

**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**

**SUPPLEMENTARY FACTUM OF BARBARA ROBINSON**

March 30, 2022

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## **I. OVERVIEW**

1. By Notice of Motion served March 16, 2022, the moving party, Barbara Robinson (“BR”), has sought the leave of this Honorable Court under paragraph 20 of the Amended and Restated Initial Order dated February 11, 2021 to lift the stay of proceedings in respect of a motion under Rule 5.03 of the *Rules of Civil Procedure* RRO 1990 Reg. 194 [“*Rules*”] to add the Applicant, Laurentian University of Sudbury (“LU”) as a Defendant to the action bearing Court File No. CV-22-00078337-0000 (“action”), subject to directions from this Honorable Court as to:
  - (i) limiting the enforceability of any judgment against LU in the action to such insurance proceeds (if any) as are determined to be available to LU, and not as against LU’s current or future assets; and,
  - (ii) the means for determining the extent of insurance proceeds available to LU.
2. BR submits this Supplementary Factum dated March 30, 2022 to provide information supplementing her Factum dated March 16, 2022, based on productions received after that date.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

### **i. BR’s initial request for identification of LU’s general liability insurer**

3. On February 28, 2022, BR made the following request for information under paragraph 34 of the Amended and Restated Initial Order dated February 11, 2021:
 

...further to paragraph 34 of the Amended and Restated Initial Order, Ms. Robinson hereby requests the identification of LU's general liability insurer preceding CURIE, and production of any available policies preceding LU's CURIE membership. The purpose of this request is to facilitate independent inquiry on Ms. Robinson's behalf with respect to the historical coverage issue.

**Exhibit “B”, Affidavit of Jeffrey A. Preszler, sworn March 15, 2022. TAB 2, Motion Record.**

4. Although BR's initial request for information remains outstanding, to date BR has obtained four important pieces of ancillary documentation:

- (i) Affidavit of Normand Lavallee, sworn March 4, 2022;
- (ii) Financial statements of LU, 1979-1989;
- (iii) Letter of Andrew Hanrahan, counsel for LU, dated March 24, 2022; and,
- (iv) Affidavit of Bobbie-Jo Brinkman, sworn March 28, 2022.

**ii. What kind of insurance is documented in LU's financial statements? What kind of insurance deductibles does LU counsel's letter refer to?**

5. The letter of Andrew Hanrahan, counsel for LU, dated March 24, 2022, states "Laurentian's understanding" that the reference to "self insurance" in LU's 1979-1989 financial statements (hereinafter collectively "LU financial statements") is:

purely an accounting entry that sets an internal reserve in Laurentian's operating account... likely for payment of insurance deductibles in a particular year.

**Exhibit "A", Affidavit of Bobbie-Jo Brinkman, sworn March 28, 2022. TAB 1, Responding Motion Record.**

6. To the extent that this statement is accepted for the truth of its contents, it implies the ongoing existence of insurance in respect of which LU documented its "internal reserve...for payment of insurance deductibles", in each of the financial statements produced.

***Ibid.***

7. LU's "Notes to Financial Statements Year Ended April 30, 1989" provides the most probative evidence on this point, in the "Summary of Significant Accounting Policies and Reporting Practices" with respect to "Appropriations" and the notes on "Contingent Liability and Commitments", as respectively cited below (pp. 4-7, emphases in original):

## SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND REPORTING PRACTICES

### Appropriations

#### **(a) Operating Fund**

Funds are committed as follows:

...

In addition, the University reserves other portions of fund balances for special purposes by means of appropriations, including self-insurance provisions.

...

### 3. CONTINGENT LIABILITY AND COMMITMENTS

#### **(a) Contingent liability**

The University's policy on mandatory retirement at age 65 and relevant provisions of the Ontario Human Rights Code, being challenged by two professors, were upheld by the Ontario Court of Appeal...Leave to appeal to the Supreme Court of Canada has been granted and the matter was heard in May 1989. A decision is expected within the next twelve months.

Should the Supreme Court of Canada render a decision unfavorable to the University, any settlement made with respect to this matter will be accounted for as a charge against operations in the period of the decision.

...

#### **(b) Commitments**

...

(2) Effective May 1, 1988 the University agreed to participate in a reciprocal exchange of insurance risks in association with forty other Canadian Universities. This self-insurance cooperative involves a contractual agreement...

*Ibid.*

8. The lawsuit referred to in the notes on contingent liability is *Mckinney v University of Guelph* [1990 CanLII 60 \(SCC\)](#) [*sub nom*] (see also: [1986 CanLII 2832 \(ON SC\)](#) and

[1987 CanLII 179 \(ON CA\)](#)) [*“Mckinney”*]). The constitutional questions which came before the Supreme Court of Canada in *Mckinney* originally arose from claims involving, *inter alia*, compensatory damages, encompassing damages for loss of income.

*Mckinney v University of Guelph* [1986 CanLII 2832 \(ON SC\)](#), [1987 CanLII 179 \(ON CA\)](#) and [1990 CanLII 60 \(SCC\)](#) [*sub nom*]. TABS 1-3, Moving Party’s Supplementary Book of Authorities.

9. The notes on contingent liability state that “any settlement” which Laurentian contemplated as having the potential to be “made with respect to this matter” (i.e. any settlement of the compensatory damages claims of Professor Syed Ziauddin and Horacio Roque Nunez in *McKinney*) was to “be accounted for as a charge against operations in the period of the decision”. In other words, had *Mckinney* been decided in accordance with L’Heureux-Dube J.’s dissent, LU’s liability for compensatory damages would have been charged against its operating funds, just as the appropriations committed to :LU’s self-insurance reserves were, as documented in LU’s 1979-1989 financial statements.

**Exhibit “A”, Affidavit of Bobbie-Jo Brinkman, sworn March 28, 2022. TAB 1, Responding Motion Record.**

10. Notwithstanding Mr. Hanrahan’s representations associating LU’s self-insurance reserves with the “payment of deductibles”, it is not for BR to speculate as to LU’s rationale for self-insuring the *Mckinney* claim. She does, however, reasonably infer that this self-insurance was “insurance” as defined by s. 1 of the *Insurance Act* RSO 1990 c. I. 8 (emphases added):

**“insurance” means the undertaking by one person [1] to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or [2] to pay a sum of money or other thing of value upon the happening of a certain event**, and includes life insurance;

*Ibid.*

**S. 1, *Insurance Act* RSO 1990 c. I. 8. Schedule “A”.**

**iii. Which insurer underwrote LU’s general liabilities in or around 1979?**

11. The Affidavit of Normand Lavallee, LU’s Associate Vice President of Finance and Administration, sworn March 4, 2022, deposes as follows:

I located a year-end working paper regarding LU’s calculation of prepaid insurance from 1975...it appears to indicate that Reed, Shaw, Stenhouse [sic], which I understand was an insurance broker, provided some services for LU in 1975.

**Affidavit of Normand Lavallee, sworn March 4, 2022, at para 13. TAB 6, Motion Record.**

12. The Affidavit of Bobbie-Jo Brinkman, sworn March 28, 2022, tenders exhibit evidence comprising correspondence between Lawrence Theall, coverage counsel to LU, and Harris Kaplan, chief counsel for Aon Canada, wherein Mr. Theall described Reed Shaw Stenhouse & Partners Limited (“RSS”) as “Aon’s predecessor”:

Laurentian has [sic] been able to find the relevant policies, but it was able to identify that Aon’s predecessor was its broker during that time period [i.e. “in the 1970s”].

**Exhibit “B”, Affidavit of Bobbie-Jo Brinkman, sworn March 28, 2022. TAB 1, Responding Motion Record.**

13. As of March 22, 2022, Mr. Kaplan indicated as follows:

...my admin has actually been in the office last week and yesterday and attempted to locate anything that we could. Unfortunately we simply do not have records that date back to the timeline that you are seeking.

***Ibid.***

14. Mr. Theall’s email to Mr. Kaplan of March 3, 2022 indicates that the services RSS provided to LU may have pertained to “a CGL policy issued in the 1970s”. Although Mr. Kaplan’s response a few hours later described this inquiry as “somewhat of a needle in a

haystack, assuming such record even exists”, he indicated that he would be “making inquiries internally”.

*Ibid.*

15. Accepting Exhibit “B” for the truth of its contents, what Mr. Kaplan’s inquiries actually consisted of is not clear. Specifically, while “admin” attended “the office...and attempted to locate...records that date back to the timeline [i.e. 1970s]”, were the records that were sought limited to inquiries for “a CGL policy issued in the 1970s” providing coverage to LU? Or was there other documentation and/or information queried? For example:

(i) Does Aon Canada possess, control, or have in its power any documentation or information as to the insurance underwriters with which RSS may have brokered CGL policies for LU and/or other Ontario universities in the 1970s?

(ii) Does Aon Canada possess, control, or have in its power any documentation or information as to the insurance underwriters with which RSS may have brokered CGL policies in the 1970s?

(iii) Does Aon Canada employ any former RSS employees who may reasonably be expected to have knowledge of the insurance underwriters with which RSS may have brokered CGL policies for LU and/or other Ontario universities in the 1970s?

(iv) Does Aon Canada employ any former RSS employees who may reasonably be expected to have knowledge of the insurance underwriters with which RSS may have brokered CGL policies in the 1970s?

(v) Does Aon Canada have knowledge of the identity of any former RSS employees who may reasonably be expected to have knowledge as to the

insurance underwriters with which RSS may have brokered CGL policies for LU and/or other Ontario universities in the 1970s?

(vi) Does Aon Canada have knowledge of the identity of any former RSS employees who may reasonably be expected to have knowledge as to the insurance underwriters with which RSS may have brokered CGL policies in the 1970s?

16. While there is no evidence as to whether the foregoing questions were part of the “inquiries internally” made by Mr. Kaplan, the requisite due diligence contemplated by BR’s initial February 28, 2022 request for “the identification of LU’s general liability insurer” at the relevant time encompassed not only inquiries of LU’s broker, but also best efforts:

(i) To identify any insurer that may have underwritten a CGL policy covering BR’s claim, by making inquiries as to any insurance underwriters with which RSS may have brokered CGL policies in the 1970s, for LU and/or other Ontario universities and/or generally, and,

(ii) To make direct inquiry of such underwriters, or their successors and assigns, confirming the existence and requesting the production of LU’s “CGL policy from the 1970s”, accordingly.

17. While Aon Canada, as the successor to RSS, which formerly acted as LU’s insurance broker, may have been well within its rights to establish a record retention period that does “not....date back to the timeline”, the same would not be true of an insurer whose “obligations to its insured are those imposed by the express terms of its policy, plus an implied obligation of good faith and fair dealing that includes certain elements of

fiduciary duty”: *Shea v. Manitoba Public Insurance Corp.*, [1991 CanLII 616 \(BC SC\)](#) op. cit. *Adams v. Confederation Life Insurance Co.*, [1994 CanLII 9244 \(AB QB\)](#).

**Exhibit “B”, Affidavit of Bobbie-Jo Brinkman, sworn March 28, 2022. TAB 1, Responding Motion Record.**

*Shea v. Manitoba Public Insurance Corp.*, [1991 CanLII 616 \(BC SC\)](#) op. cit. *Adams v. Confederation Life Insurance Co.*, [1994 CanLII 9244 \(AB QB\)](#). TABS 4 and 5, Moving Party’s Supplementary Book of Authorities.

18. On this point, BR has stated her position as follows:

...any indicia of the existence of general liability insurance may be confirmed against the Annual Reports of the Superintendent of Insurance for the relevant years. I have attached the 1979 report for ease of reference, which provides a concise list on page 98 of the licensed general liability insurers operating in Ontario at that time.

Because the corporate history of each entity is verifiable against archival information maintained by the Financial Services Regulatory Authority of Ontario, any production sufficient to confirm the existence of general liability insurance covering LU will also be sufficient to identify the applicable insurer- even in the context of any corporate succession- given the reasonable presumption that this is an occurrence based policy, with respect to which there would be a duty in the context of any corporate succession to maintain policy records indefinitely.

**Exhibit “B”, Affidavit of Jeffrey A. Preszler, sworn March 15, 2022.**

### **III. ISSUE**

19. Further to directions from this Honourable Court as to the means whereby the extent of any insurance available to LU should be determined, is it in the interests of justice to grant leave to BR to move under Rule 5.03 of the *Rules* to add LU as a Defendant to the action, subject to the limitation of the enforceability of any judgment against LU in the action to such insurance?

### **IV. LAW AND ARGUMENT**

20. In determining whether to lift a stay, the Court should consider whether there are sound reasons for doing so consistent with the objectives of the *Companies' Creditors Arrangement Act* RSC 1985 c. C-36 ["CCAA"], including a consideration of the balance of convenience, the relative prejudice to parties, and where relevant, the merits of the proposed action. The determinative question is the potential impact of the lift-stay order on the CCAA process. Does the lift-stay Order "put the restructuring process at risk"?

***ICR Commercial Real Estate (Regina) Ltd. v. Bricore Land Group Ltd.*, 2007 SKCA 72 op cit. *Wabush Iron Co. Ltd. (Arrangement relatif à)* 2016 QCCS 6061 ["Wabush"] at para 41. TABS 6 and 7, Moving Party's Supplementary Book of Authorities.**

21. The *Algoma Steel* principles indicate that where insurance indemnifying a creditor's claim exists, the answer to the foregoing question is "no", and the stay of proceedings should be lifted in accordance with the equities codified by s. 132 of the *Insurance Act*.

***Algoma Steel Corp. v. Royal Bank of Canada, et al* (1992), 1992 CanLII 7413 (ON CA) op. cit. *Cary Canada Inc. (Re)* 2006 CanLII 41289 (ON SC) at paras 6-16. TABS 8 and 9, Moving Party's Supplementary Book of Authorities.**

**S. 132, *Insurance Act* RSO 1990 c. I. 8. Schedule "A".**

22. Pointedly, the issues bearing on the applicability of the *Algoma Steel* principles to the evidence in this matter are fourfold:

- (i) The evidence is probative of the existence of liability insurance which, with respect to BR's claim, corresponds to s. 132 of the *Insurance Act* RSO 1990 c. I. 8;
- (ii) The evidence indicates that LU maintained an internal reserve of operating funds appropriated for commitment to self-insurance at the time that BR's loss occurred;

- (iii) The evidence indicates that LU's coverage counsel made an unsuccessful query of records with respect to LU's "CGL policy issued in the 1970s", but there is no information probative of the steps actually taken to identify the insurance underwriters with which RSS may have brokered a CGL policy for LU "issued in the 1970s", towards further queries of such underwriters; and,
- (iv) LU counsel's March 24, 2022 letter states that "at the time of Laurentian's CCAA Application, Laurentian did not have any other account [i.e. other than the general operating accounts described in the Affidavit of Robert Haché, sworn January 30, 2021] containing funds in respect of any self-insurance that might have previously existed".

23. To resolve these issues, BR seeks this Court's direction as to "the means for determining the extent of insurance proceeds available to LU", in relation to her outstanding request for information, made February 28, 2022 under paragraph 34 of the Amended and Restated Initial Order dated February 11, 2021, going to "identification of LU's general liability insurer preceding CURIE...to facilitate independent inquiry on Ms. Robinson's behalf with respect to the historical coverage issue".
24. At this time, there are at two clear steps which, but for the stay of proceedings, would be peremptory upon BR: cross-examination, by way of written questions, of Raymond Coutu on his Affidavit sworn March 2, 2022 ("Coutu Affidavit") and of Normand Lavallee on his Affidavit sworn March 4, 2022 ("Lavallee Affidavit").
25. Such cross-examination would supplement, or plug the gaps of the informational shortfalls prejudicing BR's right to proceed with an action in accordance with the *Algoma Steel* principles and s. 132 of the *Insurance Act* RSO 1990 c. I. 8. These shortfalls are

crystallized in the evidence tendered under the Affidavit of Bobbie-Jo Brinkman, sworn March 28, 2022, with respect to: (i) the representations in the letter of LU's CCAA counsel dated March 24, 2022, that "there are...no funds available with respect to any self-insurance that may (or may not) have existed at some point in the past"; and, (ii) the limited inquiries made by LU's coverage counsel further to the identification of RSS as LU's broker at or about the material time of BR's claim.

*Algoma Steel Corp. v. Royal Bank of Canada, et al* (1992), [1992 CanLII 7413 \(ON CA\)](#) op. cit. *Cary Canada Inc. (Re)* [2006 CanLII 41289 \(ON SC\)](#) at paras 6-16. TABS 8 and 9, Moving Party's Supplementary Book of Authorities.

**S. 132, *Insurance Act* RSO 1990 c. I. 8. Schedule "A".**

**Exhibits "A" and "B", Affidavit of Bobbie-Jo Brinkman, sworn March 28, 2022. TAB 1, Responding Motion Record.**

26. In particular, Mr. Lavallee has deposed as to the existence of a hard copy general ledger going back to 1978 documenting "control account information" including "batch totals of payments made and deposits received". It would reasonably follow that this "control account information" includes "batch totals of payments made" between operating accounts (i.e. the operating accounts deposed to in the Affidavit of Robert Hache, sworn January 30, 2021, as described in LU counsel's letter of March 24, 2022), in respect of the self-insurance appropriations documented in the financial statements.

**Affidavit of Normand Lavallee, sworn March 4, 2022, at para 6. TAB 6, Motion Record.**

**Exhibit "A", Affidavit of Bobbie-Jo Brinkman, sworn March 28, 2022. TAB 1, Responding Motion Record.**

27. To the extent that LU's self-insurance corresponds to the definition of "insurance" under s. 1 of the *Insurance Act*, namely: "the undertaking by one person...to pay a sum of money...upon the happening of a certain event", the balance of convenience and relative

prejudice associated with such cross-examination- especially if conducted by way of written questions under Rule 35 of the *Rules*- weighs in favor of granting BR this right.

**S. 1, *Insurance Act* RSO 1990 c. I. 8. Schedule “A”.**

**Rule 35, *Rules*. Schedule “A”.**

28. Further, Mr. Coutu has deposed as follows:

I was provided with two large file folders from the Vice President of Administration, Ron Chrysler, when he retired in approximately the mid 2000s. These file folders comprise all records that I am aware of relating to any insurance held by LU prior to the mid 1990s. To the best of my knowledge, they include original copies of prior insurance documents and documents related to claims.

...I did not locate any information in the files related to LU’s insurance prior to 1982-1983.

**Affidavit of Raymond Coutu, sworn March 2, 2022 at paras 6-7. TAB 7, Motion Record.**

29. The information contained in LU’s insurance documents going back to 1982-1983 has significant probative value: any identifying information as to insurance entities with potential knowledge of LU’s historical coverage could very well facilitate the “independent inquiry” which BR has sought sufficient information to enable since February 28, 2022.

**Exhibit “B”, Affidavit of Jeffrey A. Preszler, sworn March 15, 2022. TAB 2, Motion Record.**

30. The interests of justice, as a factor repeatedly endorsed by this Court as a consideration on a creditor’s lift-stay motion, indicate that on the balance of convenience and relative prejudice, BR should be accorded a sufficient opportunity to meaningfully attempt to establish her rights under s. 132 of the *Insurance Act* RSO 1990 c. I. 8.

**R.H. McLaren, Canadian Commercial Reorganization: Preventing Bankruptcy, Aurora: Canada Law Book, paragr. 3.3400, op. cit. *Canwest Global Communications***

*Corp. (Re)* [2009 CanLII 70508 \(ON SC\)](#) at paras 32-33, *op. cit. Wabush, supra*. TABS 10 and 7, Moving Party’s Supplementary Book of Authorities.

**S. 132, *Insurance Act* RSO 1990 c. I. 8. Schedule “A”.**

31. BR submits that there are necessary and proper circumstances to grant the relief sought on the herein motion, because:

- (i) The balance of convenience involves weighing the immense importance of the evidence sought to BR’s claim against the minor expense and inconvenience likely to be incurred by LU in obtaining the evidence;
- (ii) If the stay of proceedings is not lifted, BR will be prejudiced by the proscription of her rights under s. 132 of the *Insurance Act*, in terms of being compelled to compromise a claim that would more likely than not otherwise be fully enforceable against insurance proceeds whose existence and whose extent she still requires sufficient means to determine. There is no prejudice to LU, because absent grounds for relief under s. 132 of the *Insurance Act*, BR’s claim is confined to the claims process established by the Amended and Restated Claims Process Order dated May 31, 2021; and,
- (iii) As to the merits of BR’s claim against LU, in the event that BR is granted leave to move under Rule 5.03, LU’s joinder to the action will be determined on “such terms as are just”. The permissiveness of the Rule indicates that the threshold of the merits consideration is whether it is plain and obvious that BR’s claim against LU has no reasonable prospect of success. BR submits that this is neither plain nor obvious.

## **V. RELIEF SOUGHT**

32. BR agrees with LU's position in its counsel's letter of March 24, 2022: "it is not in either party's interest to spend the time and money to litigate a claim against Laurentian if any judgment cannot ultimately be enforced".
33. Accordingly, while BR maintains the prayer for relief set out in the Notice of Motion served March 16, 2022, she respectfully submits that the most just exercise of the Court's discretionary power pursuant to paragraph 20 of the Amended and Restated Initial Order dated February 11, 2021 would provide BR with leave to:
- (i) cross-examine Messrs. Coutu and Lavallee by way of written questions and to exercise the rights arising therefrom pursuant to the *Rules* by way of motion under Rule 37.17;
  - (ii) on the basis of any evidence thus obtained, to make peremptory application, under Rule 14.05(3)(d) of the *Rules*, for a declaration under s. 97 of the *Courts of Justice Act* RSO 1990 c. C. 43, to the effect that LU has insurance coverage corresponding to s. 132 of the *Insurance Act* and/or Rule 30.02(3); and,
  - (iii) further to any such declaration, to move under Rule 5.03 to add LU as a Defendant to the action.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED, THIS 30TH DAY OF MARCH,  
2022**

**"ARON ZALTZ" LSO #71115B**

## **SCHEDULE “A”- STATUTES AND REGULATIONS RELIED UPON**

### **Insurance Act RSO 1990 c. I. 8**

**S. 1** “insurance” means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event, and includes life insurance; (“assurance”)

**S. 132 (1)** Where a person incurs a liability for injury or damage to the person or property of another, and is insured against such liability, and fails to satisfy a judgment awarding damages against the person in respect of the person’s liability, and an execution against the person in respect thereof is returned unsatisfied, the person entitled to the damages may recover by action against the insurer the amount of the judgment up to the face value of the policy, but subject to the same equities as the insurer would have if the judgment had been satisfied.

### **Rules of Civil Procedure RRO 1990 Reg. 194**

## **RULE 5- JOINDER OF CLAIMS AND PARTIES**

### **Joinder of Necessary Parties**

#### ***General Rule***

**5.03 (1)** Every person whose presence is necessary to enable the court to adjudicate effectively and completely on the issues in a proceeding shall be joined as a party to the proceeding. R.R.O. 1990, Reg. 194, [r. 5.03 \(1\)](#).

## **RULE 30- DISCOVERY OF DOCUMENTS**

### **Scope of Documentary Discovery**

#### ***Insurance Policy***

**30.02(3)** A party shall disclose and, if requested, produce for inspection any insurance policy under which an insurer may be liable,

- (a) to satisfy all or part of a judgment in the action; or
- (b) to indemnify or reimburse a party for money paid in satisfaction of all or part of the judgment,

but no information concerning the insurance policy is admissible in evidence unless it is relevant to an issue in the action. R.R.O. 1990, Reg. 194, [r. 30.02 \(3\)](#).

## **RULE 35- PROCEDURE ON EXAMINATION FOR DISCOVERY BY WRITTEN QUESTIONS**

### **Questions**

**35.01** An examination for discovery by written questions and answers shall be conducted by serving a list of the questions to be answered (Form 35A) on the person to be examined and every other party. R.R.O. 1990, Reg. 194, [r. 35.01](#).

### **Answers**

**35.02** (1) Written questions shall be answered by the affidavit (Form 35B) of the person being examined, served on the examining party within fifteen days after service of the list of questions. R.R.O. 1990, Reg. 194, [r. 35.02 \(1\)](#).

(2) The examining party shall serve the answers on every other party forthwith. R.R.O. 1990, Reg. 194, [r. 35.02 \(2\)](#).

### **Objections**

**35.03** An objection to answering a written question shall be made in the affidavit of the person being examined, with a brief statement of the reason for the objection. R.R.O. 1990, Reg. 194, [r. 35.03](#).

### **Failure to Answer**

#### ***Further List of Questions***

**35.04** (1) Where the examining party is not satisfied with an answer or where an answer suggests a new line of questioning, the examining party may, within ten days after receiving the answer, serve a further list of written questions which shall be answered within fifteen days after service. R.R.O. 1990, Reg. 194, [r. 35.04 \(1\)](#).

#### ***Court Order for Further Answers***

(2) Where the person being examined refuses or fails to answer a proper question or where the answer to a question is insufficient, the court may order the person to answer or give a further answer to the question or to answer any other question either by affidavit or on oral examination. R.R.O. 1990, Reg. 194, [r. 35.04 \(2\)](#).

#### ***Court Order for Oral Examination***

(3) Where the court is satisfied, on reading all the answers to the written questions, that some or all of them are evasive, unresponsive or otherwise unsatisfactory, the court may order the person examined to submit to oral examination on such terms respecting costs and other matters as are just. R.R.O. 1990, Reg. 194, [r. 35.04 \(3\)](#).

#### ***Additional Sanctions***

(4) Where a person refuses or fails to answer a proper question on a written examination or to produce a document that he or she is required to produce, the court may, in addition to imposing the sanctions provided in subrules (2) and (3),

- (a) if the person is a party or a person examined on behalf or in place of a party, dismiss the party's action or strike out the party's defence;
- (b) strike out all or part of the person's evidence; and
- (c) make such other order as is just. R.R.O. 1990, Reg. 194, [r. 35.04 \(4\)](#).

### **Improper Conduct of Examination**

**35.05** On motion by the person being examined, or by any party, the court may terminate the written examination or limit its scope where,

- (a) the right to examine is being abused by an excess of improper questions; or
- (b) the examination is being conducted in bad faith, or in an unreasonable manner so as to annoy, embarrass or oppress the person being examined. R.R.O. 1990, Reg. 194, [r. 35.05](#).

### **Filing Questions and Answers**

**35.06** [Rule 34.18](#) applies, with necessary modifications, to the filing of written questions and answers for the use of the court. R.R.O. 1990, Reg. 194, [r. 35.06](#).

### **Companies' Creditors Arrangement Act RSC 1985 c. C-36**

**19 (2)** A compromise or arrangement in respect of a debtor company may not deal with any claim that relates to any of the following debts or liabilities unless the compromise or arrangement explicitly provides for the claim's compromise and the creditor in relation to that debt has voted for the acceptance of the compromise or arrangement:

....

- (b) any award of damages by a court in civil proceedings in respect of
  - (i) bodily harm intentionally inflicted, or sexual assault...

### **Limitations Act, 2002, SO 2002, c 24, Sch B**

#### **No limitation period**

16 (1) There is no limitation period in respect of,

...

- (h) a proceeding based on a sexual assault;
- (h.1) a proceeding based on any other misconduct of a sexual nature if, at the time of the misconduct, the person with the claim was a minor or any of the following applied with respect to the relationship between the person with the claim and the person who committed the misconduct:
  - (i) the other person had charge of the person with the claim,
  - (ii) the other person was in a position of trust or authority in relation to the person with the claim,

- (iii) the person with the claim was financially, emotionally, physically or otherwise dependent on the other person

## **SCHEDULE “B”- LIST OF AUTHORITIES**

1. *Mckinney v University of Guelph* [1986 CanLII 2832 \(ON SC\)](#)
2. *Mckinney v University of Guelph* [1987 CanLII 179 \(ON CA\)](#)
3. *Mckinney v University of Guelph* [1990 CanLII 60 \(SCC\)](#)
4. *Shea v. Manitoba Public Insurance Corp.*, [1991 CanLII 616 \(BC SC\)](#)
5. *Adams v. Confederation Life Insurance Co.*, [1994 CanLII 9244 \(AB QB\)](#)
6. *ICR Commercial Real Estate (Regina) Ltd. v. Bricore Land Group Ltd.*, [2007 SKCA 72](#)
7. *Wabush Iron Co. Ltd. (Arrangement relatif à)* [2016 QCCS 6061](#)
8. *Algoma Steel Corp. v. Royal Bank of Canada, et al* (1992), [1992 CanLII 7413 \(ON CA\)](#)
9. *Cary Canada Inc. (Re)* [2006 CanLII 41289 \(ON SC\)](#)
10. *Canwest Global Communications Corp. (Re)* [2009 CanLII 70508 \(ON SC\)](#)
11. *Cunningham v Wheeler; Cooper v Miller; Shanks v McNee* [1994 CanLII 120 \(SCC\)](#)



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. 21-CV-656040-00CL

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

Proceedings commenced at Toronto

**SUPPLEMENTARY FACTUM OF BARBARA  
ROBINSON**

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