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

MOTION RECORD
(Returnable April 29, 2021)

April 21, 2021

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M	Notice by Laurentian University of Sudbury to Disclaim or Resiliate an Agreement dated April 1, 2021 re: Thorneloe University
N	Notice by Laurentian University of Sudbury to Disclaim or Resiliate an Agreement dated April 1, 2021 re: Huntington University
O	Request for Reasons in Writing Regarding Notice of Disclaimer from University of Sudbury dated April 11, 2021
P	Letter dated April 19, 2021 to Sheppard & Claude from Thornton Grout Finnigan LLP with Reasons for Disclaimer
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Tab 1

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

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NOTICE OF MOTION
(Extension of the Stay of Proceedings, Increase to DIP, Approval of Agreements)

Laurentian University of Sudbury (the "**Applicant**" or "**LU**") will make a motion to Chief Justice Morawetz of the Ontario Superior Court of Justice on Thursday, April 29, 2021, at 9:00 A.M. (Eastern Time), or as soon after that time as the motion can be heard, via Zoom videoconference due to the COVID-19 pandemic.

PROPOSED METHOD OF HEARING:

This motion is to be heard via Zoom videoconference, the details of which are attached at Schedule "**A**".

THIS MOTION IS FOR:

1. An Order (the "**Order**") substantially in the form attached at Tab 3 of the Motion Record of the Applicant dated April 21, 2021 that, among other things[1]:

   (a) extends the Stay Period to and including August 31, 2021;

[1] All capitalized terms not otherwise defined in this Notice of Motion are as defined in the Affidavit of Dr. Robert Haché sworn April 19, 2021 contained at Tab 2 of the Motion Record dated April 21, 2021 (the "**Second Haché Affidavit**").

(b) approves the Term Sheet entered into between the Applicant and the Laurentian University Faculty Association ("**LUFA**") on April 7, 2021 annexed as Exhibit H to the Second Haché Affidavit (the "**LUFA Term Sheet**"), together with all Schedules thereto, including but not limited to the Pension Term Sheet regarding the Retirement Plan of the Applicant and its Federated and Affiliated Universities, Registration No. 0267013 (the "**Pension Plan**");

(c) approves the Term Sheet entered into between the Applicant and the Laurentian University Staff Union ("**LUSU**") on April 5, 2021, annexed as Exhibit I to the Second Haché Affidavit (the "**LUSU Term Sheet**"), together with all Schedules thereto, including but not limited to the Pension Term Sheet regarding the Pension Plan;

(d) approves the Transition Agreement entered into between the Applicant and Huntington University dated April 16, 2021 annexed as Exhibit Q to the Second Haché Affidavit (the "**Huntington Transition Agreement**");

(e) approves an Amendment (the "**DIP Amendment**") to the Applicant's DIP Facility (as defined below) that, among other things, increases the principal amount available under the DIP Facility by an additional $10 million, to finance the Applicant's working capital requirements and other general operating purposes, post-filing expenses, and costs during the Stay Period, in accordance with the terms of the Amended DIP Term Sheet annexed as Exhibit Z to the Second Haché Affidavit;

(f) increases the DIP Lender's Charge granted in the Amended and Restated Initial Order dated February 11, 2021 to a maximum principal amount of $35 million;

2. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

Overview

3. On February 1, 2021, the Applicant sought and received an initial order (the "**Initial Order**") granting it protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and approving a stay of proceedings for the initial 10-day period (the "**Stay Period**") and certain Court ordered super-priority charges.

4. On February 10, 2021, the Court held a comeback hearing which resulted in the issuance of an amended and restated initial order (the "**Amended and Restated Initial Order**") which, among other things, approved a debtor-in-possession interim financing arrangement in the amount of $25 million (the "**DIP Facility**") and extended the Stay Period to April 30, 2021.

5. At the request of the Applicant, on February 5, 2021, the Court issued an order (the "**Mediator Appointment Order**") appointing the Honourable Justice Sean Dunphy of the Ontario Superior Court of Justice as the Court-appointed mediator (the "**Mediator**") to facilitate negotiations on the various aspects of the Applicant's restructuring (the "**Mediation**").

6. Since the issuance of the Mediator Appointment Order, the Applicant has been engaged in intensive Mediation sessions with the stakeholders necessary to negotiate the critical first steps in the restructuring of the Applicant's finances and operations, including:

   (a) a committee of representatives elected by the Senate (the "**Senate Sub-Committee**"), to address the academic restructuring;

   (b) the University of Sudbury, Huntington University, and Thorneloe University (collectively, the "**Federated Universities**");

   (c) the Laurentian University Faculty Association ("**LUFA**"), the bargaining unit representing the faculty; and

   (d) the Laurentian University Staff Union ("**LUSU**"), the bargaining unit representing non-faculty staff (together with the Senate Sub-Committee, the Federated Universities, LUFA, and LUSU, the "**Mediation Parties**").

7. LU has also engaged in discussions, both within and outside of the Mediation, with its pre-filing lenders Royal Bank of Canada, The Toronto-Dominion Bank and Bank of Montreal (collectively, the "**Lenders**") who collectively are owed in excess of $100 million.

8. As discussed further below, and detailed in the Second Haché Affidavit, LU has reached critical agreements with most of the Mediation Parties listed above.

9. LU now seeks Court approval of its agreements with those Mediation Parties, as well as approval of an amendment to the DIP Facility (as defined below) and an extension of the Stay Period until and including August 31, 2021.

Approval of LUFA Term Sheet

10. The Applicant seeks approval of the LUFA Term Sheet dated April 7, 2021.

11. The LUFA Term Sheet is the product of extensive negotiation over the past two months between the Applicant and LUFA, assisted by the Court-appointed Monitor and with the involvement of the court-appointed Mediator.

12. The LUFA Term Sheet sets out the key terms and conditions agreed to by the parties, including the negotiation of a new five-year collective agreement, terms relating to the termination of 116 faculty positions arising from the academic restructuring, salary reductions for all Faculty members, and various changes related to the Pension Plan.

13. On April 13, 2021, the LUFA Term Sheet was ratified in a vote by the LUFA members.

14. The Monitor supports the approval of the LUFA Term Sheet.

Approval of LUSU Term Sheet

15. The Applicant seeks approval of the LUSU Term Sheet dated April 5, 2021.

16. The LUSU Term Sheet is the product of extensive negotiation over the past two months between the Applicant and LUSU, assisted by the Court-appointed Monitor and with the involvement of the court-appointed Mediator.

17. The LUSU Term Sheet sets out the key terms and conditions agreed to by the parties, including terms relating to the termination of 42 LUSU members, amendments to certain benefits for LUSU members, and various changes related to the Pension Plan.

18. On April 13, 2021, the LUSU Term Sheet was ratified in a vote by the LUSU members.

19. The Monitor supports the approval of the LUSU Term Sheet.

Approval of Huntington Transition Agreement

20. The Applicant seeks approval of the Huntington Transition Agreement dated April 16, 2021.

21. The Huntington Transition Agreement is the product of negotiations between the Applicant and Huntington, as overseen by the Court-appointed Monitor and assisted by the Court-appointed Mediator.

22. The Huntington Transition Agreement sets out the terms that will flow from the Applicant's termination of its federated relationship with Huntington, including that Huntington will cease to deliver academic courses or programs as credit toward LU degrees, the Applicant will no longer transfer funding to Huntington on any basis, Huntington will transfer its Gerontology program to the Applicant for consideration, and various agreements related to the Pension Plan.

23. The Monitor supports the approval of the Huntington Transition Agreement.

Increase to DIP Financing

24. The Applicant seeks approval of the DIP Amendment that amends the DIP Facility to provide the Applicant with access to a further principal amount of $10,000,000 (the "**Amended DIP Facility**").

25. The Applicant also seeks approval of a corresponding increase to the charge over the Applicant's property securing the DIP Facility (the "**DIP Lender's Charge**").

26. The Amended DIP Facility is required to provide working capital to fund the day-to-day operations of the Applicant while it further advances its operational and financial restructuring.

27. The Amended DIP Facility is conditional upon, among other things, obtaining an order of this Court in the form sought by the Applicant in its motion, approving the DIP Amendment and the documents to be executed and delivered thereunder, and granting an increase to the DIP Lender's Charge over the Property.

28. The Monitor supports the approval of the Amended DIP Facility.

Extension of the Stay of Proceedings

29. The Applicant seeks an extension of the Stay Period up to and including August 31, 2021. An extension of the Stay Period is required to allow the Applicant to continue to operate in the ordinary course, commence a claims process and call for claims, continue negotiations with creditors, assess all possible sources of recovery for creditors, develop the framework for a Plan of Arrangement and undertake operational and governance reviews, among other things.

30. The Cash Flow Forecast prepared by the Applicant demonstrates that the Applicant will have sufficient liquidity to operate its business and meet its obligations during the proposed Stay Period if the DIP Amendment is approved and the Order in the form that is sought is granted.

31. The Applicant has acted, and continues to act, in good faith and with due diligence during the course of this CCAA proceeding.

32. The Monitor supports the proposed stay extension and the relief sought on this motion.

Other Grounds

33. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court; and

34. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this application:

1. The Second Haché Affidavit and the Exhibits attached thereto;

2. The Affidavit of Dr. Robert Haché sworn January 30, 2021 and the Exhibits attached thereto, previously filed in this proceeding (the "**Initial Haché Affidavit**");

3. The Third Report of the Monitor, to be filed; and

4. Such further and other evidence as counsel may advise and this Court may permit.

April 21, 2021

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Schedule "A"
Conference Details to Join Motion via Zoom

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https://ca01web.zoom.us/j/68952421083?pwd=ZXVjTk5pSWsycGVqSmNuTHA3T0tEQT09

Meeting ID: 689 5242 1083
Passcode: 531109
One tap mobile
+16132093054,,68952421083#,,,,*531109# Canada
+16473744685,,68952421083#,,,,*531109# Canada

Dial by your location
+1 613 209 3054 Canada
+1 647 374 4685 Canada
+1 778 907 2071 Canada
+1 204 272 7920 Canada
+1 438 809 7799 Canada
+1 587 328 1099 Canada
855 703 8985 Canada Toll-free
Meeting ID: 689 5242 1083
Passcode: 531109
Find your local number: https://ca01web.zoom.us/u/geyFqs8Va0

Join by SIP
68952421083@zmca.us

Join by H.323
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
Meeting ID: 689 5242 1083
Passcode: 531109

Schedule "B"

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

NOTICE OF MOTION
(Extension of the Stay of Proceedings, Increase to DIP, Approval of Agreements)

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Tab 2

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

AFFIDAVIT OF DR. ROBERT HACHÉ
(sworn April 21, 2021)

Contents

I, Dr. Robert Haché, of the City of Sudbury, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS**:

I. INTRODUCTION

1. I am the President and Vice-Chancellor of Laurentian University of Sudbury ("**LU**" or the "**Applicant**") and a member of the Board of Governors (the "**Board**") of LU, having served in this role since July 2019.

2. As such, I have knowledge of the matters hereinafter deposed to, save where I have obtained information from others. Where I have obtained information from others, I have stated the source of the information and believe it to be true.

3. This affidavit is sworn in support of LU's motion pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**" and such proceedings, the "**CCAA Proceedings**"), for an order substantially in the form of the draft order attached as Tab 3 of the Motion Record that, among other things:

   (a) extends the stay of proceedings from April 30, 2021 until August 31, 2021;

   (b) approves term sheets that LU has entered into with two of its labour partners;

   (c) approves the Transition Agreement entered into with Huntington University ("**Huntington**"), being one of the Federated Universities (as defined below) following the issuance of the Notice of Disclaimer to Huntington; and

   (d) approves an amendment to the DIP Facility between LU, as borrower, and Firm Capital Corporation, as lender, and a corresponding increase to the DIP Lender's Charge over LU's property.

4. All monetary amounts referred to in this Affidavit are in Canadian dollars, unless otherwise noted.

II. OVERVIEW OF THE APPLICANT

5. As explained more fully in my Affidavit sworn January 30, 2021 (the "**Initial Haché Affidavit**"), LU is a non-share capital corporation that was incorporated pursuant to *An Act to Incorporate Laurentian University of Sudbury*, S.O. 1960, c. 151 C. 154 (the "**Act**"). LU is also a registered charity pursuant to the *Income Tax Act*. Where capitalized terms are used in this Affidavit and not otherwise defined, they are as previously defined in the Initial Haché Affidavit.

6. Since its inception, LU has operated in Sudbury, Ontario as a publicly-funded, bilingual and tricultural postsecondary institution. LU is an integral part of the economic fabric of Northern Ontario and serves as the primary postsecondary institution for a large geographic region. LU was the first bilingual university in Ontario to be recognized under the *French Languages Services Act*, R.S.O. 1990, c. F.32 (the "**FLSA**") and is proud of its bilingual and tricultural mission.

7. LU primarily focuses on undergraduate programming, with approximately 8,200 total domestic and international undergraduate students (approximately 6,250 full-time equivalents) enrolled in the 2020-21 fall semester. LU also has a strong graduate program, with approximately 1,100 total domestic and international graduate students (approximately 830 full-time equivalents) enrolled during the 2020-21 fall semester.

8. Of the approximately 6,250 full-time undergraduate students enrolled in the 2020-21 Fall semester, 1256 full-time equivalent students, or approximately 20% are enrolled in French

language programs offered at LU (including the three Federated Universities which have 16.8 full-time equivalent French-language students, or 1.3% of the total French-language student population at Laurentian).

9. Over 12% of the student population at Laurentian self-identifies as Indigenous.

10. Although LU's overall enrolment numbers for full-time equivalent undergraduate students has decreased over the past several years, LU's track record in attracting French-speaking students has steadily increased. In particular, in the 2016 Fall Term, there were 1037 full-time equivalent undergraduate students enrolled in French-language programs. That number has increased to 1256 in the 2020 Fall Term. The increase has been steady over several years, meaning that this particular year's enrolment was not a one-off aberration. Two programs which have seen the largest increase in demand are Psychology (French) and Social Work (French).

11. LU's governance structure is bi-cameral. The Board and the President and Vice-Chancellor generally have powers over the operational and financial management of LU, whereas the Senate of LU (the "**Senate**") is responsible for the academic policy of LU.

12. On February 1, 2021, Chief Justice Morawetz granted an initial order (the "**Initial Order**") that, among other things, appointed Ernst & Young Inc. as monitor (the "**Monitor**") of LU in these CCAA Proceedings, approved a stay of proceedings for the initial 10-day period (the "**Stay Period**") and granted certain Court ordered super-priority charges. Attached hereto as **Exhibit "A"** is a copy of the Initial Order and the related Endorsement issued by Chief Justice Morawetz.

13. On February 10, 2021, the comeback hearing on notice to all affected parties was held, which resulted in the issuance of an amended and restated initial order (the "**Amended and Restated Initial Order**") which, among other things, approved a debtor-in-possession interim financing arrangement in the amount of $25 million (the "**DIP Facility**") and extended the Stay Period to April 30, 2021. Attached hereto as **Exhibit "B"** is a copy of the Amended and Restated Initial Order and the related Endorsements issued by Chief Justice Morawetz.

14. Throughout these CCAA Proceedings, LU has operated in accordance with the Amended and Restated Initial Order and has attempted to minimize the impact of these CCAA Proceedings on students and other stakeholders, recognizing that a restructuring of this nature creates uncertainty.

III. APPEAL OF SEALING ORDER AND OUTCOME

15. Both the Initial Order and the Amended & Restated Initial Order contained a sealing order in respect of two confidential exhibits (the "**Confidential Exhibits**") to the Initial Haché Affidavit. The Confidential Exhibits contained a letter from the Ministry of Colleges and Universities (the "**MCU**") to LU dated January 21, 2021 and a letter from LU to the MCU dated January 25, 2021.

16. The Court issued a Supplementary Endorsement on February 26, 2021 containing the detailed reasons for granting the sealing order.

17. On March 4, 2021, the Ontario Confederation of University Associations, LUFA and the Canadian Union of Public Employees (collectively, the "**Appellants**") served notices of

motion seeking leave to appeal the sealing order from the Court of Appeal for Ontario (the "**Court of Appeal**").

18. The Appellants filed their motion record and factum on March 15, 2021. LU and the Monitor both filed responding facta on March 17, 2021.

19. On March 31, 2021, the Court of Appeal released its decision, denying leave to appeal. A copy of the reasons of the Court of Appeal is attached hereto as **Exhibit "C"**.

IV. OPERATIONS OF LU SINCE INITIAL ORDER

20. As set out in the Initial Haché Affidavit, one priority of LU during these CCAA Proceedings has been to minimize student disruption to the greatest extent possible. Accordingly, LU has focused on maintaining its ordinary operations during the Stay Period. All student classes have continued (virtually, due to the ongoing COVID-19 pandemic and in accordance with public health guidelines) without disruption. All students will be completing their courses this term in the normal course.

21. Immediately after the Initial Order was issued, LU commenced communications with its various stakeholders, including students, faculty and other employees, suppliers, research-granting agencies, and donors. Letters were emailed to certain of these stakeholder groups informing them of the commencement of the CCAA Proceedings.

22. LU also launched websites at www.laurentianu.info and www.ulaurantienne.info to provide further information to stakeholders, including a detailed list of frequently asked questions and answers, contact information for support services for students, faculty, and staff, and a method to contact LU by email for other information. The information on the

website has been periodically updated as a result of questions received from various parties. LU has also issued several follow-up communications to keep stakeholders informed to the greatest extent possible.

23. As expected, LU has received a significant volume of telephone calls and emails from stakeholders. Many of these inquiries have sought information regarding what will happen after April 30, 2021, as well as details on certain research grants and other restricted funds and how the obligations associated with these will be treated in the CCAA Proceedings. LU (with the assistance of the Monitor) has spent considerable time and resources responding to these inquiries in a timely manner and providing information if available and able to be disclosed.

24. Recently, LU opened registration for Spring term courses, which term commences on May 3, 2021. In light of the uncertainty with respect to LU's ability to continue operations subsequent to April 30, 2021 if agreements with stakeholders had not been achieved, LU allowed students to register for Spring courses without requiring any deposits to be paid. Provided LU obtains the Order sought on April 29, 2021, fees for Spring term courses will be due by May 7, 2021. In addition, LU: (i) has acquired Huntington University's rights to the Gerontology program, subject to the Order sought on this motion being granted; and (ii) has entered into an agreement with the University of Sudbury to teach six Indigenous Studies courses in the Spring term. Two of the courses in the acquired Gerontology program are also planned to be taught in the Spring term online commencing May 3, 2021. Plans for the delivery of all of these courses are currently underway and will be finalized in the coming days.

25. Additionally, in view of the amount of DIP financing that was required for the first three months of this proceeding, LU implemented new fiscal restraint policies, in collaboration with the Monitor, to monitor expenses and ensure that only critical and necessary expenses are authorized during the pendency of the CCAA Proceedings. Whereas LU previously had a decentralized system for approving expenses, provided they were within annual budget limits, LU now requires senior leadership approval for most expenditures before they are incurred. This represents a significant change to LU's historical practice, and such change was necessary to ensure that LU can manage its operations within the limits of the DIP financing made available during the CCAA Proceedings.

V. MEDIATION PROCESS AND RESTRUCTURING EFFORTS

26. In the Initial Haché Affidavit, I outlined LU's intention to seek the appointment of a neutral third-party mediator (the "**Court-Appointed Mediator**") to oversee negotiations 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 academic programs and (b) a reduction in the number of employees including full-time faculty. The Initial Haché Affidavit also outlined the need to undertake a number of other critical steps in the restructuring, including as it relates to the Federated Universities.

27. On February 5, 2021, the Monitor, LU and LUFA attended before the Court at a case conference in accordance with the Endorsement dated February 1, 2021. In connection with that case conference, and with the agreement of the parties in attendance, the Court issued an order (the "**Mediator Appointment Order**") and endorsement appointing the

Honourable Justice Sean Dunphy of the Ontario Superior Court of Justice as the Court-Appointed Mediator.

28. Since February 5, 2021, the Court-Appointed Mediator has dedicated himself to overseeing discussions between the parties in the mediation process (the "**Mediation**"). Parties have voluntarily participated in the Mediation and, to my knowledge, no party objected to same.

29. The initial focus of the Mediation was on negotiating agreements between LU and its labour partners and academic stakeholders that were foundational to achieve the cost savings required for LU to continue operating as a going concern beyond April 30, 2021. The alternative was a cessation of operations at that time. Negotiations in the Mediation process have primarily involved LU and:

(a) a committee of representatives elected by the Senate (the "**Senate Sub-Committee**"), to address the academic restructuring, as discussed below;

(b) each of the Federated Universities;

(c) the Laurentian University Faculty Association ("**LUFA**"), the bargaining unit representing the faculty members; and

(d) the Laurentian University Staff Union ("**LUSU**"), the bargaining unit representing non-faculty staff.

30. In addition, the Mediation has included the pre-filing lenders to LU, being Royal Bank of Canada, Toronto-Dominion Bank and Bank of Montreal which, together, are owed in excess of $100 million.

31. Several other stakeholders expressed an interest in participating in the Mediation, either within the formal process, or otherwise. To date, the Court-Appointed Mediator determined that Mediation discussions should be focused on the parties listed above, in view of the cost-savings that were required to be achieved if LU was to continue in operations after April 30, 2021.

32. The Mediation has involved an intensive process conducted on a near-daily basis, on weekends and holidays, involving the main Mediation parties outlined in paragraph 29 above, in an effort to achieve immediate and significant cost reductions as part of LU's operational restructuring. In connection with the negotiations during Mediation, each of the parties exchanged Mediation briefs as well as voluminous information and documents on an ongoing basis.

33. The Mediation schedule included a resolution deadline of April 1, 2021, as a result of a number of time-sensitive factors including: (i) the maturity date for LU's DIP Facility of April 30, 2021 and the need to have sufficient time to negotiate an extension to, and increase of, the DIP financing for the period thereafter, subject to the outcome of the Mediation including whether LU would be able to satisfy the DIP Lender as to the terms of, and pre-conditions to, any increased funding; (ii) the commencement of the Spring academic term on May 3, 2021; (iii) the fact that incoming (new) and current students would be making decisions relating to the Fall 2021 academic year and must have certainty whether LU would still be operating and, if so, which programs and courses would be available for registration; (iv) the filling of faculty and sessional positions for courses to be offered in the Spring Term; (v) the allocation of faculty members to Fall 2021 programs and courses, which was dependent upon the outcome of the Mediation and the resulting

program and cost reductions; and (vi) the cost reductions achieved in the Mediation would need to inform the availability and quantum of further DIP funding for the period beyond April 30, 2021.

34. Because the Mediation discussions were conducted pursuant to the confidentiality provisions contained in the Mediator Appointment Order, LU cannot disclose the specific discussions that took place during the Mediation. Where resolutions were achieved through the Mediation, it was as a result of those mediation parties demonstrating an extraordinary commitment to the Mediation process to ensure that necessary agreements could be reached to permit LU to continue to operate, and to position LU for the next phase of its restructuring process.

35. As described further below, I am pleased to report that LU has reached agreements with several of the key Mediation parties listed above.

36. LU expects that discussions with a broader group of its significant creditors regarding the potential terms of a Plan of Arrangement will evolve as the Mediation process continues. With the cost-savings achieved through the Mediation to date, and provided the Notices of Disclaimer (defined below) become effective on May 1, 2021 and the Order sought by LU is granted, LU will be able to expand its focus and engage in more active discussions with all of its other stakeholders, including those who previously expressed an interest in participating in the Mediation.

VI. ACADEMIC RESTRUCTURING

37. One of the first issues for LU to address as part of its operational and financial review was a full review and restructuring of LU's academic programming. While this aspect of the

restructuring has been completed, subject to any step that may have to be taken through the Commissioner appointed under the FLSA (as defined below) to de-register two Masters degrees listed thereunder, details are provided for the benefit of all stakeholders and the Court.

38. As explained in greater detail in the Initial Haché Affidavit, the academic program mix that, until recently, had been offered by LU, was not financially prudent. In particular:

(a) LU offered 166 undergraduate programs and 43 graduate programs. Approximately 25% of students were enrolled in the top five programs, approximately 62% were enrolled in the top 25 programs and 83% were enrolled in the top 50 programs;

(b) when considering individual courses (each program offers multiple courses), the issues were magnified. Of the 951 course sections offered by LU in the Winter 2021 semester for undergraduate and graduate combined:

(i) 164 sections (17.2%) had five students or fewer enrolled;

(ii) 147 sections (15.5%) had between six to ten students enrolled;

(iii) 198 sections (20.8%) had between eleven to twenty students enrolled;

(iv) 238 sections (25.0%) had between twenty-one and forty students enrolled; and

(v) 204 sections (21.5%) had over forty students enrolled; and

(c) regardless of the low number of students enrolled in a course, LU employed a faculty member to instruct that course.

39. Over time, students' interest in academic programs have changed and LU needed to update its program and course offerings to reflect those changing interests, to achieve economic sustainability, and to stay competitive among other post-secondary institutions.

40. Because LU has a bi-cameral governance structure and the Senate is responsible for the academic policy of LU, changes to the academic programming necessarily involved the Senate. One of the key objectives for the Mediation that was achieved was an agreement approved by Senate on the academic restructuring.

41. In order to fully participate in the Mediation, at a meeting of Senate held on February 9, 2021 pursuant to a Resolution that was passed, the Senate appointed the Senate Sub-Committee to represent it in the Mediation. The Senate Sub-Committee retained independent legal counsel, Mario Forte of Goldman Sloan Nash & Haber LLP.

42. Pursuant to the Resolution approved by Senate, the Senate Sub-Committee was comprised of six Senators as follows:

(a) three faculty members, at least one of whom is teaching in a French-language program, and at least one who is teaching from an Indigenous perspective;

(b) two students, who cannot be from the same student association; and

(c) one Dean, University Librarian, or Academic Associate Vice-President.

43. The Senate Sub-Committee had the following Terms of Reference:

(a) the six members are to take part in Mediation sessions, at the call of the Court-Appointed Mediator.

(b) the six members are to represent Senate at the Mediation session, and not their respective units.

(c) the six members will report regularly to Senate Executive and Senate as permitted based on the confidentiality provisions in the Mediator Appointment Order

44. The composition of the Senate Sub-Committee met the criteria outlined in the Resolution approved by Senate on February 9, 2021 and reflected the bilingual and tricultural mandate of LU. Mediation discussions with the Senate Sub-Committee focused on two key objectives: (i) identifying the appropriate program and course closures, and (ii) considering a faculty and department restructuring to streamline operations and remove efficiencies. Each of these are discussed further below.

45. In the discussion of the Academic Restructuring below, specific details provided by LU's Registrar, Dr. Serge Demers, have supplemented my personal knowledge and I verily believe such information to be true.

A. Program and Course Closures

46. LU's approach to the academic restructuring was guided by four foundational principles:

(a) LU must be positioned for both financial sustainability in the short term and financial success in the longer term, whereby LU is able to invest in growth areas and create cash reserves to provide a necessary financial buffer;

(b) LU must continue to meet its mandate of being a bilingual and tri-cultural post-secondary organization in Northern Ontario providing access to post-secondary education in Northern Ontario and in the City of Greater Sudbury;

(c) LU must focus on programs and courses that are in higher demand today and are expected to be in the future, with appropriate levels of academic staffing across categories, with a process to re-evaluate student demands in the future; and

(d) post-restructuring, LU must continue to pursue its vision of being a leading comprehensive research-engaged university for Northern Ontario that builds and contributes to the economies and communities of Northern Ontario.

47. Bearing these principles in mind, LU undertook an extensive analysis of its current programming and then identified specific programs and courses that were recommended for closure. The methodology for this viability analysis, and its conclusions regarding program and course closures, is detailed below.

48. This analysis was shared with the Senate Sub-Committee and, after extensive ongoing discussions with and input from the Senate Sub-Committee over the course of many weeks, a comprehensive list of the program and course closures was finalized and presented to the full Senate for approval, as discussed further below. These program and course changes have now been implemented.

Viability Analysis of LU's Programs

49. As part of the academic restructuring, LU conducted an analysis of program viability by considering the revenue and costs of LU's program delivery. This analysis was conducted based on the premise that, at a minimum, programs need to reflect enough student interest to cover the expenses to sustain delivery of the program.

50. Ideally, programs would be positive economic drivers for LU. However, LU also took into account that, for a certain subset of programs with a direct link to LU's mission, such programs should operate despite not satisfying the self-funding threshold.

51. LU's analysis included a calculation of the number of students required to cover the costs associated with sustaining the delivery of courses and programs.

Identification of Undergraduate Programs and Courses for Closure

Programs

52. Based on the analysis described above, LU reviewed all 166 undergraduate programs offered and identified numerous programs for closure that were not financially sustainable.

53. During its review process, LU took into consideration a number of factors. First, LU conducted a high-level estimate of the costs to offer the program by comparing the number of credits required to complete the program against the number of students currently enrolled in the program. Generally, if enrollments are high, a larger number of required credits for each program will be financially sustainable. If enrollments are low, the program can sustain fewer required credits.

54. Ultimately, LU determined an acceptable cut-off student-to-credit ratio for English-language programs and for French-language programs. For French-language programs, LU concluded that a lower student-to-credit ratio is appropriate because of the additional grant funding received by LU that is specifically allocated towards the delivery of French-language programs at LU.

55. In addition to the student-to-credit ratios, LU considered:

    (a) historical enrollment trends when comparing enrollment data from Fall 2015 to enrollment data in Fall 2020 (while accounting for outliers);

    (b) the ability of the program to appeal to a broad range of students, including domestic and international students; and

(c) the overall cost to deliver the program (special equipment and related overhead, number of sections required, laboratories, buildings and whether the program is delivered on or off the main campus).

56. Finally, because LU also has partial designation as a Public Service Agency under the FLSA for programs leading to certain degrees, the FLSA was also considered by LU and the Senate Sub-Committee during the program review and analysis. The effect of the program closures as it relates to Regulation O. Reg. 398/93 *Designation of Public Service Agencies* (the "**Regulation**") are discussed in more detail below.

57. As a result of this analysis, LU identified 38 English-language programs and 27 French-language programs that, based on the criteria described above, were considered unsustainable going forward and were identified for closure. This meant there are 63 remaining English-language programs and 38 remaining French-language programs that are financially sustainable.

58. Notwithstanding that student enrollment in specific programs fluctuates constantly as students declare and change majors, at the time of this writing, the number of programs identified for closure represents 39% of the total undergraduate programs offered by LU, but only approximately 7.5% of LU's current undergraduate students will be affected by the closure of these programs, either directly or indirectly. This represents approximately 772 undergraduate students (557 in English-language programs and 215 in French-language programs). Further, only a subset of the affected undergraduate students will be affected in the sense that their program is closed and there may be no program at LU that they would consider switching over to (i.e. midwifery or radiation therapy). Some of the

affected students will only be partially affected. That could include, as an example, a student who is currently enrolled in a double major consisting of Mathematics (closed) and History (offered).

59. LU is committed to ensuring that each of its students has an academic path towards completion of a degree and has worked diligently to identify those paths for all affected students.

60. As an initial matter, LU has delivered a message to all students advising them to communicate with their respective Deans or other key advisors, who are being made available to help assist any students affected by the program closures. The Deans or the other key advisors who were tasked with being the contact for students in specific affected programs can reach out to students individually and provide students with the various options available to them if their program has closed.

61. The terminated programs are not being offered for the Fall 2021 term. This means that new students are no longer permitted to enroll in any of the closed programs. With respect to students currently enrolled in these programs, LU will commit to providing resources to ensure that these students are able to finish their studies in the existing program with minimal disruption, to the greatest extent possible. Alternatively, LU will accommodate and work with any current students who want to transfer to other programs at LU or a similar program at another university.

62. A significant amount of work was done to identify each individual undergraduate student affected, their program of study, and their potential pathways available to them which were identified by the respective Deans.

63. Finally, as noted above, LU offers certain French-language programs leading to degrees flowing from its partial designation as a Public Service Agency pursuant to the FLSA and the Regulations thereunder, with respect to certain French-language programs leading to specific degrees. LU was the first bilingual university in Ontario to be recognized and designated under the FLSA, which occurred on July 1, 2014. Partial designation under the FLSA with respect to specific programs outlined in a Regulation was obtained by LU in 2014 as part of its continuing commitment to provide French-language education and services to students in Northern Ontario. Pursuant to section 9(2) of the FLSA, a Regulation made under the FLSA that applies to a university is not effective without the university's consent.

64. The current Regulation under the FLSA relating to LU outlines programs leading to the following 13 degrees, which LU agreed to offer in French: Bachelor of Commerce (B.Comm.), Bachelor of Education (B.Ed.), Bachelor of Physical and Health Education (B.P.H.E.), Bachelor of Science (B.Sc.), Bachelor of Science in Nursing (B.Sc.N.), Bachelor of Social Work (B.S.W.), Bachelor of Arts (B.A.), Bachelor of Health Sciences (B.H.Sc.), Doctor of Philosophy (Ph.D.) in Human Studies, Master of Human Kinetics (M.H.K.), Master of Social Work (M.S.W.), Master of Arts (M.A.), and Master of Health Sciences (M.H.Sc.).

65. Of the 13 degrees listed in the Regulation, two Masters degrees will no longer be offered by LU as a result of the academic restructuring: the Master of Arts and Master of Human Kinetics.

(a) with respect to the Master of Arts, neither the English nor the French-language degree will continue to be offered, because the programs leading to the Masters degree in History and the Masters degree in Sociology have historically had low enrollment. Existing students are expected to be able to continue their program, subject to the availability of a supervisor; and

(b) with respect to the Master of Human Kinetics, the French-language degree will no longer be offered due to **no** enrollment over the past few years and the suspension of the program in July 2020, prior to the commencement of the CCAA Proceedings. However, LU is considering whether it can offer a small number of courses that could be delivered in conjunction with other Masters programs in French, to increase overall enrollment levels. A request was also submitted to the Senate Academic Planning Committee ("**ACAPLAN**"), the committee responsible for the development of academic planning, to ensure that LU's program offerings are consistent with LU's overall purpose and mission, to reopen as a bilingual program, with the thesis in French and the theory courses in English.

66. LU is proud of its mandate as a bilingual and tri-cultural post-secondary institution, which includes the preservation of French language degrees and the Francophone culture at the university as a whole. The fact that LU no longer plans to offer programs leading to these two specific degrees (one of which has zero enrolment) does not alter LU's commitment under the FLSA, or its commitment to students who wish to study in French. LU will continue to offer French-language programming leading to the other 11 French-language degrees listed in the Regulation to the FLSA. In addition, LU offers additional French-language programs that are not listed in the Regulation to the FLSA, such as the M.SC.Inf.

(Maitrise en sciences infirmieres). LU is committed to working continuously to update our French-language degree programs in a manner that reflects the evolution in demand of francophone students at LU, as such demands change over time and new fields and qualifications emerge.

67. The steps taken as part of the academic restructuring will, in fact, allow LU to focus more of its resources on programs, including French-language programs, than it was able to do prior to the commencement of the CCAA Proceedings. The Regulation is subject to a periodic review process by ACAPLAN, the Senate, and the Quality Assurance Council, an independent body responsible for assuring the quality of all programs leading to degrees and graduate diplomas in Ontario universities.

68. As part of its restructuring within this CCAA Proceeding, LU will undertake a review, and anticipates seeking amendments to various legislation affecting it, including but not limited to the provisions of the *Laurentian University of Sudbury Act*. These amendments will be sought in order to reflect the current situation and LU's structure upon emergence from this CCAA Proceeding. That review of relevant legislation will include a discussion with the Commissioner appointed under the FLSA, to review the Regulation relating to LU under the FLSA, and seek an amendment and de-registration with respect to the two French-language programs leading to degrees that are referenced above. This should not be viewed as a change in direction by LU, but rather, a modernization of programs and degrees that reflect what francophone students are interested in taking at LU.

69. Continuing to offer some French-language programs with consistent very low enrollment or virtually no enrollment is not financially feasible and is not consistent with the funding that LU receives for French-language programs.

70. The effect of termination of a program means that students may no longer enroll in that program to obtain a degree in the program. For all programs that were terminated, the associated minor was also terminated. However, in many cases, courses in that program will continue being offered as introductory, first-year programs, but not in the upper years. In some other cases, where a course in a closed program is required for a different program that is kept open, that course will continue being offered and can be taken by anyone who meets the prerequisites.

71. For example, there are 14 students enrolled in all 4 years of the Philosophy program. No new student can now enroll in a Philosophy major or minor unless they already have all the courses required for it. However, there will still be certain Philosophy courses being offered on a go-forward basis, which are popular elective courses for students at LU.

Courses

72. In addition to the termination of low-enrollment programs, LU undertook a review of the number of courses and course sections to be offered going forward. This review involved not only the 65 undergraduate programs to be terminated, but courses offered in the 101 undergraduate programs that will remain open.

73. In order to reach an optimal set of courses (and the optimal number of sections offered for each course – courses can be offered in multiple sections, which denote the day, time, location and instructor teaching the course) to offer going forward, each faculty Dean at

LU was consulted. They were asked to examine each course and determine whether it was mandatory in programs that were to remain open. Deans were provided with the list of sections offered in each course over the past two years (Fall, Fall/Winter, Winter, Spring terms) and the enrollment in each section. They were also provided with the list of programs identified for termination.

74. Courses attached to terminated programs were labeled as 'Do not offer', unless they were:

(a) very high enrollment courses;

(b) mandatory in another program; or

(c) part of the requirements for the Bachelor of Science. For example, first-year Calculus and certain Physics courses will continue to be offered, with Math and Science faculty members teaching such courses.

75. Courses in programs to remain open were examined in order to determine whether they were mandatory in a program or an elective. Where there were multiple sections of the course offered during the year, the Deans were asked to validate that it was the correct number of section offerings, based on enrollment in different terms. A similar analysis was completed for the number of lab sections to maximize remaining resources.

76. The resulting analysis provided an optimal set of courses offered on a yearly basis that ensures all students will be able to meet their degree requirements to graduate in a timely manner and offers electives balancing the levels of student interest with the advancement of knowledge in their respective programs.

77. The list of remaining courses are not the only courses that will be offered going forward. Individual departments and schools will be able to cycle courses from time to time and from year to year, based on the expertise available at the time, as long as the total credits in the unit remain within the optimal section analysis. The process of cycling courses is routine at LU. Historically, all the courses available were not always offered depending on the available expertise at particular times.

78. Moving forward, to ensure that the necessary processes are in place to constantly re-evaluate current and future student demands for programming, under the leadership of the Provost and Vice-President Academic, the Registrar will flag programs with low enrolment. Meetings will be set up with the appropriate Dean to review enrolment numbers and the Dean will discuss strategies to address declining program demand with the appropriate School Council. Further program reviews will be conducted by the Senate Academic Planning Committee and programs will be reviewed every seven years through the Quality Assurance Council.

79. In addition, LU has the benefit of leadership at the highest levels of the University overseeing its French-language programs in that each of myself as President, the Provost and Vice-President Academic, and the Registrar are francophone in addition to many other committed leaders, faculty and staff. Further, two of LU's four Deans in the reduced administrative structure are francophone.

Identification of Graduate Programs for Closure

80. LU's analysis of its graduate programs identified 11 programs (4 in French; 7 in English) for closure which will impact approximately 3.7% of the current graduate student enrollment.

81. LU identified these programs for closure because they each have ten (10) or fewer students enrolled in the program, with four (4) of the eleven (11) programs having only one (1) student enrolled. Further, LU does not expect enrollment levels to materially increase in these programs. Due to these low enrollment levels, LU is of the view that continuing to offer these programs is unsustainable.

82. No new students will be enrolled in the graduate programs scheduled for closure. The students currently in those programs will be "taught out". However, few courses are expected to be required as most courses are taken in the first year of a Masters program. It is expected that the majority of the students in the Masters programs scheduled for closure will be working on their thesis research project or major paper/essay.

83. Therefore, we expect to identify a pathway for the majority of these students to complete their graduate degree at LU, if they choose.

84. Graduate students at LU in programs that are closing have been invited to information sessions facilitated by the Vice-President Research, Graduate Studies Office, Deans, and Graduate Program Coordinators to discuss pathways for them to complete their degree at LU. The intent is to identify a pathway for each impacted graduate student to be able to complete their degree at LU.

85. We know that a number of graduate students have been impacted by faculty redundancies, since graduate students in doctoral programs and thesis-based masters programs are required to have a faculty supervisor. The Vice-President Research, Deans, and Graduate Program Coordinators are meeting with the impacted graduate students and their supervisors to discuss all options for them to complete their degree at LU. Some redundant faculty members may be eligible to become Professor Emeritus and others may request an Adjunct Faculty appointment at LU. Emeritus Professors and Adjunct Professors can continue to supervise students at LU in a voluntary capacity. In other cases, an alternative supervisor at LU may be identified. In situations where a qualified supervisor is not available at LU, the Vice-President Research and Graduate Studies Office will work with each graduate student to facilitate transfer to another university.

86. The closure of these Masters programs will allow LU to focus on its continuing graduate programming, including the three recent additions to the program roster (Masters of Forensic Science, Masters of Forensics/Biology, and Masters of Engineering (fast track)) that are expected to continue to see additional demand from prospective graduate students.

87. LU currently offers ten Doctoral programs and no closures are recommended. Doctoral programs tend to offer fewer courses and Doctoral students typically complete courses in the first year and spend the next 2-3 years conducting original research in preparation for a dissertation.

88. Furthermore, graduate students who have applied to closed programs will each be individually contacted before the end of April. To begin, the faculty supervisor will be contacted to determine if there is a suitable alternative graduate degree at Laurentian that

they would be willing to supervise the student in. The student will then be contacted and provided details on the alternative offer.

89. In situations where an alternative offer at LU is not practical or not of interest to the graduate student, the Graduate Studies Office will work with the student and their supervisor to facilitate an alternate pathway at another university.

90. LU will continue to offer 24 Masters programs and 10 PhD programs, for a total of 34 graduate programs following the program closures.

B. Faculty and Department Restructuring

91. As part of the academic restructuring, LU also undertook an analysis to consider the restructuring of its faculties and departments to streamline operations and eliminate inefficiencies.

92. Prior to the faculty and department restructuring, LU was organized into six Faculties that each had a Dean overseeing the Faculty. There are currently 35 schools and departments. To create administrative efficiencies, LU proposed several changes. First, the structure of Faculties was recommended to reduce from six to four, as summarized below:

Faculty Structure Pre-Restructuring	**Faculty Structure Post-Restructuring**
Faculty of Arts	Faculty of Arts
Faculty of Education	Faculty of Education and Health
Faculty of Health	
Faculty of Management	Faculty of Management

Faculty of Science, Engineering and Architecture	Faculty of Science, Engineering and Architecture
Faculty of Graduate Studies	Closed (Graduate activities to report to the Vice-President Research as Office of Graduate Studies)

93. Within each Faculty, there were further restructuring changes undertaken. A summary of the various changes is attached hereto as **Exhibit "D"**.

94. In addition, when developing the reorganized structure for the Faculties, LU sought to reduce the overall number of Departments and Schools within the Faculties in order to enhance program delivery and introduce operational efficiencies by offering students centralized support systems. LU considered all possible changes to enhance operational efficiencies where possible within each Faculty.

95. The significant reduction in the number of departments will allow for an increase in the effectiveness and efficiency of academic supports for students and enhance academic flexibility.

C. Senate Approval

96. The extensive analysis undertaken by LU as described above was carried out with the active involvement and input of the Senate Sub-Committee. In both its review of the proposed course and program closures and the proposed faculty and department restructuring, the Senate Sub-Committee provided multiple rounds of feedback through questions and suggestions. This included extensive information and document exchange between LU and the Senate Sub-Committee. The active and thoughtful involvement of the Senate Sub-Committee was critically important to the academic restructuring process.

97. As an initial step in the academic restructuring, on March 16, 2021, the Senate held a meeting whereby it voted to terminate 19 programs for historical reasons. Of these 19 programs, there were 9 undergraduate English-language programs, 7 undergraduate French-language programs, and 3 graduate programs (1 French). Each of these programs had been changed in recent years but had not been formally terminated by the Senate. By way of example, in 2014-15, LU's Bachelor of Commerce program changed to a Bachelor of Business Administration. Although the Bachelor of Commerce program was no longer offered, it had never previously been formally terminated by the Senate. Several of these 19 programs formed part of LU's proposed program closures and accordingly were not terminated as a result of the Senate Sub-Committee's recommendation. These terminations were the result of a several months-long process initiated by ACAPLAN to identify the list of programs that should be terminated, and would have proceeded regardless of the CCAA proceeding being commenced. Attached hereto as **Exhibit "E"** is a list of the programs terminated by Senate at the March 16, 2021 meeting.

98. As to the remainder of the proposed program and course closures, the Senate Sub-Committee prepared an *in camera* Report to the Senate Executive Committee and Senate containing a summary of its review of the academic restructuring and its corresponding recommendations. The Sub-Committee Report made the following recommendations:

(a) that Senate approve the termination of 34 English-language undergraduate programs, 24 French-language undergraduate programs, 7 English-language graduate programs, and 4 French-language graduate programs;

(b) that LU's approach to arrive at an optimal set of course sections to be offered in future years be endorsed;

(c) that the faculty and department restructuring be approved by Senate; and

(d) that Senate approve certain program-specific changes.

99. An *in camera* Senate meeting was held on April 6, 2021 in which the Senate Sub-Committee presented the Sub-Committee Report to the Senate (the "**April 6 Senate Meeting**"). At the April 6 Senate Meeting, a resolution was passed by Senate accepting the recommendations of the Senate Sub-Committee and, accordingly, approving LU's academic restructuring. A copy of the resolution passed at the April 6 Senate Meeting is attached hereto as "**Exhibit F**".

100. This was a significant milestone for LU to accomplish, given that approval of an academic restructuring from the Senate was necessary to ensure LU's sustainability.

D. Transition Plans for Students

101. LU has taken proactive steps to ensure that affected students are informed of the various options available to them, in the hope that they will choose to continue their education at LU. The respective Deans and other key advisors have been made available to communicate with students on a case-by-case basis to ensure individual academic needs are being addressed.

Midwifery

102. LU made the decision to close the Midwifery program due to the financial costs associated with running that program that could not adequately be met by funding received from the MCU and the Ministry of Health pursuant to a transfer payment agreement. MCU funds

the academic/university component of the Midwifery program while the Ministry of Health and Long-Term Care funds the clinical components of the Midwifery program.

103. As financial support to post-secondary institutions generally is subject to the prerogative of the Province and Midwifery is an expensive program to run (relative to other programs), it is difficult for LU to solely rely on grant funding to continue operating the program. Further compounding matters is the fact that the MCU has imposed an annual cap of 30 new students that may be accepted into the Midwifery program at LU, which limits its potential growth. LU offered Midwifery in English and French, and the enrollment cap applied to both programs overall. LU, together with McMaster and Ryerson University (the other two Ontario universities that offer Midwifery programming), has advocated in recent years for increased funding for this program but has been unsuccessful to date.

104. To accommodate Midwifery students, LU is communicating options to help them make informed decisions about their academic future. LU is committed to ensuring that Midwifery students impacted by the restructuring will be able to complete their Midwifery degree or to select an alternative program at LU.

105. Students who are completing their 4th year in the Midwifery program will complete a clerkship course between May 1 and August 31. A sessional instructor will be available to support the students and students will graduate with a degree from LU in Midwifery.

106. Students who are completing their 3rd year in the Midwifery program will complete the remainder of their courses at McMaster or Ryerson with ‘Letters of Permission’ from LU and graduate with an LU degree. The students will not need to physically relocate, as the course will be taught through virtual distance learning, together with a potential in-person

intensive clinical skills course. Further, placements can be completed in the Sudbury/Northern Ontario region. There will be tutorials in French to support francophone students.

107. For students in their 1st or 2nd year in the Midwifery program, LU will help facilitate transfers to McMaster or Ryerson and students would graduate with degrees from McMaster or Ryerson. There will be virtual learning opportunities and placements can be completed in the Sudbury/Northern Ontario region, such that physical relocation may not be necessary. For francophone students, tutorials in French will be provided. Alternatively, LU has informed these students of the relevant contacts to discuss a potential program transfer within LU.

Indigenous Studies

108. On April 12, 2021, the Laurentian University Native Education Council ("**LUNEC**") passed Motion CM 21-14 which requested that LU explore the possibility of teaching courses in Indigenous Studies during the Spring term that had previously been taught at the University of Sudbury ("**SU**"), so that affected students could continue to obtain required credits. In consultation with LUNEC, LU and SU began discussions to facilitate this request.

109. On April 16, 2021, LU and SU entered into an interim Term Sheet to enable LU to teach six Indigenous Studies courses during the Spring term, as per the recommendation of LUNEC. A copy of the Term Sheet is attached hereto as **Exhibit "G"**.

110. LU will continue to engage in consultation with LUNEC during the Spring and Summer terms in order to consider and determine how best to ensure the ongoing delivery of Indigenous education at LU, as well as continue discussions with SU.

111. Moving beyond the Spring Term, LU is committed to ensuring that the approximately 140 students who were registered in the Indigenous Studies program at SU have access to courses rooted in Indigenous perspectives already offered through the Faculty of Arts in a variety of disciplines. LU will continue to engage with LUNEC to explore ideas surrounding the development of an Indigenous Perspectives program that would complement the already well-established Bachelor of Indigenous Social Work and Master of Indigenous Relations programs offered at LU.

Gerontology

112. As described further below, LU has acquired Huntington's rights to the Gerontology program to ensure that those students will continue to be able to obtain an LU degree in Gerontology.

VII. TERM SHEETS WITH LABOUR PARTNERS

A. LUFA

113. LUFA represents approximately 612 faculty members, including 355 full-time faculty members (including seven employees currently on a leave of absence from LU), 221 sessional faculty members or health care professionals and five full-time counsellors. In addition, there are 31 individuals who are staff or students of LU who also teach a sessional/clinical course. The number of sessional employees varies from term to term depending on need.

114. As outlined in the Initial Haché Affidavit, salaries and benefits across all employee groups represent the single largest expense item for LU on an annual basis.

115. LUFA and the Board of LU are parties to a Collective Agreement (the "**LUFA CA**"), with a three-year term which expired on June 30, 2020. Pursuant to the provisions of the LUFA CA, the agreement automatically continues year-to-year unless notice is provided that either LUFA or LU intends to terminate or amend the LUFA CA. In February 2020, LUFA provided LU with a notice to bargain. Pursuant to Article 13.15.3 of the LUFA CA, the agreement automatically remains in force during any period of negotiation.

116. Prior to the CCAA Proceedings, LU and LUFA were engaged in bargaining with respect to a new collective agreement. Pursuant to the Mediator Appointment Order, those negotiations continued within the Mediation.

117. LU identified that, as a result of the academic restructuring and the need to reduce expenses, a reduction in a substantial number of faculty would have to occur. Accordingly, LU sought in the Mediation to: (i) mutually agree on the number and the list of the faculty to be terminated; (ii) address various aspects of the existing LUFA CA and negotiate a new collective agreement; and (iii) amend LU's Pension Plan (as defined below) to minimize the risk of special payments arising, and to avoid a potential wind-up of the Pension Plan in the event that LU was not able to successfully restructure.

118. LU and LUFA have been engaged in extensive Mediation over the past two months, with the assistance of the Mediator and the Monitor. This has included voluminous information and document exchanges, near-daily Mediation sessions with the Court-Appointed Mediator, and the exchange of comprehensive Mediation briefs.

119. Leading to the Mediation's target resolution deadline of April 1, LU and LUFA were involved in monumental efforts to reach an agreement. Although the April 1 deadline passed without final documentation signed, the parties were sufficiently close on the key terms that negotiations continued to explore whether a deal could be reached.

120. On April 7, 2021, LU and LUFA signed a Term Sheet setting out the key terms and conditions agreed to by the parties (the "**LUFA Term Sheet**"). A redacted copy of the LUFA Term Sheet is attached hereto as **Exhibit "H**".

121. The key terms of the LUFA Term Sheet are summarized below:

(a) LU and LUFA have negotiated a new collective agreement with a five-year term expiring on June 30, 2025;

(b) 116 full-time Faculty positions were identified on a confidential Schedule and have been declared redundant (the "**Terminated Faculty Members**");

(c) the Terminated Faculty Members who are teaching courses in the Winter 2021 academic term have an effective termination date of May 15, 2021 to allow for marking of final exams, papers, and communicating grades;

(d) the Terminated Faculty Members who are not teaching courses in the Winter 2021 academic term have an effective termination date of April 30, 2021;

(e) any Faculty members who elected early retirement would receive certain non-financial incentives over and above those contained in the LUFA CA;

(f) effective May 1, 2021, each Faculty member's salary would be decreased by 5%;

(g) the Faculty member workload for Science, Engineering, and Architecture is increased from the existing LUFA CA;

(h) each Faculty member will take five unpaid furlough days during the 2021-22, 2022-23, and 2023-24 academic years;

(i) the RHBP and the SuRP (both as defined and described further below) would be terminated; and

(j) LU and LUFA agreed to a Term Sheet regarding Pension Plan issues (as described further below) which forms part of the LUFA Term Sheet.

122. On April 12, 2021, LU provided notice to the Terminated Faculty Members (excluding faculty members who took early retirement under the Retirement Incentive) that their employment was being terminated.

123. On April 13, 2021, the LUFA Term Sheet was ratified in a vote by the LUFA members.

B. LUSU

124. LUSU represents approximately 268 LU staff employees, which includes all employees in clerical, technical, administrative, service, and security work.

125. LU and LUSU are parties to a Collective Agreement that expires on June 30, 2024 (the "**LUSU CA**").

126. LU engaged in extensive Mediation with LUSU with the assistance of the Monitor, and the involvement of the Mediator. These negotiations were with the aim of achieving cost reductions to further LU's efforts to attain financial sustainability, and to effect the changes required following the academic restructuring and the reduction in faculty.

127. On April 5, 2021, following intensive negotiation, LU and LUSU entered into a Term Sheet setting out the key terms and conditions agreed to following negotiations, including the number and the list of employees to be reduced (the "**LUSU Term Sheet**"). A redacted copy of the LUSU Term Sheet is attached hereto as **Exhibit "I"**.

128. The key terms of the LUSU Term Sheet are summarized below:

(a) the total number of LUSU members terminated would be 42 (the "**Terminated LUSU Members**");

(b) the Terminated LUSU Members would have an effective termination date of April 30, 2021;

(c) the Terminated LUSU Members would have preferential recall rights for a two-year period following the date of termination;

(d) the RHBP and SuRP would be terminated; and

(e) LU and LUSU agreed to a Term Sheet regarding Pension Plan issues (as described further below) which forms part of the LUSU Term Sheet.

129. On April 12, 2021, LU provided notice to the Terminated LUSU Members that their employment was being terminated.

130. On April 13, 2021, the LUSU Term Sheet was ratified in a vote by the LUSU members.

C. Outstanding Grievances

131. As described in the Initial Haché Affidavit, at the commencement of these CCAA Proceedings, there were 102 outstanding grievances filed by LUFA (the "**Existing Grievances**"). The Mediator Appointment Order provided that the Existing Grievances

would be addressed as part of the Mediation, and the DIP Lender required that these be addressed prior to April 30, 2021. Pursuant to the DIP Amendment that is sought on this motion, and in recognition of the time involved by LU and LUFA in negotiating the LUFA Term Sheet, the DIP Lender has agreed to extend the date by which the Existing Grievances must be resolved to May 31, 2021. A process has been agreed to by the parties, with the assistance of the Monitor, whereby those can be determined.

132. Pursuant to the LUFA Term Sheet, LU and LUFA agreed that new grievances arising since the commencement of the CCAA Proceedings for non-monetary issues or those not involving the expenditure of money (such as accommodation, denial of tenure, or unjust dismissal) would not be stayed as a result of the CCAA Proceedings and could proceed to resolution or determination in the ordinary course.

133. The LUFA Term Sheet also provides that unresolved grievances advancing to mediation-arbitration can be referred to an expedited process.

D. Binding Arbitration for Remaining Issues Under LUFA CA

134. Despite the best efforts of LU and LUFA, certain terms of the existing collective agreement that were to be addressed in the Mediation were not resolved as part of the LUFA Term Sheet. In order to ensure a timely resolution of these issues, the LUFA Term Sheet provides that issues specifically identified therein which stipulate that by agreement of the parties they are to be determined through binding arbitration shall, once determined and if applicable, constitute amendments to the collective agreement. Binding arbitration with respect to these outstanding issues is to take place before Mr. William Kaplan and will be completed by June 18, 2021.

135. The outstanding issues subject to binding arbitration are:

(a) LU's ability to cancel sessional contracts and the terms upon which it may do so;

(b) the application of coordinator credits;

(c) the cost for a Faculty member to "buy-out" teaching in a given year;

(d) the terms upon which courses may be cancelled due to low enrollment;

(e) pregnancy, parental and adoption leave;

(f) the Faculty Personnel Committees;

(g) the scope of ability of LU to outsource LUFA bargaining unit work;

(h) the nomination process for Senior Academic Administrators;

(i) reimbursement for the workload of union executives; and

(j) the time it takes to pay a Faculty member for supervisory work.

E. Administration Redundancies and Changes

136. The remainder of LU's full-time employees who are not represented by a union include approximately 23 senior leadership employees, and 111 administrative and professional staff, most of which are in managerial roles. The managerial and non-managerial employees are considered part of an informal association that LU recognizes as the Laurentian University Administrative and Professional Staff Association ("**LUAPSA**"). LUAPSA has an executive committee that meets with LU on occasion and LU solicits feedback from the LUAPSA executive committee regarding matters that affect employees that are in positions falling under the LUAPSA umbrella.

137. In addition to the termination of LUFA and LUSU positions, LU's non-union employees (including executive and managerial employees) experienced terminations as well. In total, 37 non-union employees (24 of which were in management and executive positions) were terminated in this process, including through the Faculty and Department restructuring that LU undertook as described above.

138. Most of the common amendments to the LUFA and LUSU collective agreements described above were applied to the LUAPSA group, Senior Leaders, and Designated Executives, including the following:

(a) the continuation of a 3% salary roll-back;

(b) ensuring there is an equitable distribution of salary reductions;

(c) removal of the gym benefit;

(d) reduced availability of the tuition exemption;

(e) termination of the RHBP and the SuRP; and

(f) further amendments to the Pension Plan consistent with the changes to LUFA and LUSU members of the Pension Plan.

VIII. FEDERATED UNIVERSITIES

A. Background

139. LU has operated within a federated school structure whereby it has contractual affiliations with three independent universities under the overall LU umbrella: SU (defined above), the University of Thorneloe ("**Thorneloe**") and Huntington University ("**Huntington**" and, together with SU and Thorneloe, the "**Federated Universities**").

The Federation Agreements and Indentures

140. LU's relationship with the Federated Universities was formalized in Federation Agreements signed with each of SU, Thorneloe, and Huntington (collectively, the "**Federation Agreements**"). LU entered into a Federation Agreement with each of SU and Huntington on September 10, 1960, and with Thorneloe in 1962. The Federation Agreements were attached as Exhibits "K", "M", and "P" to the Initial Haché Affidavit and the terms of same were outlined therein, and are not repeated again.

141. In addition to the Federation Agreements, LU has indenture agreements with each of the Federated Universities pursuant to which the Federated Universities lease certain land owned by LU and are permitted to construct buildings and student housing. The relevant agreements are: (i) an Indenture between LU and SU dated April 9, 1965; (ii) an Indenture between LU and Huntington dated July 3, 1964; and (iii) an Indenture between LU and Thorneloe dated October 26, 1964, (collectively, the "**Indentures**"), which were attached as Exhibits "L", "N", and "Q" to the Initial Haché Affidavit, with the terms of same outlined, and are not attached again.

142. Each of the Indentures contain provisions addressing what happens to the leased lands and the buildings thereon in the event the Indenture is terminated.

Funding the Federated Universities

143. The Federated Universities do not receive funding directly from the provincial government. Instead, LU has historically transferred a portion of the funding it receives from the

provincial government to each Federated University according to a set formula between LU and the specific Federated University.

144. The formula for the distribution of funding to the Federated Universities has changed over time. Since May 1, 2019, the parties have operated in accordance with the Financial Distribution Notices delivered by LU to each of the Federated Universities (the "**Financial Distribution Notices**"). The Financial Distribution Notices set out the terms for the distribution of operating grants to the Federated Universities and service fees charged by LU to the Federated Universities from and after May 1, 2019.

145. The Financial Distribution Notices provide that LU will transfer funds to each of the Federated Universities in accordance with the new university funding model introduced by the Province in 2017 (the "**New Funding Model**"). The New Funding Model adopted an enrolment-based approach, where the Province would provide each post-secondary organization with a base level of operating funding determined in accordance with a specific level of eligible enrolment and program of registration. The Financial Distribution Notices were intended to try to align the financial relationship of LU and the Federated Universities with the New Funding Model.

146. The Financial Distribution Notices also provide that, in exchange for the provision of non-academic administrative services by LU to the Federated Universities, each of the Federated Universities would be assessed a charge by LU in the amount of 15% of relevant revenues, being grant revenue and tuition revenue as defined in the Financial Distribution Notices (the "**Administrative Services Fee**"). The Administrative Services Fee is intended to partially cover the costs incurred by LU for a number of non-academic services

it currently provides to the Federated Universities, which include but are not limited to: (i) student fee collection and accounting; (ii) central computing services; (iii) administration of all pension and employee benefits; (iv) campus security; and (v) student support services.

147. Before the Financial Distribution Notices were delivered to the Federated Universities, LU met with both the administration for the Federated Universities and the Boards of the Federated Universities to explain the basis for the change to the funding formula.

Enrolment at the Federated Universities

148. As of the Fall 2020 academic term, there were 417 students enrolled in full-time and part-time programs through the Federated Universities (271 full-time equivalents). This includes 91 full-time and part-time students at Thorneloe (62.8 full-time equivalents), 108 full-time and part-time students at SU (69.6 full-time equivalents), and 163 full-time and part-time students at Huntington (103.2 full-time equivalents). The remainder of the students enrolled at the Federated Universities are enrolled in programs jointly offered by the Federated Universities. Attached hereto as **Exhibit "J"** is a breakdown of enrollment for the Federated Universities from 2018-20 drawn from enrollment data submitted to MCU each fall.

149. The historical and contractual relationships between LU and the Federated Universities are described in greater depth in the Initial Haché Affidavit.

B. Negative Financial Impact of the Federated University Model on LU

150. Arising out of its solvency and these CCAA Proceedings, LU has undertaken a full review of its operational model. That review has also necessitated a review and reconsideration of the future viability of the relationship between LU and the Federated Universities.

151. While there is strong affinity within the LU community for the Federated Universities, LU's review of the federated model demonstrated that it comes at significant financial cost to LU.

152. I am advised by Normand Lavallee, the Associate Vice-President, Financial Services at LU and do verily believe, that LU transferred approximately $7.7 million in Fiscal Year 2020 as a result of LU students taking programs and courses through the Federated Universities, when those students could be taking all programs and courses through LU directly. Indeed, at present, a main function of SU and Thorneloe is to provide electives in the Faculty of Arts for LU students (while also providing some core programming to students in programs such as Indigenous Studies).

153. Specifically, in Fiscal Year 2020, LU transferred to the Federated Universities approximately $3.5 million in in total grants, $5.3 million in net tuition, and $0.3 million in material fees. In sum, in Fiscal Year 2020, LU transferred approximately $9.1 million in tuition, grants, and fees to the Federated Universities, which was offset by a 15% service fee of approximately $1.4 million, for a net transfer from LU to the Federated Universities of approximately $7.7 million. A summary of LU's payments to the Federated Universities is attached hereto as **Exhibit "K"**.

154. This is revenue that can and needs to stay within LU, given LU's current liquidity challenges. LU's Faculty of Arts has the ability and capacity to offer alternative electives

to its students, such that there is no need for the resulting loss in revenue to LU in doing so. Since students enrolled in programming offered by the Federated Universities could otherwise be accommodated and enrolled in programs offered by LU, a substantial portion of the grant revenue represents lost revenue for LU.

155. The unfortunate reality is that the federated relationships are no longer financially sustainable for LU. Although the Federation Agreements express a "hope" that the federated relationships will be permanent, the parties always recognized that the Federation Agreements might be ended at some point. First, the Act specifically contemplates that LU's federated relationships might be dissolved or suspended. In addition to that, the Indentures also include specific provisions for what happens to the Federated Universities' land and buildings in the event that a party "withdraws" from the Federation Agreement. So, while the aspirational goal of all parties – including LU – was that the federated relationships would continue indefinitely, that was not a term of the agreements and it was recognized that the goal might not be achievable.

C. Mediation with the Federated Universities

156. Based on LU's academic restructuring and financial situation, LU determined that it is necessary to terminate LU's agreements and relationship with the Federated Universities. That intention was initially referenced at paragraph 295 of the Initial Haché Affidavit sworn in support of the Initial Order.

157. LU engaged in extensive Mediation with the Federated Universities. In light of the historical significance of the relationship between LU and the Federated Universities, LU sought to achieve a mediated resolution which would formally terminate the relationship

on terms that would allow the historical legacy and identities of the Federated Universities to be maintained, as set out in the Initial Hache Affidavit.

158. On March 12, 2021, SU made a public announcement, in tandem with the Assembly of the Francophonie in Ontario (the "**AFO**"), that its Board of Regents had decided to form an independent, French-language school.

D. Notices of Disclaimer

159. A negotiated termination of LU's relationship with each of the Federated Universities was not achieved.

160. Accordingly, on April 1, 2021, LU delivered Notices to Disclaim or Resiliate to each of the Federated Universities, pursuant to section 32 of the CCAA (the "**Notices of Disclaimer**"). The Notices of Disclaimer disclaim the Federation Agreements and the Financial Distribution Notices with each of the Federated Universities and will become effective on May 1, 2021. Copies of each of the Notices of Disclaimer to SU, Thorneloe, and Huntington are attached hereto as **Exhibits "L"**, **"M"**, and **"N"**.

161. LU has not taken any steps that would extinguish the right of any of the Federated Universities to continue to exist, or to have a continued presence and create a historic legacy on campus. In particular, LU took no steps relating to the buildings operated by each of the Federated Universities on land owned by LU, including administration buildings and student residences. LU is prepared to work cooperatively with each of the Federated Universities regarding their physical buildings – it is only the federated relationship giving rise to the delivery of academic programs and the transfer of funds by LU for same that cannot continue.

162. On April 11, 2021, SU requested reasons in writing for issuing the Notice of Disclaimer pursuant to section 32(8) of the CCAA. A copy of SU's request is attached hereto as **Exhibit "O"**. I am advised by LU's external counsel D.J. Miller of Thornton Grout Finnigan LLP ("**TGF**") and verily believe that, following an exchange of communications, SU's counsel confirmed that, subject to LU delivering its Motion Record for the April 29, 2021 motion on Monday, April 19, 2021 (which, together with the Initial Haché Affidavit would include the reasons for the Disclaimer), no response to SU's letter was required.

163. In view of an Affidavit served on LU by SU during the evening of April 18, 2021 that was in French and required translation, and a Supplementary Motion Record served by Thorneloe on April 19, 2021, LU was not in a position to finalize and serve its Motion Record on April 19, 2021, as intended. LU's external counsel therefore sent SU's counsel a letter dated April 19, 2021 providing a response to the request made pursuant to section 32(8) of the CCAA. Annexed hereto and marked as **Exhibit "P"** is a copy of that letter.

164. As discussed further below, each of Thorneloe and SU have brought motions opposing the Notices of Disclaimer. Since it is a condition of the DIP Amendment (defined below) and the availability of a further $10 million in DIP financing that the Disclaimers become effective on May 1, 2021, it will be necessary to determine the motions brought by Thorneloe and SU at the return of the Applicant's motion on April 29, 2021. In addition, steps taken following the implementation of the academic restructuring of LU and the necessity to finalize the program and course offerings for Fall 2021 within the timeline of the academic calendar year, as outlined in the Initial Haché Affidavit, require that the issue be determined by April 30, 2021. The Spring term commences on May 3, 2021 which necessitates the removal of courses from the available online catalogue for Thorneloe.

Each of Huntington and SU have already requested that LU remove the courses on offer in the program catalogue for the Spring term that they would have otherwise taught.

E. Transition Agreement with Huntington University

165. After the Notice of Disclaimer was issued to Huntington on April 1, 2021, LU and Huntington continued discussions with respect to next steps. LU and Huntington reached agreement on transition terms arising from LU's termination of their federated relationship.

166. On April 5, 2021, LU and Huntington entered into a Term Sheet (the "**Huntington Term Sheet**") outlining the terms upon which the parties had reached an agreement and would enter into definitive documentation. On April 16, 2021, LU and Huntington entered into a Transition Agreement the ("**Huntington Transition Agreement**") formalizing the terms contained in the Huntington Term Sheet. Attached hereto as **Exhibit "Q"** is a copy of the Huntington Transition Agreement. LU's costs for the services described on Schedule "A" have been redacted. The parties will reach agreement on which of the services will continue to be provided prior to the effective date as defined in the agreement.

167. The Huntington Transition Agreement includes the following terms:

(a) Huntington will not oppose the Notice of Disclaimer;

(b) Huntington will cease to have the ability or responsibility to deliver academic courses or programs as credit towards LU degrees, and LU will no longer transfer funding to Huntington on any basis;

(c) If Thorneloe and/or SU are permitted to continue to receive funding from LU to teach courses or programs and receive funding from Laurentian, Huntington shall be similarly entitled, at its election;

(d) Huntington's current courses and programs will be discontinued by LU and LU will offer those students who are affected enrollment in other courses or programs offered by LU;

(e) Huntington will transfer to LU its rights relating to the Gerontology program in consideration for LU's assumption of Huntington's retiree wind-up liabilities under the Pension Plan;

(f) Huntington will pay the amount of $1,200,000 into the Pension Plan in respect of the wind-up deficit for its active and deferred members by no later than June 30, 2021, which amount will be notionally segregated for the benefit of such Huntington members until such time as Huntington former members who elect to receive commuted value transfer payments receive their final installment of such commuted value payments. Huntington will receive a release from LU for its obligations under the Pension Plan, upon receipt of the $1,200,000 payment and the transfer of the Gerontology program;

(g) Huntington will continue to maintain its building and related facilities for its own benefit and use on LU's land. In turn, LU agrees that the Transition Agreement and the terms thereof do not trigger the termination rights under the Indenture;

(h) LU will continue to provide certain services to be determined prior to the effective date of the agreement to Huntington, based on pricing agreed to by the parties for those services; and

(i) Huntington will cease to be a participating employer in the Pension Plan and the RHBP effective on June 30, 2021.

168. I am advised by Simon Deschenes of Eckler Ltd. ("**Eckler**"), the Pension Plan's actuary, and verily believe that:

(a) the consideration paid by Huntington is expected to be sufficient to fund the wind-up deficiency relating to the Huntington Pension Plan members at the end of five years assuming the economic assumptions in effect as at March 1, 2021 materialize over the period and as such, it is a reasonable amount in satisfaction for releasing Huntington from further obligations under the Pension Plan; and

(b) under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (together with its Regulations, the "**PBA**"), employers have five years to fund a wind-up deficiency on termination of a pension plan. Payments in respect of a wind-up deficiency do not crystallize when a participating employer ceases participating in a pension plan if the pension plan is ongoing.

169. Under the Huntington Transition Agreement, by virtue of Huntington agreeing to contribute $1,200,000 into the Pension Plan by June 30, 2021, the risk to the Pension Plan that Huntington will be unable to make future payments is removed.

F. Further Discussions with SU and Thorneloe

170. Following SU's press release on March 12, 2021 that it intended to become a unilingual (francophone) university and seek degree-granting authority, on April 12, 2021, SU sent a letter to LU requesting that all French-language programs offered by LU be transferred to SU. A copy of the letter in French (along with an unofficial English translation) is attached hereto as **Exhibit "R"**.

171. The same day, LU's counsel responded by letter to SU and advised that LU was fully committed to its status as a bilingual and tri-cultural institution that provides strong, comprehensive academic programs in both English and French, and therefore would not be transferring any French-language programs to SU. A copy of the letter is attached hereto as **Exhibit "S"**.

172. On April 14, 2021, in a further effort to consensually resolve the termination of LU's Federation Agreements with SU and Thorneloe, LU delivered to each of SU and Thorneloe an open settlement offer in the form of a Transition Agreement. These were delivered on the basis that they are not without prejudice settlement offers, and would be included in the motion materials that LU intended to file, for the benefit of the Court and interested parties. Copies of the open offers delivered to SU and Thorneloe in the form of Transition Agreements are attached hereto as **Exhibits "T"** and **"U"** (together, the "**SU and Thorneloe Settlement Offers**").

173. The SU and Thorneloe Settlement Offers were similar in form to the Huntington Transition Agreement. As with the Huntington Transition Agreement, the aim of the SU and Thorneloe Settlement Offers was to provide terms that would allow SU and Thorneloe to maintain a historic legacy on campus and continue to independently operate their own buildings after the end of the federated relationship, while also recognizing LU's severe financial restraints.

174. In particular, the SU and Thorneloe Settlement Offers provided that: (i) SU and Thorneloe will cease to have the ability or responsibility to deliver academic courses or programs as credit towards LU degrees, and LU will no longer transfer funding to SU or Thorneloe on

any basis; (ii) LU would offer those students who are affected enrollment in other courses or programs offered by LU; (iii) each of SU and Thorneloe would continue to maintain their buildings and related facilities for their own benefit and use on LU's land; and (iv) LU would continue to provide certain services to SU and Thorneloe, based on a pricing schedule agreed to by the parties for those services.

175. Additionally, similar to the terms of the Huntington Transition Agreement, SU and Thorneloe would cease participation in the Pension Plan and RHBP no later than June 30, 2021, with SU and Thorneloe remaining responsible for the funding of their proportionate share of the Pension Plan termination deficit with the goal of purchasing annuities from a life insurance company within a 15-year period. Under the terms of the SU and Thorneloe Settlement Offers, SU and Thorneloe would be required to fund the wind-up deficiency attributable to their own employees and retirees over a 15-year term, or earlier if required under the PBA, with accelerated contributions required within 5 years in respect of members who may be eligible and who elect lump sum commuted value transfers.

176. LU did not receive any response from SU and Thorneloe to the open Settlement Offers.

G. SU and Thorneloe Motions Opposing the Disclaimers

177. On April 14, 2021, SU delivered a Motion Record including the Affidavit of Pierre Riopel sworn April 14, 2021 (the "**Riopel Affidavit**") in opposition to the Notice of Disclaimer issued to SU.

178. On April 15, 2021, Thorneloe delivered a Motion Record containing the Affidavit of Sydney Edmonds (the "**Edmonds Affidavit**") opposing the Notice of Disclaimer issued to Thorneloe (together, the "**Disclaimer Motions**").

179. Thorneloe's Motion Record was initially served without its main Affidavit. On April 19, 2021, Thorneloe served a Supplemental Motion Record with the Affidavit of John Gibaut sworn April 19, 2021 (the "**Gibaut Affidavit**") and the Affidavit of Allan Nackan sworn April 19, 2021 (the "**Nackan Affidavit**").

180. I have reviewed the Disclaimer Motions, including the Riopel Affidavit, Edmonds Affidavit, Gibaut Affidavit, and Nackan Affidavit.

181. The Disclaimer Motions are largely premised on the argument that the Notices of Disclaimer will cause SU and Thorneloe significant financial hardship.

182. While LU is cognizant that the Notices of Disclaimer will have financial consequences for the Federated Universities, the unfortunate reality is that the termination of the federated relationships, and the revenue that will remain with LU as a result, is a necessary component of a successful restructuring of LU.

183. As noted above, LU transferred approximately $7.7 million last year to the Federated Universities. The effect of the Notices of Disclaimer is that revenue for the teaching of students will now stay within LU. Given LU's insolvency, and clearly strained liquidity situation, that is revenue that will be crucial to a successful restructuring, including LU's ability to put forward any Plan of Arrangement that would be acceptable to creditors and could therefore be approved.

184. For that reason, the Thorneloe Disclaimer Motion is misguided when it focuses on the relative proportion of LU's tuition fees, grants, and other costs that are attributable to Thorneloe. LU's ability to put forward a successful Plan relies on finding absolute dollar savings wherever possible – not just from those areas that make up the largest proportion of LU's budget. The $7.7 million in revenue for last year (and any corresponding relative amounts in future each year) that will be made available by the Notices of Disclaimer is, contrary to the allegations in the Thorneloe Disclaimer Motion, far from "immaterial" to that effort.

185. Moreover, the termination of the federated relationships forms part of a larger strategy by LU to reduce and consolidate the number of programs and courses offered to students, and to focus on those that generate sufficient enrollment and demonstrate financial viability.

186. To the extent that the Disclaimer Motions suggest that the federated relationships can be saved by a simple tweaking of the funding formula, rather than a full disclaimer, that is not the case based on the situation that currently exists. As outlined very extensively in both this Affidavit and the Initial Haché Affidavit, LU is facing a severe economic crisis that led to its insolvency. As a result, LU and its operational structure is in full overhaul mode. That is demonstrated by the drastic changes described above regarding both LU's academic programming and its employees.

187. The changes to the Federated Universities' relationships are similarly significant and critical. The structural challenge presented by the federated relationships is not an issue that can be resolved with tweaks to the existing order. As discussed above, LU previously attempted that type of incremental change by making adjustments to the funding formula

in 2019. It was not sufficient. From LU's perspective, we have exhausted our options, including two months of discussions during the Mediation, leading to our termination of the federation relationships.

188. The Notices of Disclaimer are further necessary because additional funding under the Amended DIP Facility will be required in order for LU to continue in operations during the period of the requested stay extension. The DIP Amendment contains a number of Conditions to Funding that must be satisfied before additional funds will be made available under the Amended DIP Facility. One of those Conditions to Funding is that each of the Notices of Disclaimer become effective, binding, and final on May 1, 2021 (30 days after they were issued in accordance with the relevant time period under the CCAA).

189. I am advised by Jonathan Mair of the DIP Lender, and do verily believe, that the DIP Lender has made clear that the satisfaction of this Condition to Funding is essential to the DIP Lender's willingness to advance further funds under the Amended DIP Facility.

190. As described further below, the availability of funds under the Amended DIP Facility is a necessity for LU. The original $25 million available under the original DIP Facility has been fully drawn an is insufficient for the period of the requested stay extension. If LU is to continue operating in the ordinary course while it successfully restructures its operations, it will require access to funds under the Amended DIP Facility.

191. Given LU's need for funding, and the DIP Lender's Conditions to Funding, it is critical to LU's restructuring efforts that the Notices of Disclaimer become effective as of May 1, 2021.

192. To be clear, LU does not take the decision to end its federated relationships lightly and regrets that it is necessary. As noted above, there is a strong affinity within the LU community for the Federated Universities and LU is committed to honouring that legacy. To that end, LU has made every effort (within its financial constraints) to smooth the transition for the Federated Universities. That has included the negotiation of the Huntington Transition Agreement described above, and our offer to settle with SU and Thorneloe on similar terms.

193. LU recognizes that some students will be affected by the Notices of Disclaimer and will have a transition plan in place to minimize any disruption to these students. In particular, all students enrolled at a program offered through the Federated Universities have been offered the opportunity to transfer to a program offered by LU. LU will undertake a full assessment of each program offered by the Federated Universities to transfer relevant credits already taken to the students' new programs. LU will ensure that any students enrolled in programming offered by the Federated Universities could be transferred to a program at LU and that such students can complete their degree without exceeding the expected 90 credits (for a three-year degree) or 120 credits (for a four-year degree).

194. To the extent the Riopel Affidavit is suggesting that LU is using the Notices of Disclaimer as an improper way to obtain ownership of the buildings that SU paid to construct, let me be clear that that is not the case. LU has no specific desire to take over the SU (or Thorneloe) buildings. Indeed, as reflected in the open settlement offers LU delivered to SU and Thorneloe, LU specifically contemplates and would agree to the Federated Universities continuing to operate their buildings and would, in fact, offer to continue to provide certain services if arrangements are agreed to. That remains the case.

195. Finally, in response to the Riopel Affidavit's statement that, as a result of the Notices of Disclaimer, SU will have to pay the annual upkeep on its buildings of approximately $400,000, I note that it is already the case that SU is responsible for upkeep costs related to its buildings, and that is not a result of the Notices of Disclaimer.

IX. PROVINCIAL ACTIONS WITH RESPECT TO NOSM AND HEARST

196. On April 15, 2021, the Province of Ontario tabled Bill 276 in the Legislature containing Schedule 16 titled the *Northern Ontario School of Medicine University Act*, *2021* which is intended to grant status as an independent university to NOSM. The bill does not include any timeline or any regulations that would be required to bring such a plan to fruition, such that NOSM could become an independent degree-granting institution. LU will engage in discussions with MCU with respect to the timing and impact of any such plan, including as it relates to buildings currently occupied by NOSM on LU's campus.

197. NOSM does not contribute to LU's financial sustainability, as tuition and other funds collected by LU on behalf of NOSM are effectively a "flow-through". LU does provide certain services to NOSM, and the transition of any such services will form part of the discussions if the intended bills that have been introduced are passed, including as to timing.

198. NOSM and MCU are aware of the terms of the CCAA and the Amended and Restated Initial Order, including the stay as it relates to the existing Business of LU during the CCAA Proceedings.

199. The Université de Hearst is a University affiliated with LU that offers undergraduate French-language degree programs, covering areas of study such as history, sociology,

philosophy, psychology, French, and geography for Northern Ontario's Franco-Ontarian community. It has approximately 100 students in total, spread between three campuses located in Hearst, Kapuskasing, and Timmins.

200. On April 15, 2021, as part of the same omnibus bill, Bill 276 referred to above, schedule 28 of the legislation included the *Université de Hearst Act, 2021* which is intended to grant status as an independent university to the Université de Hearst. Similar to the NOSM bill, the Hearst bill does not include any timeline or any regulations that would be required to bring such a plan to fruition, such that the Université de Hearst could become an independent degree-granting institution. LU will engage in discussions with MCU with respect to the timing and impact of any such plan.

X. POST-EMPLOYMENT BENEFITS

201. As further explained in the Initial Haché Affidavit, LU is the administrator of three post-employment benefit plans for its employees, the employees of the Federated Universities, and the employees of certain other participating employers: (i) the Retirement Plan for Laurentian University and its Federated and Affiliated Universities (the "**Pension Plan**"), (ii) the Supplemental Retirement Plan (the "**SuRP**"), and (iii) a Retirement Health Benefits Plan (the "**RHBP**").

A. The Pension Plan

202. The last valuation conducted in respect of the Pension Plan was as of January 1, 2020 and was filed with the Financial Services Regulatory Authority of Ontario ("**FSRA**") in December 2020. The valuation demonstrated that the Pension Plan is 104.7% funded on a

going-concern basis (99% including the provision for adverse deviation), 85.4% funded on a solvency basis and 65.8% funded on a wind-up basis.

i. Pension Order of March 17, 2021

203. Except for employees hired after September 24, 2017, members of the Pension Plan who are no longer employed by LU or any of the participating employers are entitled to commute their pension entitlements at any age and at any time prior to commencing receipt of their pension. LU's practice historically has been to transfer members' commuted value entitlements out of the Pension Plan as a single lump-sum.

204. LU determined that its historical practice could create a risk to the long-term sustainability of the Pension Plan and, depending on the outcome of these proceedings, could result in unfairness to retired members and continuing members of the Pension Plan. LU, in its fiduciary capacity as administrator of the Pension Plan, decided to change its administrative practice so that going forward it would transfer commuted value entitlements in two installments in accordance with the PBA. Under the PBA, the first installment is made based on the transfer ratio disclosed in the Pension Plan's most recently filed actuarial valuation report, currently 65.8% (the "**Transfer Ratio**"), and the remainder of the commuted value is to be paid out within 5 years. This change in historical practice was necessary to ensure all members of the Pension Plan were treated equitably and even-handedly.

205. As of February 1, 2021, 27 members of the Pension Plan had either recently made an election to receive 100% of their lump-sum commuted value transfer that was yet to be processed, or had recently received forms indicating that they could receive 100% of their commuted value transfer paid out as a single lump-sum (the "**Interim CV Applicants**").

In order to fulfill its fiduciary duty as administrator of the Pension Plan to treat all members equally and with an even-hand, LU brought a motion on March 15, 2021 seeking an order permitting it to apply the Transfer Ratio to the Interim CV Applicants' commuted value transfer requests.

206. On March 17, 2021, the Court granted an Order approving the application of the Transfer Ratio to the Interim CV Applicants (the "**Pension Order**").

207. Pursuant to the Pension Order, every Interim CV Applicant was given 30 days from the date they were notified of the Pension Order to elect or confirm their election to receive a commuted value transfer payable at the Transfer Ratio, or to receive a deferred or immediate monthly pension benefit payable from the Pension Plan. If an Interim CV Applicant did not respond within that window, the Interim CV Applicants would be deemed to have elected an immediate or deferred monthly pension benefit. On March 18, 2021, the Interim CV Applicants were provided with a copy of the Pension Order as well as a letter setting out their election options and indicating that the deadline for response was April 19, 2021. A copy of a sample letter is attached hereto as **Exhibit "V"**.

208. As of April 16, 2021, 16 of the 27 Interim CV Applicants had either made or confirmed their pension election in response to the Pension Order.

209. The Pension Order also confirmed that LU's payment due in respect of an assessment owing to the Pension Benefits Guarantee Fund ("**PBGF**") pursuant to the PBA for the Pension Plan in the amount of $919,234.66 ($851,143.20, plus provincial tax of $68,091.46) for the July 1, 2019 - June 30, 2020 plan year, and the incremental PBGF assessment due for the July 1, 2018 - June 30, 2019 plan year estimated to be $288,723.53

($267,336.60, plus provincial tax of $21,386.93) were pre-filing obligations and therefore stayed under the Amended and Restated Initial Order. The stay only applies to the LU portion (91.6%) of these payments based on LU's *pro rata* share of the Pension Plan's solvency liabilities, and not to the portion attributable to other participating employers.

ii. Retirement Incentive

210. On March 28, 2021 LU launched a Retirement Incentive Program for faculty members (the "**Retirement Incentive**") following discussions with LUFA. Under the Retirement Incentive, retirement-eligible faculty members could provide an irrevocable notice of intention to retire as of April 30, 2021 if not teaching, or May 15, 2021, if teaching, in exchange for certain non-economic benefits. Under the Retirement Incentive, faculty members would, among other things, be eligible to elect a commuted value payment option in respect of their Pension Plan entitlements. A copy of the March 28, 2021 Retirement Incentive memo is attached hereto as **Exhibit "W"**.

iii. Ongoing Pension Plan Administration

211. Given its limited operational capacity, LU has prioritized the administration of pension elections of the Interim CV Applicants and faculty members retiring under the Retirement Incentive, and continues to work closely with the Pension Plan's third-party administrator and advisors to address the large volume of interest around the Pension Plan generated by the CCAA Proceedings.

iv. Pension Term Sheet

212. As part of LU's negotiations in the mediation with LUFA and LUSU, LU sought amendments to the Pension Plan to ensure that it would be sustainable moving forward and that LU's funding obligations to the Pension Plan would not jeopardize LU's financial viability after the conclusion of the CCAA Proceedings.

213. Over the past two months, the Pension Plan's actuary, Eckler, undertook comprehensive modelling to assess what changes to the Pension Plan are required in order to ensure that LU contributions to the Pension Plan are predictable, to limit the risk of special payments arising in the future and to ensure the Pension Plan's long-term sustainability.

214. The Pension Plan amendments that were formulated based on the Eckler modelling include changes to the availability of commuted value transfers, changes to the Pension Plan benefit formula described below, and associated changes to the Pension Plan's governance structure. These changes are set out in a term sheet dated April 7, 2021 between LU and each of LUFA and LUSU (the "**Pension Term Sheet**"), which forms part of the LUFA Term Sheet and LUSU Term Sheet.

A. Pension Plan Amendments

215. Pursuant to the Pension Term Sheet, the Pension Plan will be amended as follows:

(a) Availability of Commuted Value Transfers: Going forward, commuted value transfer payments will cease to be available for terminated members of the Pension Plan who have attained their early retirement date (the first day of July coincident with or next following their 55th birthday) upon leaving employment. For employees who have not attained their early retirement date upon termination of employment, commuted value transfers will be offered on a one-time basis in accordance with PBA requirements. Limiting commuted value transfers from the Pension Plan to those required by the PBA preserves the capital that remains in the Pension Plan over the long term and, in turn, improves the long-term viability of the Pension Plan. These changes do not impact the value of terminating members' Pension Plan entitlements, only the form of the payment.

Certain transitional measures were put in place: (i) LU faculty members who provided an irrevocable notice of intention to retire pursuant to the Retirement Incentive are able to elect to receive a commuted value transfer regardless of their age, provided the election is made before May 15, 2021, and (ii) deferred vested members whose Pension Plan membership was terminated in the past and who at the time of termination of membership were advised that they could elect a commuted value transfer at any time in the future will be given a one-time option to elect a commuted value transfer. The commuted value payments will be made in two installments as described above for any member of these groups who elected a commuted value.

LU is in the process of preparing the amendments to the Pension Plan to give effect to the changes to the commuted value transfer rules. LU intends to file these Pension Plan amendments with the FSRA and Canada Revenue Agency prior to May 1, 2021.

(b) Modified Early Retirement Provisions: Currently, the Pension Plan allows all members to retire on an unreduced early retirement pension at age 62. If a member retires before that, their pension is reduced by 0.5% per month from age 62. The age 62 early retirement date is eliminated for LUFA members and Senior Leaders and Designated Executives effective July 1, 2021 for members who have not yet reached age 62 on July 1, 2021. Effective July 1, 2021, if these members retire early, their pension entitlements will be actuarially reduced from their normal retirement date. LUSU members and other employees who participate in the Pension Plan will continue to be eligible for unreduced early retirement at age 62,

but if they retire earlier than that, their pension will be actuarially reduced from age 62.

(c) Receipt of Pension While Employed: Effective July 1, 2021, members of the Pension Plan will no longer be entitled to commence receipt of their pension from the Pension Plan while employed after their normal retirement date, except as required under the *Income Tax Regulations* C.R.C., c. 945 ("**ITR**").

(d) Freeze Best Average Pensionable Earnings: Under the current terms of the Pension Plan, "Best Average Pensionable Earnings", which is the five-year average of a Pension Plan member's highest average earnings, is used to calculate members' defined benefit pension entitlements. The Pension Plan is being amended to freeze Best Average Pensionable Earnings on June 30, 2021.

(e) Career Average Earnings Benefit Formula & Integration with Enhanced CPP: Effective July 1, 2021, members of the Pension Plan will accrue benefits based on a career average earnings formula (i.e., based on pensionable earnings in each year of credited service) and not on the best average earnings formula described above. Members' benefits will be integrated with the increased pensionable earnings ceiling under the enhanced Canada Pension Plan, in advance of the Canada Pension Plan enhancement being fully implemented in 2025.

(f) Post-Retirement Indexation: For service on and after July 1, 2021, post-retirement indexation will not be provided unless granted in accordance with the Pension Plan's new Benefits and Funding Policy.

(g) Contributions: Starting July 1, 2021, members will contribute an average of 8% of pensionable earnings to the Pension Plan. LU will also contribute a minimum of 8% of pensionable earnings to the Pension Plan.

(h) Benefits and Funding Policy: The Pension Term Sheet included the key terms of a Benefits and Funding Policy which will be developed in respect of the Pension Plan and which will govern the financial management of the Pension Plan, including how contributions to the Pension Plan are used to build reserves and grant benefit improvements to Pension Plan members, such as pre-retirement and post-retirement indexation.

B. Pension Plan Governance

216. As explained above, LU, LUFA and LUSU have agreed to establish a Benefits and Funding Policy for the Pension Plan, the key terms of which are set out in the Pension Term Sheet. The Benefits and Funding Policy is intended to ensure that excess contributions are used to build reserves in the Pension Plan and to establish the funded status conditions that must be met before benefit improvements may be granted.

217. Under the Benefits and Funding Policy, benefit improvements may only be granted if: (i) the Pension Plan is at least 95% funded on a solvency basis; (ii) the Pension Plan is at least 105% funded on a going concern basis, including provision for adverse deviation, (iii) the granting of any benefit improvement does not cause the funded status of the Pension Plan to fall below 90% on a solvency basis or 103% on a going concern basis, including provision for adverse deviation, and (iv) the benefit improvement poses a low risk of requiring total contributions to exceed 16% of pay. No benefit improvements can be

granted until at least July 1, 2025 so that reserves can build in, and help stabilize, the Pension Plan.

218. LU, LUFA and LUSU have also agreed to establish a new Joint Committee on the Benefits and Funding Policy and Long-Term Sustainability (the "**Joint Committee**"). In accordance with the Pension Term Sheet, the mandate of the Joint Committee is to: (i) monitor and advise the Pension Committee on the administration and implementation of the Benefits and Funding Policy, and (ii) study possible long-term sustainability options for the Pension Plan.

219. The membership and terms of reference of the Pension Committee, which is an existing fiduciary committee in respect of the Pension Plan, are also to be changed as outlined in the Pension Term Sheet. The changes incorporate the Benefits and Funding Policy and Joint Committee into the governance structure of the Pension Plan, and remove the Federated Universities from the Pension Committee. In addition to LU, LUFA, and LUSU, the non-union employees represented by LUAPSA have a non-voting role on the Pension Committee.

C. Supplemental Retirement Plan ("SuRP")

220. The SuRP provided an additional retirement benefit which was afforded to LU's high-earning employees. The SuRP provided benefits over the maximum amounts payable from the Pension Plan under ITR restrictions. No other employer, other than LU, participates in the SuRP.

221. The SuRP was unfunded and unsecured. SuRP benefits were paid out of LU's annual operating budget. SuRP payments were expected to cost LU $262,744.87 in 2021, and the

SuRP represented an accrued benefit obligation of approximately $3,063,000 on LU's financial statements.

222. All payments from the SuRP ceased on February 1, 2021.

223. LU reached agreement with LUFA and LUSU as part of the Mediation that the SuRP would be terminated. LU is in the process of terminating the SuRP.

D. Retiree Health Benefit Plan

224. As described in the Initial Haché Affidavit, the RHBP provides qualifying retirees and their surviving spouses reimbursement of certain healthcare expenses up to a maximum annual subsidy. The annual subsidy differs by employee group and whether the retiree has single or family coverage. The RHBP is typically used to reimburse participants' health benefit premiums for private or other group medical insurance or qualifying medical expenses. As of January 30, 2021, 358 retirees and surviving spouses (including retirees from the Federated Universities and other participating employers) qualified for the RHBP.

225. The RHBP is funded by contributions from active employees and by LU, the Federated Universities, and three other employers. As of January 30, 2021, 866 employees were contributing to the RHBP.

226. All payments to retirees and their surviving spouses from the RHBP ceased on February 1, 2021.

227. Contributions to the RHBP were historically deposited in LU's general operating account and tracked as a liability in its accounting records. All contributions to the RHBP since late December 2020 have been deposited into a segregated account for the RHBP.

228. LU reached agreement with LUFA and LUSU as part of the Mediation that the RHBP would be eliminated. LU is working to terminate the RHBP and refund contributions made to the segregated account since it was established in December 2020.

XI. AFO MOTION

229. On March 31, 2021, the AFO brought a motion seeking, among other things, that LU engage in consultations regarding any restructuring plan that may impact the status or use of French, and enter into negotiations with the AFO and SU regarding any alternative proposal that may be brought forward for LU's consideration.

230. LU and the AFO and representatives of other parties including the Monitor attended a Case Conference before Chief Justice Morawetz on April 1, 2021 and a second Case Conference on April 6, 2021.

231. I am advised by LU's external counsel, D.J. Miller of TGF and do verily believe that a portion of the relief sought by AFO on its motion was resolved by way of a negotiated Consent Order, subject to a case conference being arranged to confirm the terms of the Order and have same issued. Upon any Order being signed on consent of the parties, it will be delivered to the Service List in this proceeding.

XII. COMMUNICATIONS WITH STAKEHOLDERS

A. Students

232. LU has provided regular communications to students throughout the CCAA Proceedings, including FAQ documents and direct email communications to all students. In addition, LU created a dedicated website where all information relating to the CCAA Proceedings

is located. The dedicated LU website for the CCAA Proceedings also has a link to direct students to the website maintained by the Monitor.

233. As described further above, in response to the program and course closures that have been approved by the Senate, LU has taken proactive steps to communicate to those students affected. The Deans (and other key advisors) have been made available to communicate with their respective students on an individual basis to develop personalized academic plans moving forward.

B. Donors

234. LU's legal counsel has been in contact with counsel for certain major donors to LU. LU's legal counsel has advised that LU was engaged in time-sensitive Mediation to achieve critical milestones that would permit LU to continue operating. It advised that if these milestones were achieved, LU would engage in discussions with the donors during Phase Two of the restructuring, which would include a detailed operational review of all systems, policies, and procedures to ensure that LU utilizes the processes and support that the donors have offered and can expect.

235. LU recognizes the work that will be required to re-establish confidence with its donors and other stakeholders in the community and will do everything possible to accomplish that during Phase 2 of this restructuring and in the future.

C. Research Granting Agencies

236. LU has also received correspondence from several research-granting agencies, including the Wildlife Conservation Society and the Quebec Secretariat for Canadian Relations. LU's legal counsel has responded by advising that LU, with the assistance of the Monitor,

is undertaking a review in respect of all research grants received by LU. However, at this time, LU is not able to address any particular funds that may have been received prior to the commencement of the CCAA proceedings. A copy of the letter to the Quebec Secretariat for Canadian Relations is attached hereto as **Exhibit "X"**.

237. I am advised by LU's Vice-President Research, Dr. Tammy Eger, and verily believe to be true, that LU has been in regular communication with the tri-agencies (the Natural Sciences and Engineering Research Council, the Social Sciences and Humanities Research Council and the Canadian Institutes of Health Research (collectively, the "**Tri-Agencies**")) throughout the CCAA Proceedings. Reports on the status of grants held from the Tri-Agencies have been provided along with information on the segregated bank account for research funds. Based on the exchange of information, the Tri-Agencies agreed to release new research funds in March and April to LU. Future payments will be determined subject to LU obtaining the Order that is sought on this motion.

238. Similar meetings were held with MITACS, the Ontario Center for Innovation, and Natural Resources Canada who have also agreed to release new research funds to LU.

239. Meetings have also been held with the Canadian Foundation for Innovation ("**CFI**"), who are waiting to hear if LU will continue to operate beyond April 30th prior to making a final decision on approvals for LU to resume spending CFI grant funds.

240. In the next phase of the CCAA proceeding beginning May 1, 2021, the Vice-President Research and Executive Financial Advisor to the President will continue to meet with research funders to provide an update on research account balances and management of research funds in order to rebuild trust and build back LU's research enterprise.

241. LU faculty continue to apply for and receive research grants.

242. LU is expected to be able to provide further findings regarding its review and reconciliation of research funds as the CCAA Proceedings progress.

D. Pre-Filing Lenders

243. LU's significant lenders, Toronto-Dominion Bank, Royal Bank of Canada, and the Bank of Montreal (collectively, the "**Lenders**") are collectively owed in excess of $100 million and requested participation in the Mediation. While the Mediation to date has primarily focused on negotiations for cost-cutting measures and creating operational efficiencies in the delivery of programs and services, the Lenders have participated in the Mediation and have received certain confidential information shared within the Mediation and in accordance with the terms of the confidential Mediation process.

244. In addition, LU's legal counsel, the Monitor and its counsel have met with the Lenders and their counsel and advisors over the last several weeks and have provided information and documentation as same is available.

245. On April 21, 2021, counsel to Royal Bank of Canada ("**RBC**") delivered a letter to Thornton Grout Finnigan, copying the Monitor, its counsel and counsel to the other Lenders. The letter requests certain information in respect of steps that are expected to occur after the stay extension motion that will assist RBC in making an informed decision regarding its position on the motion and requests consultation on certain key steps. Attached hereto as **Exhibit "Y"** is a copy of the letter from RBC.

246. LU will continue to respond to the information requests from the lenders and all stakeholders. If LU receives the Order sought on this motion, including the increased DIP funding to continue operations, LU expects to further engage with the Lenders with respect to the restructuring steps contemplated by LU in the next phase of the CCAA proceeding, the framework and terms for any Plan of Arrangement that may be developed, and the potential sources of recovery for creditors under any such Plan. When a motion is brought seeking a Claims Process Order, which we expect will be in May, all parties will have an opportunity to make submissions on the form of such Order and the claims process.

E. MCU

247. LU has kept MCU, and the Special Advisor appointed by MCU, apprised of all steps taken by LU during the CCAA Proceedings, other than confidential communications relating to the Mediation.

248. On March 19, 2021 MCU made a public announcement relating to $106.4 million of COVID relief funding being provided to various universities and colleges in Ontario. LU did not receive any allocation of such funds. In public statements made by the Minister of MCU following the announcement, it was made clear that it was not an oversight and that LU was expected to address its long-term financial sustainability through the CCAA Proceedings.

249. With the significant milestones achieved by LU and its stakeholders as part of the CCAA Proceedings to date, LU expects to be well positioned to demonstrate its long-term financial sustainability as part of its discussions with MCU in the next phase of the CCAA Proceeding.

XIII. CASH FLOW FORECAST

250. A cash flow forecast for the period of the requested stay extension has been developed, is being finalized and reviewed by the Monitor. This cash flow forecast reflects the impact of the faculty and staff reductions outlined in the LUFA Term Sheet and the LUSU Term Sheet.

251. The cash flow forecast will be attached to a Monitor's Report that the Monitor will be serving and filing prior to the motion.

XIII. INCREASE TO DIP FINANCING

252. In the Amended and Restated Initial Order, the Court approved the DIP Term Sheet between LU and Firm Capital Corporation ("**FCC**") dated January 29, 2021 (the "**DIP Term Sheet**") in the principal amount of $25 million (the "**DIP Facility**"), as well as granting a charge over LU's Property securing the DIP Facility (the "**DIP Lender's Charge**").

253. LU has drawn on the full $25 million available pursuant to the DIP Facility. Based on a review of the Revised Cash Flow Forecast, and in consultation with the Monitor, LU has determined that, without additional financing, LU will be unable to fund its operations for the period of the requested stay extension without the requirement for additional DIP funding.

254. Accordingly, on April 19, 2021, LU and FCC entered into an Amended DIP Term Sheet (the "**DIP Amendment**"), pursuant to which FCC agreed to increase the maximum principal amount available under the DIP Facility by a further $10,000,000 subject to the

terms and conditions described therein (the "**Amended DIP Facility**"). A copy of the DIP Amendment is attached hereto as **Exhibit "Z"**.

255. The key terms of the DIP Amendment are as follows:

(a) the DIP Lender will make available to LU additional funds up to a maximum principal amount of $10 million in accordance with the Cash Flow Forecast;

(b) the Amended DIP Facility has a maturity date of August 31, 2021;

(c) interest accrues at the same rate as pursuant to the original DIP Term Sheet, which amounts are reflected in the Cash Flow Forecast;

(d) a Loan Amendment Fee that is earned and payable to the DIP Lender on the date that the Court approves the DIP Amendment reflects the same percentage rate on the principal amount of the loan as the original DIP Term Sheet;

(e) an increase to the super-priority charge on all of the current and future assets, undertakings, and property of LU to the amount of $35,000,000 (the "**DIP Lender's Charge**") that is only subordinate to: (i) the Administration Charge up to the maximum of $1.25 million; (ii) the Directors' Charge up to the maximum of $2 million (with such further amount to be subordinate to the DIP Lender's Charge); and (iii) any valid purchase money security interests, including the registrations made under the *Personal Property Security Act* (Ontario); and

(f) customary terms and covenants for a DIP Facility in a CCAA proceeding.

256. Funding under the DIP Amendment is also conditional on the satisfaction of certain Conditions to Funding specified in the Amended DIP Term Sheet which include the

granting of an Order for the relief sought by LU in its motion to be heard on April 29, 2021. LU worked with its counsel and the Monitor in determining the quantum of the DIP Amendment and the DIP Lender's Charge. I have been advised that the Monitor supports the DIP Amendment and the increase to the DIP Lender's Charge.

XIV. NEXT STEPS IN RESTRUCTURING

257. The first 90 days of the CCAA Proceeding have been characterized by intense negotiations in the Mediation leading to the various term sheets that are referred to herein, as well as stabilizing the operations, putting new systems and controls in place for cash expenditures, ensuring that communications were delivered to students including new applicants, faculty, staff, and other employees, donors, research granting agencies, and community stakeholders. LU's main focus since the commencement of the CCAA Proceedings has been to ensure that all existing students would be able to continue and complete their current academic year, with minimal disruption.

258. The urgent restructuring changes that have been undertaken on campus since February 1, 2021 were necessary in order to position LU to be able to continue in operation beyond April 30, 2021 and be poised for future financial sustainability. These changes are disruptive and unsettling for many stakeholders, including most directly the faculty and staff who recently received notices of termination. These changes have also placed additional burdens on remaining faculty and staff.

259. The next phase of the CCAA Proceedings will be the pursuit of value for all stakeholders from all available sources, and the re-building of confidence and relationships with students, faculty, staff, donors and research-granting agencies, lenders, the communities

we serve, and all stakeholders. We appreciate that this re-building process will take some time, but we are committed to doing whatever it takes to regain any ground that may have been lost through past events or this proceeding.

260. One of the commitments that will be undertaken by LU, which is embodied in the Term Sheets signed with each of LUFA and LUSU, is a thorough review of all operational and governance matters within the entire University in order to identify and implement best practices for the future. To this end, LU will be engaging, through my office as President, an external advisor with sector expertise to undertake an extensive review of all areas. This process will include consultation with LU's stakeholders and will be open and transparent.

261. Another aspect that will be undertaken if the requested stay extension is granted is a detailed assessment of all real estate owned by LU, and buildings leased to other parties. The purpose of the review will be to determine what assets may exist that could be monetized for the benefit of stakeholders, or that could create future financial efficiencies for the benefit of LU and its stakeholders. This process will also be undertaken with the assistance of external parties, including those with sector expertise.

262. Provided the Order sought by LU is granted, LU expects to bring a motion seeking a Claims Process Order in May, in order to identify the universe of claims that may exist and seek to have all claims determined. During this time LU will also develop the framework for a Plan of Arrangement, so that when all possible sources of recovery for creditors have been identified, a Plan can be put to creditors.

XV. STAY EXTENSION

263. LU seeks an extension of the Stay Period until August 31, 2021.

264. The stay extension is required to enable LU to continue operating in the ordinary course while engaging in discussions with the aim of achieving collective resolutions with all of its stakeholders, as well as undergoing an extensive overhaul of its operational and governance systems to promote efficiencies and accountability, and streamline operations.

265. The Revised Cash Flow Forecast demonstrates that LU will have sufficient liquidity to meet its obligations during the proposed extension to the Stay Period, provided that the increase to the DIP Facility is approved.

266. LU has acted and continues to act diligently and in good faith in respect of all matters relating to these CCAA Proceedings.

267. In the circumstances, I do not believe that any creditor will suffer material prejudice as a result of the extension of the Stay Period.

XVI. CONCLUSION

268. LU seeks an Order under the CCAA, in the proposed form of order attached at Tab 3 in LU's Motion Record.

269. This affidavit is sworn in support of LU's motion for, among other things, an extension to the Stay Period, approval of certain agreements entered into by LU, an increase to the DIP Lender's Charge, and in opposition to the motions brought by SU and Thorneloe in respect of the Disclaimers, and for no other or improper purpose.

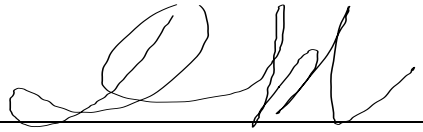
SWORN before me via videoconference by ROBERT HACHÉ located in the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 21st day of April, 2021, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.

Commissioner for Taking Affidavits

Derek Harland
LSO#: 79504N

DR. ROBERT HACHÉ

This is Exhibit “A” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits

Court File No. CV-21-___656040_____-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE CHIEF	)	MONDAY, THE 1ST
	)	
JUSTICE MORAWETZ	)	DAY OF FEBRUARY, 2021

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

INITIAL ORDER

THIS APPLICATION, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard this day by videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of Dr. Robert Haché sworn January 30, 2021 and the Exhibits thereto (the "**Haché Affidavit**"), the pre-filing report of the proposed monitor, Ernst & Young Inc. ("**EY**"), dated January 30, 2021 (the "**Pre-Filing Report**"), and on hearing the submissions of counsel for the Applicant, counsel for EY and those other parties listed on the Counsel Slip, and on reading the consent of EY to act as the monitor (the "**Monitor**");

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Haché Affidavit.

NON-APPLICANT STAY PARTY

3. **THIS COURT ORDERS** that the Laurentian University Students General Association (the "**SGA**") shall be referred to herein as a "**Non-Applicant Stay Party**". Although not an applicant under the CCAA, the Non-Applicant Stay Party shall enjoy certain of the benefits and protections provided herein and be subject to the restrictions as expressly hereunder set out.

APPLICATION

4. **THIS COURT ORDERS AND DECLARES** that the Applicant is insolvent and is a company to which the CCAA applies.

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business and deal with its assets, including the businesses and assets of the other entities, partnerships and joint ventures in which the Applicant has a direct or indirect interest, and is authorized to continue to provide services to such parties in respect of which it is currently providing services, in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to use the cash management system currently in place, as described in the Haché Affidavit, which for greater

certainty includes any segregated bank accounts now existing (together with any segregated accounts established pursuant to paragraph 7, the "**Cash Management System**"), and that any present or future bank or institution providing the Cash Management System to the Applicant shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, except to the extent that such terms are expressly modified by this Order or with the consent of the Applicant, the Monitor and any applicable bank or financial institution providing a Cash Management System, and shall be, solely in its capacity as provider of the Cash Management System only, an unaffected creditor under any plan or arrangement filed by the Applicant under the CCAA with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System on or after the date of this Order.

7. **THIS COURT ORDERS** that (a) any segregated bank accounts established by the Applicant from and after December 1, 2020, to hold funds received by it on the condition that such funds be used for a specific purpose in respect of a particular aspect of the Applicant's Business, including without limitation, funds provided to the Applicant for the purpose of research projects (including grants, awards or other similar funds), funds received in respect of restricted donations or endowments, and employee and employer contributions to benefit plans (collectively, the "**Segregated Funds**") shall be used for such specific purpose, and (b) from and after the date of this Order, the Applicant may establish additional segregated bank accounts, including trust accounts if necessary, to hold any additional Segregated Funds that are received by the Applicant under such agreed upon arrangements, and the Segregated Funds shall not form part of the Applicant's Property.

8. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages, salaries, employee and retiree benefits (including, without limitation, employee medical, dental, vision, insurance and similar benefit

plans or arrangements), amounts owing under corporate credit cards issued to management and employees of the Applicant, ordinary course pension benefits or contributions, vacation pay, expenses and any director fees and expenses, payable on or after the date of this Order, in each case for costs incurred in the ordinary course of business and consistent with existing practices, compensation policies and arrangements for current and future employees (but not including any payments to former employees or retirees in respect of the SuRP and the RHBP, as such terms are defined in the Haché Affidavit, or termination or severance payments, which are hereby stayed), and all other payroll processing and servicing expenses;

(b) all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts owing in respect of rebates, refunds or other similar amounts that are owing or may be owed to students or student associations of the Applicant, whether such amounts are as a result of the reimbursement of tuition fees, ancillary fees or otherwise, provided that such rebates, refunds or other similar amounts are subject to the existing policies and procedures of the Applicant;

(c) all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts payable to students in respect of student scholarship, bursary or grants; and

(d) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

9. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business (including the value thereof) including, without limitation, payments on account of insurance (including directors and officers' insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicant following the date of this Order or payments to obtain the release of goods or delivery of services contracted for prior to the date of this Order.

10. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) until further order of this Court, all outstanding and future normal course contributions to or payments in respect of the Pension Plan, as defined in the Haché Affidavit, in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;

(c) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(d) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

11. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of

the date of this Order (including for greater certainty in respect of the interest rate swap transactions); (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

12. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to continue negotiations with stakeholders in an effort to pursue all restructuring options.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

13. **THIS COURT ORDERS** that until and including February 11, 2021, or such later date as this Court may subsequently order (the "**Stay Period**"), no proceeding or enforcement process in or out of any court or tribunal or other forum, whether arising by contract (including pursuant to any collective agreement) or otherwise (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended, except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall:

(a) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on;

(b) exempt the Applicant from compliance with any statutory or regulatory provisions relating to health, safety or the environment;

(c) affect such investigations, actions, suits or proceedings by a regulatory body as are specifically permitted by Section 11.1 of the CCAA;

(d) prevent the filing of any registration to preserve or perfect a security interest;

(e) prevent the registration of a claim for lien; or

(f) prevent any actions that are permitted by Section 34(8) of the CCAA.

LIMITED STAY IN RESPECT OF THE NON-APPLICANT STAY PARTY

15. **THIS COURT ORDERS** that during the Stay Period, no Person shall (a) commence or continue any Proceeding or enforcement process, (b) terminate, repudiate, make any demand, accelerate, alter, amend, declare in default, exercise any options, rights or remedies, or (c) discontinue, fail to honour, alter, interfere with or cease to perform any obligation, pursuant to or in respect of any agreement, lease, sublease, license or permit with respect to which the Non-Applicant Stay Party is a party, borrower, principal obligor or guarantor, by reason of:

(a) the Applicant being insolvent or having made an application to this Court under the CCAA;

(b) the Applicant being a party to this proceeding or taking any steps related thereto; or

(c) the stay granted pursuant to this paragraph 15; and

(d) any default or cross-default arising from the matters set out in the foregoing subparagraphs,

except with the written consent of the Applicant and the Monitor, or with leave of this Court.

NO INTERFERENCE WITH RIGHTS

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant or the Non-Applicant Stay Party or take any steps to interrupt or interfere with the operation of the

Business or the continued use of the Property of the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the current or future directors or officers of the Applicant, including the members of the Board of Governors of the Applicant (the "**Board**") with respect to any claim against the directors, officers or the Board that arose before the date of this Order and that relates to any obligations of the Applicant whereby the directors, officers or the Board are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until

a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. **THIS COURT ORDERS** that the Applicant shall indemnify its directors, officers and the Board against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer, director or member of the Board, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. **THIS COURT ORDERS** that the directors, officers and Board of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $2,000,000, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 32 and 34 herein.

22. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors, officers and the Board shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any applicable insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. **THIS COURT ORDERS** that Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant's receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;

(c) advise the Applicant in the preparation of the Applicant's cash flow statements and any other reporting to the Court or otherwise;

(d) be at liberty to participate in discussions with representatives of the Ministry of Colleges and Universities ("**MCU**") and such other representatives of Provincial or Federal government agencies, at any time on all aspects of this proceeding and the Applicant's restructuring, subject to such terms of confidentiality as may be appropriate in the Monitor's assessment and in consultation with the Applicant;

(e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, wherever situate, in order to assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

(f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(g) perform such other duties as are required by this Order or by this Court from time to time.

25. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property of the Applicant, or any property of the Non-Applicant Stay Party, and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental legislation, unless it is actually in possession.

27. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant and the proposed DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and the Applicant's counsel and advisors in connection with the CCAA proceedings (collectively, the "Restructuring

Advisors") together with independent counsel to the Board ("**Board Counsel**") shall each be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Restructuring Advisors and Board Counsel. Notwithstanding the foregoing, the fees and disbursement of Board Counsel paid by the Applicant from and after the date of this Order shall not exceed the aggregate amount of $250,000, plus HST, pending further Order of the Court.

30. **THIS COURT ORDERS** that 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.

31. **THIS COURT ORDERS** that the Restructuring Advisors shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $400,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Restructuring Advisors, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 32 and 34 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

32. **THIS COURT ORDERS** that the priorities of the Administration Charge and the Directors' Charge (collectively, the "**Charges**" and each individually, a "**Charge**") as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $400,000); and

Second –Directors' Charge (to the maximum amount of $2,000,000).

33. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

34. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, construction liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, except for any Person who is a "secured creditor" as defined in the CCAA that has not been served with the Notice of Application for this Order.

35. **THIS COURT ORDERS** that the Applicant shall be entitled, on a subsequent attendance on notice to those Persons likely to be affected thereby, to seek an increase to the amounts, to seek additional charges and to seek priority of the Charges ahead of any Encumbrance over which the Charges have not obtained priority under this Order.

36. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the "**Chargees**"), or further Order of this Court.

37. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

38. **THIS COURT ORDERS** that, notwithstanding anything else contained herein and pending further Order of the Court, the Property subject to the Charges herein shall not include the Segregated Accounts.

SERVICE AND NOTICE

39. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail and the Sudbury Star a notice containing the information prescribed under the CCAA, and (ii) within five days of the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than $1,000 (excluding any individual employees, former employees with pension and/or retirement savings or benefits plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plan), and (C) prepare a list showing the names and addresses of those

creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

40. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure*, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.ey.com/ca/Laurentian.

41. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

42. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the case website as part of the public materials in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

43. **THIS COURT ORDERS** that the Applicant and the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

SEALING PROVISION

44. **THIS COURT ORDERS** that Confidential Exhibits "**EEE**" and "**FFF**" of the Haché Affidavit are hereby sealed pending further order of the Court, and shall not form part of the public record.

GENERAL

45. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

46. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

47. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative

in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

48. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

49. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order, and is enforceable without any need for entry and filing.

CHIEF JUSTICE G.B. MORAWETZ

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

FEB 0 1 2021

PER / PAR:

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-_____-00CL

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

INITIAL ORDER

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CITATION: Laurentian University of Sudbury, 2021 ONSC 659
COURT FILE NO.: CV-21-656040-00CL
DATE: 2021-02-01

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: **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

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *D.J. Miller*, *Mitch W. Grossell*, *Andrew Hanrahan* and *Derek Harland*, for the Applicant

Ashley John Taylor and *Elizabeth Pillon*, for the Monitor

Peter J. Osborne, for the Board of Governors

Natasha MacParland, Lender Counsel to the Applicant

Pamela L.J. Huff and *Aryo Shalviri*, for Royal Bank of Canada

Stuart Brotman and *Dylan Chochla*, for Toronto Dominion Bank

Martin R. Kaplan and *Vern W. DaRe*, for Firm Capital Mortgage Fund Inc., DIP Lender

Michael Kennedy, Labour Counsel for the Applicant

George Benchetrit, for Bank of Montreal

HEARD: February 1, 2021

ENDORSEMENT

Introduction

[1] Laurentian University of Sudbury ("LU" or the "Applicant") seeks certain relief pursuant to an order (the "Initial Order") under the *Companies' Creditors Arrangement Act* (the "CCAA").[1]

[2] LU is a publicly funded, bilingual and tricultural postsecondary institution in Sudbury, Ontario. Since inception, LU has provided higher education to the community of Sudbury and Northern Ontario at large and is an integral part of the economic fabric of the Northern Ontario community.

[3] As a result of many years of recurring operational deficits in the millions of dollars, and notwithstanding LU's recent efforts to improve its financial stability, LU is experiencing a liquidity crisis and is insolvent.

[4] LU submits that it requires the protection of the Court and the relief available under the CCAA so that it can financially and operationally restructure itself in order to emerge as a financially sustainable university for the benefit of all its stakeholders.

[5] The facts with respect to this application are briefly summarized below and more fully set out in the Affidavit of Dr. Robert Haché sworn January 30, 2021, filed in support of this application (the "Haché Affidavit").[2]

[6] For the following reasons, the Interim Order is granted.

Overview of the Applicant

[7] LU is a non-share capital corporation that was incorporated pursuant to *An Act to Incorporate Laurentian University of Sudbury,* S.O. 1960, c. 151, as amended by S.O. 1961-62, c. 154 (the "LU Act") and is a registered charity pursuant to the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

[8] The governance structure of LU is bicameral. The Board of Governors (the "Board"), the President, and the Vice-Chancellor generally have powers over the operational and financial management of LU, whereas the Senate of LU (the "Senate") is responsible for the academic policy of LU.

[9] LU primarily focuses on undergraduate programming, with approximately 8,200 total domestic and international undergraduate students (approximately 6,250 full-time equivalents) enrolled in the 2020-21 academic year. LU has five undergraduate faculties, each of which offer

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

[2] Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Haché Affidavit. All references to currency in this factum are to Canadian dollars, unless otherwise noted.

programs in both English and French, and students can choose from 132 undergraduate programs to enroll in.

[10] LU also has a graduate program, with approximately 1,098 total domestic and international graduate students enrolled during the 2020-21 academic year. LU offers 43 Masters and PhD programs in a variety of disciplines.

[11] LU has a federated school structure whereby it has formal affiliations with several independent universities under the overall LU umbrella: the University of Sudbury, the University of Thorneloe, and Huntington University. The Federated Universities are integrated into LU, however, each of the Federated Universities are separate legal entities and are governed by Boards that are independent of LU.

[12] LU is one of the largest employers in the Greater Sudbury area. As at December 30, 2020, LU employed approximately 1,751 people, of which approximately 758 are full-time employees. Total salaries and benefits represent the single largest expense item for LU on an annual basis (approximately $134 million of $201 million in total expenses during fiscal year 2019-20).

[13] Approximately 612 LU employees are represented by the Laurentian University Faculty Association ("LUFA"). Approximately 268 non-faculty staff are represented by the Laurentian University Staff Union ("LUSU").

[14] LUFA and the Board of LU are parties to a Collective Agreement (the "LUFA CA"), with a three-year term that expired on June 30, 2020.

[15] Since April 2020, LU and LUFA have been engaged in bargaining with respect to a new collective bargaining agreement.

[16] On July 1, 2018, LUSU and LU entered into a Collective Agreement that was set to expire on June 30, 2021 (the "LUSU CA").

Assets and Liabilities

[17] LU does not prepare interim financial statements. The most recent audited statements for the year ended April 30, 2020, are attached to the Haché Affidavit.

[18] As at April 30, 2020, LU had assets with a book value totaling approximately $358 million, of which approximately $33 million is comprised of current assets such as cash and short-term investments, accounts receivable, and other current assets. The remaining assets of LU consist primarily of investments in LU's segregated endowment fund ($53 million) and capital assets ($272 million), comprising LU's land and buildings.

[19] As at April 30, 2020, LU had liabilities with a book value totaling approximately $322 million, comprised of: (i) approximately $43 million of current liabilities; (ii) approximately $168 million of deferred contributions; and (iii) approximately $110 million in long-term liabilities.

LU's Liquidity Crisis and Insolvency

[20] LU has experienced recurring operational deficits in the millions of dollars each year for a significant period of time. These operational deficits have led to the accumulated deficit in the operational fund of LU of approximately $20 million at the end of 2019-20 fiscal year. In the current 2020-21 fiscal year, LU projects a further operational deficit of $5.6 million.

[21] LU takes the position that it is insolvent and absent the relief sought in the Initial Order, will run out of cash to meet payroll in February.

[22] LU advises that it has a number of structural issues that are causing financial challenges and that need to be resolved to ensure long-term stability, including:

(a) The terms of the LUFA CA are above market in several respects, and that issue is exacerbated by the tenuous labour relationship between LU and LUFA;

(b) Operationally, the structure of the academic programming offered by LU and the distribution of enrollment among the programs offered is flawed and must be addressed; and

(c) With its current cost structure, it costs more for LU and the Federated Universities to educate each student than the average for all Ontario universities by approximately $2,000 per student, per year.

[23] LU submits that the financial challenges that LU faces are significant and, absent fundamental change, LU's short-term and long-term financial and operational sustainability are at risk.

Objective of CCAA Filing

[24] As part of its restructuring strategy, LU intends to implement long-term financial stability initiatives including, among other things:

(a) A review of the breadth of academic programs offered at LU and their enrollment levels;

(b) A re-evaluation of the Federated Universities model;

(c) Negotiations with LU's unions regarding what LU must look like in the future and ensuring that a restructured LU can be aligned with collective agreements that will facilitate its future sustainability;

(d) Identification of opportunities for future revenue generation;

(e) Refinement of the student experience at LU to continue providing a top-notch education; and

(f) Consideration of options for addressing current and long-term indebtedness.

Law and Analysis

[25] The CCAA applies to a "debtor company" whose liabilities exceed $5 million. A "debtor company" is defined, *inter alia*, as a "company" that is "insolvent" or that has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*.[3]

[26] The CCAA defines "company" to include, among other things, a company incorporated by or under an Act of the legislature of a province.[4]

[27] The Applicant is incorporated under an act of the legislature of the Province of Ontario, the LU Act, and therefore is a "company" for the purposes of the CCAA.[5] Further, as a not-for-profit, non-share capital corporation, the Applicant falls under the *Corporations Act* (Ontario).[6]

[28] There have been several CCAA proceedings commenced in respect of not-for-profit corporations, such as *Canadian Red Cross Society*[7] and *The Land Conservancy of British Columbia*.[8]

[29] I am satisfied that the Applicant's status as a not-for-profit, non-share capital corporation does not impact the applicability of the CCAA to the Applicant.

Insolvency

[30] The insolvency of a debtor is assessed at the time of the filing of the CCAA application. While the CCAA does not define "insolvent", the definition of "insolvent person" under the BIA is commonly referenced by the Court in assessing whether an applicant is a debtor company in the context of the CCAA.[9] The BIA defines "insolvent person" as follows:[10]

> "insolvent person" means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and
>
> (i) who is for any reason unable to meet his obligations as they generally become due,

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[3] R.S.C. 1985, c. B-3 ("BIA").
[4] CCAA, s. 2(1).
[5] S.O. 1960, c. 151, as amended by S.O. 1961-62, c. 154.
[6] R.S.O. 1990, c. C.38.
[7] *Canadian Red Cross Society*, 2000 CarswellOnt 3269 (S.C.).
[8] *TLC, The Land Conservancy of British Columbia, Re*, 2014 BCSC 97 at paras. 14-18.
[9] *Stelco Inc. (Re)*, 2004 CarswellOnt 1211 (S.C.) at paras. 21-22 [*Stelco*].
[10] BIA, s. 2.

(ii) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(iii) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

[31] The tests for "insolvent person" under the BIA are disjunctive. A company satisfying either (i), (ii) or (iii) of the test is considered insolvent for the purposes of the CCAA.[11]

[32] In addition to the foregoing tests, in *Stelco*, Farley J. held that a financially troubled corporation is insolvent if it is reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring.[12]

[33] Based on the evidence set out in the Haché Affidavit and as summarized in the Report of Ernst & Young Inc., the Proposed Monitor, I find that the Applicant is plainly insolvent and faces a severe liquidity crisis.

[34] I also find that the Applicant is a "debtor company" to which the CCAA applies.

Stay of Proceedings

[35] Pursuant to section 11.02(1) of the CCAA, a Court may grant an order staying all proceedings in respect of a debtor company for a period of not more than ten days, provided that the Court is satisfied that circumstances exist to make the order appropriate.

[36] The Applicant submits that it is just and appropriate to grant a stay of proceedings. The Applicant submits that it requires a stay of proceedings in order to provide it with the breathing room necessary to financially and operationally restructure itself in order to emerge as a sustainable and long-term financially viable university to continue providing quality post-secondary education in Northern Ontario.

[37] The Proposed Initial Order provides for a stay of proceedings in favour of the Applicant's current and future directors and officers who may subsequently be appointed. The Applicant submits that the stay in favour of the current and future directors and officers is critical to retain the involvement of the Board and key officers who have knowledge that will assist the Applicant in negotiating with stakeholders and implementing a restructuring plan. I accept this submission.

[38] The Applicant also seeks a limited stay in respect of the Laurentian University Students General Association (the "Non-Applicant Stay Party" or "the SGA"). The stay in respect of the

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[11] *Stelco, supra* note 9 at para. 28.
[12] *Stelco, supra* note 9 at para. 26.

Non-Applicant Stay Party is limited to preventing any person from: (i) commencing proceedings against the Non-Applicant Stay Party, (ii) terminating, repudiating, making any demand or otherwise altering any contractual relationships with the Non-Applicant Stay Party or enforcing any rights or remedies, or (iii) discontinuing or ceasing to perform any obligations under any contractual agreements with the Non-Applicant Stay Party, resulting from the commencement of this CCAA proceeding by the Applicant, the stay of proceedings granted to the Applicant and any default or cross-default arising due to the foregoing.

[39] CCAA courts have, on numerous occasions, extended the initial stay of proceedings to non-applicants.[13] The Court's authority to grant such an order is derived from its broad jurisdiction under ss. 11 and 11.02(1) of the CCAA to make an initial order on "any terms that [the Court] may impose." It is well-established that it is appropriate for the Court to extend the protection of the stay of proceedings to third party entities where such parties are integrally and closely interrelated to the debtor companies' business or where doing so furthers the primary purpose of the CCAA, being the successful restructuring of an insolvent company.[14]

[40] In particular, where the business operations of a group of entities are inextricably intertwined, such as where there are agreements among the entities, guarantees provided by certain entities in the group in respect of the obligations of other entities in the group or shared cash management systems, courts have found it necessary and appropriate to extend a stay in respect of non-applicant parties.[15]

[41] In the present circumstances, the Applicant has provided a written guarantee in respect of a credit facility obtained by the Non-Applicant Stay Party. If counterparties were to exercise remedies due to the Applicant's insolvency, it would disrupt the Non-Applicant Stay Party and have financial implications for the Applicant.

[42] In my view, it is desirable to avoid disruption to the Non-Applicant Stay Party which is particularly critical given the Applicant's status as an operating university and its overarching aim in this CCAA proceeding to avoid or minimize any disruption to students resulting from the commencement of this proceeding. In furtherance of this objective, the Non-Applicant Stay Party will be essential to ensuring students are given all of the information and resources they need to stay informed. The Non-Applicant Stay Party will play a crucial role in maintaining an open dialogue between the Applicant and the interests/concerns of all students.

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[13] For example, *Sino-Forest Corporation (Re)*, 2012 ONSC 2063; *Canwest Global Communications Corp, Re*, 2009 CarswellOnt 6184 (S.C.) [*Canwest*]; *Cinram International Inc (Re*), 2012 ONSC 3767 [*Cinram*].
[14] *Cinram*, *ibid* at paras. 61-65.
[15] *Tamerlane Ventures Inc., Re*, 2013 ONSC 5461 at paras. 20-21; *Cinram*, *ibid* at paras. 61-65.

[43] I am satisfied that extending a limited stay of proceedings to the Non-Applicant Stay Party will allow it to continue fulfilling its intended role and providing the myriad of other key services it provides to the Applicant's students.

Pre-Filing and Post-Filing Payments

[44] The Proposed Initial Order allows the Applicant to continue to make certain pre-filing and post-filing payments, including express authorization to:

(a) pay all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts owing in respect of rebates, refunds or other amounts that are owing or may be owed to students (directly, or to the student associations of the Applicant on behalf of students), in each case, subject to the policies and procedures of the Applicant; and

(b) pay all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts payable to students in respect of student scholarship, bursary or grants.

[45] The Applicant intends on operating in the ordinary course during this CCAA proceeding and minimizing the disruption to students as much as possible. To facilitate this, the Applicant must be able to process certain rebates owing to students and continue to provide students with scholarship and bursary money that is critical to their ongoing studies. Some students must pay tuition prior to the receipt of funding from the Ontario Student Assistance Program (OSAP). Upon receipt of OSAP funding, the Applicant reimburses the students who receive such funding. In many instances, scholarship, bursary and grant money has been committed and is critical to students in need of financial aid to fund their education.

[46] If the Applicant is unable to continue to process such payments, vulnerable students may be irreparably harmed. Many of these students are younger than 19 years of age, and therefore particularly vulnerable. In addition, a change to the manner in which these financial aspects are addressed by the Applicant with their students could create immediate emergencies and disruption to their ability to continue their studies.

[47] The proposed Monitor supports the inclusion of this provision and I am satisfied that it is reasonable in the circumstances.

The Administration Charge

[48] The Applicant requests that this Court grant a super-priority Administration Charge on the Property (as defined in the proposed form of the Initial Order) in favour of the Proposed Monitor, counsel to the Proposed Monitor, the Applicant's counsel and advisors, and independent counsel to the Board. At the initial hearing the Administration Charge was requested in the amount of $400,000, and the Applicant will seek to increase it to $1.25 million pursuant to a proposed Amended and Restated Initial Order on the Comeback Hearing. Section 11.52 of the CCAA provides the Court with statutory jurisdiction to grant the Administration Charge.

[49] In *Canwest Publishing*, Pepall, J. (as she then was) considered section 11.52 of the CCAA and identified the following non-exhaustive list of factors the Court may consider when granting an administration charge:

(a) the size and complexity of the business being restructured;

(b) the proposed role of the beneficiaries of the charge;

(c) whether there is an unwarranted duplication of roles;

(d) whether the quantum of the proposed charge appears to be fair and reasonable;

(e) the position of the secured creditors likely to be affected by the charge; and

(f) the position of the monitor.[16]

[50] The Applicant submits that the Administration Charge is warranted, necessary, and appropriate in the circumstances, given that:

(a) the proposed restructuring will require the extensive involvement of the professional advisors subject to the Administration Charge;

(b) the professionals subject to the Administration Charge have contributed, and will continue to contribute, to the restructuring of the Applicant;

(c) there is no unwarranted duplication of roles so the professional fees associated with these proceedings will be minimized;

(d) the Administration Charge will rank in priority to the DIP Charge and the Directors' Charge; and

(e) the Proposed Monitor believes that the proposed quantum of the Administration Charge is reasonable.

[51] Further, the Applicant has limited the quantum of the Administration Charge that it seeks approval of to what is reasonably necessary for the first ten days of the CCAA proceedings.

[52] The proposed Monitor supports the requested relief.

[53] I am satisfied that the Administrative Charge is reasonable in the circumstances.

The Directors' Charge

[54] The Applicant requests that this Court also grant a priority charge in favour of the Applicant's current and future directors and officers in the amount of $2 million (the "Directors' Charge"). The Applicant will seek to increase the Directors' Charge at the comeback hearing to

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[16] *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222 at para. 54; *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 2037 at para. 58.

$5 million, $3 million of which will rank subordinate to the DIP Charge. The Directors' Charge protects the current and future directors and officers against obligations and liabilities they may incur as directors and officers of the Applicant after the commencement of the CCAA proceedings, except to the extent that any such claims or the obligation or liability is incurred as a result of the director's or officer's gross negligence or wilful misconduct.

[55] The Applicant has certain insurance policies in place (as defined in the Haché Affidavit); however, the Applicant is concerned that the directors and officers may be unwilling to continue in their roles with the Applicant absent the Court granting the Directors' Charge. The Directors' Charge will only be available to the extent that any claim or liability is not covered by any applicable D&O insurance and in the event that the Applicant's D&O insurance does not respond to claims against the directors and officers.

[56] Section 11.51 of the CCAA provides the Court with the express statutory jurisdiction to grant the Directors' Charge in an amount the Court considers appropriate, provided notice is given to the secured creditors who are likely to be affected by it.[17]

[57] In approving a similar charge in *Canwest*, Pepall J. applied section 11.51 of the CCAA and noted the Court must be satisfied with the amount of the charge and that it is limited to obligations the directors and officers may incur after the commencement of the proceedings, so long as adequate insurance cannot be obtained at a reasonable cost.[18]

[58] The proposed Monitor supports the relief requested.

[59] I am satisfied that the Directors' Charge is reasonable in the circumstances because: (i) the Applicant will benefit from the active and committed involvement of the directors and officers, who have considerable institutional knowledge and valuable experience and whose continued participation will help facilitate an effective restructuring, (ii) the Applicant cannot be certain whether the existing insurance will be applicable or respond to any claims made, and the Applicant does not have sufficient funds available to satisfy any given indemnity should its directors and officers need to call upon such indemnities, (iii) the Directors' Charge does not secure obligations incurred by a director as a result of the directors' gross negligence or wilful misconduct, and (iv) the Proposed Monitor is of the view that the Directors' Charge is reasonable and appropriate in the circumstances.

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[17] CCAA, section 11.51.
[18] *Canwest, supra* note 17 at paras. 46 and 48.

Sealing Provision

[60] Pursuant to the *Courts of Justice Act* (Ontario), this Court has the discretion to order that any document filed in a civil proceeding be treated as "confidential", sealed and not form part of the public record."[19]

[61] In *Sierra Club of Canada v. Canada (Minister of Finance)*, Iacobucci J. set out that a sealing order should only be granted when:

> (a) such an order is necessary in order to prevent serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternatives measures will not prevent the risk; and
>
> (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh the deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.[20]

[62] The Applicant requests that, in the Initial Order, this Court seal Confidential Exhibits "FFF" and "GGG" to the Haché Affidavit. These documents relate to correspondence between the Applicant and the Ministry of Colleges and Universities (the "Ministry"). The documents contain information with respect to the Applicant and certain stakeholders of the Applicant, including various rights or positions that stakeholders of the Applicant may take either inside or outside of a CCAA proceeding, which could jeopardize the Applicant's efforts to restructure.

[63] If the Confidential Exhibits are not sealed, the Applicant submits that stakeholders may react in such a way that jeopardizes the viability of the Applicant's restructuring. As such, the salutary effects of the sealing order, which provides the Applicant with the best possible chance to effect a restructuring, far outweigh the deleterious effects of not disclosing the correspondence between the Applicant and the Ministry.

[64] I have reviewed the Confidential Exhibits and I accept the submissions of the Applicant and grant the sealing request.

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[19] *Courts of Justice Act*, R.S.O. 1990, c C.43, s. 137(2). See also *Target Canada Corp (Re)*, 2015 ONSC 1487 at paras. 28 – 30.

[20] *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522 at para. 53.

The Requested Relief Sought is Reasonably Necessary

[65] Pursuant to s. 11.001, the relief sought on an initial application is to be limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during the initial stay period.[21]

[66] The stated purpose of s. 11.001 is to "limit the decisions that can be taken at the outset of a CCAA proceeding to measures necessary to avoid the immediate liquidation of an insolvent company, thereby improving participation of all players."[22]

[67] For the purposes of relief sought on this initial hearing, I accept the facts as stated in the Haché affidavit.

[68] The financial information required pursuant to s. 10(2) of the CCAA has been provided.

[69] I am satisfied the Ernst & Young Inc. is qualified to act as Monitor.

Disposition

[70] The requested relief complies with s. 11.001 of the CCAA in that it is limited to relief that is reasonably necessary for the continued operation of the applicant in the ordinary course of business. The Initial Order is granted in the form presented and it has been signed by me.

[71] The comeback hearing is to be held by Zoom on Wednesday, February 10, 2021 at 9:00 a.m.

Court-Appointed Mediator

[72] Finally, LU is also seeking an Order for the appointment of a mediator by the Court (the "Court-Appointed Mediator") to oversee negotiations with respect to the various restructuring initiatives necessary for the Applicant to achieve a successful restructuring.

[73] If appointed, the Applicant expects the Court-Appointed Mediator to assist with (i) negotiations related to the review and restructuring of the academic programs and (ii) the collective agreement between the Applicant and LUFA.

[74] The Applicant is of the view that the need for the appointment of a mediator by the court is urgent and a high priority item.

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[21] CCAA, s. 11.001, 11.02(1) and (3).
[22] *Lydian International Limited (Re)*, 2019 ONSC 7473 at paras. 22-26.

[75] The proposed Monitor is of the view that the appointment of a Court-Appointed Mediator is critical to ensure that LU, LUFA and the other negotiating parties have the best possible opportunity to succeed.

[76] It is the Proposed Monitor's view that it is necessary that the Court-Appointed Mediator be someone who is independent and objective, has experience in both insolvency matters as well as collective agreements and labour negotiations, someone who will appreciate the urgency with which the mediation must be conducted and have the time available to dedicate to it. Finally, in the Proposed Monitor's view, a sitting or recently retired judge meeting these characteristics would be preferable. The Proposed Monitor asks that the appointment be made by the court on an urgent basis.

[77] I appreciate and acknowledge the points put forth by counsel to both the Applicant and the Proposed Monitor. However, prior to determining this issue, in my view it is necessary to provide LUFA with an opportunity to make submissions.

[78] In recognition of the compressed timeline in these proceedings, it is desirable to determine this issue at the earliest opportunity and, in any event, not later than the comeback hearing on February 10, 2021.

[79] If LU, LUFA and the Proposed Monitor wish to address this matter prior to February 10, 2021, a case conference can be scheduled with me through the Commercial List Office.

CHIEF JUSTICE G.B. MORAWETZ

Date: February 1, 2021

This is Exhibit “B” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE CHIEF	)	THURSDAY, THE 11TH
	)	
JUSTICE MORAWETZ	)	DAY OF FEBRUARY, 2021

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

AMENDED AND RESTATED INITIAL ORDER

THIS MOTION, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order amending and restating the Initial Order (the "**Initial Order**") issued on February 1, 2021 (the "**Initial Filing Date**") and extending the stay of proceedings provided for therein was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of Dr. Robert Haché sworn January 30, 2021 and the Exhibits thereto (the "**Haché Initial Affidavit**"), the Pre-filing Report of Ernst & Young Inc. (the "**Monitor**") dated January 30, 2021, the First Report of the Monitor dated February 7, 2021 (the "**First Report**") and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, and those other parties listed on the Counsel Slip, no one else appearing although duly served as appears from the Affidavit of Service of Angela Maharaj sworn February 9, 2021, the Affidavit of Service of Derek Harland sworn February 4, 2021, and on reading the consent of Ernst & Young Inc. to act as the Monitor,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Haché Initial Affidavit.

NON-APPLICANT STAY PARTY

THIS COURT ORDERS that the Laurentian University Students General Association (the "**SGA**") shall be referred to herein as a "**Non-Applicant Stay Party**". Although not an applicant under the CCAA, the Non-Applicant Stay Party shall enjoy certain of the benefits and protections provided herein and be subject to the restrictions as expressly hereunder set out.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicant is insolvent and is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business and deal with its assets, including the businesses and assets of the other entities, partnerships and joint ventures in which the Applicant has a direct or indirect interest, and is authorized to continue to provide services to such parties in respect of which it is currently providing services, in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel

and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to use the cash management system currently in place, as described in the Haché Initial Affidavit, which for greater certainty includes any segregated bank accounts now existing (together with any segregated bank accounts established pursuant to paragraph 7, the "**Cash Management System**"), and that any present or future bank or institution providing the Cash Management System to the Applicant shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, except to the extent that such terms are expressly modified by this Order or with the consent of the Applicant, the Monitor and any applicable bank or financial institution providing a Cash Management System, and shall be, solely in its capacity as provider of the Cash Management System only, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System on or after the Initial Filing Date.

7. **THIS COURT ORDERS** that (a) any segregated bank accounts established by the Applicant from and after December 1, 2020, to hold funds received by it on the condition that such funds be used for a specific purpose in respect of a particular aspect of the Applicant's Business, including without limitation, funds provided to the Applicant for the purpose of research projects (including grants, awards or other similar funds), funds received in respect of restricted donations or endowments, and employee and employer contributions to benefit plans (collectively, the "**Segregated Funds**") shall be used for such specific purpose, and (b) from and after the date of this Order, the Applicant may establish additional segregated bank accounts, including trust accounts if necessary, to hold any additional Segregated Funds that are received by the Applicant under such agreed upon arrangements, and the Segregated Funds shall not form part of the Applicant's Property.

8. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order, in all cases subject to the availability of financing under the DIP Term Sheet (as defined below):

(a) all outstanding and future wages, salaries, employee and retiree benefits (including, without limitation, employee medical, dental, vision, insurance and similar benefit plans or arrangements), amounts owing under corporate credit cards issued to management and employees of the Applicant, ordinary course pension benefits or contributions, vacation pay, expenses and any director fees and expenses, payable on or after the date of this Order, in each case for costs incurred in the ordinary course of business and consistent with existing practices, compensation policies and arrangements for current and future employees (but not including any payments to former employees or retirees in respect of the SuRP and the RHBP, as such terms are defined in the Haché Initial Affidavit, or termination or severance payments, which are hereby stayed), and all other payroll processing and servicing expenses;

(b) all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts owing in respect of rebates, refunds or other similar amounts that are owing or may be owed to students or student associations of the Applicant, whether such amounts are as a result of the reimbursement of tuition fees, ancillary fees or otherwise, provided that such rebates, refunds or other similar amounts are subject to the existing policies and procedures of the Applicant;

(c) all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts payable to students in respect of student scholarship, bursary or grants; and

(d) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

9. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business (including the value thereof) including, without limitation, payments on account of insurance (including directors and officers' insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicant following the date of this Order or payments to obtain the release of goods or delivery of services contracted for prior to the date of this Order,

provided that, to the extent such expenses were incurred prior to the date Initial Filing Date, the Applicant shall only be entitled to pay such amounts if they are determined by the Applicant, in consultation with the Monitor, to be necessary to the continued operation of the Business or preservation of the Property and such payments are approved in advance by the Monitor.

10. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) until further order of this Court, all outstanding and future normal course contributions to or payments in respect of the Pension Plan, as defined in the Haché Initial Affidavit, in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;

(c) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(d) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

11. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicant or the making of this Order) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

12. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of the date of this Order (including for greater certainty in respect of the interest rate swap transactions); (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

PENSION PLAN

13. **THIS COURT ORDERS** that the Applicant's obligation to make special payments (whether pursuant to the Ontario *Pension Benefits Act*, RSO 1990, c. P-8 and regulations made thereunder or to the terms of the Pension Plan, as such term is defined in the Haché Initial Affidavit, and whether in respect of the Applicant's own employees and former employees or in respect of the employees and former employees of the other employers participating in the

Pension Plan as set out in the Haché Initial Affidavit) in respect of the defined benefit component of the Pension Plan (such payments being the "**Special Payments**"), shall be suspended effective on and after February 1, 2021 for the duration of this CCAA proceeding, subject to further Order of this Court. For greater certainty, the suspension of Special Payments hereunder does not constitute a disclaimer or termination by the Applicant of any component of the Pension Plan, nor does it constitute an acknowledgment of any obligation by the Applicant to make Special Payments relating to employers other than the Applicant.

14. **THIS COURT ORDERS** that for the duration of this proceeding, no Person (as hereinafter defined), including employees and former employees of the Applicant (or the surviving spouse of any such person) entitled to a benefit under the defined benefit component of the Pension Plan (whether or not such member was represented by a union when the member was employed by the Applicant) or the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario, shall commence any action or other proceeding in connection with the suspension of the Special Payments or because the Applicant has not made the Special Payments.

15. **THIS COURT ORDERS** that the Applicant and each of its respective directors, officers, officials, and agents shall not incur any obligation or liability, whether by way of debt, damages for breach of any duty whether statutory, fiduciary, common law or otherwise, or for breach of trust, as a result of the suspension of the Special Payments in accordance with the terms of this Order.

16. **THIS COURT ORDERS** that if any claim, lien, charge or trust, including deemed trust, arises as a result of the suspension of the Special Payments, no such claim, lien charge or trust, including deemed trust, shall have priority over the Charges (as hereinafter defined) in this proceeding, or in any subsequent receivership, interim receivership or bankruptcy of the Applicant.

RESTRUCTURING

17. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of its Business or operations, and to dispose of redundant or non-material assets not exceeding $50,000 in any one transaction or $250,000 in the aggregate. Notwithstanding the foregoing, the Applicant shall not cease, downsize or shut down any parts of its Business if such action would cause any current students of the Applicant to be unable to continue and complete courses that they are already enrolled in, subject to further Order of the Court;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as they deem appropriate;

(c) vacate, abandon or quit any leased premises and disclaim or resiliate any real property lease and any ancillary agreements relating to any leased premises, subject to paragraphs 11 and 18 of this Order;

(d) disclaim arrangements or agreements of any nature whatsoever with whomever, whether oral or written, as the Applicant deems appropriate, with the Monitor's consent or pursuant to further Order of the Court, in accordance with Section 32 of the CCAA;

(e) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and

(f) pursue all avenues and to engage in discussions with key stakeholders of the Applicant in an effort to give effect to an operational restructuring of the Applicant;

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of its business (the "**Restructuring**").

18. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days' prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the

landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days' notice to such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

19. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

20. **THIS COURT ORDERS** that until and including April 30, 2021, or such later date as this Court may subsequently order (the "**Stay Period**"), no proceeding or enforcement process in or out of any court or tribunal or other forum, whether arising by contract or otherwise (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

21. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the

Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended, including any existing, pending or future information requests made to the Applicant under the *Freedom of Information and Protection of Privacy Act*, except with the written consent of the Applicant and the Monitor, or leave of this Court, including, without limitation, by way of terminating, making any demand, accelerating, amended or declaring in default, sweeping any cash in the Applicant's bank accounts (if available), exercising any option, right or remedy or taking any enforcement steps under or in respect of any agreement or agreements with respect to which the Applicant is a party, borrower, principal obligor or guarantor, by reason of:

(a) the Applicant being insolvent or having made an application to this Court under the CCAA;

(b) the Applicant being a party to this proceeding or taking any steps related thereto; or

(c) any default or cross-default arising from the matters set out in the foregoing subparagraphs,

provided that nothing in this Order shall:

(a) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on;

(b) exempt the Applicant from compliance with any statutory or regulatory provisions relating to health, safety or the environment;

(c) affect such investigations, actions, suits or proceedings by a regulatory body as are specifically permitted by Section 11.1 of the CCAA;

(d) prevent the filing of any registration to preserve or perfect a security interest;

(e) prevent the registration of a claim for lien; or

(f) prevent any actions that are permitted by Section 34(8) of the CCAA.

LIMITED STAY IN RESPECT OF THE NON-APPLICANT STAY PARTY

22. **THIS COURT ORDERS** that during the Stay Period, no Person shall (a) commence or continue any Proceeding or enforcement process, (b) terminate, repudiate, make any demand, accelerate, alter, amend, declare in default, exercise any options, rights or remedies, or (c) discontinue, fail to honour, alter, interfere with or cease to perform any obligation, pursuant to or in respect of any agreement, lease, sublease, license or permit with respect to which the Non-Applicant Stay Party is a party, borrower, principal obligor or guarantor, by reason of:

(a) the Applicant being insolvent or having made an application to this Court under the CCAA;

(b) the Applicant being a party to this proceeding or taking any steps related thereto; or

(c) the stay granted pursuant to this paragraph 22; and

(d) any default or cross-default arising from the matters set out in the foregoing subparagraphs,

except with the written consent of the Applicant and the Monitor, or with leave of this Court.

NO INTERFERENCE WITH RIGHTS

23. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant or the Non-Applicant Stay Party or take any steps to interrupt or interfere with the operation of the Business or the continued use of the Property of the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

24. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from

discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

25. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

26. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the current or future directors or officers of the Applicant, including the members of the Board of Governors of the Applicant (the "**Board**") with respect to any claim against the directors, officers or the Board that arose before the date of this Order and that relates to any obligations of the Applicant whereby the directors, officers or the Board are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

27. **THIS COURT ORDERS** that the Applicant shall indemnify its directors, officers and the Board against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer, director or member of the Board, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

28. **THIS COURT ORDERS** that the directors, officers and Board of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $5,000,000, as security for the indemnity provided in paragraph 27 of this Order. The Directors' Charge shall have the priority set out in paragraphs 45 and 47 herein.

29. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors, officers and the Board shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any applicable insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 27 of this Order.

APPOINTMENT OF MONITOR

30. **THIS COURT ORDERS** that Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

31. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant's receipts and disbursements;

(b) liaise with and assist the Applicant and the Assistants with respect to all matters relating to the Applicant's Business, the Applicant's Property and the Restructuring, and such other matters as may be relevant to the proceedings herein;

(c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;

(d) advise the Applicant in the preparation of the Applicant's cash flow statements and any other reporting to the Court or otherwise;

(e) be at liberty to participate in discussions with representatives of the Ministry of Colleges and Universities ("**MCU**") and such other representatives of Provincial or Federal government agencies, at any time on all aspects of this proceeding and the Applicant's restructuring, subject to such terms of confidentiality as may be appropriate in the Monitor's assessment and in consultation with the Applicant;

(f) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender (as defined below) and its counsel on a weekly basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

(g) advise the Applicant in its development of the Plan and any amendments to the Plan;

(h) assist the Applicant, to the extent required by the Applicant, with the holding and administering of a creditors' meeting for voting on the Plan;

(i) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, wherever situate, in order to assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

(j) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(k) perform such other duties as are required by this Order or by this Court from time to time.

32. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property of the Applicant, or any property of the Non-Applicant Stay Party, and shall take no part whatsoever in the management or supervision of the management of the Business and shall not,

by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental legislation, unless it is actually in possession.

34. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

35. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order or the Initial Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order or the Initial Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

36. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and the Applicant's counsel and advisors in connection with the CCAA proceedings (collectively, the "Restructuring Advisors") together with independent counsel to the Board ("**Board Counsel**") shall each be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Restructuring Advisors and Board Counsel. Notwithstanding the foregoing, the fees and disbursement of Board Counsel paid by the Applicant from and after the date of this Order shall not exceed the aggregate amount of $250,000, plus HST, pending further Order of the Court.

37. **THIS COURT ORDERS** that 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.

38. **THIS COURT ORDERS** that the Restructuring Advisors shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $1,250,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Restructuring Advisors, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

DIP FINANCING

39. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Firm Capital Mortgage Fund Inc., or its assignee (the "**DIP Lender**") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed $25,000,000, unless permitted by further Order of this Court.

40. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicant and the DIP Lender dated as of January 29, 2021 (the "**DIP Term Sheet**") attached as Exhibit "HHH" to the Haché Initial Affidavit, subject to such minor amendments as may be acceptable to the Applicant and the DIP Lender and approved by the Monitor.

41. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents and other definitive documents (collectively, the "**DIP Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms of the DIP Term Sheet, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the DIP Documents, as and when the same become due, and are to be performed, notwithstanding any other provision of this Order.

42. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, including without limitation, the real property set out in Schedule "A" (the "**Real Property**"), and the DIP Lender's Charge shall not secure any obligation that exists between the Applicant and the DIP Lender before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 45 and 47 hereof.

43. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the DIP Documents;

(b) upon the occurrence of an event of default under the DIP Documents or the DIP Lender's Charge or upon the Maturity Date (as defined in the DIP Term Sheet), the DIP Lender, upon 14 days' written notice to the Applicant and the Monitor, may exercise, with prior approval of this Court, any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Term Sheet, the DIP Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant, to make, demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

44. **THIS COURT ORDERS AND DECLARES** that, unless otherwise agreed by the DIP Lender, the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any other or similar proceeding that may be commenced by the Applicant with respect to any advances made under the DIP Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

45. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge and the DIP Lender's Charge (collectively, the "**Charges**" and each individually, a "**Charge**") as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $1,250,000);

Second – Directors' Charge (to the maximum amount of $2,000,000);

Third – DIP Lender's Charge (to the maximum amount of $25,000,000); and

Fourth – Directors' Charge (to the maximum amount of $3,000,000).

46. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, construction liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

48. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also

obtains the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the "**Chargees**"), or further Order of this Court.

49. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the DIP Documents shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Term Sheet, the creation of the Charges or the execution, delivery or performance of the DIP Documents; and

(c) the payments made by the Applicant pursuant to this Order, the DIP Term Sheet or the DIP Documents and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

50. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

51. **THIS COURT ORDERS** that, notwithstanding anything else contained herein and pending further Order of the Court, the Property subject to the Charges herein shall not include the Segregated Funds.

SERVICE AND NOTICE

52. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail and the Sudbury Star a notice containing the information prescribed under the CCAA, and (ii) within five days of the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than $1,000 (excluding any individual employees, former employees with pension and/or retirement savings or benefits plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plan), and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

53. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure*, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.ey.com/ca/Laurentian.

54. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal

delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

55. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the case website as part of the public materials in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

56. **THIS COURT ORDERS** that the Applicant and the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

SEALING PROVISION

57. **THIS COURT ORDERS** that Confidential Exhibits "**EEE**" and "**FFF**" of the Haché Initial Affidavit, are hereby sealed pending further order of the Court, and shall not form part of the public record.

GENERAL

58. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

59. **THIS COURT ORDERS** that upon the registration in the Land Titles Division of the Real Property of the DIP Lender's Charge in the form prescribed in the *Land Titles Act* or the

Registration Reform Act, or both, as applicable, the Land Registrar is hereby directed to register the DIP Lender's Charge on title of the Real Property.

60. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

61. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

62. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

63. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

64. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order, and is enforceable without any need for entry and filing.

CHIEF JUSTICE G.B. MORAWETZ

Schedule "A"
Real Property

PIN	Legal Description
73584-0678	LT 63-67 PL 4SB MCKIM; LT 158-159 PL 25SA MCKIM; PT LT 160 PL 25SA MCKIM; PT LT 68-69 PL 4SB MCKIM; PT NELSON ST, DAVID ST PL 4SB MCKIM (CLOSED BY S70); PT S1/2 LT 5 CON 3 MCKIM AS IN S61148; S/T INTEREST IN S61148; S/T EXECUTION 00-00878, IF ENFORCEABLE; GREATER SUDBURY
73584-0804	LT 232-234 PL 6S MCKIM; PT LT 229-231 PL 6S MCKIM AS IN S53645 EXCEPT PART 1 53R6379; GREATER SUDBURY
73585-1167	PT LT 6, CON 3 MCKIN, PTS 1, 2, AND 3 ON PLAN 53R-19698; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 53R19698 AS IN SD225472; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD225678; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD229534; CITY OF GREATER SUDBURY
73592-0084	PCL 46194 SEC SES SRO; PT LT 2 CON 2 MCKIM PT 2 53R7594; GREATER SUDBURY
73592-0412	PCL 53884 SEC SES; 1STLY: PT LT 3 CON 2 MCKIM PT 1, 53R16920: 2NDLY: PT LT 3 CON 2 MCKIM PT 5, 8, 11 & 12 53R5371; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 2,4,5,6,8,10,11,12 & 13 53R17763 AS IN SD246793
73592-0426	PCL 30769 SEC SES; LT 3 CON 2 MCKIM SW OF PT 13 & 14 53R9175, E OF PT 15 & 16 53R5371, W OF BETHEL LAKE & N OF LT65581; S/T LT394500, LT891690; GREATER SUDBURY
73592-0427	PCL 30769 SEC SES; PT LT 3 CON 2 MCKIM LT 1 EXPROP PL M785; S/T LT622331; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 53R19195 AS IN SD246792
73593-0063	PCL 21810 SEC SES; FIRSTLY: PT LT 2 CON 1 MCKIM; SECONDLY: PT LT 2 CON 2 MCKIM AS IN LT130739; GREATER SUDBURY
73593-0406	PCL 34100 SEC SES AS IN LT264521; PT BROKEN LT 1 CON 1 MCKIM LOCATION 145, PT 1 SR1028; GREATER SUDBURY
73593-0446	PCL 53880 SEC SES; PT LT 3 CON 2 MCKIM PT 7 53R5371; GREATER SUDBURY
73593-0465	PCL 30769 SEC SES; LT 3 CON 2 MCKIM S OF UNIT 1,2,3,4,5 & 6 EXPROP PL D49 & SW OF PT 2,3,7,9 & 14 53R5371; EXCEPT PT 1 SR754 & PARTS 1,2,3 53R20763; N 1/2 LT 2 CON 1 MCKIM; EXCEPT LT130739; PT LT 2 CON 2 MCKIM AS IN EP6694; EXCEPT LT130739, PT 3 53R7594; SRO E 1/2 LT 3 CON 1 MCKIM; EXCEPT PT 1-6, 853R6915; PT LT 3 CON 1 MCKIM AS IN LT211094, EP4842, LT 1 EXPROP PL M764; EXCEPT PT 1 SR754; PT BROKEN LT 4 CON 2 MCKIM AS IN LT220905 (FIRSTLY); EXCEPT UNITS 1-3, 13 EXPROP PL D48; PT LT 4 CON 1 MCKIM AS IN LT2 20905 (SECONDLY) & PT 2 SR754; EXCEPT PT 1 53R4053, PT 1 53R7807, PT 1 & 2 53R8716 & PT 1 & 2 53R9178; PT LT 5 PL M92 PT 2 53R7807; S/T LT119418, LT32862, LT233153 (PARTIALLY RELEASED AS IN SD371949), LT436834, LT25019, LT748126, LT842126;; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 53R7680 AS IN SD261440; SUBJECT TO AN

	EASEMENT IN GROSS OVER PART 1 53R20567 AS IN SD317507; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 2 & 3 53R20797 AS IN SD353369; CITY OF GREATER SUDBURY
	Lease between Her Majesty the Queen in Right of Ontario as Represented by the Minister of Government and Consumer Services and Laurentian University dated January 1, 2020

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)
Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

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CITATION: Laurentian University of Sudbury, 2021 ONSC 1121
COURT FILE NO.: CV-21-656040-00CL
DATE: 2021-02-11

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: **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

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *D.J. Miller, Mitch W. Grossell, Andrew Hanrahan* and *Derek Harland*, for the Applicant

Ashley Taylor, Elizabeth Pillon and *Ben Muller*, for the Monitor

Peter J. Osborne and *David Salter*, for the Board of Governors

Pamela L.J. Huff and *Aryo Shalviri*, for Royal Bank of Canada

Stuart Brotman and *Dylan Chochla*, for Toronto Dominion Bank

Vern W. DaRe, for Firm Capital Mortgage Fund Inc., DIP Lender

Michael Kennedy, Labour Counsel for the Applicant

Charles Sinclair, *Susan Philpott* and *Clio Godkewitsch*, Insolvency Counsel for Laurentian University Faculty Association ("LUFA")

David Wright, Labour Counsel for LUFA

Tracey Henry and *Brendon Scott*, for Laurentian University Staff Union

Alex McFarlane and *Lydia Wakulowsky*, for Northern Ontario School of Medicine

Daniel Loberto, for Queen's University

André Claude, for University of Sudbury

Joseph Bellissimo, for Huntington University

Andrew J. Hatnay and *Sydney Edmonds*, for Thorneloe University

Linda H-C. Chen, for the Information and Privacy Commissioner of Ontario

Gale Rubenstein and *Bradley Wiffen*, Counsel for Financial Services Regulatory Authority

Murray Gold and *James Harnum*, for Ontario Confederation of University Faculty Associations

George Benchetrit, for Bank of Montreal

Shahana Kar, for Her Majesty the Queen in Right of Ontario

Guneev Bhinder, for Canada Foundation for Innovation

James MacLellan, for Zurich Insurance Company Ltd.

Tushara Weerasoriya and *Stephen Brown-Okruhlik*, for St. Joseph's Health Centre of Sudbury

Mark Baker and *Andriy Luzhetskyy*, for Laurentian University Students' General Association

HEARD: February 11, 2021

ENDORSEMENT

[1] The Amended and Restated Order has been signed.

[2] The Stay Period is extended until April 30, 2021.

[3] The stay of proceedings includes any actions taken pursuant to any collective agreement.

[4] Confidential Exhibits "EEE" and "FFF" of the Haché Initial Affidavit are to remain sealed. This issue will be addressed the way of a supplementary endorsement.

[5] The Service and Notice issues contained at paragraphs 57 – 62 of the draft order have been deleted.

[6] Detailed reasons reflecting the foregoing will follow, most likely, on February 12, 2021.

CHIEF JUSTICE G.B. MORAWETZ

Date: February 11, 2021

CITATION: Laurentian University of Sudbury, 2021 ONSC 1098
COURT FILE NO.: CV-21-656040-00CL
DATE: 2021-02-12

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: **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

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *D.J. Miller, Mitch W. Grossell, Andrew Hanrahan* and *Derek Harland*, for the Applicant

Ashley Taylor, Elizabeth Pillon and *Ben Muller*, for Ernst & Young Inc., Monitor

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Pamela L.J. Huff and *Aryo Shalviri*, for Royal Bank of Canada

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Vern W. DaRe, for Firm Capital Mortgage Fund Inc., DIP Lender

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André Claude, for University of Sudbury

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Andrew J. Hatnay and *Sydney Edmonds*, for Thorneloe University

Linda H-C. Chen, for the Information and Privacy Commissioner of Ontario

Gale Rubenstein and *Bradley Wiffen*, Counsel for Financial Services Regulatory Authority

Murray Gold and *James Harnum*, for Ontario Confederation of University Faculty Associations

George Benchetrit, for Bank of Montreal

Shahana Kar, for Her Majesty the Queen in Right of Ontario

Guneev Bhinder, for Canada Foundation for Innovation

James MacLellan, for Zurich Insurance Company Ltd.

Tushara Weerasoriya and *Stephen Brown-Okruhlik*, for St. Joseph's Health Centre of Sudbury

Mark Baker and *Andriy Luzhetskyy*, for Laurentian University Students' General Association ("LUSGA")

HEARD: February 10, 2021

DETERMINED: February 11, 2021

REASONS: February 12, 2021

ENDORSEMENT

Background

[1] On February 1, 2020, an Initial Order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C–36, as amended (the "CCAA") was granted, the effect of which was to provide Laurentian University of Sudbury ("LU" or the "Applicant") protection under the CCAA.

[2] At the time of seeking the Initial Order, LU indicated that it intended to seek additional relief at the comeback hearing, upon notice to affected parties, pursuant to a more fulsome order (the "Amended and Restated Initial Order").

[3] The Applicant filed a factum in respect to both the relief sought in the Initial Order and the relief to be sought at the comeback hearing.

[4] The facts to support the requested relief for the Initial Order and for the comeback hearing were set out in the Affidavit of Dr. Robert Haché, sworn January 30, 2021 (the "Haché Affidavit").

Additional evidence was provided in the form of the Report of the Proposed Monitor dated January 30, 2021, and the First Report of the Monitor dated February 7, 2021.

[5] In granting the Initial Order, I made certain findings of fact, including:

i. the Applicant falls under the *Corporations Act*, R.S.O. 1990, c. C.38;

ii. the Applicant's status as a not-for-profit, non-share capital corporation does not impact the applicability of the CCAA to the Applicant;

iii. the Applicant is insolvent;

iv. the Applicant is a "debtor company" to which the CCAA applies;

v. the financial information required pursuant to s. 10(2) of the CCAA was provided;

vi. Ernst & Young Inc. is qualified to act as Monitor;

vii. the requested relief was limited to relief that was reasonably necessary for the continued operation of the Applicant in the ordinary course of business.

[6] The Initial Order provided for relief which included:

i. a stay of proceedings pursuant to s. 11.02(1) of the CCAA, which stay also covered the LUSGA;

ii. authorization to make certain pre-filing and post-filing payments;

iii. the granting of a super priority Administration Charge on the Property (as defined in the Initial Order) in favour of the Monitor, counsel to the Monitor, the Applicant's counsel and advisors, and independent counsel to the Board in the amount of $400,000;

iv. the granting of a priority charge in favour of the Applicant's current and future directors and officers ("Directors and Officers") in the amount of $2 million (the "Directors' Charge"); and

v. a Sealing Order in respect of Confidential Exhibits "EEE" and "FFF" to the Haché Affidavit, relating to correspondence between the Applicant and the Ministry of Colleges and Universities (the "Ministry").

[7] The Endorsement of February 1, 2021, also referenced that LU sought an order for the appointment of a Mediator by the Court (the "Court-Appointed Mediator") to oversee negotiations with respect to the various restructuring initiatives necessary for the Applicant to achieve a successful restructuring.

[8] At the conclusion of a case conference held on February 5, 2021, the Honourable Justice Sean Dunphy was appointed as Court-Appointed Mediator.

[9] At this comeback hearing, the Applicant sought, among other things, the following relief:

i. an extension of the stay of proceedings to April 30, 2021;

ii. approval of a debtor in possession facility (the "DIP Facility") in the amount of $25 million and a DIP Lender's Charge (defined below) to secure the DIP Facility;

iii. an increase in the Administration Charge from $400,000 to $1.25 million; and

iv. an increase in the Directors' Charge from $2 million to $5 million (the increase of $3 million was not to have priority over the DIP Charge).

[10] In its First Report, the Monitor states that since the date of the Initial Order, the Applicant has focused on maintaining normal day-to-day operations. Student classes are continuing (virtually due to the pandemic) with no disruption.

[11] In addition, the Applicant has commenced communications with its various stakeholders. It has launched a website to provide further information to stakeholders, including a detailed list of frequently asked questions and answers, contact information for support services for students, faculty and staff, and a method to contact LU by email for other information.

[12] The Monitor also reports that the Applicant does not anticipate any material change in the weekly Cash Flow Forecast for the period from January 30, 2021 to April 30, 2021 (the "Cash Flow Forecast"), attached to the First Report.

[13] The Monitor also reports that the Applicant is in urgent need of funding in order to permit it to continue operations. LU, through its legal counsel, approached external lenders that specialize in real estate and infrastructure-based lending, including debtor-in-possession financing. The inquiries embarked upon by LU resulted in LU receiving nonbinding draft term sheets from three potential lenders. The Applicant and the Monitor reviewed the terms submitted by the prospective lenders and after further negotiations, the Applicant executed the term sheet (the "DIP Term Sheet") with Firm Capital Corporation. Subsequently, Firm Capital Corporation assigned its interest to Firm Capital Mortgage Fund Inc. (the "DIP Lender").

[14] The material terms of the DIP Facility are set out at paragraph 34 of the Monitor's report.

[15] The Monitor comments that the Applicant will be unable to maintain operations and address its operational and financial restructuring needs without access to DIP financing.

[16] The Monitor states that it is of the view that the Applicant's request for approval of DIP Financing and the DIP Term Sheet is required and reasonable.

Stay Extension

[17] The Monitor is of the view that the requested extension is appropriate for the following reasons:

a. the extension will provide comfort to LU students that the Applicant will continue in the ordinary course for the duration of the winter semester;

b. the Applicant requires the extension in order to conduct a mediated negotiation with its stakeholders; and

c. the Applicant continues to operate in good faith and with due diligence since the date of the Initial Order.

[18] In addition, based on the Cash Flow Forecast, and with the approval of the DIP Term Sheet and the DIP lender's charge ("DIP Lender's Charge"), the Monitor is of the view that the Applicant should have sufficient liquidity to fund its operations until April 30, 2021.

[19] The Monitor supports the Applicant's request for an order extending the stay to April 30, 2021.

Pension and Benefit Plans

[20] The Applicant administers three employee pension and benefit plans: (a) a registered defined benefit pension plan (the "DB Pension Plan"); (b) a supplementary unfunded retirement plan (the "SURP"); and (c) a retirement health benefits plan (the "RHBP").

[21] The proposed Amended and Restated Order requests a stay of the payment of any pre-filing or post-filing special payments to the DB Pension Plan to assist LU with its current liquidity crisis.

[22] The Monitor reports that while the Applicant will have access to funding through the DIP Facility, that funding is limited and is only projected to be sufficient to fund operations through to the end of the current academic term. Given the Applicant's overall liquidity constraints, the Monitor is of the view that permitting a stay of special payments to the DB Pension Plan during the stay period is appropriate and reasonable.

Freedom of Information and Protection of Privacy Act

[23] The proposed Amended and Restated Order provides for a stay of any existing, pending or future information requests to the Applicant pursuant to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 ("FIPPA").

[24] The Monitor reports that the Applicant expects to receive a significant increase in volume of FIPPA information requests and that the Applicant does not have the resources to deal with the increased volume. The Applicant is of the view that it must focus all of its efforts in either serving the needs of students or supporting the operational restructuring process.

[25] The Monitor expects that there will continue to be substantial disclosure of information to all stakeholders through materials filed in the CCAA proceedings as well as additional communications from LU directly to stakeholders. Given the anticipated distraction that would result in attempting to deal with these requests, the Monitor is of the view that extending the stay to FIPPA requests is reasonable in the circumstances.

Super Priority Charges

[26] The proposed Amended and Restated Initial Order provides for the following super priority charges (collectively, the "Charges") on current and future assets of the Applicant, in the following order:

a. first, the Administration Charge (up to a maximum amount of $1.25 million);

b. second, the Directors' Charge (up to a maximum amount of $2 million);

c. third, the DIP Lender's Charge (up to a maximum of $25 million); and

d. fourth, the Directors' Charge (up to an additional $3 million for a total maximum Directors' Charge amount of $5 million).

[27] The Applicant's secured creditors are primarily comprised of subcontractors who registered construction liens and equipment lessors. These parties have been served with notice of the comeback motion and the relief sought at the comeback motion will provide for the Charges to rank in priority to these potential claims.

[28] The Administration Charge and the proposed Amended and Restated Initial Order provide for a charge up to $1.25 million in favour of counsel and advisors to the Applicant, the Monitor, the Monitor's independent counsel and independent counsel to the Board as security for the professional fees and disbursements incurred prior to and after the commencement of the CCAA proceedings.

[29] The Monitor is of the view that the proposed Administration Charge is reasonable and appropriate in the circumstances.

DIP Lender's Charge

[30] In addition to the approval of the DIP Term Sheet, the proposed Amended and Restated Initial Order provides for the creation of a super priority charge in the amount of $25 million to match the maximum allowable borrowing amount proposed in the DIP Term Sheet. The DIP Lender's Charge will be secured by all Property (as defined in the Amended and Restated Initial Order) of the Applicant.

[31] The Monitor notes that the DIP Lender's Charge is a condition of the DIP Financing.

[32] The Monitor further reports the Applicant is in urgent need of the financing to fund operations and is of the view that the DIP Lender's Charge is appropriate and reasonable.

Directors' Charge

[33] The proposed Amended and Restated Initial Order provides for the amount not to exceed $5 million to secure the indemnity in favour of the current and future directors and officers of the Applicant against obligations and liabilities that they may incur as Directors and Officers for actions taken after the commencement of the CCAA proceedings, except to the extent that the obligation or liability is incurred as a result of such Directors' or Officers' gross negligence or wilful misconduct.

[34] The Directors and Officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any insurance policy.

[35] The DIP Term Sheet provides that a Directors' Charge may only rank ahead of the DIP Lender's Charge to a maximum of $2 million. Accordingly, the Applicant proposes that $2 million of the Directors' Charge rank behind the Administration Charge and ahead of the DIP Lender's Charge, with the balance of $3 million ranking behind the DIP Lender's Charge.

[36] The Monitor has reviewed the calculation of the Directors' Charge, taking into account the amount of LU's payroll, current service pension contributions and vacation pay and notes that the Directors' Charge is less than the quantum of such amounts that will accrue during the CCAA proceedings.

[37] The Monitor is of the view that the Directors' Charge is required and is reasonable in the circumstances.

Conclusions of the Monitor

[38] In its conclusions, the Monitor states that it supports the relief sought by the Applicant in the proposed Amended and Restated Initial Order.

Oral Submissions

[39] A number of oral submissions were made by various parties, but no additional evidence was filed at the comeback hearing.

[40] I note that a number of these submissions, while of interest, were not germane to the relief being sought on this motion.

[41] Counsel also expressed concerns with respect to the scope of proposed language in paragraph 17(b) of the Amended and Restated Order. Counsel referenced certain protections which arise by way of tenure and academic freedom.

[42] Counsel also raised concerns with respect to the Sealing Order which formed part of the Initial Order. Counsel submitted that the relevant portions of the Haché Affidavit (paragraphs 284 – 291) did not establish the basis for a Sealing Order. This submission was echoed by a number of other counsel, including for the Ontario Confederation of University Faculty Associations, the Northern Ontario School of Medicine, the Laurentian University Staff Union, and CUPE.

[43] In addition, counsel indicated that he wished to reserve all rights to cross-examine Dr. Haché on his Affidavit. However, no such relief was requested on this motion. Should the need arise, this issue can be revisited by any interested party.

[44] A reservation of rights was also raised with respect to a potential trust claim for former retirees in respect of the RHBP, as referenced in paragraph 8(a) of the proposed Amended and Restated Initial Order. This reservation of rights is noted.

[45] Counsel on behalf of LUFA and Mr. Gold, on behalf of the Ontario Confederation of University Faculty Associations (the "Associations"), raised concerns about the absence of the Ministry in these proceedings. Although this issue is of interest to LUFA and the Associations and perhaps other stakeholders, it does not, in my view, impact the issues that have to be determined on this comeback motion.

[46] Mr. Gold also raised questions as to whether LU is insolvent. The evidence before me at the time of granting the Initial Order was sufficient for me to find that LU was insolvent. There is nothing in the evidence before me on this comeback hearing that would alter this finding.

[47] Mr. Gold also requested that the extension of the stay be restricted to the end of February, namely February 26, 2021. He reasoned that this timeline could result in the participation of the Ministry.

[48] Counsel on behalf of St. Joseph's Continuing Care and St. Joseph's Health Care Centre raised a concern that the granting of the CCAA charges may give rise to a default under St. Joseph's financing arrangements with, among others, Royal Trust. This issue was addressed by the affected parties and they are content with the following being included as part of my endorsement. Details of Royal Trust's financing of St. Joseph's and the negative covenant relating to encumbrances on the fee simple are set out at paragraphs 192 – 194 of the Haché Affidavit. Royal Trust has been served with these materials and has not objected to the granting of the charges. If St. Joseph's and Royal Trust need to, they may come back before this Court to discuss issues relating to their loan agreement. For greater certainty, this does not constitute a comeback or any reservation of rights with respect to the DIP Charge granted.

[49] Mr. McFarlane, on behalf of the Northern Ontario School of Medicine, submitted that all references to timing provisions in the proposed Initial Restated Order at paragraphs 59, 60 and 61 should be deleted. He reasoned that restructurings are unpredictable and issues may arise at the last moment.

[50] Counsel on behalf of CUPE supported the position put forth by Mr. Sinclair, counsel to LUFA, that there is gratuitous language in paragraph 20 of the proposed Amended and Restated

Order. In particular, counsel objected to the inclusion of the words ("including pursuant to any collective agreement") which addresses the stay of proceedings. The inclusion of these words is not necessary. The jurisprudence establishes that a stay of proceedings is to be broadly interpreted. Paragraph 20 is broad enough and is interpreted as establishing that the stay of proceedings includes any actions taken in respect of any collective agreement.

[51] Counsel on behalf of CUPE also made reference to paragraph 17(b) of the proposed Amended and Restated Order which permits the Applicant to terminate the employment of such of its employees or temporarily lay off such of its employees as they deem appropriate. This language is contained in the Commercial List Model Order and reflects the current state of the jurisprudence.

[52] Counsel representing the Information and Privacy Commissioner raised concerns with respect to the stay provisions extending to requests made to the Applicant under the FIPPA. Concerns were expressed with respect to the overly broad language of this provision.

[53] Counsel on behalf of the Ministry of the Attorney General advised that she had not been provided with any instructions on this motion.

[54] Counsel on behalf of Royal Bank of Canada did not oppose the requested relief.

[55] In reply, counsel for LU, on the issue of the Sealing Order, submitted that there had been full and clear disclosure in the Affidavit of Dr. Haché with respect to the necessity and the need for the sealing provision. Counsel added that the Monitor is fully aware of the contents of the documents and supports the view that the sealing provision should be maintained.

LAW AND ANALYSIS

Stay Period and Scope of Stay

[56] Section 11.02(2) of the CCAA provides the authority to extend the stay beyond the initial 10 day stay period. The burden of proof on such an application is on the Applicant.

[57] I am satisfied that the Applicant has established that circumstances exist that make the order appropriate and further that the Applicant is acting in good faith and with due diligence.

[58] In my view it is reasonable and appropriate to grant the request of the Applicant, supported by the Monitor, to extend the stay, until April 30, 2021.

[59] In arriving at this conclusion, I have taken into account that the key stakeholders are participating in a mediation with a Court-Appointed Mediator, which mediation will focus on the key aspects of any proposed restructuring. It is both necessary and important that the Applicant should focus on its proposed restructuring If this restructuring is to be successful, it will have to be largely completed by the end of April 2021. With the approval of the DIP Facility, the Applicant will have liquidity to the end of this period. It is my expectation that the Monitor will file periodic reports with the Court and these reports will provide updates to interested stakeholders. To the

extent that any party is of the view that issues relating to the Stay Period should be brought to the attention of the Court, they can schedule such an attendance. The ability to schedule such an attendance addresses the concerns raised by Mr. Gold to the effect that the Stay Period should not extend beyond the end of February, 2021.

[60] With respect to whether the Amended and Restated Initial Order should provide that information requests made under the FIPPA be stayed, I accept the view expressed by the Applicant and the Monitor that the Applicant expects to receive a high volume of FIPPA requests at this time and the limited resources of the Applicant should not be diverted from its restructuring efforts. I also accept that the Monitor will, during this period, provide alternative means through which information can be obtained.

[61] However, I am unable to determine at this stage of the proceeding as to whether it would be appropriate to extend this specific provision of the stay for an indefinite period of time. I am prepared to continue the stay on the understanding that the Information and Privacy Commissioner can request that this issue be revisited in 30 days. Any request for reconsideration can be made through the Monitor and if the matter remains unresolved, a hearing on this issue can be expedited.

[62] With respect to the request that the court authorize the termination of employees as the Applicant deems appropriate, this provision has been fundamental to CCAA proceedings and is broadly worded to facilitate a restructuring (see: *Windsor Machine and Stamping Limited, Re*, Amended and Restated Initial Order dated September 2, 2008 and *Windsor Machine and Stamping Limited, Re*, 2009 CarswellOnt 4471 at para. 23; and *Aveos Fleet Performance Inc.*, Initial Order dated March 19, 2012 and *Aveos Fleet Performance Inc./Aveos Performance aéronautique inc.* (*Arrangement relatif à* [2013] QCCS 5924.

[63] I also note that the Applicant has acknowledged the challenges that will be faced in this aspect of the restructuring, including as it relates to tenure. The Applicant has also acknowledged the existence of the LUFA collective agreement which was entered into on July 1, 2017, which initial term expired on June 30, 2020, and remains in force during any negotiating period.

[64] The Applicant also points out that the relief sought will not substantially alter the LUFA collective agreement. Indeed, the collective agreement does not prevent employees from being terminated and specifically allows that they may be terminated in certain circumstances, which include redundancy and financial exigency.

[65] I am satisfied that the requested relief is not inconsistent with the provisions of s. 33 of the CCAA. The Applicant has addressed this issue at paragraphs 74 – 75 of its factum. Nor is it inconsistent with the provisions of section 18(b) of *An Act to incorporate Laurentian University of Sudbury*, S.O. 1960, c. 151, which provides that the Board has the sole discretion to terminate faculty (Application Record – Vol. 2A, Tab 8A, p. 251).

Special Payments

[66] The Applicant requests that the Amended and Restated Initial Order stay any outstanding pre-filing special payments to the pension plan. I am satisfied that the liquidity crisis facing LU

and restrictions on the use of the DIP Facility is such that it is necessary to stay any outstanding pre-filing or post-filing special payments to the pension plan. This will assist the Applicant with its severe liquidity crisis. This stay is limited to the special payments and does not apply to the Applicant's regular (ordinary course) contributions to the pension plan.

The CCAA Charges

Administration Charge

[67] The Applicant requests that an Administration Charge be granted super priority on the Property in the increased amount.

[68] Section 11.5 of the CCAA provides the court with statutory jurisdiction to grant the Administration Charge.

[69] In *CanWest Publishing Inc./Publications CanWest Inc., (Re)*, 2010 ONSC 222 at para. 54, Pepall J (as she then was) identified the following non-exhaustive list of factors the court may consider when granting an administration charge:

a. the size and complexity of the business being restructured;

b. the proposed role of the beneficiaries of the charge;

c. whether there is an unwarranted duplication of roles;

d. whether the quantum of the proposed charge appears to be fair and reasonable;

e. the position of the secured creditors likely to be affected by the charge; and

f. the position of the monitor.

[70] I am satisfied that the Administration Charge is warranted, necessary, and appropriate in the circumstances, given that the proposed restructuring will require the extensive involvement of professional advisors and there does not appear to be an unwarranted duplication of roles, so that the professional fees will be minimized. I also note that the Monitor is supportive of the proposed quantum of the Administration Charge.

[71] Based on the forecasted costs and the Cash Flow Forecast for the professionals covered under the Administration Charge, I am satisfied that the requested relief should be granted.

DIP Facility and DIP Charge

[72] The Applicant seeks approval of the DIP Facility and also seeks a super priority charge on the Property in the amount of $25 million, subject to the terms of the DIP Term Sheet. The DIP Charge is proposed to rank behind the Administration Charge (up to a maximum amount of $1,250,000) and the Directors' Charge (up to a maximum of $2 million), but ahead of all other

interests in the Property of the Applicant, save and except properly perfected purchase money security interest on specific equipment.

[73] The evidence establishes that the Applicant is facing a liquidity crisis and that absent additional financing, the Applicant will be unable to meet payroll at the end of February.

[74] The evidence also establishes that a competitive process involving multiple potential DIP lenders was entered into, following which the Applicant secured the DIP Facility from the DIP Lender pursuant to the DIP Term Sheet.

[75] The Applicant's access to the DIP Facility is conditional upon an order of the court approving the DIP Term Sheet and the DIP Facility and granting the DIP Charge.

[76] Section 11.2 of the CCAA provides the Court with authority to approve the DIP Facility and the DIP Charge. Section 11.2(2) also provides the court with authority to order that the DIP charge rank in priority over the claim of any secured creditor of the company.

[77] Section 11.2 (4) sets out the factors to be considered by the court in deciding whether to grant a super priority charge in respect of DIP financing.

[78] I have concluded that it is appropriate to approve the DIP Facility and the DIP Charge. In arriving at this conclusion, I have taken into account that the notice requirements under s. 11.2(1) have been met; the Applicant has immediate liquidity needs and it is apparent that the Applicant cannot obtain alternative financing outside of these CCAA proceedings; the terms of the DIP Term Sheet resulted from an arms-length negotiation; the DIP Facility is necessary in order for the Applicant to implement its restructuring plan and without it, the Applicant will not be able to continue operations.

[79] In my view, the quantum of the DIP Facility is reasonable and appropriate. I also note that the Monitor is of the view that the DIP Term Sheet and DIP Charges are appropriate and limited to what is reasonably necessary in the circumstances.

Directors' Charge

[80] A Directors' Charge in the amount of $2 million was granted at the initial hearing. The Applicant seeks to increase the Directors' Charge to $5 million, $3 million of which will rank subordinate to the DIP Charge.

[81] Section 11.51 of the CCAA provides the court with the jurisdiction to grant a directors' charge in an amount the court considers appropriate, provided notice is given to the secured creditors likely to be affected by it. In order to grant a directors' charge, the court must be satisfied of the following factors:

a. notice has been given to the secured creditors likely to be affected by the charge;

b. the amount is appropriate;

c. the applicant could not obtain adequate indemnification insurance for the directors at a reasonable cost; and

d. the charge does not apply in respect of any obligation incurred by directors as a result of the directors' gross negligence or wilful misconduct. (see: *Jaguar Mining Inc., Re*, 2014 ONSC 494 at para. 45).

[82] I am satisfied that the Directors' Charge is reasonable in the circumstances. In arriving at this conclusion, I accept the submissions that the Applicant will benefit from the active and committed involvement of the Directors and Officers; the Applicant cannot be certain whether the existing insurance will be applicable or respond to any claims made; the Directors' Charge is not to secure obligations incurred by the Directors as a result of gross negligence or wilful misconduct, and the Monitor is of the view that the Directors' Charge is reasonable and appropriate.

Confidential Exhibits – Sealing Order

[83] A Sealing Order was granted at the initial hearing.

[84] A number of parties raised concerns with respect to the Sealing Order at the comeback hearing. In view of the expiration of the Stay Period on February 11, 2021, it was necessary to determine this comeback motion no later than that date. In order to address the sealing provision, I require additional time. Accordingly, the sealing order in respect of Confidential Exhibits "EEE" and "FFF" to that Haché Affidavit will remain in effect pending the issuance of a Supplementary Endorsement addressing this issue.

Provisions in the Draft Order Relating to the Objection Deadline

[85] Paragraphs 57 - 62 of the proposed Initial and Restated Order purport to establish deadlines to file materials for court hearings. The *Rules of Civil Procedure* address this issue. I acknowledge the concerns raised by Mr. McFarlane that the establishment of strict deadlines may not be practical in the context of a time sensitive restructuring. There is always the possibility that events dictate that materials have to be filed on the eve of the hearing. I expect that counsel will cooperate with each other to minimize the delivery of any last-minute materials, but I also acknowledge that in certain circumstances this may be unavoidable. In the circumstances, I have determined that it is not necessary or desirable to include the proposed paragraphs 57 - 62.

INITIAL AND RESTATED ORDER

[86] In accordance with my brief endorsement of February 11, 2021, I modified the proposed Initial and Restated Order to reflect the foregoing. The signed order was provided to the Commercial List Office on February 11, 2021, for distribution to the parties.

CHIEF JUSTICE G.B. MORAWETZ

Date: February 12, 2021

CITATION: Laurentian University of Sudbury, 2021 ONSC 1453
COURT FILE NO.: CV-21-656040-00CL
DATE: 2021-02-26

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: **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

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *D.J. Miller, Mitch W. Grossell, Andrew Hanrahan* and *Derek Harland*, for the Applicant

Ashley Taylor, Elizabeth Pillon and *Ben Muller*, for Ernst & Young Inc., Monitor

Peter J. Osborne and *David Salter*, for the Board of Governors

Pamela L.J. Huff and *Aryo Shalviri*, for Royal Bank of Canada

Stuart Brotman and *Dylan Chochla*, for Toronto Dominion Bank

Vern W. DaRe, for Firm Capital Mortgage Fund Inc., DIP Lender

Michael Kennedy, Labour Counsel for the Applicant

Charles Sinclair, *Susan Philpott* and *Clio Godkewitsch*, Insolvency Counsel for Laurentian University Faculty Association ("LUFA")

David Wright, Labour Counsel for LUFA

Tracey Henry and *Brendon Scott*, for Laurentian University Staff Union

Alex McFarlane and *Lydia Wakulowsky*, for Northern Ontario School of Medicine

Daniel Loberto, for Queen's University

André Claude, for University of Sudbury

Joseph Bellissimo, for Huntington University

Andrew J. Hatnay and *Sydney Edmonds*, for Thorneloe University

Linda H-C. Chen, for the Information and Privacy Commissioner of Ontario

Gale Rubenstein and *Bradley Wiffen*, Counsel for Financial Services Regulatory Authority

Murray Gold and *James Harnum*, for Ontario Confederation of University Faculty Associations

George Benchetrit, for Bank of Montreal

Shahana Kar, for Her Majesty the Queen in Right of Ontario

Guneev Bhinder, for Canada Foundation for Innovation

James MacLellan, for Zurich Insurance Company Ltd.

Tushara Weerasoriya and *Stephen Brown-Okruhlik*, for St. Joseph's Health Centre of Sudbury

Mark Baker and *Andriy Luzhetskyy*, for Laurentian University Students' General Association ("LUSGA")

Miriam Martin, for Canadian Union of Public Employees ("CUPE")

SUPPLEMENTARY ENDORSEMENT

[1] This Supplementary Endorsement to the Endorsement of February 12, 2021, addresses a challenge to the Sealing Order granted in the Initial Order of February 1, 2021. The Sealing Order covers Confidential Exhibits "EEE" and "FFF" (the "Exhibits") to the affidavit of Dr. Robert Haché, sworn January 30, 2021 (the "Haché Affidavit").

[2] "EEE" is a letter from the Ministry of Colleges and Universities (the "Ministry") to Laurentian University ("LU") dated January 21, 2021. "FFF" is a letter from LU to the Ministry dated January 25, 2021.

[3] LU contends that the Exhibits contain information with respect to LU and certain of its stakeholders, including various rights or positions that stakeholders or LU may take either inside or outside of these CCAA proceedings, the disclosure of which could jeopardize LU's efforts to restructure.

[4] Counsel to LU submits that the salutary effects of the Sealing Order far outweigh the deleterious effects of not disclosing the correspondence between LU and the Ministry.

[5] The position of LU is supported by the Monitor. The Monitor is fully aware of the state of negotiations, not only as between LU and the Ministry, but also between LU and various stakeholders, including the Laurentian University Faculty Association ("LUFA").

[6] Submissions in opposition to the Sealing Order were made by counsel on behalf of LUFA, the Ontario Confederation of University Faculty Associations ("OCUFA"), the Northern Ontario School of Medicine and Laurentian University Staff Union.

[7] The essence of the submissions in opposition to the Sealing Order was to the effect that there was no evidence that would suggest that the Sealing Order is necessary to protect a valid commercial interest. Therefore, there was no evidentiary basis on which to grant the Sealing Order.

[8] Mr. Gold, on behalf of OCUFA, took the position that the Sealing Order is not justified and is speculative in nature and it would be a dangerous precedent to seal the documents, just on the basis that they are not helpful to LU's position.

[9] It is necessary to take into account that the position of the Ministry in these proceedings, if any, is unknown.

[10] However, it is clear that Dr. Alan Harrison has been appointed as Special Advisor by the Ministry. His mandate is to provide advice and recommendations to the Ministry with respect to the current financial state of LU and its path to return to financial sustainability.

[11] It is also clear that the Honourable Justice Sean Dunphy is the Court-Appointed Mediator in these proceedings and a critical aspect of the mediation is the relationship between LU and its stakeholders, including LUFA.

[12] Section 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, provides the court with the discretion to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.

[13] In *Sierra Club of Canada* v. *Canada (Minister of Finance)*, [2002] 2 S.C.R. 522 (S.C.C.), Iacobucci, J. set out that a Sealing Order should only be granted when:

> (a) such an order is necessary in order to prevent serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and
>
> (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

[14] The Supreme Court identified three important elements subsumed under the first branch of the above test. First, the risk in question must be real and substantial, in that the risk is well grounded in evidence and imposes a serious threat to the commercial interest in question. Second, a "commercial" interest must be an interest that goes beyond harm to the private commercial interests of a person or business. To qualify as an "important commercial interest", the interest must be one that can be expressed in terms of a public interest in confidentiality. Third, the phrase

"reasonable alternative measures" requires the court to consider not only whether reasonable alternatives to a confidentiality order are available, but also to restrict the order as much as is reasonably possible while preserving the commercial interest in question.

[15] The evidence of Dr. Haché can be summarized as follows:

(i) LU is insolvent;

(ii) LU has been completely transparent with the Ministry regarding the financial challenges it faces, has provided details to the Ministry regarding its financial situation and the outcome if the efforts undertaken by LU to resolve its concerns cannot achieve the required results;

(iii) LU has highlighted the benefits that it provides to the community of Northern Ontario and the costs and risks associated with attempting an informal restructuring outside of a proceeding and the costs and risks associated with the potential CCAA restructuring;

(iv) in the days and weeks leading up to this CCAA application, LU has been in frequent communication with the Ministry, members of the Treasury Board and senior staff members at the Ministry of Finance;

(v) LU has been in continuous dialogue with the Ministry and intends to continue this dialogue throughout the CCAA proceedings.

[16] Dr. Haché has not been cross-examined, although a number of parties at the comeback hearing reserved rights to cross-examine him at some point in the future.

[17] I have reviewed the Exhibits in detail.

[18] Firstly, the evidence as contained in the Haché Affidavit outlines that there has been continuous communication between LU and the Ministry with respect to the financial crisis currently facing LU. As such, the Ministry is well aware that a real-time solution to the crisis must be found if LU is to survive and continue operations beyond the current academic year. The crisis is real and immediate. The role, if any, that the Ministry will play is at this moment uncertain.

[19] In my view, the disclosure of the Exhibits, at this time, could be detrimental to any potential restructuring of LU. As such, the risk in disclosing the Exhibits is real and substantial and imposes a serious risk to the future viability of LU. I also note that it is speculative to conclude that the Exhibits contain information that is not helpful to LU's position.

[20] Secondly, it seems to me that the "commercial" interest related to the Exhibits transcends the direct commercial interests of LU. It involves the entire LU community, including the faculty, students, employees, third-party suppliers, and the City of Greater Sudbury and the surrounding area. It is of paramount importance to all of these groups that all efforts to restructure LU be explored. In order to do so, it is necessary to maintain the confidentiality of the Exhibits. The

disclosure of the Exhibits, at this time, could undermine the restructuring efforts being undertaken by LU.

[21] Thirdly, I am required to consider whether there are any reasonable alternatives to a confidentiality order affecting the Exhibits. At this time the stakeholders are involved in a mediation being conducted by Justice Dunphy. It could very well be that negotiations are at a sensitive stage or will shortly be at a sensitive stage. In my view, it would not be appropriate, at this time, to implement any alternative to a confidentiality order, as to do so could negatively impact the mediation efforts being conducted by Justice Dunphy.

[22] At this stage of the proceedings, I am satisfied that it is in the interests of all stakeholders that the Mediator be provided with an adequate opportunity to consult with the various stakeholders in order to ascertain whether or not common ground can be found on which to formulate a restructuring of LU.

[23] I am satisfied that the first branch of the test has been met.

[24] I am also satisfied, based on the evidence, that the salutary effects of the Sealing Order outweigh its deleterious effects, which in this context, includes the public interest in accessing the Exhibits. Thus, the second branch of the test is satisfied.

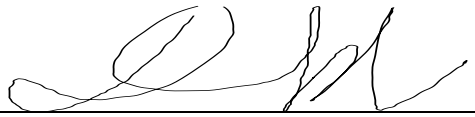
Disposition

[25] Accordingly, I conclude that LU has satisfied the test set forth in *Sierra Club* and that it is necessary to maintain the confidentiality of the Exhibits and the existing provision in the Amended and Restated Order providing for the sealing of the Exhibits.

CHIEF JUSTICE MORAWETZ

Date: February 26, 2021

This is Exhibit “C” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits

COURT OF APPEAL FOR ONTARIO

CITATION: Laurentian University of Sudbury (Re), 2021 ONCA 199
DATE: 20210331
DOCKET: M52287

Hoy, Pepall and Zarnett JJ.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

Murray Gold and James Harnum, for the moving party the Ontario Confederation of University Faculty Associations

Susan Philpott and Charles Sinclair, for the moving party the Laurentian University Faculty Association

Miriam Martin, for the moving party the Canadian Union of Public Employees

D.J. Miller, Scott McGrath and Derek Harland, for the responding party Laurentian University of Sudbury

Ashley Taylor, Elizabeth Pillon and Zev Smith, for the responding party Ernst & Young Inc., acting as the Monitor

Heard: in writing

Motion for leave to appeal from the order of Chief Justice Geoffrey B. Morawetz of the Superior Court of Justice, dated February 26, 2021.

REASONS FOR DECISION

[1] Laurentian University of Sudbury (“Laurentian”) is a publicly funded, bilingual and tricultural post-secondary institution, serving domestic and international undergraduate and graduate students. Due to recurring operational deficits, it has encountered a liquidity crisis and is insolvent.

[2] Laurentian sought and obtained protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C.36 (“CCAA”), to permit it to restructure, financially and operationally, in order to emerge as a sustainable university for the benefit of all stakeholders. Among the stated reasons for Laurentian’s CCAA application was what it described as unsustainable “academic costs”, which Laurentian attributes in part to the terms of its collective agreement with its faculty members.

[3] Two unions representing Laurentian employees - the Laurentian University Faculty Association (“LUFA”) and the Canadian Union of Public Employees (“CUPE”) - and the Ontario Confederation of University Faculty Associations (“OCUFA”), an umbrella organization representing faculty associations, seek leave to appeal the decision of the CCAA judge, dated February 26, 2021, which continues a sealing order over two documents that Laurentian filed on its application for CCAA protection.

[4] Having reviewed the written submissions of the parties and the sealed documents, we refuse leave for the reasons that follow.

Background

[5] On February 1, 2021, the CCAA judge made an order (the "Initial Order"), granting Laurentian initial relief under the CCAA.

[6] Four days later, on February 5, 2021, the CCAA judge made an order appointing Dunphy J. as mediator to conduct a confidential mediation among Laurentian's key stakeholders. The mediation is intended to address various issues concerning Laurentian's restructuring, including a new collective agreement with LUFA, which represents 612 Laurentian faculty, accounting for 60% of the university's payroll. LUFA supported the appointment of the mediator.

[7] The Initial Order contained a sealing provision. At the comeback hearing, there was opposition to it. The CCAA judge continued the sealing provision in the Amended and Restated Order, dated February 11, 2021, on an interim basis, pending a supplementary endorsement.

[8] The sealing provision, which was identical in both orders, covers two exhibits (Exhibits "EEE" and "FFF") to the affidavit by Dr. Robert Haché, which was filed in support of Laurentian's request for the Initial Order. Dr. Haché is the President, Vice-Chancellor and CEO of Laurentian.

[9] The sealing provision states that the Exhibits "are herby sealed pending further order of the Court, and shall not form part of the public record". Both the

Initial Order and the Amended and Restated Order provide that any interested party may apply on seven days' notice to vary or amend the order.

[10] The sealed Exhibits consist of two letters. Exhibit "EEE" is a letter from the Ministry of Colleges and Universities ("Ministry") to Laurentian, dated January 21, 2021. Exhibit "FFF" is a letter from Laurentian to the Ministry, dated January 25, 2021. Laurentian has described the letters as containing "information with respect to [Laurentian] and certain of its stakeholders, including various rights or positions that stakeholders or [Laurentian] may take either inside or outside of these CCAA proceedings, the disclosure of which could jeopardize [Laurentian's] efforts to restructure."

[11] None of the moving parties sought to cross-examine Dr. Haché on his affidavit or the communications between Laurentian and the Ministry.

[12] The CCAA judge released his supplementary endorsement on February 26, 2021, continuing the sealing provision. The effect of the sealing provision is that both the broader public and the parties to the CCAA proceeding are prevented from accessing the Exhibits.

[13] The CCAA judge held that the sealing provision was authorized under s. 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and by the application of the principles in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002

SCC 41, [2002] 2 S.C.R. 522. According to *Sierra Club*, at para. 53, a confidentiality or sealing order should only be granted when:

> (a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
>
> (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

[14] The CCAA judge summarized the evidence in Dr. Haché's affidavit and noted that he had reviewed the Exhibits in detail. He indicated that the evidence, as contained in Dr. Haché's affidavit, outlines that there has been continuous communication between Laurentian and the Ministry with respect to Laurentian's financial crisis, and that the government is well aware that a real-time solution must be found if Laurentian is to survive. He noted that "the role, if any, that the Ministry will play is at this moment uncertain."

[15] Considering the first branch of the *Sierra Club* test, he concluded that disclosure of the Exhibits, "<u>at this time</u>, could be detrimental to any potential restructuring of [Laurentian]" (emphasis added). Accordingly, "the risk in disclosing the Exhibits is real and substantial and poses a serious risk to the

future viability of [Laurentian].” He also noted that “it is speculative to conclude that the Exhibits contain information that is not helpful to [Laurentian’s] position.”

[16] He found that the commercial interest was that of the entire Laurentian community, including the faculty, students, employees, third-party suppliers and the City of Greater Sudbury and the surrounding area; that it is of paramount importance to these groups that all efforts to restructure Laurentian be explored; and that it is necessary to maintain the confidentiality of the Exhibits in order to do so. He reiterated that “[t]he disclosure of the Exhibits, at this time, could undermine the restructuring efforts being undertaken by [Laurentian]” (emphasis added).

[17] He was not satisfied that there were any reasonable alternatives to a sealing order over the Exhibits. Stakeholders were involved in the mediation and the negotiations could or could shortly be at a sensitive stage. It would not be appropriate to implement any alternative to a confidentiality order. To do so could negatively impact the mediation efforts.

[18] Turning to the second branch of the *Sierra Club* test, the CCAA judge was also satisfied, based on the evidence, that the salutary effects of the sealing provision outweighed its deleterious effects, including the public interest in accessing the Exhibits.

Leave Test

[19] Section 13 of the CCAA provides that any person dissatisfied with an order or a decision made under the CCAA may appeal from the order or decision with leave. Leave to appeal in CCAA proceedings is to be granted sparingly and only where there are serious and arguable grounds that are of real and significant interest to the parties. This cautious approach is a function of several factors.

[20] First, a high degree of deference is owed to discretionary decisions made by judges supervising CCAA proceedings, who are "steeped in the intricacies of the *CCAA* proceedings they oversee". Appellate intervention is justified only where the "supervising judge erred in principle or exercised their discretion unreasonably": *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, 78 C.B.R. (6th) 1, at paras. 53 to 54.

[21] Second, CCAA proceedings are dynamic. It is often "inappropriate to consider an exercise of discretion by the supervising judge in isolation of other exercises of discretion by the judge in endeavouring to balance the various interests": *Edgewater Casino Inc. (Re)*, 2009 BCCA 40, 51 C.B.R. (5th) 1, at para 20.

[22] Third, CCAA restructurings can be time sensitive. The existence of, and delay involved in, an appeal can be counterproductive to a successful restructuring.

[23] In addressing whether leave should be granted, the court will consider four factors, specifically whether:

(a) the proposed appeal is *prima facie* meritorious or frivolous;

(b) the points on the proposed appeal are of significance to the practice;

(c) the points on the proposed appeal are of significance to the action; and

(d) whether the proposed appeal will unduly hinder the progress of the action.

See: *Nortel Networks Corp. (Re)*, 2016 ONCA 332, 130 O.R. (3d) 481, at para. 34.

Leave is Not Warranted

[24] As we will explain, we refuse to grant leave because the proposed appeal is not *prima facie* meritorious, granting leave would unduly hinder the progress of the action, and the proposed appeal is not of significance to the action. This is not an appropriate case for this court to explore issues of significance to the practice relating to the granting of sealing orders in the CCAA context.

Leave Not *Prima Facie* Meritorious

[25] The moving parties raise three questions for determination on their proposed appeal, which we paraphrase as follows:

> 1. Did the CCAA judge err in focussing solely on Laurentian's assertion of an important commercial interest without balancing the various competing interests applicable to a sealing order?

> 2. Did the CCAA judge err in granting the sealing provision without a sufficient evidentiary foundation?
>
> 3. Did the CCAA judge err in concluding that the sealing provision was justified as a result of speculative concerns about the impact that disclosure of the Exhibits that were sealed would have on the CCAA restructuring process?

[26] A significant plank of the moving parties' argument is that the sealing provision denies access to the sealed documents to parties to the CCAA process on the ostensible ground that the documents might have an impact on the positions those parties choose to take vis-à-vis the restructuring. They argue that the importance of the documents to the formulation of their positions is the exact reason why they should have access to the documents, not a justification for denying access to them.

[27] We note that one of the moving parties, OCUFA, is not a creditor of Laurentian and is apparently not participating in the court-ordered mediation, the aim of which is a consensual restructuring. It is not clear in what sense OCUFA is a party to the CCAA proceeding or is in any different position than any other member of the public who may be interested in the court-filed materials. Yet the moving parties do not differentiate, in their proposed appeal questions or in the relief they propose to seek, between the entitlements of OCUFA to obtain the documents and those of the other moving parties. In other words, although reference is made to the denial of access to "litigants", the underlying theory of

the moving parties actually starts and stops with the proposition that there should be no sealing order at all.

[28] We are not persuaded that the proposed appeal, challenging what is a discretionary order, is *prima facie* meritorious.

[29] The CCAA judge set out the *Sierra Club* test in his reasons. Contrary to the submissions of the moving parties, he was well aware that *Sierra Club* required him to balance the deleterious effects of the sealing order.

[30] In earlier reasons, the CCAA judge noted that if the restructuring is to be successful, it will have to be largely completed by the end of April 2021. The timeline is exceptionally short. In exercising his discretion, the CCAA judge concluded that the risk to the potential restructuring of Laurentian within this extremely tight timeframe if the Exhibits were disclosed outweighed other relevant interests.

[31] The moving parties were (and are) concerned that they understand the Ontario government's position in relation to the restructuring, yet they did not seek to cross-examine Dr. Haché. The CCAA judge, who reviewed the Exhibits, strove to address that concern, carefully signaling that "the role, if any, that the Ministry will play is at this moment uncertain." Alive to concerns about fairness, he also signaled to the parties that it would be "speculative to conclude that the Exhibits contain information that is not helpful to [Laurentian's] position."

[32] The moving parties have expressed particular concern that the sealing order creates an informational imbalance that may hurt them in the mediation process. Nothing before us suggests that the moving parties who are participating in the court-ordered mediation (which appears to be only LUFA) have been hampered by any informational imbalance. The judicial mediator, who was appointed by the CCAA judge, is a bulwark against unfair treatment in the mediation. Should the judicial mediator have concerns that the moving parties have been hampered in the mediation by an informational imbalance or a perceived informational imbalance, it is open to him to raise them with the CCAA judge within the parameters of the February 5, 2021 order appointing the mediator.

[33] Nor do we see anything in the sealing provision that would prevent a party from making a request to the CCAA judge, at the appropriate time, for relief on appropriate terms. As noted, the sealing provision is expressly subject to "further order of the Court". The CCAA judge in his reasons of February 26 said only that an alternative to the sealing provision was not appropriate "at this time".

[34] In seeking leave, the moving parties have raised questions about how s. 2(d) of the *Charter of Rights and Freedoms* comes into play, as one of the purposes of the mediation is to conclude a new collective agreement with LUFA. But they do not dispute Laurentian's submission that this issue was not argued

below. It is difficult to fault the CCAA judge for not weighing a competing interest that was not asserted before him.

[35] The moving parties also say that the CCAA judge failed to advert to the impact his ruling would have on freedom of expression. We are satisfied he did take that factor into account, as he mentions it in setting out the test and later says that the deleterious effects include “the public interest in accessing the Exhibits.”

[36] The second and third questions raised by the moving parties ask the court to revisit an issue raised before the CCAA judge. He described the essence of the submissions made to him by those opposing the sealing order as there being no evidence that the sealing order was necessary to protect a valid commercial interest.

[37] The CCAA judge was satisfied that there was a sufficient evidentiary basis. He based his conclusion that disclosing the Exhibits posed a serious risk to the restructuring on his review of the Exhibits and Dr. Haché’s evidence. The moving parties are correct that Dr. Haché did not opine in his affidavit that disclosure of the Exhibits posed a serious risk to the viability of the restructuring. But Dr. Haché’s evidence describes something of the dynamics at play and is clear as to Laurentian’s dire position and the timeframe within which the restructuring must be completed, if it is to be successful. It provided the foundation on which the

Monitor, an officer of the court, supported Laurentian's position that disclosure posed a serious risk, and the CCAA judge, who has extensive experience in CCAA restructurings, concluded that disclosure posed a serious risk. The CCAA judge exercised his judgment, based on an evidentiary record.

[38] The fact the proposed appeal is not *prima facie* meritorious weighs significantly against granting leave.

Appeal Would Hinder Progress of the Action

[39] As we have said, this restructuring is on an exceptionally short timeline. We are told that the mediation is ongoing, with sessions occurring daily. There is urgency to being able to reach a successful restructuring by the end of April, in light of Laurentian's financial position and the need for certainty regarding the next academic year. There is too great a risk that an appeal would be a distraction from restructuring efforts and thus would unduly hinder the progress of the action, which also weighs significantly against granting leave.

No Significance to the Action

[40] Given the involvement of a court-appointed mediator and that it is open to the CCAA judge to revisit the sealing provision and possibly revoke it or limit its impact by allowing the parties to the CCAA proceeding to access the sealed documents, the significance of the proposed appeal to the action is insufficient to justify leave.

Significance to the Practice

[41] The facts of this case highlight some novel and interesting questions about the application of the *Sierra Club* test in the CCAA context.These include questions about granting sealing orders over information filed in support of the application for protection under the CCAA, the granting of sealing orders where interests under s. 2(d) of the *Charter* are arguably at play, and about the application of sealing orders to parties and stakeholders involved in the restructuring efforts. However, given our view of the merits of the proposed appeal and the other factors, this is not the appropriate case in which to explore these issues.

Disposition

[42] Leave to appeal is refused. In the circumstances, there shall be no order as to costs.

"Alexander Hunter JA."

"K. Repsall JA"

"B. Burnett JA"

This is Exhibit “D” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

Table 1: Changes to Faculties pre and post Laurentian restructuring

Faculty Structure Pre-Restructuring	Faculty Structure Post-Restructuring
Faculty of Arts	Faculty of Arts
Faculty of Education	Faculty of Education and Health
Faculty of Health	
Faculty of Management	Faculty of Management
Faculty of Science, Engineering and Architecture	Faculty of Science, Engineering and Architecture
Faculty of Graduate Studies	Closed (Graduate activities to report to the Vice-President Research)

Table 2: Summary of Reorganization of Schools and Departments with the Faculty of Arts	
Pre-Restructuring	**Post-Restructuring**
School/Department Structure	**School/Department Structure**
School of Northern and Community Studies	**All programs closed**
Economics	School of Liberal Arts
English	School of Liberal Arts
Études françaises	**Closed** (FSL as a program will remain)
Geography	**All Programs Closed**
History	School of Liberal Arts
Law & Justice	School of Liberal Arts
Modern Languages	**All Programs Closed**
Music	**All Programs Closed**
Philosophy	**All Programs Closed**
Political Science	**All Programs Closed**
Psychology	School of Liberal Arts
Sociology	School of Liberal Arts

Table 3: Summary of Reorganization of Schools and Departments with the Faculty of Education and Health	
Pre-Restructuring	Post-Restructuring
School/Department Structure	School/Department Structure
School of Nursing École de sciences infirmières	School of Nursing and Allied Health Professions École de sciences infirmières et des professions de la santé
École d'orthophonie	
School of Social Work École de service social	
School of Indigenous Relations	School of Indigenous Relations
School of Kinesiology and Health Sciences École de kinésiologie et des sciences de la santé	School of Kinesiology and Health Sciences École de kinésiologie et des sciences de la santé
School of Rural and Northern Health	
School of Midwifery	Closed
School of Education	School of Education École d'éducation
École des sciences de l'éducation	
Centre for Academic Development	Centre for Academic Development**
** LU is considering making the Centre for Academic Development a standalone auxiliary unit.	

Table 4: Summary of Reorganization of Schools and Departments in the Faculty of Management	
Pre-Restructuring	Post-Restructuring
School/Department Structure	School/Department Structure
School Sport Administration (SPAD)	School of Sports Management
Department Accounting	School of Business Administration
Department Finance & Operations	
Department Marketing & Management	

Table 5: Summary of Reorganization of Schools and Departments in the Faculty of SEA	
Pre-Restructuring School/Department Structure	Post-Restructuring School/Department Structure
Harquail School of Earth Sciences	Harquail School of Earth Sciences
Bharti School of Engineering	Bharti School of Engineering & Computation
Department of Mathematics and Computer Science (Computer Science programs only)	
McEwen School of Architecture	McEwen School of Architecture
Department of Forensic Science	School of Biological, Chemical & Forensic Sciences
Department of Biology	
Department of Chemistry & Biochemistry	
Department of Mathematics and Computer Science	Closed (some math courses retained and computer science programs to remain in Bharti School)
School of the Environment	Closed (Masters in Science Communications retained)
Department of Physics	Closed and all programs in it closed

This is Exhibit “E” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

Programs terminated by Senate at the meeting on March 16, 2021

Programs that have changed, but the original program was never terminated/Programmes qui ont changé, mais le programme initial n'a pas été supprimé

Program to be terminated/Program à supprimer	**Program changed to…/Programme changé à...**	**Year of change/Année du changement**
Bachelor of Commerce (EN) – not SPAD	Bachelor of Business Administration	2014-15
Baccalauréat en commerce (FR)	Baccalauréat en administration des affaires	2014-15
Liberal Science (EN)	Interdisciplinary Science	2019-20
Sciences libérales (FR)	Sciences pluridisciplinaires	2019-20
Masters of Engineering – Natural Resources (EN)	Masters of Engineering	2018-19
Bachelor of Education (1 year) (EN)	Bachelor of Education (2 years)	2015-16
Baccalauréat en education (1 an)	Baccalauréat en education (2 ans)	2015-16
Labour Studies	Workplace and Labour Studies	2019-20
Women's Studies	Women's, Gender and Sexuality Studies	2016-17
Native Studies	Indigenous Studies	2013-14
Human Development (MA and MSc)	Interdisciplinary Health (MA and MSc)	2013-14
Développement humain (MA et MSc)	Santé interdisciplinaire	2013-14
Native Social Work	Indigenous Social Work	2012-13

Programs that have had admissions suspended, but never terminated/Programmes qui ont les admissions suspendues, mais jamais supprimés

Program to be terminated/Programme à supprimer	**Date of last admission/Dernière date d'admission**
EBusiness (EN)	2016
Biochimie-biotechnologie (FR) (spécialisation)	2017
B.A. Éducation (FR) (concentration)	2014
Science politique (FR) (spécialisation)	2018
Ethics (Huntington) (EN) - concentration	2018
Santé publique (FR) (concentration, majeure, spécialisation, certificat)	2015

This is Exhibit “F” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

WHEREAS on February 1, 2021, Laurentian University commenced a court proceeding for a formal restructuring to be undertaken pursuant to the *Companies' Creditors Arrangement Act* ("**CCAA**") wherein a stay of proceedings was granted to April 30, 2021 (the "**Stay Period**") and debtor-in-possession financing ("**DIP Financing**") was approved by the Court to permit Laurentian University to continue its operations and pay expenses in accordance with its cash flow forecast during the Stay Period, and;

WHEREAS on February 5, 2021, the Honourable Chief Justice Geoffrey Morawetz granted an Order appointing the Honourable Justice Sean Dunphy as the Court-Appointed Mediator in the CCAA proceeding (the "**Mediator Appointment Order**"), and;

WHEREAS the Laurentian University Senate, at its regular February 2021 meeting, passed a resolution electing Malek Abou-Rabia, Éric Gauthier, Jay Patel, Brent Roe, Amanda Schweinbenz and Jennifer Straub (collectively, the "**Senate Mediation Committee**") to represent the Senate in mediation conducted under the supervision of Justice Dunphy based on the following terms of reference: i) The six members are to take part in mediation sessions, at the call of Justice Dunphy; ii) The six members are to represent Senate at the session, and not their respective units; iii) The six members will report regularly to Senate Executive and Senate as permitted based on the confidentiality provisions in the Mediator Appointment Order, and;

WHEREAS the Senate Mediation Committee retained Mario Forte of Goldman Sloan Nash & Haber LLP to act as independent counsel to the Senate Mediation Committee and advise it during the mediation sessions, and;

WHEREAS the Senate Mediation Committee received extensive materials including a Mediation Brief and Supplemental Mediation Brief delivered by the Administration, met with Justice Dunphy and representatives of the Administration on six occasions through Zoom videoconference and exchanged numerous written questions and answers, comments and clarifications with the Administration during and between the various meetings, including as it related to the methodology and analysis to support the review being undertaken, and;

WHEREAS the Senate Mediation Committee considered the provisions of the *French Language Services Act* and the Regulation thereunder relating to Laurentian, as well as considered Laurentian's tricultural mandate, in undertaking its review of programs and in preparing its report, and;

WHEREAS the Senate Mediation Committee was presented with, commented on, and adjusted the Administration's initial list of programs proposed for termination, the initial list of sections to be offered that maximizes current resources, as well as a proposal of Faculty and Department/School reorganizations, all of which fall within the Senate purview, and;

WHEREAS Laurentian University is committed to providing ongoing high quality post-secondary education, in English and in French, while playing an important role towards meeting the Truth and Reconciliation Calls to Action, and;

WHEREAS the Senate Mediation Committee also discussed various ideas to restructure programs that some Departments/Schools will continue to offer;

BE IT RESOLVED,

THAT the Senate Mediation Committee recommends that the Senate terminate 69 programs, including 28 offered in French and 41 offered in English, as well as the restructuring of the current Departments/Schools into a new Faculty structure, as outlined in the following omnibus report, which the Senate Mediation Committee recommends that the Senate accept.

BE IT FURTHER RESOLVED,

THAT the Senate Mediation Committee recommends to Senate that the programs in the current School of Kinesiology and Health Studies be examined by its members over the next 12 months in order to conform to a 120-credit degree structure, including normalizing the credit values attached to activity courses, and;

THAT the Senate Mediation Committee recommends to Senate that the programs in the current School of Nursing/École des sciences infirmières be examined by its members over the next 12 months as to the current practice of placements, both the number and environment of them, and;

THAT the Senate Mediation Committee recommends to Senate that the undergraduate program in the current École d'orthophonie be examined by its members over the next 12 months to modify the requirements given the termination of Études françaises programs.

Passed this _____ day of April, 2021 as

MOVED BY: _____
signature

SECONDED BY: _____
Signature

ATTENDU QUE le 1er février 2021, l'Université Laurentienne a entamé une procédure judiciaire en vue d'une restructuration formelle à entreprendre en vertu de la Loi sur les arrangements avec les créanciers des compagnies ("LACC"), dans le cadre de laquelle une suspension des procédures a été accordée jusqu'au 30 avril 2021 (la "période de suspension") et un financement du débiteur-exploitant ("financement du débiteur-exploitant") a été approuvé par la Cour afin de permettre à l'Université Laurentienne de poursuivre ses activités et de payer ses dépenses conformément à ses prévisions pendant la période de suspension, et ;

ATTENDU QUE le 5 février 2021, l'honorable juge en chef Geoffrey Morawetz a rendu une ordonnance nommant l'honorable juge Sean Dunphy à titre de médiateur nommé par la Cour dans le cadre de la procédure de la LACC (l' "ordonnance de nomination du médiateur"), et ;

ATTENDU QUE le Sénat de l'Université Laurentienne, lors de sa réunion régulière de février 2021, a adopté une résolution élisant Malek Abou-Rabia, Éric Gauthier, Jay Patel, Brent Roe, Amanda Schweinbenz et Jennifer Straub (collectivement, le "Comité de médiation du Sénat") pour représenter le Sénat lors de la médiation menée sous la supervision du juge Dunphy selon le mandat suivant : i) Les six membres participeront aux séances de médiation, à la demande du juge Dunphy ; ii) Les six membres représenteront le Sénat aux séances, et non leurs unités respectives ; iii) Les six membres feront régulièrement rapport à l'exécutif du Sénat et au Sénat, comme le permettent les dispositions relatives à la confidentialité contenues dans le décret de nomination du médiateur ; et ;

ATTENDU QUE le Comité de médiation du Sénat a retenu les services de Mario Forte de Goldman Sloan Nash & Haber LLP pour agir à titre de conseiller indépendant du Comité de médiation du Sénat, et le conseiller pendant les séances de médiation, et ;

ATTENDU QUE le Comité de médiation du Sénat a reçu des documents détaillés, y compris un mémoire de médiation et un mémoire de médiation supplémentaire, fournis par l'Administration, a rencontré le juge Dunphy et des représentants de l'Administration à six reprises par vidéoconférence Zoom, et a échangé de nombreuses questions et réponses écrites, des commentaires et des clarifications avec l'Administration pendant et entre les diverses réunions, y compris en ce qui concerne la méthodologie et l'analyse à l'appui de l'examen entrepris, et ;

ATTENDU QUE le Comité de médiation du Sénat a tenu compte des dispositions de la Loi sur les services en français et de son règlement d'application concernant la Laurentienne, ainsi que du mandat triculturel de la Laurentienne, lors de l'examen des programmes et de la préparation de son rapport ; et

ATTENDU QUE le Comité de médiation du Sénat a reçu la liste initiale des programmes proposés par l'administration, la liste initiale des sections à offrir qui maximise les ressources actuelles, ainsi qu'une proposition de réorganisation des facultés et des départements/écoles, qui relèvent toutes de la compétence du Sénat, et qu'il a formulé des commentaires et des ajustements à cet égard ; et

ATTENDU QUE l'Université Laurentienne s'est engagée à offrir en permanence une éducation postsecondaire de haute qualité, en anglais et en français, tout en jouant un rôle important pour répondre aux appels à l'action de la Commission de vérité et réconciliation du Canada ; et

ATTENDU QUE le Comité de médiation du Sénat a également discuté de diverses idées pour restructurer les programmes que certains départements/écoles continueront d'offrir ;

QU'IL SOIT RÉSOLU

QUE le Comité de médiation du Sénat recommande que le Sénat mette fin à 69 programmes, y compris 28 programmes offerts en français et 41 programmes offerts en anglais, ainsi qu'à la restructuration des départements/écoles actuels en une nouvelle structure professorale, tel que décrit dans le rapport omnibus suivant, que le Comité de médiation du Sénat recommande que le Sénat accepte.

QU'IL SOIT EN PLUS RÉSOLU

QUE le Comité de médiation du Sénat recommande au Sénat que les programmes de l'actuelle École de kinésiologie et d'études de la santé soient examinés par ses membres au cours des 12 prochains mois afin de se conformer à une structure de diplôme de 120 crédits, y compris la normalisation de la valeur des crédits rattachés aux cours d'activités, et ;

QUE le Comité de médiation du Sénat recommande au Sénat que les programmes de l'actuelle School of Nursing/École des sciences infirmières soient examinés par ses membres au cours des 12 prochains mois quant à la pratique actuelle des stages, tant au niveau du nombre que de l'environnement de ceux-ci, et ;

QUE le Comité de médiation du Sénat recommande au Sénat que le programme de premier cycle de l'actuelle École d'orthophonie soit examiné par ses membres au cours des 12 prochains mois afin de modifier les exigences compte tenu de la fin des programmes d'Études françaises.

Adopté ce _____ jour d'avril 2021.

PROPOSÉ PAR : _____
signature

APPUYÉ PAR : _____
Signature

This is Exhibit “G” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

TERM SHEET BETWEEN UNIVERSITY OF SUDBURY ("USUDBURY") AND LAURENTIAN UNIVERSITY OF SUDBURY ("LAURENTIAN") WITH RESPECT TO INDIGENOUS COURSES FOR THE SPRING 2021 TERM

Laurentian and USudbury have a common goal of ensuring that students are unaffected, to the extent possible, by changes that are occurring during the restructuring pursuant to the *Companies Creditors' Arrangement Act* ("**CCAA**"). Further to the letter of Laurentian dated April 13, 2021 referring to Motion CM 21-14 passed by the Laurentian University Native Education Council ("**LUNEC**") on April 12, 2021, Laurentian has been requested to explore the possibility of teaching courses in Indigenous Studies during the Spring Term so that affected students can obtain required credits.

FOR CONSIDERATION RECEIVED, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the terms of this binding Term Sheet in order to facilitate Laurentian's teaching of Indigenous Studies courses during the Spring Term only, on the following terms and conditions:

1. Teaching courses in the Spring Term is at the request of the Indigenous community, including as reflected in the LUNEC resolution dated April 12, 2021. Laurentian will continue to engage with the Indigenous community and LUNEC during the Spring and Summer terms in order to consider and determine how best to ensure the ongoing delivery of Indigenous education at Laurentian. The terms set out in this email relate to the one-time delivery of these distance-learning courses for the Spring term only. Laurentian remains open to discussing a longer-term solution with USudbury, which will involve continued engagement with LUNEC and Indigenous stakeholders.

2. USudbury will immediately grant an exclusive license to Laurentian at a one-time total cost to Laurentian of $10, together with payment of the total amount of $1,050 in compensation for course cancellation fees paid recently by USudbury to its sessional teachers, for all rights to teach the Relevant Courses (defined below) and for all course materials (in any format) used in the teaching of the Relevant Courses including testing and assignment materials, that will be needed for Laurentian to teach the following six (6) courses for the Spring term only:

   i) **INDG-1016EL-10**

   ii) **INDG-1116EL-12**

   iii) **INDG-1117EL-12**

   iv) **INDG-2285EL-12**

   v) **INDG-3105EL-12**

   vi) **INDG-3116EL-12**

   (collectively, the "**Relevant Courses**").

3. No other compensation will be paid or provided by Laurentian to USudbury or anyone else in respect of Laurentian's teaching of the Relevant Courses for the Spring Term. Laurentian will pay the relevant sessional instructors who teach the Relevant Courses in the Spring Term in the ordinary course in accordance with Laurentian's relevant contracts and collective agreement.

4. Nothing in this Term Sheet precludes USudbury from filing a Proof of Claim as part of a Claims Process within the CCAA proceeding, including in respect of the Disclaimer of the Federation Agreement by Laurentian. For greater certainty, nothing in this Agreement constitutes a waiver by USudbury of any claim to damages or losses from having allowed Laurentian to teach the Relevant Courses.

5. Laurentian will not offer the course having code INDG-1017EL-10 as there is zero enrolment.

6. All course materials for the Relevant Courses will be delivered by USudbury to Laurentian by close of business on Friday, April 16, 2021 on a best-efforts basis, to allow preparations to be in place for teaching on May 3, 2021. At the completion of the Spring term, these course materials must be either returned or destroyed by Laurentian, at the option of USudbury, with no copies to be kept in Laurentian's possession.

7. As INDG-1016EL-10 is a paper-based course and not online, USudbury will provide a hard copy (PDF) of all course materials to Laurentian.

8. The Relevant Courses will be taught as distance courses, and all will be taught by sessionals. No aspect of this Term Sheet constitutes an assumption of any obligations by Laurentian from USudbury of any kind. This Term Sheet grants a license only to Laurentian with respect to the Relevant Courses, including course materials, for the Spring Term only.

9. The contract between Laurentian and the sessionals teaching the Relevant Courses will be in accordance with Laurentian's collective agreement with LUFA.

10. USudbury will provide to Laurentian the names and contact information of the previous sessional teachers of the Relevant Courses by 12:00 P.M. on Friday, April 16, 2021.

11. USudbury confirms, represents and warrants, as a condition to Laurentian entering into this agreement, that it has full ownership and all other rights including intellectual property rights to all aspects of the Relevant Courses including all course materials, and the delivery of these Relevant Courses by Laurentian using the existing course materials will not infringe upon any other person's rights in doing so.

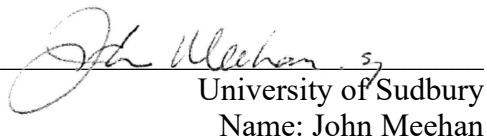
12. Any communications to be issued by Laurentian or USudbury with respect to this matter will be provided to the other in advance, to ensure that there is no inconsistent or confusing messaging being provided to students.

13. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument.

[Signature page to follow]

DATED at Sudbury this 16th day of April, 2021.

Laurentian University of Sudbury
Name: Robert Haché
Title: President and Vice-Chancellor



University of Sudbury
Name: John Meehan
Title: President and Vice-Chancellor

DATED at Sudbury this 16th day of April, 2021.

Laurentian University of Sudbury
Name: Robert Haché
Title: President and Vice-Chancellor

University of Sudbury
Name: John Meehan
Title: President and Vice-Chancellor

This is Exhibit “H” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

LAURENTIAN UNIVERSITY FACULTY ASSOCIATION
MEDIATION TERM SHEET

DATED APRIL 7, 2021

The below sets out the key financial terms and conditions agreed to following negotiations between Laurentian University of Sudbury ("**Laurentian**") and the Laurentian University Faculty Association ("**LUFA**") in the confidential mediation overseen by Mr. Justice Sean Dunphy, the Court-appointed mediator in the CCAA proceedings of Laurentian (in such capacity, the "**Mediator**").

For greater certainty, this term sheet and its schedules reflect certain key terms and conditions required by Laurentian to become a financially sustainable post-secondary organization, in terms of monetary value and stability of overall operations.

Term of Collective Agreement	The collective agreement shall have a five-year term commencing on July 1, 2020 up to and including June 30, 2025.
Faculty Member Termination	The parties agree that the total number of Full-Time Faculty Members who will be terminated or who elect to retire pursuant to the Retirement Election below is 116 Faculty Members, including 6 members of Administration. The agreed-upon confidential list of Faculty Members who will be terminated is attached hereto as Confidential Schedule "**A**" (the "**Terminated Faculty Members**").
Effective Termination Date	The effective termination date of the Terminated Faculty Members for those teaching courses in this academic term shall be May 15, 2021, to allow for marking of final exams, papers and communicating grades. For all Terminated Faculty Members who are not teaching courses in this academic term, the effective termination date shall be April 30, 2021.
Retirement Election	Faculty Members may elect, by irrevocable written notice provided on or before April 9, 2021, that any Faculty Members intend to retire (the "**Retiring Faculty Members**"). The effective termination date of the Retiring Faculty Members for those teaching courses in this academic term shall be May 15, 2021, to allow for marking of final exams, papers and communicating grades. For all Retiring Faculty Members who are not teaching courses in this academic term, the effective termination date shall be April 30, 2021.
Notice to Faculty Members	The parties agree to develop mutually acceptable communications to be delivered to the Terminated Faculty Members.

Terms of Termination of Faculty Members

Terminated Faculty Members shall be entitled to file a claim in the CCAA claims process in respect of all entitlements relating to their employment or former employment with Laurentian in accordance with their entitlement under the collective agreement and the terms of the CCAA.

Treatment of Retiring Faculty Members

Retiring Faculty Members shall be entitled to receive the following:

(i) A claim in the CCAA claims process in accordance with their entitlement under the collective agreement and the terms of the CCAA;

(ii) Access to office space for up to June 30, 2023. The office provided shall be at the discretion of the Dean, and may be shared office space;

(iii) Emeritus Status (as defined in the Collective Agreement), if eligible and alternatively adjunct status if eligible, such determinations to be made on a reasonably expedited basis;

(iv) To be added to the sessional roster in the applicable Department/School and be given priority for one three credit course for which no member has establishment, for which they have taught at least once in the past 3 years, to be paid at the overload rate;

(v) Continued library privileges;

(vi) Until June 30, 2023, the ability to maintain their current status with respect to supervision of students and will be paid when the graduate student completes a thesis in accordance with article 5.40.8;

(vii) Their name appearing on the University website for their Department as long as they are either engaged as a sessional instructor and/or with respect to supervision of students;

(viii) Until June 30, 2023, with 100% of the premium cost to be at the cost of the retiree, the option to maintain Laurentian Health Benefits (Health & Dental) subject to Manulife approval;

(ix) Their name included in the next service ceremony for Laurentian; and

(x) Retiring Members shall be advised that the option to commute the value of their pension at the wind-up transfer ratio remains available to them at this time but may not be available in the future.

Claims of Terminated Faculty Members

Any and all claims that each of the Terminated Faculty Members listed in Confidential Schedule "**A**" has against Laurentian shall be dealt with solely as part of a claims process in the CCAA proceedings.

It is further agreed that a Terminated Faculty Member shall have no further or other rights against Laurentian pursuant to the collective agreement or otherwise upon termination, save and except as it relates to the registered pension plan and the terms of the collective agreement as amended herein. In the event of an inconsistency between the collective agreement and this Term Sheet, this Term Sheet shall be paramount.

Termination of Counsellor

The parties agree that the one counsellor listed in confidential Schedule "**B**" to this term sheet shall be terminated (the "**Terminated Counsellor**"), with an effective termination date of April 30, 2021.

Terms of Termination of Counsellor

The Terminated Counsellor shall be entitled to file a claim in the CCAA claims process in respect of all entitlements relating to their employment or former employment with Laurentian, which claim shall be in accordance with their employment contract with the University and the terms of the CCAA.

Centre for Academic Excellence

Laurentian will agree to terminate 1 academic advisor position.

Salary Adjustments to Faculty Members

As per Schedule "**C**", effective May 1, 2021, each of the Faculty Members' salary shall be decreased by five percent (5%).

Year 1 (July 1, 2020 – June 30, 2021)

(i) ATB to Base Salary: 0%
(ii) Annual Progress-Through-the-Ranks: $0
(iii) Promotion and Additional Qualifications: $2,900

Year 2 (July 1, 2021 – June 30, 2022)

(i) ATB to Base Salary: 0%
(ii) Annual Progress-Through-the-Ranks: $0
(iii) Promotion and Additional Qualifications: $2,900

Year 3 (July 1, 2022 – June 30, 2023)

(i) ATB to Base Salary: 1%
(ii) Annual Progress-Through-the-Ranks: $2,900
(iii) Promotion and Additional Qualifications: $2,900

Year 4 (July 1, 2023 – June 30, 2024)

(i) ATB to Base Salary: 1%
(ii) Annual Progress-Through-the-Ranks: $2,900
(iii) Promotion and Additional Qualifications: $2,900

Year 5 (July 1, 2024 – June 30, 2025)

(i) ATB to Base Salary: 1%
(ii) Annual Progress-Through-the-Ranks: $2,900
(iii) Promotion and Additional Qualifications: $2,900

Each member of the bargaining unit will take 5 unpaid furlough days in each of 2021-22, 2022-23 and 2023-24 to be processed as one day per month between July and November.

Laurentian will ensure that there is an equitable distribution of salary reductions among LUFA, LUAPS and Senior Leaders over the term of the collective agreement.

Professional Development

As per Schedule "**D**", upon execution of this Term Sheet, all existing professional development balances allocated to each of the Faculty Members shall be zero.

Allocation of professional development funds shall resume on July 1, 2021, in accordance with the terms of the collective agreement.

Faculty Member Workload

As per Schedule "**E**", the maximum normal teaching load for each academic year shall be two and one-half (2 ½) full-year courses or fifteen (15) credit equivalents in all Faculties.

Other Amendments to Collective Agreement

Please refer to the attached Schedules "**F**" to "**EE**" to this Term Sheet for other amendments to the Collective Agreement.

Binding Arbitration	Issues specifically identified within Schedules "**F**" to "**EE**" which stipulate that by agreement of the parties they are to be determined through binding arbitration shall, once determined and if applicable, constitute amendments to the collective agreement. Such binding arbitration shall take place before William Kaplan and will be completed by June 18, 2021.
Grievances	The parties agree that grievances for non-monetary issues or those not involving the expenditure of money such as accommodation, denial of tenure or unjust dismissal, which arise on or after February 1, 2021 shall not be stayed as a result of the CCAA proceeding, and may proceed in the ordinary course.
Entire Agreement	This Term Sheet and its Schedules constitute the entire agreement between the parties pertaining to the subject matter of this Term Sheet. For greater certainty, in the event that this Term Sheet and the Schedules conflict, this Term Sheet shall be paramount.
Governing Law	The terms of settlement and amendments to the collective agreement set out in this Term Sheet shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario. While the stay of proceedings remains in force, the CCAA Court shall have the exclusive jurisdiction to determine any action arising under this agreement and the parties hereby attorn to the exclusive jurisdiction thereof. Nothing in this agreement derogates from the exclusive jurisdiction conferred on the Ontario Labour Relations Board or a labour arbitrator by the *Labour Relations Act*, 1995, S.O. 1995, c.1-Schedule A for non-monetary matters during the currency of the stay of proceedings, and for all matters upon emergence or termination of the CCAA proceeding.
Amendments	This Term Sheet, once executed, shall only be modified in writing and upon signature by the parties hereto.
Notices	All notices, requests, consents and other communications delivered pursuant to the terms of this Term Sheet shall be contained in a written instrument and may be delivered in person or sent by internationally recognized overnight courier or by email.

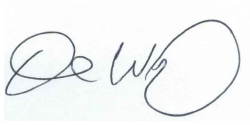
[**Remainder of the page intentionally left blank**]

LAURENTIAN UNIVERSITY OF SUDBURY

Per:  c/s
Name: Robert Haché
Title: President and Vice-Chancellor

I have the authority to bind the Corporation.

LAURENTIAN UNIVERSITY FACULTY ASSOCIATION

Per:  c/s
Name: David Wright
Firm: Ryder Wright Blair & Holmes LLP
Title: Chief Negotiator and Counsel

I have the authority to bind LUFA.