For the Monitor, $2,294,720.00 (plus applicable taxes of $298,313.60);

(b) For EY FAAS, $438,448.50 (plus applicable taxes of $56,998.31); and

(c) For Stikeman, $1,991,905.95 and disbursements of $5,630.92 (plus applicable taxes of $259,638.23).

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of October, 2022.

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SCHEDULE "A" – LIST OF AUTHORITIES

1. *Nortel Networks Corp. (Re)*, 2017 ONSC 673
2. *Laurentian University of Sudbury*, 2022 ONSC 2927
3. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851
4. *Tiger Brand Knitting Co., Re*, 2006 CarswellOnt 9983 (Ont. S.C.)
5. *Confectionately Yours Inc., Re* (2002), 36 C.B.R. (4th) 200 (Ont. C.A.)
6. *Chartrand v. De la Ronde*, 139 Man.R. (2d) 36 (Q.B.)
7. *Re Target Canada Co.*, 2015 ONSC 7574
8. *Re Clover Leaf Foods* (29 September 2020), Toronto CV-20-00641220-00CL (Ont Sup Ct [Commercial List]) Order (Re Approval of Monitor's Activities and Fees and for Stay Extension)
9. *Re Laurentian University of Sudbury* (11 May 2022), Toronto CV-21-656040-00CL (Ont Sup Ct [Commercial List]) Order (Re Approval of Monitor's Activities and Fees)

SCHEDULE “B” – RELEVANT STATUTES

Not applicable

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

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

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

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

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