

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

EIGHTEENTH REPORT OF THE MONITOR
October 27, 2022

INTRODUCTION

1. On February 1, 2021, Laurentian University of Sudbury (“LU” or the “**Applicant**”) brought an application before this Court seeking an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) to, among other things, obtain a stay of proceedings to allow the Applicant an opportunity to restructure itself financially and operationally.
2. On February 1, 2021, the Court granted an initial order (the “**Initial Order**”) that, among other things, appointed Ernst & Young Inc. as monitor of the Applicant in this CCAA proceeding (in such capacity, the “**Monitor**”), and approved a stay of proceedings for the initial 10-day period (the “**Stay Period**”) and certain Court ordered super-priority charges.
3. On February 5, 2021, the Court issued an order (the “**Mediator Appointment Order**”) appointing the Honourable Mr. Justice Sean F. Dunphy as mediator (the “**Court-Appointed Mediator**”) to oversee and mediate certain negotiations within the restructuring as set out in the Mediator Appointment Order.
4. On February 10, 2021, the Court held a comeback hearing, which resulted in the issuance of an amended and restated initial order (the “**Amended and Restated Initial Order**”) that, among other things, approved debtor-in-possession interim financing up to the maximum amount of \$25 million (the “**DIP Facility**”) and extended the stay of proceedings to April 30, 2021.

5. On April 29, 2021, the Court granted a stay extension order that, among other things, approved an increase in the DIP Facility up to a maximum principal amount of \$35 million (the “**Amended DIP Facility**”), approved the Transition Agreement entered into between the Applicant and Huntington University dated April 16, 2021 (the “**Huntington Transition Agreement**”) and extended the stay of proceedings to August 31, 2021.
6. On May 31, 2021, the Court granted a claims process order (as amended and restated from time to time, the “**Claims Process Order**”) that, among other things, established a process whereby the Monitor, in conjunction with the Applicant, would (a) call for claims of creditors and establish bar dates by which all such claims must be filed, (b) determine Claims (as defined in the Claims Process Order) for voting and distribution purposes in relation to a plan of compromise or arrangement to be presented by the Applicant at a future date, and (c) develop a process for dealing with compensation claims, including establishing a methodology for calculating the compensation claims (the “**Claims Process**”).
7. On May 31, 2021, the Court granted an order appointing Mr. Louis (Lou) P. Pagnutti as Chief Redevelopment Officer (the “**CRO**”) of the Applicant.
8. On July 5, 2021, the Court issued an order authorizing and directing LU to engage Cushman & Wakefield (“**C&W**”) as an advisor to perform a review of the Applicant’s real estate portfolio. On July 20, 2021, the engagement letter with C&W was executed.
9. On August 17, 2021, the Court granted an order (the “**Compensation Claims Process Order**”) approving the methodology to calculate Compensation Claims, other than Third Party RHBP Claims, (as those terms are defined in the Compensation Claims Process Order) and a process for notification and claims processing to determine Compensation Claims for voting and distribution purposes in relation to a plan of compromise or arrangement to be presented by the Applicant at a future date.
10. On August 27, 2021, the Court granted an Order (a) extending the stay of proceedings to January 31, 2022; and (b) approving an amendment to the Amended DIP Facility that, among other things, extended the Maturity Date (as defined in the Amended DIP Facility) to January 31, 2022.
11. On October 1, 2021, the Court granted an Order amending the Compensation Claims Process Order to reflect certain revisions to the Compensation Claims Process Order and Methodology related to the Third Party RHBP Claims (as defined in the Amended Compensation Claims Process Order) that were the product of additional discussions among LU, the Monitor, and the Third Parties (as defined in the Amended Compensation Claims Process Order).

12. On December 20, 2021, the Court granted an Order appointing three Claims Officers (as defined in the Claims Process Order) pursuant to the Claims Process Order and an Order (the “**Grievance Resolution Order**”) setting out a process for the resolution of grievances filed subsequent to the date of the Initial Order and appointing the Grievance Resolution Officer (as defined in the Grievance Resolution Order).
13. On January 27, 2022, the Court granted two orders (a) extending the stay of proceedings to May 31, 2022 and authorizing the Monitor and CRO to develop and implement a process to identify and retain a qualified, independent third-party to assist LU with the development of a new strategic plan; and (b) approving a new DIP facility (the “**MCU DIP Facility**”) which, among other things, replaced the existing DIP Lender with the Province of Ontario (the “**Province**”) as represented by the Ministry of Colleges and Universities (“**MCU**”) and provided for a maturity date of September 30, 2022.
14. On April 1, 2022, the Court granted an order on consent terminating the stay of proceedings with respect to information requests made under the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, effective May 1, 2022.
15. On May 30, 2022, the Court granted two orders (a) approving the pension participation agreement with the University of Sudbury; and (b) extending the stay of proceedings to September 30, 2022.
16. On July 28, 2022, the Court granted an Order (the “**Meeting Order**”): (a) accepting the filing of LU’s Plan of Compromise and Arrangement dated July 21, 2022; (b) authorizing one class of Affected Creditors (as defined in the Plan (as defined below)) for the purpose of considering and voting on the Plan; (c) authorizing LU to call, hold and conduct a virtual meeting of Affected Creditors (the “**Meeting**”); (d) establishing certain rules and procedures to be followed in connection with the Meeting; and (e) setting the date for the hearing of LU’s motion seeking court approval of the Plan, if the Plan is approved.
17. On September 23, 2022, the Court granted two orders (a) extending the stay of proceedings to October 7, 2022, and (b) approving the DIP Amending Agreement and extending the maturity date of the MCU DIP Facility to November 30, 2022.
18. On October 5, 2022, the Court granted three Orders (a) sanctioning the Plan (the “**Sanction Order**”), (b) extending the Stay Period to November 30, 2022, and (c) unsealing certain confidential appendices to the affidavit of Robert Haché sworn January 30, 2021 at the Effective Time on the Plan Implementation Date.

PURPOSE

19. The purpose of this Eighteenth Report of the Monitor (the “**Eighteenth Report**”) is to provide information to the Court and LU’s stakeholders on:
 - a. the Applicant’s request for approval of:
 - i. an order approving an exit financing agreement (the “**Exit Financing Agreement**”) as between the Applicant and the Province of Ontario (the “**Province**”), represented by the Minister of Colleges and Universities (the “**Lender**”) dated October 21, 2022 (the “**Exit Financing Order**”); and
 - ii. an order discharging the Grievance Resolution Officer (the “**Grievance Resolution Officer Discharge Order**”) on the Plan Implementation Date; and
 - b. the Monitor’s recommendations with respect to the above.

TERMS OF REFERENCE AND DISCLAIMER

20. In preparing this Eighteenth Report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by the Applicant and discussions with senior management of the Applicant (“**Management**”) (collectively, the “**Information**”).
21. Unless otherwise indicated, the Monitor’s understanding of factual matters expressed in this Eighteenth Report concerning the Applicant and its business is based on the Information, and not independent factual determinations made by the Monitor.
22. This Eighteenth Report does not take into account all future impacts of COVID-19 (SARSCoV-2) (“**COVID-19**” or the “**Pandemic**”) on the forecasts or projections or other actions taken by the Applicant as a result of the Pandemic. Any references made to the impact of the Pandemic on the Applicant in this Eighteenth Report are based on preliminary enquiries and are not to be interpreted as a complete commentary or as an accurate assessment of the full impact of the Pandemic. The full impact of the Pandemic is not capable of being qualitatively or quantitatively assessed at this time.
23. Capitalized terms not defined in this Eighteenth Report are as defined in the Pre-Filing Report of the Proposed Monitor, prior reports of the Monitor, the Amended and Restated Initial Order, the Plan, as well as other orders granted in the CCAA proceedings, as applicable.

24. Certain documents referred to in this Eighteenth Report are as attached to the initial affidavit of Dr. Robert Haché (the “**Initial Haché Affidavit**”) sworn January 30, 2021, or the affidavit of Dr. Robert Haché (the “**Recent Haché Affidavit**”) sworn October 25, 2022 in connection with this motion.
25. Unless otherwise stated all monetary amounts contained herein are expressed in Canadian dollars.

BACKGROUND

26. On March 28, 1960, LU was incorporated under *An Act to Incorporate Laurentian University of Sudbury*, S.O. 1960, c. 151 C. 154 (the “**Laurentian Act**”).
27. LU is a non-share capital corporation and a registered charity pursuant to the *Income Tax Act*, R.S.C. 1985, c.1 (the “**Income Tax Act**”). Pursuant to Section 149 of the Income Tax Act, LU is exempt from the payment of income tax because of its status as a registered charity. As a registered charity, LU issues tax receipts in respect of donations that it receives.
28. LU is a publicly funded, bilingual and tricultural post-secondary institution. Its operations are located in the City of Greater Sudbury, Ontario. LU has consistently been one of the largest employers in Sudbury.
29. As described in the Initial Haché Affidavit, the governance structure of LU is bi-cameral. It has a Board of Governors (the “**Board**”) and a Senate (the “**Senate**”), both of which derive their powers from the Laurentian Act. The Board, and the President and Vice-Chancellor generally have powers over the operational and financial management of LU, whereas the Senate is responsible for decisions in respect of educational policy at LU.
30. Prior to this CCAA proceeding, LU had relationships with certain independent federated universities, including the University of Sudbury (“**SU**”), Thorneloe University (“**Thorneloe**”) and Huntington University (“**Huntington**”) (collectively, the “**Former Federated Universities**”). On April 1, 2021, LU delivered Notices to Disclaim to each of the Former Federated Universities pursuant to section 32 of the CCAA (the “**Notices of Disclaimer**”). The Notices of Disclaimer became effective on May 2, 2021.
31. Further background information with respect to the Applicant is described in the Pre-Filing Report and prior Reports of the Monitor.

THE STATUS OF THE CCAA PROCEEDINGS

32. As previously reported to the Court, a Meeting of Affected Creditors was held on September 14, 2022 to consider and vote upon the Applicant's Amended Plan of Compromise and Arrangement dated September 9, 2022 (the "**Plan**"). At the Meeting, Affected Creditors holding claims representing a majority in number and 2/3 in value of all claims of Affected Creditors present in person or by proxy and voting on the resolution to approve the Plan voted in favour of accepting the Plan. As set out above, the Plan was subsequently sanctioned by the Court.
33. The Plan represents the culmination of many steps taken within this CCAA proceeding and is the result of significant efforts made by LU and its key stakeholders to achieve a comprehensive operational and financial restructuring of LU. The Plan provides a recovery for LU's creditors while providing LU with a new foundation for long-term sustainability and future success by including post-implementation actions for operational and governance transformation. Implementation of the Plan will allow LU to emerge from this CCAA proceeding as a going concern with hundreds of jobs preserved, the pension plan remaining intact, a continuing bilingual and tricultural setting for more than 6,000 full-time equivalent students and a corresponding significant positive economic impact in the Greater Sudbury region of Northern Ontario.
34. The Plan is subject to the satisfaction or waiver of several conditions to implementation (the "**Plan Implementation Conditions**"). The Applicant is currently working diligently to satisfy those conditions so that implementation may occur.

EXIT FINANCING AGREEMENT

35. The Plan provides that upon implementation, the MCU DIP Facility shall be repaid in full through the proceeds of an exit financing facility. Execution of an agreement in respect of the exit financing facility and the advance of the proceeds to repay the MCU DIP Facility is a Plan Implementation Condition.
36. The Applicant worked with the Province to finalize the terms of the Exit Financing Agreement. On October 21, 2022, the Exit Financing Agreement was executed, subject to court approval. A copy of the Exit Financing Agreement is attached as Exhibit "B" to the Recent Haché Affidavit.
37. The key terms of the Exit Financing Agreement include:
 - a. The Lender will establish a single-draw, non-revolving term facility in the principal amount of \$35 million (the "**Exit Financing Facility**");

- b. The Exit Financing Facility will be advanced upon implementation of the Plan (the “**Facility Advance Date**”) and the proceeds shall be used solely to repay the outstanding principal obligations under the MCU DIP Facility;
 - c. All amounts owing under the Exit Financing Facility must be repaid in full by April 30, 2038;
 - d. The Exit Financing Facility will bear interest at a rate of 6.106% per annum subject to the Cost of Funds Adjustment. The Cost of Funds Adjustment is an increase or decrease to the base interest rate solely based on any change in the Province’s fifteen year cost of funds as between the date of the Exit Financing Agreement and the Facility Advance Date;
 - e. LU will be required to make annual payments of principal and interest in accordance with an amortization schedule appended to the Exit Financing Agreement;
 - f. Prepayments of the Exit Financing Facility are only permitted with the consent of the Lender, and any such requests for prepayment will not be considered prior to the fifth anniversary of the Facility Advance Date;
 - g. As security for the obligations under the Exit Financing Facility, LU will grant a continuing security interest and a first-ranking lien in favour of the Lender over all of LU’s present and future held undertaking, property and assets, real and personal (the “**Collateral**”), subject only to Permitted Liens (as defined in the Exit Financing Facility). LU is required to deliver, in form satisfactory to the Lender, a demand debenture in respect of all of its right, title and interest in all present and after acquired real and personal property and any other security documents as the Lender may require for purposes of granting, perfecting and ensuring a first ranking perfected lien over the Collateral (collectively, such documents are the “**Security Documentation**”);
38. The obligation of the Lender to advance the funds pursuant to the Exit Financing Agreement is subject to a number of conditions precedent in favour of the Lender including;
- a. LU must deliver the Security Documentation and a number of other documents, in form satisfactory to the Lender;
 - b. LU will provide the Lender with title insurance in form and substance satisfactory to the Lender;
 - c. Certain representations and warranties of LU as contained in the Exit Financing Agreement are true and correct as of the Facility Advance Date;

- d. There shall have been no Material Adverse Change with respect to LU;
 - e. There shall have been no Event of Default (as set out in the Exit Financing Agreement) or event or condition that would constitute an Event of Default;
 - f. The Lender shall have received from LU financial and other information or documents as it may reasonably require;
 - g. The Sanction Order shall not have been vacated or stayed, there shall be no application for leave to appeal and all applicable appeal periods shall have expired;
 - h. The Plan shall not have been amended or modified without the prior consent of the Lender in its sole discretion;
 - i. The Exit Financing Order shall not have been vacated or stayed, there shall be no application for leave to appeal and all applicable appeal periods shall have expired; and
 - j. LU must have delivered a Financial Forecast to the Lender for the five-year period subsequent to the Facility Advance Date;
39. During the period while obligations are outstanding to the Lender pursuant to the Exit Financing Agreement, LU must maintain compliance with a number of affirmative covenants including an obligation to:
- a. Maintain and operate its business and comply in all material respects with all applicable laws and regulations including directives issued by MCU;
 - b. Maintain insurance on its properties and assets and for its operations;
 - c. Comply with a number of specific financial covenants;
 - d. Periodically report to the Lender in respect of various financial, operational, governance and other matters including providing the Lender with:
 - i. Annual audited financial statements prior to public disclosure;
 - ii. An annual Financial Covenant Report with respect to compliance with the financial covenants as set out in the Exit Financing Agreement;
 - iii. Annual updates to the Financial Forecast;
 - iv. Updates with respect to the development and implementation of the Governance and Senior Management Renewal Assessment (as defined in the Exit Financing Agreement);

- v. A Financial Usage Plan (as defined in the Exit Financing Agreement), to be delivered to the Lender within 60 days of the Facility Advance Date, setting out the manner in which LU intends to use any operating or other surpluses identified in the Financial Forecast;
 - vi. Monthly or quarterly cash flow reporting; and
 - vii. Any other information that the Lender may reasonably require.
 - e. Provide certain public reporting in respect of its compliance with financial covenants, progress in respect of the development and implementation of its transformation plan and any other information that the Lender may require;
 - f. Comply with certain obligations as set out in the Plan including the retention of third-party consultants to assist in the development of a strategic plan and to carry out the operational transformation;
 - g. Advance the development of the strategic plan and the operational transformation, in a manner satisfactory to the Lender and provide the Lender with monthly updates in respect of progress made; and
 - h. Develop, within 6 months of the Plan Implementation Date, an internal process that includes consultation with MCU and the Ministry of Francophone Affairs in respect of matters that could impact LU's designation under the *French Language Services Act*, R.S.O. 1990, c. F.32.
40. In addition, during the period while obligations are outstanding to the Lender pursuant to the Exit Financing Agreement, LU must maintain compliance with a number of negative covenants, including an agreement not to:
- a. Grant any liens against any of its properties or assets other than Permitted Liens;
 - b. Guarantee the obligations of any other person;
 - c. Incur or assume any indebtedness in an aggregate amount exceeding \$10 million;
 - d. Make or commit to any expenditure or payment other than in the ordinary course and as consistent with the Financial Forecast;
 - e. Make or commit to any acquisitions, investments or capital expenditures exceeding \$10 million, individually or in aggregate, without the prior approval of the Lender, other than as provided for in the Financial Forecast delivered to the Lender;

- f. Sell, transfer, lease or dispose of any of its assets, property or undertaking other than in the ordinary course of business or in respect of the Designated Real Estate Assets contemplated to be sold to the Province pursuant to the terms of the Plan;
 - g. Cease to carry on operations or make any material change to operations;
 - h. Utilize or expend any operating or other surpluses other than in accordance with the Financial Usage Plan as approved by the Lender;
 - i. Pay any amounts to the Distribution Pool (as defined in the Plan) other than the Net Sale Proceeds (as defined in the Plan);
41. The Exit Financing Agreement also specifies a number of Events of Default, which include the terms of the Exit Financing Agreement not being met, the financial covenants as provided for in the Exit Financing Agreement not being met, the existence of a Plan Default in accordance with the terms of the Plan, LU becoming insolvent or an insolvency proceeding being commenced or a Material Adverse Change occurring.
42. The Monitor has been involved in the discussions between the Province and LU in respect of the terms of the Exit Financing Agreement. The Monitor notes that the advance of the proceeds pursuant to the Exit Financing Agreement is a Plan Implementation Condition and therefore is required for the Plan to be implemented. The Monitor also notes that the refinancing of the MCU DIP Facility through the proceeds of the Exit Financing Facility will provide LU with the liquidity it requires to fulfill its obligations under the Plan in respect of the operational transformation and provide it with the necessary working capital to continue to manage its operations. The Monitor is satisfied that the terms of the Exit Financing Agreement are reasonable in the circumstances.

REGISTRATION DISCHARGES

43. As set out above, the terms of the Exit Financing Agreement are that the Lender will be granted a first lien security interest over the Collateral, subject only to Permitted Liens.
44. In consultation with LU, the Lender has reviewed existing registrations and determined that certain existing registrations should be discharged from title prior to the Facility Advance Date. The specific registrations are listed on Schedule “A” to the proposed Exit Financing Order and further detail with respect to these instruments is contained in the Recent Haché Affidavit.
45. Certain of the identified registrations deal with liens registered by parties whose potential claims, if any, were subject to the requirement to prove their claims in accordance with the Claims Process Order and are to be dealt with in accordance with the Plan. As a result,

upon implementation of the Plan, it is the Monitor's view that these potential claims, if any, will have been barred and extinguished and therefore, a discharge of these registrations will be appropriate. The other identified registrations were made by the entity that provided the original DIP Facility, which has since been fully repaid through the proceeds of the MCU DIP Facility.

46. LU seeks an order of this Court directing the Land Registry Office for the Land Titles Division of Sudbury (No. 53) to discharge, delete and expunge the registrations from title.
47. The Monitor is not aware of any reason why the listed registrations should not be deleted from title. While the specific timing for implementation of the Plan is still uncertain as additional Plan Implementation Conditions remain that must be satisfied, obtaining an Order permitting these registrations to be discharged on Plan Implementation will assist in ensuring that all steps required for implementation can be satisfied.

DISCHARGE OF GRIEVANCE RESOLUTION OFFICER

48. The Grievance Resolution Process Order appointed the Grievance Resolution Officer to resolve any disputed Compensation Claims and outstanding Pre-Filing Grievances, Restructuring Grievances, and Material Post-Filing Grievances. It is a Plan Implementation Condition that all Pre-Filing Grievances, Restructuring Grievances, and Material Post-Filing Grievances shall be fully resolved or withdrawn by the applicable Union.
49. Since his appointment, the Grievance Resolution Officer has worked diligently with LU and the Laurentian University Faculty Association ("LUFA") to resolve all outstanding LUFA grievances. At present, all LUFA grievances subject to the Grievance Resolution Process Order have been resolved.
50. As set out in the Fourteenth Report, the Monitor became aware of four outstanding grievances filed by the Laurentian University Staff Union ("LUSU"). LUSU has withdrawn two of these grievances, one grievance will proceed in the ordinary course because it does not fall under the scope of the Grievance Resolution Process Order, and the remaining grievance remains subject to ongoing discussions among the parties to determine if the grievance remains outstanding and the classification of such grievance to determine whether it would need to be resolved as a condition to implementation of the Plan. The Monitor continues to work with LU's labour counsel and LUSU in respect of this grievance.
51. Once this remaining LUSU grievance has been addressed and the Plan is implemented, the role of the Grievance Resolution Officer will be completed. Accordingly, LU seeks the discharge of the Grievance Resolution Officer on the Plan Implementation Date.

52. It is the Monitor's view that the Grievance Resolution Officer has exercised his duties in good faith and with due diligence and the discharge of the Grievance Resolution Officer is appropriate.

MONITOR'S RECOMMENDATIONS AND CONCLUSIONS

53. For the reasons stated herein, the Monitor supports the relief sought by the Applicant including:
- a. The approval of the Exit Financing Order including the provisions for the discharge of certain registrations from title; and
 - b. The approval of the Grievance Resolution Officer Discharge Order.
54. Accordingly, the Monitor recommends that the Court grant the relief sought by the Applicant.

All of which is respectfully submitted this 27th day of October, 2022.

**ERNST & YOUNG INC., in its capacity as
Monitor of the Applicant, and not in
its corporate or personal capacity**

Per:



**Sharon S. Hamilton, CPA, CA, CIRP, LIT
Senior Vice President**