

**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**

**NINTH REPORT OF THE MONITOR
December 16, 2021**

INTRODUCTION

1. On February 1, 2021, Laurentian University of Sudbury (“LU” or the “**Applicant**”) brought an application (the “**CCAA 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 financially and operationally restructure itself.
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 these CCAA proceedings (in such capacity, the “**Monitor**”), and approved a stay of proceedings for the initial 10-day 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 Justice Sean Dunphy as mediator (the “**Court-Appointed Mediator**”) to oversee negotiations within the restructuring.
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**”) which among other things, approved a debtor-in-possession interim financing arrangement in the amount of \$25 million (the “**DIP Facility**”) and extended the stay of proceedings to April 30, 2021 (the “**Stay Period**”).
5. On April 29, 2021, the Court granted a stay extension order (the “**Stay Extension Order**”) which, among other things, approved an increase in the DIP Facility to a maximum

principal amount of \$35 million (the “**Amended DIP Facility**”) 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**”) which, among other things, established a process whereby the Monitor, in conjunction with the Applicant, would (a) call for certain claims of creditors and establish bar dates by which 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 (the “**Plan**”), and (c) develop a process for dealing with compensation claims, including establishing a methodology for calculating the compensation claims (collectively, the “**Claims Process**”).
7. 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.
8. 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 which, among other things, extended the Maturity Date (as defined in the Amended DIP Facility) to January 31, 2022.
9. On October 1, 2021, the Court granted an Order amending the Compensation Claims Process Order to reflect revisions to the Order and Methodology related to the Third Party RHBP Claims (as defined in the amended Compensation Claims Process Order).

PURPOSE

10. The purpose of this Ninth Report of the Monitor (the “**Ninth Report**”) is to provide information to the Court with respect to the following:
 - a) the Applicant’s request for an order (the “**Claims Officers Order**”) appointing the Honourable Clément Gascon, the Honourable J. Douglas Cunningham, Q.C., and W. Niels Ortved (collectively, the “**Claims Officers**” and each individually, a “**Claims Officer**”) as claims officers to assist in the determination of disputed claims pursuant to the Claims Process Order that the Monitor may refer to any on of them; and
 - b) the Applicant’s request for an order (the “**Grievance Resolution Process Order**”):

- i. approving the grievance resolution process for all grievances filed by the Laurentian University Faculty Association (“**LUFA**”) against the Applicant prior to October 14, 2021 and until the Applicant’s emergence from this CCAA proceeding (the “**Grievance Resolution Process**”);
 - ii. appointing Ken Rosenberg of Paliare Roland Rosenberg Rothstein LLP (the “**Grievance Resolution Officer**”) to case manage and, if necessary, determine and resolve any issues arising as a result of the Grievance Resolution Process and authorizing him to deal with any disputed Compensation Claims that arise and remain under the Compensation Claims Process Order;
- c) the Applicant’s request for an order removing the cap on the Board counsel’s professional fees; and
 - d) the Monitor’s recommendations with respect to the above.

TERMS OF REFERENCE AND DISCLAIMER

11. In preparing this Ninth 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**”).
12. Unless otherwise indicated, the Monitor’s understanding of factual matters expressed in this Ninth Report concerning the Applicant and its business is based on the Information, and not independent factual determinations made by the Monitor.
13. Capitalized terms not defined in this Ninth Report are as defined in the Pre-Filing Report of the Proposed Monitor, prior reports of the Monitor, the Amended and Restated Initial Order and other orders granted in the CCAA proceedings, as applicable.
14. On May 27, 2021 the Monitor issued its Fourth Report outlining the proposed Claims Process. Further, on August 12, 2021 and September 28, 2021, the Monitor issued its Sixth Report and Eighth Report, respectively, outlining the proposed Compensation Claims Process and certain amendments to the Compensation Claim Methodology. This Ninth Report should be read in conjunction with the Fourth, Sixth and Eighth Reports and the information provided therein.
15. Unless otherwise stated all monetary amounts contained herein are expressed in Canadian dollars.

BACKGROUND

16. 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**”).
17. 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 also receives donations and issues tax receipts to donors.
18. 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.
19. As described in the affidavit of Dr. Robert Haché sworn January 30, 2021, 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.
20. Prior to this CCAA proceeding, LU had relationships with certain independent federated universities, including the University of Sudbury (“**SU**”), the University of Thorneloe (“**Thorneloe**”) and Huntington University (“**Huntington**”) (collectively, the “**Former Federated Universities**”). On April 1, 2021, LU delivered Notices to Disclaim or Resiliate 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.
21. Further background information with respect to the Applicant is described in the Pre-Filing Report and prior Reports of the Monitor.

APPOINTMENT OF CLAIMS OFFICERS

22. On May 31, 2021, the Court issued the Claims Process Order, which provided for a process to call for and determine the validity and quantum of the claims against the Applicant and its Directors and Officers.
23. The Claims Process (together with the Compensation Claims Process) has resulted in approximately 1,500 claims in the aggregate amount of approximately \$360 million being asserted. The Monitor, with the assistance of the Applicant, is reviewing the claims filed against the Applicant and its Directors and Officers. Although the exact number is

unknown at this time, it is anticipated that there will be several disputed claims (the “**Disputed Claims**”). The majority of Disputed Claims will likely be resolved consensually and without the aid of a Claims Officer. However, a number of the Disputed Claims are complex and significant enough in quantum that they will require the involvement of a Claims Officer or the Court to determine. The Monitor proposes that all or a significant number of such Disputed Claims (other than disputed Compensation Claims) that cannot be resolved be referred to the Claims Officers for determination at first instance.

24. Pursuant to paragraph 37 of the Claims Process Order, either the Applicant or the Monitor is authorized to bring a motion to seek an order appointing Claims Officers to assist in the determination of any or all Disputed Claims.
25. The Applicant has proposed the following individuals to act as Claims Officers:
 - a) *The Honourable Clément Gascon* – former Supreme Court of Canada Justice and fluently bilingual in both English and French. He has extensive experience in insolvency matters;
 - b) *The Honourable J. Douglas Cunningham, Q.C.* - former Associate Chief Justice for the Ontario Superior Court of Justice. He has broad experience from two decades of serving as a Justice of the Ontario Superior Court and is a resident arbitrator and mediator with Arbitration Place; and
 - c) *W. Niels Ortvad* – member of Arbitration Place. He was previously a senior partner for over 35 years in the litigation group at McCarthy Tétrault, with a wide range of experience in corporate and commercial claim matters including insolvency.
26. A copy of the Curriculum Vitae (“CV”) for each of the proposed Claims Officers is attached as Exhibit “D” to the Affidavit of Dr. Robert Haché dated December 13, 2021.
27. The Monitor has reviewed the CV of each of the proposed Claims Officers, has spoken to the proposed Claims Officers and consulted with its legal counsel as well as legal counsel for the Applicant regarding the reputation and relevant experience of the proposed parties. The Monitor is of the belief that each Claims Officer is sufficiently knowledgeable and experienced in insolvency and claims resolution matters to competently act in such capacity.
28. Due to the expected number of Disputed Claims and the Monitor’s understanding of the time that the proposed Claims Officers have to dedicate to this process, the Monitor is of the view that three Claims Officers are required and that it is prudent and most efficient to seek this Court’s appointment of the Claims Officers now, rather than return to the Court for appointment of claims officers once Disputed Claims arise. This will allow the scheduling, process and coordination of the Disputed Claims to already be in place.

29. The fees and expenses incurred by the Claims Officers in undertaking the mandate pursuant to this Order, including any staff or other lawyers reasonably required by the Claims Officers to assist with the mandate, at their standard hourly rates for similar matters as approved by the Monitor, shall be paid by the Applicant upon receiving a direction from the Monitor.

GRIEVANCE RESOLUTION PROCESS

30. On August 17, 2021, the Court granted the Compensation Claims Process Order, as amended on October 1, 2021. The Compensation Claims Process Order applies to, among others, claims by any union in respect of grievances under any collective agreement to which the Applicant is party, whether such grievance arose prior to or after the date of the Initial Order and is in respect of any matter that:
 - a) is based in whole or in part on facts existing prior to the Filing Date, related to a time period prior to the Filing Date (“**Pre-Filing Grievances**”); or
 - b) arises as a result of the restructuring of the Applicant prior to the date of the Compensation Claims Process Order (“**Restructuring Grievances**”).
31. On or before October 14, 2021, LUFA filed 36 new grievances (collectively, the “**October 14 Grievances**”). The Monitor notes that while the October 14 Grievances were filed prior to the Compensation Claims Bar Date, they were not filed in the form of a Notice of Dispute as contemplated in the amended Compensation Claims Process Order. For the purposes of the proposed Grievance Resolution Process, certain of the October 14 Grievances (other than ordinary course, non-material post-filing grievances) shall be treated as Grievance Claims (as defined in the amended Compensation Claims Process Order) as if filed by way of Notice of Dispute prior to the Compensation Claims Bar Date.
32. As of the date of this Ninth Report, three grievances have been withdrawn or resolved. The balance of the October 14 Grievances remain unresolved. These grievances must be resolved in a timely manner because their outcome may have a material impact on the Plan that the Applicant will be able to put before its creditors.
33. To be able to appropriately address the remaining unresolved grievances, it is necessary to first classify the October 14 Grievances as: (i) Pre-Filing Grievances, (ii) Restructuring Grievances, or (iii) grievances arising based on facts and circumstances that occurred subsequent to the Filing Date and do not relate to the restructuring of the Applicant (the “**Post-Filing Grievances**”).
34. For Post-Filing Grievances, the Applicant and Monitor believe that it is also necessary to further determine if any Post-Filing Grievances are material due to the fact that they may

jeopardize the ordinary course operations of the Applicant or may jeopardize the restructuring of LU (“**Material Post-Filing Grievances**”). The Monitor notes that while the Compensation Claims Process Order did not specifically address this subcategory of grievances, the Grievance Resolution Process includes Material Post-Filing Grievances and proposes that such grievances be addressed within the CCAA proceedings, given the potential material effect of such grievances on the operations of the Applicant as it exits CCAA.

35. The classification of the October 14 Grievances affects the manner that the grievances may be addressed under a Plan, including whether any monetary award that could arise from a determination of the grievance is subject to compromise.
36. After preliminary review of the October 14 Grievances, the Applicant made a number of requests to LUFA for additional particulars regarding certain of the October 14 Grievances to assist in the categorization of the grievances. LUFA provided some particulars for certain of the October 14 Grievances, however, additional particulars from LUFA are required before certain of the October 14 Grievances can be properly classified. This is addressed in the proposed Grievance Resolution Process.
37. In an effort to advance the classification and resolution of the October 14 Grievances in an efficient and timely manner, the Applicant and Monitor have developed a Grievance Resolution Process to be complied with by both the Applicant and LUFA with respect to the October 14 Grievances. The Grievance Resolution Process is attached as Exhibit “E” to the Affidavit of Dr. Robert Haché dated December 13, 2021 and as Schedule “A” to the Grievance Resolution Process Order attached at Tab 4 of the Applicant’s Motion Record dated December 13, 2021.
38. Issues relating to the manner in which grievances would be categorized and determined were addressed in correspondence following the receipt of the October 14 Grievances and on December 10, 2021, counsel to the Monitor provided counsel to LUFA with the proposed Grievance Resolution Process.
39. The proposed Grievance Resolution Process outlines a schedule to allow for a determination of the classification of the October 14 Grievances by January 14, 2022, and an ultimate resolution of Pre-Filing Grievances, Restructuring Grievances and Material Post-Filing Grievances by February 25, 2022, or such later date as agreed to by the proposed Grievance Resolution Officer. Non-material Post-Filing Grievances are anticipated to be resolved by no later than April 29, 2022 pursuant to the proposed Grievance Resolution Process.
40. In respect of any Material Post-Filing Grievances filed after October 14, 2021, the timeline to address particulars, classification and resolution shall be addressed on an individualized basis with the assistance of the Grievance Resolution Officer. Any Pre-Filing Grievances,

Restructuring Grievances or Material Post-Filing Grievances must be determined before the Applicant emerges from its CCAA proceeding.

41. The Grievance Resolution Process proposes that the Monitor will first determine the classification of grievances. If there is a dispute regarding the Monitor's classification, the disputes shall be referred to the Court-Appointed Mediator for mediation. If the parties are unable to agree to the classification of the grievances, the Court-Appointed Mediator will have the authority to make a determination solely in respect of that classification and such decision shall be final and binding.
42. The Grievance Resolution Process proposes Pre-Filing Grievances, Restructuring Grievances and Material Post-Filing Grievances will then be addressed by the Grievance Resolution Officer, and that the Grievance Resolution Officer will have the authority to establish a procedure for the determination of any issue related to the Grievance Resolution Process.
43. The Grievance Resolution Officer will not participate in the determination of the non-material Post-Filing Grievances. The Grievance Resolution Process provides that such grievances will proceed in the ordinary course pursuant to the Applicant's collective agreement with LUFA, and any disputes that cannot be resolved by the parties will be referred to a labour arbitrator. The arbitrator will have the authority to case manage any such grievances pursuant to the *Labour Relations Act*, 1995, S.O. 1995, c. 1, Sched. A, as amended.
44. As contemplated in the Claims Process Order and Compensation Claims Process Order, the Monitor will also remain involved in reviewing Grievances Claims, as filed.

Appointment of Grievance Resolution Officer

45. The proposed Grievance Resolution Process contemplates the appointment of a Grievance Resolution Officer to hear and determine all Pre-Filing Grievances, Restructuring Grievances and Material Post-Filing Grievances and have the authority to establish a procedure for the determination of any issue related to the Grievance Resolution Process. The Grievance Resolution Officer will also be authorized to deal with any disputed Compensation Claims that arise and remain under the Compensation Claims Process Order.
46. After considering the availability and experience of individuals who may be suitable to serve as Grievance Resolution Officer, the Monitor and Applicant propose that Ken Rosenberg of Paliare Roland Rosenberg Rothstein LLP be appointed as Grievance Resolution Officer. A copy of Mr. Rosenberg's CV is attached as Appendix "A".
47. The Monitor and Applicant are of the belief that the proposed Grievance Resolution Officer is sufficiently knowledgeable and experienced in grievance resolution matters to

competently act in such capacity. He is well known to the Labour and Restructuring bars and to this Court.

48. The fees and expenses incurred by the Grievance Resolution Officer, including any staff or other lawyers reasonably required by the Grievance Resolution Officer to assist with the mandate, are to be at their standard hourly rates for similar matters as approved by the Monitor. The Applicant will pay such fees and expenses upon receiving a direction from the Monitor.

REMOVAL OF CAP ON BOARD COUNSEL'S PROFESSIONAL FEES

49. Paragraph 36 of the Amended and Restated Initial Order limited the amount of fees that could be incurred by independent counsel to the Board of Governors of the Applicant ("**Board Counsel**") to a maximum amount of \$250,000 plus HST, pending further Order of the Court.
50. Pursuant to an Endorsement of Chief Justice Morawetz dated May 31, 2021, the maximum amount of fees that could be incurred by Board Counsel was increased to \$500,000.
51. Board Counsel has been, and is expected to continue to be, extremely active throughout the CCAA proceedings. Having the benefit of experienced independent counsel representing the Board as it navigates various issues in this precedent-setting CCAA proceeding has been helpful to the Applicant and the Monitor and has created efficiencies.
52. The Monitor has been reviewing the amount of professional fees incurred by Board Counsel and will continue to do so and report to the Court from time to time.
53. It is the Monitor's view the Applicant's request for the removal of the cap on the Board Counsel's professional fees is reasonable in the circumstances and will allow the Board's counsel to continue to assist the Board through the CCAA process as the Applicant progress towards a Plan.

MONITOR'S RECOMMENDATIONS AND CONCLUSIONS

54. The Monitor believes the appointment of the Claims Officers will greatly assist in ensuring the Claims Process proceeds in an efficient and timely manner.
55. The Monitor believes the proposed Grievance Resolution Process represents a fair, expeditious and reasonable procedure for the classification and resolution of certain of the October 14 Grievances. The proposed Grievance Resolution Process makes adequate

resources available to complete the task and will assist in the resolution of the grievances in a timely manner and further assist the Applicant in progressing towards a Plan.

56. For the reasons stated herein, the Monitor supports the relief sought by the Applicant including the granting of:

- a) The Order Appointing Claims Officers;
- b) The Grievance Resolution Process Order; including the appointment of the Grievance Resolution Officer; and
- c) An Order removing the cap on the Board Counsel's professional fees.

57. Accordingly, the Monitor recommends that the Court grant the relief sought by the Applicant.

All of which is respectfully submitted this 16th day of December 2021.

**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**

APPENDIX "A"
CV of KEN ROSENBERG

CV OF KEN ROSENBERG

2001 – Present	PALIARE ROLAND ROSENBERG ROTHSTEIN LLP (“PRRR”)
1981 - 2001	GOWLING LAFEUR HENDERSON/Strathy’s (save for 1985 to 1988)
1985 – 1988	Chief of Staff - Ontario’s Minister of Consumer and Commercial Relations, Minister of Financial Institutions, and the Minister of Industry, Trade and Technology

EDUCATION:

1981	Called to the Bar of the Province of Ontario
1976-1979	Bachelor of Law Degree, Osgoode Hall Law School, York University, Toronto
1976	United Nations Exchange Programme – Guyana, South America
1973-1976	Bachelor of Arts Degree, University of Winnipeg, Winnipeg, Manitoba

Ken Rosenberg brings a strategic approach to problem-solving in business and financial disputes, including commercial litigation, insolvency litigation, class actions, administrative law/regulated industries, cross-border disputes, mediation and arbitration. Ken has acted as mediator in more than 100 cases and has also acted as an arbitrator and has conducted Superior Court Pre-trials in a project created to clear a large back log of cases. He has appeared at all levels of court in Canada and has appeared in U.S. courts.

Prominent litigation cases with significant litigation success in insolvency and corporate commercial matters, often acting for Labour unions, pension interests and/or employee groups, have included Sino-Forest Corporation, Lac Megantic Railway disaster, ABCP, Nortel, Sears, Collins & Aikman, Air Canada, Stelco 1 & 2, Algoma 1,2 & 3, MacDonald vs BMO, Pace Securities Investors Rep. action plus hundreds of civil litigation cases and administrative law cases. Ken and the Paliare Roland team successfully developed and advanced the winning “Pro Rata” theory in the approximately \$10B Nortel Allocation cross border, bi-national trial, involving many countries and estates.

After four separate elections prior to and not including 2018, Ken acted as legal counsel to Ontario’s then Premier Elect, and then Premier regarding the transition to government and issues thereafter.

For over 15 years, Ken was Secretary of the Ontario’s Commercial List Bench/Bar stakeholder committee – The Commercial List User’s Committee (CLUC).

Ken has been recognized as a leading advocate and litigator by Lexpert/ROB Magazine, Chambers Canada, Best Lawyers, Who's Who Legal, Martindale-Hubbell and more.

Mediation, Facilitation and Arbitration:

The following highlights Ken's experience as a Mediator, Facilitator and Arbitrator over the last 30 plus years:

- (a) For two years, he was a guest lecturer at Harvard Law School's one-week intensive course in mediation and has also taught ADR at the University of Toronto Law School, University of Toronto Business School, Osgoode Hall Law School, York University's Business School, Queen's University and numerous professional development courses. He has also provided alternative dispute resolution training to Canadian and Foreign Judges and to Canadian and American Regulatory Tribunals and their members.
- (b) From the early 90s through to the present (2021), he has acted as a Facilitator and Mediator in more than 100 Ontario Energy Board (OEB) cases involving matters such as rates, facilities, market structure and market access, demand/supply management, landowner compensation, expropriation, gas storage, gas and electricity integration, and/or other operational issues. These cases range from small matters to multi-billion dollar cases involving up to or more than 25 private and public authority participants. Many negotiations are completed in one day or a few days but some negotiations have taken months to complete.
- (c) He has acted as a mediator in dozens of civil litigation/business disputes. In addition, he was appointed by the Ontario Superior Court of Justice as a Pre-Trial Settlement Officer and undertook pre-trial conferences.
- (d) He has conducted numerous arbitrations. Of note, In 2003/04, he was appointed as the sole Arbitrator, with no appeal, by two multinational forest companies operating in Northwestern Ontario to determine the price of Wood Fibre in Ontario's North West Region. This was the first ever price arbitration under the then Ontario Sustainable Forest Licence regulatory system.
- (e) In April of 1998, he completed an 8-month project as facilitator/mediator for the Recycling Council of Ontario involving over 600 Ontario's municipalities and over 100 businesses and public interest groups involved in Ontario's Blue Box Curbside Household Recycling Programme, which resulted in a report to Ontario's Minister of the Environment. Many of the recommendations were implemented by the Province.
- (f) In 1996/97, he was appointed as Independent Chair of the Ontario Energy Board's Working Group on Deregulation of the Natural Gas Monopoly Business in Ontario. After approximately 9 months of work and negotiations, a report was submitted by Ken and the Committee to the OEB regarding deregulating and re-

regulating the natural gas industry in Ontario. The report was entitled "Toward a Fully Competitive Natural Gas Commodity Market". Certain recommendations were adopted into legislation and regulations by the Province. The fundamental market restructuring that was adopted, is still in place.

- (g) In the early 90s, he was part of a team of lawyers at Gowlings that were Canadian legal advisors to the negotiating team of the Government of Mexico on matters related to the negotiation of the North American Free Trade Agreement (NAFTA). This was a multi-year brief.

Professional
Associations

Law Society of Upper Canada
Canadian Bar Association
Advocates Society
Turnaround Management Association
Insolvency Institute of Canada