

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
(Appointment of Real Estate Advisor: Returnable July 5, 2021)**

June 28, 2021

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Tab	Document
1.	Notice of Motion dated June 28, 2021
2.	Draft Order (Appointment of Real Estate Advisor)

TAB 1

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

**ONTARIO
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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**NOTICE OF MOTION
(Appointment of Real Estate Advisor)**

Laurentian University of Sudbury (the “**Applicant**” or “**LU**”) will make a motion to Chief Justice Morawetz of the Ontario Superior Court of Justice on Monday, July 5, 2021, at 2:00 P.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 2 of the Motion Record of the Applicant dated June 28, 2021 authorizing and directing the Applicant to retain Cushman & Wakefield (“**C&W**”) as real estate advisor to the Applicant (in such capacity, the “**Real Estate Advisor**”).
2. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:***Background***

3. On February 1, 2021, the Applicant sought and received an 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**").
4. On February 10, 2021, the Court issued an amended and restated initial order which, among other things, extended the Stay Period to April 30, 2021 (the "**Amended and Restated Initial Order**").
5. On May 2, 2021, following a brief extension of the Stay Period from April 30 to that date, the Court extended the Stay Period to August 31, 2021.

Appointment of Real Estate Advisor

6. Phase 1 of the Applicant's restructuring has been completed, which included the negotiation and settlement of restructuring term sheets with key stakeholders, including the labour partners of the Applicant.
7. Phase 2 of the Applicant's restructuring process entails, among other things, the formulation of a plan of compromise and arrangement (a "**Plan**") or framework of a Plan for the benefit of the Applicant's creditors. To facilitate the development of a Plan and consistent with its obligations under the term sheets with its labour partners, the Applicant will undertake a review of its real estate portfolio in order to ascertain its current and future

space utilization requirements given the restructuring that has taken place since the filing date, in order to determine whether or not certain parts of the Applicant's real estate portfolio can be monetized in some manner that is beneficial to the Applicant and its creditors.

8. Following a process described below and as further described in the Monitor's Report, to be filed, the Applicant seeks the authority to appoint the Real Estate Advisor to assist with the review of the Applicant's real estate portfolio.
9. The Applicant intends to review its real estate portfolio to investigate the potential to better utilize and/or monetize its real estate assets to maximize value for its stakeholders while allowing the Applicant to fully and efficiently continue its restructured operations on a go-forward basis. The review will focus on identifying any opportunities for extracting value without interfering with the normal operations of the university.
10. The review is expected to include the following components:
 - (a) reviewing and understanding the Applicant's current portfolio of real estate;
 - (b) consideration of potential strategies with respect to the monetization of any redundant or excess assets that may exist within the real estate portfolio (land and buildings);
 - (c) review of third-party leases within the real estate portfolio;
 - (d) consideration of different strategies to monetize real estate assets; and

(e) recommendations to optimize space utilization, including opportunities to consolidate, and the feasibility of doing so.

(collectively, the “**Mandate**”).

11. A real estate advisor with experience and expertise, particularly in the post-secondary and public sectors, will provide critical guidance with respect to the Mandate and be in the best position to advise on developing a strategic plan for the Applicant’s real estate portfolio. This will enable the Applicant to consider how it can maximize value for its stakeholders while ensuring that it is able to continue to provide comprehensive services and space on its campus for students, faculty, staff, visitors and the communities it serves.

Selection of Real Estate Advisor

12. The Applicant issued a Request for Quotations on May 18, 2021 (the “**RFQ**”). The RFQ requested proposals setting out a proposed approach with respect to the Mandate. There were nine different firms that had either previously expressed interest in the role or who were recommended by certain stakeholders of the Applicant. For these parties, counsel to the Applicant directly emailed those nine parties with the RFQ and invited such party to submit a bid.
13. The RFQ was also posted on the Monitor’s website maintained for this CCAA proceeding to appeal to a broader audience and ensure a fully open and transparent process. In total, thirty-two different firms accessed the RFQ.
14. In addition, the RFQ was posted on MERX, a platform commonly used in the private and public procurement sector where entities can access both public and private sector tenders.

15. Thirty-two (32) unique organizations downloaded the RFQ. The Applicant ultimately received six proposals, which it reviewed with the Monitor. The review was informed by the following selection criteria:
 - (a) experience and qualifications, particularly with respect to postsecondary and publicly-funded organizations;
 - (b) breadth and extent of services offered, support and technology utilized;
 - (c) proposed methodology;
 - (d) level of detail contained in proposal, and understanding of the mandate and challenges that may exist in implementing same;
 - (e) hourly rates and budget;
 - (f) expectations as to information and data that may be provided by the university, including with limited resources, or what may need to be created or obtained from other sources; and
 - (g) other relevant factors.
16. Interviews were conducted with four potential candidates who were considered by the Applicant and the Monitor to have provided the best written responses to the RFQ.
17. The Amended and Restated Initial Order does not require the Applicant to seek court approval when retaining a real estate advisor. The process that was undertaken represented a hybrid between: (a) the procurement process that would typically be undertaken by the

Applicant within the public sector outside of a CCAA proceeding; and (b) the steps and process that would be undertaken by an Applicant or the Monitor in inviting expressions of interest to act as a real estate advisor in a CCAA proceeding, in communicating with such parties and in reviewing and considering responses received from interested parties. As the process did not strictly follow all terms of a public sector procurement process, and incorporated aspects of a more typical CCAA engagement process, the Applicant seeks court approval of same.

18. The Monitor was directly involved in and supports the process undertaken to select the real estate advisor, and C&W as the successful candidate.
19. C&W was chosen as the successful proposed Real Estate Advisor for the following reasons:
 - (a) C&W's proposal was comprehensive and set out a clear approach to fulfilling the Mandate;
 - (b) C&W demonstrated a strong grasp of the multitude of factors that will influence the review and, ultimately, any decision to dispose of real estate assets;
 - (c) C&W demonstrated the most experience working with both publicly-funded organizations and post-secondary institutions;
 - (d) C&W partnered with an education consultant, an urban planning consultant, a student housing specialist, and a local real estate firm to form an end-to-end team capable of exploring all potential avenues to find efficiencies;

- (e) C&W and its partners demonstrated an understanding of the challenges and effort that this particular review will require; and
 - (f) C&W's budget was reasonable and offers significant value in terms of the estimated number of hours to be allocated to the project and the estimated total cost.
20. C&W has the requisite skills and experience necessary to fulfill the Mandate.
21. The Monitor recommends the appointment of C&W as the Real Estate Advisor.

Sealing Provision

22. As part of the Order, the Applicant seeks a provision sealing the unredacted proposal of C&W, which will be attached as a Confidential Appendix to the Fifth Report of the Monitor. C&W has advised the Applicant that its unredacted proposal contains commercially sensitive and proprietary information that, if disclosed publicly and made available to competitors, could jeopardize the business of C&W.

Other Grounds

23. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
24. Section 137(2) of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and
25. 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 motion:

1. The Fifth Report of the Monitor, to be filed; and

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

June 28, 2021

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Schedule “A”
Conference Details to Join Motion via Zoom

Join Zoom Meeting

<https://ca01web.zoom.us/j/62994317703?pwd=UWhvN2FCc0NXdlRNQ1dINDhsa2xrdz09>

Meeting ID: 629 9431 7703

Passcode: 136055

One tap mobile

+16475580588,,62994317703#,,,,*136055# Canada

+17789072071,,62994317703#,,,,*136055# Canada

Dial by your location

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+1 778 907 2071 Canada

+1 204 272 7920 Canada

+1 438 809 7799 Canada

+1 587 328 1099 Canada

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855 703 8985 Canada Toll-free

Meeting ID: 629 9431 7703

Passcode: 136055

Find your local number: <https://ca01web.zoom.us/u/gbmrDceoUg>

Join by SIP

62994317703@zmca.us

Join by H.323

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

Meeting ID: 629 9431 7703

Passcode: 136055

Schedule “B”**SERVICE LIST**

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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
(Appointment of Real Estate Advisor)**

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TAB 2

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE CHIEF	)	MONDAY, THE 5TH
	)	
JUSTICE MORAWETZ	)	DAY OF JULY, 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

ORDER

(Re: Appointment of Real Estate Advisor)

THIS MOTION, made by Laurentian University of Sudbury (the “**Applicant**”) pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), for an order appointing a Real Estate Advisor, was heard this day by videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic;

ON READING the Applicant’s Notice of Motion and the Fifth Report of Ernst & Young Inc. (the “**Monitor**”) dated June __, 2021 (the “**Fifth 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 with the Applicant’s Motion Record as appears from the Affidavit of Service of [X] dated June [X], 2021;

UPON BEING ADVISED of the existence of various legislation, policies, guidelines and directives to which the Applicant may be subject including *The Public Sector Accountability Act*, the *Laurentian University Policy on Purchasing*, *The Procurement Guideline for Publicly Funded Organizations in Ontario*, *The Ontario Broader Public Sector (BPS) Procurement Directive* issued by the Management Board of Cabinet, effective July 1, 2011 and various Ontario Trade

Agreements (including the *Canadian Free Trade Act*) (collectively, the “**Public Sector Parameters**”);

AND UPON CONSIDERING the processes and principles utilized for retaining advisors in a CCAA proceeding and the timing and other considerations applicable to the Applicant in fulfilling its obligation to conduct a real estate review pursuant to term sheets approved by this Court on April 29, 2021, and upon considering the Monitor’s direct involvement and oversight in the open, competitive and transparent process for the selection of the Real Estate Advisor and its recommendation as set out in the Fifth Report;

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged 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 Fifth Report.

REAL ESTATE ADVISOR

3. **THIS COURT ORDERS** that the Applicant is hereby authorized and directed to retain Cushman & Wakefield as the Real Estate Advisor in respect of the Mandate.
4. **THIS COURT ORDERS** that, to the extent that any aspect of the process leading to the selection of the Real Estate Advisor was not in accordance with any applicable Public Sector Parameters, such requirements are waived.
5. **THIS COURT ORDERS** that, subject to the approval of the Monitor as to its terms, the Applicant is hereby authorized to execute an engagement letter with the Real Estate Advisor in order to implement the terms of the Mandate.

SEALING PROVISION

6. **THIS COURT ORDERS** that the proposal of Cushman & Wakefield, attached to the Fifth Report, is hereby sealed pending further order of the Court, and shall not form part of the public record.

GENERAL

7. **THIS COURT ORDERS** that no person shall be liable for any act done in good faith in accordance with this Order, pursuant to section 142 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

8. **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.

9. **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.

10. **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

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

ORDER
(Appointment of Real Estate Advisor)

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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

**MOTION RECORD
(Appointment of Real Estate Advisor
Returnable July 5, 2021)**

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