



Office of the Auditor General of Ontario

# Update on the Special Audit of Laurentian University



*December 2021*



# Update on The Special Audit of Laurentian University

## 1.0 Summary

Established in 1960, Laurentian University of Sudbury (Laurentian) is one of Ontario's 23 public universities. Over the last five fiscal years, Laurentian has received on average \$85.9 million per year (or 45% of its total annual revenues) from the provincial government. Laurentian has had a significant role in the greater Sudbury region, as one of the primary bilingual and post-secondary institutions serving Northern Ontario. It is also one of the region's largest employers, employing a total of 1,751 people, including part-time staff and student employees, as of December 2020.

On February 1, 2021, Laurentian filed for creditor protection under the *Companies' Creditors Arrangement Act* (CCAA). This is the first time in Canadian history that a publicly funded university has filed for creditor protection.

The CCAA is a federal act that allows corporations experiencing financial difficulties to restructure their affairs while being temporarily protected from creditors. The CCAA can only be used by corporations with amounts owing in excess of \$5 million. Based on information in reports of Ernst & Young, Inc., the Monitor appointed under the CCAA proceedings, Laurentian has spent approximately \$9.86 million from January 30, 2021 to August 13, 2021 thus far on restructuring activities under the CCAA and is projected to spend a total of \$19.84 million by February 4, 2022.

On April 28, 2021, the Standing Committee on Public Accounts (Committee) unanimously passed a motion requesting that the Office of the Auditor General conduct a value-for-money audit on Laurentian's operations for the period of 2010 to 2020. During the discussion on the motion, the Committee indicated that they want the audit to examine what happened to lead Laurentian to enter the CCAA process, to bring transparency to the situation, and to identify lessons learned. The Committee also identified that they would like the audit to look forward and "ensure something like this does not happen in another academic institution elsewhere."

Because of the historical scope of the request, as well as the desire to be forward looking, the Committee provided the Auditor General with discretion on the scope of the audit. Shortly thereafter, our Office initiated a value-for-money audit to examine the governance, operations and past financial decisions at Laurentian University.

### Limitations Imposed by Laurentian on the Conduct of the Special Audit

Given that Laurentian is a publicly funded institution, part of the broader public sector (BPS) and a recipient of significant provincial government funding, there is an expectation from the public for transparency and accountability.

Unfortunately, our Office has been denied access by Laurentian to information we consider absolutely necessary for the conduct of our audit work to be able



to fully satisfy the Committee's motion. Laurentian has refused to provide our Office information that its internal and external legal counsel decided is subject to solicitor-client privilege, litigation privilege, or settlement privilege. In many instances, it has also declined to provide non-privileged information on the basis that to review documents to determine if information is privileged would be too resource intensive. Consequently, we have been restricted from obtaining unfettered access and timely access to information. Such a pervasive restriction of our audit work is unprecedented.

Further, Laurentian put in place communication and documentation protocols that discourage university staff from speaking freely with us or providing our Office with unfettered access to information without fear of reprimand. These protocols have created a culture of fear surrounding interactions with our Office.

In addition, Laurentian has implemented a centralized tracking system to review most information before it is provided to us and to control and monitor our conversations with staff. All of these self-imposed processes require Laurentian staff and external legal counsel to spend significant time and resources responding to our audit requests.

Unfettered access to information is fundamental to the work of our Office. If an auditor is prevented from accessing information, many of the auditor's questions will remain unanswered, and audit findings would remain inconclusive. Undue scope restrictions also undermine an auditor's ability to accurately assess the completeness of information provided in response to audit inquiries.

Despite explaining on numerous occasions the type of access granted under the *Auditor General Act* and the safeguards in place, Laurentian has not wavered on its position. In light of this, on September 29, 2021, the Auditor General filed an Application before the Ontario Superior Court of Justice for a declaration that section 10 of the *Auditor General Act* confers on the Auditor General a right of access to privileged information and documents.

### Standing Committee on Public Accounts (Committee)

In October 2021, we communicated the restrictions Laurentian was placing on our work to the Standing Committee on Public Accounts. The Committee then formally requested information from Laurentian University in conjunction with their motion. The *Legislative Assembly Act*, Standing Orders and Parliamentary Privilege provide the Committee the authority to command the production of papers or things that the Committee considers necessary for its work.

After sending three letters, the Committee began to receive material from Laurentian on November 17, 2021. However, Laurentian's external legal counsel indicated that Laurentian would not provide privileged information, information subject to court ordered confidentiality, and information that implicates third parties and the CCAA process. A fourth letter was sent to Laurentian on November 18, 2021 to request the President and the Chair of the Board of Laurentian appear before the Committee to explain their delay and refusal to provide material. It remains unclear whether all requested material will be received.

### Ministry of Colleges and Universities (Ministry)

The Ministry has strongly encouraged Laurentian to cooperate with the Office of the Auditor General of Ontario by providing the information requested for the special audit.

## 2.0 Background

### 2.1 Standing Committee on Public Accounts

The Standing Committee on Public Accounts (Committee) is an all-party committee of the Legislature empowered to review and report to the Legislative Assembly its observations, opinions and recommendations on reports from the Auditor General and on the Public Accounts. The Committee examines,

assesses and reports to the Legislative Assembly on a number of issues, including the economy and efficiency of government and broader public sector (BPS) operations, and the effectiveness of programs in achieving their objectives. Under sections 16 and 17 of the *Auditor General Act*, the Committee may also request that the Auditor General examine any matter in respect of the Public Accounts or undertake a special assignment.

## 2.2 University Governance in Ontario

A university is a higher learning institution designed for teaching and research. Universities are authorized by the province to grant undergraduate and graduate academic degrees through their academic programs. There are 23 publicly funded universities in Ontario. Every publicly funded university, with the exception of Queen's University (governed under Royal Charter) has its own provincial statute, the earliest having been established in legislation in 1849 (University of Toronto) and the most recent awaiting proclamation (Université de Hearst and the Northern Ontario School of Medicine).

Universities are part of the broader public sector (BPS) and receive on average 23% of their operating revenue from the Ministry of Colleges and Universities (Ministry). As BPS entities, they are subject to specific accountability and transparency rules set out in legislation (e.g. *Broader Public Sector Accountability Act, 2010* and *Broader Public Sector Executive Compensation Act, 2014*). These rules are accompanied by directives and cover topics such as expenses, procurement, executive compensation, and the publication of business plans and other business or financial documents such as an annual report.

The Ministry provides operating funding and manages some capital funding programs to publicly assisted universities, establishes provincial objectives for the use of public funds, and designs frameworks for achieving these objectives. The province has bilateral agreements with each university (referred to as Strategic Mandate Agreements), which outline priorities of the province and establish strategic objectives

(e.g., graduation rates, research funding secured) for the universities.

Most universities operate through a bicameral structure, whereby university operations are governed by a Board of Governors and academic affairs governed by a Senate. The Board of Governors (Board) has powers to make bylaws, resolutions, or regulations. The Board has legal responsibility for the institution and authority over the conduct, management and control of university property, revenues, expenditures, business, and other affairs. Each university's legislation may include requirements to have a number of Lieutenant Governor in Council (LGIC) appointments (provincial appointments) on the Board. The Senate, generally comprised of academic and administrative representatives, is responsible for making academic decisions, such as educational policies, the creation of faculties, or courses. However, any educational or academic policy from Senate that requires the expenditure of funds or the establishment of facilities, requires Board approval.

## 2.3 Companies' Creditors Arrangement Act (CCAA)

The *Companies' Creditors Arrangement Act* (CCAA) is a federal act that allows corporations experiencing financial difficulties to restructure their affairs while being temporarily protected from creditors. During this period, the company presents a Plan of Arrangement (Plan) to the court and its creditors for approval, outlining how it will address the debt it owes. The CCAA process can only be used by corporations with amounts owing in excess of \$5 million. Until Laurentian's filing on February 1, 2021, the CCAA process had been used exclusively in the private sector. However, there are no restrictions in the act that limit its use by a government-funded and broader public sector institution.

The intent of the CCAA process is to provide an opportunity for a corporation to restructure its financial affairs to avoid bankruptcy and allow creditors to receive some form of payment for amounts owing

to them by the company. First, a majority number in each class of creditor, representing two-thirds of the value of the claims in each class of creditors, must vote to approve the Plan. Second, the Court will be asked to sanction the Plan. Upon Court sanction, the company continues forward as outlined under the Plan until it has satisfied the requirements under the Plan. If a class of creditors or the Court does not approve the Plan, the CCAA process will often come to an end shortly after the Plan fails. When the CCAA proceedings come to an end as a result of a failed Plan, it is possible that the corporation will subsequently be placed into receivership or bankruptcy, which are stricter legal processes, to address the corporation's financial difficulties.

## 2.4 Laurentian University of Sudbury

Located in the bilingual City of Greater Sudbury, Laurentian has been one of the primary post-secondary organizations serving Northern Ontario and one of Sudbury's largest employers. As of December 30, 2020, Laurentian employed approximately 1,751 people; of this total, approximately 758 were full-time employees and approximately 993 were contract, part-time and student employees.

Laurentian's history is that of a tricultural (French, English and Indigenous) and bilingual post-secondary institution, offering courses in both English and French. On April 6, 2021, Laurentian's Senate passed a resolution approving proposed program closures and faculty and departmental restructuring as part of the university's financial restructuring under the *Companies' Creditors Arrangement Act* (CCAA).

Approximately 8,200 domestic and international undergraduate students (or approximately 6,250 full-time equivalents) were enrolled in the 2020/21 fall semester. Laurentian's graduate program had approximately 1,100 domestic and international graduate students (or approximately 830 full-time equivalents) enrolled in the 2020/21 fall semester. Generally, half of its students have been from Northern Ontario, and 19% of its total student population studied in French.

In the last five years, between 2016/17 and 2020/21, the Province of Ontario provided Laurentian on average \$85.9 million annually, comprising over 45% of Laurentian's revenues (see **Figure 1**).

### 2.4.1 Laurentian University's Finances

The following financial information is derived from our review of Laurentian's public financial statements.

**Figure 1: Provincial Funding to Laurentian University 2016/17 to 2020/21 (\$)**

Source of data: Public Accounts of Ontario Detailed Schedules of Payments

| Ministry                                                  | 2016/17           | 2017/18           | 2018/19           | 2019/20           | 2020/21           |
|-----------------------------------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| Colleges and Universities <sup>1</sup>                    | 84,992,214        | 86,780,936        | 81,173,128        | 83,672,459        | 78,885,968        |
| Economic Development, Job Creation and Trade <sup>2</sup> | 324,534           | 225,699           | 297,591           | 603,362           | –                 |
| Education                                                 | 324,175           | 561,416           | 673,345           | 419,256           | 141,300           |
| Energy, Northern Development and Mines <sup>3</sup>       | 57,915            | –                 | –                 | –                 | –                 |
| Health <sup>4</sup>                                       | 688,184           | –                 | 1,516,299         | 1,752,949         | 668,132           |
| Labour, Training and Skills Development <sup>5</sup>      | 537,901           | 144,191           | 313,846           | 715,569           | 989,963           |
| Natural Resources and Forestry                            | 153,315           | 98,101            | 110,715           | 75,000            | 50,000            |
| Other                                                     | 1,047,502         | 862,395           | 507,500           | –                 | –                 |
| <b>Total</b>                                              | <b>88,125,740</b> | <b>88,672,738</b> | <b>84,592,424</b> | <b>87,238,595</b> | <b>80,735,363</b> |

Notes:

1. Includes funding from former Ministry of Advanced Education and Skills Development and Ministry of Training, Colleges and Universities.
2. Includes funding from former Ministry of Economic Development and Growth and Ministry of Economic Development, Employment and Infrastructure.
3. Includes funding from former Ministry of Northern Development and Mines.
4. Includes funding from former Ministry of Health and Long-Term Care.
5. Includes funding from former Ministry of Labour.

**Ratio analysis** is a useful way to evaluate an entity's financial results and trends over time to provide indicators of financial performance. It also enables a comparison of financial results of entities of varying sizes. Useful financial ratios include:

- **Net income/loss ratio:** [(total revenues - total expenses) / total revenues] measures the portion of an entity's revenues which translate to net income.
- **Current ratio:** [current assets / current liabilities] measures an entity's ability to meet its short-term obligations using its current, more liquid assets.
- **Debt ratio:** [total debt / total assets] measures the portion of assets funded by debt.
- **Primary reserve ratio:** [expendable net assets / total expenses x 365 days] measures how long an entity could cover expenses using its available unrestricted net assets without accessing any new revenues.
- **Viability ratio** [expendable net assets / long-term debt] measures the proportion of long-term debt that could be settled using unrestricted assets.

As illustrated in **Figure 2**, Laurentian's net income ratio averaged -0.8% over the past eight years and has

consistently been below Ministry benchmarks for the post-secondary sector during this period.

Laurentian generated a net loss of \$11.9 million in aggregate between 2012/13 and 2019/20. During this time, its debt ratio increased and approached the Ministry's benchmark maximum debt ratio of 35%. Laurentian's current ratio had fallen to 0.67 by April 30, 2016. This meant that for every dollar of current liabilities (i.e. liabilities falling due within one year), Laurentian only had 67 cents available to pay the liabilities using its current assets such as cash and short-term investments as at the end of the 2015/16 fiscal year. As of April 30, 2020, Laurentian's primary reserve ratio had also fallen below the sector benchmark of 30 days.

By 2019/20, Laurentian's viability ratio, which measures the proportion of long-term debt that could be settled using unrestricted assets, had already been below zero for the past eight years.

Laurentian was historically able to manage its cash flows because the university did not have a significant number of capital projects under active development and its cash flows from operating activities tended to break even over the last decade. However, as indicated in **Figure 3** below, between 2014/15 and 2018/19 the

**Figure 2: Ratio Analysis**

Source of Data: Laurentian University Audited Financial Statements

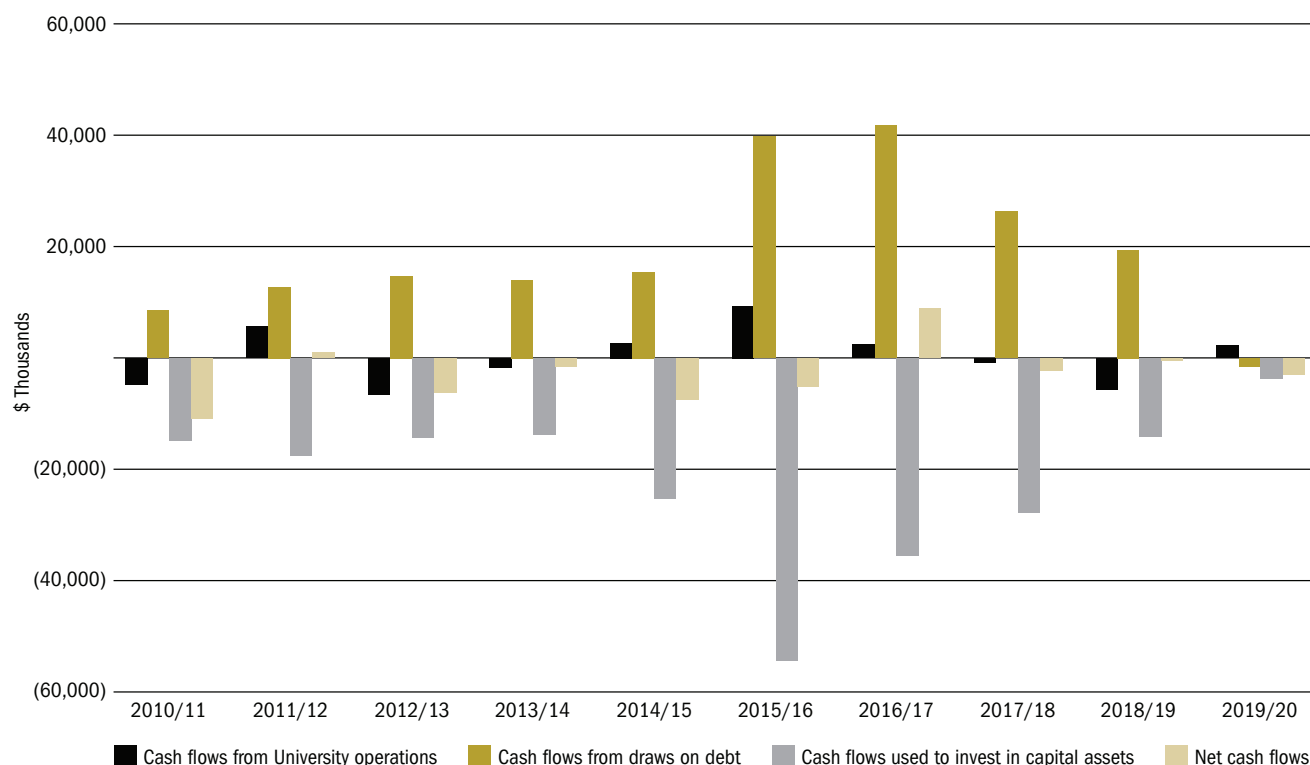
| Measure                               | Ministry Benchmarks | 2012/13 | 2013/14 | 2014/15 | 2015/16 | 2016/17 | 2017/18 | 2018/19 | 2019/20 |
|---------------------------------------|---------------------|---------|---------|---------|---------|---------|---------|---------|---------|
| Net Income/Loss Ratio (%)             | =>1.5               | 0.1     | (0.8)   | (1.0)   | (1.1)   | (1.0)   | 1.1     | (2.1)   | (1.6)   |
| Debt Ratio (%)                        | =<35                | 25.0    | 25.2    | 23.3    | 29.9    | 28.2    | 29.9    | 30.7    | 30.0    |
| Current ratio                         | =>1                 | 1.55    | 1.51    | 1.06    | 0.67    | 0.89    | 0.83    | 0.78    | 0.76    |
| Primary Reserve (Days) <sup>1,2</sup> | =>30                | (14)    | (16)    | (11)    | (18)    | (21)    | (15)    | (25)    | (33)    |
| Viability Ratio (%) <sup>1</sup>      | =>30                | (10.0)  | (12.2)  | (8.3)   | (10.0)  | (10.5)  | (8.3)   | (14.3)  | (19.6)  |
| In-Year Surplus (\$ millions)         | =>0                 | 0.2     | (1.4)   | (1.7)   | (2.0)   | (1.8)   | 2.1     | (4.1)   | (3.1)   |

1. In calculating expendable net assets, the Office of the Auditor General of Ontario (OAGO) included all components of net assets other than endowments, capital assets and employee future benefits, while the Ministry also excludes portions of the net asset balance related to accrued vacation pay.

2. In calculating long-term debt, the OAGO included the current portion of long-term debt, while the Ministry excluded this portion.

**Figure 3: Laurentian University Cash Flow Analysis (2010-2020)**

Source: Laurentian University Audited Financial Statements



university completed several capital projects which put significant strain on the university's cash flow.

#### 2.4.2 Laurentian's Application to Restructure Under the CCAA

On February 1, 2021, Laurentian filed for creditor protection under the *Companies' Creditors Arrangement Act* (CCAA). This is the first time in Canadian history that a publicly-funded university has filed for creditor protection under the CCAA.

Based on information in reports of the court-appointed monitor (Monitor's Reports), Laurentian has spent approximately \$9.86 million from January 30, 2021 to August 13, 2021 on restructuring costs. These are costs for services retained by Laurentian to conclude its CCAA proceedings. Including projections to February 4, 2022, Laurentian is estimated to spend a total of \$19.84 million on restructuring costs between January 30, 2021 and February 4, 2022.

### 3.0 Audit Initiation and Restrictions to Our Work

We initiated our audit work on May 14, 2021 by meeting with the President of Laurentian to explain the role of the Auditor General and discuss the upcoming audit. Following this meeting, an introductory letter for the audit was sent to the President and the Chair of the Board of Laurentian along with a draft management representation letter to be signed at the end of the audit, indicating that Laurentian's management fulfilled its responsibilities to provide our Office with complete and accurate information.

Following this, a detailed list of information requests was provided to Laurentian on June 15, 2021. Nearly one month later, Laurentian informed our Office that information it deems to be privileged would not be provided to our Office.



Laurentian has refused to provide our Office information that it asserts is subject to solicitor-client privilege, litigation privilege, or settlement privilege. In some instances, Laurentian has declined to provide non-privileged information on the basis that the process to review documents for privilege is too resource intensive, thereby restricting our access to non-privileged information as well. As a consequence, our Office is not being provided with timely, unfettered and direct access to all information needed to conduct our audit without significant scope limitations.

Between July 8, 2021 and September 28, 2021 our Office explained to Laurentian's President, internal legal counsel and external legal counsel on a number of occasions the type of access granted under the *Auditor General Act*, discussed the past practices of other auditees, shared protocols and guides on working with our Office (see **Appendix 1** for extracts from the *Auditor General Act* and guidelines document). During this time, we also reassured Laurentian repeatedly that under the *Auditor General Act* disclosure of privileged documents and information does not waive privilege. Further, our Office indicated that Laurentian would receive a draft report for senior management's review prior to publication to safeguard against public disclosure of privileged information.

On three occasions, Laurentian declined the Auditor General's offer to meet with the Board as a whole to discuss the audit and the audit process.

Outlined below are examples of challenges that have been faced by our audit team in accessing information and the limitations placed on our work.

### Board of Governor and Committee Materials

A review of Board and Board Committee (Committee) materials and minutes is standard practice in value-for-money audits. Such a review can provide insight into the governance of an organization, the quality and completeness of information used to inform key decision-makers, and provides a record of the decision-making process.

Laurentian's internal and external legal counsel indicated it needed to review all Board and

Committee materials for privilege before providing them to our Office. It was not until early September that we were informed that in addition to redactions, documents related to Board items had been removed in their entirety from Board packages. As a result, our audit team expended significant time attempting to identify what material had been removed from Board and Committee materials. In some cases, information was initially withheld in its entirety and later provided in redacted form. In other instances, Laurentian provided a list of materials removed, but the audit team had no record of certain items being discussed at Board meetings or was previously informed by Laurentian staff that no accompanying materials existed.

Laurentian's screening measures have prevented our auditors from accessing information in a timely manner and our staff must spend excessive time to review the material provided to assess completeness. Further, the lack of transparency in the process undermines our Office's ability to rely on management's assertions of relevance and completeness, since we do not know what information is being withheld or specific reasons as to why.

### Legal Invoices

Auditing standards require auditors to identify litigation and claims involving the entity being audited as well as to review legal expenses. Such work often includes reviewing source documentation, such as legal invoices and details of completed or ongoing litigation. As part of Laurentian's refusal to provide privileged information, no legal invoices have been provided to date and limited documentation on current and past litigation has been received.

### Emails and Electronic Server Folders

Our audit team requested access to emails of senior administrators and key decision-makers and electronic server folders for the university administration which contain thousands of individual files. Provision of such access by auditees is standard practice in many of our audits. It is often the most efficient and effective way to conduct an audit since it allows auditors to review digital information in an unrestricted manner

and uses less auditee staff time and resources. However, Laurentian internal and external legal counsel took the position that they also needed to review every email and server file for privilege before sharing them with our audit team.

On September 3, 2021, Laurentian's external legal counsel told us that access to emails and server files would not be provided to us because it would take years to vet them for privileged information and they do not have the capacity to review them before they are provided to us. They suggested that we provide them with search terms to search the email database and review this material before providing it to us. Under audit standards, this would be an unacceptable limitation on our work, as it impacts the independent performance of our audit procedures.

### Human Resources, Recruitment and Union Grievance Files

Laurentian refused to provide our Office direct access to human resource files and union grievance files, and instead decided that all files were to be reviewed by Laurentian staff first. As a result, we have not been able to freely obtain information required for our audit or confirm completeness of the files we receive. Further, Laurentian indicated it did not have sufficient staff to review entire personnel or grievance files.

On November 23, 2021, months after our request, access to some personnel files reviewed by Laurentian were provided to our auditors, with redactions and information removed. Further, our Office has only been provided access to some incomplete union grievance files and some information with respect to grievance settlements.

### Communications with Staff

Our understanding is that Laurentian has instituted a centralized process to control all information and communications with our audit team. Staff are being instructed to:

- inform internal legal counsel if we ask to meet or talk with them;
- seek approval to provide us with any documented information; and
- share all information provided to the audit team (including public information) with internal and external legal counsel.

This strategy is causing an additional strain on Laurentian's resources and has the side effect of making staff hesitant to speak freely with us, for fear of reprimand. A culture of fear has been created.

Direct unfettered access is the most efficient way to audit, for both the auditor and the entity being audited. We routinely receive privileged information during our audit work. In some cases, our auditors need to access databases that may contain thousands of privileged documents as part of their audit work (e.g. compliance related databases). It has been our experience that in such cases the auditees provide us with direct unfettered access with the understanding that such access does not waive privilege and there will be an opportunity for the auditee to review our draft audit report prior to finalization to ensure that client privileged information is not disclosed.

If the university chose, likewise, to provide our audit team with unrestricted access, there would be no need for them to centrally collect and review documents or files. As a result, the legal effort and costs associated with vetting such large amounts of material would be reduced or avoided entirely.

Given the limitations and challenges faced by our Office, the Auditor General filed an Application before the Ontario Superior Court of Justice on September 29, 2021 for a declaration that Section 10 of the *Auditor General Act* includes unfettered access to privileged information. Based on communications to date, it is unclear if Laurentian will provide our Office unrestricted access to information even if the court agrees with our interpretation of Section 10 of the *Auditor General Act*.

## 4.0 Laurentian's Response to the Standing Committee on Public Accounts

Pursuant to subsection 35 (1) of the *Legislative Assembly Act* and Standing Order 113 (b) the Standing Committee on Public Accounts (Committee) has the authority to command the production of papers or things that the Committee considers necessary for its work. The Committee has requested information directly from Laurentian in conjunction with their motion.

The Committee sent three letters to Laurentian's President and Board Chair requesting the production of information to the Committee and asked for explanations as to why requested information was not being provided. Laurentian's external legal

counsel indicated that Laurentian would not provide privileged information, information subject to court ordered confidentiality, and information that implicates third parties and the CCAA process.

The Committee has indicated that, unless demonstrable progress is made on the Committee's demand, the Committee may have to seek a Speaker's warrant to enforce its demand.

On November 17, 2021, the Committee began to receive some material from Laurentian. A fourth letter was sent to Laurentian on November 18, 2021 to request the President and the Chair of the Board of Laurentian to appear before the Committee to explain their delay and refusal to provide all material. The President and the Chair of the Board are scheduled to appear before the Committee on December 1, 2021. It is still unclear whether all material requested by the Committee will be received.

## Appendix 1: The Office of the Auditor General's Access to Information

### Extracts from the *Auditor General Act*

Subsections 10(1) and 10(2) of the *Auditor General Act* (Act) impose a mandatory duty on auditees to provide documents and information to the Office and entitles the Auditor General access to documents and information that the Auditor General believes to be necessary to perform the duties under the Act.

#### **Duty to furnish information**

10(1) Every ministry of the public service, every agency of the Crown, every Crown controlled corporation and every grant recipient shall give the Auditor General the information regarding its powers, duties, activities, organization, financial transactions and methods of business that the Auditor General believes to be necessary to perform his or her duties under this Act.

#### **Access to records**

10(2) The Auditor General is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by a ministry, agency of the Crown, Crown controlled corporation or grant recipient, as the case may be, that the Auditor General believes to be necessary to perform his or her duties under this Act.

#### **No waiver of privilege**

10(3) A disclosure to the Auditor General under subsection (1) or (2) does not constitute a waiver of solicitor-client privilege, litigation privilege or settlement privilege.

Staff of the Office of the Auditor General of Ontario have a duty of confidentiality with respect to privileged information they obtain under Section 10 of the *Auditor General Act*.

#### **Duty of confidentiality**

27.1(3) A person required to preserve secrecy under subsection (1) shall not disclose any information or document disclosed to the Auditor General under section 10 that is subject to solicitor-client privilege, litigation privilege or settlement privilege unless the person has the consent of each holder of the privilege.

### ***The Ontario Public Service Guide for Interaction with the Auditor General of Ontario: Value for Money Audits***

The duty of auditees to provide the Office of the Auditor General (OAGO) privileged information is clearly articulated in *The Ontario Public Service Guide for Interaction with the Auditor General of Ontario: Value for Money Audits*, a jointly developed guide signed in April 2019 by the Auditor General and the Secretary of the Cabinet. The guide defines auditees or audited entities as government ministries, organizations in the broader public sector (BPS) such as hospitals, colleges and universities, school boards, agencies of the Crown, and Crown-controlled corporations and their subsidiaries.

The Guide states that auditees are required “to provide the OAGO with free (open) access to audit information, reports, and explanations, as the OAGO deems necessary to complete the audit”, indicating that the subsections of the Act related to privileged information (10(3), 27.1(3)), “ensure that the disclosure of privileged information to the Auditor General does not result in the loss of the privilege and prohibit the OAGO from disclosing privileged information without the consent of the holder of the privilege.”

As institutions which receive reviewable grants and transfer payments from the province, universities are part of the broader public sector and are grant recipients as defined under the Act. Therefore, they have a duty to provide all documents and information that the Auditor General believes is necessary to perform her duties, including privileged documents and information.





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