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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

FACTUM OF THE ATTORNEY GENERAL OF ONTARIO
(Motion Returnable January 18, 2022)

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PART I – OVERVIEW

1. Parliamentary privilege is an essential part of Canada's "Constitution similar in Principle to that of the United Kingdom" that "shield[s] some areas of legislative activity from external review" and "grants the legislative branch of government the autonomy it requires to perform its constitutional functions."

> *Constitution Act, 1867*, 30 & 31 Vict., c. 3, Preamble
>
> *Chagnon v. Syndicat de la function publique et parapublique du Québec*, 2018 SCC 39 at para. 1, [2018] 2 SCR 687

2. One of the oldest recognized parliamentary privileges is the power "to send for persons, papers, and records." In order to perform their constitutional functions, legislative bodies need the power to decide for themselves what information they require, when they require it, and how to use it, free from external influence. Legislatures throughout the Commonwealth have thus long had the power to require the production of any information they determine they require, including information in the hands of private individuals and information protected by solicitor-client privilege.

3. In this motion, Laurentian University of Sudbury ("Laurentian") seeks to stay Speaker's Warrants issued by the Legislative Assembly of Ontario (the "Assembly") to require it to produce privileged information the Standing Committee on Public Accounts (the "Committee") has determined it requires by February 1, 2022 to complete the tasks the Assembly has assigned it.

4. This Court has jurisdiction to determine whether the Assembly has the power to compel the production of privileged documents from a public body. But it does not have the jurisdiction to determine whether the use of those powers is appropriate in this

particular case. Nor does it have the jurisdiction to stay presumptively valid Speaker's Warrants absent a finding that the privilege on which they are based does not exist.

5. Even if the Court did have that jurisdiction, the outcome of this motion will have the effect of determining the ultimate outcome of Laurentian's challenge to the Warrants. Either Laurentian will have to produce the required documents or, unless a hearing on the merits is held almost immediately, it will succeed in resisting the Warrants for the remainder of this Assembly's term. Laurentian therefore must show there is a "strong likelihood" its challenge will succeed and the Assembly will be found not to have the power to compel the production of solicitor-client privileged documents.

6. This it cannot do. The necessity of legislatures, not the courts, having the final say on which documents they require to perform their functions has long been accepted by both parliamentary and judicial authorities. Parliament lacks the power to limit the constitutionally-protected privileges of the provincial legislative assemblies and the Assembly has not limited its own privilege to demand the production of the documents it believes are necessary to do its work. That autonomy is crucial to the functioning of our parliamentary democracy and this motion should be dismissed.

PART II – FACTS

7. Ontario has continuously enjoyed an elected Legislative Assembly since 1791. The original Legislative Assembly of Upper Canada was, together with the Legislative Assembly of Lower Canada, replaced by the Legislative Assembly of the United Province of Canada in 1840 and reconstituted at Confederation as the Assembly.

> *Constitutional Act, 1791*, 31 Geo. III, c. 31, s. 2 (UK)
>
> *The Union Act, 1840*, 3 & 4 Vict., c. 35, s. 3 (UK)
>
> *Constitution Act, 1867*, *supra*, ss. 69-70, 82-87, and 89-90

8. Exercising its plenary power over education in the province, the Ontario Legislature established Laurentian in 1960. Laurentian's powers, including its power to hold property and participate in legal proceedings, all flow from provincial legislation. Laurentian is required by law to apply all of its property and revenue for the advancement of learning, the dissemination of knowledge, and the intellectual, social, moral and physical development of its members and the betterment of society.

> *Constitution Act, 1867*, *supra*, s. 93
>
> *Laurentian University of Sudbury Act, 1960*, SO 1960, c. 151, ss. 2-4, 6, and 8-9

9. The Legislature has the exclusive jurisdiction to raise revenue for provincial purposes. All such revenues form part of the provincial Consolidated Revenue Fund. Only the Assembly may appropriate any part of the public revenue.

> *Constitution Act, 1867*, *supra*, ss. 53, 90, 92(2)-(3), (5), and (9), 92A(4), 109, and 126

10. To ensure the proper oversight of the uses to which the public revenue is put, the Assembly established the Committee. The Chair of the Committee is always a member of the Official Opposition. The Public Accounts stand permanently referred to the Committee for its consideration.

> Ontario, Legislative Assembly, *Standing Orders*, ss. 111(h) and 120(b)

11. In the last five fiscal years alone, Laurentian has received almost half a billion dollars in provincial funding ($429.4 million), comprising over 45% of its revenues.

> Ontario, Auditor General, *Update on the Special Audit of Laurentian University* (December 2021) at 4, Exhibit N to the Supplementary Affidavit of Ephry Mudryk, Moving Party's Motion Record, Tab 3N, p. 198

12. Many of the allegations in Laurentian's factum concern the propriety and advisability of the particular request for documents that led to the issuance of the

Speaker's Warrants. As described below, this Court only has jurisdiction to determine whether there exists a parliamentary privilege to demand the production of documents and whether its scope extends to documents that are protected from disclosure by solicitor-client privilege or court order. Accordingly, any factual allegations concerning why the Committee and the Assembly demanded the production of documents or the process by which they decided to do so are irrelevant and should be disregarded by this Court. As well, the comments of MPPs cited by Laurentian constitute "proceedings in Parliament" which cannot be "impeached or questioned" in this or any other Court.

Moving Party's Factum, paras. 9-14, 17-24, 63, 73, 75, and 89

Bill of Rights, 1688, 1 Will. & Mar. (2nd Sess.), art. 9 (UK)

PART III – ISSUES AND LAW

13. Ontario's position on the issues in this motion are that:

a) This Court lacks jurisdiction to stay a Speaker's Warrant absent a finding that the Assembly lacks the power to compel the production of privileged documents from public bodies.

b) If the Court does have jurisdiction to grant a stay, the applicable test for a stay is the strong *prima facie* test as the stay motion will effectively determine the merits of Laurentian's challenge to the Speaker's Warrants.

c) Laurentian cannot meet the strong *prima facie* test or even the lower serious issue to be tried test as it is plain and obvious the Speaker's Warrants are exercises of a well-recognized parliamentary privilege.

d) Ontario takes no position on whether Laurentian would suffer irreparable harm or whether the balance of convenience favours granting a stay.

A. **<u>This Court Lacks Jurisdiction to Stay the Speaker's Warrants Absent a Finding that the Assembly Lacks the Power to Compel the Production of Privileged Documents from Public Bodies</u>**

14. A Speaker's Warrant is to be construed as a writ from a Superior Court. It is presumed to be duly issued and must be obeyed unless revoked by the Assembly or set aside because the category of privilege on which it is based does not exist.

> *Gosset v. Howard* (1847), 10 QB 411 at 453-60, 116 ER 158 at 173-75 (Ex. Ch.), Ontario's Book of Authorities [OBOA] at Tab 1

15. Absent a finding that the Assembly lacks the power to compel privileged documents from public bodies, however, this Court has no jurisdiction to stay the Warrants. The Assembly, in the exercise of its long-recognized privilege to demand the production of documents (even privileged ones) from any body in Ontario, has ordered that the required documents be produced by February 1, 2022.

16. Any delay in compliance with the Speaker's Warrants would itself be a breach of the Assembly's privilege to determine not only what documents it requires to do its work, but ***when*** it requires them. Thus, a stay that would have the effect of delaying production past February 1, 2022 cannot be granted absent a finding on the merits that the claimed category of privilege does not exist. To grant a stay without making such a finding would be to judicially review the ***exercise*** of the Assembly's privileges rather than their ***existence***, something the Supreme Court has repeatedly held courts cannot do.

> *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker)*, [1993] 1 SCR 319 at 383
>
> *Canada (House of Commons) v. Vaid*, 2005 SCC 30 at paras. 29(9) and 47-49, [2005] 1 SCR 667
>
> *Chagnon*, *supra* at para. 32

17. Laurentian's arguments that the Court has jurisdiction to stay the Speaker's Warrants without first ruling on the existence of the underlying privilege turn these principles on their head. Parliamentary privilege is a constitutional principle. Its very purpose is to exempt certain matters from the jurisdiction of the ordinary courts, even when the *Charter* is engaged, because it is necessary to the proper functioning of the Assembly that it have the autonomy to decide those matters for itself. As the Supreme Court has held, "in matters of privilege, it would lie within the exclusive competence of the legislative assembly itself to consider compliance with human rights and civil liberties." Staying the Speaker's Warrants without a finding that the privilege on which they are based does not exist "would effectively defeat the autonomy of the legislative assembly which is the *raison d'être* for the doctrine of privilege in the first place."

> *Vaid*, *supra* at paras. 29(4) and (7), 30, 41, 46, and 48

18. Laurentian cites *Newbould* and other cases for the proposition that concerns about the Court's jurisdiction to grant a stay should only be considered as part of the stay analysis. *Newbould* was a case about prematurity, an aspect of the substantive law at issue, not jurisdiction to grant a stay at all. The other cases Laurentian cites deal with the authority of the Court of Appeal to stay an order of this Court on the basis that ***it*** may have lacked jurisdiction. Laurentian has not cited a single case where a Court has found it has the jurisdiction to grant an interlocutory stay of the exercise of parliamentary privilege absent a finding that the claimed privilege did not exist.

> *Newbould v. Canada (AG)*, 2017 FCA 106 at paras. 1, 22, and 24, [2018] 1 FCR 590
>
> *Yaiguaje v. Chevron Corp.*, 2014 ONCA 40 at para. 1
>
> *Stuart Budd & Sons Ltd. v. IFS Vehicle Distributors*, 2014 ONCA 546 at para. 2

H.E. v. M.M., 2015 ONCA 244 at para. 1

19. Laurentian could have avoided this difficulty by, as the Assembly and Ontario proposed, moving to challenge the Speaker's Warrants directly. The warrants were issued December 9, 2021 and do not require compliance until February 1, 2022. The existence and scope of the parliamentary privilege on which they are based is a question of law which Laurentian has had more than ample time to brief and argue on the merits. Its decision not to do so cannot grant this Court jurisdiction to stay the Warrants without a finding that the Assembly lacks the power to compel the production of privileged documents from public bodies.

Speaker's Warrants, Exhibit R to the Supplementary Affidavit of Ephry Mudryk, Moving Party's Motion Record, Tab 3R, pp. 233-34

B. Even If this Court has Jurisdiction to Grant a Stay, Laurentian Must Meet the Strong *Prima Facie* Test

20. Where a moving party's request for an injunction will in effect amount to a final determination of the merits, the test at the first step of the *RJR-MacDonald* test is whether the applicant can demonstrate a strong *prima facie* case, or a "strong likelihood" that the application will succeed.

RJR-MacDonald, [1994] 1 SCR 311 at 338

Toronto (City) v. Ontario (AG), 2018 ONCA 761 at para. 10, 142 OR (3d) 481

21. Laurentian's request for an injunction will in effect amount to a final determination of the merits of its challenge to the Speaker's Warrants. If the stay is refused, it will have to disclose the requested documents. If the stay is granted, the Assembly will not receive the documents it has determined are necessary for its Committee to perform its work in a timely fashion. That delay is itself a breach of the

Assembly's privileges which guarantees it the autonomy to decide when it needs the documents necessary to do its work.

22. Moreover, any significant delay risks stymying the Committee's work entirely. Laurentian has proposed a merits hearing in May or June 2022. Pursuant to the *Election Act*, Ontario is currently scheduled to have its next election no later than June 2, 2022. In order for that election to take place, the Assembly must be dissolved in late April or early May 2022. Upon dissolution, the Committee's request for production, the Assembly's Order and the Speaker's Warrants will all lapse.

> *Election Act*, RSO 1990, c. E.6, ss. 9 and 9.1
>
> Marc Bosc and André Gagnon, *House of Commons Procedure and Practice* (Ottawa: House of Commons, 2017), Chapter 8, "Effects of Dissolution"
>
> Canada, *House of Commons Debates*, 44th Parl., 1st Sess., Vol. 151, No. 14 (9 December 2021) at 953-54

23. The fact that the Warrants could potentially be renewed once a new Committee is formed by a differently-constituted Assembly after the election does not change the fact that granting a stay would permit Laurentian to entirely avoid the orders of this Assembly. Unless a merits hearing were to be held almost immediately, a stay would constitute a final determination of whether these Speaker's Warrants were binding on Laurentian. The strong *prima facie* test should therefore apply.

C. Laurentian Cannot Meet Either the Strong *Prima Facie* Test or the Ordinary Serious Case to Be Tried Test

24. In any event, regardless of which test for injunctive relief is applied, Laurentian cannot meet it. It is plain and obvious that the Speaker's Warrants are grounded on a well-recognized and necessary category of parliamentary privilege: the privilege to demand production of whatever documents the Assembly determines are necessary for

its work, whether protected by solicitor-client privilege or not. Most of Laurentian's complaints concern the wisdom or propriety of the Assembly's order, matters which are for the Assembly and the Assembly alone to judge, not this Court.

25. Laurentian describes the constitutional functions of the Assembly too narrowly. They are not limited to debating legislation and holding the government to account. The Assembly has plenary jurisdiction over post-secondary education in Ontario, including determining what if any changes may be required to avoid other institutions falling into the situation in which Laurentian now finds itself. It is also responsible for overseeing all expenditures from the public purse, including determining whether the hundreds of millions of dollars in public funds that have been given to Laurentian University in recent years have been prudently spent.

Constitution Act, 1867, *supra*, ss. 53, 90, 92(2)-(3), 93, and 126

26. In carrying out these constitutional functions in our representative democracy, the Assembly cannot be required to work with a blindfold. Privileged information of a post-secondary institution – a body which the Legislature itself has created, which exists solely because of provincial legislation, and to which it has given hundreds of millions of dollars – may well be needed to carry out its functions. Subjecting to judicial review the decision of the Assembly that it needs particular information to do its work to judicial review would lead to the Assembly being "caught up in legal proceedings and appeals about what is [producible] and [not producible]. This in itself might impair the proper functioning of the chamber" in a manner that would impair the "dignity and efficiency of the House."

New Brunswick Broadcasting Co., *supra* at 383 and 387-88

Vaid, *supra* at para. 7

27. A complete answer to any suggestion that the Assembly lacks the inherent power to decide for itself what information it needs to do its work is the fact that the Legislature has amended the provincial constitution to expressly provide that the Assembly may "at all times command and compel … the production of such papers and things, as the ***Assembly or committee*** considers necessary for any of its proceedings or deliberations."

> *Legislative Assembly Act*, RSO 1990, c. L. 10 s. 35(1)

(1) The Power to Require the Production of Any and All Documents Is a Well-Recognized Privilege That Is Necessary to the Assembly's Functions

The Assembly Has an Inherent Privilege to Require the Production of Any and All Documents:

28. Parliamentary privilege is grounded in the Preamble of the *Constitution Act, 1867*, which provides Canada with "a Constitution similar in Principle to that of the United Kingdom." The inherent privileges of the Assembly "are a means to preserve their independence and promote the workings of representative democracy." The wisdom or propriety of any particular exercise of privilege is for the Assembly and ultimately the electorate, not the courts, to judge:

> The insulation from external review that privilege provides is a key component of our constitutional structure and the law that governs it. Judicial review of the exercise of parliamentary privilege, even for *Charter* compliance, would effectively nullify the necessary immunity this doctrine is meant to afford the legislature.
> …
>
> once the category and scope are established, "it is for Parliament, not the courts, to determine whether in a particular case the *exercise* of the privilege is necessary or appropriate."
>
> *Chagnon*, *supra* at paras. 23-24 and 32
>
> *Vaid*, *supra* at paras. 21, 29, 41 and 47 [Emphasis in original]

New Brunswick Broadcasting, *supra* at 350, 354, and 382-84

29. The courts do have a limited role in demarcating the boundaries of parliamentary privilege: they "determine whether a ***category*** of parliamentary privilege exists and … delimit its scope." In order to fall within the scope of parliamentary privilege, the matter at issue must meet the necessity test: it must be "so closely and directly connected with the fulfilment by the assembly or its members as a legislative and deliberative body … that outside interference would undermine the level of autonomy required to enable the assembly and its members to do their work with dignity and efficiency."

Chagnon, *supra* at paras. 29 and 32 [Emphasis added]

Vaid, *supra* at paras. 29, 40, and 46

30. The Court's task of determining the existence and scope of parliamentary privilege must be exercised with great care. As Justice Rowe cautioned in his concurring reasons in *Chagnon*:

> Parliamentary privilege, derived from centuries of conflict and diverse experience, should be circumscribed with great caution and after careful reflection. It is difficult sometimes to see the connections between what is necessary for the autonomy and proper functioning of the legislature and the extent of parliamentary privilege. The legislature is not like a department or regulatory agency. Profound deference should be shown as to how it chooses to operate.

Chagnon, *supra* at para. 74

31. It is plain and obvious, however, that one thing which would undermine the "autonomy and proper functioning" of the Assembly would be to allow an outside body to determine which documents the Assembly and its committees require to do their work. That is why the absolute nature of parliamentary assemblies' ability to require the production of whatever documents they deem necessary, even if those documents would

be subject to a recognized legal privilege in a court of law, has long been recognized as an essential aspect of parliamentary privilege both in Canada and in other Westminster democracies.

32. As Bosc and Gagnon, the leading authority on parliamentary procedure in Canada, explains:

> Parliament has the ability to institute its own inquiries, to require the attendance of witnesses and to order the production of documents, rights which are fundamental to its proper functioning. These rights are as old as Parliament itself. *Maingot* states:
>
> > The only limitations, which could only be self-imposed, would be that any inquiry should relate to a subject within the legislative competence of Parliament, particularly where witnesses and documents are required and the penal jurisdiction of Parliament is contemplated.
> > …
>
> As stated in a report of the Standing Committee on Privileges and Elections in 1991:
>
> > The power to send for persons, papers and records has been delegated by the House of Commons to its committees in the Standing Orders. It is well established that Parliament has the right to order any and all documents to be laid before it which it believes are necessary for its information. … The power to call for persons, papers and records is absolute, but it is seldom exercised without consideration of the public interest.
> > …
>
> Bosc and Gagnon, *supra*, Chapter 3, "The Rights to Institute Inquiries, to Require the Attendance of Witnesses and to Order the Production of Documents"

33. Bosc and Gagnon go on to explain that the power to require the production of papers extends to papers in the hands of private citizens and to papers protected from disclosure by legislation or solicitor-client privilege:

> The *Standing Orders* do not delimit the power to order the production of papers and records. The result is a broad, absolute power that on the

> surface appears to be without restriction. There is no limit on the types of papers likely to be requested; the only prerequisite is that the papers exist in hard copy or electronic format, and that they are located in Canada. They can be papers originating from or in the possession of governments, or papers the authors or owners of which are from the private sector or civil society (individuals, associations, organizations, et cetera).
>
> In practice, standing committees may encounter situations where the authors of or officials responsible for papers refuse to produce them or are willing to provide them only after certain portions have been removed. Public servants and Ministers may sometimes invoke their obligations to justify their position. Companies may be reluctant to release papers which could jeopardize their industrial security or infringe upon their legal obligations particularly with regard to the protection of personal information. Others have cited solicitor-client privilege in refusing to allow access to legal papers or notices.
>
> These types of situations have absolutely no bearing on the power of committees to order the production of papers and records. No statute or practice diminishes the fullness of that power rooted in House privileges unless there is an explicit legal provision to that effect, or unless the House adopts a specific resolution limiting the power. The House has never set a limit on its power to order the production of papers and records. However, it may not be appropriate to insist on the production of papers and records in all cases.
>
> In cases where the author of or the authority responsible for a record refuses to comply with an order issued by a committee to produce documents, the committee essentially has three options … The third option is to reject the reasons given for denying access to the record and uphold the order to produce the entire record.
>
> Bosc and Gagnon, *supra*, Chapter 20, "Committee Powers by Committee Type"

34. Authorities in the United Kingdom, Australia, and New Zealand describe the privilege and its scope in similar terms. It applies not only to papers held by the Executive government but to public bodies and even private citizens. And it even applies to documents subject to solicitor-client privilege or protected from disclosure by statutory secrecy provisions.

United Kingdom:

There is no restriction on the power of committees to require the production of papers by private bodies or individuals, provided that such papers are relevant to the committee's work as defined by its order of reference. Select committees have formally ordered papers to be produced by the Chairman of a nationalised industry and a private society. Solicitors have been ordered to produce papers relating to a client; and a statutory regulator has been ordered to produce papers whose release was otherwise subject to statutory restriction.

Erskine May: Parliamentary Practice, 25th ed. (London: LexisNexis, 2019), paras. 7.31, 11.39, and 38.31-38.32

Australia:

By the end of the 19th century each House of the United Kingdom Parliament was invested with the power of ordering all documents to be laid before it which were necessary for its information. Despite the powers of each House to enforce the production of documents, a sufficient cause had to be shown for the exercise of that power. This unquestioned power of the House of Commons is extended to the Australian Parliament by way of section 49 of the Constitution.

D.R. Elder, ed., *House of Representatives Practice*, 7th ed. (Canberra: House of Representatives, 2018) at 626-29 and 663-67

Each House of the Parliament has the power to require the attendance of persons and production of documents and to take evidence under oath. This power supports one of the major functions of the Houses: that of inquiring into matters of concern as a necessary preliminary to debating those matters and legislating in respect of them. The power has long been regarded as essential for a legislature.

…

Subject to what is said above about possible constitutional limitations [regarding summoning members of the other House, officers of the other level of government, and inquiries that do not relate to Parliament's heads of power], there is no limitation on the power of the Houses to compel the attendance of witnesses, the giving of evidence and the production of documents.

…

It has never been accepted in the Senate, nor in any comparable representative assembly, that legal professional privilege provides grounds for a refusal of information in a parliamentary forum.

Harry Evans, ed., *Odgers' Australian Senate Practice*, 14th ed. (Canberra: Senate, 2016) at 78-82, 500-01, 649-57, and 667-69

New Zealand:

> The power to summon witnesses and order the production of documents is not limited in its application to public servants, Government bodies, or other public agencies. It extends to ordering individuals, corporate and private bodies to appear before the House or a committee to give evidence, and to produce to a committee documents in their possession that are relevant to the inquiry being prosecuted.

Mary Harris and David Wilson, *McGee's Parliamentary Practice in New Zealand*, 4th ed. (Auckland: Oratia Books, 2017) at 494-507 and 751

35. The necessity of this privilege to the ability of representative assemblies to carry out their functions has been upheld judicially on multiple occasions. As early as 1847, the Exchequer Chamber (the predecessor of the English Court of Appeal) held that:

> First, that House, which forms the Great Inquest of the Nation (4 Inst. P. 11), has a power to institute inquiries and to order the attendance of witnesses, and in case of disobedience (whether it has not even without disobedience, we need not inquire), bring them in custody to the Bar for the purpose of examination. And secondly, if there be a charge of contempt and breach of privilege, and an order for the person charged to attend and answer it, and a wilful disobedience of that order, the House has undoubtedly the power to cause the person charged to be taken into custody and to be brought to the Bar to answer the charge: and further, the House, and that alone, is the proper judge when these powers or either of them are to be exercised.

Gosset v. Howard, *supra* at 450-51 (QB), 172 (ER), OBOA at Tab 1

36. From its inception, the power to require the production of documents has similarly been a necessary part of the Assembly's powers in Ontario. As this Court's predecessor, the Upper Canada Court of King's Bench, held in 1830:

> Robinson CJ: I cannot satisfy myself upon any reasoning that it is not as important for us as the people of England that our legislature should not be compelled to make laws in the dark, and that they should have power to enquire before they come to decide.
>
> …

> Sherwood J: It is my opinion that the right of enquiry for the purpose of enabling the legislature to exercise their constitutional functions is necessarily incident to both branches [the Assembly and the Council]; for I do not see how they could join in making laws for the good government of the King's subjects without obtaining the information requisite to form a correct opinion of the measures and alterations proper to be adopted. I think this is an inherent right essential to every legislature.
>
> *McNab v. Bidwell and Baldwin* (1830), Draper 144 at 152 and 156-57 (KB), OBOA at Tab 2

37. Courts in other provinces and federally have come to similar conclusions. In 1875, the Quebec Court of Appeal held in a 4-1 decision that even without statutory authority, "there must be an inherent right in the Legislative Assembly to compel persons to attend before them and give evidence" as such a power was "absolutely, indispensably necessary … to carry on and accomplish the legislation of the country":

> I do not see that the power of Colonial Legislatures to summon witnesses in order to conduct the enquiries required for a proper understanding of the several questions affecting legislation or the administration of public affairs was ever challenged. Responsible Government, which has been recognized in the Local as well as in the constitution of the General Government, would be a delusion if that power of enquiry was denied and the enquiry would be valueless without the power of summoning witnesses. I consider this to be a necessary incident of the powers of Legislatures, and of controlling the administration of public affairs and as such I believe that the House of Assembly had a right to exercise it….
>
> *Ex parte Dansereau* at 190-91 (Dorion CJ), 192-95 (Taschereau J), 204 (Sanborn J), and 212-15 (Monk J), OBOA at Tab 3

38. More recently, in 2003, the Prince Edward Island Supreme Court considered whether a provincial Legislative Assembly could compel employees of a federal agency to appear before a standing committee and produce documents and concluded it could:

> I am satisfied the right of the Legislative Assembly of Prince Edward Island to summon witnesses and have them produce documents is necessary for the proper functioning of the assembly and, therefore, meets the test for recognition as an inherent privilege. It satisfies the test articulated by the Supreme Court of Canada in *New Brunswick*

> *Broadcasting*. It is difficult to imagine how the legislative assembly could properly conduct an inquiry within its constitutional jurisdiction without the power to summon witnesses and require the production of records and documents.
>
> …
>
> There is no doubt but that the Committee has the power to issue the summons in question; that it derives that power from the legislative assembly; that the power is rooted in parliamentary privilege; and it is not for this Court to inquire into how that power is exercised.

Canada (AG) v. MacPhee, 2003 PESCTD 6 at paras. 24, 31-32 and 44

39. *MacPhee* has been followed by both the Federal Court and the Québec Superior Court in cases dealing with the use of testimony given before a parliamentary committee in subsequent proceedings. Both cases held that is necessary for Parliament to be able to protect witnesses before parliamentary committees from later being cross-examined about their testimony because it is necessary for legislative bodies to be able to investigate as they see fit.

Gagliano v. Canada (AG), 2005 FC 576 at paras. 81-84, appeal dismissed as moot 2006 FCA 86

Alternative Capital Group Inc. c. Côté, 2020 QCCS 2494 at paras. 88-97

40. All of these parliamentary and judicial authorities stand for the same proposition: in order to carry out its functions of legislating and overseeing public affairs, it is necessary for the Assembly to be able to obtain whatever information it determines it requires, even if that information is held by a private individual or is protected from disclosure by statute or solicitor-client privilege. To give the courts the power to determine what privileges should stand in the way of the Assembly's power to obtain the information it believes it needs would be to destroy the autonomy required to effectively represent the people of Ontario.

41. The necessity of the Assembly having the power to decide for itself what documents it requires to performs its constitutional mandate is not undermined by the *in terrorem* examples posited by Laurentian. The Courts created solicitor-client privilege and determined when, in light of other public needs, exemptions should apply. In performing their tasks, the courts have long exercised the power to determine what information should be privileged and when it should and should not be disclosable. In determining what information it requires to perform its work, the Assembly is equally capable of deciding when privileged documents should and should not be disclosed.

Smith v. Jones, [1999] 1 SCR 455 at paras. 51-57 and 74-86

R. v. McClure, 2001 SCC 14 at paras. 34-42, [2001] 1 SCR 445

42. There is no reason to assume the Assembly will be any less diligent in protecting the confidentiality of the information it requires to be disclosed than the courts have been. Laurentian's suggestion at para. 63 of its factum that "the Court cannot assume that the Assembly will act responsibly on this or any other occasion" must be rejected. On the contrary, as the Supreme Court held in *New Brunswick Broadcasting Co.*:

> It may be added that the historical record suggests that the danger of abuse of the Speaker's power to control proceedings in the House, even to the point of excluding strangers, is not grave. The right to exclude strangers has been recognized in the United Kingdom for centuries and in this country for well over one hundred years without adverse effect. And the legislative assembly always faces the ultimate sanction, that of the voters.

New Brunswick Broadcasting Co., *supra* at 388-89

43. Those words apply equally here. Legislative assemblies in Canada have not abused their power to demand the documents they require to do their work, even when those documents are privileged. They regularly put into place safeguards to assure the confidentiality of privileged information on the rare occasions they require it.

44. In this very case, the Committee has made clear that it will not make the privileged documents it seeks to obtain from Laurentian publicly available. But "it is fundamental to the working of government as a whole" that the decision of what information is required, when it is required, and how it is to be used is one which "proper deference for the legitimate sphere of activity" of the legislative branch of government requires the Assembly, not this Court, to have the power to make.

New Brunswick Broadcasting Co., *supra* at 389

The Constitution of the Province Has Been Amended to Confer the Power to Require the Production of Documents on the Assembly:

45. Even if the Assembly did not have the inherent power to determine for itself what information it requires to do its work, the Legislature has granted the Assembly the power to do so by amending the "constitution of the Province." Section 35 of the *Legislative Assembly Act* provides that "The Assembly may at all times command and compel … the production of such papers and things, as the ***Assembly or committee considers necessary*** for any of its proceedings or deliberations" and that "the Speaker may issue a warrant … requiring the production of the paper and things as ordered."

Legislative Assembly Act, *supra*, s. 35(1) [Emphasis added]

46. The Judicial Committee of the Privy Council has held that former s. 92(1) of the *Constitution Act, 1867* gave the provincial Legislatures the power to amend the constitution of the province for the purpose of "defining the powers and privileges of the provincial legislature." The predecessors to s. 35 were first enacted in 1876 and have formed part of the *Legislative Assembly Act* ever since (the Legislature's power to make such amendments likely continues today under s. 45 of the *Constitution Act, 1982*

but that point need not be decided here given that the amendment in question dates to 1876).

Constitution Act, 1867, *supra*, s. 92(1) [repealed]

Constitution Act, 1982, s. 45, Sch. B to the *Canada Act, 1982*, 1982, c. 11 (UK)

Fielding v. Thomas, [1896] AC 600 at 610-11 (PC), OBOA at Tab 4

Chagnon, *supra* at paras. 60-63 (Rowe J. concurring)

An Act respecting the Legislative Assembly, SO 1875-76, c. 9, ss. 1-2

Legislative Assembly Act, RSO 1877, c. 12, ss. 34-35

47. In *Vaid*, the Supreme Court made clear that the exercise of federal legislated privileges enacted under s. 18 of the *Constitution Act, 1867* is just as immune from judicial review (including on *Charter* grounds) as the exercise of inherent privileges. There is no reason to treat provincial legislated privileges enacted under former s. 92(1) any differently. If anything, provincial legislated privileges are even more clearly amendments to the constitution itself.

Vaid, *supra* at paras. 33-34

48. The Assembly therefore has constitutionally-protected inherent and legislated privileges to determine for itself what documents it requires to do its work and to compel their production when it chooses to do so. Allowing any outside body, even this Court, to determine when such production is or is not appropriate would undermine the autonomy the Assembly requires to perform its constitutional function.

(2) Parliament Lacks the Power to Limit the Assembly's Privileges

49. Laurentian argues that the Assembly's power to compel the disclosure of documents cannot extend to documents ordered to be kept in confidence by an order made by this Court under the *Companies' Creditors Arrangements Act* (the CCAA).

Companies' Creditors Arrangements Act, RSC 1985, c. C-36, s. 11

50. The CCAA, and the Orders this Court has made under it, are exercises of Parliament's jurisdiction to make laws in relation to "Bankruptcy and Insolvency" under s. 91(21) of the *Constitution Act, 1867*. The Assembly's parliamentary privilege, however, is part of the constitution itself and "cannot be abrogated or diminished by other parts of the Constitution," much less ordinary federal legislation. As Laurentian itself notes at para. 70 of its factum, "parliamentary privilege would become unworkable if the federal House of Commons could invade provincial jurisdiction." Provincial parliamentary privilege can only be abrogated or diminished by a constitutional amendment passed with the consent of the affected Legislative Assembly.

New Brunswick Broadcasting Co., *supra* at 373-78, 384-85, and 390-94

Vaid, *supra* at paras. 29(3) and 33

Chagnon, *supra* at para. 23

Constitution Act, 1982, *supra*, ss. 38(1)-(3), 41, and 45

51. The examples Laurentian gives of compelling federal Cabinet or judicial deliberations are not helpful as they involve questions of the ability of one constitutional actor to inquire into the inner workings of other bodies that themselves form part of Canada's constitutional architecture. The ability of the Assembly to compel information from the federal Crown or the judiciary themselves would raise complex questions of federalism and the separation of powers that need not be answered in determining whether ordinary federal legislation can limit the Assembly's privileges.

52. Even if Parliament did have the power to abrogate or diminish provincial legislative privileges by ordinary legislation, nothing in the wording of the CCAA suggests that Parliament intended to undermine the autonomy of its co-equal provincial

counterparts by limiting their privileges. Such an unprecedented intrusion into provincial jurisdiction would have required clear and express language.

Duke of Newcastle v. Morris (1870), L.R. 4 H.L. 661 at 668, OBOA at Tab 5

53. *Vaid* held that this common law interpretative principle did not apply to the application of the *Canadian Human Rights Act* to Parliamentary employees. But it concerned the application of federal legislation to the federal Parliament. It thus says nothing about the interpretation of federal legislation that allegedly limits the privileges of a provincial legislative assembly. As well, *Vaid* was decided in the absence of any established parliamentary privilege and in the context of Parliament's decision to enact quasi-constitutional human rights legislation.

Vaid, *supra* at paras. 77-82

54. Professors Brun, Tremblay and Brouillet have argued that "[the rule in *Duke of Newcastle*] can still apply in appropriate cases" as Rowe J noted in his concurring reasons in *Chagnon*. If any case were "appropriate," it would be one where a general order-making power in federal insolvency legislation is argued to, without any indication of Parliamentary intent, limit a well-established privilege of another legislature. The general power to make "any order" in s. 11 of the CCAA therefore should not be taken to limit the Assembly's privilege to determine for itself, free from external judicial oversight, which documents it requires to perform its duties.

Chagnon, *supra* at paras. 65-69 (Rowe J concurring). See also paras. 152-63 (Brown and Côté JJ dissenting). The majority did not consider the issue as they found no applicable privilege that could be limited by statute.

Québec (Procureur général) v. Confédération des syndicats nationaux, 2011 QCCA 1247, at para. 30

See also *Duffy v. Canada (Senate)*, 2020 ONCA 536 at paras. 115-24, leave to appeal to SCC dismissed 11 February 2021

55. Contrary to Laurentian's assertions at paras. 68-72 of its factum, recognizing that the CCAA does not limit the Assembly's privileges impairs neither federalism nor the separation of powers. On the contrary, it shows respect for the boundaries written into the constitution itself and ensures that neither Parliament nor the courts intrude into the sphere of autonomy the Assembly requires to perform its work. Parliament has the power to give this Court the ability to shield Laurentian from revealing information to Laurentian's creditors, not to the Assembly, Laurentian's creator.

(3) The Assembly Has Not Limited Its Own Privileges

56. The Assembly has not limited its own privileges by enacting the *Auditor General Act*. The *Auditor General Act*, as its name implies, sets out the powers and duties of the Auditor General. It does not limit the privileges of the Assembly or the Committee which are defined by the *Legislative Assembly Act*, the *Standing Orders*, and the Assembly's practice, precedent, usage, and custom.

> *Standing Orders*, *supra*, s. 23(a)

57. The *Standing Orders* create the Committee and give it the "power to send for persons, papers and things" unless the House orders otherwise. As previously mentioned, the *Legislative Assembly Act* grants the Assembly the power to compel such production by way of a Speaker's Warrant.

> *Legislative Assembly Act*, *supra*, s. 35
>
> *Standing Orders*, *supra*, ss. 111(h) and 113(b)

58. The *Auditor General Act* makes it clear that the Auditor General is an officer of the Assembly and assists the Committee in its work, not the other way around:

> **Auditor General**
> **2** (1) There shall be an Auditor General who is an officer of the Assembly.

Appointment
(2) The Assembly shall, by order, appoint the Auditor General.
…

Attendance at standing Public Accounts Committee of the Assembly
16 At the request of the standing Public Accounts Committee of the Assembly, the Auditor General and any member of the Office of the Auditor General designated by the Auditor General shall attend at the meetings of the committee in order,

(a) to assist the committee in planning the agenda for review by the committee of the Public Accounts and the annual report of the Auditor General; and

(b) to assist the committee during its review of the Public Accounts and the annual report of the Auditor General,

and the Auditor General shall examine into and report on any matter referred to him or her in respect of the Public Accounts by a resolution of the committee.

Auditor General Act, RSO 1990, c. A.35, ss. 2(1)-(2) and 16

59. Section 10 of the *Auditor General Act* sets out the power of the Auditor General to obtain information. It does not purport to speak to the power of the Committee or the Assembly to obtain information at all, much less limit the clear words of the *Legislative Assembly Act* that "the Assembly may command and compel … the production of such papers and things as the Assembly or committee considers necessary" which has been on the statute books for 145 years or the inherent privilege to do so that has existed since before Confederation.

60. Nor does the *sub judice* convention do so. As Bosc and Gagnon make clear, the "*sub judice* convention is first and foremost a ***voluntary*** exercise of restraint on the part of the House … since no rule exists to ***prevent*** Parliament from discussing a matter which is *sub judice*." Neither the Assembly nor Ontario were parties to the proceedings brought by the Auditor General to determine the scope of her powers. Even if they had

been, "the *sub judice* convention has never stood in the way of the House considering a prima facie matter of privilege vital to the public interest or to the effective operation of the House and its Members."

> Bosc and Gagnon, *supra*, Chapter 13 "The *Sub Judice* Convention" [Emphasis added]

61. The only way the *Auditor General Act* limits the ability of the Assembly to receive documents is when it does so expressly. Section 19 provides that "Audit working papers of the Office of the Auditor General shall not be laid before the Assembly or any committee of the Assembly." That express reference demonstrates that had the Assembly wished to limit its power to require the production of documents more generally, it would have done so explicitly. Nothing in section 19 expresses any intention to limit the power of the Assembly to itself require the production of papers from a public body, even when that public body is the subject of an audit.

62. The Assembly has not limited its privilege to require the production of the documents it determines are needed for it to do its work. For the reasons set out above, that privilege meets the test of necessity and its exercise in individual circumstances is immune from judicial review, even under the *Charter*. Laurentian therefore cannot establish a *prima facie* case or even a serious issue to be tried. It is unnecessary to consider the other steps of the test for a stay. This motion should be dismissed.

PART IV – ORDER REQUESTED

63. Ontario respectfully requests that this Court dismiss the Moving Party's motion for a stay. Should the motion not be dismissed, Ontario requests that the hearing on the merits be scheduled as soon as possible and, in any event, before the Assembly returns on February 22, 2022.

64. As an intervener, Ontario neither seeks costs nor should pay costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, THIS 12TH DAY OF JANUARY, 2022

Josh Hunter

Emily Owens

SCHEDULE A – AUTHORITIES CITED

CASES

1. *Chagnon v. Syndicat de la function publique et parapublique du Québec*, 2018 SCC 39
2. *Gosset v. Howard* (1847), 10 QB 411, 116 ER 158 (Ex. Ch.)
3. *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker)*, [1993] 1 SCR 319
4. *Canada (House of Commons) v. Vaid*, 2005 SCC 30, [2005] 1 SCR 667
5. *Newbould v. Canada (AG)*, 2017 FCA 106, [2018] 1 FCR 590
6. *Yaiguaje v. Chevron Corp.*, 2014 ONCA 40
7. *Stuart Budd & Sons Ltd. v. IFS Vehicle Distributors*, 2014 ONCA 546
8. *H.E. v. M.M.*, 2015 ONCA 244
9. *RJR-MacDonald*, [1994] 1 SCR 311
10. *Toronto (City) v. Ontario (AG)*, 2018 ONCA 761, 142 OR (3d) 481
11. *Canada (AG) v. MacPhee*, 2003 PESCTD 6
12. *McNab v. Bidwell and Baldwin* (1830), Draper 144 (KB)
13. *Ex parte Dansereau* (1875), 19 LC Jurist 210
14. *Gagliano v. Canada (AG)*, 2005 FC 576, appeal dismissed as moot 2006 FCA 86
15. *Alternative Capital Group Inc. c. Côté*, 2020 QCCS 2494
16. *Smith v. Jones*, [1999] 1 SCR 455
17. *R. v. McClure*, 2001 SCC 14, [2001] 1 SCR 445
18. *Fielding v. Thomas*, [1896] AC 600 (PC)
19. *Duke of Newcastle v. Morris* (1870), L.R. 4 H.L. 661
20. *Québec (Procureur général) v. Confédération des syndicats nationaux*, 2011 QCCA 1247

TEXTS

1. Marc Bosc and André Gagnon, *House of Commons Procedure and Practice* (Ottawa: House of Commons, 2017)

2. Canada, *House of Commons Debates*, 44th Parl., 1st Sess., Vol. 151, No. 14 (9 December 2021)

3. *Erskine May: Parliamentary Practice, 25th ed.* (London: LexisNexis, 2019)

4. D.R. Elder, ed., *House of Representatives Practice, 7th ed.* (Canberra: House of Representatives, 2018)

5. Harry Evans, ed., Odgers' Australian Senate Practice, 14th ed. (Canberra: Senate, 2016)

6. Mary Harris and David Wilson, *McGee's Parliamentary Practice in New Zealand, 4th ed.* (Auckland: Oratia Books, 2017)

SCHEDULE B – LEGISLATION CITED

***Constitution Act, 1867*, 30 & 31 Vict., c. 3**

Preamble

An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith

(29th March 1867)

Whereas the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom:

And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire:

And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared:

And whereas it is expedient that Provision be made for the eventual Admission into the Union of other Parts of British North America

…

Appropriation and Tax Bills

53 Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

…

Legislature for Ontario

69 There shall be a Legislature for Ontario consisting of the Lieutenant Governor and of One House, styled the Legislative Assembly of Ontario.

Electoral districts

70 The Legislative Assembly of Ontario shall be composed of Eighty-two Members, to be elected to represent the Eighty-two Electoral Districts set forth in the First Schedule to this Act.

…

Summoning of Legislative Assemblies

82 The Lieutenant Governor of Ontario and of Quebec shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of the Province, summon and call together the Legislative Assembly of the Province.

Restriction on election of Holders of offices

83 Until the Legislature of Ontario or of Quebec otherwise provides, a Person accepting or holding in Ontario or in Quebec any Office, Commission, or Employment, permanent or temporary, at the Nomination of the Lieutenant Governor, to which an annual Salary, or any Fee, Allowance, Emolument, or Profit of any Kind or Amount whatever from the Province is attached, shall not be eligible as a Member of the Legislative Assembly of the respective Province, nor shall he sit or vote as such; but nothing in this Section shall make ineligible any Person being a Member of the Executive Council of the respective Province, or holding any of the following Offices, that is to say, the Offices of Attorney General, Secretary and Registrar of the Province, Treasurer of the Province, Commissioner of Crown Lands, and Commissioner of Agriculture and Public Works, and in Quebec Solicitor General, or shall disqualify him to sit or vote in the House for which he is elected, provided he is elected while holding such Office.

Continuance of existing Election Laws

84 Until the legislatures of Ontario and Quebec respectively otherwise provide, all Laws which at the Union are in force in those Provinces respectively, relative to the following Matters, or any of them, namely, — the Qualifications and Disqualifications of Persons to be elected or to sit or vote as Members of the Assembly of Canada, the Qualifications or Disqualifications of Voters, the Oaths to be taken by Voters, the Returning Officers, their Powers and Duties, the Proceedings at Elections, the Periods during which such Elections may be continued, and the Trial of controverted Elections and the Proceedings incident thereto, the vacating of the Seats of Members and the issuing and execution of new Writs in case of Seats vacated otherwise than by Dissolution, — shall respectively apply to Elections of Members to serve in the respective Legislative Assemblies of Ontario and Quebec.

Provided that, until the Legislature of Ontario otherwise provides, at any Election for a Member of the Legislative Assembly of Ontario for the District of Algoma, in addition to Persons qualified by the Law of the Province of Canada to vote, every Male British Subject, aged Twenty-one Years or upwards, being a Householder, shall have a Vote.

Duration of Legislative Assemblies

85 Every Legislative Assembly of Ontario and every Legislative Assembly of Quebec shall continue for Four Years from the Day of the Return of the Writs for choosing the same (subject nevertheless to either the Legislative Assembly of Ontario or the Legislative Assembly of Quebec being sooner dissolved by the Lieutenant Governor of the Province), and no longer.

Yearly Session of Legislature

86 There shall be a Session of the Legislature of Ontario and of that of Quebec once at least in every Year, so that Twelve Months shall not intervene between the last Sitting of the Legislature in each Province in one Session and its first Sitting in the next Session.

Speaker, Quorum, etc.

87 The following Provisions of this Act respecting the House of Commons of Canada shall extend and apply to the Legislative Assemblies of Ontario and Quebec, that is to say, — the Provisions relating to the Election of a Speaker originally and on Vacancies, the Duties of the Speaker, the Absence of the Speaker, the Quorum, and the Mode of voting, as if those Provisions were here re-enacted and made applicable in Terms to each such Legislative Assembly.

…

89 Each of the Lieutenant Governors of Ontario, Quebec and Nova Scotia shall cause Writs to be issued for the First Election of Members of the Legislative Assembly thereof in such Form and by such Person as he thinks fit, and at such Time and addressed to such Returning Officer as the Governor General directs, and so that the First Election of Member of Assembly for any Electoral District or any Subdivision thereof shall be held at the same Time and at the same Places as the Election for a Member to serve in the House of Commons of Canada for that Electoral District.

[s. 89 was repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict. C. 14 (UK)]

…

Application to Legislatures of Provisions respecting Money Votes, etc.

90 The following Provisions of this Act respecting the Parliament of Canada, namely, — the Provisions relating to Appropriation and Tax Bills, the Recommendation of Money Votes, the Assent to Bills, the Disallowance of Acts, and the Signification of Pleasure on Bills reserved, — shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in Terms to the respective Provinces and the Legislatures thereof, with the Substitution of the Lieutenant Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province for Canada.

…

Subjects of exclusive Provincial Legislation

92 In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

1. Repealed.

2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.

3. The borrowing of Money on the sole Credit of the Province.

…

5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.

…

9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.

…

92A

Taxation of resources

(4) In each province, the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of

> **(a)** non-renewable natural resources and forestry resources in the province and the primary production therefrom, and
>
> **(b)** sites and facilities in the province for the generation of electrical energy and the production therefrom,

whether or not such production is exported in whole or in part from the province, but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the province.

…

Legislation respecting Education

93 In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:

1. Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union;

2. All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec;

3. Where in any Province a System of Separate or Dissentient Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education;

4. In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section.

…

Property in Lands, Mines, etc.

109 All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.

…

Provincial Consolidated Revenue Fund

126 Such Portions of the Duties and Revenues over which the respective Legislatures of Canada, Nova Scotia, and New Brunswick had before the Union Power of Appropriation as are by this Act reserved to the respective Governments or Legislatures of the Provinces, and all Duties and Revenues raised by them in accordance with the special Powers conferred upon them by this Act, shall in each Province form One Consolidated Revenue Fund to be appropriated for the Public Service of the Province.

***Constitutional Act, 1791*, 31 Geo. III, c. 31, (UK)**

II. And whereas his Majesty has been pleased to signify, by his Message to both Houses of Parliament, his royal Intention to divide his Province of Quebec into two separate Provinces, to be called The Province of Upper Canada, and The Province of Lower Canada;" be it enacted by the Authority aforesaid, That there shall be within each of the said Provinces respectively a Legislative Council, and an Assembly to be severally composed and constituted in the Manner herein-after described; and that in each of the said Provinces respectively his Majesty, his Heirs or Successors, shall have Power, during the Continuance of this Act, by and with the Advice and Consent of-the Legislative Council and Assembly of such Provinces respectively, to make Laws for the Peace, Welfare, and good Government thereof, such Laws not being repugnant to this Act; and that all such Laws, being passed by the Legislative Council and Assembly of either of the said Provinces respectively, and assented to by his Majesty, his Heirs or Successors, or assented to in his Majesty's Name, by such Person as his Majesty, his Heirs or Successors, shall from Time to Time appoint to be the Governor, or Lieutenant Governor, of such Province, or by such Person as his Majesty, his Heirs and Successors, shall from Time to Time appoint to administer the Government within the same, shall be, and the same are hereby declared to be, by virtue of and under the Authority of this Act, valid and binding to all Intents and Purposes whatever, within the Province in which the same shall have been so passed.

***The Union Act, 1840*, 3 & 4 Vict., c. 35, (UK)**

III. And be it enacted, That from and after the Re-union of the said Two Provinces there shall be within the Province of Canada One Legislative Council and One Assembly, to be severally constituted and composed in the Manner herein-after prescribed, which shall be called "The Legislative Council and Assembly of Canada;" and that within the Province of Canada, Her Majesty shall have Power, by and with the Advice and Consent of the said Legislative Council and Assembly, to make Laws for the Peace, Welfare, and good Government of the Province of Canada, such laws not being repugnant to this Act, or to such Parts of the said Act passed in the Thirty-first Year of the Reign of His said late Majesty as are not hereby repealed, or to any Act of Parliament made or to be made, and not hereby repealed, which does or shall, by express Enactment or by necessary Intendment, extend to the Provinces of Upper and Lower Canada, or to either of them, or to the Province of Canada; and that all such Laws being passed by the said Legislative Council and Assembly, and assented to by Her Majesty, or assented to in Her Majesty's Name by the Governor of the Province of Canada, shall be valid and binding to all Intents and Purposes within the Province of Canada.

***Laurentian University of Sudbury Act, 1960*, SO 1960, c. 151**

Laurentian University of Sudbury incorporated

2. Ralph Douglas Parker, Robert James Askin, Benjamin Franklin Avery, Harold Bennett, Robert Campeau, William Stanley Cole, Jean-Noël Desmarais, Ernest Cecil Facer, Horace John Fraser, Donald Leslie James, Nigel Mordaunt Kensit, Joseph Armand Lapalme, John Williams McBean, James Wesley McNutt, James Richard Meakes, George Merle Miller, Alibert St. Aubin, Adjutor Joseph Samson, George Clement Tate, and such other persons who may hereafter be appointed or elected President or a member of the Board or a member of the Senate or upon whom the University may confer a degree, are hereby created a body corporate with perpetual succession and a common seal under the name of "Laurentian University of Sudbury".

Objects and purposes

3. The objects and purposes of the University are, a) the advancement of learning and the dissemination of knowledge; and b) the intellectual, social, moral and physical development of its members and the betterment of society.

Powers

4. (1) The University has university powers, including the power,

Establish courses

a) to establish and maintain, in either or both of the French and English languages, such faculties, schools, institutes, departments and chairs as determined by the Board, other than those already established by the University of Sudbury, which faculties, schools, institutes, departments and chairs are continued in the University under authority of the Board and Senate;

Degrees

b) to confer university degrees, honorary degrees, awards and diplomas in any and all branches of learning, except in Theology; University College

c) to establish a college of the University within the Faculty of Arts and Science to be known as University College, which college shall give instruction in either or both of the French and English languages in such subjects, excepting religious knowledge, as may from time to time be approved by the Faculty of Arts and Science of the University and be consented to by the Senate and Board, and the University shall accept such courses in partial fulfillment of the requirements for a degree under the same academic terms and conditions as would obtain if the instruction were given in 3 the University;

Federation of church-related colleges

d) to admit church-related universities or colleges into federation as colleges of the Faculty of Arts and Science, which church-related universities or colleges have the right to give instruction in philosophy and religious knowledge and in such other subjects as may from time to time be approved by the Faculty of Arts and Science of the University and be consented to by the Senate and Board, and the University shall accept such courses in partial fulfillment of the requirements for a degree under the same academic terms and conditions as would obtain if the instruction were given in University College;

Federation

e) to permit federation or affiliation of other colleges or universities with the University and to make agreements for federation or affiliation with other colleges or universities, provided that Hearst College and Prince Albert College, presently affiliated with The University of Sudbury, may enter agreements to affiliate with the University;

University property

f) in addition to the powers, rights and privileges mentioned in section 26 of The Interpretation Act, to purchase or otherwise acquire, take or receive by deed, gift, bequest or devise and to hold and enjoy any estate or property whatsoever, and to sell, grant, convey, mortgage, hypothecate, pledge, charge, lease or otherwise dispose of the same or any part thereof from time to time as occasion may require and to acquire other estate and property in addition thereto without licence in mortmain and without limitation as to the period of holding;

Expropriation

g) without the consent of the owner or of any person interested therein, other than a municipal corporation, to enter upon, take, use and expropriate all such real property as it deems necessary for the purposes of the University, making due compensation for any such real property to the owners and occupiers thereof and all persons having an interest therein, and the provision of The Municipal Act as to taking land compulsorily and making compensation therefor and as to the manner of determining and paying the compensation apply mutatis mutandis to the University and to the exercise by it of the powers conferred by this Act, and, where any act is by any of such provisions required to be done by the clerk of a municipality or at the office of such clerk, the like act shall be done by or at the office of the secretary of the Board;

Borrowing

h) if authorized by by-law of the Board,

i) to borrow money on its credit in such amount, on such terms and from such persons, firms or corporations, including chartered banks, as may be determined by the Board,

ii) to make, draw and endorse promissory notes or bills of exchange,

iii) to hypothecate, pledge, charge or mortgage any or all of its property to secure any money so borrowed or the fulfillment of the obligations incurred by it under any promissory note or bill of exchange signed, made, drawn or endorsed by it,

iv) to issue bonds, debentures and obligations on such terms and conditions as the Board may decide and pledge or sell such bonds, debentures and obligations for such sums and at such prices as the Board may decide and hypothecate, pledge, charge or mortgage all or any part of the property of the University to secure any such bonds, debentures and obligations.

Enrolment of students

(2) Every undergraduate student in the Faculty of Arts and Science shall enroll either in University College or in one of the church-related colleges of the Faculty.

University non-denominational

5. The management and control of the University shall be non-denominational, and no religious test shall be required of any professor, lecturer, teacher, officer, employee, servant or student of the University, but such management and control shall be based upon Christian principles.

University property

6. All property hereafter granted, conveyed, devised or bequeathed to, or to any person in trust for, or for the benefit of, the University, subject to any trust or trusts affecting the same, is vested in the University.

…

Proceedings

8. All proceedings by or against the University may be had and take in the name of "Laurentian University of Sudbury".

Investment of funds

9. The funds of the University not immediately required for its purposes and the proceeds of all property that come into the University, subject to any trust or trusts affecting the same, may be invested and re-invested in such investments as to the Board seems meet, and all property and revenue of the University shall be applied for the attainment of the objects for which the University is constituted and to the payment of expenses to be incurred for objects legitimately connected with or depending on the purposes aforesaid.

Ontario, Legislative Assembly, *Standing Orders*

Privileges

23. (a) Privileges are the rights enjoyed by the House collectively and by the members of the House individually conferred by the Legislative Assembly Act and other statutes, or by practice, precedent, usage and custom.

…

Membership appointed

111. Within the first 10 Sessional days following the commencement of a Parliament, the membership of the following Standing Committees shall be appointed, on motion with notice, for the duration of the Parliament

(h) Standing Committee on Public Accounts which is empowered to review and report to the House its observations, opinions and recommendations on the Report of the Auditor General and the Public Accounts, which documents shall be deemed to have been permanently referred to the Committee as they become available;

…

Same

113. (b) Except when the House otherwise orders, each Committee shall have power to send for persons, papers and things.

…

120. (b) The Chair of the Standing Committee on Estimates shall be a member of a recognized Party in opposition to the government, the Chair of the Standing Committee on Finance and Economic Affairs shall be a member of the Party forming the government and the Chair of the Standing Committee on Public Accounts shall be a member of the Party forming the Official Opposition.

***Bill of Rights, 1688*, 1 Will. & Mar. (2nd Sess.), art. 9 (UK)**

Freedom of Speech.

That the Freedome of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament.

***Election Act*, RSO 1990, c. E.6**

Powers of Lieutenant Governor

9 (1) Nothing in this section affects the powers of the Lieutenant Governor, including the power to dissolve the Legislature, by proclamation in Her Majesty's name, when the Lieutenant Governor sees fit.

First Thursday in June

(2) Subject to the powers of the Lieutenant Governor referred to in subsection (1), general elections shall be held on the first Thursday in June in the fourth calendar year following polling day in the most recent general election.

…

Dates for writs, close of nominations and polling day
Application to all elections
9.1 (1) This section applies to all elections.

Powers of Lieutenant Governor in Council
(2) When an election is to be held, the Lieutenant Governor in Council may,
(a) order that the writ or writs for the election be issued; and
(b) appoint and proclaim a day,
 (i) for the close of nominations and the grant of a poll where required, and
 (ii) as polling day.

Date of writ
(3) A writ for an election shall be dated on a Wednesday.

Day for close of nominations and grant of poll
(4) The day for the close of nominations and the grant of a poll where required shall be,
(a) in the case of a general election under subsection 9 (2), the second Thursday after the date of the writ;
(b) in any other case, the third Thursday after the date of the writ.

Polling day
(5) Polling day shall be the fifth Thursday after the date of the writ.

Alternate day
(6) If the Chief Electoral Officer is of the opinion that a Thursday that would otherwise be polling day is not suitable for that purpose because it is a day of cultural or religious significance, the Chief Electoral Officer shall choose another day in accordance with subsection (7) and recommend to the Lieutenant Governor in Council that polling day should be that other day, and the Lieutenant Governor in Council may make an order to that effect.

Same

(7) The alternate day shall be one of the seven days following the Thursday that would otherwise be polling day, but shall not be a Saturday, Sunday or a day that is a public holiday as defined in the Employment Standards Act, 2000.

Regular general election, time for order

(8) In the case of a general election under subsection 9 (2), an order under subsection (6) shall not be made after February 1 in the year in which the general election is to be held.

***Legislative Assembly Act*, RSO 1990, c. L. 10**

Power to compel attendance of witnesses, etc.

35 (1) The Assembly may at all times command and compel the attendance before the Assembly or a committee thereof of such persons, and the production of such papers and things, as the Assembly or committee considers necessary for any of its proceedings or deliberations. R.S.O. 1990, c. L.10, s. 35 (1).

Speaker's warrant for attendance, etc.

(2) When the Assembly requires the attendance of a person before the Assembly or a committee thereof, the Speaker may issue a warrant directed to the person named in the order of the Assembly requiring the person's attendance before the Assembly or committee and the production of the papers and things as ordered.

***Constitution Act, 1982*, Sch. B to the *Canada Act, 1982*, 1982, c. 11 (UK)**

General procedure for amending Constitution of Canada
38 (1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by

(a) resolutions of the Senate and House of Commons; and

(b) resolutions of the legislative assemblies of at least two-thirds of the provinces that have, in the aggregate, according to the then latest general census, at least fifty per cent of the population of all the provinces.

Majority of members
(2) An amendment made under subsection (1) that derogates from the legislative powers, the proprietary rights or any other rights or privileges of the legislature or government of a province shall require a resolution supported by a majority of the members of each of the Senate, the House of Commons and the legislative assemblies required under subsection (1).

Expression of dissent
(3) An amendment referred to in subsection (2) shall not have effect in a province the legislative assembly of which has expressed its dissent thereto by resolution supported by a majority of its members prior to the issue of the proclamation to which the amendment relates unless that legislative assembly, subsequently, by resolution supported by a majority of its members, revokes its dissent and authorizes the amendment.

…

Amendment by unanimous consent

41 An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(b) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province is entitled to be represented at the time this Part comes into force;

(c) subject to section 43, the use of the English or the French language;

(d) the composition of the Supreme Court of Canada; and

(e) an amendment to this Part

…

Amendments by provincial legislatures

45 Subject to section 41, the legislature of each province may exclusively make laws amending the constitution of the province.

***An Act respecting the Legislative Assembly*, SO 1875-76, c. 9**

Power to compel attendance of witnesses, etc.

1. The Legislative Assembly may, at all times, command and compel the attendance before such Assembly or before any committee thereof, of such persons, and the production of such papers and things as such Assembly or Committee may deem necessary for any of its proceedings or deliberations.

Speaker's warrant for attendance, etc.

2. Whenever the said Legislative Assembly requires the attendance of any person or persons before the said Assembly or before any Committee thereof, the Speaker may issue his warrant or subpoena, directed to the person or persons named in the Order of the said Legislative Assembly requiring the attendance of such person or persons before the said Legislative Assembly or a Committee thereof, and the production of such papers and things as may be ordered.

***Legislative Assembly Act*, RSO 1877, c. 12**

Power to compel attendance of witnesses, etc.
34. The Legislative Assembly may, at all times, command and compel the attendance before such Assembly or before any committee thereof, of such persons, and the production of such papers and things as such Assembly or Committee may deem necessary for any of its proceedings or deliberations.

Speaker's warrant for attendance, etc.
35. Whenever the said Legislative Assembly requires the attendance of any person or persons before the said Assembly or before any Committee thereof, the Speaker may issue his warrant or subpoena, directed to the person or persons named in the Order of the said Legislative Assembly requiring the attendance of such person or persons before the said Legislative Assembly or a Committee thereof, and the production of such papers and things as may be ordered.

***Companies' Creditors Arrangements Act*, RSC 1985, c. C-36**

General power of court

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

***Auditor General Act*, RSO 1990, c. A.35**

Auditor General
2 (1) There shall be an Auditor General who is an officer of the Assembly.

Appointment
(2) The Assembly shall, by order, appoint the Auditor General.
…

Attendance at standing Public Accounts Committee of the Assembly
16 At the request of the standing Public Accounts Committee of the Assembly, the Auditor General and any member of the Office of the Auditor General designated by the Auditor General shall attend at the meetings of the committee in order,

(a) to assist the committee in planning the agenda for review by the committee of the Public Accounts and the annual report of the Auditor General; and

(b) to assist the committee during its review of the Public Accounts and the annual report of the Auditor General,

and the Auditor General shall examine into and report on any matter referred to him or her in respect of the Public Accounts by a resolution of the committee.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as amended

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

FACTUM OF THE ATTORNEY GENERAL OF ONTARIO
(Motion Returnable January 18, 2022)

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