

**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

**FACTUM OF THE MONITOR
(Motion for Approval of Monitor's Activities and Fees)**

May 9, 2022

STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Ashley Taylor (LSO# 39932E)
Tel: (416) 869-5236
Email: ataylor@stikeman.com

Elizabeth Pillon (LSO# 35638M)
Tel: (416) 869-5623
Email: lpillon@stikeman.com

Ben Muller (LSO# 80842N)
Tel: (416) 869-5543
Email: bmuller@stikeman.com

Lawyers for the Monitor,
Ernst & Young Inc.

TO: SEE ATTACHED SERVICE LIST

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SUDBURY**

**SERVICE LIST
(as at April 17, 2022)**

<p>THORNTON GROUT FINNIGAN LLP</p> <p>100 Wellington St. West, Suite 3200 TD West Tower, Toronto-Dominion Centre Toronto, ON M5K 1K7</p> <p>D.J. Miller Tel: 416-304-0559 Email: djmiller@tgf.ca</p> <p>Mitchell W. Grossell Tel: 416-304-7978 Email: mgrossell@tgf.ca</p> <p>Andrew Hanrahan Tel: 416-304-7974 Email: ahanrahan@tgf.ca</p> <p>Derek Harland Tel: 416-304-1127 Email: धारland@tgf.ca</p> <p>Lawyers for the Applicant</p>	<p>ERNST & YOUNG INC.</p> <p>100 Adelaide Street West EY Tower Toronto, ON M5H 0B3</p> <p>Sharon Hamilton Tel: 416-943-2153 Email: sharon.s.hamilton@ca.ey.com</p> <p>Michael Nathaniel Tel: 416-932-5837 Email: michael.nathaniel@ca.ey.com</p> <p>Court-appointed Monitor of the Applicant</p>
---	---

<p>STIKEMAN ELLIOTT LLP</p> <p>5300 Commerce Court West 199 Bay Street Toronto, ON M5L 1B9</p> <p>Ashley Taylor Tel: 416-869-5236 Email: ataylor@stikeman.com</p> <p>Elizabeth Pillon Tel: 416-869-5623 Email: lpillon@stikeman.com</p> <p>Maria Konyukhova Tel: 416-869-5230 Email: mkonyukhova@stikeman.com</p> <p>Ben Muller Tel: 416-869-5543 Email: bmuller@stikeman.com</p> <p>Lawyers for the Monitor</p>	<p>LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP</p> <p>130 Adelaide Street West, Suite 2600 Toronto, ON M5H 3P5</p> <p>Peter J. Osborne Tel: 416-865-3094 Email: posborne@litigate.com</p> <p>David Salter Tel: 416-649-1818 Email: dsalter@litigate.com</p> <p>Lawyers for the Board of Governors of Laurentian University of Sudbury</p>
<p>MINISTRY OF THE ATTORNEY GENERAL</p> <p>McMurtry-Scott Building 720 Bay Street, 11th floor Toronto, ON M7A 2S9</p> <p>Michelle Pottruff Tel: 416-528-1235 Email: michelle.pottruff@ontario.ca</p> <p>Lawyer for the Ministry of Colleges and Universities</p>	<p>HICKS MORLEY LLP</p> <p>77 King Street West 39th Floor Toronto, ON M5K 1K8</p> <p>Michael J. Kennedy Tel: 416-864-7305 Email: michael-kennedy@hicksmorley.com</p> <p>Labour Counsel to the Applicant</p>

FOGLER, RUBINOFF LLP

77 King Street West, Suite 3000
Toronto, ON M5K 1G8

Martin R. Kaplan

Tel: 416-941-8822
Email: mkaplan@foglers.com

Vern W. DaRe

Tel: 416-941-8842
Email: vdare@foglers.com

Joseph Fried

Tel: 416-941-8836
Email: jfried@foglers.com

Lawyers for the DIP Lender, Firm Capital
Mortgage Fund Inc.

BLAKE, CASSELS & GRAYDON LLP

199 Bay Street
Suite 4000, Commerce Court West
Toronto, ON M5L 1A9

Pamela L.J. Huff

Tel: 416-863-2958
Email: pamela.huff@blakes.com

Aryo Shalviri

Tel: 416-863-2962
Email: aryo.shalviri@blakes.com

Cristina Cataldo

Tel: 514-982-6312
Email: cristina.cataldo@blakes.com

Lawyers for Royal Bank of Canada

FASKEN MARTINEAU DUMOULIN LLP

Bay-Adelaide Centre
333 Bay Street, Suite 2400
P.O. Box 20
Toronto, ON M5H 2T6

Stuart Brotman

Tel: 416-865-5419
Email: sbrotman@fasken.com

Dylan Chochla

Tel: 416-868-3425
Email: dchochla@fasken.com

Mitch Stephenson

Tel: 416-868-3502
Email: mstephenson@fasken.com

Lawyers for Toronto-Dominion Bank

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

George Benchetrit

Tel: 416-218-1141
Email: george@chaitons.com

Gary Feldman

Tel: 416-218-1130
Email: gary@chaitons.com

Lawyers for Bank of Montreal

<p>CAISSE POPULAIRE VOYAGEURS INC.</p> <p>40 Elm Street, Unit 166 Sudbury, ON P3C 1S8</p> <p>Richard Dupuis, Director Tel: 705-525-2373 Email: richard.u.dupuis@desjardins.com</p>	<p>ATTORNEY GENERAL OF CANADA</p> <p>Department of Justice Ontario Regional Office The Exchange Tower 130 King Street West Suite 3400, Box 36 Toronto, ON M5X 1K6</p> <p>Diane Winters Tel: 647-256-7459 Email: diane.winters@justice.gc.ca</p> <p>Lawyer for Canada Revenue Agency including Charities Directorate</p>
<p>RYDER WRIGHT BLAIR & HOLMES LLP</p> <p>333 Adelaide Street West, 3rd Floor Toronto, ON M5V 1R5</p> <p>David Wright Tel: 416-340-9070 Ext. 237 Email: dwright@rwbh.ca</p> <p>Labour Counsel for Laurentian University Faculty Association (LUFA)</p>	<p>GOLDBLATT PARTNERS LLP</p> <p>20 Dundas Street West, #1039 Toronto, ON M5G 2C2</p> <p>Clio Godkewitsch Tel: 416-979-4059 Email: cgodkewitsch@goldblattpartners.com</p> <p>Insolvency Counsel for LUFA</p> <hr/> <p>Susan Philpott Tel: 416-979-6417 Email: sphilpott@goldblattpartners.com</p> <p>Charles Sinclair Tel: 416-979-4234 Email: csinclair@goldblattpartners.com</p> <p>Insolvency Counsel for LUFA and lawyers for Ontario Public Service Employees Union (OPSEU), Local 667</p>

WRIGHT HENRY LLP

200 Wellington Street West, Suite 602
Toronto, ON M5V 3C7

Tracey Henry

Tel: 416-306-8275
Email: thenry@wrighthenry.ca

Michael D. Wright

Tel: 416-306-8270
Email: mwright@wrighthenry.ca

Danielle Stampley

Tel: 416-306-8272
Email: dstampley@wrighthenry.ca

Brendan Scott

Tel: 416-306-8277
Email: bscott@wrighthenry.ca

Lawyers for Laurentian University Staff Union
(LUSU)

MCMILLAN LLP

Brookfield Place
181 Bay Street, Suite 4400
Toronto ON M5J 2T3

Tushara Weerasooriya

Tel: 416-865-7890
Email: tushara.weerasooriya@mcmillan.ca

Stephen Brown-Okruhlik

Tel: 416-865-7043
Email: stephen.brown-okruhlik@mcmillan.ca

Lawyers for St. Joseph's Health Centre of
Sudbury and St. Joseph's Continuing Care
Centre of Sudbury

Wael Rostom

Tel: 416-865-7790
Email: wael.rostom@mcmillan.ca

Peter Giddens

Tel: 416-307-4042
Email: peter.giddens@mcmillan.ca

Guneev Bhinder

Tel: 416-307-4067
Email: guneev.bhinder@mcmillan.ca

Lawyers for Canada Foundation for Innovation

**DELL FINANCIAL SERVICES CANADA
LIMITED**

155 Gordon Baker Road, Suite 501
North York, ON M2H 3N5

Gregory J. Segal, Legal Counsel

Tel: 416-758-3316

Email: gregory_segal@dell.com

KOSKIE MINSKY LLP

20 Queen Street West
Suite 900, Box 52
Toronto, ON M5H 3R3

Murray Gold

Tel: 416-595-2085

Email: mgold@kmlaw.ca

James Harnum

Tel: 416-542-6285

Email: jharnum@kmlaw.ca

Lawyers for Ontario Confederation of
University Faculty Associations

Andrew J. Hatnay

Tel: 416-595-2083

Email: ahatnay@kmlaw.ca

Sydney Edmonds

Tel: 416-595-2260

Email: sedmonds@kmlaw.ca

Demetrios Yiokaris

Tel: 416-595-2130

Email: dyiokaris@kmlaw.ca

Lawyers for Thorneloe University

LENOVO FINANCIAL SERVICES

5035 South Service Road
Burlington, ON L7R 4C8

Randy Poulton, Regional Leasing Manager

Email: customerservice@lenovofs.ca

**DAVIES WARD PHILLIPS & VINEBERG
LLP**

155 Wellington Street West
40th Floor
Toronto, ON M5V 3J7

Natasha MacParland

Tel: 416-863-5567

Email: nmacparland@dwpv.com

Natalie Renner

Tel: 416-367-7489

Email: nrenner@dwpv.com

Lender Counsel to the Applicant

BORDEN LADNER GERVAIS LLP

Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 3400
Toronto, ON M5H 4E3

Alex MacFarlane

Tel: 416-367-6305
Email: amacfarlane@blg.com

Lydia Wakulowsky

Tel: 416-367-6207
Email: lwakulowsky@blg.com

Charlotte Chien

Tel: 416-367-7267
Email: cchien@blg.com

Lawyers for Northern Ontario School of
Medicine

James W. MacLellan

Tel: 416-367-6592
Email: jmaclellan@blg.com

Lawyer for Zurich Insurance Company Ltd.

DENTONS CANADA LLP

77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

Kenneth Kraft

Tel: 416-863-4374
Email: kenneth.kraft@dentons.com

Daniel Loberto

Tel: 416-863-4760
Email: daniel.loberto@dentons.com

Lawyers for Queen's University

<p>SHEPPARD & CLAUDE</p> <p>202-1173 Cyrville Road Ottawa, ON K1J 7S6</p> <p>André Claude Tel: 613-748-3333 Email: aclaude@sheppardclaude.ca</p> <p>Lawyer for University of Sudbury</p>	<p>CASSELS BROCK & BLACKWELL LLP</p> <p>2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p> <p>Joseph Bellissimo Tel: 416-860-6572 Email: jbello@casells.com</p> <p>Jed Blackburn Tel: 416-860-6725 Email: jblackburn@casells.com</p> <p>Natalie Levine Tel: 416-860-6568 Email: nlevine@casells.com</p> <p>William Onyeaju Tel: 416-869-5498 Email: wonyeaju@casells.com</p> <p>Lawyers for Huntington University</p>
<p>SUDBURY NEUTRINO OBSERVATORY LABORATORY</p> <p>Creighton Mine #9 1039 Regional Road 24 Lively, ON P3Y 1N2 Tel: (705) 692-7000</p> <p>Clarence Virtue Email: Clarence.Virtue@snolab.ca</p>	<p>MINING INNOVATION REHABILITATION AND APPLIED RESEARCH CORPORATION</p> <p>Cliff Fielding Building, Room CF203 935 Ramsey Lake Road Sudbury, ON P3E 2C6 Tel: (705) 675-1151</p> <p>Nadia Mykytczuk, Interim President and CEO Email: NX_Mykytczuk@laurentian.ca</p>

<p>CENTRE FOR EXCELLENCE IN MINING INNOVATION</p> <p>105 Elm Street, Unit A Sudbury, ON P3C 1T3 Tel: (705) 673-6568</p> <p>Douglas Morrison, President Email: dmorrison@cemi.ca</p>	<p>BAKER & COMPANY</p> <p>130 Adelaide Street West, Suite 3300 Toronto, ON M5H 3P5</p> <p>Mark G. Baker Tel: 416-777-0100 Email: mbaker@bakerlawyers.com</p> <p>Andre Luzhetskyy Tel: 416-777-0100 Email: aluzhetskyy@bakerlawyers.com</p> <p>Lawyers for Laurentian University Students' General Association</p>
<p>INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO</p> <p>2 Bloor Street East, Suite 1400 Toronto, ON M4W 1A8</p> <p>Linda Hsiao-Chia Chen, Legal Counsel Tel: 416-326-3333 Email: linda.chen@ipc.on.ca</p>	<p>CORFAB COMPANY LIMITED</p> <p>1360 Kelly Lake Road Sudbury, ON P3E 5P4</p> <p>John Corsi, President Tel: 705-522-9096 Email: jcorsi@jcorsi.com</p>
<p>F&M CAULKING LIMITED</p> <p>10 Kenmore Avenue, Unit #1 Stoney Creek, ON L8E 5N1</p> <p>Jeffrey Lucato, Manager Tel: 905-643-8085 Email: jlucato@fmcl.ca</p>	<p>ACCEL ELECTRICAL CONTRACTORS LIMITED</p> <p>100 Haist Avenue Woodbridge, ON L4L 5V4</p> <p>George Caufin, President Tel: 905-850-8668 Email: georgecaufin@accelectric.com</p>

BIANCHI PRESTA LLP

9100 Jane Street
Building A, 3rd Floor
Vaughan, ON L4K 0A4

Domenic Presta
Tel: 905-738-1078 Ext. 2223
Email: dpresta@bianchipresta.com

Lawyer for 1033803 Ontario Inc. o/a Forma-Con Construction and Forma Finishing and B.B.M. Excavation Company Limited

PARISÉ LAW OFFICE

58 Lisgar Street, Suite 200
Sudbury, ON P3E 3L7

Réjean Parisé
Tel: 705-674-4042
Email: pariselaw@unitz.ca

Lawyer for Interpaving Ltd.

DEDIANA, ELORANTA & LONGSTREET

219 Pine Street
Sudbury, ON P3C 1X4

James Longstreet
Tel: 705-674-4289
Email: spisani@bellnet.ca

Lawyer for Sandro Steel Fabrication Ltd.

CANADIAN UNION OF PUBLIC EMPLOYEES

1378 Triole St
Ottawa, ON K1B 3M4

Miriam Martin, In-House Counsel
Tel: 613-212-4325
Email: mmartin@cupe.ca

MINDEN GROSS LLP

2200-145 King Street West
Toronto, ON M5H 4G2

Rachel Moses
Tel: 416-369-4137
Email: rmoses@mindengross.com

Lawyer for Royal Trust Corporation of Canada

MINISTRY OF INFRASTRUCTURE

777 Bay Street, 5th Floor
Toronto, ON M5G 2C8

Aryn Azzopardi, Chief of Staff
Tel: 416-327-4412
Email: aryn.azzopardi@ontario.ca

<p>SILVIA LAROCQUE</p> <p>905 Cambrian Heights, Unit 36 Sudbury, ON P3C5R5</p> <p>Tel: 705-675-1151 ext. 3804 Email: kennethlarocque@hotmail.com</p>	<p>ZAYO CANADA INC.</p> <p>625, Rue Belmont Montreal, QC H3B 2M1</p> <p>Derek Wilk, Associate General Counsel Tel: 416-644-6705 Email: dwilk@zayo.com</p>
<p>MINISTRY OF FINANCE</p> <p>777 Bay Street College Park 11th Floor Toronto, ON M5G 2C8</p> <p>Anthony R. Golding, Senior Counsel Tel: 416-938-5069 Email: anthony.golding@ontario.ca</p>	<p>CLYDE & CO LLP</p> <p>401 Bay Street Suite #2500 Toronto, ON M5H 2Y4</p> <p>Barry Stork Tel: 647-789-4848 Email: barry.stork@clydeco.ca</p> <p>Roderic McLaughlan Tel: 647-789-4849 Email: roderic.mclauchlan@clydeco.com</p> <p>Mark Mandelker Tel: 647-789-4821 Email: mark.mandelker@clydeco.ca</p> <p>Lawyers for Canadian Universities Reciprocal Insurance Exchange (CURIE)</p>
<p>CANADIAN INSTITUTES OF HEALTH RESEARCH</p> <p>160 Elgin Street, 10th Floor Address Locator 4809A Ottawa, ON K1A 0W9</p> <p>Anita Ploj, Senior Corporate Advisor Email: anita.ploj@cihr-irsc.gc.ca</p>	<p>CANADA FOUNDATION FOR INNOVATION</p> <p>55 Metcalfe Street, Suite 1100 Ottawa, ON K1P 6L5</p> <p>Isabelle Henrie, Vice President Tel: 613-943-1123 Email: isabelle.henrie@innovation.ca</p>

MCKENZIE LAKE LAWYERS

140 Fullarton Street
Suite 1800
London, ON N6A 5P2

Michael J. Peerless

Tel: 519-667-2644
Email: mike.peerless@mckenzielake.com

Emily Assini

Tel: 519-672-5666 Ext. 7359
Email: emily.assini@mckenzielake.com

Class Counsel for Representative Plaintiff

**NORTON ROSE FULBRIGHT CANADA
LLP**

222 Bay Street, Suit 3000
Toronto, ON M5K 1E7

Evan Cobb

Tel: 416-216-1929
Email: evan.cobb@nortonrosefulbright.com

Lawyer for Ernst & Young Inc. in its capacity
as Monitor of Bondfield Construction
Company Limited

MEROVITZ POTECHIN LLP

1565 Carling Avenue, Suite 300
Ottawa, ON K1Z 8R1

David Contant

Tel: 613-563-6691
Email: david@mpottawa.com

Lawyer for Cy Rheault Construction Limited

HUGH CONNELLY LAW

92 CentrepoinTE Drive
Nepean, ON K2G 6B1

Hugh Connelly

Tel: 613-723-7007
Email: info@hughconnellylaw.com

Lawyer for Lindsay Lotan

HAMEED LAW

43 Florence Street
Ottawa, ON K2P 0W6

Yavar Hameed

Tel: 613-232-2688
Email: yhameed@hameedlaw.ca

Lawyer for Issyakha Camara

DEVRY SMITH FRANK LLP

95 Barber Greene Road, Suite 100
Toronto, ON M5C 3E9

David Schell

Tel: 416-446-5096
Email: david.schell@devrylaw.ca

Lawyer for Zhiju Zhu

DIAMOND AND DIAMOND LAWYERS

255 Consumers Road, 5th Floor
Toronto, ON M2J 1R4

Simon Diamond

Tel: 1-800-567-4878 Ext. 207
Email: simon@diamondlaw.ca

Lawyer for Petra Spencer

LAMER STICKLAND LLP

101 Worthington Street East
North Bay, ON P1B 8G6

Geoffrey Larmer

Tel: 705-478-8100
Email: larmer@larmerstickland.com

Lawyer for Nina Kucheran and Mary-Catherine Kucheran

CITY OF GREATER SUDBURY

P.O. Box 5000, Station 'A'
200 Brady Street
Sudbury, ON P3A 5P3

Carolyn A. Dawe, Assistant City Solicitor

Tel: 705-674-4455 Ext. 4545
Email: carolyn.dawe@greatersudbury.ca

MARSH CANADA LIMITED

120 Bremner Boulevard, Suite 800
Toronto, ON M5J 0A8

Murray Davidson, Senior Vice-President

Tel: 416-349-4354
Email: murray.s.davidson@marsh.com

SNOWDEN LAW PROFESSIONAL CORPORATION

130 Adelaide St. W.
Suite 1940, P.O. Box 19
Toronto ON M5H 3P5

Marcus B. Snowden

Tel: 416-363-3343
Email: marcus@snowdenlaw.ca

Monitoring counsel for Lloyd's Underwriters (Markel)

DOOLEY LUCENTI LLP

10 Checkley Street
Barrie, ON L4N 1W1

Scott R. Fairley

Tel: 705-792-7963
Email: sfairley@dllaw.ca

Lawyer for Cladco Limited

<p>GOODMANS LLP</p> <p>Bay Adelaide Centre 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7</p> <p>Gale Rubenstein Tel: 416-597-4148 Email: grubenstein@goodmans.ca</p> <p>Bradley Wiffen Tel: 416-597-4208 Email: bwiffen@goodmans.ca</p> <p>Michael Wilson Tel: 416-597-4130 Email: mwilson@goodmans.ca</p> <p>Lawyers for Financial Services Regulatory Authority</p>	<p>MCKENZIE LAKE LAWYERS LLP</p> <p>140 Fullarton Street, Suite 1800 London, ON N6A 5P2</p> <p>Michael J. Peerless Tel: 519-667-2644 Email: mike.peerless@mckenzielake.com</p> <p>Matthew D. Baer Tel: 519-667-2646 Email: matt.baer@mckenzielake.com</p> <p>Emily Assini Tel: 519-672-5666 Email: emily.assini@mckenzielake.com</p> <p>Lawyers for Sarah Connell</p>
<p>ATTORNEY GENERAL FOR ONTARIO</p> <p>Crown Law Office - Civil 720 Bay Street, 8th Floor Toronto, ON M7A 2S9</p> <p>Shahana Kar Tel: 416-571-2100 Email: shahana.kar@ontario.ca</p> <p>Jonathan Sydor Tel: 416-689-8279 Email: jonathan.sydor@ontario.ca</p> <p>Lawyer for Her Majesty the Queen in Right of Ontario</p>	<p>FRED TAYAR & ASSOCIATES PROFESSIONAL CORPORATION</p> <p>65 Queen Street West Suite 1200 Toronto, ON M5H 2M5</p> <p>Fred Tayar Tel: 416-363-1800 Email: fred@fredtayar.com</p> <p>Lawyers for Canadian Universities Reciprocal Insurance Exchange (CURIE)</p>

<p>CANADIAN ASSOCIATION OF UNIVERSITY TEACHERS</p> <p>2705, promenade Queensview Drive Ottawa, ON K2B 8K2</p> <p>Sarah Godwin Tel: 613-820-2270 Email: godwin@caut.ca</p>	<p>THORNELOE UNIVERSITY</p> <p>935 Ramsey Lake Road Sudbury, ON P3E 2C6 Tel: (705) 673-1730</p> <p>Dr. John Gibaut, President Email: president@thorneloe.ca</p>
<p>GOWLING WLG (CANADA) LLP</p> <p>1 First Canadian Place 100 King Street West, Suite 1600 Toronto, ON M5X 1G5</p> <p>Virginie Gauthier Tel: 416-844-5391 Email: virginie.gauthier@gowlingwlg.com</p> <p>Thomas Gertner Tel: 416-369-4618 Email: thomas.gertner@gowlingwlg.com</p> <p>Lawyers for Lakehead University</p>	<p>XEROX CANADA LTD.</p> <p>20 York Mills Road, Suite 500 Toronto, ON M2P 2C2</p> <p>Stephanie Grace, Senior Legal Counsel Tel: 416-250-3917 Email: stephanie.grace@xerox.com</p>
<p>POWER LAW LLP</p> <p>130 Albert Street, #1103 Ottawa, ON K1P 5G4</p> <p>Francis Poulin Tel: 613-702-5569 Email: fpoulin@powerlaw.ca</p> <p>Charlotte Servant-L'Heureux Tel: N/A Email: cservantlheureux@powerlaw.ca</p> <p>Lawyers for the Assemblée de la francophonie de l'Ontario</p>	<p>AIRD & BERLIS LLP</p> <p>Brookfield Place 181 Bay Street, Suite 1800 Toronto, Ontario M5J 2T9</p> <p>Steven L. Graff Tel: 416-865-7726 Email: sgraff@airdberlis.com</p> <p>Jonathan Yantzi Tel: 416-865-4733 Email: jyantzi@airdberlis.com</p> <p>Lawyers for the David Harquail and the Harquail family, The Goodman Family Foundation, Rob McEwen and The Bharti Charitable Foundation</p>

<p>FARBER GROUP INC.</p> <p>150 York Street, Suite 1600 Toronto, ON M5H 3S5</p> <p>Allan Nackan Tel: 416-496-3732 Email: anackan@farbergroup.com</p> <p>Hylton Levy Tel: 416-496-3070 Email: hlevy@farbergroup.com</p> <p>Financial advisors for Thorneloe University</p>	<p>WEISZ FELL KOUR LLP</p> <p>100 King Street West, Suite 5600 Toronto, ON M5X 1C9</p> <p>Pat Corney Tel: 416-613-8287 Email: pcorney@wfkllaw.ca</p> <p>Lawyer for Weeneebayko Area Health Authority</p>
<p>UNITED STEELWORKERS</p> <p>Canadian National Office, Legal Department 234 Eglinton Avenue East, Suite 800 Toronto, ON M4P 1K7</p> <p>Shaheen Hirani Tel: 416-544-5987 Email: shirani@usw.ca</p> <p>Lawyers for the Respondent, United Steel, Paper and Forestry, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers)</p>	<p>OSLER, HOSKIN & HARCOURT LLP</p> <p>1000 De La Gauchetière Street West, Suite 2100 Montréal, QC H3B 4W5</p> <p>Julien Morissette Tel: 514-904-5818 Email: jmorissette@osler.com</p> <p>Lawyer for Canadian Research Knowledge Network</p>
<p>William Edward Oxley Tel: 249-878-3901 Email: bill.oxley1975@gmail.com</p> <p>13 Levack Drive, Box 65 Levack, Ontario P0M 2C0</p> <p>Self-represented person</p>	<p>MBC LAW PROFESSIONAL CORPORATION</p> <p>265 Carling Avenue, Suite 500 Ottawa, ON K1S 2E1</p> <p>James Alden Christian Tel: 613-564-3005 Email: achristian@mbclaw.ca</p> <p>Lawyer for CY Rheault Construction Ltd.</p>

<p>CONWAY BAXTER WILSON LLP</p> <p>401-411 Roosevelt Avenue Ottawa, ON K2A 3X9</p> <p>David Taylor Tel: 613-691-0368 Email: dtaylor@conwaylitigation.ca</p> <p>M. Alyssa Holland Tel: 613-691-0373 Email: aholland@conwaylitigation.ca</p> <p>Counsel for the Speaker of the Legislative Assembly of Ontario</p>	<p>ATTORNEY GENERAL OF CANADA</p> <p>Ontario Regional Office National Litigation Sector 120 Adelaide Street West, Suite #400 Toronto, ON M5H 1T1</p> <p>Eric Peterson Tel: 647-256-7550 Email: eric.peterson@justice.gc.ca</p> <p>Mark Taggart Email: mark.taggart@canada.ca</p> <p>Shaun Harrington Email: shaun.harrington@canada.ca</p> <p>Lawyers for the Natural Sciences and Engineering Research Council of Canada and the Social Sciences and Humanities Research Council</p>
<p>LEVITT SHEIKH LLP</p> <p>130 Adelaide St West Suite 801 Toronto, ON M5H 3P5</p> <p>Kathryn Marshall Tel: 416-597-7887 Email: kmarshall@levittllp.com</p> <p>Lawyer for Shelley Watson</p>	<p>LOUIS PAGNUTTI Email: lou@pagnutti.ca</p> <p>Chief Redevelopment Officer</p>

<p>STOCKWOODS LLP</p> <p>Toronto-Dominion Centre TD North Tower, Box 140 77 King Street West, Suite 4130 Toronto, ON M5K 1H1</p> <p>Brian Gover Tel: 416-593-2489 Email: briang@stockwoods.ca</p> <p>Fredrick R. Schumann Tel: 416-593-2490 Email: fredricks@stockwoods.ca</p> <p>Regulatory Counsel to the Applicant</p>	<p>TEPLITSKY, COLSON LLP</p> <p>70 Bond Street, Suite 200 Toronto, ON M5B 1X3</p> <p>James M. Wortzman Tel: 416-865-5315 Email: jwortzman@teplitskycolson.com</p> <p>Lawyer for Michael Atkins</p>
<p>BLANEY MCMURTRY LLP</p> <p>2 Queen Street East, Suite 1500 Toronto, ON, M5C 3G5</p> <p>David T. Ullmann Tel: 416-593-4289 Email: dullmann@blaney.com</p> <p>Stephen Gaudreau Tel: 416-596-4285 Email: sgaudreau@blaney.com</p> <p>Philip Yang Tel: 416-596-2883 Email: pyang@blaney.com</p> <p>Lawyers for The Art Gallery of Sudbury</p>	

E-Service List

djmiller@tgf.ca; mgrossell@tgf.ca; धारलंद@tgf.ca; ahanrahan@tgf.ca;
sharon.s.hamilton@ca.ey.com; michael.nathaniel@ca.ey.com; posborne@litigate.com;
dsalter@litigate.com; ataylor@stikeman.com; lpillon@stikeman.com; bmuller@stikeman.com;
michael-kennedy@hicksmorley.com; nmacparland@dwpv.com; nrenner@dwpv.com;
pamela.huff@blakes.com; aryo.shalviri@blakes.com; sbrotman@fasken.com;
dchochla@fasken.com; mstephenson@fasken.com; george@chaitons.com; gary@chaitons.com;
dwright@rwbh.ca; sphilpott@goldblattpartners.com; csinclair@goldblattpartners.com;
thenry@wrighthenry.ca; diane.winters@justice.gc.ca; mkaplan@foglers.com;
vdare@foglers.com; jfried@foglers.com; richard.u.dupuis@desjardins.com;
gregory_segal@dell.com; jbellissimo@cassels.com; jblackburn@cassels.com;
wonyeaju@cassels.com; NX_Mykytczuk@laurentian.ca; dmorrison@cemi.ca;
jcorsi@jcorsi.com; jlucaato@fmcl.ca; georgecaufin@accelelectric.com;
dpresta@bianchipresta.com; pariselaw@unitz.ca; spisani@bellnet.ca;
aryn.azzopardi@ontario.ca; barry.stork@clydeco.ca; roderic.mclauchlan@clydeco.com;
carolyn.dawe@greatersudbury.ca; mike.peerless@mckenzielake.com;
emily.assini@mckenzielake.com; info@hughconnellylaw.com; yhameed@hameedlaw.ca;
simon@diamondlaw.ca; murray.s.davidson@marsh.com; evan.cobb@nortonrosefulbright.com;
mwright@wrighthenry.ca; bscott@wrighthenry.ca; amacfarlane@blg.com;
lwakulowsky@blg.com; sfairley@dllaw.ca; michelle.potruff@ontario.ca; mmartin@cupe.ca;
grubenstein@goodmans.ca; bwiffen@goodmans.ca; mwilson@goodmans.ca;
david@mpottawa.com; david.schell@devrylaw.ca; shahana.kar@ontario.ca;
customerservice@lenovofs.ca; tushara.weerasooriya@mcmillan.ca; stephen.brown-okruhlik@mcmillan.ca; dwilk@zayo.com; mgold@kmlaw.ca; jharnum@kmlaw.ca;
cristina.cataldo@blakes.com; anthony.golding@ontario.ca; larmer@larmerstickland.com;
aclaude@sheppardclaude.ca; president@thorneloe.ca; kenneth.kraft@dentons.com;
daniel.loberto@dentons.com; linda.chen@ipc.on.ca; isabelle.henrie@innovation.ca;
wael.rostom@mcmillan.ca; peter.giddens@mcmillan.ca; guneev.bhinder@mcmillan.ca;
ahatnay@kmlaw.ca; sedmonds@kmlaw.ca; jmaclellan@blg.com;
mike.peerless@mckenzielake.com; matt.baer@mckenzielake.com;
emily.assini@mckenzielake.com; cgodkewitsch@goldblattpartners.com;
jonathan.sydor@ontario.ca; kennethlarocque@hotmail.com; mbaker@bakerlawyers.com;
aluzhetskyy@bakerlawyers.com; anita.ploj@cihr-irsc.gc.ca; godwin@caut.ca;
nlevine@cassels.com; virginie.gauthier@gowlingwlg.com; thomas.gertner@gowlingwlg.com;
rmoses@mindengross.com; stephanie.grace@xerox.com; fpoulin@powerlaw.ca;
cservantlheureux@powerlaw.ca; dstampley@wrighthenry.ca; sgraff@airdberlis.com;
jyantzi@airdberlis.com; anackan@farberggroup.com; hlevy@farberggroup.com;
pcorney@wfkllaw.ca; shirani@usw.ca; zsmith@stikeman.com; cchien@blg.com;
jmorissette@osler.com; bill.oxley1975@gmail.com; dyiokaris@kmlaw.ca;
achristian@mbclaw.ca; Clarence.Virtue@snolab.ca; eric.peterson@justice.gc.ca;
mark.taggart@canada.ca; shaun.harrington@canada.ca; lou@pagnutti.ca;
briang@stockwoods.ca; fredricks@stockwoods.ca; fred@fredtayar.com;
mark.mandelker@clydeco.ca; dtaylor@conwaylitigation.ca; aholland@conwaylitigation.ca;
kmarshall@levittllp.com; jwortzman@teplitskycolson.com; mkonyukhova@stikeman.com;
marcus@snowdenlaw.ca; dullmann@blaney.com; sgaudreau@blaney.com; pyang@blaney.com

**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**

FACTUM OF THE MONITOR

PART I - OVERVIEW

1. Ernst & Young Inc., in its capacity as Monitor of Laurentian University of Sudbury, brings this motion for approval of: (a) the Reports (as defined below) and the Twelfth Report of the Monitor, and the activities of the Monitor described therein; and (b) the fees and disbursements of (i) the Monitor; (ii) EY FAAS; and (iii) Stikeman, for the Period.

2. The remuneration of Court officers is approved when it is fair and reasonable, judged by reference to certain factors enshrined in the jurisprudence, including the time and effort involved, the complexity of the matter, the responsibilities assumed and the results achieved. The relevant factors support approval of the accounts of the Monitor, EY FAAS and Stikeman.

3. This CCAA Proceeding marks the first time that a public university in Canada has filed under the CCAA. This CCAA Proceeding is unprecedented in terms of the legal, operational, governance, regulatory and practical issues involved. As a result of the complexity of the issues involved and the lack of internal resources at LU, the Monitor was required to engage in far more aspects of the restructuring than in most other proceedings. The activities of the Monitor and its counsel during the case included participating in a multi-party mediation process to implement

certain critical restructuring actions, significant claims administration, assisting the Applicant in its completion of its annual financial statements and supporting the Applicant in connection with a real estate review, operational and governance review and various extensive regulatory investigations.¹

4. The efforts of the Monitor and its counsel during the Period have added significant value to the Applicant's restructuring, assisting the Applicant to achieve substantial benefits for its stakeholders. These efforts and resulting benefits include:

- (a) Achieving operational cost savings of approximately \$40 million per annum as a result of the restructuring of LU's academic programs and courses, faculty and staff reductions and compensation changes reached through execution of the LUFA Term Sheet and LUSU Term Sheet, and the disclaimer of historical relationships with the Former Federated Universities;
- (b) Negotiating, designing and implementing the Claims Process, including the review of a large number of unique and complex Claims;
- (c) Negotiating, designing and implementing the Compensation Claims process for more than 1,300 former and active employees;
- (d) Completion of a substantial real estate review and operational and governance review designed to inform and support a CCAA Plan;
- (e) Supporting LU in responding to a number of regulatory investigations including those of the MFA, the Commissioner and the AGO; and

¹ Twelfth Report of the Monitor dated April 29, 2022 (the "Twelfth Report") at [paras. 179 to 180](#), Motion Record of the Monitor, Tab 2.

- (f) Liaising with a large number of stakeholders, including creditors, active and former employees, students, community members, the Province and others.²

5. The fees and disbursements of the Monitor, EY FAAS and Stikeman resulting from the work described herein are a function of the complex circumstances of this CCAA Proceeding and the effort required to advance the interests of the Applicant and its stakeholders, maximize the amount available for distribution to the Applicant's creditors pursuant to a plan of compromise or arrangement, to be filed, and advance the CCAA proceeding toward a successful conclusion.³

6. The work performed by the Monitor and its counsel has been extensively reported to the Court and stakeholders in 12 reports filed over the course of the CCAA Proceeding, and nine reports filed during the Period (the "**Reports**"). The fees and disbursements of the Monitor, EY FAAS and Stikeman for the Period have been set out in the cash flow forecasts and reporting of actual cash flow results included within previously filed Reports.⁴ The Monitor served its motion materials on Friday, April 29, 2022, including the Twelfth Report summarizing the activities of the Monitor, EY FAAS and Stikeman during the Period, as well as two affidavits detailing the fees.

7. In the circumstances of this CCAA Proceeding, the fees and disbursements of the Monitor, EY FAAS and Stikeman for the Period are fair and reasonable. In addition, the Monitor has carried out its activities in a manner consistent with the Initial Order and as prescribed by the CCAA. It is respectfully submitted that this Court should approve (a) the Reports and the Twelfth Report and

² Twelfth Report at [para. 180](#); Motion Record of the Monitor, Tab 2.

³ Twelfth Report at [para. 181](#); Motion Record of the Monitor, Tab 2.

⁴ Twelfth Report at [para. 41](#); Motion Record of the Monitor, Tab 2.

the activities of the Monitor described therein, and (b) the fees and disbursements of the Monitor, EY FAAS and Stikeman.

PART II - FACTS

8. The facts with respect to this motion are more fully set out in the Twelfth Report. Capitalized terms used within this factum but not otherwise defined have the meanings ascribed to them in the Twelfth Report. Unless otherwise stated all monetary amounts contained herein are expressed in Canadian dollars.

A. Parties to the CCAA Proceeding

9. On February 1, 2021, LU filed for and obtained protection under the CCAA.⁵ Pursuant to the Initial Order, Ernst & Young Inc. was appointed as Monitor in this CCAA proceeding.⁶ The Monitor engaged Stikeman as its legal counsel prior to the commencement of the CCAA proceeding.⁷ Paragraph 37 of the Initial Order requires the Monitor and its counsel to seek Court approval of their fees and expenses incurred during the CCAA proceeding.

B. Overview of the Fees and Disbursements

10. In support of this motion, the Monitor delivered its Twelfth Report, which provides a detailed summary of the activities of the Monitor, EY FAAS and Stikeman throughout the Period, together with a detailed breakdown of the fees and disbursements of the Monitor, EY FAAS and Stikeman.⁸ The Twelfth Report supplements the Reports that were filed during the Period, detailing the activities of the Monitor, EY FAAS and Stikeman.

⁵ Twelfth Report at [para. 1](#); Motion Record of the Monitor, Tab 2.

⁶ Twelfth Report at [paras. 2 and 3](#); Motion Record of the Monitor, Tab 2.

⁷ Twelfth Report at [para. 38](#); Motion Record of the Monitor, Tab 2.

⁸ Twelfth Report at [Appendix “B”, “C” and “E”](#); Motion Record of the Monitor, Tab 2.

11. In addition, affidavits filed by lead professionals of the Monitor and Stikeman provide a comprehensive listing of the accounts sought to be approved, including summaries of each account, individual professionals who have worked on the matter, each of their positions, average hourly billing rates, total number of hours worked and total associated professional fees.⁹ Stikeman's accounts have been redacted to remove privileged, confidential, and sensitive information.¹⁰

12. The aggregate accounts of the Monitor, EY FAAS and its counsel for the Period are set out below.¹¹

	Fees	Disbursements	HST
Monitor	4,917,795.07	54,754.33	646,431.42
EY FAAS	947,900.00	119.89	123,242.59
Stikeman	2,762,526.55	12,425.19	360,743.73

13. This is the first time that the Court is being asked to approve the fees and disbursements of the Monitor and Stikeman in this CCAA Proceeding. The accounts have been paid by the Applicant in the normal course since the commencement of the CCAA proceeding as authorized by the Initial Order.¹²

14. The Monitor, EY FAAS and Stikeman billed amounts at each firm's standard/regular hourly rates, which are consistent with the hourly rates charged by other firms in the Toronto market for the provision of similar services regarding significant complex commercial

⁹ [Affidavit of Sharon Hamilton sworn April 29, 2022](#) (the "**Hamilton Affidavit**"); Motion Record of the Monitor, Tab 2, Appendix A; [Affidavit of Elizabeth Pillon sworn April 29, 2022](#) (the "**Pillon Affidavit**"); Motion Record of the Monitor, Tab 2, Appendix D.

¹⁰ Twelfth Report at [para. 52](#); Motion Record of the Monitor, Tab 2.

¹¹ Twelfth Report at [para. 40](#); Motion Record of the Monitor, Tab 2.

¹² Twelfth Report at [para. 51](#); Motion Record of the Monitor, Tab 2.

restructuring and accounting matters.¹³ In the Monitor’s professional judgement, the accounts requested to be approved on this motion are fair and reasonable in the circumstances of this CCAA Proceeding.¹⁴

C. The Monitor and EY FAAS

15. Sharon Hamilton, Senior Vice President with Ernst & Young Inc., is the Monitor’s lead professional on this mandate.¹⁵ Her affidavit in support of this motion (the “**Hamilton Affidavit**”) provides this Court with a detailed summary of information about the activities of the Monitor, EY FAAS and Stikeman throughout the Period.

16. In addition to the Twelfth Report and the Reports, the Monitor has provided a:

- (a) Comprehensive listing of its accounts for the Period, including each account date and amount;¹⁶
- (b) Summary table which identifies the individual professionals of the Monitor who have worked on the matter for 20 hours or more during the Period together with their position, average hourly billing rates, total number of hours worked, total associated professional fees and the primary work stream(s) in the CCAA proceeding in which the professional has been involved;¹⁷ and
- (c) Summary table which identifies the individual professionals of the EY FAAS team that provided Accounting Assistance for 20 hours or more during the Period,

¹³ Hamilton Affidavit at [para. 5](#); Motion Record of the Monitor, Tab 2, Appendix A; Pilon Affidavit at [para. 10](#); Motion Record of the Monitor, Tab 2, Appendix D.

¹⁴ Twelfth Report at [para. 182](#); Motion Record of the Monitor, Tab 2.

¹⁵ Twelfth Report at [para. 35](#); Motion Record of the Monitor, Tab 2.

¹⁶ Hamilton Affidavit at [Exhibit “A”](#); Motion Record of the Monitor, Tab 2.

¹⁷ Twelfth Report at [Appendix “A”](#); Motion Record of the Monitor, Tab 2.

together with their position, average hourly billing rate, total number of hours worked and total associated professional fees.¹⁸

D. Counsel to the Monitor

17. Stikeman has represented the Monitor in all aspects of this CCAA proceeding. The affidavit of Elizabeth Pillon, Partner and Head of Stikeman’s restructuring practice and a lead lawyer on this mandate (the “**Pillon Affidavit**”), provides further details in respect of Stikeman’s accounts in addition to those set out in the Twelfth Report. That detail includes: (a) copies of Stikeman’s accounts for the Period¹⁹; (b) a summary table which identifies the date, fees, disbursements and HST of each account; and (c) a summary table which identifies the individual Stikeman professionals that have worked on the matter, their position, average hourly billing rate, total number of hours worked and total associated professional fees.²⁰ A summary table which includes the primary work stream(s) in the CCAA proceeding in which Stikeman professionals who have worked for 20 or more hours has been involved is provided by the Monitor in Appendix “E” to the Twelfth Report.²¹

18. The accounts submitted for the Period by Stikeman have been reviewed by the Monitor as and when received, authorized and paid by the Monitor and billed to the Applicant in the normal course as authorized by the Initial Order.²²

¹⁸ Twelfth Report at [Appendix “B”](#); Motion Record of the Monitor, Tab 2.

¹⁹ Pillon Affidavit at [Exhibit “B”](#); Motion Record of the Monitor, Tab 2, Appendix D.

²⁰ Pillon Affidavit at [Exhibit “C”](#); Motion Record of the Monitor, Tab 2, Appendix D.

²¹ Twelfth Report at [Appendix “E”](#); Motion Record of the Monitor, Tab 2.

²² Twelfth Report at [para. 55](#); Motion Record of the Monitor, Tab 2.

E. The Activities of the Monitor, EY FAAS and Stikeman

19. Since the Initial Order was granted, the Monitor has fulfilled the role of Monitor as such role is described in the Initial Order and prescribed by the CCAA.²³ The more significant matters that the Monitor has undertaken to assist the Applicant include: (a) assisting the Applicant in considering their restructuring options and consulting with key stakeholders; (b) assisting in the preparation of cash-flow forecasts and otherwise assisting LU in managing their financial affairs following the CCAA filing; (c) providing requisite notices in connection with the commencement of the CCAA proceeding; (d) actively participating and assisting the Applicant in the mediation process in connection with considering and implementing certain restructuring actions, including the repudiation and re-negotiation of various contracts and agreements; (e) assisting the Applicant in connection with responding to information requests and liaising with significant stakeholders; (f) commencing a claims process, including a Compensation Claims process; (g) assisting the Applicant with the completion of its annual financial statements; (h) assisting the Applicant with responding to various regulatory inquiries; and (i) reporting to the Court on the status of the CCAA proceeding.²⁴

20. The Monitor's counsel has represented the Monitor in all aspects of the CCAA proceeding, including in connection with: (a) at least 22 motions, Court hearings and case conferences; (b) two leave to appeal applications; (c) organizing and participating in all sessions of the mediation process; (d) assisting in the development of the claims process, the compensation claims process, and the grievance resolution process approved in the CCAA Proceeding; (e) the review, dispute and resolution of disputed claims filed pursuant to the various claims procedures approved in the

²³ Twelfth Report at [para. 37](#); Motion Record of the Monitor, Tab 2.

²⁴ Twelfth Report at [para. 37](#); Motion Record of the Monitor, Tab 2.

CCAA Proceedings; and (f) responding to information requests and liaising with significant stakeholders.²⁵

21. The activities of the Monitor and Stikeman throughout the Period as described in the Twelfth Report can be divided into two phases. Phase 1 covers the period from February 1, 2021 to April 30, 2021; phase 2 covers the period from May 1, 2021 to December 31, 2021.²⁶ The following provides a description and overview of the primary activities undertaken by the Monitor and Stikeman in connection with the significant workstreams during phase 1 of the CCAA proceeding²⁷:

Description of Significant Workstreams during Phase 1: February 1 – April 30, 2021	
Work Stream	Description of Work Performed
<u>CCAA Administration and Stabilization of Operations</u>	<ul style="list-style-type: none">• Preparing, publishing and mailing the statutory notice of the CCAA filing• Establishing and maintaining a website for the CCAA proceeding in which relevant documents, including all court documents, were made available for stakeholders to access• Assisting the Applicant in preparing employee, student, public and stakeholder communications and addressing operational related human resources issues• Assisting the Applicant in respect of the unwinding and termination of its interest rate derivative programs• Reviewing pension related matters• Monitoring the overall business, operations and cash situation of the Applicant

²⁵ Twelfth Report at [para. 39](#); Motion Record of the Monitor, Tab 2.

²⁶ Twelfth Report at [para. 57](#); Motion Record of the Monitor, Tab 2.

²⁷ Twelfth Report at [paras. 59 to 103](#); Motion Record of the Monitor, Tab 2.

<p><u>Cash Flow Reporting and disbursement approval, DIP reporting/renewal</u></p>	<ul style="list-style-type: none"> • Assisting the Applicant in the preparation of weekly cash flow reporting and related analysis on a weekly basis to the Board and the DIP Lender • Assisting the Applicant with designing and implementing procedures to ensure restricted funds, including research grants and restricted donations are deposited to the segregated cash accounts and reviewing and reconciling disbursements in connection with restricted funds • Reviewing critical research spending requests • Assisting the Applicant with the preparation of cash flow forecasts
<p><u>Multi Year Projections</u></p>	<ul style="list-style-type: none"> • Assisting the Applicant with preparing, reviewing and updating a 5-year financial projection • Assisting with the Applicant's review of its academic programming and the financial impact of its relationship with the Former Federated Universities
<p><u>Mediation</u></p>	<ul style="list-style-type: none"> • Gathering, analysing and presenting information relevant to the Mediation, including detailed information in respect of current faculty and department structures, faculty complement, head count reductions, academic programming, costs savings analysis, actuarial pension analysis • Assisting in the preparation of mediation briefs to be distributed to the mediation parties • Actively participating in Mediation sessions with the Senate Sub-Committee, LUFA, LUSU, each of the Former Federated Universities, and the Lenders • Providing other assistance that the mediation parties required, including facilitating the exchange of information and documents between the parties and liaising with mediation parties
<p><u>CCAA Reporting</u></p>	<ul style="list-style-type: none"> • Preparing for and attending at least nine motions or attendances in Court within the CCAA proceeding in addition to one application for leave to appeal • Preparing three of the Reports during Phase 1 of the CCAA Proceeding

<u>Operational Matters</u>	<ul style="list-style-type: none"> • Supporting LU’s management in dealing with various operational matters including finance and accounting processes, labour related issues, communications and other matters • Participating in regular meetings with Management to provide support in managing day-to-day issues
<u>Liaison with MCU / Government</u>	<ul style="list-style-type: none"> • Participating in the Applicant’s communications with MCU, including numerous regular calls with MCU, its advisors and other representatives of the Province to provide updates in respect of the CCAA proceeding and respond to their inquiries • Responding to inquiries from various other government parties, including the Information and Privacy Commissioner of Ontario and other ministries of the Province
<u>Liaison with Major Creditors including lenders and unions</u>	<ul style="list-style-type: none"> • Acting as primary liaison with the Lenders, LUFA, LUSU, NOSM and others to provide updates on matters related to the CCAA proceeding and respond to questions and information requests
<u>Board, Board-sub-committee and Senate meetings</u>	<ul style="list-style-type: none"> • Preparing for and attending numerous meetings with LU’s Board, Board Sub-Committees and selected Senate meetings, providing updates to the Board on CCAA matters and debriefing after these meetings

22. The following provides a description and overview of the primary activities undertaken by the Monitor and Stikeman in connection with the significant workstreams during phase 2 of the CCAA proceeding²⁸:

Description of Significant Workstreams during Phase 2: May 1- December 31, 2021	
Work Stream	Description of Work Performed
<u>CCAA Administration and Stabilization of Operations</u>	<ul style="list-style-type: none"> • Substantially the same as phase 1

²⁸ Twelfth Report at [paras. 104 to 172](#); Motion Record of the Monitor, Tab 2.

<p><u>Cash Flow Reporting and disbursement approval, DIP reporting/renewal</u></p>	<ul style="list-style-type: none"> • Substantially the same as phase 1
<p><u>Claims Process</u></p>	<ul style="list-style-type: none"> • Designing and implementing a process whereby the Monitor called for and, in conjunction with the Applicant, determined certain of the over 200 Proofs of Claim with an aggregate asserted claim value in excess of \$300 million filed by creditors for voting and distribution purposes in relation to a future plan of compromise or arrangement • Developing a sophisticated methodology and a process for notification and claims processing to determine compensation claims against the Applicant • Producing and delivering approximately 1,300 Statement of Compensation Claims to compensation claimants and processing approximately 55 notices of dispute and five compensation claim inquiry forms • Designing a process, in consultation with LUFA, for reviewing, negotiating and/or adjudicating the October 14 Grievances and commencing the Grievance Resolution Process • Assisting the Applicant in obtaining seven Court Orders or amendments in connection with the Claims Process or Compensation Claims Process
<p><u>CCAA Reporting</u></p>	<ul style="list-style-type: none"> • Preparing for and attending at least 13 motions or attendances in Court within the CCAA proceeding, as well as hearings related to the AGO Application • Preparing seven of the Reports during Phase 2 of the CCAA Proceeding, including one supplementary Report
<p><u>Operational Matters</u></p>	<ul style="list-style-type: none"> • In addition to the work described in respect of phase 1 for this workstream, the Monitor provided assistance to Management and various functional teams to mitigate the resource constraints arising from resignations and increased workload from the CCAA proceeding and governmental investigations
<p><u>Liaison with MCU / Government</u></p>	<ul style="list-style-type: none"> • In addition to the work described in respect of phase 1 for this workstream, the Monitor responded to inquiries from

	<p>the Ministry of Francophone Affairs and the French Language Services Commissioner on LU's French-language programming and services</p> <ul style="list-style-type: none"> • Reviewing and assisting LU in the preparation of LU's request for financial assistance from MCU and replacement DIP Facility
<u>Liaison with Major Creditors including lenders and unions</u>	<ul style="list-style-type: none"> • Substantially the same as phase 1, with discussions focused on addressing matters that arose in connection with phase 2, such as matters related to the Claims Process, Compensation Claims process, real estate review and operational and governance review
<u>Board, Board-sub-committee and Senate meetings</u>	<ul style="list-style-type: none"> • Substantially the same as phase 1
<u>Real Estate Review</u>	<ul style="list-style-type: none"> • Assisting LU in determining the initial mandate and scope of the real estate review, determining potential advisor candidates, reviewing candidate proposals, discussions with prospective advisors and the ultimate selection of the Real Estate Advisor • Reviewing materials prepared by, and meeting with, the Real Estate Advisor to discuss, among other things, the Real Estate Advisor's analysis and findings
<u>Nous Operational and Governance Review</u>	<ul style="list-style-type: none"> • Assisting LU in developing a request for proposals to be submitted by interested parties to undertake all or a portion of the operational and governance review • Reviewing and discussing draft reports with the CRO and Nous, the party selected to undertake the governance and operational reviews
<u>Auditor General of Ontario</u>	<ul style="list-style-type: none"> • Assisting LU in reviewing the AGO's extensive information requests in connection with its value-for-money audit of LU for the period 2010-2020 • Reviewing documentation produced by LU for delivery to the AGO for privilege and confidentiality • Attending various meetings, case conferences and hearings

	<ul style="list-style-type: none">• Preparing for and attending at least six motions, Court hearings and case conferences in connection with this workstream
<u>Accounting Assistance</u>	<ul style="list-style-type: none">• See description at para. 23, below

23. Due to the limited resources within the Applicant's finance team and numerous competing demands, the Applicant requested EY FAAS' assistance with the preparation of LU's annual financial statements. Starting in phase 2, EY FAAS provided LU with Accounting Assistance, which included: (a) advising LU on certain accounting policies as well as accounting alternatives and their impact on LU's financial statements; (b) preparing accounting position papers for LU in respect of certain accounting analysis, and new or revised accounting policies; and (c) assisting in the preparation of detailed account reconciliations and providing comments and observations on reconciliations prepared by LU; and (d) assisting LU with drafting financial statements with disclosure notes.²⁹ EY FAAS did not provide a professional opinion on the application of accounting principles pursuant to the Canadian standards for not-for-profit organizations and the procedures performed in connection with the Accounting Assistance do not constitute an audit conducted in accordance with Canadian generally accepted auditing standards or other assurance, review or related services in accordance with the standards established by the Chartered Professional Accountants of Canada.³⁰

²⁹ Twelfth Report at [paras. 173 to 176](#); Motion Record of the Monitor, Tab 2.

³⁰ Twelfth Report at [para. 178](#); Motion Record of the Monitor, Tab 2.

PART III - LAW AND ANALYSIS

A. Jurisdiction of this Court to Pass the Accounts

24. The jurisdiction of this Court to pass the accounts is confirmed in the Initial Order, which directs: “the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice”.³¹ The Initial Order reflects a practical consideration, as a judge who has managed the proceedings and has heard the various motions brought within the proceedings is best situated to determine the appropriate quantum of fees.³²

B. The Fair and Reasonable Test for Approval of Accounts

25. The role of the Court on a motion to pass accounts is to evaluate them based on the “overriding principle of reasonableness”. The overall value contributed by the Monitor and its counsel is the predominate consideration in assessing the reasonableness of the accounts.³³

26. The Court does not engage in a docket-by-docket or line-by-line assessment of the accounts as minute details of each element of a professional’s services may not be instructive when looked at in isolation. In complex cases, detailed assessments are not practical and do not aid in determining the overall value of the services provided.³⁴ As the Court of Appeal has stated: “The focus of the fair and reasonable assessment should be on what was accomplished, not on how much time it took”.³⁵

³¹ Initial Order at para. 37 ([Monitor’s Website](#)).

³² *Nortel Networks Corp. (Re)*, [2017 ONSC 673](#) at [para. 17](#) [*Nortel*].

³³ *Nortel* at [paras. 15, 21](#).

³⁴ *Nortel* at [para. 21](#).

³⁵ *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#) at [para. 45](#) [*Diemer*].

27. In this case, it is not necessary or desirable for the Court to engage in a review of each individual entry to determine whether the Monitor's and Stikeman's accounts are fair and reasonable. There has been considerable disclosure of the activities of the Monitor and Stikeman in the Reports and the Twelfth Report and through the proceedings that took place before this Court. Based on the extensive record filed in support of the motion, as well as the degree of Court oversight and involvement throughout these proceedings, it is respectfully submitted that the Court can and should determine that the Monitor's and Stikeman's accounts are fair and reasonable.

C. The Factors to Be Considered

28. As mentioned, the test to be applied in determining whether to approve the Monitor's and Stikeman's fees is whether they are fair and reasonable. Any challenges to a court officer's accounts are evaluated based on specific objections as "without some specified principled objection, it would be inappropriate to reduce the fees of Court officers based on the suggestion that they are too high".³⁶

29. To aid in the determination of whether a court-appointed officer's fees are fair and reasonable, Ontario appellate courts have recognized certain factors as a useful guideline.³⁷ These factors are not intended to be an exhaustive list and other factors may be material in any particular case.³⁸ These factors include:

- (a) The nature, extent and value of the assets being handled;
- (b) The complications and difficulties encountered;
- (c) The degree of assistance provided by the company, its officers or its employees;

³⁶ *Tiger Brand Knitting Co., Re*, [2006 CarswellOnt 9983](#) at paras. 14-15 (Ont. S.C.).

³⁷ *Confectionately Yours Inc., Re* (2002), [36 C.B.R. \(4th\) 200](#) at para. 51 (Ont. C.A.); *Diemer* at [para. 33](#).

³⁸ *Nortel* at [para. 14](#).

- (d) The time spent;
 - (e) The Monitor's knowledge, experience and skill;
 - (f) The diligence and thoroughness displayed;
 - (g) The responsibilities assumed;
 - (h) The results achieved; and
 - (i) The cost of comparable services when performed in a prudent and economical manner.
- (i) *Nature, extent and value of the assets being handled*

30. The Applicant's governance structure is complex, and its constituents are vast. LU is a publicly funded, bilingual and tri-cultural post-secondary institution. Its operations are located in the City of Greater Sudbury, Ontario and it has consistently been one of the largest employers in Sudbury. LU's operations include its academic teaching operations, academic research and the provision of certain ancillary services, including student residences and food services.³⁹ The book value of LU's assets exceed \$350,000,000, consisting primarily of its investments and capital assets.⁴⁰ LU's capital assets are comprised of buildings, equipment and furnishing, site improvements, and land. While LU is a not-for-profit, non-share capital corporation, courts have expressly rejected the fact that an entity was a non-profit federation as a basis for reducing a court-officer's fees.⁴¹

³⁹ Pre-Filing Report of the Proposed Monitor at paras. 27 and 30, ([Monitor's Website](#)).

⁴⁰ Affidavit of Dr. Robert Haché sworn January 30, 2021 at paras. 203 and 204 ([Monitor's Website](#)).

⁴¹ *Confectionately Yours Inc., Re* (2002), [36 C.B.R. \(4th\) 200](#) at para. 53 (Ont. C.A.), citing *Chartrand v. De la Ronde*, [139 Man.R. \(2d\) 36](#) (Q.B.).

(ii) Complications and difficulties encountered

31. These proceedings are unprecedented in terms of the novel legal, operational, governance, regulatory and practical issues confronted. From the outset, these proceedings have been highly contentious and scrutinized by creditors and the public alike. These proceedings represent the first time in Canada that a publicly funded educational institution has filed for creditor protection under the CCAA.

32. The CCAA Proceeding has involved complex issues and a multitude of competing interests from various groups of stakeholders. Significant complex issues include the faculty and staff reductions and compensation changes reached following the intensive Mediation with the Applicant's unions, LUFA and LUSU and ultimate disclaimer of the relationships with the Former Federated Universities, which involved highly contentious Court proceedings opposing the disclaimer. The Applicant's stakeholders are numerous and the Monitor was challenged with coordinating, negotiating and liaising with many unique stakeholders that do not typically feature in a conventional CCAA proceeding. During phase 1 and phase 2, in addition to LUFA, LUSU, and the Former Federated Universities, the CCAA proceeding received significant stakeholder involvement from the Lenders, MCU, AFO, the Ministry of Francophone Affairs, the French Language Services Commissioner and the AGO.

33. The efforts of the Monitor and its counsel in assisting the Applicant have had a material, positive impact on LU's financial position. For example, the staff reductions and negotiated amendments to the collective agreements resulting from the Mediation is expected to result in \$30.3 million to \$33.5 million in net annual cost savings. Furthermore, the disclaimer of the Federated Agreements and Financial Distribution Notice resulting from the Mediation is expected

to result in an additional \$7.1 million to \$7.3 million in net annual cost savings, for a total of approximately \$40 million annually.

(iii) Degree of assistance provided by the company, its officers or its employees

34. In light of its size and mandate, the Applicant's internal resources were strained even at the start of the CCAA proceeding. As at December 30, 2020, the Applicant employed only 111 administrative and professional staff.⁴² Since the CCAA filing on February 1, 2021, several key personnel have departed from LU, leaving a large number of administrative positions vacant.⁴³ This has negatively impacted the ability of the remaining LU personnel to manage both their day-to-day ordinary course duties as well as advancing many of the additional and time intensive aspects of the CCAA Proceeding.

35. The challenging circumstances of the CCAA proceeding, the state of LU's books and records, and lack of internal resources at LU resulted in the Monitor undertaking a scope of work that is beyond the typical role of a monitor in a CCAA proceeding. Given the financial circumstances of LU and the limited resources within the finance team at LU, this scope of work included assisting with day-to-day operations and, at the Board's request, the provision of accounting personnel from Ernst & Young to assist the LU finance team with, among other things, the preparation of LU's annual financial statements.⁴⁴

⁴² Pre-Filing Report of the Proposed Monitor at para. 75, ([Monitor's Website](#)).

⁴³ Seventh Report of the Monitor at para. 34, ([Monitor's Website](#)); Twelfth Report at [para. 133](#); Motion Record of the Monitor, Tab 2.

⁴⁴ Twelfth Report at [paras. 173 to 179](#); Motion Record of the Monitor, Tab 2.

(iv) *Time spent*

36. The Monitor and its counsel have named the individual professionals⁴⁵ who have performed the necessary work along with their position, hourly billing rate, total number of hours worked, total associated professional fees and the work stream(s) in the CCAA proceeding in which the professional has been involved.

37. The time spent, and thus the fees and disbursements of the Monitor and Stikeman resulting from their activities, are commensurate with the significant role and responsibilities and activities undertaken. The work has been undertaken with a view to advancing the interests of the LU estate having regard to the complications and challenges that have confronted the Monitor, to maximize the amounts available for distribution to creditors, and to best position LU to emerge from these CCAA proceedings as a going concern.

38. In addition to this Court's direct knowledge of the Monitor's and Stikeman's activities, the information necessary for this Court to assess the reasonableness of the time spent and the fees and disbursements of the Monitor and Stikeman during the Period has been detailed in the Twelfth Report and the Reports.

39. The time expended and the fees claimed by the Monitor, EY FAAS and Stikeman have been disclosed as a separate line item in a number of the Reports along with forecasts of expected fees.

⁴⁵ Individual professionals of the Monitor working less than 20 hours have been aggregated in a single line item.

(v) Monitor's knowledge, experience and skill

40. The Monitor and Stikeman have significant knowledge, experience and skill in complex restructuring matters. The Monitor and its counsel have acted in this capacity in some of Canada's largest and most complicated restructuring mandates. The lead professionals involved are all highly regarded and possess significant expertise in complex and special situations.

(vi) Diligence and thoroughness displayed

41. The breadth of matters detailed in the Twelfth Report demonstrate the diligence and thoroughness displayed by the Monitor, EY FAAS and Stikeman.

(vii) Responsibilities assumed

42. The Monitor, with the assistance of Stikeman, carried out extensive activities during the Period. These activities are detailed in the Twelfth Report and the Reports, and summary tables have been provided at paras. 21 and 21, above. Summary tables that detail the hours allocated to each workstream can be found at paragraphs 61 and 107 of the Twelfth Report.

43. The more significant responsibilities that the Monitor has assumed include: (a) assisting the Applicant in considering its restructuring options and consulting with key stakeholders; (b) assisting in the preparation of cash-flow forecasts and otherwise assisting LU in managing its financial affairs following the CCAA filing; (c) providing requisite notices in connection with the commencement of the CCAA proceeding; (d) actively participating and assisting the Applicant in the mediation process in connection with considering and implementing certain restructuring actions, including the repudiation and re-negotiation of various contracts and agreements; (e) assisting the Applicant in connection with responding to information requests and liaising with significant stakeholders; (f) commencing a claims process, including a Compensation Claims

process; (g) assisting the Applicant in responding to various and demanding regulatory inquiries; and (h) reporting to the Court on the status of the CCAA proceedings.⁴⁶

(viii) Results achieved

44. It is clear that the Monitor's efforts during phase 1 of the CCAA proceedings were integral to achieving major cost-savings for LU. The Monitor's active participation throughout the Court-ordered Mediation significantly contributed to the Applicant reaching important agreements with major stakeholders which were necessary to secure immediate cost savings required for LU to continue as a going concern beyond April 30, 2021.⁴⁷ The Mediation was successful in achieving an estimated net annual savings of approximately \$40 million.

45. The Monitor's activities were essential to advancing a claims process with over 200 Proofs of Claim filed, many of which contain legally and factually complex issues, with an aggregate asserted claim value in excess of \$300 million. The efforts of the Monitor and its counsel during the Period also resulted in the substantial completion of a compensation claims process to determine the claims against the Applicant by more than 1,300 current and former employees of the Applicant and certain other third parties.⁴⁸ The Monitor also assisted LU in successfully achieving the resolution of over 100 pre-filing grievances, many of which had been outstanding for more than a year prior to the CCAA proceeding, and designed a process for reviewing, negotiating and/or adjudicating various Grievances filed post-filing and commenced the Grievance Resolution Process.

⁴⁶ Twelfth Report at [para. 37](#); Motion Record of the Monitor, Tab 2.

⁴⁷ Affidavit of Dr. Robert Haché sworn April 21, 2021 at para. 29 ([Monitor's Website](#)).

⁴⁸ Twelfth Report at [para. 120](#); Motion Record of the Monitor, Tab 2.

46. When the fees and disbursements of the Monitor, EY FAAS and Stikeman are viewed in the context of the significant results achieved, it is respectfully submitted that the accounts are fair and reasonable.

(ix) *The cost of comparable services when performed in a prudent and economical manner*

47. The Monitor's and Stikeman's professional fees and disbursements are comparable to the rates charged by other professional firms in the Toronto market for the provision of similar services regarding significant complex commercial restructuring matters.

D. Conclusion on Fairness and Reasonableness

48. It is respectfully submitted that a consideration of the factors articulated by the courts supports the conclusion that the remuneration of the Monitor, EY FAAS and Stikeman is fair and reasonable and their fees and disbursements for the Period should be approved.

E. Monitor's Reports and Activities

49. In *Re Target Canada Co.*, Morawetz R.S.J. (as he then was) stated that a request to approve a monitor's report "is not unusual"⁴⁹ and that:

there are good policy and practical reasons for the court to approve of [*sic*] Monitor's activities and providing a level of protection for Monitors during the CCAA process...

Specifically, Court approval:

- (a) allows the Monitor to move forward with next steps in the CCAA proceedings;
- (b) brings the Monitor's activities before the Court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;

⁴⁹ *Re Target Canada Co.*, [2015 ONSC 7574](#) at paras. 2 [*Target*].

- (d) enables the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;
- (e) provides protection for the Monitor not otherwise provided by the CCAA; and
- (f) protects the creditors from the delay and distribution that would be caused by:
 - (i) re-litigation of steps taken to date, and
 - (ii) potential indemnity claims by the Monitor.⁵⁰

50. The form of the proposed order, with respect to approval of the Monitor's Reports and activities, is consistent with the language used in *Target*⁵¹ and subsequent proceedings⁵².

51. In the present case, the Monitor's Reports and the activities of the Monitor described therein should be approved. The Monitor was asked specifically to place its fees and activities before the Court for approval at this time, instead of waiting for approval later in the CCAA Proceeding. The Monitor has responded to this request. The Monitor has acted responsibly and carried out its activities in a manner consistent with the provisions of the CCAA and in compliance with the Initial Order. No party has put forward evidence to the contrary. It is respectfully submitted that in the circumstances, the Court should avoid second-guessing the good faith decisions of the Monitor made in the course of the highly complex and fast-paced CCAA proceedings.

⁵⁰ *Target* at [para. 22](#).

⁵¹ *Target* at [paras. 7 and 26](#).

⁵² See, for example: *Re Clover Leaf Foods* (29 September 2020), Toronto CV-20-00641220-00CL (Ont Sup Ct [Commercial List]) Order (Re Approval of Monitor's Activities and Fees and for Stay Extension) at para. 3 ([Monitor's Website](#)); *Re Green Growth Brands Inc.* (18 December 2020), Toronto CV-20-00641220-00CL (Ont Sup Ct [Commercial List]) Order (Re Approval of the Monitor's Activities and Fees) at para. 2 ([Monitor's Website](#)); *Re Comark Holdings Inc.* (8 September 2020), Toronto CV-20-00642013-00CL (Ont Sup Ct [Commercial List]) Order (Re Fee Approval) at para. 2 ([Monitor's Website](#)).

PART IV - RELIEF SOUGHT

52. For the foregoing reasons, the Monitor requests an Order approving (a) the Reports and the Twelfth Report, and the activities of the Monitor described therein, and (b) the fees and disbursements incurred during the period February 1, 2021 through to and including December 31, 2021, being:

- (a) For the Monitor, \$4,917,795.07 and disbursements of \$54,754.33 (plus applicable taxes of \$646,431.42);
- (b) For EY FAAS, \$947,000.00 and disbursements of \$119.89 (plus applicable taxes of \$123,242.59); and
- (c) For Stikeman, \$2,762,526.55 and disbursements of \$12,425.19 (plus applicable taxes of \$360,743.73).

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of May, 2022.

STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Ashley Taylor (LSO# 39932E)
Tel: (416) 869-5236
Email: ataylor@stikeman.com

Elizabeth Pillon (LSO# 35638M)
Tel: (416) 869-5623
Email: lpillon@stikeman.com

Ben Muller (LSO# 80842N)
Tel: (416) 869-5543
Email: bmuller@stikeman.com

Counsel for the Monitor,
Ernst & Young Inc.

SCHEDULE “A” – LIST OF AUTHORITIES

1. *Nortel Networks Corp. (Re)*, [2017 ONSC 673](#)
2. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#)
3. *Tiger Brand Knitting Co., Re*, 2006 CarswellOnt 9983 (Ont. S.C.)
4. *Confectionately Yours Inc., Re* (2002), [36 C.B.R. \(4th\) 200](#) (Ont. C.A.)
5. *Chartrand v. De la Ronde*, [139 Man.R. \(2d\) 36](#) (Q.B.)
6. *Re Target Canada Co.*, [2015 ONSC 7574](#)
7. *Re Clover Leaf Foods* (29 September 2020), Toronto CV-20-00641220-00CL (Ont Sup Ct [Commercial List]) Order (Re Approval of Monitor’s Activities and Fees and for Stay Extension) at para. 3
8. *Re Green Growth Brands Inc.* (18 December 2020), Toronto CV-20-00641220-00CL (Ont Sup Ct [Commercial List]) Order (Re Approval of the Monitor’s Activities and Fees) at para. 2
9. *Re Comark Holdings Inc.* (8 September 2020), Toronto CV-20-00642013-00CL (Ont Sup Ct [Commercial List]) Order (Re Fee Approval) at para. 2

SCHEDULE “B” – RELEVANT STATUTES

Not applicable

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

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

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

FACTUM OF THE MONITOR

STIKEMAN ELLIOTT LLP

5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Ashley Taylor (LSO# 39932E)

Tel: (416) 869-5236

Email: ataylor@stikeman.com

Elizabeth Pillon (LSO# 35638M)

Tel: (416) 869-5623

Email: lpillon@stikeman.com

Ben Muller (LSO# 80842N)

Tel: (416) 869-5543

Email: bmuller@stikeman.com

Counsel for the Monitor,
Ernst & Young Inc.