

**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**

**MOTION RECORD
(Stay Extension, DIP Amendment)**

September 23, 2022

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SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

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INDEX
(Stay Extension, DIP Amendment)

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1.	Notice of Motion dated September 23, 2022
2.	Affidavit of Robert Haché, sworn September 23, 2022
A.	Exhibit "A" – DIP Amendment
3.	Draft Stay Extension and Approval of DIP Amendment Order

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **LAURENTIAN UNIVERSITY OF SUDBURY**

**NOTICE OF MOTION
(Stay Extension, DIP Amendment)**

Laurentian University of Sudbury (the “**Applicant**” or “**LU**”) will make a motion to Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) at 330 University Avenue, Toronto.

PROPOSED METHOD OF HEARING:

This motion is to be heard in writing.

THIS MOTION IS FOR:

1. An Order (the “**Order**”) substantially in the form attached at Tab 3 of the Motion Record of the Applicant dated September 23, 2022 (the “**Motion Record**”), that, among other things:
 - (a) if necessary, abridges the time for service of the Motion Record and validates service thereof;

- (b) extends the Stay Period¹ for seven (7) days up to and including October 7, 2022; and
 - (c) approves an amendment (the “**DIP Amendment**”) to the DIP Agreement (as defined below) deleting the date of September 30, 2022 and replacing it with November 30, 2022 in the definition of Maturity Date (as defined therein), substantially in the form annexed as Exhibit “A” to the Haché Affidavit.
2. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

Overview

3. On February 1, 2021, the Applicant sought and obtained an initial order (the “**Initial Order**”) granting it protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), approving a stay of proceedings for an initial 10-day period (the “**Stay Period**”) and certain Court ordered super-priority charges.
4. At the comeback hearing on February 10, 2021, the Court granted the amended and restated initial order (the “**Amended and Restated Initial Order**”) that, among other things, approved a debtor-in-possession interim financing arrangement in the principal amount of \$25 million (the “**Initial DIP Facility**”) and extended the Stay Period to April 30, 2021.

¹ All capitalized terms not otherwise defined in this Notice of Motion are as defined in the Affidavit of Dr. Robert Haché sworn September 23, 2022 (the “**Haché Affidavit**”) contained at Tab 2 of the Motion Record.

Since then, the Stay Period has been extended many times, most recently up to and including September 30, 2022.

5. On January 27, 2022, the Court issued an order authorizing the Applicant to borrow under the DIP Facility governed pursuant to a DIP Loan Agreement dated as of January 19, 2022 (as amended, the “**DIP Agreement**”) between the Applicant and Her Majesty the Queen in right of Ontario as represented by the Minister of Colleges and Universities (the “**DIP Lender**”). The DIP Facility was used by the Applicant to repay in full the Initial DIP Facility.
6. Pursuant to the terms of the DIP Agreement, the outside date constituting the Maturity Date is September 30, 2022.
7. Since the issuance of the Stay Extension Order, LU has completed significant steps towards its overall restructuring and emerging from the CCAA proceeding. In particular, on July 28, 2022, the Court issued an order (the “**Meeting Order**”) whereby it accepted the filing of the Plan of Compromise and Arrangement dated July 21, 2022 (as amended on September 9, 2022, the “**Plan**”) and called for a meeting of LU’s creditors to vote on a resolution to approve the Plan on September 14, 2022 (the “**Meeting**”).
8. LU’s creditors voted to accept the Plan at the Meeting and, pursuant to the Meeting Order, the date of the Sanction Hearing has been scheduled for October 5, 2022. Materials in respect of the Meeting and in support of the Sanction Hearing will be served separately.

Extension of the Stay of Proceedings

9. The Applicant seeks an extension of the Stay Period up to and including October 7, 2022.

10. The short stay extension is required to enable the Applicant to continue operating in the ordinary course while preparing for the Sanction Hearing, at which time LU will ask for a further extension of the Stay Period to November 30, 2022, to permit LU to implement the Plan, if sanctioned at the Sanction Hearing.
11. The Revised Cash Flow Forecast prepared by the Applicant with the assistance of the Monitor demonstrates that the Applicant will have sufficient liquidity to operate its business and meet its obligations during the requested brief extension of the Stay Period.
12. The Applicant has acted, and continues to act, in good faith and with due diligence during the course of this CCAA proceeding.
13. The Monitor supports the proposed stay extension and the relief sought on this motion.

Amendment to DIP Maturity Date

14. The Applicant seeks Court approval of the DIP Amendment to extend the outside date for the Maturity Date to November 30, 2022. In the absence of the DIP Amendment, the DIP Facility would mature on September 30, 2022.
15. The outside date of November 30, 2022 for the Maturity Date coincides with the proposed extension of the Stay Period that the Applicant will be seeking at the Sanction Hearing.
16. Prior to the Maturity Date set out in the DIP Amendment, the Applicant expects to have entered into an agreement with the DIP Lender to provide exit financing in order to re-finance and fully repay the DIP Facility upon implementation of the Plan.
17. The Monitor supports the approval of the DIP Amendment.

Other Grounds

18. Chief Justice Morawetz directed that the Applicant's motion for an extension of the Stay Period proceed in writing. The amendment to the Maturity Date under the DIP Facility is sought in parallel with the extension to the Stay Period so that the DIP Facility does not become immediately due and payable while the Applicant seeks the sanction of the Plan on October 5, 2022 and works towards its implementation, if sanctioned by the Court;
19. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court; and
20. Such further and other grounds as counsel may advise and this Court may permit.

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

1. The Haché Affidavit (sworn September 23, 2022) and the Exhibit attached thereto;
2. The Fifteenth Report of the Monitor, to be filed; and
3. Such further and other evidence as counsel may advise and this Court may permit.

September 23, 2022

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Schedule "A"
SERVICE LIST

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

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(as at June 9, 2022)

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

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

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

Proceedings commenced at Toronto

**NOTICE OF MOTION
(Stay Extension, DIP Amendment)**

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TAB 2

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **LAURENTIAN UNIVERSITY OF SUDBURY**

Applicant

AFFIDAVIT OF DR. ROBERT HACHÉ
(sworn September 23, 2022)

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

I. INTRODUCTION

1. I am the President and Vice-Chancellor of Laurentian University of Sudbury (“**LU**” or the “**Applicant**”) and a member of the Board of Governors (the “**Board**”) of LU, having served in this role since July 2019.
2. As such, I have knowledge of the matters hereinafter deposed to, save where I have obtained information from others. Where I have obtained information from others, I have stated the source of the information and believe it to be true.
3. This affidavit is sworn in support of LU’s motion for an order substantially in the form of the draft order attached as Tab 3 of the Motion Record of LU dated September 23, 2022 (the “**Motion Record**”) that, among other things:
 - (a) abridges the time for service of the Motion Record, if necessary, and validates service thereof;

- (b) extends the Stay Period (as defined in the Amended and Restated Initial Order) from September 30, 2022 until October 7, 2022 to permit a longer extension of the Stay Period to be sought at the Sanction Hearing (as defined below) scheduled for October 5, 2022; and
 - (c) approves an amendment to the DIP Facility (as defined below) to delete reference to “September 30, 2022” and replace it with “November 30, 2022” in the definition of Maturity Date (the “**Maturity Date**”), with all other terms of the DIP Facility remaining unamended, substantially in the form of the amendment attached hereto as Exhibit “A” (the “**DIP Amendment**”).
4. All monetary amounts referred to in this affidavit are in Canadian dollars, unless otherwise noted.

II. OVERVIEW OF THE APPLICANT

5. As explained more fully in my affidavit sworn January 30, 2021 (the “**Initial Haché Affidavit**”), LU is a non-share capital corporation that was incorporated pursuant to *An Act to Incorporate Laurentian University of Sudbury*, S.O. 1960, c. 151 C. 154 (the “**Act**”). LU is also a registered charity pursuant to the *Income Tax Act*, R.S. C., 1985, c. 1 (5th Supp). Where capitalized terms are used in this affidavit and not otherwise defined, they shall have the meaning ascribed to them in the Initial Haché Affidavit.
6. Below is a summary of events in LU’s CCAA proceeding that are relevant to this motion. Earlier affidavits I have sworn in this proceeding provide a detailed description of the significant events to date in the CCAA proceeding.

7. On February 1, 2021, the Court granted an initial order (the “**Initial Order**”) that, among other things, appointed Ernst & Young Inc. (“**EY**”) as monitor (in such capacity, the “**Monitor**”) of LU in this proceeding, approved a stay of proceedings for the initial 10-day period (the “**Stay Period**”) and granted certain Court ordered super-priority charges.
8. On February 11, 2021, the Court granted the amended and restated initial order (the “**Amended and Restated Initial Order**”) that, among other things, approved a debtor-in-possession interim financing arrangement up to the maximum amount of \$25 million, which was subsequently increased by court order to \$35 million (the “**DIP Facility**”) and extended the Stay Period to April 30, 2021. The Stay Period has since been extended on several occasions by orders of the Court and is currently set to expire on September 30, 2022.
9. On January 27, 2022, the Court issued an order (the “**DIP Approval Order**”) authorizing the Applicant to borrow \$35 million (the “**DIP Facility**”) pursuant to a DIP Loan Agreement dated as of January 19, 2022 (as amended, the “**DIP Agreement**”) between the Applicant and Her Majesty the Queen in right of Ontario as represented by the Minister of Colleges and Universities (in such capacity, the “**DIP Lender**”).
10. Since the Stay Period was last extended, LU has completed significant steps towards its overall restructuring and emergence from this CCAA proceeding. In particular, on July 28, 2022, the Court issued an order (the “**Meeting Order**”) whereby it accepted the filing of the Plan of Compromise and Arrangement dated July 21, 2022 (as amended, the “**Plan**”) and called for a meeting of LU’s creditors to vote on a resolution to approve the Plan on September 14, 2022 (the “**Meeting**”).

11. The Meeting was held, and the Plan was approved by the requisite majorities of Affected Creditors (as defined in the Plan) entitled to vote on the Plan. Further information regarding the Meeting is expected to be included in separate motion materials to be served by LU in support of the Sanction Hearing, which is scheduled for October 5, 2022.
12. Throughout this proceeding, LU has operated in accordance with the Amended and Restated Initial Order. LU has worked closely with the Monitor in advancing the restructuring to this point, including in preparation for the Meeting.

III. STAY EXTENSION

13. LU seeks a short extension of the Stay Period until October 7, 2022, in view of the timing and scheduling of the Sanction Hearing. At the Sanction Hearing, LU expects to seek a further extension of the Stay Period until November 30, 2022, to permit LU time to complete implementation of the Plan, if the Court sanctions the Plan.
14. The requested brief extension of the Stay Period is required to enable LU to continue operating in the ordinary course while preparing for the Sanction Hearing.
15. LU has undergone significant changes during the CCAA proceeding, all with the objective to emerge as a sustainable and financially viable university to continue providing quality post-secondary education in Northern Ontario. LU believes that the Plan, if approved by the Court at the Sanction Hearing and implemented, accomplishes that objective.
16. Pursuant to the Meeting Order, a motion for the approval of the Sanction Order (as defined in the Meeting Order) is scheduled for October 5, 2022 (the “**Sanction Hearing**”). Sanctioning of the Plan at the Sanction Hearing represents another significant step towards

LU's emergence from the CCAA proceeding, and will allow LU to proceed to implementation of the Plan. At the Sanction Hearing, LU will seek to further extend the Stay Period to November 30, 2022, to permit LU time to implement the Plan.

17. The Revised Cash Flow Forecast (as defined below) demonstrates that LU will have sufficient liquidity to meet its obligations during the proposed brief extension to the Stay Period.
18. LU has acted and continues to act diligently and in good faith in respect of all matters relating to this CCAA proceeding.
19. In the circumstances, I do not believe that any creditor will suffer material prejudice as a result of the extension of the Stay Period.
20. I have been advised by Sharon Hamilton, Senior Vice-President with EY, that the Monitor supports the proposed extension to the Stay Period.

IV. DIP AMENDMENT AND CASH FLOW FORECAST

A. Amendment to Maturity Date in the DIP Agreement

21. On January 19, 2022, LU and the DIP Lender entered into the DIP Agreement, whereby the DIP Lender provided LU with \$35 million to refinance the previous DIP Facility that was provided by Firm Capital Mortgage Fund Inc, in accordance with the terms and conditions of the DIP Agreement. The DIP Agreement has a Maturity Date of September 30, 2022.
22. On January 27, 2022, the Court issued the DIP Approval Order approving the DIP Facility and the DIP Agreement.

23. The DIP Agreement has a Maturity Date of September 30, 2022. LU and the DIP Lender have negotiated an amendment to the Maturity Date to delete reference to the date “September 30, 2022” in section 15(a) and replace it with “November 30, 2022” (the “**DIP Amendment**”). A copy of the DIP Amendment is attached hereto as **Exhibit “A”**.
24. LU seeks Court approval of the DIP Amendment so that the outside Maturity Date corresponds with the outside date of the final extension to the Stay Period that LU expects to seek in the CCAA proceeding, and to provide sufficient time for LU to complete the necessary steps to allow implementation of the Plan and an exit from the CCAA proceeding. The Meeting Order scheduled the date of the Sanction Hearing, which is after the expiry of the current Stay Period and the outside Maturity Date under the DIP Agreement.
25. Due to timing issues relating to the process for the DIP Lender to seek the required approvals, and the Court’s availability prior to the expiry of the Stay Period on September 30, 2022, the Applicant’s service of this motion may be slightly less than the notice period prescribed by the *Rules of Civil Procedure* (Ontario).
26. As a condition of Plan implementation and LU’s emergence from the CCAA proceeding, exit financing will need to be obtained in order to repay in full the DIP Facility. Prior to the expiry of the Maturity Date, LU expects to have entered into an agreement with the DIP Lender to provide exit financing in order to re-finance and fully repay the DIP Facility upon implementation of the Plan.
27. I have been advised by Ms. Hamilton that the Monitor supports the DIP Amendment and the extension of the Maturity Date.

B. Cash Flow Forecast

28. Ms. Hamilton advised me that a cash flow forecast for the period covering the requested stay extension has been reviewed by the Monitor and indicates that LU will have sufficient cash to cover the brief (seven day) period of the requested extension to the Stay Period (the “**Revised Cash Flow Forecast**”).

29. The Revised Cash Flow Forecast will be attached to a Monitor’s Report which Ms. Hamilton informed me the Monitor will be serving and filing in support of this motion.

V. CONCLUSION

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

31. This affidavit is sworn in support of LU’s motion for, among other things, an extension to the Stay Period and an amendment to the Maturity Date under the DIP Agreement, and for no other or improper purpose.

SWORN before me via videoconference by
DR. ROBERT HACHÉ located in the City
of Sudbury, in the Province of Ontario,
before me at the City of Toronto, in the
Province of Ontario, this 23rd day of
September, 2022 in accordance with O.
Reg 431/20, *Administering Oath or
Declaration Remotely*.



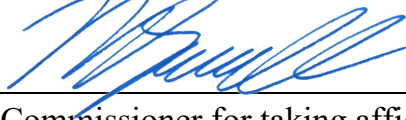
Commissioner for Taking Affidavits

Mitchell W. Grossell
LSO # 699931



DR. ROBERT HACHÉ

This is Exhibit “A” referred to in the Affidavit of Dr. Robert Haché sworn by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 23rd day of September, 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.



A Commissioner for taking affidavits

MITCHELL W. GROSSELL

AMENDMENT TO THE DIP LOAN AGREEMENT

This Amendment to the DIP Loan Agreement (the “**Amendment**”) is made as of September 22, 2022.

RECITALS:

- A. On February 1, 2021, Laurentian University of Sudbury (the “**Borrower**”) commenced proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) in the Ontario Superior Court of Justice (Commercial List) (the “**Court**”).
- B. Pursuant to a DIP Loan Agreement dated as of January 19, 2022 (the “**DIP Loan Agreement**”) between the Borrower and Her Majesty the Queen in right of Ontario as represented by the Minister of Colleges and Universities (the “**DIP Lender**”), the DIP Lender advanced super-priority debtor-in-possession financing to the Borrower in the principal amount of \$35,000,000 (the “**DIP Facility**”) to be used by the Borrower to repay in full and discharge the Existing DIP Facility and to continue its restructuring efforts in the CCAA Proceedings.
- C. Section 15 of the DIP Loan Agreement provides that all DIP Obligations owing to the DIP Lender shall become immediately due and payable in full on the earliest of, *inter alia*, September 30, 2022 or such later date as the DIP Lender may agree in its sole discretion.
- D. The Borrower has requested an extension of the Maturity Date of the DIP Facility while it pursues approval and implementation of a CCAA plan of compromise and arrangement.
- E. The Lender is prepared to extend the Maturity Date of the DIP Facility on the terms set forth in this Amendment.
- F. Pursuant to Section 29 of the DIP Loan Agreement, the DIP Loan Agreement may be amended by an instrument in writing duly executed by the Borrower and the DIP Lender.
- G. Capitalized terms used but not defined herein have the meanings given to them in the DIP Loan Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and the Lender agree as follows:

- 1. Section 15(a) of the DIP Loan Agreement is hereby amended by deleting the words “September 30, 2022” and replacing them with the words “November 30, 2022”.
- 2. Except as expressly amended herein, all terms of the DIP Loan Agreement remain in full force and effect, unamended.
- 3. The Borrower hereby represents and warrants to the DIP Lender as follows and acknowledges that the DIP Lender is relying on such representations and warranties in connection with entering into this Amendment:
 - (a) no Default or Event of Default exists as of the date hereof; and
 - (b) the representations and warranties made by the Borrower in or pursuant to the DIP Loan Agreement are true and correct as of the date hereof.

4. This Amendment shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein. The parties hereby irrevocably attorn and submit to the exclusive jurisdiction of the Court supervising the CCAA Proceedings with respect to any matter relating to this Amendment.
5. This Amendment may be executed in any number of counterparts and delivered by e-mail, including in PDF format, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

LAURENTIAN UNIVERSITY OF SUDBURY

By:



Name: Robert Haché

Title: President and Vice-Chancellor

**HIS MAJESTY THE KING IN RIGHT OF
ONTARIO AS REPRESENTED BY THE
MINISTER OF COLLEGES AND
UNIVERSITIES**

By:



Name: The Honourable Jill Dunlop

Title: Minister of Colleges and Universities

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

**AFFIDAVIT OF DR. ROBERT HACHÉ
(Stay Extension; DIP Amendment)**

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Lawyers for the Applicant

TAB 3

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that service of the Applicant's Notice of Motion and the Applicant's Motion Record is hereby abridged and validated, so that its Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Haché Affidavit.

EXTENSION OF STAY PERIOD

3. **THIS COURT ORDERS** that the Stay Period, as ordered and defined in paragraph 20 of the Amended and Restated Initial Order dated February 11, 2021, is hereby extended up to and including October 7, 2022.

APPROVAL OF DIP AMENDMENT

4. **THIS COURT ORDERS** that the DIP Amendment substantially in the form attached as Exhibit "A" to the Haché Affidavit is hereby approved and the Applicant is authorized and empowered to enter into the DIP Amendment.

GENERAL

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

terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

Chief Justice G.B. Morawetz

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

ORDER
(Stay Extension and Approval of DIP
Amendment)

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

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

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

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**MOTION RECORD
(Stay Extension, DIP Amendment)**

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