

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

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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**

**MOTION RECORD
(Stay of Enforcement of Speaker's Warrant)**

December 17, 2021

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**ONTARIO
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ARRANGEMENT OF **LAURENTIAN UNIVERSITY OF SUDBURY**

NOTICE OF MOTION (INTERLOCUTORY STAY OF SPEAKER'S WARRANTS)

Laurentian University of Sudbury (the "**Applicant**" or "**LU**") will make a motion to Chief Justice Morawetz of the Ontario Superior Court of Justice on a date and time to be scheduled at a case conference before Chief Justice Morawetz for a date on which 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 will be provided to the Service List.

THIS MOTION IS FOR:

1. An order (the "**Stay of Speaker's Warrants Order**"):
 - (a) Staying and suspending the enforcement of the warrants of the Speaker of the Legislative Assembly of Ontario dated December 9, 2021 (the "**Speaker's warrants**"), served on the President and Vice-Chancellor of the Applicant, Dr. Robert Haché; and on the Chair of the Applicant's Board of Governors (the "**Board**"), Claude Lacroix, pending a determination of whether their issuance fell within the scope and extent of the Legislative Assembly's parliamentary privilege, or further order of the Court;

(b) In the alternative, advice and directions from the Court on how the University should comply with the Speaker's warrants, given the existing court orders and the CCAA restructuring process; and

(c) Any other ancillary relief that may be required by LU to give effect to the foregoing.

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

THE GROUNDS FOR THIS MOTION ARE:

3. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Supplementary Affidavit of Ephry Mudryk sworn December 9, 2021.

Overview of CCAA Proceedings

4. 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**").

5. As part of the initial order, the Court made a sealing order pursuant to section 137(2) of the *Courts of Justice Act* with respect to two Exhibits to the Affidavit of Dr. Robert Haché, being letters between the Applicant with the Ministry of Colleges and Universities in the two weeks prior to the commencement of the CCAA proceeding (the "**Sealing Order**").

6. In granting the Sealing Order, the Court found that 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.” The Court further found that “the risk in disclosing the Exhibits is real and substantial and imposes a serious risk to the future viability of [the Applicant].” A motion for leave to appeal the sealing order to the Court of Appeal for Ontario was dismissed.

7. On February 5, 2021, this Court issued an order appointing the Honourable Justice Sean Dunphy of the Superior Court of Justice as judicial mediator in this application (the “**Mediation Order**”). The order included a “Mediation Confidentiality Protocol.”

8. On February 11, 2021, the Court issued an Amended and Restated Initial Order (the “**Amended and Restated Initial Order**”) that, among other things, extended the Stay Period to April 30, 2021.

9. In his written reasons for the Amended and Restated Initial Order, Chief Justice Morawetz made the following findings of fact:

- (a) the Applicant is an entity that qualifies for protection under the CCAA;
- (b) the Applicant falls under the Corporations Act, R.S.O. 1990, c. C.38;
- (c) the Applicant’s status as a not-for-profit, non-share capital corporation does not impact the applicability of the CCAA to the Applicant;
- (d) the Applicant is a “debtor company” to which the CCAA applies;
- (e) the Applicant is plainly insolvent and faced a severe liquidity crisis; and
- (f) absent debtor-in-possession financing (obtained pursuant to the CCAA), the Applicant would have been unable to meet payroll at the end of February 2021.

10. On May 2, 2021, following a brief extension of the Stay Period to that date, the Court extended the Stay Period up to and including August 31, 2021.

11. On August 27, 2021, the Court further extended the Stay Period up to and including January 31, 2022.

Audit by the Auditor General of Ontario

12. On April 28, 2021, the Standing Committee on Public Accounts (the “**Standing Committee**”), one of the committees of the Legislative Assembly of Ontario (the “**Assembly**”) passed a motion requesting the Auditor General of Ontario (the “**Auditor General**”) to conduct a value-for-money audit on the operations of the Applicant for the period of 2010 to 2020.

13. The Auditor General is an Officer of the Assembly (*Auditor General Act*, R.S.O. 1990, c. A.35, s. 2).

14. The Auditor General notified Dr. Haché in May 2021 of the Standing Committee’s motion. Since becoming aware of the audit, the Applicant has expended every reasonable effort and resource to comply with the Auditor General’s audit and provide information, documentation and access. The Applicant’s cooperation has been extensive, despite the limited resources available due to its staff complement, operating a university while in a pandemic, and the ongoing CCAA proceeding.

15. The Auditor General’s mandate as prescribed by the Standing Committee was limited to the period from 2010 to 2020.

16. On August 5, 2021, the Auditor General sent a letter to Dr. Haché stating her position that the Auditor General is entitled to compel privileged information from an audit subject.

17. On August 9, 2021, Dr. Haché responded, stating that the issues regarding disclosure of privileged information were complex and would require further discussion with the Applicant's Board and advisors.

18. On August 11, 2021, the Auditor General issued a summons to Dr. Haché requiring the production of various documents. On the same day, the Auditor General advised the Applicant's regulatory counsel, Stockwoods LLP, that the summons had to be complied with and that she had the authority to compel the delivery of privileged information.

19. On August 12, 2021, at a case conference before Chief Justice Morawetz, counsel for the Auditor General informed Chief Justice Morawetz that the Auditor General was no longer seeking production of privileged documents through the summons power.

20. On August 15, 2021, counsel for the Auditor General confirmed in written correspondence that the Auditor General would not legally pursue the production of privileged documents pursuant to section 10 of the *Auditor General Act*.

21. Shortly thereafter, the Auditor General sought to resile from her position and began demanding the production of privileged information and documentation from the Applicant and its employees.

22. At a case conference on September 27, 2021, counsel for the Auditor General and the Applicant presented an agreed memorandum to Chief Justice Morawetz outlining terms for the

determination of the issues. The parties agreed that the Auditor General could commence an application for a determination whether the *Auditor General Act*: (a) requires an auditee to give privileged information to the Auditor General; and (b) provides the Auditor General a right of access to an auditee's privileged information. The parties agreed that the Applicant reserved its rights to seek any relief in relation to a request by the Auditor General for privileged information, after the Auditor General's application was decided. These agreed terms were reflected in an Endorsement by Chief Justice Morawetz (the "**September 27 Endorsement**").

23. On September 29, 2021 in accordance with the schedule established in the September 27 Endorsement, the Auditor General commenced an application (the "**AG Application**") seeking a declaration that s. 10 of the *Auditor General Act* (a) requires every grant recipient to give her privileged information, and (b) gives her a right to free and unfettered access to privileged information.

24. The Applicant responded to the Auditor General's application. Chief Justice Morawetz heard the application on December 6, 2021 and reserved his decision.

Standing Committee requests and Speaker's warrants

25. On October 6, 2021, the Standing Committee held a meeting. The Auditor General attended the meeting. According to the transcript of the meeting, the Committee moved into closed session with the Auditor General at 9:04 a.m. and returned to open session approximately three and a half hours later, at 12:30 p.m.

26. On Friday, October 15, 2021 at 3:31 p.m., following the schedule established under the September 27 Endorsement, the Applicant served its responding application record in the AG Application.

27. At approximately 9:54 p.m. on the same day, October 15, 2021, Taras Natyshak, Chair of the Standing Committee, sent a letter to Dr. Haché and Mr. Lacroix. It states, in part: “the Committee decided during its October 6, 2021 meeting to request that Laurentian University provide the Committee with all of the information set out in Appendix 1, including privileged information.”

28. The requests in Appendix 1 to the October 15 letter were provided by the Auditor General to the Standing Committee.

29. Complying with the requests in Appendix 1 to the October 15 letter would mean disclosing documents and information pertaining to the restructuring of the Applicant under the CCAA, including privileged communications about that process, and pertaining to the confidential mediation protected by the Mediation Order and documents subject to the Sealing Order.

30. On October 19, 2021, Brian Gover, a lawyer at Stockwoods LLP, regulatory counsel for the Applicant, replied to Mr. Natyshak’s letter.

31. On October 22, 2021, Mr. Natyshak sent a second letter to Dr. Haché and Mr. Lacroix. It stated, among other things, “the Committee has the power to command the production of papers and things from Laurentian University of Sudbury (Laurentian) that the Committee considers necessary for its work, including privileged information ... It will be a serious matter if Laurentian University does not comply with the Committee’s request by the indicated deadlines.”

32. Mr. Natyshak's October 22 letter included a further list of requests for documents and information, some of which overlapped with the requests in the October 15 letter. As with the October 15 requests, complying with the requests in the October 22 letter would mean disclosing documents and information pertaining to the CCAA process, including privileged communications about that process, and about the confidential mediation protected by the Mediation Order and documents subject to the Sealing Order.

33. On October 29, 2021, Mr. Gover replied to Mr. Natyshak's letter.

34. On November 3, 2021, Mr. Natyshak sent a third letter to Dr. Haché and Mr. Lacroix.

35. On November 10, 2021, Mr. Gover replied to Mr. Natyshak's letter.

36. On November 18, 2021, Christopher Tyrrell, the Clerk of the Standing Committee, sent a letter to Dr. Haché and Mr. Lacroix. Mr. Tyrrell's letter stated that the Standing Committee had moved on November 17, 2021 to invite Dr. Haché and Mr. Lacroix to attend a closed session meeting of the Committee, and that, if they declined or failed to appear, the Committee had moved to authorize the Chair to report the matter to the House and request a Speaker's warrant to compel their appearance. The November 18 letter specified three purposes for the appearance: (a) to justify the Applicant's position regarding the Standing Committee's authority to compel the delivery of documents; (b) to address the Applicant's concerns regarding the sensitivity of documents related to the audit of the Applicant; and (c) to explain the Applicant's plan to comply with the order of the Standing Committee compelling the delivery of documents in a fulsome and timely manner.

37. On November 22, 2021 Mr. Gover wrote a letter to Mr. Tyrrell, stating that Dr. Haché and Mr. Lacroix would appear before the Standing Committee on December 1, 2021 at 12:30 p.m.

38. On December 1, 2021, at 11:16 a.m., the Auditor General publicly released her 2021 annual report, which included “an update on the ongoing Special Audit of Laurentian University.” The update stated, among other things, “Laurentian has refused to provide our Office information that it asserts is subject to solicitor-client privilege, litigation privilege, or settlement privilege. In some instances, Laurentian has declined to provide nonprivileged information on the basis that the process to review documents for privilege is too resource intensive, thereby restricting our access to non-privileged information as well. As a consequence, our Office is not being provided with timely, unfettered and direct access to all information needed to conduct our audit without significant scope limitations.”

39. On December 1, 2021, at 12:30 p.m., Dr. Haché and Mr. Lacroix appeared in camera before the Standing Committee. The Auditor General, Bonnie Lysyk, and her counsel in the AG Application, Richard Dearden, were present.

40. On December 8, 2021, the Auditor General attended a meeting of the Standing Committee. The Standing Committee voted to bring a request for a Speaker’s warrant to the Assembly.

41. On December 9, 2021, the Standing Committee reported to the Assembly and requested a Speaker’s warrant. The Assembly voted to request the Speaker to issue his warrant.

42. Statements in the Standing Committee’s meeting made plain that the reason the Standing Committee had sought documents and information from Laurentian was to provide them to the Auditor General for her value-for-money audit:

- (a) The Chair of the Committee, Mr. Taras Natyshak MPP, stated: “... the issue that we’re dealing with pertains to Laurentian University and the production of documents

through this committee, and the inability for this committee **and the Auditor General to recover those documents and to have Laurentian be compelled to do so, after various attempts.**”

(b) Mr. Michael Parsa MPP stated: “Dr. Robert Haché, Laurentian’s president and vice-chancellor, and Mr. Claude Lacroix, chair of the board of governors, have **continually resisted this committee’s demand for documents to audit the university’s finances.**”

(c) Mr. Parsa stated: “By October 6, the committee decided that **if there was to be any hope of this audit being completed**, the committee would have to directly demand the delivery of documents from Laurentian University.”

(d) Ms. France Gélinas MPP stated: “**Once the auditor has access to the information and emails and papers that she needs to do her work**, we can assure everyone that in the over a hundred years that we’ve had an Auditor General in every single of our provinces and at the federal level, there has never been a breach of confidentiality. Every auditor has gained access to solicitor-client privilege. They gain access to litigation privilege, to so many privileges—I don’t even know what those words mean but I hear them lots. ... But at the same time, they tell us the story of what happened. They tell us what needs to change. And they make recommendations so that the initial goal of having this independent third party look at Laurentian can tell us where did they go wrong. What can we do so it doesn’t happen to another university, and how do we rebuild from there? **That was the impetus behind the ask and it is just as important today as it was back in April.**”

(e) Ms. Gélinas stated: **“We need this independent third party to shed light. I don’t know why they’re giving the auditor such a hard time to let her do her work, but it has to be done.”**

(f) Ms. Gélinas stated: **“This falls on your shoulders, as House leader, to make that happen. I realize it is a huge ask. I realize that there’s lots on the docket between now and 24 hours or so when the House rises, but I want you to understand how important it is to get this done, to have the motion tabled in the House, discussed, if it needs to, and agreed upon so that our Speaker can issue this warrant and the auditor can gain access to the documents she needs to bring peace back to my community.”**

(g) Mr. Jamie West MPP stated: **“Chair, MPP Vanthof, Minister Calandra, this process has been going on since April. It’s now December—it’s eight or nine months—and I am concerned about Laurentian’s behaviour and the response to the Auditor General. I’m concerned not just because of Laurentian University, but I’m concerned about setting a precedent for future Auditor General requests, setting a precedent for the authority of this committee, setting a precedent for the authority of the Legislative Assembly of Ontario, because, rest assured, there are lawyers watching this and wondering, ‘Maybe this is the route that I should take if I’m ever asked for an audit by the Auditor General.’ And so, MPP Vanthof, Minister Calandra, the people of Sudbury, they need your help. I need your help. I want to join the call to issue a warrant for the documents that the Auditor General has requested.”**

43. The same was evident from the statements of Members in the Assembly on December 9, 2021.

44. On December 10, 2021, the Sergeant at Arms of the Assembly served Speaker's warrants on Dr. Haché and Mr. Lacroix in their respective capacities as President and Vice-Chancellor, and Chair of the Board of Governors (the "**Speaker's Warrants**").

45. Pursuant to section 46 of the *Legislative Assembly Act*, if a person fails to obey a warrant, the Assembly has all the rights and privileges of a court of record for the purposes of summarily inquiring into and punishing these persons without affecting their liability to prosecution and punishment criminally or otherwise according to law, independently of the *Legislative Assembly Act*.

46. Section 48 of the *Legislative Assembly Act* provides that the Speaker shall issue a warrant to the sergeant-at-arms of the Assembly for any person guilty of an act referred to in section 46 and they are to be taken into custody.

Stay of the Speaker's Warrant – Overview

47. It would be just and appropriate to stay any enforcement of the Speaker's warrants until the court has determined whether their issuance fell within the scope and extent of the Legislative Assembly's parliamentary privilege.

48. The Speaker's warrants can be stayed under s. 11 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, s. 101 of the *Courts of Justice Act*, or otherwise under s. 24(1) of the *Charter of Rights and Freedoms*.

49. A stay can be granted where the court is satisfied that it is "just or convenient to do so." When considering a request for a prohibitory injunction, such as a stay, courts will consider (a) whether there is a serious question to be tried; (b) whether the moving party will suffer irreparable

harm if the stay is not granted; and (c) whether the balance of convenience favours granting the stay.

50. A serious question to be tried is one that is not frivolous or vexatious.

51. There are serious questions to be tried as to the validity of the Speaker's warrants, on at least the following three grounds:

(a) Parliamentary privilege of a provincial Legislative Assembly does not extend to compelling the production of information protected by a class privilege from a person or entity that is not part of government. Solicitor-client privilege is a constitutionally protected right, and it is not necessary for a legislative assembly to have the power to invade the constitutionally protected privilege of an entity that is not part of government.

(b) Parliamentary privilege of a provincial Legislative Assembly does not extend to compelling the production of documents and information that a federal statute, or a court order made pursuant thereto, prohibits a person or entity from disclosing. It is not necessary to its functioning for a provincial legislative assembly to have the power to compel disclosure of information in breach of federal law.

(c) The Legislative Assembly has limited the scope of its privileges by enacting the *Auditor General Act*, which devolved on the Auditor General, and limited, the power to audit the expenditure of public funds and the power to obtain documents and information for that purpose. The result is that the Standing Committee itself no longer has the power to obtain documents for the purpose of an audit. Its remaining role is to receive and comment on the Auditor General's report. The legislature cannot now circumvent the limits

on the Auditor General's authority that it itself enacted by resorting to parliamentary privilege.

52. The Speaker's warrants, if enforced, would cause irreparable harm to the Applicant's restructuring proceedings, as they would:

- (a) compel the Applicant to produce documents and information protected by solicitor-client privilege, litigation privilege, and settlement privilege;
- (b) compel the Applicant to produce documents and information protected by the Mediation Confidentiality Protocol and Sealing Orders of this Court; and/or
- (c) result in the punishment, including potentially the imprisonment, of its President and the Chair of its Board of Governors.

All these outcomes would jeopardize the ongoing restructuring efforts of the Applicant.

53. The balance of convenience favours the granting of the stay. The interest of the Assembly or the Standing Committee in obtaining the requested information is not urgent. There is no reason to believe that a delay in its delivery will prejudice the Standing Committee or the Assembly in any significant way. By contrast, the harm that the Applicant and its personnel would suffer, if the warrant is enforced, would be extremely serious.

Ground 1: No parliamentary privilege to compel information that is protected by a class privilege of an entity that is not part of the government

54. Privilege is a principle of fundamental justice under s. 7 of the *Charter* and is a protected interest under s. 8 of the *Charter*.

55. Actions of the Assembly are subject to the *Charter* to the extent they do not fall within the scope and extent of parliamentary privilege. Section 32 provides that the *Charter* applies “to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.”

56. The Speaker’s warrants rely on parliamentary privilege. Parliamentary privilege is the sum of the privileges, immunities and powers enjoyed by the Senate, the House of Commons and provincial legislative assemblies, without which they could not discharge their functions.

57. The existence and scope of Parliamentary privilege are justiciable.

58. The test for the existence and scope of the privilege of a provincial legislative assembly is “necessity.” That is, inherent parliamentary privileges are limited to those which are necessary for a legislative body to fulfill its constitutional functions. These functions are legislating and holding the government to account. In other words, to fall within the scope of parliamentary privilege, a matter must be so closely and directly connected with the fulfilment by the assembly or its members of their functions that outside interference would undermine the level of autonomy required to enable the assembly and its members to do their work with dignity and efficiency. The inherent nature of parliamentary privilege means that its existence and scope must be strictly anchored to its rationale.

59. The party seeking to rely on parliamentary privilege bears the burden of establishing its necessity in light of the purposes of parliamentary privilege.

60. Courts apply the necessity test more stringently to claims to parliamentary privilege that impact persons outside the legislative assembly than to claims that involve matters entirely internal to the legislature.

61. Laurentian University is not part of the legislative assembly, nor, indeed, is it part of the government at all. Universities in Ontario are legally independent entities. Laurentian is no exception: it is a corporation, and, although it receives funding from the government, it is not part of government.

62. Parliamentary privilege and the *Charter* are both essential parts of the Constitution of Canada. Neither prevails over the other. Where a claimed instance of parliamentary privilege appears to conflict with a *Charter* right, courts try to reconcile them with a purposive approach. Such an approach recognizes the potential impact on the *Charter* rights of parliamentary privilege, and strives to reconcile the two, by ensuring that the privilege is only as broad as is necessary for the proper functioning of our constitutional democracy.

63. There is no necessity for the Assembly to have the unreviewable authority to compel privileged information from third parties that are not part of the government in order to do its work with efficiency and dignity:

(a) The Assembly would still have access to the privileged information of the government. It could still use that information to discharge its core function, namely holding the executive to account. The government does not have *Charter* rights.

(b) The Assembly would have access to all non-privileged information.

(c) Given the constitutional importance of privilege, there is no reason why the Assembly needs access to privileged information of third parties to do its work. All information protected by the solicitor-client privilege is out of reach for the state.

64. Accordingly, there is a serious question to be tried as to whether the scope and extent of parliamentary privilege extends to compelling privileged information from entities that are not part of government.

Ground 2: No parliamentary privilege to compel information that a federal statute or court order made pursuant thereto prohibits a person or entity from disclosing

65. There is similarly no necessity for the Assembly to have the unreviewable authority to compel information contrary to the law of another Canadian jurisdiction, or contrary to the order of a Canadian court of competent jurisdiction. Such a power is not necessary for the Assembly to perform its constitutional functions of vigorously debating laws and holding the executive of its jurisdiction to account.

66. The *CCAA* is a federal statute, and, accordingly, paramount over provincial legislation to the extent the two come into conflict.

67. Federal legislation, including the *CCAA*, occupies the field in relation to bankruptcy and insolvency. The purpose of the *CCAA* is to facilitate and govern the restructuring of insolvent organizations. Two fundamental parts of the *CCAA* scheme are (a) the stay of all proceedings against the Applicant and (b) the supervising judge's general power to make orders that he or she considers appropriate in the circumstances to provide an Applicant with the greatest chance of success in its restructuring efforts.

68. Section 40 of the *CCAA* provides that the *CCAA* is binding on Her Majesty in right of Ontario.

69. The supervising judge in this application has made an order granting the Applicant a stay of proceedings. He has also ordered the Applicant to keep confidential documents and information pertaining to the court-ordered mediation. Finally, he has ordered that certain documents, filed with the court, be sealed. The Speaker's warrants would require the Applicant to deliver that information and those documents, on pain of contempt. There is therefore a conflict between Orders made pursuant to the *CCAA* and the Speaker's warrants.

70. Complying with the Speaker's warrants would contravene the Mediation Order and would expose the Applicant, and its personnel, to potential liability for contempt of court. It would also jeopardize the ongoing negotiations in the restructuring and undermine the integrity of the *CCAA* process. In general, if provincial legislative assemblies had an absolute and unreviewable power to compel documents relating to an ongoing *CCAA* process, which a court had ordered to remain confidential, the overall efficacy of the *CCAA* regime would be undermined.

71. Accordingly, there are serious questions to be tried as to whether the Assembly's parliamentary privilege extends to the power to compel information in breach of federal law or in breach of a court order.

Ground 3: The Standing Committee's power to audit the expenditure of public funds and its power to obtain documents and information for that purpose have been devolved upon the Auditor General, and limited, in the provisions of the Auditor General Act

72. The scope, extent, and manner of the Standing Committee's power to audit the expenditure of public funds and its power to obtain documents and information for that purpose have been

devolved to the Auditor General, and limited, in the provisions of the *Auditor General Act*. As a result, the Committee does not have the inherent power to perform audits itself, or to obtain documents itself for the purpose of an audit. Accordingly, the legislature cannot now circumvent the limits on the Auditor General's authority in the *Auditor General Act*, which it itself enacted, by resorting to inherent parliamentary privilege.

73. When a legislative body subjects an aspect of privilege to the operation of statute, it is the provisions of the statute that govern. While the relevant statutory provisions remain operative, a legislative body cannot reassert privilege to do an end-run around an enactment whose very purpose is to govern the legislature's operations. Parliamentary privilege should not be invoked to bypass the application of a statute enacted by the legislature to govern its own operation.

74. Expecting a legislature to comply with its own legislation cannot be regarded as an intrusion on the legislature's privilege. It is not an impediment to the functioning of a legislature for it to comply with its own enactments. The legislature must have had in mind its inherent oversight powers over the expenditure of public funds when it enacted the *Auditor General Act* and entrusted the Auditor General, an officer of the Assembly, with that function.

75. The Standing Orders of the Assembly demonstrate that the Assembly has devolved the power to audit the expenditure of public funds to the Auditor General, and that its role is limited to reviewing her reports and reporting to the House on those reports. The Standing Order setting out the mandate of the Standing Committee on Public Accounts reads: “[The] Standing Committee on Public Accounts ... is empowered to review and report to the House **its observations, opinions and recommendations on the Report of the Auditor General and the Public Accounts**, which

documents shall be deemed to have been permanently referred to the Committee as they become available.”

76. The provisions of the *Auditor General Act* reinforce the proposition that the Auditor General, not the Standing Committee, is to conduct audits *and* gather information for those audits:

- (a) Section 2 creates the office of the Auditor General and provides that she is an officer of the Assembly.
- (b) Section 5.5 provides that the Auditor General cannot be a member of the Assembly.
- (c) Section 8 provides that the Auditor General must be licensed under the *Public Accounting Act, 2004*.
- (d) Section 9.2 provides that “the Auditor General may conduct a special audit of a grant recipient with respect to a reviewable grant received by the grant recipient.”
- (e) Section 10 provides for the Auditor General’s rights to obtain information.
- (f) Section 11 provides for the Auditor General’s ability to examine persons under oath and to compel attendance by way of a summons, and provides that s. 33 of the *Public Inquiries Act, 2009* applies to such examinations.
- (g) Section 11.2 prohibits the obstruction of the Auditor General and creates the offence of obstruction.
- (h) Section 12 requires the Auditor General to report to the Assembly.

(i) Section 16 requires the Auditor General to attend at the meetings of the Standing Committee at its request, “in order (a) to assist the committee in planning the agenda for **review by the committee of the Public Accounts and the annual report of the Auditor General**; and (b) to assist the committee **during its review of the Public Accounts and the annual report of the Auditor General**, and the Auditor General shall examine into and report on any matter referred to him or her in respect of the Public Accounts by a resolution of the committee.”

(j) Section 17 allows the Assembly or the Standing Committee to give the Auditor General special assignments.

(k) Section 19 provides that the Auditor General’s working papers shall not be laid before the Assembly or any committee thereof (including the Standing Committee).

(l) Section 27.1 provides that the Auditor General and her staff must preserve secrecy with respect to all matters that come to their attention in the course of their duties. It also provides that they shall not disclose any information disclosed under s. 10 that is subject to privilege without the consent of each privilege holder.

77. The intent of the Standing Order and *Auditor General Act* is to empower an independent officer of the Legislature, qualified as an accountant and with the assistance of staff, to gather information, perform an audit, and report her findings to the Committee. Equally, its intent is to prevent the Committee and Assembly from seeing her working papers, confining them to making “observations, opinions and reports” on her report.

78. In particular, the Assembly set out the powers of the Auditor General to compel information from audit subjects in s. 10 and s. 11 of the *Auditor General Act*. It would be inconsistent with those legislative provisions if the Standing Committee and Assembly could invoke parliamentary privilege and obtain documents and information for the Auditor General that exceeded what those provisions entitled her to.

79. Further, the Assembly set out safeguards on the disclosure of information by the Auditor General in s. 19 and s. 27.1 of the *Auditor General Act*. It would be inconsistent with those legislative provisions if the Standing Committee and Assembly could invoke parliamentary privilege and obtain information for an audit that would otherwise be covered by those safeguards.

80. The Assembly, having enacted legislation defining the scope and extent of its powers and privileges regarding audits of the expenditure of public funds, cannot bypass that legislation by invoking inherent parliamentary privilege.

81. Further, the provisions of the Standing Order and the *Auditor General Act* demonstrate that the Assembly does not need exclusive, unreviewable authority over compelling production of documents for audits in order to perform its constitutional role with dignity and efficiency.

82. Accordingly, there is a serious question to be tried about whether the scope and extent of parliamentary privilege covers the Speaker's warrants in question.

Other Grounds

83. The provisions of the CCAA, including section 11;

84. Sections 101 and 109 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;

85. Sections 7, 8 and 24(1) of the *Charter*;
86. The inherent and equitable jurisdiction of this Honourable Court; and
87. 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:

88. The Affidavit of Ephry Mudryk, sworn October 15, 2021, and the exhibits thereto, filed in the related application *Auditor General of Ontario v Laurentian University of Sudbury*, CV-21-00669471-00CL;
89. The transcript of the Auditor General's cross-examination on October 28, 2021 in *Auditor General of Ontario v Laurentian University of Sudbury*, CV-21-00669471-00CL, and the exhibit thereto;
90. The Supplementary Affidavit of Ephry Mudryk sworn December 9, 2021 and the exhibits thereto; and
91. Such further and other evidence as counsel may advise and this Court may permit.

December 15, 2021
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FINNIGAN LLP**
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Co-counsel for the Applicant/Moving
Party

TO: THE ATTACHED SERVICE LIST

**AND TO: THE SPEAKER OF THE LEGISLATIVE ASSEMBLY OF
ONTARIO** The Honourable Peter Sibenik, MPP
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psibenik@ola.org

AND TO: MINISTRY OF THE ATTORNEY GENERAL
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Lawyers for the Auditor General of Ontario

Schedule "A"**SERVICE LIST****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**

SERVICE 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**

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

ONTARIO
**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**NOTICE OF MOTION
(INTERLOCUTORY STAY OF SPEAKER'S
WARRANTS)**

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Toronto, ON M5K 1K7

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Tel: 416-304-1616

Lawyers for the Applicant

Court File No. CV-21-00669471-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

AUDITOR GENERAL OF ONTARIO

Applicant

LAURENTIAN UNIVERSITY OF SUDBURY

Respondent

AFFIDAVIT OF EPHRY MUDRYK
(sworn October 15, 2021)

I, Ephry Mudryk, of the City of Vaughan, in the Province of Ontario, **MAKE OATH**
AND SAY AS FOLLOWS:

1. I am a law clerk at Stockwoods LLP, lawyers for the respondent, Laurentian University of Sudbury (“**Laurentian**” or the “**University**”). As such, I have knowledge of the matters hereinafter deposed to, save where I have obtained information from others. Where I do not possess personal knowledge, I have stated the source of my information and belief and, in all such cases, believe such information to be true.

2. On August 5, 2021, the Auditor General of Ontario, Bonnie Lysyk, sent a letter to Dr. Robert Haché, the President of Laurentian. Ms. Lysyk’s letter is attached hereto and marked as **Exhibit “A”** to my affidavit. It states her position that she is entitled to compel privileged information from an audit subject.

3. On August 9, 2021, Dr. Haché sent a letter to the Auditor General, stating that the issues regarding disclosure of privileged information were complex and that the University needed to

discuss them with its advisors and the Board. Dr. Haché's letter is attached hereto and marked as **Exhibit "B"** to my affidavit.

4. On August 11, Ms. Lysyk issued a summons to Dr. Haché requiring the production of certain categories of documents. The summons is attached hereto and marked as **Exhibit "C"** to my affidavit. The summons required production of all *in-camera* board material to her by 10:00 in the morning on Friday, August 13, 2021.

5. In response to the summons, also on August 11, 2021, one of the University's external counsel, Brian Gover, wrote a letter to Ms. Lysyk setting out the University's position and inviting her to reconsider the request for privileged information, failing which the University would take steps to set aside the summons. Mr. Gover's letter is attached hereto and marked as **Exhibit "D"** to my affidavit.

6. Later on August 11, 2021, Mr. Gover received a letter from Ms. Lysyk stating that the summons served on Dr. Haché had to be complied with and that she has the authority to compel the delivery of privileged information. This letter is attached hereto and marked as **Exhibit "E"** to my affidavit.

7. Also on August 11, 2021, Jeff Chauvin, a member of the Auditor General's staff, sent an email to Laurentian's staff, requesting board materials and emails. Fredrick Schumann, a lawyer at Stockwoods, replied to Mr. Chauvin's email. Mr. Schumann's email stated that the material requested will include privileged information and that the review of years of emails would take a great deal of time. I attach hereto and mark as **Exhibit "F"** to my affidavit the emails from Mr. Chauvin and Mr. Schumann.

8. Then, also on August 11, 2021, the Auditor General sent a letter to Dr. Haché about the disclosure of emails, stating that she is entitled to access privileged information, and pointing out that obstructing her from carrying out her duties is an offence. I attach Ms. Lysyk's second letter of August 11, 2021 hereto and mark it as **Exhibit "G"** to my affidavit.

9. I am advised by Mr. Schumann that, at the request of counsel to the court-appointed Monitor Ernst & Young Inc., in Laurentian's restructuring proceeding under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA Proceeding**"), Chief Justice Morawetz scheduled a case conference on an urgent basis for 4:00 p.m. on August 12, 2021.

10. I am further advised by Mr. Schumann that, at the case conference on August 12, 2021, both Ms. Lysyk and her counsel Christopher Wirth made submissions to Chief Justice Morawetz. Mr. Schumann further advises me that at the case conference, Mr. Wirth informed Chief Justice Morawetz and others that the Auditor General was no longer seeking production of privileged documents through the summons power set out in the *Auditor General Act* and the *Public Inquiries Act, 2009*, that she conceded that that power could not be used to compel the production of privileged documents, and that it would not be suggested that failure to comply with the summons constituted the offence of obstructing the Auditor General or a member of the OAGO. Ms. Lysyk also mentioned her request for production of emails, the University's objection on the basis of privilege, and the University's assertion that the review of the emails for privilege would take a great deal of time.

11. On August 13, 2021, Mr. Gover wrote to Mr. Wirth, asserting that certain allegations of obstruction made by the Auditor General's staff were inappropriate and inconsistent with the position the Auditor General had taken at the case conference with Chief Justice Morawetz. Mr.

Gover stated that, if the threats of obstruction continued, the University would have to take steps to have the issue judicially determined. Mr. Gover's letter is attached hereto and marked as **Exhibit "H"** to my affidavit.

12. Mr. Wirth replied to Mr. Gover's letter on August 15, 2021. In that letter, Mr. Wirth stated "we confirm that the Office of the Auditor General is not alleging that Ms. Boyer or anyone else representing Laurentian University is committing the offence of obstruction under section 11.2 of the *Auditor General Act* by taking the legal position that they are not required to disclose privileged documents under the *Auditor General Act*." Mr. Wirth went on to say, "with respect to the issue of disclosure of privileged documents under section 10 of the *Auditor General Act*, the Auditor General has decided not to legally pursue the production of privileged documents and will conduct her audit using information and documents that she voluntarily receives from Laurentian University." Mr. Wirth's letter of August 15, 2021 sent on behalf of the Auditor General is attached hereto and marked as **Exhibit "I"** to my affidavit.

13. On August 30, 2021, the Auditor General sent a letter to Dr. Haché, about an interview she wished to hold with Sara Kunto, the former Secretary and General Counsel of Laurentian University. According to the Auditor General's letter, Ms. Kunto had told the Auditor General that she was precluded from discussing any privileged and confidential information. The Auditor General wrote: "Section 10 of the *Auditor General Act* entitles the Auditor General to privileged information ... Notwithstanding that the University disagrees with our interpretation of section 10 of the *Auditor General Act*, to expedite matters, I am requesting that the University inform Ms. Kunto that she can freely discuss all matters that will assist our value-for money audit." Ms. Lysyk's letter of August 30 is attached hereto and marked as **Exhibit "J"** to my affidavit.

14. Dr. Haché responded to Ms. Lysyk's letter on August 31, 2021. His letter stated that Ms. Kunto could meet with the Auditor General but could not disclose privileged information. Dr. Haché's letter is attached hereto and marked as **Exhibit "K"** to my affidavit.

15. On September 1, 2021, a lawyer at Stockwoods LLP, Fredrick Schumann, wrote to Ms. Kunto's lawyer, advising that she was free to meet with the Auditor General, subject to her obligation to safeguard privilege. Mr. Schumann's letter is attached hereto and marked as **Exhibit "L"** to my affidavit.

16. On September 8, 2021, the Auditor General sent a letter to Dr. Haché. Her letter states that she has "determined that we require access to all privileged information, both documentary and from interviewees such as Sara Kunto." She stated that she will be requesting an interpretation from the Superior Court under rule 14.05 of the *Rules of Civil Procedure* for an interpretation of s. 10 of the *Auditor General Act*. Ms. Lysyk's letter is attached hereto and marked as **Exhibit "M"** to my affidavit.

17. On September 27, 2021, the parties held a case conference before Chief Justice Morawetz. The Chief Justice endorsed a procedural memorandum submitted by the parties, which included their agreement about the relationship between this application and the ongoing CCAA proceeding. In particular, the agreement stated (in paragraphs 2 and 3) that the only issue to be raised in the application is the interpretation of s. 10 of the *Auditor General Act*, and that the University reserved its rights to seek relief under the CCAA. A copy of the memorandum and endorsement of Chief Justice Morawetz is attached hereto and marked as **Exhibit "N"** to my affidavit.

SWORN before me via videoconference by
EPHRY MUDRYK located in the City of
Vaughan, in the Province of Ontario,
before me at the City of Toronto, in the
Province of Ontario, this 15th day of
October, 2021, in accordance with O. Reg
431/20, *Administering Oath or Declaration
Remotely*.

Caitlin Milne

Commissioner for Taking Affidavits

CAITLIN MILNE

Ephry Mudryk

EPHRY MUDRYK

This is **Exhibit “A”** to the Affidavit of Ephry
Mudryk, sworn October 15, 2021

Caitlin Milne

A Commissioner for oaths, etc.



Office of the Auditor General of Ontario
Bureau de la vérificatrice générale de l'Ontario

August 5, 2021

Mr. Robert Haché
President and Vice-Chancellor
Laurentian University
935 Ramsey Lake Road
Sudbury, Ontario P3E 2C6

Dear Mr. Haché:

Re: Disclosure of Privileged Documents to the Office of the Auditor General of Ontario

I am writing to you to clarify the position of the Office of the Auditor General of Ontario (the “OAGO”) with respect to the disclosure of privileged documents and information as part of our audit of Laurentian University.

Subsections 10(1) and (2) of the *Auditor General Act*, R.S.O. 1990, c. A.35 (the “AGA”) impose a duty on audit subjects to furnish documents and information to the OAGO:

Duty to furnish information

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

Access to records

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

These provisions grant the Auditor General broad authority to compel any documents or information that I believe to be necessary to perform my duties under the AGA. The provisions do not make any exceptions which would allow an audit subject to withhold or redact privileged information. Rather, pursuant to subsection 10(3), the AGA expressly contemplates the disclosure of privileged documents and information to the OAGO by confirming that such disclosure under this section does not constitute a waiver of the privilege:

Box 105, 15th Floor
20 Dundas Street West
Toronto, Ontario
M5G 2C2
416-327-2381
fax 416-326-3812

B.P. 105, 15^e étage
20, rue Dundas ouest
Toronto (Ontario)
M5G 2C2
416-327-2381
télécopieur 416-326-3812

Mr. Robert Haché

August 5, 2021

Page 2

No waiver of privilege

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

As an institution which receives reviewable grants and transfer payments from the Consolidated Revenue Fund, Laurentian University is a “grant recipient” as defined under section 1 of the *AGA*, and is therefore subject to the duty to furnish documents and information that I believe to be necessary to perform my duties, including privileged documents and information, pursuant to section 10 of the *AGA*.

We understand that Laurentian University may nevertheless have concerns about the disclosure of privileged documents and information to the OAGO. In that regard, we note section 27.1 of the *AGA*, which imposes a duty of confidentiality on the OAGO. In particular, subsection 27.1(3) prohibits the OAGO from disclosing privileged documents or information obtained under section 10 without the consent of each holder of the privilege:

Same

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

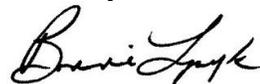
This provision prevents the OAGO from publishing Laurentian University’s privileged documents or information in its final report without your consent. You will be provided with a copy of the final draft report prior to publication. In the event that any privileged information is inadvertently included in the final draft report, you will be given an opportunity to identify such information so that it can be removed prior to publication.

It is my position that Laurentian University would not be complying with its obligations as an audit subject under section 10 of the *AGA* if it were to provide the OAGO with only redacted copies of its records, nor would redacting privileged information be necessary to maintain the privilege or prevent public disclosure, given the protections already afforded by subsections 10(3) and 27.1(3) of the *AGA*.

In that regard, audit subjects routinely provide the OAGO with unredacted copies of their privileged documents and information in accordance with the provisions discussed above.

Should you have any questions or concerns, please do not hesitate to contact me at 647-267-9263.

Sincerely,



Bonnie Lysyk
Auditor General of Ontario

cc: Shelley Tapp, Deputy Minister, Ontario Ministry of Colleges and Universities

This is **Exhibit “B”** to the Affidavit of Ephry
Mudryk, sworn October 15, 2021

Caitlin Milne

A Commissioner for oaths, etc.

August 9, 2021

Sent via email

Ms. Bonnie Lysyk
Auditor General of Ontario
Box 105, 15th Floor
20 Dundas Street West
Toronto, ON M5G 2C2
Bonnie.Lysyk@auditor.on.ca

Dear Ms Lysyk,

Re: Disclosure of Privileged Documents

I acknowledge receipt of your letter of August 5, 2021 for which I thank you. As discussed during our meeting of August 6, 2021 the issues raised in your letter regarding your requested disclosure of privileged information are complex. They will need to be discussed with our advisors and the University's Board of Governors. The University intends to make a more substantive response to your letter as soon as it is able to do so.

Please let me reiterate that the University takes this audit seriously. Over the last few months, we have cooperated and worked diligently to compile and deliver information to your office. You may rest assured that our cooperation will continue during the upcoming campus site visit.

I look forward to welcoming you to Laurentian University.

Respectfully,



Robert Haché, Ph.D.
President and Vice-Chancellor

This is **Exhibit “C”** to the Affidavit of Ephry
Mudryk, sworn October 15, 2021

Castlin Milne

A Commissioner for oaths, etc.

Form 1

Public Inquiries Act, 2009

Prescribed Form of Summons Under Subsection 33(4) of the ActAuditor General Act, R.S.O. 1990, c. A.35, ss. 11. (1) & 11.*(Name of Act under which proceeding arises)*SUMMONS BEFORE Auditor General of Ontario*(Name of body or individual)*TO Dr. Robert Haché, President and Vice-Chancellor

Name

935 Ramsey Lake Rd. Sudbury, ON P3E 2C6

Address

(For Evidence on Oath or Affirmation)

YOU ARE REQUIRED TO ATTEND to give evidence on oath or affirmation in this proceeding on:

_____ at _____
Date (yyyy/mm/dd) Timeat _____
PlaceYOU ARE REQUIRED TO BRING WITH YOU and produce at the proceeding the following documents and things: *(set out the nature and date of each document and give sufficient particulars to identify each document and thing.)*

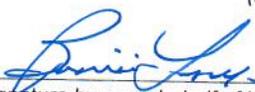
•

IF YOU FAIL TO ATTEND OR TO REMAIN IN ATTENDANCE AS THIS SUMMONS REQUIRES, THE DIVISIONAL COURT MAY ORDER THAT YOU BE PUNISHED IN THE SAME MANNER AS FOR CONTEMPT OF THAT COURT.

(For Production of Documents and Things)YOU ARE REQUIRED TO PRODUCE at the proceeding on 2021/08/13 at 10:00 AM
Date (yyyy/mm/dd) Time
at 935 Ramsey Lake Rd. Sudbury, ON P3E 2C6 (11th floor, Senate Chamber)
Placethe following documents and things: *(set out the nature and date of each document and give sufficient particulars to identify each document and thing.)*

- In-camera and private Board of Governors meeting materials (packages) and minutes (2010 – present) in their entirety ;
- In-camera and private Board of Governors committees meeting materials (packages) and minutes (2010 – present) in their entirety; and
- Full read access to any and all electronic Board of Governors materials including network drives, loose files, board portal and any other forms of electronic storage.

IF YOU FAIL TO PRODUCE THE DOCUMENTS AND THINGS THIS SUMMONS REQUIRES, THE DIVISIONAL COURT MAY ORDER THAT YOU BE PUNISHED IN THE SAME MANNER AS FOR CONTEMPT OF THAT COURT.

Bonnie Lysyk, Auditor General of Ontario*(Name of body or individual)*


 Signature by or on behalf of body or individual

2021/08/11

 Date (yyyy/mm/dd)

This is **Exhibit “D”** to the Affidavit of Ephry
Mudryk, sworn October 15, 2021

Caitlin Milne

A Commissioner for oaths, etc.



Brian Gover
Direct Line: 416-593-2489
Direct Fax: 416-593-9345
briang@stockwoods.ca

August 11, 2021

BY EMAIL Bonnie.Lysyk@auditor.on.ca

Ms. Bonnie Lysyk
Auditor General of Ontario
Box 105, 15th Floor
20 Dundas Street West
Toronto, Ontario
M5G 2C2

Dear Ms Lysyk:

Re: Laurentian University - summons to Dr Robert Haché

As you know, we act for Laurentian University. We have been provided with a copy of a summons, issued by you, requiring the production of documents from Dr Robert Haché, the President and Vice-Chancellor of the University (copy attached).

The summons seeks production of *in-camera* packages and minutes for meetings of the University's Board of Governors, *in-camera* packages and minutes for meetings of committees of the Board of Governors, and "full read access to any and all electronic Board of governors materials."

The summons is returnable August 13, 2021, at 10:00 a.m., less than 48 hours from now.

You have taken the position in numerous communications that you are entitled to require privileged information from audit subjects, so it seems clear that the reason for the summons is to try to compel production of privileged information from the University.

As you know, the University has never objected to producing to you non-privileged *in camera* Board material. Rather, it has been diligently working to produce *in camera* Board packages to you. It has been reviewing, with counsel's assistance, those packages for privilege, and has already produced a great number of non-privileged Board packages to you. The privilege review is ongoing, and will not be complete by August 13.

STOCKWOODS LLP

TD NORTH TOWER, 77 KING STREET WEST, SUITE 4130, P.O. BOX 140, TORONTO, ONTARIO M5K 1H1 • PH: 416-593-7200 • FAX: 416-593-9345
Stockwoods:00279660.1

- 2 -

This is alongside the extremely voluminous production of other material that the University has already made, and continues to make. The University has provided a very large volume of documents and has provided access to all its staff, all while it navigates a court-managed restructuring process under the *Companies' Creditors Arrangement Act*.

The University's position remains that the Auditor General is not entitled to require an audit subject to disclose privileged information. The issuance of a summons does not change that.

Please confirm by **5:00 p.m. today**, August 11, 2021, that you will not require production of privileged information pursuant to the summons, and that you will not require production of the remainder of the non-privileged documents by August 13, but will instead work with us to agree on a reasonable timeline. In the event that you do not do so, the University will bring this issue before the judge case-managing the *Companies' Creditors Arrangements Act* process, Chief Justice Morawetz of the Superior Court of Justice, by moving to quash or set aside the summons.

We look forward to hearing from you.

Yours truly,



Brian Gover

BG/FRS

Enclosure: Summons to R. Haché, August 11, 2021

- c. Christopher Wirth (by email)
DJ Miller (by email)

This is **Exhibit “E”** to the Affidavit of Ephry
Mudryk, sworn October 15, 2021

Caitlin Milne

A Commissioner for oaths, etc.



Office of the Auditor General of Ontario
Bureau de la vérificatrice générale de l'Ontario

August 11, 2021

VIA E-MAIL (briang@stockwoods.ca)

Mr. Brian Gover
Stockwoods LLP Barristers
77 King Street West, Suite 4130
P.O. Box 140
Toronto, Ontario M5K 1H1

Dear Mr. Gover:

Re: Laurentian University - Summons to Dr. Robert Haché

Further to your letter of today's date, I am writing to you to confirm the position of the Office of the Auditor General of Ontario (the "OAGO") with respect to the summons served on Dr. Robert Haché ("Mr. Haché") and the disclosure of privileged documents and information as part of our audit of Laurentian University.

As discussed in our correspondence with Mr. Haché last week, it is our position that the *Auditor General Act*, R.S.O. 1990, c. A.35 (the "AGA") provides the OAGO with broad authority to compel the disclosure of documents and information that I believe to be necessary to perform my duties under the AGA, including privilege information.

Given the foregoing, the OAGO will not be rescinding the summons served on Mr. Haché and will require the production of all materials as set out in the summons in an organized manner tied to board and committee meeting dates, excluding information which may be subject to privilege.

Privileged information is required to be provided to us, without the need for a summons under *The Auditor General Act*.

Should you have any questions or concerns, please do not hesitate to contact us.

Best regards,

Bonnie Lysyk
Auditor General of Ontario

cc: Dr. Robert Haché, President & Vice-Chancellor of Laurentian University
Kristy May, Office of the Auditor General of Ontario (by email)

Box 105, 15th Floor
20 Dundas Street West
Toronto, Ontario
M5G 2C2
416-327-2381
fax 416-326-3812

B.P. 105, 15^e étage
20, rue Dundas ouest
Toronto (Ontario)
M5G 2C2
416-327-2381
télécopieur 416-326-3812

This is **Exhibit “F”** to the Affidavit of Ephry
Mudryk, sworn October 15, 2021

Caitlin Milne

A Commissioner for oaths, etc.

From: [Fredrick Schumann](#)
To: [Gus Chagani](#)
Cc: [Celeste Boyer](#); [Brian Gover](#); [Jeff Chauvin](#); [D. J. Miller](#)
Subject: RE: Request
Date: Wednesday, August 11, 2021 2:41:11 PM
Attachments: [image001.png](#)

Gus,

We received the below email from Martin Laferriere in Laurentian's IT department. We understand that you and Jeff Chauvin are in the IT office now and are refusing to leave until you receive the information you have requested.

The University is not able to fulfil this request. The material you have requested includes privileged information. In particular, the board materials and the emails of Executive Team members (including the emails of the University's former General Counsel, Sara Kunto) will contain a wide variety of privileged material, including material pertaining to the ongoing CCAA process.

The board material has been the subject of separate discussions between us and your office. Indeed, the Auditor General today served a summons to Dr Haché purporting to require him to provide board material. We have delivered a letter to the Auditor General, attached, regarding this summons. Given the outstanding summons for board material, you should not be attempting to obtain it directly from IT staff.

Because of the nature of the material requested, In order to produce it to you, we will need to review it for privilege. Since you have requested eight and a half years of emails, this will obviously take a great deal of time.

Accordingly, Laurentian's IT department will not be providing any material in relation to this request today.

Sincerely,

Fredrick Schumann

STOCKWOODS LLP

Direct: (416) 593-2490

Mobile: (647) 962-7823

From: **Jeff Chauvin** <Jeff.Chauvin@auditor.on.ca>

Date: Wed, Aug 11, 2021 at 10:24 AM

Subject: Request

To: ML_Laferriere@laurentian.ca <ML_Laferriere@laurentian.ca>

Cc: Laura Geryk <lgeryk@laurentian.ca>, Jesse Dufour <Jesse.Dufour@auditor.on.ca>, Sara Harrison <Sara.Harrison@auditor.on.ca>

Martin, Laura –

Thanks for your time this morning. Can you guys start the network drive / google drive download for the board materials now and we can tackle the emails at 1pm? Let me know if you think that will be an issue.

As discussed see below for the list of items that we would like to collect. For timeframe, let's start with google mail (last 5 years) and any data from LTO5 tapes dating back to January 1, 2013. We can confirm specifics at 1PM.

Custodians (including archives):

- Dr. Robert Haché
- Dominic Giroux

Dr. Pierre Zundel

- Sara Kunto
- Lorella Hayes
- Serge Demers
- Normand Lavallee
- Tracy MacLeod
- Isabelle Bourgeault-Tasse
- Chris Mercer
- Carol McAulay

Any and all communications (including archives) with the following domains:

- kpmg.ca
- sudburylaw.com

Thanks in advance,

Jeff

Jeff W. Chauvin | CFE

Director – Forensic Audit | Office of the Auditor General of Ontario

20 Dundas Street West, Suite 1530 | Toronto, ON M5G 2C2

Tel: +1 (416) 522-3010 | E-mail: jeff.chauvin@auditor.on.ca

[cid:image001.png@01CD1728.2AC4BE80](#)



-- This email (including attachments) may contain confidential, personal, legally-privileged, copyrighted information, or information exempt from disclosure under The Auditor General Act, R.S.O. 1990, c. A.35. Contact me immediately if you are not the intended recipient and delete this email from your system and do not use, distribute (forward), copy, or disclose its contents.

This is **Exhibit "G"** to the Affidavit of Ephry
Mudryk, sworn October 15, 2021

Caitlin Milne

A Commissioner for oaths, etc.



Office of the Auditor General of Ontario
Bureau de la vérificatrice générale de l'Ontario

August 11, 2021

VIA E-MAIL

Mr. Robert Haché
President and Vice-Chancellor
Laurentian University
935 Ramsey Lake Road
Sudbury, Ontario P3E 2C6

Dear Mr. Haché:

**Re: Obstruction of the Office of the Auditor General of Ontario's Audit of
Laurentian University**

I am writing to you with respect to the disclosure of emails to the Office of the Auditor General of Ontario (the "OAGO") as part of our audit of Laurentian University.

I understand that Laurentian University is refusing to disclose emails requested by the OAGO as part of our audit, on the basis that they may be subject to privilege.

As discussed in our correspondence of last week, it is our position that the *Auditor General Act*, R.S.O. 1990, c. A.35 (the "AGA") provides the OAGO with access to documents and information that I believe to be necessary to perform my duties under the AGA, including privileged information.

It is an offence under section 11.2 of the AGA to obstruct the OAGO from the carrying out of our duties in the conduct of a special audit.

Prohibition re obstruction

11.2 (1) No person shall obstruct the Auditor General or any member of the Office of the Auditor General in the performance of a special audit under section 9.1 or an examination under section 9.2 and no person shall conceal or destroy any books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property that the Auditor General considers to be relevant to the subject-matter of the special audit or examination.

Given the foregoing, I request that you immediately allow my auditors to obtain all requested emails from staff of the Laurentian University IT Division in compliance with your obligations as an audit subject under the AGA.

Should you have any questions or concerns, please do not hesitate to contact me at 647-267-9263.

Sincerely,

Bonnie Lysyk
Auditor General of Ontario

Box 105, 15th Floor
20 Dundas Street West
Toronto, Ontario
M5G 2C2
416-327-2381
fax 416-326-3812

B.P. 105, 15^e étage
20, rue Dundas ouest
Toronto (Ontario)
M5G 2C2
416-327-2381
télécopieur 416-326-3812

www.auditor.on.ca

This is **Exhibit “H”** to the Affidavit of Ephry
Mudryk, sworn October 15, 2021

Caitlin Milne

A Commissioner for oaths, etc.

Brian Gover
Direct Line: 416-593-2489
Direct Fax: 416-593-9345
briang@stockwoods.ca

August 13, 2021

BY EMAIL cwirth@keelcottrelle.ca

Mr. Christopher Wirth
Keel Cottrelle LLP
36 Toronto St., Suite 920
Toronto, ON M5C 2C5

Dear Mr. Wirth:

Re: Laurentian University

I was informed today that Jesse Dufour, a member of the staff of the Auditor General of Ontario, met with Céleste Boyer, an in-house lawyer at Laurentian University. Mr. Dufour demanded from Ms. Boyer production of all legal invoices received by the University. Ms. Boyer responded that she could not disclose the invoices, at least not in unredacted form, because the task descriptions on those invoices would disclose solicitor-client privileged communications. Ms. Boyer suggested that Mr. Dufour confer with the Auditor General herself, since she was present at yesterday's case conference before Chief Justice Morawetz.

I understand that Mr. Dufour agreed to do so, then returned and read from a written statement in which he maintained the Auditor General's right to require the disclosure of privileged information, and asserted that Ms. Boyer was "obstructing" the Auditor General's investigation by failing to provide the unredacted invoices.

This is a very serious allegation and this behaviour of your client's staff is completely inappropriate. It directly contradicts the commitments you made before Chief Justice Morawetz just yesterday afternoon. On behalf of your client, you assured us that you recognized that there was a disagreement about the legal issue of the Auditor General's right to demand privileged information under her statute, assured us and the Court that there was no need to have the issue adjudicated urgently, and, most important of all, stipulated that there would be no further threats that, by not disclosing privileged information, University staff were "obstructing" your client's audit.

Unless you can give us written confirmation that threats of obstruction will immediately cease and will not happen again, we will, unfortunately, have to raise the matter before Chief Justice Morawetz at Tuesday's scheduled hearing in the CCAA matter. I expect we will be instructed to schedule a hearing before him for a declaration that the Auditor General Act, in s. 10, does not require audit subjects to disclose privileged information. The threats that continue to be levelled by your client's staff give us no other choice.

I look forward to hearing from you.

Yours truly,



Brian Gover
BG/sk

c. Fredrick Schumann

This is **Exhibit "I"** to the Affidavit of Ephry
Mudryk, sworn October 15, 2021

Caitlin Milne

A Commissioner for oaths, etc.

CHRISTOPHER WIRTH

Direct: 416-367-7708

Email: cwirth@keelcottle.ca

Office: 416-367-2900

Fax: 416-367-2791

36 Toronto Street, Suite 920
Toronto, Ontario M5C 2C5

August 15, 2021

VIA E-MAIL (briang@stockwoods.ca)

Mr. Brian Gover
Stockwoods LLP Barristers
77 King Street West, Suite 4130
P.O. Box 140
Toronto, Ontario M5K 1H1

Dear Mr. Gover:

Re: Laurentian University

In response to your letter of Friday, August 13, 2021, there appears to be a misunderstanding concerning the conversation that occurred between a member of the Auditor General's staff, Jesse Dufour and Céleste Boyer, in-house legal counsel for Laurentian University.

Mr. Dufour met with Ms. Boyer to request documents relating to the audit of Laurentian University. Ms. Boyer responded that she could not disclose these documents because they contained information which may be subject to solicitor-client privilege. Mr. Dufour left to confer with the Auditor General and her team, and then returned to Ms. Boyer to explain the Auditor General's position with respect to the usual disclosure of information to the Office of the Auditor General in full, unredacted form.

The reference in your letter that Mr. Dufour stated that Ms. Boyer was "obstructing" the audit is not an accurate statement of what occurred. The exchange was professional and cordial.

In accordance with our discussion before Chief Justice Morawetz on August 12th, we confirm that the Office of the Auditor General is not alleging that Ms. Boyer or anyone else representing Laurentian University is committing the offence of obstruction under section 11.2 of the *Auditor General Act* by taking the legal position that they are not required to disclose privileged documents under the *Auditor General Act*.

The Auditor General is disappointed that there have been delays in receiving specific information from Laurentian University that has been requested since June 2021. She also notes that auditees have typically provided all requested information to her Office consistent with the protocols contained within the *Ontario Public Sector Guide for Interaction with the Office of the Auditor General of Ontario: Value for Money Audits*. In accordance with this guide, auditees are responsible for reviewing documents requested by the Auditor General for privilege on a timely basis, before releasing the un-redacted privileged documents instead of not providing them at all.

As mentioned in previous correspondence, the Office of the Auditor General has a history of maintaining the confidentiality of privileged documents as part of its working papers. A vetting by auditees of their draft audit report enables auditees to confirm that privileged information is not disclosed in a public report. Should auditees choose not to review privileged documents prior to

them providing the information to the Office of the Auditor General, the review of the draft public report fulfills the intent of the task.

Notwithstanding the above, with respect to the issue of disclosure of privileged documents under section 10 of the *Auditor General Act*, the Auditor General has decided not to legally pursue the production of privileged documents and will conduct her audit using information and documents that she voluntarily receives from Laurentian University.

I will be connecting with Mr. Schumann on Monday to see when the outstanding non-privileged documents will be provided to the Office of the Auditor General.

If you have any questions, please do not hesitate to contact me.

Yours truly,

KEEL COTTRELLE LLP



Christopher Wirth

CW/

cc: Bonnie Lysyk, Auditor General of Ontario (via email)
cc: Frederick Schumann, Stockwoods LLP Barristers (via email)

This is **Exhibit “J”** to the Affidavit of Ephry
Mudryk, sworn October 15, 2021

Caitlin Milne

A Commissioner for oaths, etc.



Office of the Auditor General of Ontario
Bureau de la vérificatrice générale de l'Ontario

August 30, 2021

Dr. Robert Haché
President and Vice-Chancellor
Laurentian University of Sudbury
935 Ramsey Lake Road
Sudbury, ON
P3E 2C6

Dear Mr. Haché:

Re: Value-For-Money Audit

I requested a meeting with Sara Kunto, the former Secretary and General Counsel of Laurentian University. Ms. Kunto has advised that the University must grant permission in advance of any discussion that may take place with me. Although I disagree that the University must provide Ms. Kunto with permission to meet with me or the audit team, to expedite matters, can you please inform Ms. Kunto that she is free to meet with me and my audit team members.

In addition, Ms. Kunto has advised that she is precluded from discussing any privileged and confidential information as the privilege can only be waived by the University. Section 10 of the *Auditor General Act* entitles the Auditor General to privileged information and in this regard I attach the *OPS Guide for Interaction with the Auditor General of Ontario : Value-for-Money Audits* (April 2019) signed by the Secretary to the Cabinet and the Auditor General which further outlines this access. Notwithstanding that the University disagrees with our interpretation of section 10 of the *Auditor General Act*, to expedite matters, I am requesting that the University inform Ms. Kunto that she can freely discuss all matters that will assist our value-for money audit.

Please provide a response to this letter on or before September 3rd.

Sincerely,

Bonnie Lysyk
Auditor General of Ontario

Box 105, 15th Floor
20 Dundas Street West
Toronto, Ontario
M5G 2C2
416-327-2381
fax 416-326-3812

B.P. 105, 15^e étage
20, rue Dundas ouest
Toronto (Ontario)
M5G 2C2
416-327-2381
télécopieur 416-326-3812

This is **Exhibit “K”** to the Affidavit of Ephry
Mudryk, sworn October 15, 2021

Caitlin Milne

A Commissioner for oaths, etc.

August 31, 2021

Sent via email

Ms. Bonnie Lysyk
Auditor General of Ontario
Box 105, 15th Floor
20 Dundas Street West
Toronto, ON M5G 2C2
Bonnie.Lysyk@auditor.on.ca

Dear Ms. Lysyk,

Re: Response to your letter dated August 30, 2021.

Ms. Kunto is free to meet with you and we will so inform her.

Ms. Kunto is correct that she is precluded from discussing any privileged and confidential information with you. A lawyer has legal obligations to her client to keep privileged matters confidential.

Your letter claims that s. 10 of the *Auditor General Act* entitles the Auditor General to privileged information.

However, your counsel confirmed in his letter of August 15, 2021 that you were not seeking access to privileged information. The University's counsel wrote to him on August 13, 2021, repeating the University's position that s. 10 "does not require audit subjects to disclose privileged information" and stating that, if the Auditor General continued to demand access to privileged information, the matter would have to be judicially determined. Rather than take up that invitation, Mr. Wirth replied, on August 15, that "with respect to the issue of disclosure of privileged documents under section 10 of the *Auditor General Act*, the Auditor General has decided not to legally pursue the production of privileged documents."

Accordingly, the claims about s. 10 and privileged information in your letter were surprising. We had understood that the issue was no longer being pressed.

- 2 -

In any event, the document you enclosed with your letter does not change the position. It is a guide prepared by the Secretary of the Cabinet for the Ontario Public Service. While it does contemplate that the Ontario government will provide privileged documents to the Auditor General, that is not the case for entities outside the government. Nothing in the document contemplates that grant recipients such as the University will provide privileged documents to the Auditor General.

The University will certainly inform Ms. Kunto that she can freely discuss all matters that will assist your audit, subject to her legal obligation to maintain privilege.

Respectfully,



Robert Haché, Ph.D.
President and Vice-Chancellor

This is **Exhibit “L”** to the Affidavit of Ephry
Mudryk, sworn October 15, 2021

Caitlin Milne

A Commissioner for oaths, etc.

Fredrick Schumann
Direct Line: 416-593-2490
Direct Fax: 416-593-9345
fredricks@stockwoods.ca

September 1, 2021

BY EMAIL *mwright@wrighthenry.ca*

Michael Wright
Wright Henry LLP
200 Wellington Street West, Suite 602
Toronto, ON M5V 3C7

Dear Mr. Wright:

**Re: Laurentian University of Sudbury - CCAA
Court File No. CV-21-656040-00CL**

I understand that you represent Ms Sara Kunto. I am a lawyer for Laurentian University in connection with the Auditor General of Ontario's audit of the University.

The Auditor General has told us that she has sought to interview Ms Kunto. I am writing to inform you that, from the University's perspective, Ms Kunto is free to meet with the Auditor General, and may discuss all matters that will assist the audit, subject to her legal obligation to maintain privilege.

I enclose a letter from the University's President to the Auditor General, which sets out the University's position.

Please let me know if you have any questions about the above. As well, if, in an interview with the Auditor General, Ms Kunto is uncertain about whether the answer to a question would reveal privileged information, please seek guidance from the University before answering.

Yours truly,



Fredrick Schumann
FS/hw

Encls.

August 31, 2021

Sent via email

Ms. Bonnie Lysyk
Auditor General of Ontario
Box 105, 15th Floor
20 Dundas Street West
Toronto, ON M5G 2C2
Bonnie.Lysyk@auditor.on.ca

Dear Ms. Lysyk,

Re: Response to your letter dated August 30, 2021.

Ms. Kunto is free to meet with you and we will so inform her.

Ms. Kunto is correct that she is precluded from discussing any privileged and confidential information with you. A lawyer has legal obligations to her client to keep privileged matters confidential.

Your letter claims that s. 10 of the *Auditor General Act* entitles the Auditor General to privileged information.

However, your counsel confirmed in his letter of August 15, 2021 that you were not seeking access to privileged information. The University's counsel wrote to him on August 13, 2021, repeating the University's position that s. 10 "does not require audit subjects to disclose privileged information" and stating that, if the Auditor General continued to demand access to privileged information, the matter would have to be judicially determined. Rather than take up that invitation, Mr. Wirth replied, on August 15, that "with respect to the issue of disclosure of privileged documents under section 10 of the *Auditor General Act*, the Auditor General has decided not to legally pursue the production of privileged documents."

Accordingly, the claims about s. 10 and privileged information in your letter were surprising. We had understood that the issue was no longer being pressed.

- 2 -

In any event, the document you enclosed with your letter does not change the position. It is a guide prepared by the Secretary of the Cabinet for the Ontario Public Service. While it does contemplate that the Ontario government will provide privileged documents to the Auditor General, that is not the case for entities outside the government. Nothing in the document contemplates that grant recipients such as the University will provide privileged documents to the Auditor General.

The University will certainly inform Ms. Kunto that she can freely discuss all matters that will assist your audit, subject to her legal obligation to maintain privilege.

Respectfully,



Robert Haché, Ph.D.
President and Vice-Chancellor

This is **Exhibit “M”** to the Affidavit of Ephry
Mudryk, sworn October 15, 2021

Caitlin Milne

A Commissioner for oaths, etc.



Office of the Auditor General of Ontario
Bureau de la vérificatrice générale de l'Ontario

September 8, 2021

Robert Haché
President and Vice Chancellor
Laurentian University
935 Ramsey Lake Road
Sudbury, ON
P3E 2C6

Dear Mr. Haché:

Re: Value-For-Money Audit

Further to your letter dated August 31st regarding my request for a meeting with Sara Kunto, please be advised that the *OPS Guide for Interaction with the Office of the Auditor General of Ontario: Value-for-Money Audits* does apply to Universities, which are part of the broader public sector (BPS). In accordance with the *OPS Guide*, privileged information and documents have been provided to my Office by numerous government agencies and BPS entities. In our past value-for-money audits in the post-secondary sector, the removal or redaction of privileged information was never demanded by the universities and colleges involved. Laurentian University is governed by the *OPS Guide* and is obligated under section 10 of the *Auditor General Act* to provide my Office with all privileged information and documents.

As regards your reference to the August 15, 2021 letter from Chris Wirth to Brian Gover, I have learned that last week your external lawyer (Fredrick Schumann) informed my Assistant Auditor General (Gus Chagani) that Laurentian University has located about 2.4 million emails and advised that there will be privileged material in those emails. Mr. Schumann also informed Mr. Chagani that it would take years to review and redact the privileged information contained in the 2.4 million emails. When the Assistant Auditor General replied that the University should provide all of the emails in their entirety which would not be a waiver of privilege, your General Counsel Celeste Boyer advised that the University is not going to be providing the emails without first vetting those emails. Accordingly, I have determined that we require access to all privileged information, both documentary and from interviewees such as Sara Kunto.

Because we have a disagreement about the interpretation of section 10 of the *Auditor General Act*, I will be requesting an interpretation from the Ontario Superior Court of Justice under Rule 14.05 of the *Rules of Civil Procedure*. My counsel, Mr. Richard Dearden (Gowling WLG (Canada) LLP) will be in communication with your counsel in the near future.

Sincerely,

Bonnie Lysyk
Auditor General

Box 105, 15th Floor
20 Dundas Street West
Toronto, Ontario
M5G 2C2
416-327-2381
fax 416-326-3812

B.P. 105, 15^e étage
20, rue Dundas ouest
Toronto (Ontario)
M5G 2C2
416-327-2381
télécopieur 416-326-3812

This is **Exhibit “N”** to the Affidavit of Ephry Mudryk,
sworn October 15, 2021

Caitlin Milne

A Commissioner for oaths, etc.

MEMORANDUM

DATE: 2021-09-27

TO: Chief Justice Morawetz

FROM: Laurentian University (Brian Gover and Fredrick Schumann, Stockwoods LLP);
Auditor General of Ontario (Rick Dearden, Heather Fisher, Sarah Boucaud
(Gowling WLG)

RE: Laurentian University/Auditor General of Ontario - procedural understanding

Chief Justice,

The parties agree that the issue of whether s. 10 of the *Auditor General Act* (a) requires an auditee to give privileged information to the Auditor General, and (b) provides the Auditor General a right of access to an auditee's privileged information may be heard by you as an application. They propose the following procedure for the resolution of that issue:

1. The Auditor General may commence an Application for an interpretation of s. 10 of the *Auditor General Act*. The Application would be under paragraphs 14.05(3)(d) (interpretation of a statute) and 14.05(3)(h) (any matter where it is unlikely that there will be material facts in dispute requiring a trial) of the *Rules of Civil Procedure*. The Application will be filed as a Civil List or Commercial List proceeding and not within the *CCAA* proceeding.
2. The only issue that will be raised in the Application is the statutory interpretation of s. 10 of the *Auditor General Act*. In particular, the parties agree that the University reserves all its rights to seek, after the Application is decided, any relief in relation to a request by the Auditor General for privileged documents or regarding other aspects of the audit.
3. Accordingly, no issues will be raised under the *CCAA* in the Auditor General's Application for an interpretation of section 10 of the *Auditor General Act*. For instance, Laurentian University will not assert in that Application that the *CCAA* stay prevents the Application from being commenced, or that the Auditor General is not a "regulatory body" within the meaning of the *CCAA*, or that an order should be made under s. 11 of the *CCAA* to address the unique situation of an applicant in an ongoing *CCAA* restructuring. Neither will the University assert estoppel in the Auditor General's Application based on her letter dated August 15, 2021 stating that she would not seek privileged documents in the audit. Those issues, if raised, will be brought by way of motion within the *CCAA* proceeding.

4. Laurentian University has not seen the Auditor General's Application Record, and reserves its rights to object or seek other relief once that material has been served.
5. Based on the above understanding, the parties propose the following timetable for the Application:
 - a. Auditor General to serve her Application Record on or before September 30, 2021;
 - b. Laurentian University to serve a Responding Application Record on or before October 15, 2021;
 - c. Cross-examinations, if any, to be completed on or before October 29, 2021;
 - d. Auditor General to serve her factum on or before November 12, 2021;
 - e. Laurentian University to serve its factum on or before November 26, 2021; and
 - f. Hearing date – subject to the availability of the Chief Justice, counsel are available any day during the weeks of December 6 and 13 except for Tuesday, December 14.
6. The parties may vary the timetable on consent, or return to court if one wishes to seek a variation and the other does not consent.

Sent 27, 2021

The Application of the Auditor General is to be issued in the Commercial List.

The Schedule is acceptable to the Court.
The Application is to be heard by me on Friday December 6, 2021 a date that is acceptable to all parties.

1/2 Day to be set aside.

 J. H. Parent, C.J.

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

**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**

AFFIDAVIT OF EPHRY MUDRYK
(sworn December 14, 2021)

I, Ephry Mudryk, of the City of Vaughan, in the Province of Ontario, **MAKE OATH**

AND SAY AS FOLLOWS:

1. I am a law clerk at Stockwoods LLP, regulatory lawyers for the applicant, Laurentian University of Sudbury (“**Laurentian**” or the “**University**”). As such, I have knowledge of the matters hereinafter deposed to, save where I have obtained information from others. Where I do not possess personal knowledge, I have stated the source of my information and belief and, in all such cases, believe such information to be true.
2. I previously swore an affidavit in a related matter, *Auditor General of Ontario v Laurentian University of Sudbury*, CV-21-00669471-00CL. I have reviewed that affidavit and, to the best of my knowledge, its contents remain true.
3. On February 5, 2021, Chief Justice Morawetz of this Court issued an order appointing the Honourable Justice Sean Dunphy of the Superior Court of Justice as judicial mediator in this application. The order included a “Mediation Confidentiality Protocol.” I attach hereto and mark

as **Exhibit “A”** to my affidavit a copy of the February 5 order, including the Mediation Confidentiality Protocol.

4. According to the transcript of the meeting of the Standing Committee on Public Accounts of the Legislative Assembly of Ontario (the “**Standing Committee**”) on October 6, 2021, available on the website of the Legislative Assembly, the Acting Chair of the Committee stated: “We will now move into closed session for our briefing with the research officer and the Auditor General.” The transcript then states: “The committee continued in closed session at 0904 and resumed at 1230.” The transcript from the December 6 Standing Committee meeting is attached hereto and marked as **Exhibit “B”** to my affidavit.

5. On Friday, October 15, 2021, at 3:31 pm, the applicant served its responding application record in the application *Auditor General of Ontario v Laurentian University of Sudbury*, CV-21-00669471-00CL in accordance with the schedule approved by the Court in an Endorsement dated September 27, 2021. Attached hereto and marked as **Exhibit “C”** to my affidavit is an email from Holly Watson, a legal assistant at Stockwoods LLP, serving the responding application record on counsel for the Auditor General.

6. At approximately 9:54 pm on the same day, Friday October 15, 2021, Taras Natyshak, Chair of the Standing Committee sent a letter to Dr. Robert Haché and Claude Lacroix, of Laurentian University. It states: “the Committee decided during its October 6, 2021 meeting to request that Laurentian University provide the Committee with all of the information set out in Appendix 1, including privileged information.” The Legislative Assembly’s letter with its appendix is attached hereto and marked as **Exhibit “D”** to my affidavit. I also attach hereto and

mark as **Exhibit “E”** to my affidavit the covering email from the Clerk of the Standing Committee, delivering the Chair’s letter.

7. On October 19, 2021, Brian Gover, a lawyer at Stockwoods LLP, replied to Mr. Natyshak’s letter. Mr. Gover’s letter is attached hereto and marked as **Exhibit “F”** to my affidavit.

8. On October 22, 2021, Mr. Natyshak sent a second letter to Dr. Haché and Mr. Lacroix. It stated, among other things, “the Committee has the power to command the production of papers and things from Laurentian University of Sudbury (Laurentian) that the Committee considers necessary for its work, including privileged information ... It will be a serious matter if Laurentian University does not comply with the Committee’s request by the indicated deadlines.” Mr. Natyshak’s letter is attached hereto and marked as **Exhibit “G”** to my affidavit.

9. On October 29, 2021, Mr. Gover replied to Mr. Natyshak’s letter. Mr. Gover’s letter is attached hereto and marked as **Exhibit “H”** to my affidavit.

10. On November 3, 2021, Mr. Natyshak sent a third letter to Dr. Haché and Mr. Lacroix. Mr. Natyshak’s letter is attached hereto and marked as **Exhibit “I”** to my affidavit.

11. On November 10, 2021, Mr. Gover replied to Mr. Natyshak’s letter. Mr. Gover’s letter is attached hereto and marked as **Exhibit “J”** to my affidavit.

12. On November 18, 2021, Christopher Tyrrell, the Clerk of the Standing Committee, sent a letter to Dr. Haché and Mr. Lacroix. Mr. Tyrrell’s letter stated that the Standing Committee had moved on November 17, 2021 to invite Dr. Haché and Mr. Lacroix to attend a closed session meeting of the Committee, and that “if Mr. Lacroix and Mr. Haché decline this request to appear or fail to appear that the Chair, on behalf of the Committee, be authorized to report this matter to

the House and request that the House authorize the Speaker to issue his warrant for the appearance of [Mr. Lacroix and Dr. Haché] before the Standing Committee on Public Accounts at a date and time to be set by the Committee.” Mr. Tyrrell’s letter is attached hereto and marked as **Exhibit “K”** to my affidavit.

13. On November 22, 2021, Mr. Gover wrote a letter to Mr. Tyrrell, stating that Dr. Haché and Mr. Lacroix would appear before the Standing Committee on December 1 at 12:30 pm. Mr Gover’s letter is attached hereto and marked as **Exhibit “L”** to my affidavit.

14. On December 1, 2021, at 11:16 am, the Auditor General’s Twitter account announced that she had released her 2021 annual report. The news release linked to that tweet stated that the Report included “an update on the ongoing Special Audit of Laurentian University.” I attach hereto and mark as **Exhibit “M”** to my affidavit copies of the tweet and the news release.

15. Excerpts from the Auditor General’s 2021 Annual report from her website are attached hereto and marked as **Exhibit “N”** to my affidavit. The excerpts are: the “Reflections” section and the “Update on the Special Audit of Laurentian University.”

16. I am advised by Fredrick Schumann, a lawyer at Stockwoods LLP and believe, that on December 1, 2021, starting at 12:30 pm, Dr. Haché and Mr. Lacroix appeared before the Standing Committee and that the Auditor General and her counsel Richard Deardon of Gowlings LLP were present.

17. On December 8, 2021, the Standing Committee on Public Accounts met again. According to the preliminary transcript of the meeting, the Auditor General was present and the Standing Committee passed a motion to report to the Legislative Assembly the following day (December 9)

and request the issuance of a Speaker's Warrant to compel production from the University of the documents and information requested in its letter of October 15, with a deadline of February 1, 2022. Attached hereto and marked as **Exhibit "O"** to my affidavit is the preliminary transcript of the Standing Committee meeting on December 8.

18. On December 8, 2021, Mr. Gover sent a letter to the Speaker of the Legislative Assembly, and others, regarding the Standing Committee's request for a Speaker's warrant. Mr Gover's letter is attached hereto and marked as **Exhibit "P"** to my affidavit.

19. On December 9, 2021, the Legislative Assembly met and the Standing Committee reported to it. Attached hereto and marked as **Exhibit "Q"** to my affidavit is the relevant excerpt from the transcript of the proceedings in the Legislative Assembly on December 9.

20. On December 9, 2021, the Speaker of the Legislative Assembly issued two warrants, one for Dr. Robert Hache, the University's President and Vice-Chancellor, and one for Claude Lacroix, the Chair of the University's Board of Governors. The warrants attached the Report of the Standing Committee dated December 8, 2021. Attached hereto and marked as **Exhibit "R"** to my affidavit are copies of the two Speaker's warrants and a copy of the Report of the Standing Committee.

SWORN before me via videoconference by
EPHRY MUDRYK located in the City of
Vaughan, in the Province of Ontario, before
me at the City of Toronto, in the Province of
Ontario, this 14th day of December, 2021, in
accordance with O. Reg 431/20, *Administering
Oath or Declaration Remotely*.

Caitlin Milne

Commissioner for Taking Affidavits

CAITLIN MILNE

LSO #74695F

Ephry Mudryk

EPHRY MUDRYK

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**

Proceeding commenced at TORONTO

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Lawyers for Laurentian University

This is **Exhibit "A"** to the Affidavit of Ephry
Mudryk, sworn December 14, 2021

Caitlin Milne

A Commissioner for oaths, etc.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE CHIEF)	FRIDAY, THE 5TH
)	
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

ORDER

(Re: Appointment of Mediator)

THIS APPLICATION, 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 mediator as an officer of the Court to act as a neutral third party, was heard this day by videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Notice of Application of the Applicant dated February 1, 2021, the affidavit of Dr. Robert Haché sworn January 30, 2021 and the Exhibits thereto (the "**Haché Initial Affidavit**") and the Report of Ernst & Young Inc. (the "**Monitor**") dated January 30, 2021 and on hearing the submissions of counsel for the Applicant, counsel for the Monitor and counsel for the Laurentian University Faculty Association ("**LUFA**").

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Notice of Case Conference is hereby abridged and validated so that this case conference 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.

COURT-APPOINTED MEDIATOR

3. **THIS COURT ORDERS** that Justice Sean Dunphy is hereby appointed, as an officer of the Court and shall act as a neutral third party (the “**Court-Appointed Mediator**”) to assist the Applicant and its relevant stakeholders with the mediation of the following issues:
 - (a) the review and restructuring of the Applicant’s existing academic programs;
 - (b) the review and restructuring of the faculty necessary to deliver the Applicant’s restructured academic programs;
 - (c) a new collective agreement between the Applicant and LUFA, including resolving all outstanding grievances;
 - (d) the review and restructuring of the Applicant’s Federated Universities’ model;
 - (e) the framework for the Applicant’s restructuring and future operations; and
 - (f) any other matters that are referred to the Court-Appointed Mediator by the Applicant, the Monitor, the relevant stakeholders or this Court;

(together, the “**Mediation Objectives**”).

4. **THIS COURT ORDERS** that in carrying out his mandate, the Court-Appointed Mediator may, among other things:

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- (a) adopt processes, procedures, and timelines which, in his discretion, he considers appropriate to facilitate an effective and efficient negotiation of the Mediation Objectives (the “**Mediation Process**”); and
 - (b) consult with any appointed representative(s) of the parties relevant to the Mediation Objectives, the Monitor, the Applicant, and such creditors, stakeholders of the Applicant, and other persons the Court-Appointed Mediator considers appropriate.
5. **THIS COURT ORDERS** that the Monitor shall provide the Court-Appointed Mediator with such assistance as the Court-Appointed Mediator shall reasonably request.
6. **THIS COURT ORDERS** that the Mediation Confidentiality Protocol (the “**Protocol**”) attached hereto as Schedule “A” is hereby approved and that the entirety of the Mediation Process or anything reasonably incidental to the Mediation Process shall be subject to the Protocol.
7. **THIS COURT ORDERS** that the Court-Appointed Mediator is authorized to take all steps and to do all acts reasonably necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.
8. **THIS COURT ORDERS** that, in addition to the rights and protections afforded as an officer of this Court, the Court-Appointed Mediator shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order. Nothing in this Order shall derogate from the protections afforded to a person pursuant to Section 142 of the *Courts of Justice Act* (Ontario).
9. **THIS COURT ORDERS** that the Court and the Court-Appointed Mediator may communicate between one another directly to discuss, on an ongoing basis, the conduct of the Mediation Process and the manner in which it will be coordinated with the CCAA proceedings, including but not limited to individual matters referred specifically by the Court to the Court-Appointed Mediator for resolution.
10. **THIS COURT ORDERS** that the Court shall not disclose to the Court-Appointed Mediator how the Court will decide any matter which may come before the Court for determination

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and the Court-Appointed Mediator will not disclose to the Court the negotiating positions or confidential information of any of the parties in the Mediation Process.

GENERAL

11. **THIS COURT ORDERS** that the Applicant and the Monitor may apply to this Court from time to time for directions from this Court with respect to this Order, or for such further order or orders as any of them may consider necessary or desirable to amend, supplement or clarify the terms of this Order.

12. **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.

13. **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.

14. **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.

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

FEB 05:2021

PER / PAR:



CHIEF JUSTICE G.B. MORAWETZ

SCHEDULE "A" to Proposed Form of Mediator Appointment Order

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

**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**

MEDIATION CONFIDENTIALITY PROTOCOL**1. THE PROCESS:**

Pursuant to the Court's Order (the "**Mediation Order**"), Justice Sean Dunphy was appointed as an officer of the Court and to act as a neutral third party (the "**Court-Appointed Mediator**") to assist the Applicant and stakeholders with a mediation of various issues in the Applicant's CCAA proceeding. The Mediation Order authorizes the Court-Appointed Mediator to adopt processes, procedures, and timelines that, in his discretion, are considered appropriate to facilitate an effective and efficient mediation. Further to that authority, this Mediation Confidentiality Protocol shall apply to all written and oral communications related to or arising out of the mediation undertaken pursuant to the Mediation Order (the "**Mediation**").

2. PARTY AND MONITOR CONFIDENTIALITY:

All written and oral communication at the Mediation shall be deemed to be without prejudice settlement discussions. For the purposes of this section, a Mediation communication shall also include all conduct, statements, discussion, promises, offers, views, opinions, admissions and communications for purposes of conducting, considering, initiating, continuing, or reconvening the Mediation together with the delivery and exchange of any documents in the course of the Mediation made by any party, their agents, employees, representatives, or other invitees, and by the Court-Appointed Mediator.

The parties and the Monitor acknowledge and agree that:

- a) the Mediation is a settlement negotiation;
- b) the Mediation is confidential and no stenographic, visual, or audio recordings shall be made;

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- c) no Mediation communication shall be discoverable, admissible or referred to in Court for any purpose, including impeachment in the action or in any other proceeding or to establish the meaning and/or validity of any settlement or alleged settlement arising from the Mediation, and shall not be discussed with anyone, provided that communications otherwise admissible or subject to discovery do not become inadmissible or protected from discovery or admission by reason of their use in Mediation;
- d) any notes, records, statements made, discussions had, and recollections of the Court-Appointed Mediator in conducting the Mediation shall be confidential and without prejudice and protected from disclosure for all purposes; and
- e) except as permitted by law, the parties will not subpoena or otherwise require the Court-Appointed Mediator to testify or produce the records or notes in an action or in any other proceeding.

3. MEDIATOR CONFIDENTIALITY:

During the Mediation process, the Court-Appointed Mediator may disclose to either party any information provided by either party, unless the disclosing party has specifically requested the Court-Appointed Mediator to keep the information confidential, in which case the Court-Appointed Mediator will attempt to keep that information in confidence.

The Court-Appointed Mediator will not disclose to anyone who is not a party to the Mediation anything said, or any materials submitted to the Court-Appointed Mediator, except:

- a) where applicable, to the lawyers or other professionals retained on behalf of the parties or to non-parties consented to in writing by the parties, as deemed appropriate or necessary by the Court-Appointed Mediator;
- b) to the Court, to the extent specifically permitted in the Mediation Order; or
- c) where otherwise ordered to do so by a judicial authority or where required to do so by law.

Except as noted above, the notes, records, statements made, and recollections of the Court-Appointed Mediator shall be confidential and protected from disclosure for all purposes.

4. CONSENT TO THIS AGREEMENT:

Each party present during all or any part of the Mediation shall review this Mediation Confidentiality Protocol and agrees to proceed with the Mediation on the terms herein contained.

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 Mediator)

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Lawyers for the Applicant

This is **Exhibit “B”** to the Affidavit of Ephry Mudryk,
sworn December 14, 2021

Caitlin Milne

A Commissioner for oaths, etc.

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

Official Report of Debates (Hansard)

P-1

Journal des débats (Hansard)

P-1

Standing Committee on Public Accounts

2020 Annual Report,
Auditor General:

Ministry of Government
and Consumer Services

Electrical Safety Authority

2nd Session
42nd Parliament

Wednesday 6 October 2021

Comité permanent des comptes publics

Rapport annuel 2020,
vérificatrice générale :

Ministère des Services
gouvernementaux
et des Services
aux consommateurs

Office de la sécurité
des installations électriques

2^e session
42^e législature

Mercredi 6 octobre 2021

Chair: Taras Natyshak
Clerk: Christopher Tyrell

Président : Taras Natyshak
Greffier : Christopher Tyrell

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Ms. Josie Erzetic	
Mr. Earl Davison	
Dr. Joel Moody	

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
PUBLIC ACCOUNTS**

**COMITÉ PERMANENT DES
COMPTES PUBLICS**

Wednesday 6 October 2021

Mercredi 6 octobre 2021

The committee met at 0901 in room 151 and by video conference.

The Clerk of the Committee (Mr. Christopher Tyrell): Good morning, honourable members. In the absence of the Chair and Vice-Chair, it is my duty to call upon you to elect an Acting Chair. Are there any nominations for Acting Chair? Madame Gélinas.

M^{me} France Gélinas: Sorry, Chris. The sound was really, really low, and I missed what you said. Is there anybody in the room with you right now?

The Clerk of the Committee (Mr. Christopher Tyrell): I apologize. I will repeat. I said, “Good morning, honourable members. In the absence of the Chair and Vice-Chair, it is my duty to call upon you to elect an Acting Chair. Are there any nominations?” Currently, Mr. Hatfield is present in the room.

Madame Gélinas.

M^{me} France Gélinas: I will nominate MPP Hatfield, please.

The Clerk of the Committee (Mr. Christopher Tyrell): Does the member accept the nomination?

Mr. Percy Hatfield: I do.

The Clerk of the Committee (Mr. Christopher Tyrell): Are there any further nominations? There being no further nominations, I declare the nominations closed and Mr. Hatfield elected Acting Chair of the committee.

The Acting Chair (Mr. Percy Hatfield): Good morning, everyone. Thank you for electing me as your Acting Chair. We will now move into closed session for our briefing with the research officer and the Auditor General. I have a gavel to bang.

The committee continued in closed session at 0904 and resumed at 1230.

2020 ANNUAL REPORT,
AUDITOR GENERAL
MINISTRY OF GOVERNMENT
AND CONSUMER SERVICES
ELECTRICAL SAFETY AUTHORITY

Consideration of value-for-money audit: Electrical Safety Authority.

The Acting Chair (Mr. Percy Hatfield): Good afternoon, everybody. I'd like to call this meeting of the Standing Committee on Public Accounts to order. We're here to begin consideration of the value-for-money audit

on the Electrical Safety Authority from the 2020 Annual Report of the Office of the Auditor General of Ontario.

Joining us today are officials from the Ministry of Government and Consumer Services and the Electrical Safety Authority.

For those of you participating in person or remotely, if you'd like to make a point of order or if you'd like to be recognized to speak, please physically raise your hand to get my attention.

For the Zoom participants, please be aware that broadcast and recording will be controlling your microphones. Depending on the version of Zoom you're using, you may have been asked to grant permission to be unmuted when you joined. If you accepted, the broadcast operator will be able to activate your microphone once I recognize you. Participants using older versions of Zoom may still get a request to unmute their microphone before they are able to speak. Please wait for the unmute notification before trying to unmute.

If you get accidentally disconnected, please try to rejoin the meeting with the information you used to join initially. If you are unable to rejoin, please contact Andrew Kleiman from technical services. His email was included in the email which contained the Zoom link for this meeting.

If we are required to recess due to technical difficulties, please keep the device you are using to participate close at hand and wait for further instructions via email from the Clerk.

For any members present in person, I would ask that you stay a safe distance apart from your colleagues in order to maintain a safe distance between everyone.

To our presenters, I would invite each person to introduce yourself for Hansard before you begin speaking. You will have 20 minutes collectively for an opening presentation to the committee. We will then move into the question and answer portion of the meeting, where we will rotate back and forth between the government and official opposition caucuses in 20-minute intervals, with some time for questioning for the independent member.

I need to verify that we've been joined by Ms. Kusendova. Before we begin, I have to ask you to verify that you are here.

Ms. Natalia Kusendova: I am here in Ontario.

The Acting Chair (Mr. Percy Hatfield): Thank you for joining us. Congratulations on your recent marriage.

Ms. Natalia Kusendova: Thank you.

The Acting Chair (Mr. Percy Hatfield): To the presenters, you may begin when you're ready. Remember, you have 20 minutes collectively, so share your time. Welcome.

Mr. David Collie: I believe the deputy was going to speak first, Chair, if that's appropriate.

The Acting Chair (Mr. Percy Hatfield): Yes, that's appropriate.

Ms. Renu Kulendran: Hi. I just wanted to make sure that you could hear me.

Thank you very much for having us today. Good afternoon. It's a great privilege to address to the public accounts committee. My name is Renu Kulendran. I'm the deputy minister responsible for government and consumer services.

I'd like to take a moment to introduce the officials who are joining me today. With me are Michèle Sanborn, who is the assistant deputy minister of the policy, planning and oversight division at the ministry; Hussein Lalani, the director of the public safety and operations policy branch; and Samantha Pinto, the manager of the regulatory policy and oversight unit.

I would also like to introduce my colleagues at the Electrical Safety Authority. Today I am joined by David Collie, the president and CEO of the Electrical Safety Authority; Annette Bergeron, the chair of the board of directors; Joel Moody, the former public safety officer; Josie Erzetic, the chief regulatory officer and general counsel; and Earl Davison, the vice-president of operations.

I would like to begin by thanking the Auditor General and her team for their thorough and diligent work in compiling this comprehensive report. The role of the Auditor General is vital in ensuring democratic transparency and accountability in every aspect of the government's operations. The ministry takes the recommendations in the 2020 Auditor General's report very seriously and we are committed to examining areas where we can improve our oversight processes to provide greater assurances that the Electrical Safety Authority is meeting its public safety mandate in an efficient and cost-effective manner.

Upon receiving the report last December, the former Minister of Government and Consumer Services requested an action plan from the Electrical Safety Authority on how it intended to implement all 25 recommendations identified in the Auditor General's report. In the interest of transparency, a version of this plan that is updated regularly with progress reports is posted on the ESA's website. The ministry is tracking the ESA's progress very closely, and we are also collaborating on implementing the joint recommendations made by the Auditor General.

I would like to take a moment to explain the ministry's administrative authority model. Administrative authorities, which include the Electrical Safety Authority, are responsible for delivering critical programs and services, including ensuring that some of Ontario's vital consumer protection and public safety laws are applied and enforced.

The administrative authority model establishes an accountability and governance framework for delegating the

administration of legislation to these not-for-profit corporations which are independent of government. The administrative authority is responsible and accountable for the day-to-day delivery of regulatory services and operations, including financial responsibility. Each administrative authority is governed by an independent board of directors and is responsible for ensuring that it delivers on its statutory mandate and is accountable to the minister.

The administrative authority model is a unique co-regulatory model where the government plays a leading role in designing, authorizing and monitoring the statutory framework. And the administrative authority, through its board of directors, is delegated responsibility to administer designated legislation in accordance with an administrative agreement or similar accountability agreement with the government. The model is designed to be cost-neutral to government.

In the case of the Auditor General's review, many of the audit recommendations are operational in nature and fall directly under the purview of the Electrical Safety Authority. In a moment, the ESA will speak to the significant work being done to address the findings in a timely manner.

Oversight is the system and actions used by government to monitor an administrative authority's governance and execution of its regulatory responsibilities, and we take this oversight responsibility seriously. The ministry has demonstrated its commitment to ensuring its administrative authorities are more accountable and efficient, most recently through the Rebuilding Consumer Confidence Act that was passed by the Legislature in July of 2020.

In July 2020, key provisions of the Rebuilding Consumer Confidence Act came into effect. This act amends key oversight, governance, accountability and transparency requirements set in various administrative authorities' governing legislation. The legislation improves governance by enabling more skills-based boards of directors, increasing transparency and accountability, making information more publicly available, strengthening oversight by the government, and enhancing the Auditor General's authority to conduct audits of the administrative authorities. The changes give the government more consistent and stronger tools to address issues such as performance, and these changes will strengthen protection and promote trust and confidence for the people of Ontario at home, online and in our communities.

1240

As part of these modernization efforts, the ministry is currently updating its administrative agreement, the document that governs the relationship between the ministry and the authority. The ministry is currently working with the Electrical Safety Authority to update this agreement by March 31, 2022. We are pleased to see that the Auditor General found in her report that electrical safety in Ontario has improved over the last 10 years. Public safety is our top priority, and we're proud of this collective achievement, but we also know that there is always room for improvement.

I'd like to speak briefly about the actions taken so far by the ministry on two key recommendations directed to

us. The Auditor General found that the occurrence of unlicensed individuals performing illegal electrical installation work without notifying the Electrical Safety Authority is prevalent across Ontario—also known as the underground economy. While the ESA has developed numerous programs to monitor and address the underground economy, the Auditor General recommended that the ministry enable the ESA to directly issue monetary fines to provide for a more robust range of compliance tools. I'm very pleased to report that the ministry has worked with the ESA and developed a proposal for government decision-making that will enable the ESA to issue monetary fines to address illegal electrical work.

Using administrative monetary penalties would offer the ESA the opportunity to fill gaps where existing compliance tools do not provide an effective, efficient or proportional mechanism to change behaviours, as well as to deter non-compliance. Using administrative penalties would also be less costly and more efficient for the ESA and stakeholders than pursuing prosecutions. By enabling the ESA to directly issue administrative monetary penalties, the ESA can more effectively target those who perform illegal electrical installations.

Furthermore, the ministry is undertaking work with the ESA and stakeholders to address the prevalence of unsafe electrical products online. Through the administration of the product safety regulation, the ESA has oversight for product safety related to the approval of electrical products before they are sold, used, offered, advertised or put on display in Ontario. The federal government also has responsibility for the safety of post-market consumer products across the country through the Canada Consumer Product Safety Act, which was passed in 2010.

The pace at which the online market for all products, including electrical products, is evolving rapidly continues to accelerate. While the expansion of online sales has delivered benefits, there remains a need to ensure that public safety is not compromised. This is a complex issue, and many of these challenges are beyond the scope of the provincial authority. The issue of product safety is based on a variety of jurisdictional and boundary issues, as there are no borders for the Internet. The ESA and the ministry are working together to review the regulation and determine ways to address potential product safety concerns stemming from the proliferations of these online shopping websites, and that includes working with our federal partners.

We've also undertaken research activities in support of this recommendation and undertaken stakeholder engagement, including the launch of a multi-sectoral working group, the product safety task force.

The collaborative efforts of the ministry and the ESA to address the Auditor General's value-for-money findings will serve to strengthen the performance and accountability of the ESA in delivering its public safety mandate and reinforce our shared roles as guardians of public safety.

Lastly, I want to take a moment to acknowledge the ESA's continued support responding to challenging circumstances that arose from COVID-19. In the midst of

meeting their regulatory responsibilities, the ESA also contributed to the province's efforts to expand health capacity to protect Ontarians; supported Ontario's efforts to increase the supply of critical PPE and COVID testing materials; and supported the province's COVID-19 safety campaign in essential workplaces that presented heightened risk factors for the potential transmission of COVID-19, such as manufacturing warehouses and food processing facilities. ESA, thank you for keeping Ontarians safe during such difficult times.

Thank you, members, for your time this afternoon. I would like to hand the floor over to the ESA to address the committee.

The Acting Chair (Mr. Percy Hatfield): Somebody from the ESA, could you introduce yourself, please? Please go ahead.

Ms. Annette Bergeron: Good afternoon, Mr. Chair, Madam Vice-Chair and members of the committee. My name is Annette Bergeron, and I am here today in my capacity as chair of the board of directors of the Electrical Safety Authority. I'm also joined today by David Collie, president and chief executive officer of ESA. David will be speaking shortly to outline ESA's response to the 2020 value-for-money audit conducted by Ontario's Auditor General.

Ms. Lysyk, I want to acknowledge your presence today and thank you for your important work examining Ontario's electrical safety system oversight. ESA accepts your recommendations in full. Our board found the audit to be a useful exercise to reflect on our approach to delivering electrical safety in Ontario. ESA's staff appreciated the professionalism and understanding that your auditor's office provided as we worked together through the audit process and a pandemic simultaneously.

I am also joined today by Dr. Joel Moody, the chief public safety officer during the course of the audit, whom we wish well in his next endeavour as chief prevention officer and assistant deputy minister with the Ministry of Labour, Training and Skills Development. I would also like to introduce Josie Erzetic, general counsel and chief regulatory officer for ESA, and Earl Davison, vice-president of operations. David and team will be responding to your questions this afternoon.

We are also honoured to be joined today by the present deputy minister and assistant deputy minister from the Ministry of Government and Consumer Services, Renu Kulendran and Michèle Sanborn. The Auditor General's report provided recommendations directly to ESA, as well as recommendations to the ministry to which we report. Deputy Minister Kulendran will be available to speak to those.

Since receiving the public report, ESA and MGCS have worked diligently to set joint plans to deliver on these recommendations in an expedited manner, demonstrating our alignment with the Auditor General's view on the important work the ESA can do to improve the electrical safety system in Ontario. This work bolsters ESA's five-year strategy launched in 2020 by helping ESA find ways of improving operational effectiveness and becoming

more cost-efficient through its recently launched risk-based oversight program. This program progresses ESA as a forward-looking, modern regulator that will continue to improve its already exceptional approach to delivering electrical safety in Ontario. ESA has embraced the Auditor General's recommendations. We strive to live up to a high standard of transparency, completeness and fairness in the implementation of each recommendation. These are expectations we believe the committee shares with ESA.

My colleague David Collie will now speak to you more specifically about the steps we're taking in this regard. Thank you.

The Acting Chair (Mr. Percy Hatfield): Thank you, David?

Mr. David Collie: Thank you, Annette, for those remarks. I'd also like to offer my personal greetings to you, Mr. Chairman, Madam Vice-Chair, committee members and the Auditor General, for the opportunity to attend the meeting.

Before I continue, I'd like to recognize our board chair, Ms. Bergeron. In addition to her significant accomplishments in the business and academic world, she was recently awarded the Governor General's Sovereign's Medal for Volunteers. This award is the highest honour for volunteer service that an individual can receive in the Canadian honours system, and it's a testament to her incredible service ethic. Annette, we're very proud to have you as our chair of our board, helping to ensure ESA's governance remains effective, transparent and reliable.

As Ms. Bergeron indicated, our work with the Auditor General and her office was a helpful review and a timely assessment of how ESA is delivering on its electrical safety mandate. On behalf of our organization and our employees, we truly appreciate the time Ms. Lysyk's auditors spent with our staff to gain a deeper understanding of our approach to developing a robust electrical safety system in Ontario. Their professionalism and co-operation in working through the audit process, particularly during a global pandemic, was most considerate and truly appreciated by our organization and in particular by my team here today.

The Acting Chair (Mr. Percy Hatfield): David, you have five minutes. I'll give you a five-minute warning and a two-minute warning; you're at five. Sorry for the interruption.

Mr. David Collie: Thank you.

As mentioned, the ESA played an important role in support of the province of Ontario's COVID-19 public safety efforts. For example, our inspectors continued to work with local governments and health care providers to set up temporary emergency health care facilities and help industry retool in order to produce vital, needed personal protective equipment.

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At ESA, we take our responsibilities seriously, so we were very proud that the Auditor General noted electrical safety in the province had improved significantly over the last 10 years. At the same time, we appreciate the opportunity to further strengthen our operations and enhance our

effectiveness in terms of delivering electrical public safety, and we accept that challenge.

We were really pleased to note that many of the recommendations in the audit are directly aligned with our five-year strategic plan, which we launched in 2020. This marked a new era for ESA, further solidifying our role as a modern regulator ensuring that Ontario's electricity future is powered safely. It focuses on pillars of safety, compliance, organizational excellence and public accountability.

Let me be clear: We're absolutely committed to embracing the spirit and intent of the Auditor General's report and to implementing its recommendations, and significant progress is being made in this effort. When we received the final report, we took immediate action and carefully reviewed and developed a comprehensive action plan in co-operation with our minister. We established 50 deliverables that addressed the 25 recommendations in the report. We've already completed about 25% of the deliverables across those recommendations, and by the end of this calendar year, 2021, we estimate that about 50% of the deliverables will be complete. By next September, we expect to have almost 90% completed.

Additionally, and more broadly, we're continuing our transformation into a modern and results-based regulator by delivering against our strategic plan. As noted by our chair, of particular significance was the launch this last year of our risk-based oversight approach, or RBO. This aligns directly with the auditor's recommendations from an operational effectiveness and safety standpoint.

The program we implemented focuses on medium- and high-risk wiring installations, so that we can direct our inspectors and safety efforts to the locations with the greatest potential for harm—

The Acting Chair (Mr. Percy Hatfield): Two minutes.

Mr. David Collie:—while at the same time reducing burden on Ontario businesses. This is a very important shift in resources from low-risk to high-risk work, and creates more opportunity for us to assign more resources to the thorny issues, such as the underground economy, and to take an even more proactive approach to addressing non-compliance.

For three years prior to the launch, a comprehensive RBO team at ESA, including all our departments, worked tirelessly to ensure that the launch of RBO would be successful. The team conducted numerous consultations and training sessions, stakeholder surveys, monthly communications and an extensive trial involving over 60 of our inspectors right across the province. I'm very confident that RBO has made and will continue to make a significant impact on our ability to improve efficiency and safety at the same time.

Another program of note is our digital road map. We've committed to significantly expanding our digital capabilities, and are currently targeting specific areas of the organization where we can automate to realize cost-effectiveness as part of our drive towards organizational excellence.

Of course, we don't do any of this work alone. I'm profoundly grateful for the many contributions of the Ministry of Government and Consumer Services, our board, our employees, our union partners and stakeholders working in co-operation to ensure our ongoing progress, and specifically working to address the recommendations in front of us. Over the coming weeks, months and years, we're committed to partnering with our ministry to evolve and strengthen our public safety mandate.

Thank you for giving ESA the opportunity to share our progress on the important work we're doing to serve our electrical safety mandate and realize our vision for Ontario. I look forward to our discussion this afternoon.

The Acting Chair (Mr. Percy Hatfield): You had four seconds left. You could have used four more seconds, David.

We're going to begin the round of questioning with the official opposition. If one of them—ah, Mr. Tabuns. We go to you, sir.

Mr. Peter Tabuns: Thank you very much, Chair. I appreciate it, and I appreciate the presentations today. Chair, before I start asking questions, how many rotations will we have?

The Acting Chair (Mr. Percy Hatfield): We will follow the rotation of what we've set out: 20 minutes to the official opposition, 20 minutes to the government, three minutes to the independent for two rounds. For the third and final round, we'll split the time between government and official opposition, and allow the independent member three minutes at the end. So we'll have at least two full rounds and then a split-term round.

Mr. Peter Tabuns: Okay, that's great. I appreciate your clarity on that.

I think my colleagues may have questions as well, but I'm going to start off with the ministry. Ms. Kulendran, if you could speak to this point: The Auditor General says that you haven't fulfilled your oversight responsibilities. Can you tell me what you see as the shortfalls in your oversight responsibilities and how you're going to be addressing that in the year to come?

Ms. Renu Kulendran: Thank you to the honourable member for the question. I would say that the ministry takes its oversight responsibilities very, very seriously and we invest heavily in those responsibilities and activities. Those include regular meetings with all levels of the administrative authority from a staff level to senior levels on a regular basis. That includes tracking commitments that have been made by the administrative authority, ensuring the requirements of the administrative agreement are met, reviewing annual reports and business plans, and regularly updating the administrative agreements to include additional performance metrics. We are, in fact, in the process of updating our administrative agreement with the Electrical Safety Authority, which we expect to have completed by March 2022.

We do take these responsibilities seriously. There's always room for improvement, and we acknowledge the recommendations made by the Auditor General in this regard.

Mr. Peter Tabuns: So you've told me what you're doing. Can you tell me what your shortfalls are that you've accepted?

Ms. Renu Kulendran: I'm just going to repeat that we are continually looking at addressing how these recommendations that have been made by the Auditor General can be incorporated into the work we are doing, including enhancing our performance metrics.

Mr. Peter Tabuns: Okay. I may come back to you later on that, then.

I'm going to go to the ESA. One of the things that was noted by the Auditor General was that the names of contractors who have done unsafe installations are not made available to the public. I have had to hire electrical contractors in the past; I would have liked to have known if the people I was contracting have actually had a history of good work or bad work. So I guess the first question is this one: Why aren't you making public the names of those who do bad work?

Mr. David Collie: Thank you very much for your question. It's really important that we have good transparency with our consumers. We have a hierarchy on follow-up on licensed electrical contractors who perhaps don't do work according—I'm going to ask Josie Erzetic, our chief regulatory officer, to answer what we do in terms of disclosure.

Ms. Josie Erzetic: Thank you for the question, and thanks for unmuting me. It's a very good question. We do have current tools on our website. For example, we do have a contractor look-up tool and we have a number of other consumer protection tips and tools on the website. As both David and the deputy have mentioned, we have a culture of continuous improvement, and we take very seriously the Auditor General's recommendations.

We recently had an amendment—actually, it was a delegation of the minister's authority to provide disclosure under the Regulatory Modernization Act. As a result, we can provide more disclosure, so we are looking at the types of disclosure you're talking about, in terms of suspension of licence, revocation of licence etc.

The Auditor General report pointed us to what Technical Safety BC does, so what we have been doing is reviewing their disclosure and also we've been having discussions with our stakeholders. Once all of that is complete, we'll be making a report to the ministry for further action. Thank you.

Mr. Peter Tabuns: Okay. Well, I just took a quick look at your contractor locator tool on your site, and yes, it's a way to find a contractor. But I'm going to go back: Why have you not, historically, warned the public about contractors who did dangerous or unsafe or illegal work?

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Ms. Josie Erzetic: Yes, it's a very good question. As part of our five-year corporate strategy, we incorporated a licensing strategic plan as well, and part of that was to look at increased disclosure. As I've indicated, under the Regulatory Modernization Act, we required a delegation of the minister's authority to release information about licensees. So now we've received that delegation and now,

as part of our continuous improvement, we're looking at what Technical Safety BC discloses, we're talking to our stakeholders—because there are privacy concerns as well—and then we'll make a full report to the ministry to determine further disclosure.

Mr. Peter Tabuns: And so, historically, you haven't done it because you felt you were constrained by the laws that were in place at the time?

Ms. Josie Erzetic: It provided additional options for us to have the delegation under the Regulatory Modernization Act.

Mr. Peter Tabuns: Okay. One of the comments here was that rather than taking people to court, you were going to be issuing fines or having inspectors issue fines. Have I understood that correctly? Can you tell me the scale of the fines and whether or not you judge them adequate to actually cause change in practice? I deal with some businesses who are quite happy to pay a fine; they just see it as the cost of business and they move on, because it's a lot cheaper to carry on unsafe work or unsafe practices than to change those practices. Can you give us a sense of the scale of fines and whether or not you can tell us credibly that they will change practice?

Mr. David Collie: Thank you very much for the question. I think what's important is to look at the whole hierarchy of response that we use. First off, we start with just education and awareness. Many times, we find someone just might not be aware of exactly what the compliance rules are. That tends to be the largest. We find most come into compliance that way.

We have a whole escalation, and that escalation would go right up to prosecutions. For example, over the last five years—it's our last choice. The most severe disciplinary process we can use is prosecution. It's costly. It's time-consuming. We did pursue 140 cases over the last five years. That information is all publicly available on our website, which goes partially to your previous question as well. But there is a bit of a gap in there.

I'll say, for example, on one prosecution case, we spent significant efforts over almost two years. The fine they received, at the end of the day, was \$6,000. There have been larger ones, of course—some many, many thousands of dollars, depending on the nature—but that's a tremendous amount of work for a \$6,000 fine at the end of the day.

Now, I'm not taking away from what that means to a small business by any means, but we just think that having administrative monitoring penalties, in conjunction with our ministry looking at what the best models are, what the levels of fines are and making sure that's another tool that is well honed within the compliance framework, would help us be able to escalate where required. Thank you.

Mr. Peter Tabuns: Thank you for that. One of the comments of the Auditor General was that you hadn't followed up on unsafe installations, which I find pretty disturbing. Why is that the case? Why has that been the case? And what are you doing to ensure that we don't see that in future? Because I don't think it's acceptable.

Mr. David Collie: Thank you very much for the question and comment and the observation that came from

the report. One instance the Auditor General had mentioned was 3,500 instances over, I believe it was, a decade. Putting it in context, that's a very, extremely small amount relative to the almost half a million inspections we do each year. All of those were low-risk inspections. Now, notwithstanding there were very few, notwithstanding they were all low risk, we take any code violations seriously. We found—this was when we transferred one IT program to another and failed to produce one report—there were about 3,500 over 10 years that were not identified to our inspectors.

We really appreciate the Auditor General's work. They found that. We corrected it immediately. We have followed up on all of those defects, and I can report today that we have concluded well over 90% of them today. Again, it was small, low risk. Like you, we didn't find it acceptable. We appreciate the work and we've completed that.

Mr. Peter Tabuns: So, I think, from what you've said, we should take comfort that this will not be part of your operations in the future, that you have a tracking system, that unsafe installations will be followed up on.

Interjections.

Mr. Peter Tabuns: I see nodding heads. I appreciate that, but for the purposes of Hansard, a verbal response as well.

Mr. David Collie: Okay. I will verbally respond, and that is exactly correct. We have changed the procedure—again, thanking the Auditor General for finding that. It was a small variation, but it's been closed, yes. Thank you.

Mr. Peter Tabuns: Okay. I have one or two questions, but I'm just going to ask my colleagues, who also had questions, if they want to jump in.

Interjection.

Mr. Peter Tabuns: Yes. I yield the floor, Mr. Chair.

The Acting Chair (Mr. Percy Hatfield): Mr. Kernaghan.

Mr. Terence Kernaghan: I would like to thank you for your presentation. Our Auditor General has raised concerns—it was recommendation number 2—about the ESA's high inspection fees that could end up being a barrier and discourage homeowners from having inspections. To the ESA, are you aware of this problem? And what are you doing to address this barrier for homeowners?

Mr. David Collie: Sure. We start from a foundation of electrical safety—that's key and important—but at the same time, we do need to collect fees to pay for the overall safety system. Part of that goes to inspection, but it also goes to many other things that are included within the fees we charge.

I appreciate the fact that the Auditor General raised the question. We're always open to looking at fees. Interestingly, we haven't increased fees since 2016. So if we put that against inflation during that period of time, that's, in essence, 10% relative to inflation that we've absorbed.

Notwithstanding that great track record, we also took that very seriously. When we introduced our risk-based oversight, we looked at some of the compliance areas and we said, "What are some of the most common activities

that are done in a home? What are the fees associated with that and could we, in fact, reduce them?” One specific example—it’s one of the most common renovations that touches upon electrical work—is bathrooms. I think everybody would know it’s the most common renovation you do in your home.

Our fee prior to risk-based oversight to take out a notification—so think about the cost of a bathroom reno. It’s not insignificant. Our fee was \$79. Notwithstanding—I think that’s actually incredibly low—we reduced that to \$40 with the implementation of risk-based oversight. I would hardly think today that \$40 would be an impediment to someone taking out a notification and being able to ensure that their installation was part of the overall safety system.

We took the recommendation very seriously. Notwithstanding what we feel are very appropriate fees already, we have lowered them in those areas, and we’ll be able to monitor and see what impact that has on compliance. Thank you.

Mr. Terence Kernaghan: I see. So then, overall, the inspection fees will not be lowered, despite the Auditor General’s recommendation.

My next question is: One of the biggest problems is that the ESA board does not have a consumer protection member, or a member representing the interests of consumers. This would help consumers have a voice and help build trust and awareness between licensed electricians and consumers. I’d like to know how the ESA is addressing this and if you believe it’s in the best interests of the public to have a voice on the ESA board. When will this position begin, if the answer is affirmative?

Ms. Annette Bergeron: Thank you very much to the member for your question. I can report our success so far in making changes to our constating documents in order to facilitate the replacement of the CEO board position with a consumer interest member. We have initiated a process to recruit the new board member. Our target completion for this recommendation is the end of fall 2021.

Mr. Terence Kernaghan: Thank you very much. I also wanted to inquire as to whether you’re going to be developing publicly available inspection standards and checklists. Is there going to be a monitoring system to ensure compliance with these?

Ms. Annette Bergeron: Thank you for the question. My role as chair is to provide oversight and to ensure effective governance, reliable governance and transparent governance. On this subject, I would defer to David Collie and his team, who are here today, and ask David to answer this question.

The Acting Chair (Mr. Percy Hatfield): Just before you do that, David, it’s a five-minute warning. Thank you.

Mr. David Collie: Okay. Thank you very much, Chair, and thank you for the question. Earl Davison is our vice-president of operations. He has had charge of this file, so he can tell you the significant steps we’ve taken, consistent with this recommendation. Earl?

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Mr. Earl Davison: Thank you, David. Earl Davison, vice-president of operations. To the member’s question:

The development of inspection standards and checklists was a recommendation of the Auditor General. We did take it very seriously.

We have since gone and looked across the regulatory community, both in the US and Canada, and have developed a set of items that we would say people should be ready for when they’re expecting an inspection. It covers the most common work items that people would undertake that involve electrical work—renovations; rough-in for a new service—and those items have been collected. They are just in the approval processes now, and we expect to publish them by the late fall.

To the second point the member asked, which was on the inspection standards for our inspectors and if they are being monitored: Yes is the answer again. Concurrent with those lists being published, the lists will also form part of the performance-management process for our inspection staff.

Mr. Terence Kernaghan: Wonderful. My final question before I turn it back over to my colleagues on the official opposition is: The auditor found the ESA rarely did remote inspections, but with the advent of COVID, they had begun them. Will the ESA continue this very cost-effective measure once the pandemic ends?

Mr. David Collie: Thank you very much for your question. We were starting to do remote inspections using photo and video, and it has been a small part of our inspection process for many, many years.

We really embrace the Auditor General’s recommendation. In fact, again, this was completely in alignment with our strategic plan. In our digital road map, we had identified the expanded use of photo and video—where we can do it without compromise to safety; that always needs to be mentioned, of course. But where it can, that can be very efficient and can reduce burden on consumers, and the licensed electrical contractors as well.

We have put in place an extremely robust procedure now. That was in the works during the pandemic anyway and, again, was completely consistent with the Auditor General’s report: process, procedures, sign-off, accountability. And then we are doing literally thousands of them this year already, and that is only going to escalate after the pandemic, as well.

The Acting Chair (Mr. Percy Hatfield): We’re really close to the two-minute warning for the next speaker. Ms. Gélinas.

M^{me} France Gélinas: I don’t know if it’s a one-minute answer, so I may come back to it: the issue that only ESA-licensed contractors can legally perform electrical installation. I live in Nickel Belt, where we have tons of electricians, because they work at the mines and they work in the heavy industrial area, and I would say most people don’t know that. They hire the guys on their days off to do the electrical work that they need to be done. They work at the mines; they must be good electricians, but they’re not licensed with you.

What kind of education have you done recently for people like me to know that it is illegal to do that?

Mr. David Collie: Thank you very much for your question, and perhaps we will run out of time a little bit on this one. I would be happy to address it further in other questions as well.

We think it's really important for consumers to understand the individual roles and responsibilities. We have taken many actions over the last five to 10 years in terms of differentiating and educating consumers, but it still requires more and more. The Auditor General's report highlighted this, and we completely agree. We've been using increased social media, targeting specific audiences when someone might be doing electrical work—such as home renovation magazines, for example—and those sorts of things.

But most recently, we've engaged the Mike Holmes group. I think most people would be familiar with Mike Holmes and his renovations. He is seen as a highly influential expert in terms of renovation—Mike Holmes and his whole team. Our partnership with them has already produced tremendous results. They have a five-minute video out, which is Top 5 Things You Need to Know About Electrical Work. I'll just give you a snippet of it—

The Acting Chair (Mr. Percy Hatfield): Thank you, David. Perhaps we will get back to that later on, because it is a very important question.

It is now time to turn the questioning for the next 20 minutes over to the government members. I see Mr. Crawford has his hand up. Please go ahead, Steve.

Mr. Stephen Crawford: Thank you to both the ESA and the ministry folks for being here today. It's very interesting and very important work that you do.

I have a couple of questions for each group before I pass it off to one of my colleagues. My first question is to the ministry. I'm just trying to get a better handle on what you're doing to ensure the Auditor General's recommendations are fully implemented in a timely manner. Maybe you could get a little more specific as to how that's going and what little bit still needs to be moved on.

Ms. Renu Kulendran: Absolutely. Once we received the Auditor General's report last December, we worked with the ESA to develop plans and identify recommendations that were led by the ministry or the ESA, and to track the recommendations and follow-up.

Certainly, from a ministry perspective, while we have a number of performance measures in place to assess the ESA's performance—including incidents, public safety and compliance data, which are publicly reported—we are also now working with the ESA to establish additional outcome measures and performance targets, some of which have been recommended by the Auditor General, that focus on cost-efficiency and safety improvement in the sector. As well, as I mentioned, we are updating our administrative agreement with the ESA to ensure those recommendations are captured.

We're also working with the ESA and with our federal partners around the recommendations related to electrical product safety, recognizing that there is shared jurisdiction in this area. There has been a task force established to review issues in other jurisdictions, and some engagement has happened to move forward on that particular issue.

With respect to administrative monetary penalties, which was a recommendation to the ministry, we have developed a proposal for decision-making to allow for the use of administrative monetary penalties as a deterrent and an additional compliance tool for the Electrical Safety Authority.

Mr. Stephen Crawford: Okay, thanks. I'm just wondering, how does the ministry oversee the ESA? What kind of relationship do you have between you and the ESA? What's the communication like?

And the people you assigned who are, I guess, in contact with the organization, do they have specific knowledge of this particular industry? Because obviously there's a lot of nuances and details in this industry which might require a certain expertise. Do some of those folks that you have working have that knowledge?

Just characterize the overall relationship and some of those details. Thanks.

Ms. Renu Kulendran: For sure. The relationship is governed by an administrative agreement that's between the minister and the board. I have colleagues on the line here today who actually work on a daily basis with the Electrical Safety Authority. ADM Michèle Sanborn is responsible for policy and oversight of all the administrative authorities. We have the director of the public safety branch, Hussein Lalani, and the manager of the electrical safety unit, whose specific job is maintaining that relationship on a daily, weekly and monthly basis, reviewing business plans and reports, assessing the data and performance measures, asking questions about certain policies and instances, and ensuring broader compliance with guidance.

I would say that the relationship happens at all levels. I meet with David Collie, my counterpart. The minister meets with Annette, as chair of the board. That relationship runs through the whole organization so that we have a good sense of what's happening at all levels of the organization and how that work is progressing. So there is a fair amount of accountability and regularity in that relationship at all levels.

As I said, we're in the process of updating that administrative agreement. That administrative agreement is binding in terms of the performance of the electrical authority and it is the instrument on which we base all our oversight activities.

Mr. Stephen Crawford: Okay. From your point of view at the ministry, what's the biggest improvement that the ESA has implemented with the AG's advice, and what gap does that take care of in terms of any sort of issues, in your view?

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Ms. Renu Kulendran: Firstly, we're pleased that the Auditor General recognized that electrical safety has improved over the past 10 years, but we recognize that there is more work to be done. The cumulative impact of all the recommendations, because many of them are interdependent, I think will certainly support our continuous journey towards greater electrical safety and accountability as a system.

Mr. Stephen Crawford: Okay. Just a final question for the ESA—maybe your take on that same question. What's

the most substantive change you've implemented, and what sort of impact do you feel that's had?

Mr. David Collie: Thank you very much for the question. I know you didn't ask this but I would just comment on the relationship. We really respect the relationship with the ministry. We realize we have different roles to do and so we will respect those differences in roles. But our process is always very open and transparent and making sure that we have full disclosure with the ministry—a very appropriate working relationship.

It's hard to pick out one particular item. Maybe the largest—I don't know if it was necessarily; they're all impacted. But the largest one was our risk-based oversight program. We had been building this program for three years prior to the Auditor General's arrival in our offices. We were delighted that quite a number of the recommendations were exactly in alignment with risk-based oversight. Actually, while the Auditor General's team was there, we launched it right in the middle of the pandemic and it has worked incredibly well for us.

We have had great stakeholder acceptance. It's allowed us to increase safety, shift some resources over to these emerging areas. It's allowed us to further increase the customer experience so that homeowners, licensed electrical contractors can have an advance notice of when we're coming or if we don't need to come to a particular site. And it's allowed us to use more digital transformation. We've seen probably a 5% efficiency, which again allows us to put resources in other emerging areas.

So, it's hard to pick out one. Every area of safety is important, but that's probably the largest, I think, involvement from the ministry, ourselves and our staff and stakeholders. It's been extremely well received.

Mr. Stephen Crawford: Thanks. I'm just wondering, is there anything more that the ESA can do? Non-compliance is obviously an issue and we all know the demand for the profession is only going to grow exponentially over the next decade. We know about the housing boom and renovations, and safety is paramount, obviously. No one wants to put anyone's lives into jeopardy, because the work that the people who are part of your organization do is critically important.

Is there anything that you can do to make the public aware of how to interact with your organization? I guess you're the go-to organization if there is non-compliance or issues. What could be done to make the public more aware?

Mr. David Collie: Thank you for that. First of all, obviously acknowledging the safety role we play—that's why we get up every day. But, yes, as part of the safety system, we have our responsibilities to do, but we also can help that safety system by further educating consumers.

Maybe I'll tag on to the answer—we ran out of time—a little bit more, but if you think about our relationship with Mike Holmes—and this is just one, by the way, of many safety educational awareness programs. They cover home safety. They cover power line safety. They cover worker safety. But I will focus just in this one particular area that you asked about.

The quote that Mike Holmes has posted recently—it's on my own LinkedIn. It says: "In the province of Ontario, licensed electrical contractors (LEC) are the only businesses that can legally tackle electrical work in your" home. "Any electrician you hire should work for a licensed electrical contractor"—because that's really about consumer protection—"and have an ECRA/ESA"—which is the acronym for our licensing group—"licence number on their business card, vehicle and estimate." Those are really good tips coming from Mike Holmes, in addition to our media campaign.

Then he goes on to say a lot of the general contractors were handymen that said they could do electrical work, but it's important to know to have a professional and that they have to hire a licensed electrical contractor, so ask them about that. And then it goes on to the relationship and so on.

Again, that's just one example of a very broad media campaign that we've increased for consumers so that they can be empowered. Again, they're not the only ones responsible. We have to be responsible as well, and all the safety partners in the system. But that's one of the educational pieces.

Mr. Stephen Crawford: Okay. Thanks very much. I'm done with my questions. I believe MPP Bailey is next in the queue. Thank you.

The Acting Chair (Mr. Percy Hatfield): Yes, the tradesman from Sarnia-Lambton has a question.

You're muted, Bob.

Mr. Robert Bailey: I'm trying to unmute myself.

The Acting Chair (Mr. Percy Hatfield): There you go.

Mr. Robert Bailey: There. Thank you, Chair, and thank you to the ESA and Ministry of Government and Consumer Services that are here today. I was going to, actually, have Mr. Collie follow up on where he got cut off before, because he ran out of time. Is there anything else you'd like to add to that before I ask a question, or did you pretty well cover that? I'm very well interested in how you've interacted with the public through these commercials with Mr. Holmes. Is there something else you'd like to add to there that you felt you didn't have time to cover?

Mr. David Collie: Well, thank you. Again, I just used one example, which was really about people doing renovations, but that's not always where electrical safety harms appear. If you think about it, there are hundreds and, sometimes the case, thousands of critical injuries that take place that show up in emergency rooms. Many of those are children. We have had very targeted media campaigns at parents so that they can identify electrical harms within their homes. We used a woman who was working with us who very sadly took their young child to an emergency room. They'd had an electrical shock. If you think about it, no electrical shock is good, but when they're small children and their bodies are so small, it can have a detrimental impact on their nervous system. So we've targeted that specifically on home safety.

Those are the types of campaigns that—if we stepped back for a moment and looked at our overall approach to

harm reduction and electrical safety, it's about really understanding the data, exactly where these incidents are taking place, and then targeting, whether it's a change in a regulation, whether it's a change in education, whether it's a change in something else, to prevent that type of circumstance from happening.

We're delighted, and thank you, MPP Bailey, for asking that question. We've talked about our safety record, but over the last 10 years, ESA's safety record is beyond reproach. We haven't seen any jurisdiction globally—in North America, for sure—that has achieved the types of reductions in critical injuries and electrical fires that we have. Thank you for asking.

Mr. Robert Bailey: Well, I'll ask a couple of other questions now, but thank you for covering the safety. I worked in industry long before I got this job, so it was something we dealt with every day.

Back to the Auditor General's report: There were some issues raised. My question is, how has the electrical safety organization refined its risk-based inspection approach so that fewer inspections of low-risk installations and more inspections of the higher-risk installations are performed? And then, has a target been set for the reduction of low-risk inspections, and how well is the ESA performing on those targets to date?

Mr. David Collie: Thank you very much for the question. I've probably spoken to RBO at the high level, on what some of the benefits have been from RBO, but at this point, I'll ask our vice-president of operations, Earl Davison. He has charge of implementing the RBO project, which went live in 2020. Earl, do you want to comment on the high, medium and low process?

Mr. Earl Davison: Thank you. The question is right on point in terms of what I would term one of the biggest programs to try to target the use of our resources a bit more effectively.

A quick overview of how RBO works: Every time someone takes out an electrical permit—we call them an applicant, or a notification—it is scored based on the type of installation, who is doing the work and where it is located, and it is given a risk reading. The risk is assessed as being low, medium or high.

We have used the data that comes in—and we process about 400,000 of these notifications a year, so we have an extensive database. I must give a shout-out to Dr. Joel Moody, who was instrumental in the design of RBO and the mechanics behind how the theory works. We've used that data over a 10-year period to assess what types of installations pose the low, medium and high risks. Then that information is given to our inspectors who—

The Acting Chair (Mr. Percy Hatfield): Five minutes to go.

1330

Mr. Earl Davison: Thank you. Along with their own knowledge and judgment at a local level, they will use the information to assist in their assessment as to whether they need to go to visit a site. We've set targets to reduce our use of resources on low-risk items and we've also set targets for high and medium. To give you a specific

example, we've seen a 15% improvement in resources allocated to medium- and high-risk notifications. That 15% came out of effort that was previously spent on low-risk notifications. All in all, it is data-driven. It is heavily based on science as well as observed behaviour and data over the last 10 years.

Mr. Robert Bailey: Okay, another—I think I've got a couple of minutes yet. I think that's what the Chair said anyway. The other question I had, and it arose out of the Auditor General's report, as well, about ESA—I don't know who this will go to, maybe management. Would the ESA have reviewed their fee model, and what steps were taken to reduce the organization's operational cost? I think you maybe touched on it earlier just a bit, but maybe you'd like a chance to expand upon that. Thank you.

Mr. David Collie: Yes, thank you very much for the question. This isn't new for us. Over the previous five years, before the Auditor General's review, one of our top priorities was reducing costs where we could and it not impacting safety. As I mentioned, we've been very successful in keeping our fees flat since 2016, which is about a 10% productivity improvement over that period of time.

But, notwithstanding, we also had identified, consistent with the Auditor General's review but prior to its arrival, targeting in our next five-year strategy, which we're currently in, a further 10% productivity improvement—same as I'd mentioned around fees. So we've been able to hold fees. That efficiency component comes from many different ways. One of the key elements in our current strategy, in addition to what Earl had mentioned about RBO, is a digital road map. Without a doubt, we realized before the pandemic that—and certainly the pandemic has made that entirely clear—manual processes, we can automate those, we can reduce costs and, at the same time, provide a much better customer experience for the public and for licensed electrical contractors as well.

Mr. Robert Bailey: Do I have any time left, Mr. Chair?

The Acting Chair (Mr. Percy Hatfield): Two minutes, Mr. Bailey.

Mr. Robert Bailey: All right. Well, I've got one other question. Has the ESA had an opportunity to ensure a timely follow-up on any unsafe installations that have been found by your inspectors? What's the timeline for that?

Mr. David Collie: Sure, thank you. We're probably short on time. Earl Davison could expand in more detail than myself on the specific timelines, but I won't necessarily pass it over to Earl at this point. We have certain standards that we do for—actually, Earl, why don't I have you expand on it? You know this area best.

Mr. Earl Davison: Thank you. Very quickly: Any defect that is noted is again categorized as to whether it's a life and/or property hazard or whether it's a technical defect. On technical defects, the inspector is required to follow up with the installer within 30 days. But if it is life and/or property, the inspector either arranges for immediate disconnection from energy supply at the moment or they must be followed up within 14 days if there are

other implications, such as they need to order parts or they need to arrange an outage or things that they just cannot deal with. But it must be cleared inside that 14-day time frame, and the inspectors take this very seriously. That is their primary purpose, to clear defects in a timely manner.

Mr. Robert Bailey: Thank you very much. I have nothing further, Chair.

The Acting Chair (Mr. Percy Hatfield): Thank you, Mr. Bailey. I'm just double-checking if Mr. Blais has rejoined us. I saw him on the chamber screen earlier; he was introducing a bill. He may be in the House. Stephen, have you come back to the committee? No? Okay.

Then, in that case, we'll move from the time allotted for the independent member back to the official opposition. Ms. Gélinas, yes, please go ahead.

M^{me} France Gélinas: I just wanted to give you a chance—I know that you had an opportunity to answer my questions when you were answering others. Aside from the work you have done with Mike from Holmes on Homes, was there anything? And then my follow-up question is, what happens when electrical work gets done by a non-ESA licensed contractor? What happens when you find out? Who is responsible? What kind of punishments? How often does that happen? How does that happen, that people actually find out that the electrician they hired that had an electrical ticket was not actually allowed to do work in their homes? How does this process work?

Mr. David Collie: Thank you for your question. I'll start off the question, and then maybe pass some of it over to Josie Erzetic.

As I mentioned, we have a hierarchy of compliance. If it's a minor infraction and someone was doing some work and perhaps they're licensed but did not take out a notification, that might be a gentle reminder about the case and procedure. That could escalate, of course, to someone who knowingly did electrical work and was not licensed, and as I said, in those particular cases, we would pursue more aggressive compliance with them. We have done that in 140 cases over the last five years. That is really the last resort. Those are for people doing egregious work where they really have created a potential harm to the public.

As we said, we are very interested, working with the Ministry of Consumer Services, in having the additional tool, which would be administrative monetary penalties, which fits in between, which would allow not our inspectors but our investigators—that's a different role we have within the organization that is independent of our inspectors—to follow up on circumstances like you've described and, depending on the nature of what that work was—again, this is to be defined—to then be able to issue an administrative monetary penalty as a rather quicker deterrent in those situations. But those details still have to be worked out. We're working with our deputy in the ministry in terms of what that administrative monetary penalty regime would look like.

M^{me} France Gélinas: I'm told that there's sort of a loophole in that, as in, if you are the homeowner, you are allowed to do your own electrical work. Is that true?

Mr. David Collie: So, legally, homeowners can do their own electrical work. That is true. They can do their own work. What our role is, is to ensure that they understand the nature of that work. They still are legally required to take out a notification so that work is inspected.

Mr. Davison talked about our risk-based model. It has a number of attributes that look at who's doing the work, the location of the work, the complexity of the work and so on. But when a homeowner is doing the work, that's very different from a professional, experienced, licensed electrical contractor. As you might imagine, the risk rating in that circumstance goes to high risk. That means we would be inspecting all of that work, 100% of that work. That is the system that exists.

The other thing we do with our educational programs, though, is to provide as much information to homeowners so they understand the limits of their capabilities. That also is very consistent with your earlier question and our discussion around using well-known renovation experts like Mike Holmes so that they can talk about and consumers can really understand the complexity of this work. The electrical code is about 1,000 pages, so you might imagine that's a pretty daunting thing for homeowners to take on. We also educate them so they understand those limits.

M^{me} France Gélinas: Coming back to the people that are ESA-licensed contractors but offer not to ask for a notification so that they could get a discounted price to their customers—the AG talks about this in her report. What are you actively doing to deal with that?

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Mr. David Collie: Thank you for the question. Prior to the Auditor General's report, we already had a number of compliance programs to tackle—I guess more broadly, we might call it the underground economy, or contractors that are unlicensed offering electrical services. So we have expanded those programs significantly.

One I will just hone in on, which is a program that we've worked on co-operatively with Kijiji: We hunt down ads for services that are being offered. Where we find those people who are unlicensed, again, through our hierarchy of compliance—sometimes, it's just a gentle warning; other times, we've taken more aggressive approaches with them. Kijiji has been very supportive and has been willing to take down those ads where we've been able to find that those people are unqualified to do that work.

M^{me} France Gélinas: Basically, you categorize most of that work as the underground economy, as in, this is where the problem lies, that people don't want to pay taxes. People want to get this done cheaper.

We had a nine-week strike at Vale this summer. Vale is the big mining giant in my area. A nine-week strike: That means we had 300 electricians on strike. I guarantee you, everybody in Sudbury had their electrical work done during the nine-week strike because we had all of those electricians available, and everybody thought they were doing the right thing. Everybody thought that by hiring an electrician, "He has a licence. He works at the mine. He

handles things that are way more dangerous than renovating my bathroom, putting in a plug for outside,” and the list goes on and on and on. Renovating a house, I can tell you—I won’t—many of my neighbours did that during the summer.

All of this is simply underground economy and ignorance? They’re good people. They usually follow the law. They have an MPP as their neighbour. But they’re still doing it.

Mr. David Collie: Thanks for your observations. I guess I would step back and take a look at the safety system and the consumer protection system. There’s a reason why these roles are defined within the electrical safety system.

Having a licensed electrical contractor means that we know who they are. We know where they’re doing the work. We know there’s consumer protection and follow-up, which we have done, and we know that they have all the proper insurances. I’m not going to comment or speculate on activities that took place, but this regime is there for a reason.

There were recommendations within the Auditor General’s report for the ESA to consider roles and responsibilities. I’ll ask Josie Erztic to expand a little bit on the activities we’re doing to address that recommendation. Josie?

Ms. Josie Erztic: Hi. Thank you for the question. I would take a step back and I would say in response, MPP, to your point of how are people being made aware, that one of the Auditor General’s recommendations was to take a look at our communications materials. We have done that. We’ve used some pretty sophisticated behavioural research to think about: When do people go out and want to hire a licensed electrical contractor? When are they coming up with ideas for their home? When are they undertaking the work? When do they hire a general contractor etc.? What we have done is target specific materials to different points within that process so that we can make sure that we are most relevant when these decisions are being made.

For example, people are searching social media. You may have experienced this yourself: You’re looking for someone, so you will go on YouTube. David mentioned what we’re doing with Kijiji. We’re using social media and using things like YouTube to increase our presence so that we make sure people know who to hire safely. Again, David has given you the example of Mike Holmes and the Holmes Group because they are very present in some of these social media channels. So we are doing a lot to make sure that people are educated and they get the message to hire a licensed electrical contractor.

I think the other part of the question that David forwarded to me was around the work we are doing in order to assess the categories of low-risk work that the AG suggested we take a look at. I would say the importance, and what we think is paramount, in terms of hiring a licensed electrical contracting business is that these businesses hold both WSIB and \$200 million in liability insurance. It’s very important for your constituents, very important for homeowners and consumers of Ontario.

When we look at master electricians—and again, we have now created communication materials so people will understand the difference. What a master electrician does is they supervise the qualified electricians who work within the licensed electrical contracting business. As we look at those other categories, we have to really remind ourselves that those C of Q holders or the certified electricians and the masters do not hold the WSIB or the \$2 million in insurance. So we need, as a safety regulator, to think very carefully about safety and consumer protection.

We’re doing all that work now as well as discussing with stakeholders, and we will be presenting a report to the ministry.

M^{me} France Gélinas: Okay. That brings me to the not-so-good electricians who do not-so-good work.

When you answered that question, you talked about the technical safety that BC had brought forward—that you are thinking about it, that you are talking to stakeholders. Because the act has been modernized, you now have delegations that allow you to do this, but you talking to stakeholders when the AG has told us that you don’t have a consumer representative on your board leads me to believe that you will be talking to a whole bunch of electrical contractors, who have no interest in having their bad work made available to all.

How will you make sure that at the end of your process, we will know when somebody puts in a complaint against an ESA-licensed contractor who has done poor work, who has not finished work, who has left a big mess behind, whatever it is? The consumer needs to know that. Nothing in what you’ve answered my colleague reassured me that we will end up there. Talking to stakeholders, to me, means you’re talking to electrical contractors who have no interest in getting to the end goal that we want to get to.

Ms. Josie Erztic: I can continue with that question. David has his hand up. What I would indicate is that we do have a consumer advisory council, but I see David’s hand is up as well.

Mr. David Collie: Well, that’s it, Josie. The consumer element is a very important voice within all of the actions we take across every area. We have a really robust consumer advisory council. These are strong representatives. These types of issues are the types of issues that they work and deal with.

We also, a few years ago, designated a senior executive within the organization to have the customer experience voice, so they are a champion. We track all complaints that come in to us and we have a system for that. There are very few, frankly, but we do track all of those. When we are consulting on any major change in our systems—roles, whatever—we also do ad hoc consumer engagement processes through our communications department.

I completely agree with you. It has to be a balance. Stakeholders, in our mind, represent the public as well as those we regulate, in making sure that there’s the appropriate balance. At the end of the day, our organization exists to protect the public from electrical harms and from consumer protection standpoints, so I completely agree.

M^{me} France Gélinas: Okay. You give me hope. Thank you.

The next one—again, it has to do with the consumer—is your call centre employees. The AG tells us that they are not trained to answer any technical questions, no matter how basic they are. They refer them to your inspectors, who told the AG that they do not have the time to respond to these calls. This is not good consumer service and this is not good consumer protection.

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The Acting Chair (Mr. Percy Hatfield): France, we have five minutes left.

David?

Mr. David Collie: Thank you for the question. We agree with the observation that the Auditor General has. It's a complicated area. As we said, the electrical code is a thousand pages deep, so it's not something that we are going to be able to educate a homeowner on, all the complexities of the electrical code. That notwithstanding, we do provide some technical information and some education materials that we can point them to.

Earl, I believe you were going to answer this question for us, or was it Josie? No, Earl. Thank you.

Mr. Earl Davison: Thank you very much for the question. We did take the Auditor General's recommendation very seriously. It is true that a contact centre agent is not trained to answer technical questions. As David said, the electrical code is a thousand pages long—all in number 8 font, I might add.

What we have done is collect all of the freely available technical information that is in the public domain, both from ESA and the Canadian Standards Association, and we are in the process of putting it all on a website that our contact centre agents can forward or refer the customer or caller to, so that they can do the research or gain the knowledge they need.

The electrical code was written specifically to be used by knowledgeable individuals. Of course, callers to the contact centre span the spectrum of knowledge, but our goal is to make the freely available information in a central location so that the inspector doesn't have to answer the question, because they, of course, are busy and we want them to be inspecting medium- and high-risk installations. We fully agree with the Auditor General's recommendation, and we're in the process of implementing it. Again, it will be in place this fall.

M^{me} France Gélinas: Just a quick parenthesis that I forgot to ask: For your master electricians, do you agree and do you have a time frame as to when they will have to do continuing education to renew their licences?

Mr. David Collie: Yes, thank you for that question around the continuing education. That's an important component. We were already considering continuous education when the Auditor General came in and did her review. Josie Erzetic and her team can update you on our next steps that we've taken.

Ms. Josie Erzetic: Thank you for that. Yes, as part of our five-year corporate strategy, we had already planned on—

The Acting Chair (Mr. Percy Hatfield): And I plan on two minutes, so you have a two-minute warning.

Ms. Josie Erzetic: Okay. Thank you. We had planned on incorporating continuous education as part of that under our licensing strategy. At this point, we again have undertaken a jurisdictional review to see what kind of education regimes exist out there, not only in the electrical sector but also in other sectors, for continuous mandatory education.

Again, we're doing a stakeholder review, because that's very important. I believe a number of folks have referred to ECRA, which is our committee that has representatives of contractors and also representatives of the public on it, which provides advice to us with respect to things like education. So we're taking a close watch of what our stakeholders are saying about it and we'll be providing our information back to the ministry. We would expect to have this well under way spring or summer of next year.

M^{me} France Gélinas: I'll plant the seed for my last question, but you won't have time to answer. It has to do with products that are coming in that are not certified—in my neck of the woods, especially portable heaters. So I'm just putting it out there: What can be done? Is there a legislative way? Do you need our help to make sure that we don't burn down anymore homes in Nickel Belt because they ordered all these portable heaters that caught on fire?

The Acting Chair (Mr. Percy Hatfield): There's only 20 seconds left—

M^{me} France Gélinas: And you have 15 seconds to answer.

The Acting Chair (Mr. Percy Hatfield): Fifteen seconds left.

Mr. David Collie: Okay. I obviously can't do justice to that one. We would be pleased to talk about electrical product safety. The deputy mentioned it, as well. That's a large file.

M^{me} France Gélinas: Okay. Next round.

The Acting Chair (Mr. Percy Hatfield): We're going to move on to the Conservatives for 20 minutes. Following that, there's probably 10 minutes left for each side before we run out of time. Ms. Kusendova has the first question.

Ms. Natalia Kusendova: Thank you to members of the ESA, as well as MGCS, for their thorough presentation today. I'd also like to take the opportunity to thank the Auditor General, Bonnie Lysyk, for her very thorough and informative work, not just in this report but in many previous reports, including pandemic readiness and response in long-term care, which I have read all 100-and-some pages of. It has certainly been an important piece of information for us as we move forward. Even today's long-term care announcement was thanks to the thorough work you've done, so thank you for that, Auditor General.

I wanted to talk a little bit about the illegal electrical installations. As the auditor concluded, "The law that prohibits certified electricians and master electricians from offering their services to the public is one of the contributing factors to the widespread problem of illegal electrical installations."

I recently became a homeowner, because I moved in with my husband, and I have to say, I'm a laywoman when it comes to any trades. It's certainly not my area of expertise. We recently did have some electrical work done on our home, and I must admit I don't even know whether the electrician who came to our home was one who was licensed with the ESA, because that's not something that was top of mind for myself. I certainly will check with my husband when I get home whether that's something that he checked for.

But I think that just goes to show that homeowners, perhaps, are not aware that this is a requirement by law, actually, to see whether electricians are licensed with the ESA. So I was wondering if you could explain, just in layman's terms, what is the difference between a certified electrician, a master electrician and a licensed electrical contractor? I know it was touched on a little bit already, but how can we effectively communicate this to our constituents and the public at large?

Mr. David Collie: Thank you very much for the question. In a moment, I'll ask Josie Erzetic to answer the last part of your question, which is differentiating between those different roles. I would just reiterate a little bit of what I said before, which is that we agree with the Auditor General's recommendation that more work needs to be done. As I said, we've done a number of campaigns that are escalating now, which we believe will have a very positive impact in that regard.

Josie, did you want to expand a bit on the roles themselves?

Ms. Josie Erzetic: Yes. Thank you for that question. I guess I would start with the licensed electrical contractor, if you can think of it as a bit of a hierarchy of responsibilities here. The licensed electrical contractors—or the LECs, as we talk about them—are licensed by the ESA, and they are a business. As I responded to one of the earlier questions, they are required to carry both WSIB as well as \$2 million in liability insurance. What happens with the LEC is that they actually employ master electricians, and we'll talk about that in a second, but the master electrician is then responsible for supervising the work of other certified electricians, or what we call certificate of qualification holders, within that company.

The master electrician, then, in order to attain that status, has to have been a C of Q holder for a minimum of three years, but they also have to have relevant industry experience, and they also have to pass an exam, which they take through us. You'll recall that was another one of the AG recommendations, to look at that exam. I can inform the committee that we have looked at that exam, and we have created over 200-plus additional questions for that. So we're just waiting to complete all of our work there, but it is quite a robust exam. The masters are also subject to a standard of conduct which we hold them to, and they're also licensed by the ESA.

The third category that you mentioned, the C of Q holders or the certified electricians, are not licensed by the ESA. They are under the jurisdiction of a body which is OCOT, or the Ontario College of Trades and apprenticeship, which is transitioning to something called Skilled

Trades Ontario, which is part of the Ministry of Labour, Training and Skills Development—sorry, I was just getting that acronym correct there. There are two types of C of Q holders: Some of them have the ability to work in a broader field, including construction sites, and some of them do not have as broad an authority, so there's a differentiation there. You have to take an apprenticeship program to be qualified in this manner and you also have to take an exam.

1400

Again, those latter two categories do not carry WSIB or the liability insurance, and so that is probably the biggest differentiation, and that is why, as we examine categories of work that could be devolved to either the masters or the C of Q holders, we need to think carefully about safety and we need to think carefully about consumer protection as a regulator. I hope I've answered the question there.

Ms. Natalia Kusendova: Yes, thank you; a very thorough answer. So I was wondering, as a consumer, if I need an electrician to come to my home, am I then allowed to ask them to show me whether they're licensed with the ESA?

Ms. Josie Erzetic: Absolutely. I feel like we've referred to the Mike Holmes video and Mike Holmes family frequently, but we are trying to get this message out. The ESA has been educating in this regard for a long, long time, but as you yourself have mentioned, until people are in the position of either buying a home or renovating or doing other things, it's not as relevant. We are really trying to impact people when they're making these decisions, so part of the most recent campaign is around "hire an LEC" and what to look for. Make sure they're giving you their qualification number. It's on the estimate and it's on the invoice. So, absolutely, you should ask.

Ms. Natalia Kusendova: Thank you. I wanted to ask another question with regard to municipalities because, as has been noted by the Auditor General, some municipalities actually do not require proof of ESA inspection. Are you doing any awareness campaigns at that level with our municipal partners?

Mr. David Collie: Thank you for the question. We were, again, really pleased that this was highlighted in the report. The relationship between the municipalities, ourselves and the province is an important one. If you think about the whole safety system, you could think about people taking out building permits or being knowledgeable within the municipality of what's taking place in terms of renovations or new construction. So we do think there is potential opportunity for coordination between two ministries here, and that is a project that's being undertaken in co-operation with the deputy and her team. I'd be pleased to have her comment further.

Ms. Renu Kulendran: Thank you, David, for starting to respond, but it is something we're looking into and working with our partners at the Ministry of Municipal Affairs and Housing in terms of the connection to the building code inspections. So that is certainly something we are following up on.

Ms. Natalia Kusendova: Thank you. And my last question, before I pass it on to my colleague Christine Hogarth—I wanted to shift gears a little bit and talk about the fiscal impact of the ESA. You’ve talked about the five-year strategy and the operational effectiveness and the aspirations of being a modern regulator. I was wondering whether there is any opportunity to reduce the fiscal impact of the ESA.

Mr. David Collie: Thank you very much for the question. We addressed a little bit of this earlier but, obviously, reducing our fiscal impact where it doesn’t have an impact on electrical safety is important for us. We’ve been able to do that very successfully over the last five years.

In the report, it made reference to other administrative authorities, and I think that’s important as well, so we do have a great coordination group that works together amongst the administrative authorities. That was a recommendation as to one of the reports that was highlighted in the Auditor General’s recommendations. That group has been able to come together and share best practices, share some joint procurement together and take advantage of the provincial government’s procurement program. So all of those are good efforts in terms of reducing costs.

And then, going forward, in our five-year strategy, we’ve outlined a number of efficiency improvements we can do, in addition to risk-based oversight and, obviously, our digital plan, which can reduce costs going forward as well. We have a very aggressive program that we had in place, and we’re carrying forward on that, going forward.

We’ve targeted a 10% productivity improvement in this current five-year strategy. I see the deputy has indicated to add in as well.

Ms. Renu Kulendran: Thank you, David. I had mentioned that we are working with the Electrical Safety Authority with respect to updating our administrative agreement which governs our relationship and sets performance metrics. Some of the areas we’re looking at, in terms of the agreement, that we want to have updated by the end of March is not only enhanced transparency requirements around the public posting of some policies and a more robust information-sharing protocol, but also developing an annual burden reduction plan. In terms of promoting efficiencies and potentially impacting whether it’s cost or processes etc., we see that as an area we can focus on.

Ms. Natalia Kusendova: Thank you, Chair.

The Acting Chair (Mr. Percy Hatfield): Christine, it’s over to you. You have nine minutes remaining on the clock.

Ms. Christine Hogarth: Great. Thank you very much. I’ll be fast, because I’m going to pass it off to my colleague MPP Cuzzetto. I have one question for each, and I’m going to start with the ESA. I appreciate an interesting conversation talking about electrical work. Many of us watch HGTV and a lot of us are renovating these days, so obviously it’s something that is important, right? If you have fires in your homes—you have to be safe. It’s not just for anyone to do, even though it looks really easy on TV.

My first question is: Obviously, we want to have the top skills in our communities looking after our homes, renovating probably our most expensive asset we’ll actually invest in. How often does the ESA plan to update their master electrician exams with new questions to make sure that we have the top-rated electricians in the country, or maybe even in the world?

Mr. David Collie: First off, thank you very much for your question. There are a couple of things in there that I think are important just to unpack. One is around, obviously, electrical safety in our homes. We’re really pleased that we’ve seen the number of fires reduced about—I think it’s 33% in the last five years. So that’s tremendous improvement, heading in the right direction. At the same time, any injury or fire is too many, so we do want the top talent in our organization, to make sure that we’ve got that oversight and we want to make sure the master electricians who are out there are also of that calibre. But I’ll ask Josie Erzetic—she was speaking earlier about some of the changes we’re doing in our master examination process—to highlight the last piece you asked about.

Ms. Josie Erzetic: Thank you for that question. We are in the process of updating the master electrician exam. We’ve actually done some analysis of it and retained some external expertise to assist us in that as well. We currently have, I’d say, about 208 or so additional questions. We are just looking to finalize all of that and then we will put that in place.

Ms. Christine Hogarth: Thank you. I think it was Earl who had spoken about the document, the manual, being 8 font, which—I can’t see anything anymore, so 8 font is difficult. It will be interesting how it will move in the future, that these might be electronic versions in multiple languages. So if I speak English, French, Italian, whatever I speak, it’s translated universally and electronically. A lot of people don’t carry the book around. They all carry these things around now, so they’ll have it at their fingertips. But it’s obviously a discussion for another day.

My last question is for the ministry. I know that MPP Tabuns touched on this, but how is the ministry supporting the ESA to address the illegal electrician installations? And how are you ensuring that the ESA is committed to transparency and accountability, moving forward?

Ms. Renu Kulendran: Thank you for the question, to the honourable member. We acknowledge the Auditor General’s recommendations and are working closely with the ESA around them. The current system does provide public assurance that electrical safety work that is conducted is safe and completed by qualified individuals. We are working with the ESA. And just related to the question about the different classes of electricians that do this work, I just wanted to acknowledge that in response to the recommendations of the auditor—

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The Acting Chair (Mr. Percy Hatfield): Five minutes. You have your five-minute warning. Sorry for the interruption.

Ms. Renu Kulendran:—we are working with the ESA to reassess the current restrictions on those who can perform electrical installation work to see if other arrangements are possible for master electricians and certified electricians, with a view that safety is the paramount concern, but also recognizing the auditor's recommendations around certified electricians or master electricians being allowed to perform lower-risk installation work.

As Josie indicated, there's consultation that's taking place. This work also involves the Ministry of Labour, Training and Skills Development to consider findings. As the auditor recommended for us to take a look at this and to look to see if there are opportunities to open up work for a broader group of electrical workers, as long as they're qualified and as long as safety issues are paramount, that work continues, in terms of addressing the illegal economy.

With respect to the other tool we talked about, in terms of the development of administrative monetary penalties to support additional compliance and allow for the ESA to leverage that to bring more immediate, effective and swifter compliance: As David outlined earlier, prosecutions can be lengthy and expensive and don't necessarily result in an intended outcome for the consumer. We see this as a way to deter illegal activity.

So I would say we're working on a couple of fronts to address illegal electrical installations.

Ms. Christine Hogarth: I'll pass it over to my colleague MPP Cuzzetto, please. Thank you.

The Acting Chair (Mr. Percy Hatfield): Are you there, Rudy? Michael Parsa was there earlier. Are you there, Michael? Do you have a question, sir?

Mr. Michael Parsa: Yes, if my colleague Rudy Cuzzetto is not available. Do you mind if I go, and then maybe Rudy can go right after me?

The Acting Chair (Mr. Percy Hatfield): All right. Go ahead, Michael.

Mr. Michael Parsa: Thank you, Chair. Just a quick question, just to build upon one of my colleagues who was asking: Certainly during the global pandemic a lot of people started renovating their homes. It was quite popular. They had the time. They were spending time at home, so they were able to do that. Many started purchasing products virtually and online and started getting it delivered to them.

I just want to know the role of the ESA when products are sold virtually. You touched on this earlier. I'm just wondering: Whether it's online or in retail settings, how is the ESA protecting consumers with products that are safer for people, as opposed to those that are not? I just want to know if you can just expand on the ESA's role on that, please.

Mr. David Collie: Thank you very much for the question. I was hoping that this would come back up again later. We do an awful lot in terms of campaigns for consumers and what to look for in a particular product. You will notice one coming up very soon in conjunction with Christmas lights and so on that you'll see. But without a doubt, the product-safety area is one that rapidly changed

pre-pandemic, and certainly has been exacerbated during the pandemic. In a moment I'll ask Josie Erzetic to talk about our response to the Auditor General's recommendation, but we were already developing an enhanced product safety plan and we're completely in alignment with the AG's recommendation in this regard.

We can't address this problem on its own. Even if we had all the money in the world, it is a global challenge. I think anyone can appreciate that the online sale of products has escalated enormously over the last few years, and it's not going to go away. It's not an Ontario-alone problem. It's not even a Canada-alone problem; it's a global piece, but we have a role to play.

Josie, maybe you can outline the steps we're doing in our consultation.

The Acting Chair (Mr. Percy Hatfield): And you can do so in 35 seconds.

Mr. David Collie: Okay. That might be hard.

Ms. Josie Erzetic: Wow. How fast can I talk?

It is a really big problem. We are doing a lot of work. People have referred both to the analysis we've done, as well as to the task force we've undertaken. If there is additional time available to expand further, I would love to do so, because it is a challenge, and I would say we are vigorously taking on that challenge.

The Acting Chair (Mr. Percy Hatfield): Thank you. There are only 10 seconds left, Michael. You won't get another question in in this round. However, we do have time remaining, and we're going to split it evenly. We haven't heard from Mr. Blais. It's 15 minutes for each side at this point.

The official opposition: Ms. Gélinas, if you could kick us off, please.

M^{me} France Gélinas: I will continue down the path that I had started and MPP Parsa continued. If a piece of electrical anything is made in Ontario, sold in Ontario, you are able to make sure that it is safe. I would say, explain to me that process.

The second part of my question is that, for everything that gets ordered online, I take it that there is no process for you to oversee that?

My third question, all regarding the same topic: Is there a jurisdiction in the world that does good on that? I have heard that Israel was doing good, but I don't know why. I was wondering if you guys know who does good, why, and what do they do that we're not doing? So, many questions, but all about the same topic as to a whole bunch of electrical stuff.

The Auditor General told us that they actually ordered six pieces—"Six of 13 products we purchased from a large online retailer were uncertified, including a portable heater, light fixture, lamp, heated blanket and two cell phone chargers. Five of these six uncertified products did not pass safety tests." I leave it to whoever wants to start.

Mr. David Collie: Thanks. I will start and just acknowledge that this is a very large area.

We have a role to play in Ontario. Josie Erzetic can outline what we've done in terms of bringing all the key participants to the table to help work collectively to outline

the procedure and some of the global reviews we've taken to see what other countries are doing, because every country, every province is dealing with the same challenge. Josie?

Ms. Josie Erzetic: Thank you for the question. I really appreciate that we're able to have this kind of a discussion in this forum.

I've made a note, actually, about your comments on Israel. Israel is one jurisdiction we have not examined, but I will confirm with you we certainly will do so after we get off this call.

We've examined a number of jurisdictions internationally, including the UK, the United States and different states within the United States. We have also examined South Korea and Australia. I can tell you with great certainty this is a global problem. Online products, as one of the other MPPs alluded to, do not know national or international boundaries. People are ordering them from all over.

We do currently, under the regulation, have responsibilities for online as well as what you alluded to, brick-and-mortar stores. But what makes this very complicated is this is a shared jurisdiction. It is not just the province and the ESA as its regulator; it is also the federal level and Health Canada as its regulator. Health Canada has jurisdiction over consumer products.

Not only do we have the task force working group, which includes ourselves, our ministry and Health Canada, but also brick-and-mortar retailers, online retailers, consumer representatives, manufacturers and distributors. We're all sitting down to talk about how we can tackle what is, quite frankly, a big problem and then provide our advice back to government.

We are very mindful, as I'm sure everybody on the call is, that you cannot boil the ocean. We are a provincial regulator. In every jurisdiction we have examined, the federal level has a role to play. We need to think about that very carefully and we need to, in effect, stay in our swim lane as a provincial regulator.

We are also evolving our thinking in terms of risk-based oversight, looking at the areas of highest risk and addressing those first. So that's a very quick way of talking about a very big problem.

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M^{me} France Gélinas: From what you've just shared with us, does that mean that if I go to a buck store right now—Dollarama, whatever you want to call them—and buy a new charger for my phone, do I know that it is a certified product or no?

Ms. Josie Erzetic: If I can continue answering the question, you would look at the product to see if it has a certification label. If it is a consumer product—and that's what you're talking about—and there is a certified label on it, that becomes the jurisdiction of Health Canada if there is a problem with that product. If it is an unapproved product—so in other words, it is pre-market—that is where we get involved. But we do work very closely with Health Canada, so we are reporting back and forth in terms of either reports they receive or reports we receive.

M^{me} France Gélinas: How confident are you that most of the electrical products we buy in Ontario—so if we use the example from the auditor of a heated blanket, a lamp, a light fixture, a portable heater. Portable heaters I really hate, so I'm interested in those. How confident are you that all of the products that Home Hardware sells—let's focus on portable heaters—all the portable heaters that Canadian Tire, Home Hardware and all of those bricks-and-mortar stores in little communities in Nickel Belt pass the testing to be safe?

Ms. Josie Erzetic: If I can continue answering the question, it's very difficult for me to speculate on particular retailers or particular products, but I would say that on our task force, we do have some of the retailers you've mentioned working with us. Part of the campaigns we do around product safety is we ask homeowners and we ask retailers to ensure that they have certified products that they're selling, so they're selling CSA-approved, UL-approved products.

M^{me} France Gélinas: Okay. So what kind of a relationship exists? Give me an example with whoever you want: Home Hardware, Canadian Tire. You don't even have to name it. But how do we know that you are holding them accountable? What is this accountability to make sure that every single product they sell us that is electrical has your blessing? Does such a thing exist?

Ms. Josie Erzetic: Maybe I'll take that again. Our accountability in that regard is to ensure that there are certified or approved products for sale. It is a joint accountability, as I said earlier, with Health Canada, so with the federal level as well, because we have joint accountability for consumer products.

M^{me} France Gélinas: You're still leaving me with those very uncomfortable feelings that although they are bricks and mortar, although they are a recognized brand—it doesn't matter the joint accountability between you and Health Canada—there could still be a lot of uncertified products available for sale in a bricks and mortar. And we multiply this once we go online.

Ms. Josie Erzetic: It is a difficult situation to talk about in a holistic way. We really have to look at it in a fact-specific way to determine where particular problems could exist.

I think that as with our other awareness campaigns and as to what we were talking about earlier to ensure you're hiring a licensed electrical contractor, our role is to make sure that people are aware of the requirements and aware of safety. Vis-à-vis retailers, we ensure that they know they should be selling products that are certified, that are approved. It's the same with online retailers.

I can go back to our jurisdictional scan. Different jurisdictions are taking a different look at some of these things. I'll give you an example of California, where there is some legislation that has recently been considered about whether consumers could directly sue online retailers, because is it the platform or is it the specific seller who is accountable for this thing? So different jurisdictions are looking at different ways of addressing the problem, but there's no one solution to everything right now, I would say.

M^{me} France Gélinas: I get from this that the accountability is not that proactive if a—

The Acting Chair (Mr. Percy Hatfield): Five minutes, France.

M^{me} France Gélinas: Okay. If a store wants to do good, they make sure that what they buy is certified. If a store did not want to do good, they could buy stuff that is not certified, and unless somebody complains, nobody would ever know.

Ms. Josie Erzetic: They are required by law to sell certified products.

M^{me} France Gélinas: Okay.

I will let my colleagues—sorry I took so long. Peter or Terence.

Mr. Terence Kernaghan: Thank you very much. My question is for the ministry, for the deputy minister. I'd like to ask what, in your opinion, could the ministry do to better work with and support the ESA?

Ms. Renu Kulendran: Thank you to the member for the question. Just for a point of clarification, are you talking about with respect to the issue of electrical safety products or more generally?

Mr. Terence Kernaghan: More generally.

Ms. Renu Kulendran: In terms of the work that has been identified as a follow-up to the Auditor General's recommendations, which we endorse and support: the work we are doing to enhance the measures and expectations arising from the administrative agreement; the collaborative work we're doing on the product safety piece—and we are certainly a partner in that work, as is the federal government, in terms of identifying a holistic approach to how we can solve that from a compliance perspective, from a potential regulatory legislative perspective and from an implementation perspective.

There is also the ongoing work we do on oversight that we do collaboratively and on a regular basis, as I've talked about before, and there is work we do interministerially. We also work very closely with the Ministries of Labour, Training and Skills Development, Municipal Affairs and Housing, and our other partners, in terms of in that broader enforcement compliance regime with respect to broader consumer protection and health and safety issues.

Our role is strong oversight in ensuring that the Electrical Safety Authority fulfills the terms of the administrative agreement, which governs the day-to-day operations and regulatory work. For example, when issues come up that need a regulatory or legislative review, we are advancing those issues and consulting on them so that we can improve the framework, improve the governing legislation.

The Acting Chair (Mr. Percy Hatfield): Two minutes.

Ms. Renu Kulendran: As I've mentioned before, we did introduce the rebuilding consumer confidence legislation last year that enhanced tools that the minister has with respect to the oversight relationship and allowed for more transparency in terms of policies. That legislation not only will help us improve the way we support the ESA and we support consumer protection and safety, but also with

respect to how we work with the broad spectrum of delegated administrative authorities.

Mr. Terence Kernaghan: Thank you.

In the remaining time, I'll pass it over to MPP Tabuns. It's go time.

Mr. Peter Tabuns: I'm now unmuted. Thanks very much.

One of the things that was mentioned by the Auditor General is the setting of targets by the ministry. Ms. Kulendran, can you tell us if you have set the targets that the Auditor General suggested you have in place?

Ms. Renu Kulendran: Thank you for the question, to the honourable member. I mentioned that we do take our oversight relationship seriously, and we welcome the Auditor General's advice on how we can do that job better. We do have, as I mentioned, performance and compliance targets that are in our existing administrative agreement, but we are in the process of updating our administrative agreement with the Electrical Safety Authority and are considering the recommendations of the Auditor General in this regard. That includes working to identify some of the additional measures that the Auditor General had identified in her report.

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The Acting Chair (Mr. Percy Hatfield): Thank you so much. There are five seconds left, not time enough for a question and an answer. We're going to move on to the government side, which will have 15 minutes, if there's a government member with a question. Mr. Parsa, the floor is yours, sir.

Mr. Michael Parsa: Thank you, Chair. I appreciate it. I'm wondering if they can just finish off—I believe one of the members, I'm not really sure exactly who, was going to elaborate on the point earlier to the other question that I asked. There was a reference to bricks and mortar as opposed to more digital sales. I'm wondering if you can just elaborate on that for me, because the confidence in bricks and mortar certainly is different than those being sold online and virtually. As I said, there are a lot of people who are going and are purchasing it online, so I'm just wondering if you can expand on that, please.

Mr. David Collie: Sure, thank you very much. Josie Erzetic went through all the detail in terms of what we're doing for the consultation process, so I won't go into that component at all, but maybe it's important to differentiate that with bricks-and-mortar, well-established businesses, they know their responsibilities under the law. They know, whether they're ordering hockey equipment or whether it's electrical equipment and parts, that it needs to be certified, and they have the staff and capabilities to look for that sort of thing. Cases where a product is uncertified showing up in, we'll say, traditional bricks and mortar are much less.

This really, now, what we're speaking about, is a more modern phenomenon, obviously: the ordering of things online where a consumer can order something from anywhere around the world. Josie mentioned like a phone charger or something which you can order and pick up. We're not going to be able to stop every single phone charger. No jurisdiction we've looked at can look at that.

Dr. Joel Moody is here. He was our chief public safety officer at the time, doing the report. I'd be happy to have him talk about the safety aspects of it. But looking at some of those, those are not high-risk ones if it's a phone charger, for example. Some of the others might be. When we look at our response to electrical products, we again want to apply risk-based oversight.

I can say, it was part of the Auditor General's recommendation to put more resources in this area, and we've done so. We are currently today following up on 100% of any incident of any electrical product that comes to our attention and taking appropriate responses, including talking to vendors and having those removed where those might be a harm to the public online.

Dr. Moody, did you wish to comment at all in terms of the safety implications?

Dr. Joel Moody: Thank you very much, Mr. Collie, and I appreciate the honourable member's question. From the data, we use a population-based epidemiological approach to really understand what are the causes of either injury or, unfortunately, fatalities that arise when certain products are used. What the data are showing us is that we are not seeing a massive amount of injuries or fatalities coming from these different products.

Now, with that being said, with injuries and fatalities, one is one too many. As the Auditor General has verified and elaborated upon, we have seen marked improvement in electrical safety over the last 10-year period.

As Ms. Erzetic was saying, the construct around approved products in bricks and mortar, working with those standard development organizations such as the CSA, the UL, the ULC, to ensure that that supply chain is robust, that is really a very important step in the process. But the data are clear that, at this time, you're not seeing those adverse outcomes that are very important. That's a very important piece of risk that we take into account at the Electrical Safety Authority, when I was part of the organization, to help us identify those areas of highest risk and therefore creating tailored, specific intervention in order to minimize those risks to the population.

The Acting Chair (Mr. Percy Hatfield): Go ahead, Josie. Do you want to finish off what David was saying? Josie, yes. Can you—

Ms. Josie Erzetic: Sorry, I was muted there. I just wanted to follow up on the bricks and mortar and the 100% review that David had mentioned as well. If we receive a report and it's with respect to a bricks-and-mortar store about an uncertified product, we will attend at the store. We'll send a warning letter to the store. We will attend at the store, and when we've attended and indicated that those products should be removed from the shelves, they are removed from the shelves. So it's based on follow-up to a report.

Mr. Michael Parsa: Thank you very much. Chair, I'm going to pass it over to my colleague MPP Deepak Anand.

The Acting Chair (Mr. Percy Hatfield): I have seen him waving his hand all around, and I was wondering when we were going to get to him. Deepak, go ahead, sir.

Mr. Deepak Anand: Thank you, Chair. Do you know what? If I will not ask this question, it's not going to be well done, because—I just want to say thank you to the ESA because they're physically located in, of course, the most beautiful riding of Mississauga–Malton. So I just want to say thank you for that.

My question is: Often I hear a lot from my residents, and they will have an issue and they will say, "Oh, we want you to help us out with the ESA"—or other organizations, for that matter. In terms of the consumer, how are consumer interests represented and considered within your organization? If there is any problem, how would a consumer or resident get in contact, and what are the obligations, duties of the authorities that we have?

Mr. David Collie: Thank you very much for the question. The consumer voice is really important with the ESA. We understand our regulated community, but we go back to and say, "Well, why do we exist?" We exist to protect the public and the consumers, and that can be on the safety side or consumer protection or other types of issues. So yes, making sure that's built in right across the organization at all decision points is really important.

Our board chair spoke about consumer representation on our board of directors, which, from a staff perspective, we certainly think is terrific, as well. I would speak to the actions I've taken on behalf of the organization, which are to include a senior executive who is responsible for making sure that consumers are consulted at every process change we do. So that voice is present at all our major decisions: system changes, regulatory changes and the like.

Then again, we have—and it's important to have that—a very strong consumer advisory council. That's a cross-section of representatives from every geographic or other diversity lens you would expect in the consumer voice. That's a really important balance.

Also, on our licensing, Josie had mentioned ECRA, which is our acronym. It's the electrical registration authority that's part of the ESA. We have a balanced view there as well. So yes, the regulated community is there, but it's balanced against consumer voices as well, and we think that produces the best results at the end of the day.

And then, we're not satisfied there either, because for every interaction that we do at our customer service centre and with our field inspectors, we do a sampling. We get consumer feedback on how well that went. I can tell you, we always score very high, in the eighties—that's excellent. Comparing it, we always want to go higher, but that's a strong number. Then we do periodic surveys, as well. All of that together gives us a very strong consumer voice, making sure that we're making the right decisions for the right reasons. Thank you for that.

Mr. Deepak Anand: And just on that, are there any seminars that you do—I mean, especially now, we can do those things online as well. I know you have a section on DIY where you talk about if you have to take on a job yourself, how you do it. But often, at the end of the day, those who are doing it—I mean, it's typical: You buy a machine, you start fixing the machine and halfway, when

you're stuck, only then do you take out the manual and read it and say, "Oh, my goodness. I should have started from the beginning." Are there seminars done on that?

After that, if any of my colleagues want to jump in, they're more than welcome. If not, then I just want to ask you about the Auditor General's report. I can't thank the AG enough, as my other colleagues did. What is the game plan? What is happening with that? Back to you.

1440

Mr. David Collie: Maybe I'll address the last piece. Very similar to my opening comments, we embrace the Auditor General's review. I spoke directly to Ms. Lysyk in my office when we started the process. I said, "You would have 100% support from me and our team. We want to be the best safety regulator we possibly can be. We want Ontario to continue to be a leader across Canada. We have been, and we think this report would make us even better." So we fully embraced it.

I've set a process in place. Our board chair can talk about the board oversight elements, but I can tell you that we have a team and that we've assigned every single action item to an executive in a senior management team. They have—

Mr. Deepak Anand: Thank you so much. I would like my colleagues to ask the next question.

Mr. David Collie: Thank you.

Ms. Christine Hogarth: I just want to thank the AG for bringing this forward today. It's very timely, because a lot of us are looking at renovating, and hey, it's one of my favourite channels to watch, the renovation channel. My husband says it's probably the most expensive channel we have in the house.

My comment is: One thing we can take out of this is that there are changes, and people need to be careful to make sure our homes are safe. What advice would you share with all of us that we can pass along to our constituents to make sure that they're doing things safely, that they're making sure that whoever they hire for their home is certified? Any parting words that you can share with us that we can share with our community members?

Mr. David Collie: Sure. Well, thank you very much. I think we all know the world has changed dramatically with the pandemic. We all know it will never be the same after. And, yes, many people are working remotely. I think while there's been this huge renovation boom, there probably will still be a lot of that taking place later.

I think that in anything that you're getting done in your home, it is important. Many of the members have said today that it's probably the largest purchase you'll ever make and it's the most you'll continue to invest, but it's where you live. It's where your family lives. It's where you sleep. It's where you bring people over as guests. It's really important to make sure that that home is safe.

Obviously we're biased, but we think the electricity system is the most important investment of net safety within your home, and so it's worth just taking a little bit of time, being an informed and educated consumer. We have lots of things that we can help do for the consumer, and then a number of those have been highlighted where

we can do more in the Auditor General's review, which we've embraced.

So the final word is that we will do what we can. We're enhancing our capabilities, but we want to help you to be empowered as a consumer to make the right informed choices.

Ms. Christine Hogarth: And if people have questions, how do they contact you?

Mr. David Collie: It's very easy to contact the Electrical Safety Authority. Our website is up and available with links. There are simple links to go there, and you would get somebody right away. If you phone our contact centre—yes, this is a true stat—the majority of the time, you will get a live body speaking to you within 30 seconds. That's how importantly we take the customer service element. They will be able to handle any issues for you. Then, of course, we're on Twitter and all these other social media contacts as well.

Ms. Christine Hogarth: Okay. Thank you once again. There are no further questions from me.

The Acting Chair (Mr. Percy Hatfield): We do have two minutes. Seeing no—oh, yes, Mr. Parsa. Go ahead, Michael.

Mr. Michael Parsa: Were you going to wrap up early there, Chair?

I wanted to ask a very, very quick question. First of all, as always, I want to thank the Auditor General, just like my colleagues. Great work, as always. Thank you and your team for bringing this forward. It's incredibly helpful to us, especially as we look to protect the consumers. Thank you very much, Auditor.

A question that I have, Chair, and probably the deputy minister or perhaps somebody from our ministry can answer: I'm always curious to know, when we look at good or bad, where we are. In the middle? I always like to benchmark ourselves against other jurisdictions. I'm wondering how much of a scan is done, especially in light of the report here, for us to be able to say where we are now and where we need to be, to make sure there's better protection for the people. I'm just wondering if you can just give me a quick update on that lens, if possible, please.

Ms. Renu Kulendran: Sure, absolutely. I'm going to turn it over to some of the team here, because they're really the ones who work most closely with the ESA and do that policy work, oversight work and interjurisdictional work. Perhaps I'll turn it over to Michèle Sanborn, who is the assistant deputy minister, and she may turn it over to the specific branch that's responsible for oversight. Thanks.

The Acting Chair (Mr. Percy Hatfield): The only problem we have is we have 40 seconds left, so it's going to be quick responses.

Ms. Renu Kulendran: Maybe I can just make a general comment and get back to you specifically on the work that we do with the ESA to benchmark against other jurisdictions. Although I will say that David mentioned earlier that the ESA safety record is probably one of the most outstanding in terms of benchmarking.

We in the ministry do our ongoing policy work and oversight work to see where other jurisdictions are as well.

We work collaboratively to understand where Ontario is situated and where we can do better. So—

The Acting Chair (Mr. Percy Hatfield): Thank you, Deputy. Unfortunately, we do have time constraints and we have hit that time limit.

Our time for questions this afternoon has concluded. I want to thank everyone for being here.

On a personal note, it's taken me back almost 50 years. Back in the early 1970s, when I was working at CHOV television in Pembroke, I'd get an extra \$15 a week to go down to the Pembroke arena and be the ring announcer for Big Time Wrestling, and I'd have to give a "five minutes, five minutes" warning so the actors could get themselves ready for the big finale. So thank you for that.

I'd like to thank you for appearing. My script says, "You are dismissed." We are not dismissing your work, but you are free to leave at this point. Thank you very much for coming.

Thank you to the Auditor General and her team for everything, all the work they've put into this audit and annual report.

We're going to take a pause now, briefly, as we go into closed session so that the committee can commence its report writing. Thank you all.

Colleagues, we'll get back to you shortly, once we know that what we're talking about isn't being broadcast.

The committee continued in closed session at 1447.

STANDING COMMITTEE ON PUBLIC ACCOUNTS

Chair / Président

Mr. Taras Natyshak (Essex ND)

Vice-Chair / Vice-Présidente

M^{me} France Gélinas (Nickel Belt ND)

Mr. Deepak Anand (Mississauga–Malton PC)

Mr. Toby Barrett (Haldimand–Norfolk PC)

Ms. Jessica Bell (University–Rosedale ND)

Mr. Stephen Blais (Orléans L)

Mr. Stephen Crawford (Oakville PC)

Mr. Rudy Cuzzetto (Mississauga–Lakeshore PC)

M^{me} France Gélinas (Nickel Belt ND)

Ms. Christine Hogarth (Etobicoke–Lakeshore PC)

Mr. Daryl Kramp (Hastings–Lennox and Addington PC)

Mr. Taras Natyshak (Essex ND)

Mr. Michael Parsa (Aurora–Oak Ridges–Richmond Hill PC)

Substitutions / Membres remplaçants

Mr. Robert Bailey (Sarnia–Lambton PC)

Mr. Percy Hatfield (Windsor–Tecumseh ND)

Ms. Natalia Kusendova (Mississauga Centre / Mississauga-Centre PC)

Mr. Peter Tabuns (Toronto–Danforth ND)

Also taking part / Autres participants et participantes

Mr. Terence Kernaghan (London North Centre / London-Centre-Nord ND)

Ms. Laura Mae Lindo (Kitchener Centre / Kitchener-Centre ND)

Mr. Jamie West (Sudbury ND)

Ms. Bonnie Lysyk, Auditor General

Clerk / Greffier

Mr. Christopher Tyrell

Staff / Personnel

Mr. Dmitry Granovsky, research officer,

Research Services

This is **Exhibit “C”** to the Affidavit of Ephry
Mudryk, sworn December 14, 2021

Caitlin Milne

A Commissioner for oaths, etc.

From: [Holly Watson](#)
To: richard.dearden@gowlingwlq.com; sarah.boucaud@gowlingwlq.com; heather.fisher@gowlingwlq.com; DJMiller@tgf.ca; ataylor@stikeman.com; sharon.s.hamilton@ca.ey.com
Cc: [Fredrick Schumann](#); [Brian Gover](#)
Subject: Laurentian University of Sudbury ats Auditor General of Ontario - CV-21-00669471-00CL
Date: Friday, October 15, 2021 3:30:00 PM
Attachments: [20211015 ltr to Counsel encl responding application record \(00301551xF838A\).pdf](#)
[20211015 Responding Application Record \(00301425xF838A\).pdf](#)

Dear Counsel:

Please find attached correspondence and enclosure in connection with the above-noted matter.

Thanks,
Holly

This is **Exhibit “D”** to the Affidavit of Ephry
Mudryk, sworn December 14, 2021

Caitlin Milne

A Commissioner for oaths, etc.

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

October 15, 2021

Robert Haché
President and Vice-Chancellor
Laurentian University
935 Ramsey Lake Road
Sudbury, Ontario P3E 2C6

Claude Lacroix
Chair, Board of Governors
Laurentian University
935 Ramsey Lake Road
Sudbury, Ontario P3E 2C6

Dear Mr. Haché and Mr. Lacroix,

On April 28, 2021, the Standing Committee on Public Accounts (Committee), an all-Party Committee of the Legislative Assembly of Ontario, carried the following motion:

“That the Standing Committee on Public Accounts request that the Auditor General conduct a value-for-money audit on Laurentian University’s operations from the period 2010-2020.”

Pursuant to subsection 35 (1) of the *Legislative Assembly Act* and Standing Order 113 (b) the Committee has the legal and parliamentary authority to command the production of papers or things that the Committee considers necessary for its work.

To aid the Standing Committee on Public Accounts in the conduct of its work, the Committee decided during its October 6, 2021 meeting to request that Laurentian University provide the Committee with all of the information set out in **Appendix 1**, including privileged information.

The Committee is requesting the receipt of these materials in electronic form where available no later than the respective dates indicated in **Appendix 1**.

On behalf of the Committee, I thank you for your cooperation and assistance in this matter. If you require further information, please contact Christopher Tyrell, Clerk of the Committee, at 416-325-3883 or comm-publicaccounts@ola.org.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Taras Natyshak', written over a faint, light blue grid background.

Taras Natyshak, MPP
Chair of the Committee

Cc. Christopher Tyrell, Clerk of the Committee

Appendix 1: Information and Materials Requested by the Standing Committee on Public Accounts

Information and materials requested	Date Requested by
All Board of Governors and Board of Governors Committee and Ad-hoc Committees public and in-camera materials and minutes from January 1, 2010 to present	October 22, 2021
All Senate and Senate Committee, Subcommittee and Ad-hoc Committees public and in-camera materials (including all communications of financial information on programs viability and/or Laurentian's overall finances) and minutes from January 1, 2010 to present	October 22, 2021
<p>The complete emails, including archives, from January 1, 2010 to present for the following individuals:</p> <ul style="list-style-type: none"> • Alex Freedman • Amanda Schweinbenz • Annette Cacciotti • Bernadette Schell • Brad Parkes • Blaine Nicholls • Brent Roe • Carol McAulay • Celeste Boyer • Céline Larivière • Chris Mercer • Chantal Beauparlant • Cindy Cacciotti • Claude Lacroix • Collette Rainville • Craig Fowler • Darquise Lauzon • Diane Massicotte • David Lesbarres • Dean Millar • Dominic Giroux • Eric Chappell • Eric Gauthier • Fabrice Colin • Heather McPherson • Isabelle Bourgeault-Tasse 	October 22, 2021

Information and materials requested	Date Requested by
<ul style="list-style-type: none"> • Joël Dickinson • Jay Patel • Jennifer Straub • Joseph Burke • Julie Birnie • Julie Lacroix • Justin Lemieux • Lace Marie Brodgen • Lorella Hayes • Lindsey Melanson • Marie Josee-Berger • Martin Bayer • Maxim Jean-Louis • Malek Abou-Rabia • Marie-France Girard • Melanie Boulianne • Michel Delorme • Michel Seguin • Normand Lavallee • Osman Abou-Rabia • Dr. Pierre Zundel • Patrice Sawyer • Richard Therrien • Roxane Marois • Robert Bourgeois • Sara Kunto • Serge Demers • Silvie Allard • Shauna Lehtmaki • Stan Pawlowicz • Shawn Frappier • Therese Klotz • Tom Fenske • Tracy MacLeod • Dr. Robert Haché • Robert Kerr • Rui Wang 	

Information and materials requested	Date Requested by
Any and all email communications, including archives, from January 1, 2010 to present with the following domains: <ul style="list-style-type: none"> • kpmg.ca • kpmg.com • sudburylaw.com 	October 22, 2021
Extract of all folders and contents from Laurentian University's T-drive, Google Drive, and any other drive or network share containing documents related to the administrative function of the University as of October 15, 2021	October 22, 2021
KPMG audit planning reports for the following fiscal periods: <ul style="list-style-type: none"> • year ending April 30, 2019 (presented to the Audit Committee during its meeting on March 25, 2019) • year ending April 30, 2020 (presented to the Audit Committee during its meeting on March 23, 2020) • year ending April 30, 2021 (presented to the Audit Committee) 	October 22, 2021
KPMG audit findings reports for the following fiscal periods: <ul style="list-style-type: none"> • year ending April 30, 2010 (presented to the Finance Committee during its meeting on October 4, 2010) • year ending April 30, 2021 (Audit Committee) 	October 22, 2021
All documentation relating to the appointment and retention of the external auditor (including but not limited to internal correspondence, request for proposals, vendor-submitted proposals, evaluation of submissions, minutes of any discussions or decision-making, and signed Board or Audit Committee resolutions) for the fiscal years ending April 30, 2019, April 30, 2020, April 30, 2021	October 22, 2021
All contracts, reports, and correspondence with KPMG regarding non-assurance services (e.g. consulting services, accounting advisory services, tax, financial compilation, loan staff, internal audit services, etc.) for the period of January 1, 2010 to present	October 22, 2021
Documentation and correspondence related to all Laurentian University land purchases, sales and other transactions from January 1, 2010 to present	October 22, 2021
All documentation related to "Laurentian 2.0" prepared for of by the In Camera Ad Hoc Committee on Contingency Planning and the Contingency Planning and Sustainability Measures Report	October 22, 2021
All draft and final budgets and supporting analysis for Laurentian University's budgets from 2010 to present	October 22, 2021
All student registration data from January 1, 2010 to present	October 29, 2021
All internal analysis of revenue and expenses by programs and courses prepared by faculty and administration from January 1, 2010 to present	October 29, 2021

Information and materials requested	Date Requested by
All reconciliation of student enrollment submitted to the Province of Ontario, with Laurentian's budgets presented to the Board of Governors and actual student enrollment for January 1, 2010 to present	October 29, 2021
Materials produced by faculty deans on their analysis of programs' viability and student enrolment from January 1, 2010 to present	October 29, 2021
All internal correspondence regarding the preparation of enrollment data submitted to the province of Ontario for funding purposes from January 1, 2010 to present	October 29, 2021
<p>All documentation, including supporting analysis and decisions made in relation to program/course cancellations, staff and faculty cuts and restructuring prepared up to January 31, 2021 including, but not limited to:</p> <ul style="list-style-type: none"> • All analysis and supporting documentation used in the analysis • Methodology of analysis • Listing of all staff/faculty and departments that contributed to the analysis • Results of the analysis <p>All material that was provided to senior management, and Senate or Board or Committees related to this matter.</p>	October 29, 2021
All current and former Laurentian University Directors and Officers (D&O) Liability Insurance Policy(s) (including Carriers and Reinsurers agreements and policies) from January 1, 2010 to present	October 29, 2021
All personnel files, including but not limited to employment and benefits contracts, performance reviews, annual merit pay and compensation reviews, and resumes, for Chiefs of Staff, Special Advisors, University Secretary and General Counsel, Chief Advancement Officer, and Assistant/Associate Vice Presidents and higher including Interim and Acting appointments (current and former) from January 1, 2010 to present	October 29, 2021
All recruitment files, including but not limited to recruitment postings, applications and resumes received, and documentation of the selection process steps and decisions making for all Chiefs of Staff, Special Advisors and Assistant/Associate Vice Presidents Administration (non-academic) appointments from January 1, 2010 to present	October 29, 2021
All business case, justification or other analysis used to inform the creation of new senior administrator positions (Assistant/Associate Vice Presidents and higher) from January 1, 2010 to present	October 29, 2021
All legal engagement letters and invoices from January 1, 2010 to present	October 29, 2021
Any and all correspondence with Lenczner Slaght LLP, Stockwoods LLP Barristers, Thornton Grout Finnigan LLP and related personnel (including but not limited to all documents, engagement letters, retainer	October 29, 2021

Information and materials requested	Date Requested by
agreements, terms and conditions, invoices, recordings, reports, legal opinions) from January 1, 2010 to present	
All documentation and correspondence relating to the property encroachment on 2115 South Bay Rd from January 1, 2010 to present	October 29, 2021
All documents, including contracts and other information, related to third-party partnership agreements from January 2010 to present	October 29, 2021
All correspondence with the City of Sudbury regarding the School of Architecture property from January 1, 2010 to present	October 29, 2021
All information and internal communications regarding actual or potential conflict of interest situations between January 1, 2010 and present	October 29, 2021
All communications and correspondence with Desjardins between January 1, 2010 to January 31, 2021	October 29, 2021
A listing of restricted donations received from January 1, 2010 to present	October 29, 2021
A listing of restricted research funding received from January 1, 2010 to present	October 29, 2021
All documentation pertaining to current and past litigation from January 1, 2010 to present	November 5, 2021
<p>All documentation provided by Laurentian University to Ernst & Young (EY) as financial advisor and subsequently monitor, and documentation provided by E&Y to Laurentian University from January 1, 2010 to present, not limited to:</p> <ul style="list-style-type: none"> • Letters(s) of engagement, statements of work, and terms of reference • Documentation and correspondence for the period of engagement prior to the date of the CCAA filing and after the CCAA filing • Reports and draft reports • Meeting minutes 	November 5, 2021
All documentation pertaining to union grievances from January 1, 2010 to present	November 5, 2021
All complaints filed by Laurentian University's employees from January 1, 2010 to present and accompanying documentation of the resolutions of those complaints	November 5, 2021
All correspondence, materials and minutes, from meetings between LUAPS Executive, the Board and/or Laurentian University from 2010 to present	November 5, 2021
Contracts with all international student recruiters and foreign governments from January 1, 2010 to present	November 5, 2021

Information and materials requested	Date Requested by
All international travel expenses related to international student recruitment from January 1, 2010 to present	November 5, 2021
All internal and external communications regarding the compliance with the Midwifery program funding agreements from January 1, 2010 to present	November 5, 2021
All internal and external communications regarding Laurentian's compliance regarding compliance with (<i>An Act to Incorporate Laurentian University of Sudbury, Broader Public Sector Accountability Act, Broader Public Sector Executive Compensation Act, French Language Services Act, Protecting a Sustainable Public Sector for Future Generations Act, 2019</i>) from January 1, 2010 to present	November 5, 2021
All current and former Board of Governors and Senate expenses from January 1, 2010 to present	November 5, 2021
All information on Board of Governor nominations and appointments from January 1, 2010 to present	November 5, 2021
All financial statements for the Laurentian University pension plan as well as plan text, plan amendments, actuarial valuations (funding and accountings), fund manager investment reports, and all documentation regarding the conversion of the pension plan from defined contribution to defined benefits for period of 2010 to present	November 5, 2021
The bids and submissions received for the operational and governance review that the university is currently undertaking, and any evaluations of the proponents	November 5, 2021

This is **Exhibit “E”** to the Affidavit of Ephry Mudryk,
sworn December 14, 2021

Castlin Milne

A Commissioner for oaths, etc.

From: Standing Committee on Public Accounts <comm-publicaccounts@ola.org>
Date: October 15, 2021 at 9:54:24 PM EDT
To: clacroix@sudburylaw.com
Subject: Request for Documents from Laurentian University

Good evening,

Please see attached a letter from the Chair of Ontario's Standing Committee on Public Accounts.

Should you have any questions, please feel free to reach me via phone or email.

Take care,

Chris

[CONFIDENTIALITY NOTE](#) - AVIS: COURRIEL CONFIDENTIEL.

You can view the confidentiality terms at <https://laurentian.ca/confidentiality>. Notre avis de confidentialité est disponible au site <https://laurentienne.ca/avis>

This is **Exhibit “F”** to the Affidavit of Ephry Mudryk,
sworn December 14, 2021

Caitlin Milne

A Commissioner for oaths, etc.



Brian Gover
Direct Line: 416-593-2489
Direct Fax: 416-593-9345
briang@stockwoods.ca

October 19, 2021

SENT VIA EMAIL to tnatyshak-qp@ndp.on.ca

Taras Natyshak, MPP
Chair, Standing Committee on Public Accounts
Legislative Building, Queen's Park
Toronto, ON
M7A 1A5

Dear Mr. Natyshak:

Re: Laurentian University of Sudbury – Standing Committee on Public Accounts

I am counsel for Laurentian University of Sudbury (the “**University**”) in respect of this matter. My client has forwarded a letter from you which was delivered to my client on the evening of Friday, October 15, 2021. I also write on behalf of the Chair of the University’s Board of Governors, to whom your letter was also addressed.

Your letter conveyed a request by the Standing Committee on Public Accounts (the “**Committee**”), of which you are Chair. It asked the University to produce a lengthy list of documents and information, some of which had previously been requested by the Auditor General in her value-for-money audit.

The University would like to discuss with the Committee how the University can produce documents to allow the Committee to perform its function while not compromising the University’s ability to continue to operate. In that regard, there are several important circumstances of which the Committee should be aware.

Scope of documents requested and timelines

First, there is the scope of documents that the Committee has requested, and the timelines set out in the request. Appendix A to your letter sets out various dates by which the Committee requests production: October 22 (this Friday), October 29 (the following Friday), and November 5 (the Friday after that).

- 2 -

I understand the Committee's desire to obtain information quickly, but I must point out that the timelines requested would be impossible for the University. Before receiving your request, the University's resources were stretched thin. Staff have been working tirelessly to deal with four extremely pressing situations: (1) the beginning of the academic year and the return of students to campus; (2) the COVID-19 pandemic; (3) the CCAA restructuring; and (4) the Auditor General's audit. Staff have been working diligently to satisfy the Auditor General's documentary requests as quickly as possible.

The University has already produced a vast amount of documentation to the Auditor General. However, the requests in your letter are, in many cases, much broader than those made to date by the Auditor General. Some of the Committee's requests call for extremely voluminous production, such as the one for the last ten years of emails from 63 former or current members personnel, which in all likelihood would involve the production of tens of millions of records. In other cases, the requests require information to be gathered from the review of many different documents in many different areas. The University simply does not have the resources to fulfill these requests on anywhere close to the timeline requested by the Committee.

Documents pertaining to the CCAA negotiations

Second, the Committee has requested documents pertaining to the restructuring currently going on under the federal *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("CCAA"). The Committee will appreciate that the restructuring is necessary to the University's survival.

Since it sought CCAA protection in February 2021, the University has been negotiating with creditors, unions, federated universities, and other stakeholders to achieve a compromise that will allow the University to emerge as a financially viable and vibrant institution. At the heart of the CCAA negotiations is a confidential mediation facilitated by a judge of the Ontario Superior Court of Justice.

To date, the CCAA process has resulted in annual savings of approximately \$40 million – a reduction of 25% in the University's annual expenses.

The negotiations, compromises and settlements that led to these savings depend on confidentiality and privilege being respected at all times, without exception. Parties would not be able to negotiate if they knew that communications could be disclosed in any setting to anyone outside of the immediate parties themselves. In particular, there is a court order requiring that all information and documents pertaining in any way to the mediation remain confidential. I enclose a copy. The mediation process, and the negotiations more broadly, are still going on.

Among the documents requested by the Committee are documents pertaining to the CCAA negotiations and the confidential mediation. Leaving aside the fact that producing documents relating to the mediation would violate a court order, the mere prospect of disclosure would seriously compromise the CCAA restructuring and therefore the University's ability to continue operating. Parties would not enter into in any further discussions or negotiations if there was any

prospect that the subject matter or content of those discussions would be disclosed to anyone. This would mean that the University could not exit the CCAA process through a plan of arrangement.

Privileged information

Third, your letter expressly requests privileged information. Solicitor-client privilege is a critically important right in our legal system. The Supreme Court of Canada has described it as “a principle of fundamental justice and civil right of supreme importance in Canadian law.”¹

Parliamentary bodies themselves recognize that they should not intrude on privilege, or other significant interests, unnecessarily. In requesting documents, legislatures should proceed in a way that allows them to carry out their important functions while also avoiding or minimizing the harm that unrestricted disclosure could inflict. Often it is advisable to engage in dialogue with a records holder to find a way forward. There is recent and compelling authority for this proposition. I refer to the ruling of the Honourable Peter Milliken, Speaker of the House of Commons, on April 27, 2010, starting on p. 98 (enclosed); and the ruling of Speaker Dave Levac of the Legislative Assembly, on September 13, 2012, starting on p. 3607 (enclosed).

The request as currently framed calls for the disclosure of the University’s communications with its lawyers from 2010 to present, including those lawyers currently representing the University and Board in the CCAA restructuring process. The University’s ability to communicate with those lawyers and to receive advice in connection with the restructuring would be undermined if their communications are subject to disclosure. A lawyer cannot represent a client adequately if the lawyer and client cannot be assured that their communications will remain confidential. If the University’s relationships with its lawyers in ongoing litigation are undermined in this manner, it will compromise its ability to complete the rest of the restructuring and continue operating.

I know the Committee will bring careful consideration to the matters outlined above. If the University’s restructuring fails and it is forced to close its doors, there would be serious harm to the University’s students, faculty and staff, and more broadly to the Sudbury community and northeastern Ontario. It is unimaginable that the Committee intends that result.

¹ *Lavallee, Rackel & Heintz v Canada (Attorney General)*, 2002 SCC 61 (CanLII), [2002] 3 SCR 209 at para 36.

- 4 -

Thank you for considering the contents of this letter. I will contact the Committee's Clerk, Mr. Tyrrell, to discuss next steps.

Yours truly,



Brian Gover
BG/

Enclosures: Ruling of Speaker Peter Milliken, April 27, 2010
Ruling of Speaker Dave Levac, September 13, 2012
Order re Appointment of Mediator of Chief Justice Morawetz, February 5, 2021
Notice of Application, September 28, 2021
Endorsement of Chief Justice Morawetz, September 27, 2021

- c. Claude Lacroix, Chair, Board of Governors
Dr. Robert Haché, President and Vice-Chancellor
D. J. Miller, *Thornton Grout Finnigan LLP* (Insolvency counsel to the University)
Sharon Hamilton, *Ernst & Young Inc.* (Court-Appointed Monitor of the University)
Ashley Taylor, *Stikeman Elliott LLP* (Counsel to the Court-Appointed Monitor)
Peter Osborne, *Lenczner Slaght* (Counsel to the Board of Governors of the University)
Richard Dearden, *Gowling WLG (Canada) LLP* (Counsel to the Auditor General)

This is **Exhibit “G”** to the Affidavit of Ephry Mudryk,
sworn December 14, 2021

Caitlin Milne

A Commissioner for oaths, etc.

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

October 22, 2021

Robert Haché
President and Vice-Chancellor
Laurentian University
935 Ramsey Lake Road
Sudbury, Ontario P3E 2C6

Claude Lacroix
Chair, Board of Governors
Laurentian University
935 Ramsey Lake Road
Sudbury, Ontario P3E 2C6

Dear Mr. Haché and Mr. Lacroix,

The Standing Committee on Public Accounts (Committee) has received the letter from your legal counsel, Mr. Gover, dated October 19, 2021.

As indicated in our letter of October 15, 2021, the Committee has the power to command the production of papers and things from Laurentian University of Sudbury (Laurentian) that the Committee considers necessary for its work, including privileged information.

The documents received by the Committee will not be exhibited publicly. The Committee is of the view that the provision of information to the Committee will not negatively impact Laurentian, the Sudbury community or northeastern Ontario, nor will it compromise Laurentian's ability to continue to operate.

In discussion with the Auditor General, we understand that a number of our requests are readily available and already collected in an electronic format by Laurentian University staff or by your legal counsel. Therefore, in the spirit of cooperation, we have identified the items that we believe can be easily provided with minimal time and effort. As such, we require the items listed in Appendix A to be provided to the Committee by October 29, 2021.

All remaining items included in our October 15, 2021 letter must be provided no later than November 12, 2021. It will be a serious matter if Laurentian University does not comply with the Committee's request by the indicated deadlines. When this Committee decides to launch an inquiry and request documents pursuant to its authority under the Standing Orders of the Legislative Assembly of Ontario, it is helping the Assembly to carry out an accountability function and to exercise a parliamentary privilege that, as noted in the Speakers' rulings referenced in Mr. Gover's letter, ultimately trumps the legal privileges and other considerations mentioned in that letter. Compliance with the Committee's request and deadlines is therefore expected.

The Committee's request is clear and does not require a meeting with Laurentian's legal counsel.

I thank you in advance for your cooperation and assistance in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Taras Natyshak', written in a cursive style.

Taras Natyshak, MPP
Chair of the Committee

CC: Christopher Tyrell, Clerk of the Committee

**Appendix A:
Information to be provided to the Standing Committee on Public Accounts by October
29, 2021**

Information and materials requested
All Board of Governors and Board of Governors Committee and Ad-hoc Committees public and in-camera materials and minutes from January 1, 2010 to present in their entirety
All Senate and Senate Committee, Subcommittee and Ad-hoc Committees public and in-camera materials (including all communications of financial information on programs viability and/or Laurentian's overall finances) and minutes from January 1, 2010 to present in their entirety
<p>**The complete emails (including all archives and migrated emails from the legacy mail system to Google Mail), as of either August 12, August 13, or August 16, 2021 for the following individuals and domain names**:</p> <ul style="list-style-type: none"> • Carol McAulay • Chris Mercer • Dominic Giroux • Isabelle Bourgeault-Tasse • Julie Lacroix • Lorella Hayes • Normand Lavallee • Dr. Pierre Zundel • Sara Kunto • Serge Demers • Shawn Frappier • Tracy MacLeod • Dr. Robert Haché (rhache@laurentian.ca, rhpvc@laurentian.ca) • president@laurentian.ca • pvpa@laurentian.ca • vpadmin@laurentian.ca
<p>**Any and all email communications, (including all archives and migrated emails from the legacy mail system to Google Mail), as of either August 12, August 13, or August 16, 2021 with the following domains**:</p> <ul style="list-style-type: none"> • kpmg.ca • sudburylaw.com
<p>**Extract of all folders, including subfolders and contents, from Laurentian University's T-Drive as of August 16, 2021 contained in the folders identified below**:</p> <ul style="list-style-type: none"> • Finance • Human Resources and Organizational Development

Information and materials requested
<ul style="list-style-type: none"> • Legal • Physical Plant Capital • Risk and Insurance • Secretariat <p><i>(Our understanding is that the above folders contain, at a minimum, the following types of information: Accounting, Finance, Legal / General Counsel, Corporate Secretary, Board of Governors, Capital Procurement, Procurement and HR)</i></p>
<p>KPMG audit planning reports for the following fiscal periods:</p> <ul style="list-style-type: none"> • year ending April 30, 2019 (presented to the Audit Committee during its meeting on March 25, 2019) • year ending April 30, 2020 (presented to the Audit Committee during its meeting on March 23, 2020) • year ending April 30, 2021 (presented to the Audit Committee at an unknown date)
<p>KPMG audit findings reports for the following fiscal periods:</p> <ul style="list-style-type: none"> • year ending April 30, 2010 (presented to the Finance Committee during its meeting on October 4, 2010) • year ending April 30, 2021 (presented to the Audit Committee at an unknown date)
<p>All documentation relating to the appointment and retention of the external auditor (including but not limited to internal correspondence, request for proposals, vendor-submitted proposals, evaluation of submissions, minutes of any discussions or decision-making, and signed Board or Audit Committee resolutions) for the fiscal years ending April 30, 2019, April 30, 2020, April 30, 2021</p>
<p>All draft and final budgets and supporting analysis for Laurentian University's budgets from 2010 to present</p>

* The Committee's understanding is that these materials have already been provided in complete form to Laurentian Counsel*

The Committee's understanding is that this information is already downloaded and stored on a hard drive at Laurentian University with password protection from Laurentian University and Office of the Auditor General.

This is **Exhibit “H”** to the Affidavit of Ephry Mudryk,
sworn December 14, 2021

Caitlin Milne

A Commissioner for oaths, etc.



Brian Gover
Direct Line: 416-593-2489
Direct Fax: 416-593-9345
briang@stockwoods.ca

October 29, 2021

SENT VIA EMAIL to tnatyshak-qp@ndp.on.ca

Taras Natyshak, MPP
Chair, Standing Committee on Public Accounts
Legislative Building, Queen's Park
Toronto, ON
M7A 1A5

Dear Mr. Natyshak:

Re: Laurentian University of Sudbury – Standing Committee on Public Accounts

My client has forwarded your letter, which was delivered to my client, Laurentian University of Sudbury (“**Laurentian**” or the “**University**”) on October 22, 2021. I also write on behalf of the Chair of the University’s Board of Governors, to whom your letter was also addressed.

Your October 22 letter states, “The Committee’s request is clear and does not require a meeting with Laurentian’s legal counsel.” However, shortly after your letter was received, I had a pre-arranged call with the Clerk of the Committee, Christopher Tyrrell. Mr. Tyrrell offered to arrange a call between me and Parliamentary counsel. I told him that such a call would be helpful.

Later that afternoon, however, Mr. Tyrrell sent me an email stating that “any concerns that you have with the contents of the letters sent by the Committee should be addressed in writing and returned to this email address.”

I take from this email that the Committee has instructed Mr. Tyrrell to put an end to further oral discussions and, specifically, not to arrange a call between me and Parliamentary counsel.

Laurentian understands and respects the Committee’s mandate. Laurentian remains willing to discuss any arrangement under which it could produce documents while respecting court orders, the pending process under the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36 (“**CCAA**”), and the rights of third parties.

Accordingly, the only documents the University is at liberty to provide are those that do not contain privileged information and are not subject to confidentiality pursuant to court orders. Gathering

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documents to fulfill some of these requests, especially from the October 15 letter, may require a great deal of staff time, and they cannot be fulfilled by the Committee's deadline of November 12, 2021. Full production would take much longer. The University is in the process of determining how to collect and produce these documents and will advise you as soon as we have that information.

That said, many of the Committee's requests correspond to requests already made by the Auditor General of Ontario in her value-for-money audit, and already fulfilled by the University. The University will consent to the Auditor General providing those documents directly to the Committee, as long as the Committee will not disclose or permit the disclosure of any of the documents or their contents.

Because the Committee has demanded information and documents that the University is prohibited by court order from disclosing, and for information and documents that implicate the rights of third parties and the CCAA process, it would appear that an attendance before Chief Justice Morawetz will be necessary.

Again, the University remains willing to discuss this matter, and to try to reach a mutually agreeable solution.

Thank you for considering the contents of this letter. I look forward to hearing from you.

Yours truly,



Brian Gover
BG/

- c. Claude Lacroix, Chair, Board of Governors
- Dr. Robert Haché, President and Vice-Chancellor
- D. J. Miller, *Thornton Grout Finnigan LLP* (Insolvency counsel to the University)
- Sharon Hamilton, *Ernst & Young Inc.* (Court-Appointed Monitor of the University)
- Ashley Taylor, *Stikeman Elliott LLP* (Counsel to the Court-Appointed Monitor)
- Peter Osborne, *Lenczner Slaght* (Counsel to the Board of Governors of the University)
- Richard Dearden, *Gowling WLG (Canada) LLP* (Counsel to the Auditor General)
- Fredrick Schumann, *Stockwoods LLP*

This is **Exhibit “I”** to the Affidavit of Ephry Mudryk,
sworn December 14, 2021

Caitlin Milne

A Commissioner for oaths, etc.

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

November 3, 2021

Robert Haché
President and Vice-Chancellor
Laurentian University
935 Ramsey Lake Road
Sudbury, Ontario P3E 2C6

Claude Lacroix
Chair, Board of Governors
Laurentian University
935 Ramsey Lake Road
Sudbury, Ontario P3E 2C6

Dear Mr. Haché and Mr. Lacroix,

Further to your counsel's correspondence of October 19 & 29, 2021, the Standing Committee on Public Accounts ("Committee") seeks clarification of Laurentian University of Sudbury's ("University") positions on the Committee's demand that the University produce certain documents:

- 1) In the correspondence of October 19, 2021, the University implicitly acknowledges the parliamentary right to demand and receive documents that are subject to solicitor-client privilege. Does the University now intend to produce documents that are alleged to be subject to solicitor-client privilege to the Committee? If not, why not?
- 2) The University has alleged that certain judicial orders prohibits the University from disclosing certain documents to the Committee. Can the University provide the Committee with a copy of all such orders that the University is relying on and explain how each order prevents the University from complying with the Committee's demand?
- 3) The University has alleged that certain documents will prejudice the University and third parties. For every demand made in Appendix A of the Committee's correspondence of October 22, 2021 and Appendix 1 of the Committee's correspondence of October 15, 2021, will the University provide a detailed explanation of what prejudice will arise from the disclosure of each of those documents to the Committee?
- 4) Given that the Committee has indicated that any documents we receive from the University will not be publicly exhibited, can the University explain how the disclosure of documents set out in Appendix A of the Committee's correspondence of October 22, 2021, and Appendix 1 of the Committee's correspondence of October 15, 2021 to the Committee will prejudice third parties and the CCAA process?

- 5) In the correspondence of October 29, 2021, the University has agreed to provide certain documents to the Committee. Will the University indicate by what date it will provide those documents?

The Committee looks forward to working collaboratively with the University to reach an acceptable outcome. However, the Committee notes that it has been three weeks since its initial demand and no documents have been produced by the University. Therefore, unless demonstrable progress is made on the Committee's demand soon, the Committee may have to seek a Speaker's warrant to enforce its demand. I trust this will not be required.

The Committee would appreciate a response by Monday, November 15, 2021 at Noon (EST).

Sincerely,

A handwritten signature in blue ink, appearing to read 'Taras Natyshak', written in a cursive style.

Taras Natyshak, MPP
Chair of the Committee

CC: Christopher Tyrell, Clerk of the Committee

This is **Exhibit “J”** to the Affidavit of Ephry Mudryk,
sworn December 14, 2021

Caitlin Milne

A Commissioner for oaths, etc.



Brian Gover
Direct Line: 416-593-2489
Direct Fax: 416-593-9345
briang@stockwoods.ca

November 10, 2021

SENT VIA EMAIL to tnatyshak-qp@ndp.on.ca

Taras Natyshak, MPP
Chair, Standing Committee on Public Accounts
Legislative Building, Queen's Park
Toronto, ON
M7A 1A5

Dear Mr. Natyshak:

Re: Laurentian University of Sudbury – Standing Committee on Public Accounts

I am writing to reply to your letter dated November 3, 2021 to Dr Robert Haché and Mr Claude Lacroix.

I can respond to the points in your letter as follows:

1. I recognize that parliamentary committees do on occasion request documents that are subject to solicitor-client privilege. I do not necessarily accept that a committee has a right to *compel* the production of such documents, in particular from an entity that is not part of government. As I said in my October 19 letter, solicitor-client privilege is a constitutional right under the *Charter of Rights and Freedoms*. Express language is required to abrogate it, and there is none in s. 35 of the *Legislative Assembly Act*, RSO 1990, c L.10, which you cited in your October 15 letter. Even if such language did exist, it would be subject to strict constitutional scrutiny.

That said, I remain hopeful that it will be unnecessary to deal with the legalities if we continue the discussion that I proposed in that letter. Your letter of November 3 is encouraging in that regard.

2. I have **enclosed** a copy of the Order of the Honourable Chief Justice Geoffrey Morawetz of the Superior Court of Justice dated February 5, 2021 (the "**Mediation Order**"). It instituted a mediation process in the CCAA restructuring proceeding, appointed the Honourable Sean Dunphy as judicial mediator, and imposed confidentiality protections on

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information, documents and communication in respect of, or exchanged in, the mediation. At the outset of the mediation, Justice Dunphy also imposed terms of confidentiality as a pre-condition to ensure the free flow of communications and information by all participants.

Many of the Committee's requests call for the production of documents that contain information about the CCAA mediation. The University is therefore not able to produce them to the Committee without violating a court order.

3. Delivering documents that disclose confidential or privileged information about the CCAA process would prejudice the University and the other parties to that process. The CCAA proceeding involves continual negotiations and discussions amongst the University and its stakeholders. The ultimate aim of all these discussions is to develop and put forward a plan of arrangement, which is the ultimate settlement between the University and its creditors. These discussions need to be held confidentially if they are to occur at all, and they are a requirement for a successful restructuring.

Delivering documents that disclose communications between the University and its lawyers would also prejudice the University. Such disclosure could undermine the University's position in ongoing litigation, including the CCAA proceeding and the separate court application brought by the Auditor General, which is to be heard by Chief Justice Morawetz on December 6. It would also have a chilling effect on the University's ability to receive candid and effective legal advice and representation, hampering its ability to restructure.

Finally, disclosing documents over which a third party held a privilege (for instance, settlement privilege) could prejudice that third party.

The chart enclosed with this letter indicates, in relation to each request of the Committee, whether production of the documents for that request would disclose confidential or privileged information about the CCAA process, or other privileged information.

4. While the Committee has indicated that any documents it receives from the University will not be publicly exhibited, there is still the risk that the Committee's meetings, discussions, or report would reveal privileged information. Indeed, even having the Committee members review the University's privileged documents would infringe the privilege. I would appreciate hearing from you about what confidentiality measures the Committee would propose to mitigate the risks of disclosure.
5. The University will work as fast as it can to satisfy the Committee's requests. You will appreciate that the Committee's requests cover a very broad range of the University's operations over a more than ten year period. University staff are also occupied with fulfilling the requests of the Auditor General. While I cannot give a single answer for how long it will take to produce documents, I can report the following:

- 3 -

- a. As I said in my October 22 letter, the University consents to the Auditor General providing those documents directly to the Committee, as long as the Committee will not disclose or permit the disclosure of any of the documents or their contents. I look forward to receiving that confirmation.
- b. The University has already provided to the Auditor General the following categories of documents of information that correspond to the Committee's requests:
 - i. All non-privileged information in meeting materials of the Board of Governors (including committees thereof).
 - ii. A list of restricted research funding received from 2010 to present.
 - iii. A list of restricted donations from 2010 to present.

The University has also provided the Auditor General with full access to Laurentian's internal financial system and enrollment system.

- c. Some of the Committee's requests implicate a large volume of hard-copy files (e.g. personnel files, recruitment files). Others implicate documents that are not stored in one place or within a single department. The University does not have the staff to locate, retrieve, and scan these files. The University will bring in external support, but this will obviously come at a cost, and there are limits to how much external personnel can help.
- d. Where the University can gather documents and they do not implicate one of the issues outlined above, they will be provided to the Committee as soon as possible.

You will appreciate that the requests made by the Committee are extraordinarily broad. If the Committee could narrow them in any way, to what it felt it truly needed for its inquiry, it would both reduce the issue about production of privileged information, and allow the University to accomplish production more quickly.

I hope the above is satisfactory to the Committee and I look forward to your response.

Yours truly,



Brian Gover
BG/

Enclosures: Mediation Order, February 5, 2021
Chart of Committee requests

- c. Claude Lacroix, Chair, Board of Governors
Dr. Robert Haché, President and Vice-Chancellor
D. J. Miller, *Thornton Grout Finnigan LLP* (Insolvency counsel to the University)
Sharon Hamilton, *Ernst & Young Inc.* (Court-Appointed Monitor of the University)
Ashley Taylor, *Stikeman Elliott LLP* (Counsel to the Court-Appointed Monitor)
Peter Osborne, *Lenczner Slaght* (Counsel to the Board of Governors of the University)
Richard Dearden, *Gowling WLG (Canada) LLP* (Counsel to the Auditor General)
Fredrick Schumann, *Stockwoods LLP*
Celeste Boyer, *Laurentian University*

List B – Request of Oct 22 2021

	Request	Confidential and privileged information about CCAA process	Other privileged information
1.	All Board of Governors and Board of Governors Committee and Ad-hoc Committees public and in-camera materials and minutes from January 1, 2010 to present in their entirety	Yes (for period March 21, 2020 to present)	Yes
2.	All Senate and Senate Committee, Subcommittee and Ad-hoc Committees public and in camera materials (including all communications of financial information on programs viability and/or Laurentian's overall finances) and minutes from January 1, 2010 to present in their entirety*	Yes, but only as it relates to Senate Subcommittee on Academic Restructuring for the period February 5, 2021 to present	No
3.	The complete emails (including all archives and migrated emails from the legacy mail system to Google Mail), as of either August 12, August 13, or August 16, 2021 for the following individuals and domain names: Carol McAulay	No	Yes
4.	Emails Chris Mercer	No	Yes
5.	Emails Dominic Giroux	No	Yes
6.	Emails Isabelle Bourgeault-Tasse	Yes, for the period March 21, 2020	Yes
7.	Emails Julie Lacroix	Yes, for the period March 21, 2020 to present	Yes

	Request	Confidential and privileged information about CCAA process	Other privileged information
8.	Emails Lorella Hayes	Yes, for the period March 21, 2020 to present	Yes
9.	Emails Normand Lavallée	Yes, for the period March 21, 2020 to present	Yes
10.	Emails Dr. Pierre Zundel	No	Yes
11.	Emails Sara Kunto	Yes, for the period March 21, 2020 to present	Yes
12.	Emails Dr. Serge Demers	Yes, for the period March 21, 2020 to present	Yes
13.	Emails Shawn Frappier	Yes, for the period March 21, 2020 to present	Yes
14.	Emails Tracy MacLeod	Yes, for the period March 21, 2020 to present	Yes
15.	Emails Dr. Robert Haché <ul style="list-style-type: none"> • rhache@laurentian.ca • rhpvc@laurentian.ca • president@laurentian.ca 	Yes, for the period March 21, 2020 to present	Yes
16.	Emails pvpa@laurentian.ca (Provost's general email account)	Yes, for the period March 21, 2020 to present	Yes

	Request	Confidential and privileged information about CCAA process	Other privileged information
17.	Emails vpadmin@laurentian.ca	Yes, for the period March 21, 2020 to present	Yes
18.	Any and all email communications, (including all archives and migrated emails from the legacy mail system to Google Mail), as of either August 12, August 13, or August 16, 2021 with the following domains: <input type="checkbox"/> kpmg.ca <input type="checkbox"/> sudburylaw.com	KPMG: no Sudburylaw.com: yes	KPMG: No Sudburylaw.com: Yes
19.	Extract of all folders, including subfolders and contents, from Laurentian University's T drive as of August 16, 2021 contained in the folders identified below: Finance	Yes, for the period March 21, 2020 to present	Yes
20.	T drive Human Resources and Organizational Development	Yes, for the period March 21, 2020 to present	Yes
21.	T drive Legal	Yes, for the period March 21, 2020 to present	Yes
22.	T drive Physical Plant Capital	No	Yes
23.	T drive Risk and Insurance	Yes, for the period February 1, 2021 to present	Yes

	Request	Confidential and privileged information about CCAA process	Other privileged information
24.	T drive Secretariat	Yes, for the period March 21, 2020 to present	Yes
25.	<p>KPMG audit planning reports for the following fiscal periods:</p> <p><input type="checkbox"/> year ending April 30, 2019 (presented to the Audit Committee during its meeting on March 25, 2019)</p> <p><input type="checkbox"/> year ending April 30, 2020 (presented to the Audit Committee during its meeting on March 23, 2020)</p> <p><input type="checkbox"/> year ending April 30, 2021 (presented to the Audit Committee at an unknown date)</p>	No	No
26.	<p>KPMG audit findings reports for the following fiscal periods:</p> <p><input type="checkbox"/> year ending April 30, 2010 (presented to the Finance Committee during its meeting on October 4, 2010)</p> <p><input type="checkbox"/> year ending April 30, 2021 (presented to the Audit Committee at an unknown date)</p>	No	No
27.	All documentation relating to the appointment and retention of the external auditor (including but not limited to internal correspondence, request for proposals, vendor-submitted proposals, evaluation of submissions, minutes of any discussions or decision-making, and signed Board or Audit	Only as it relates to the fiscal year ending April 30, 2021	No

	Request	Confidential and privileged information about CCAA process	Other privileged information
	Committee resolutions) for the fiscal years ending April 30, 2019, April 30, 2020, April 30, 2021		
28.	All draft and final budgets and supporting analysis for Laurentian University's budgets from 2010 to present	No	No

LIST A - Request of October 15, 2021

	Request	Confidential and privileged information about CCAA process	Other privileged information
29.	All Board of Governors and Board of Governors Committee and Ad-hoc Committees public and in-camera materials and minutes from January 1, 2010 to present in their entirety	See List B	See List B
30.	All Senate and Senate Committee, Subcommittee and Ad-hoc Committees public and in camera materials (including all communications of financial information on programs viability and/or Laurentian's overall finances) and minutes from January 1, 2010 to present in their entirety	See List B	See List B
31.	The complete emails, including archives, from January 1, 2010 to present (October 15, 2021) Joel Dickinson	Yes, for the period January 1, 2021, to present	Yes
32.	Emails Jay Patel	Yes, for the period February 5, 2021 to present	No
33.	Emails Jennifer Straub	Yes, for the period February 5, 2021 to present	No
34.	Emails Joseph Burke	Yes, for the period March 21, 2020 to present	Yes
35.	Emails Julie Birnie	Yes, for the period March 21, 2020 to present	Yes
36.	Emails Julie Lacroix	See List B	See List B
37.	Emails Justin Lemieux	No	No
38.	Emails Lace Marie Brodgen	Yes, for the period February 1, 2021 to present	Yes

	Request	Confidential and privileged information about CCAA process	Other privileged information
39.	Emails Lorella Hayes	See List B	See List B
40.	Emails Lindsey Melanson	Yes, for the period February 1, 2021 to present	Yes
41.	Emails Dr. Marie Josée-Berger	Yes, for the period August 1, 2020 (date of hire)v to present	Yes
42.	Emails Martin Bayer	Yes, for the period March 21, 2020 to present	Yes
43.	Emails Maxim Jean-Louis	Yes, for the period March 21, 2020 to present	Yes
44.	Emails Malek Abou-rabia	Yes, for the period February 5, 2021 to present	No
45.	Emails Marie-France Girard	Yes, for the period February 1, 2021 to present	Yes
46.	Emails Melanie Boulianne	Yes, for the period February 1, 2021 to present	Yes
47.	Emails Michel Delorme	Yes, for the period February 1, 2021 to present	Yes
48.	Emails Michel Seguin	No	Yes
49.	Emails Normand Lavallee	See List B	See List B
50.	Emails Dr. Osman Abou-Rabia	No	Yes
51.	Emails Dr. Pierre Zundel	See List B	See List B
52.	Emails Dr. Patrice Sawyer	No	Yes
53.	Emails Richard Therrien	No	No

	Request	Confidential and privileged information about CCAA process	Other privileged information
54.	Emails Roxane Marois	Yes, for the period February 1, 2021 to present	Yes
55.	Emails Robert Bourgeois	No	Yes
56.	Emails Sara Kunto	See List B	See List B
57.	Emails Dr. Serge Demers	See List B	See List B
58.	Emails Silvie Allard	No	Yes
59.	Emails Shauna Lehtimäki	Yes, for the period February 1, 2021 to present	Yes
60.	Emails Stan Pawlowicz (former Board member)	No	Yes
61.	Emails Shawn Frappier	See List B	See List B
62.	Emails Therese Klotz	No	Yes
63.	Emails Tom Fenske	Yes, for the period February 1, 2021 to present, with union's own counsel	Yes (third party)
64.	Emails Fabrice Colin	Yes, for the period February 1, 2021 to present, with union's own counsel	Yes (third party)
65.	Emails Tracy MacLeod	See List B	See List B
66.	Emails Dr. Robert Haché	See List B	See List B
67.	Emails Dr. Robert Kerr	No	Yes
68.	Emails Rui Wang	No	Yes

	Request	Confidential and privileged information about CCAA process	Other privileged information
69.	Emails Alex Freedman	No	Yes
70.	Emails Amanda Schweinbenz	Yes, for the period February 5, 2021 to present	No
71.	Emails Annette Cacciotti	No	Yes
72.	Emails Bernadette Schell	No	Yes
73.	Emails Brad Parkes	No	Yes
74.	Emails Blaine Nicholls (former Board member)	No	Yes
75.	Emails Brent Roe	Yes, for the period February 5, 2021 to present	No
76.	Emails Carol McAulay	See List B	See List B
77.	Emails Céleste Boyer	Yes, for the period March 21, 2020 to present	Yes
78.	Emails Céline Larivière	Yes, for the period February 1, 2021 to present	Yes
79.	Emails Chris Mercer	See List B	See List B
80.	Emails Chantal Beauparlant	Yes , for the period February 1, 2021 to present	Yes
81.	Emails Cindy Cacciotti	Yes, for the period March 21, 2020 to present	Yes
82.	Emails Claude Lacroix	Yes, for the period March 21, 2020 to present	Yes
83.	Emails Collette Rainville	No	No

	Request	Confidential and privileged information about CCAA process	Other privileged information
84.	Emails Craig Fowler	No	Yes
85.	Emails Darquise Lauzon	No	Yes
86.	Emails Diane Massicotte	No	Yes
87.	Emails Dr. David Lesbarrères	No	Yes
88.	Emails Dean Millar	Yes, for the period February 1, 2021 to present	Only from date of installment as Interim Dean in 2020
89.	Emails Dominic Giroux	See List B	See List B
90.	Emails Eric Chappell	Yes, for the period March 21, 2020 to present	Yes
91.	Emails Eric Gauthier	Yes, for the period February 5, 2021 (date of Mediation Order) to present	No
92.	Emails Heather McPherson	Yes, for the period March 21, 2020 to present	Yes
93.	Emails Isabelle Bourgeault Tasse	See List B	See List B
94.	Any and all email communications, (including all archives and migrated emails from the legacy mail system to Google Mail), as of either August 12, August 13, or August 16, 2021 with the following domains**: • kpmg.ca • sudburylaw.com	See #18 on List B.	See #18 on List B.

	Request	Confidential and privileged information about CCAA process	Other privileged information
95.	Extract of all folders and contents from Laurentian University's T-drive, Google Drive, and any other drive or network share containing documents related to the administrative function of the University as of October 15, 2021	Yes, for the period March 21, 2020 to present, but require clarification on the request	Yes, but require clarification on the request
96.	<p>KPMG audit planning reports for the following fiscal periods:</p> <p><input type="checkbox"/> year ending April 30, 2019 (presented to the Audit Committee during its meeting on March 25, 2019)</p> <p><input type="checkbox"/> year ending April 30, 2020 (presented to the Audit Committee during its meeting on March 23, 2020)</p> <p><input type="checkbox"/> year ending April 30, 2021 (presented to the Audit Committee at an unknown date)</p>	See List B	See List B
97.	<p>KPMG audit findings reports for the following fiscal periods:</p> <p><input type="checkbox"/> year ending April 30, 2010 (presented to the Finance Committee during its meeting on October 4, 2010)</p> <p><input type="checkbox"/> year ending April 30, 2021 (presented to the Audit Committee at an unknown date)</p>	See List B	See List B

	Request	Confidential and privileged information about CCAA process	Other privileged information
98.	All documentation relating to the appointment and retention of the external auditor (including but not limited to internal correspondence, request for proposals, vendor-submitted proposals, evaluation of submissions, minutes of any discussions or decision-making, and signed Board or Audit Committee resolutions) for the fiscal years ending April 30, 2019, April 30, 2020, April 30, 2021	See List B	See List B
99.	All contracts, reports, and correspondence with KPMG regarding nonassurance services (e.g. consulting services, accounting advisory services, tax, financial compilation, loan staff, internal audit services, etc.) for the period of January 1, 2010 to present	No	No
100.	Documentation and correspondence related to all Laurentian University land purchases, sales and other transactions from January 1, 2010 to present	No	No
101.	All documentation related to “Laurentian 2.0” prepared for or by the In Camera Ad Hoc Committee on Contingency Planning and the Contingency Planning and Sustainability Measures Report	Yes	Yes
102.	All draft and final budgets and supporting analysis for Laurentian University’s budgets from 2010 to present	See List B	See List B

	Request	Confidential and privileged information about CCAA process	Other privileged information
103.	All student registration data from January 1, 2010 to present	No	No
104.	All internal analysis of revenue and expenses by programs and courses prepared by faculty and administration from January 1, 2010 to present	Yes, for the period March 21, 2020 to present	No
105.	All reconciliation of student enrollment submitted to the Province of Ontario, with Laurentian's budgets presented to the Board of Governors and actual student enrollment for January 1, 2010 to present	No	No
106.	Materials produced by faculty deans on their analysis of programs' viability and student enrolment from January 1, 2010 to present	Yes, for the period February 1, 2021 to present	No
107.	All internal correspondence regarding the preparation of enrollment data submitted to the province of Ontario for funding purposes from January 1, 2010 to present	No	No
108.	All documentation, including supporting analysis and decisions made in relation to program/course cancellations, staff and faculty cuts and restructuring prepared up to January 31, 2021 including, but not limited to: <input type="checkbox"/> All analysis and supporting documentation used in the analysis	Yes, for the period March 21, 2020 to present	Yes

	Request	Confidential and privileged information about CCAA process	Other privileged information
	<input type="checkbox"/> Methodology of analysis <input type="checkbox"/> Listing of all staff/faculty and departments that contributed to the analysis <input type="checkbox"/> Results of the analysis <p>All material that was provided to senior management, and Senate or Board or Committees related to this matter.</p>		
109.	All current and former Laurentian University Directors and Officers (D&O) Liability Insurance Policy(s) (including Carriers and Reinsurers agreements and policies) from January 1, 2010 to present	No	No, but the insurer may take the position that it must consent before the policy can be produced
110.	All personnel files, including but not limited to employment and benefits contracts, performance reviews, annual merit pay and compensation reviews, and resumes, for Chiefs of Staff, Special Advisors, University Secretary and General Counsel, Chief Advancement Officer, and Assistant/Associate Vice Presidents and higher including Interim and Acting appointments (current and former) from January 1, 2010 to present	No	No
111.	All recruitment files, including but not limited to recruitment postings, applications and resumes received, and documentation of the selection	No	No

	Request	Confidential and privileged information about CCAA process	Other privileged information
	process steps and decisions making for all Chiefs of Staff, Special Advisors and Assistant/Associate Vice Presidents Administration (nonacademic) appointments from January 1, 2010 to present		
112.	All business case, justification or other analysis used to inform the creation of new senior administrator positions (Assistant/Associate Vice Presidents and higher) from January 1, 2010 to present	No	No
113.	All legal engagement letters and invoices from January 1, 2010 to present	Yes, for the period March 21, 2020 to present	Yes
114.	Any and all correspondence with Lenczner Slaght LLP, Stockwoods LLP Barristers, Thornton Grout Finnigan LLP and related personnel (including but not limited to all documents, engagement letters, retainer agreements, terms and conditions, invoices, recordings, reports, legal opinions) from January 1, 2010 to present	TGF: Yes, for the period March 21, 2020 to present in the case of TGF Lenczner Slaght: Yes, for the period January 2021 to present Stockwoods: Yes, for the period January 2021 to present	Yes
115.	All documentation and correspondence relating to the property encroachment on 2115 South Bay Rd from January 1, 2010 to present	Yes, for the period February 1, 2021	Yes
116.	All documents, including contracts and other information, related to third-party partnership agreements from January 2010 to present	Request is unclear	Request is unclear

	Request	Confidential and privileged information about CCAA process	Other privileged information
117.	All correspondence with the City of Sudbury regarding the School of Architecture property from January 1, 2010 to present	No	No
118.	All information and internal communications regarding actual or potential conflict of interest situations between January 1, 2010 and present	Request is unclear	Request is unclear
119.	All communications and correspondence with Desjardins between January 1, 2010 to January 31, 2021	Yes, for the period December 1, 2020 to January 31, 2021. (During this period, nothing was owing on the Desjardins line of credit.)	No
120.	A listing of restricted donations received from January 1, 2010 to present	No	No
121.	A listing of restricted research funding received from January 1, 2010 to present	No	No
122.	All documentation pertaining to current and past litigation from January 1, 2010 to present	Yes, for the period March 21, 2020 to present	Yes
123.	All documentation provided by Laurentian University to Ernst & Young (EY) as financial advisor and subsequently monitor, and documentation provided by E&Y to Laurentian University from January 1, 2010 to present, not limited to: <input type="checkbox"/> Letters(s) of engagement, statements of work, and terms of reference <input type="checkbox"/> Documentation and correspondence for the period of engagement prior to the date of the CCAA filing and after the CCAA filing	Yes, for the period August 1, 2020 to present	Yes, for the period August 1, 2020 to present

	Request	Confidential and privileged information about CCAA process	Other privileged information
	<input type="checkbox"/> Reports and draft reports <input type="checkbox"/> Meeting minutes		
124.	All documentation pertaining to union grievances from January 1, 2010 to present	Yes, for the period February 1, 2021 to present. Union grievances were addressed in the CCAA mediation.	Yes
125.	All complaints filed by Laurentian University's employees from January 1, 2010 to present and accompanying documentation of the resolutions of those complaints	No	Yes
126.	All correspondence, materials and minutes, from meetings between LUAPS Executive, the Board and/or Laurentian University from 2010 to present	No	No
127.	Contracts with all international student recruiters and foreign governments from January 1, 2010 to present	No	No
128.	All internal and external communications regarding the compliance with the Midwifery program funding agreements from January 1, 2010 to present	No	No
129.	All internal and external communications regarding Laurentian's compliance with (<i>An Act to Incorporate Laurentian University of Sudbury, Broader Public Sector Accountability Act, Broader Public Sector Executive Compensation Act, French Language Services Act, Protecting a Sustainable Public Sector for Future Generations Act, 2019</i>) from January 1, 2010 to present	Request is unclear	Request is unclear
130.	All current and former Board of Governors and Senate expenses from January 1, 2010 to present	No	No

	Request	Confidential and privileged information about CCAA process	Other privileged information
131.	All information on Board of Governor nominations and appointments from January 1, 2010 to present	No	No
132.	All financial statements for the Laurentian University pension plan as well as plan text, plan amendments, actuarial valuations (funding and accountings), fund manager investment reports, and all documentation regarding the conversion of the pension plan from defined contribution to defined benefits for period of 2010 to present	No	No
133.	The bids and submissions received for the operational and governance review that the university is currently undertaking, and any evaluations of the proponents	No	No

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE CHIEF)	FRIDAY, THE 5TH
)	
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

ORDER

(Re: Appointment of Mediator)

THIS APPLICATION, 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 mediator as an officer of the Court to act as a neutral third party, was heard this day by videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Notice of Application of the Applicant dated February 1, 2021, the affidavit of Dr. Robert Haché sworn January 30, 2021 and the Exhibits thereto (the "**Haché Initial Affidavit**") and the Report of Ernst & Young Inc. (the "**Monitor**") dated January 30, 2021 and on hearing the submissions of counsel for the Applicant, counsel for the Monitor and counsel for the Laurentian University Faculty Association ("**LUFA**").

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Notice of Case Conference is hereby abridged and validated so that this case conference 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.

COURT-APPOINTED MEDIATOR

3. **THIS COURT ORDERS** that Justice Sean Dunphy is hereby appointed, as an officer of the Court and shall act as a neutral third party (the “**Court-Appointed Mediator**”) to assist the Applicant and its relevant stakeholders with the mediation of the following issues:
 - (a) the review and restructuring of the Applicant’s existing academic programs;
 - (b) the review and restructuring of the faculty necessary to deliver the Applicant’s restructured academic programs;
 - (c) a new collective agreement between the Applicant and LUFA, including resolving all outstanding grievances;
 - (d) the review and restructuring of the Applicant’s Federated Universities’ model;
 - (e) the framework for the Applicant’s restructuring and future operations; and
 - (f) any other matters that are referred to the Court-Appointed Mediator by the Applicant, the Monitor, the relevant stakeholders or this Court;

(together, the “**Mediation Objectives**”).

4. **THIS COURT ORDERS** that in carrying out his mandate, the Court-Appointed Mediator may, among other things:

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- (a) adopt processes, procedures, and timelines which, in his discretion, he considers appropriate to facilitate an effective and efficient negotiation of the Mediation Objectives (the “**Mediation Process**”); and
 - (b) consult with any appointed representative(s) of the parties relevant to the Mediation Objectives, the Monitor, the Applicant, and such creditors, stakeholders of the Applicant, and other persons the Court-Appointed Mediator considers appropriate.
5. **THIS COURT ORDERS** that the Monitor shall provide the Court-Appointed Mediator with such assistance as the Court-Appointed Mediator shall reasonably request.
6. **THIS COURT ORDERS** that the Mediation Confidentiality Protocol (the “**Protocol**”) attached hereto as Schedule “A” is hereby approved and that the entirety of the Mediation Process or anything reasonably incidental to the Mediation Process shall be subject to the Protocol.
7. **THIS COURT ORDERS** that the Court-Appointed Mediator is authorized to take all steps and to do all acts reasonably necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.
8. **THIS COURT ORDERS** that, in addition to the rights and protections afforded as an officer of this Court, the Court-Appointed Mediator shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order. Nothing in this Order shall derogate from the protections afforded to a person pursuant to Section 142 of the *Courts of Justice Act* (Ontario).
9. **THIS COURT ORDERS** that the Court and the Court-Appointed Mediator may communicate between one another directly to discuss, on an ongoing basis, the conduct of the Mediation Process and the manner in which it will be coordinated with the CCAA proceedings, including but not limited to individual matters referred specifically by the Court to the Court-Appointed Mediator for resolution.
10. **THIS COURT ORDERS** that the Court shall not disclose to the Court-Appointed Mediator how the Court will decide any matter which may come before the Court for determination

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and the Court-Appointed Mediator will not disclose to the Court the negotiating positions or confidential information of any of the parties in the Mediation Process.

GENERAL

11. **THIS COURT ORDERS** that the Applicant and the Monitor may apply to this Court from time to time for directions from this Court with respect to this Order, or for such further order or orders as any of them may consider necessary or desirable to amend, supplement or clarify the terms of this Order.

12. **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.

13. **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.

14. **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.

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

FEB 05 2021

PER / PAR:



CHIEF JUSTICE G.B. MORAWETZ

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SCHEDULE "A" to Proposed Form of Mediator Appointment Order

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

**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**

MEDIATION CONFIDENTIALITY PROTOCOL**1. THE PROCESS:**

Pursuant to the Court's Order (the "**Mediation Order**"), Justice Sean Dunphy was appointed as an officer of the Court and to act as a neutral third party (the "**Court-Appointed Mediator**") to assist the Applicant and stakeholders with a mediation of various issues in the Applicant's CCAA proceeding. The Mediation Order authorizes the Court-Appointed Mediator to adopt processes, procedures, and timelines that, in his discretion, are considered appropriate to facilitate an effective and efficient mediation. Further to that authority, this Mediation Confidentiality Protocol shall apply to all written and oral communications related to or arising out of the mediation undertaken pursuant to the Mediation Order (the "**Mediation**").

2. PARTY AND MONITOR CONFIDENTIALITY:

All written and oral communication at the Mediation shall be deemed to be without prejudice settlement discussions. For the purposes of this section, a Mediation communication shall also include all conduct, statements, discussion, promises, offers, views, opinions, admissions and communications for purposes of conducting, considering, initiating, continuing, or reconvening the Mediation together with the delivery and exchange of any documents in the course of the Mediation made by any party, their agents, employees, representatives, or other invitees, and by the Court-Appointed Mediator.

The parties and the Monitor acknowledge and agree that:

- a) the Mediation is a settlement negotiation;
- b) the Mediation is confidential and no stenographic, visual, or audio recordings shall be made;

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- c) no Mediation communication shall be discoverable, admissible or referred to in Court for any purpose, including impeachment in the action or in any other proceeding or to establish the meaning and/or validity of any settlement or alleged settlement arising from the Mediation, and shall not be discussed with anyone, provided that communications otherwise admissible or subject to discovery do not become inadmissible or protected from discovery or admission by reason of their use in Mediation;
- d) any notes, records, statements made, discussions had, and recollections of the Court-Appointed Mediator in conducting the Mediation shall be confidential and without prejudice and protected from disclosure for all purposes; and
- e) except as permitted by law, the parties will not subpoena or otherwise require the Court-Appointed Mediator to testify or produce the records or notes in an action or in any other proceeding.

3. MEDIATOR CONFIDENTIALITY:

During the Mediation process, the Court-Appointed Mediator may disclose to either party any information provided by either party, unless the disclosing party has specifically requested the Court-Appointed Mediator to keep the information confidential, in which case the Court-Appointed Mediator will attempt to keep that information in confidence.

The Court-Appointed Mediator will not disclose to anyone who is not a party to the Mediation anything said, or any materials submitted to the Court-Appointed Mediator, except:

- a) where applicable, to the lawyers or other professionals retained on behalf of the parties or to non-parties consented to in writing by the parties, as deemed appropriate or necessary by the Court-Appointed Mediator;
- b) to the Court, to the extent specifically permitted in the Mediation Order; or
- c) where otherwise ordered to do so by a judicial authority or where required to do so by law.

Except as noted above, the notes, records, statements made, and recollections of the Court-Appointed Mediator shall be confidential and protected from disclosure for all purposes.

4. CONSENT TO THIS AGREEMENT:

Each party present during all or any part of the Mediation shall review this Mediation Confidentiality Protocol and agrees to proceed with the Mediation on the terms herein contained.

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 Mediator)

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