CITATION: Laurentian University of Sudbury, 2022 ONSC 429
COURT FILE NO.: CV-21-00656040-00CL
DATE: 2022-01-26

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 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

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *Brian Gover and Fredrick R. Schumann*, Regulatory Counsel for Laurentian University of Sudbury

D.J. Miller, Mitchell W. Grossell, Andrew Hanrahan and Derek Harland, Insolvency Counsel for Laurentian University of Sudbury

Ashley Taylor, for the Monitor

David Taylor and M. Alyssa Holland, for the Speaker of the Legislative Assembly of Ontario

Richard Dearden, Heather Fisher and Sarah Boucaud, for the Auditor General of Ontario

Joshua Hunter, for the Attorney General of Ontario – Constitutional Law Branch

Charles Sinclair, for the Laurentian University Faculty Association

Sarah Godwin, for the Canadian Association of University Teachers

HEARD: January 18, 2022

ENDORSEMENT

[1] Laurentian University of Sudbury ("LU") brings this motion for an order (the "Stay of Speaker's Warrants Order") staying and suspending the enforcement of the warrants issued by the Speaker of the Legislative Assembly of Ontario dated December 9, 2021 (the "Speaker's Warrants"), served on the President and Vice Chancellor of LU, Dr. Robert Haché, and on the Chair of LU's Board of Governors (the "Board"), Mr. Claude Lacroix, pending a determination of whether the issuance fell within the scope and extent of the Legislative Assembly's parliamentary privilege, or further orders of the Court.

[2] In the alternative, LU seeks advice and directions on how LU should comply with the Speaker's Warrants, given the existing court orders in the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA") restructuring process.

[3] For the reasons set out below, the motion for the Stay of Speaker's Warrants Order is denied, save and except for matters relating to the Sealing Order (defined below) granted in the CCAA proceedings on February 1, 2021 and for matters covered by the Mediation Order (defined below) granted on February 5, 2021. This limited stay is in effect pending a determination of whether the issuance of the Speaker's Warrants as they relate to matters covered by the Sealing Order and Mediation Order falls within the scope and extent of the Legislative Assembly's parliamentary privilege. Certain directions to LU are outlined in the reasons.

Summary of Facts

[4] On February 1, 2021, LU commenced proceedings under the CCAA. An Initial Order was granted, which included a sealing provision (the "Sealing Order") applying to exhibits to LU's supporting affidavit.

[5] On February 5, 2021, a further order was made in the CCAA proceedings creating a mediation process (the "Mediation Order") with Justice Sean Dunphy as judicial mediator. The Mediation Order imposed a "Confidentiality Protocol" on "the entirety of the mediation process or anything reasonably incidental to the mediation process."

[6] On April 28, 2021 the Standing Committee on Public Accounts of the Legislative Assembly (the "Committee") met and asked the Auditor General of Ontario (the "Auditor General") to conduct a value-for-money audit of the operations of LU for the period between 2010 and 2020.

[7] The Auditor General demanded from LU (a) privileged information and (b) information covered by the Mediation Order and the Sealing Order. LU took issue with this demand and refused to produce the information and documents.

[8] In late September 2021, the Auditor General commenced an application for a determination of whether audit subjects were required to give her privileged information, and whether she had the right to access privileged information, under s. 10 of the *Auditor General Act*, R.S.O. 1990, c. A.35 (the "*AG Act*").

[9] On October 6, 2021, the Auditor General met with the Committee, in camera.

[10] On October 15, 2021, the Committee sent correspondence to LU, expressly calling for LU's production to include privileged information.

[11] On December 6, 2021, in accordance with a schedule agreed upon in September 2021, the court heard the Auditor General's application and reserved its decision.

[12] On December 8, 2021, the Committee met and asked the Government House Leader and the Official Opposition Whip to report to the House and to request a Speaker's Warrant for the documents it had requested from LU.

[13] On December 9, 2021, the Committee reported to the Assembly and sought the Speaker's Warrants. The House approved the Committee's report and the Speaker issued the Speaker's Warrants. The Speaker's Warrants are addressed to Dr. Haché and Mr. Lacroix and require LU to produce all documents from the Committee's requests by delivering them to the Clerk of the Committee, and to do so by February 1, 2022. They also state: "if you disobey this warrant, you may be subject to punishment, including imprisonment."

[14] On January 12, 2022, the decision with respect to the Auditor General's application was released (*Auditor General of Ontario v. Laurentian University of Sudbury*, 2022 ONSC 109). It was determined that audit subjects were not required to give the Auditor General privileged information and the Auditor General had no right to access privileged information under s. 10 of the *AG Act*.

Issues

[15] This motion presents two issues:

(a) Does the court have jurisdiction to grant an interlocutory stay of the enforcement of a Speaker's Warrant; and

(b) Should a stay be granted.

[16] LU takes the position that the court has jurisdiction and the stay should be granted. Ernst & Young Inc., in its capacity as monitor in the CCAA proceedings (the "Monitor") supports the position of LU.

[17] The motion was opposed by the Speaker of the Legislative Assembly of Ontario (the "Speaker"), the Attorney General of Ontario, the Auditor General, the Laurentian University Faculty Association, and the Canadian Association of University Teachers.

Positions of the Parties and Analysis

[18] The Speaker's Warrants seek to compel LU to disclose information that LU submits is protected by solicitor-client, litigation, and settlement privilege, and information that is confidential or sealed under a court order.

[19] LU states that the asserted legal authority to compel such disclosure is the Assembly's "constitutionally protected parliamentary privilege, including the right to institute inquiries and to require production of documents." Parliamentary privilege is an exemption from the ordinary law: *Chagnon v. Syndicat de la function publique et parapublique du Québec*, 2018 SCC 39, [2018] 2 S.C.R. 687, at para. 19 ("*Chagnon*"). Courts will determine whether a category of parliamentary privilege exists and delimit its scope; but actions within the scope of the privilege are not subject to judicial review. However, if the claimed privilege does not cover the Speaker's Warrants, the ordinary law will apply and the court will grant relief so as to protect the information that is confidential or sealed under a court order. LU contends that certain aspects of the Speaker's Warrants are subject to judicial review and "[t]he role of the courts is to ensure that a claim of privilege does not immunize from the ordinary law the consequences of conduct by Parliament or

its officers and employees that exceeds the necessary scope of the category of privilege": *Canada (House of Commons) v. Vaid*, 2005 SCC 30, [2005] 1 S.C.R. 667, at para. 29(11) ("*Vaid*").

[20] LU reasons that since the court has jurisdiction to determine the scope of parliamentary privilege and whether the Speaker's Warrants fall within that scope, it must also have the jurisdiction to grant interlocutory remedies to preserve the rights of the parties pending its determination of those issues. Jurisdiction to stay the enforcement of a Speaker's Warrant has a number of potential sources: s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 24(1) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"), and s. 11 of the CCAA.

[21] The Speaker takes the position that the Court has no jurisdiction to grant the requested relief. The Assembly's privilege to "send for persons, papers and things" is a centuries-old parliamentary privilege and the court has no jurisdiction over the exercise of this aspect of privilege in this, or any other case.

[22] The Speaker submits that as the Supreme Court of Canada has recognized on multiple occasions, judicial remedies are not available against exercises of parliamentary privilege: see *Chagnon*, at para. 25. This is because a review of matters protected by parliamentary privilege would negate the immunity that protects the Assembly's independence.

[23] The Speaker counters the submissions of LU by noting that, "While Laurentian evokes the distinction between the "scope" of a parliamentary privilege and its "exercise" in its brief submissions on jurisdiction, these submissions fail to recognize that even an interlocutory stay of an in-scope exercise of the Assembly's privilege defeats the very rationale for the scope/exercise distinction. There is no basis to distinguish judicial review in the form of an interlocutory stay from judicial review in the form of a final order quashing the Speaker's Warrants. … Contrary to the authorities cited by Laurentian, courts have dismissed proceedings at a preliminary stage due to a lack of jurisdiction resulting from parliamentary privilege."

[24] The Speaker and Attorney General argue that the scope of parliamentary privilege is a threshold question that must first be answered in LU's favour before the Court has jurisdiction to grant any relief, including interlocutory relief. LU, however, submits that this is incorrect and where a case presents a threshold question, courts answer it as part of the three-part test set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 (under "serious question to be tried"), rather than treating it as a threshold issue to be answered before they reach that test.

[25] In support of its submission, LU references *Newbould v. Canada (Attorney General)*, 2017 FCA 106, [2018] 1 F.C.R. 590 ("*Newbould (FCA)*"), where the moving party sought judicial review of a decision of the Canadian Judicial Council and moved for an interlocutory stay. The respondent asserted that judicial review was premature because the administrative process had not yet run its course. This argument was accepted by the Federal Court (*Newbould v. Canada (Attorney General)*, 2017 FC 326, at para 11), but the Federal Court of Appeal rejected it and allowed the appeal:

> The insertion of a decision on the merits of the underlying application before consideration of the tri-partite test for granting a stay or an injunction pre-empts the question of whether there is a serious issue…. It forces applicants who need only

> meet a low threshold under the serious issue branch of the tripartite test to satisfy the more demanding test of showing extraordinary circumstances as a condition of being heard on their application for a stay: *Newbould (FCA)*, at para. 22.

[26] LU submits that the scope of parliamentary privilege, and whether the Speaker's Warrants fall within that scope, are the issues on the merits. They should be analyzed as part of the three-part *RJR-MacDonald* test, through the lens of the "serious question to be tried" element. It would pre-empt that test if the court first required LU to positively establish jurisdiction.

[27] I agree with LU. The court has jurisdiction to review the scope of the privilege and so has jurisdiction to grant an interlocutory stay where there is a serious question to be tried as to whether the Speaker's Warrants fall within the scope of the privilege.

[28] The Speaker and the Attorney General have indicated that, in view of the upcoming election in June 2022, the granting of any stay will result in a determination of the merits and requires that LU meet the "strong *prima facie*" test as opposed to the "serious issue to be tried" test.

[29] I do not accept this argument. I see no reason why the parties should not be able to bring this issue forward and be in a position to argue the merits, on a full record, on a timetable that will enable the court to make a timely determination of the issues.

[30] LU submits that there are three serious questions to be tried with respect to the scope of the claimed privilege, "the right to institute inquiries and to require documents":

> (a) whether the claimed privilege extends to documents protected by a class privilege of a person or entity that is not part of government;
>
> (b) whether the claimed privilege extends to information the disclosure of which is prohibited by a court order made pursuant to the CCAA; and
>
> (c) whether parliamentary privilege may be used by the Committee to obtain documents directly for the purpose of an audit of a public entity covered by the *AG Act*.

[31] LU takes the position that the recognized categories of parliamentary privilege all involve internal matters, but this case falls into a very different category: the Assembly is reaching outside of its walls to compel a third party to do something that it would ordinarily have the right not to do.

[32] LU cites *Lavallee, Rackel & Heintz v. Canada (Attorney General)*, 2002 SCC 61, [2002] 3 S.C.R. 209, at para. 24 for the proposition that "all information protected by the solicitor-client privilege is out of reach for the state. …[A]ny privileged information acquired by the state without the consent of the privilege holder is information that the state is not entitled to as a rule of fundamental justice."

[33] LU points out that no Canadian court has held that a parliamentary assembly can compel the production of privileged information. Further, the parliamentary authorities relied upon by the

Speaker concern the compulsion of documents from the government. Where the Assembly seeks privileged documents from outside of government, the calculus must be very different. While universities and other broader public sector entities receive funding from the government, they are not part of the provincial government and LU is not responsible to the legislature.

[34] LU also argues that the necessity test requires that the scope of privilege must be "tethered to its purposes" and "strictly anchored to its rationale"; it must be "delimited by the purposes it serves," extending "only so far as is necessary to protect legislators in the discharge of their legislative and deliberative functions, and the Legislative Assembly's work in holding the government to account for the conduct of the country's business." Otherwise, it would "unjustifiably trump other parts of the Constitution": *Chagnon*, at paras. 24-26.

[35] LU submits that whatever may be covered by the claimed parliamentary privilege to institute inquiries and require documents, it cannot extend to the point suggested by the Speaker. The "necessity" test helps reconcile parliamentary power with other constitutional norms and limits the scope of parliamentary privilege to what is truly necessary. The Speaker has the onus to prove necessity and it is a stringent test.

[36] LU also submits out that if the Speaker's position is accepted, an intolerable situation could arise. The Assembly could summons a criminal defence lawyer during a high-profile trial and compel him or her to disclose any confessions by the client. It could compel the police to disclose the identity of confidential informants, putting their lives at risk. The Speaker claims an absolute right to act in such a manner and asserts that the courts can do nothing to intervene.

[37] LU points out that the Speaker may answer that the Assembly will act responsibly and that there is no need to be concerned by such a scenario. However, LU submits that the Court cannot assume that the Assembly will act responsibly on this or any other occasion.

[38] On the issue of whether parliamentary privilege extends to compelling production of information where a court order made in the CCAA process prohibits its disclosure, LU raises the question as follows: Does a CCAA supervising judge have any ability to protect information about a CCAA process against parliamentary demands? Or does the Assembly have the absolute and unreviewable right to access all such information?

[39] LU raises another question, namely, if a provincial legislative assembly could order someone to violate a court order made pursuant to a federal statute, it would simultaneously undermine the separation of powers (i.e. the relationship between the branches of government, including the courts) and the division of powers (i.e. federalism). LU further submits that a provincial legislative assembly has no need for an absolute and unreviewable power to force a person to disclose information that is prohibited by a court order made under the CCAA.

[40] LU concludes on this issue by submitting that if the Assembly is concerned about how LU used government funding and how to prevent similar situations arising the future, it will have ample access to LU's information. It will also have access to information from the Ministry of Colleges and Universities relating to its funding and oversight of LU. Only privileged communications or information protected by a CCAA court order will be protected. The non-protected information will provide a sufficient basis for the Assembly's proper consideration of

those issues. Consequently, an absolute and unreviewable power to override CCAA confidentiality and Sealing Orders is not necessary.

[41] Finally, LU submits that the Assembly cannot resort to parliamentary privilege to obtain documents for the purpose of an audit by the Auditor General under the *AG Act.* LU argues that by enacting the *AG Act* and creating a statutory scheme by which the Auditor General conducts audits – rather than the Assembly itself – the Legislature has limited the scope of the Assembly's privilege.

[42] I have concluded that, save and except for issues relating to the Sealing Order and the Confidentiality Order, the factum of the Speaker provides a complete answer to the arguments put forth by LU.

[43] The Speaker submits that the separation of powers is a fundamental doctrine underlying Canada's system of constitutional democracy and that all three branches of government – the executive, legislative, and judicial – have distinct institutional capacities and play critical and complementary roles in our constitutional democracy. The Speaker cites *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly),* [1993] 1 S.C.R. 319, where McLachlin J. (as she then was) affirmed the importance of respecting the separate roles and institutional capacities of Canada's branches of government, holding that "it is fundamental to the working of government as a whole that all these parts play their proper role. It is equally fundamental that no one of them overstep its bounds, that each show proper deference for the legitimate sphere of activity of the other": at p. 389; see also *Ontario v. Criminal Lawyers' Association of Ontario* 2013 SCC 43, [2013] 3 S.C.R. 3, at para. 29 ("*Criminal Lawyers' Association*").

[44] Further, as referenced in *British Columbia (Attorney General) v. Provincial Court Judges' Association of British Columbia*, 2020 SCC 20, 448 D.L.R. (4th) 1, at para. 66, the Supreme Court of Canada went on to affirm the importance of parliamentary privilege as a doctrine that prevents undue interference from the executive or judicial branches:

> Several doctrines work to prevent undue interference, including the secrecy afforded judicial deliberations, and the recognition of the privileges, powers and immunities enjoyed by the Senate, the House of Commons and the legislative assemblies. These doctrines are a corollary to the separation of powers because they help to protect each branch's ability to perform its constitutionally-assigned functions. [Citations omitted.]

[45] The Speaker contends that LU casts the Assembly's constitutional role too narrowly, limiting it to debating legislation and holding the government to account. This view of the legislative branch's constitutional role entirely eschews the Assembly's deliberative role, as the "grand inquest of the [Province]," which the Supreme Court of Canada recognized as the third function of the legislative branch in *Vaid*. The Assembly's deliberative role encompasses more than simply debating legislative proposals from the government.

[46] The Speaker also submits that contrary to LU's assertion that "the recognized categories of parliamentary privilege all involve internal matters," the privilege claimed by the Assembly,

"the power to send for persons, papers and things," has deep and historic roots. Parliament has the ability to institute its own inquiries, to require the attendance of witnesses, and to order production of documents that are fundamental to its proper functioning. These rights are as old as Parliament itself: Canada, House of Commons, *House of Commons Procedure and Practice*, (3d) ed. at Ch. 3 (online), at "The Rights to Institute Inquiries, to Require the Attendance of Witnesses and to Order the Production of Documents."

[47] The Speaker references the *House of Commons Procedure and Practice* and notes that "[i]t 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." The foregoing authority has been relied upon by the Supreme Court in *New Brunswick Broadcasting, Vaid,* and *Chagnon*.

[48] In *Vaid*, a unanimous Supreme Court of Canada held that "the courts will clearly give considerable deference to our own Parliament's view of the scope of autonomy it considers necessary to fulfil its functions."

[49] The Speaker then addressed whether that necessity continues in the contemporary context. The Speaker submits that in *Chagnon*, a majority of the Supreme Court of Canada ruled that "given its rationale, the necessity of a privilege must be assessed in the contemporary context. Even if a certain area has historically been considered subject to parliamentary privilege, it may only continue to be so if it remains necessary to the independent functioning of our legislative bodies today." The Assembly bears the onus of establishing the continuing necessity of this privilege: *Chagnon*, at para. 30.

[50] The Speaker also points out that the privilege claimed by the House of Commons in *Vaid* and by the National Assembly of Québec in *Chagnon* had not been historically recognized: *Vaid*, at para 70. As such, there is no reason to displace the approach in *New Brunswick Broadcasting*, adopted again in *Vaid* and in *Chagnon*, which considers the historically recognized privilege in the contemporary context. The power to compel the attendance of witnesses or the production of documents is certain in scope and it grants the Assembly the ability to obtain the information that it requires in order to fulfil its constitutional role.

[51] The Speaker points out that contrary to LU's position, the necessity test cannot be used to review the purpose for which parliamentary privilege is exercised, as any consideration of the Assembly's purpose requires consideration of the circumstances in which the privilege is exercised. This falls outside the judicial role in relation to privilege, as has been repeatedly stated by the Supreme Court of Canada in *New Brunswick Broadcasting*, *Vaid,* and *Chagnon*.

[52] The foregoing approach is binding authority.

[53] The Speaker also submits that drilling down into the nature of the specific documents and asking whether each kind of document is necessary to the Assembly's function, as LU proposes, would be a radical departure from Canada's parliamentary privilege jurisprudence. This approach moves beyond ascertaining the scope of the privilege, which is permitted, to evaluating the appropriateness of the privilege's exercise, which is not. Instead of asking whether it remains

necessary for the Assembly to obtain information so that it can fulfil its legislative and deliberative functions, LU asks the Court to examine whether the kind of information sought by the Assembly in this case is in fact required. The Speaker contends that this distorted test places the judicial branch in the constitutionally impermissible position of supervising the exercise of the privilege rather than determining whether privilege exists. This trenches on the very separation of powers that underlies the constitutional doctrine of parliamentary privilege. The Speaker submits that the court's analysis must remain at the level of whether it is necessary for the Legislative Assembly to be able to obtain outside information, and cannot consider the nature of the outside information itself.

[54] The Speaker also responds to LU's submission that the compulsion of documents covered by a class privilege falls outside the scope of parliamentary privilege. The Speaker submits that solicitor-client privilege can accommodate exceptions based on the societal values at play. Reference was made to *Smith v. Jones* [1999] 1 SCR 455, at p. 477 where Cory J., writing for the majority, recognized that while the protection afforded by solicitor-client privilege is a policy decision based on the importance of solicitor-client privilege to our legal system, "[i]n certain circumstances, however, other societal values must prevail."

[55] The Speaker contends that the Assembly's ability to obtain the information required in order to legislate is an "other societal value," with deep roots in our constitutional order, that must prevail over solicitor-client privilege. Establishing solicitor-client communications as an "inquiry-free zone" would impede the Assembly's abilities to fulfil its constitutional purpose where it required such protected communications in order to inform its deliberations and legislative activities. This would run contrary to the direction from the Supreme Court of Canada by effectively making parliamentary privilege subordinate to solicitor-client privilege and the *Charter* rights LU invokes.

[56] I agree with the Speaker that recognizing parliamentary privilege as an "other societal value" that prevails over solicitor-client privilege is consistent with the reconciling exercise mandated in *Chagnon*, as the scope of parliamentary privilege and exceptions to solicitor-client privilege are both governed by necessity.

[57] The Speaker contends that it is for the Assembly itself to determine what steps are appropriate to protect the documents in question and that the Committee has conducted precisely this type of diligence in this case. Should the Committee or the Assembly give insufficient protections to these or other sensitive documents in its possession, it is for the electorate, not the courts, to pass judgement on their conduct.

[58] Further, as pointed out by the Attorney General at para. 44 of its factum, the Committee has made it clear that it will not make the privileged documents it seeks to obtain from LU publicly available. However, "it is fundamental to the working of government as a whole" that the decision of what information is required and how it is to be used is one that is the Assembly's to make.

[59] I agree with the Speaker that parliamentary privilege extends to compelling production of information and documents that are subject to a class privilege from a non-governmental entity. LU's argument on this point does not raise a serious issue to be tried.

[60] In response to LU's argument that the enactment of the *AG Act* has limited the scope of the Assembly's parliamentary privilege, the Speaker submits that waiver or abrogation of parliamentary privilege must be clear and unambiguous and there is nothing in the *AG Act* that suggests an intention to limit the Assembly's power to "send for persons, papers and things." I agree. This argument does not raise a serious issue to be tried.

[61] The Speaker also addressed the issue of whether court orders limit the Assembly's power to "send for persons, papers and things." The Speaker submits that given that the power to "send for persons, papers and things" is ancillary to the privilege over proceedings in Parliament, the judicial branch cannot, through its orders, limit the information that the Assembly may obtain, just as these orders cannot limit the topics that the Assembly may debate.

[62] The Speaker submits that allowing court orders to curtail the Legislative Assembly's ability to gather information to fulfil its constitutional mandate would have the effect of allowing the judicial branch to restrict the topics that the legislative branch could consider, which would "upset the balance of roles, responsibilities and capacities that has evolved in our system of governance over the course of centuries: *Criminal Lawyers' Association*, at para 30.

[63] It is on this point that I find that I am unable to accept the position of the Speaker and the Attorney General.

[64] I have not been provided with any authority that stands for the proposition that a pre-existing court order which restricts the disclosure of specified information can be overridden by a legislative assembly's demand for production.

[65] It is, in my view, an open question as to whether the Legislative Assembly can order production of information that is subject to restrictions imposed by a court order, including a court order made under a federal statute.

[66] In this case, such restrictions exist in the Sealing Order and the Mediation Order. Both Orders predate the disputes as between the Auditor General and LU and as between the Committee and LU. Further, both Orders and in particular the Mediation Order, affect parties beyond the government.

[67] The question as to whether the Legislative Assembly can compel the production of such information or whether this goes beyond the scope of parliamentary privilege is a serious issue that has not been addressed in any reported decision.

[68] It is a fundamental question that affects the relationship between the three independent branches of government – the executive, the legislative, and the judicial.

[69] I have no hesitation in concluding that the disclosure of the information referenced in the Sealing Order and the Mediation Order is likely to result in irreparable harm to LU. The consequences of disclosing the information that is restricted by the Sealing Order and the Mediation Orders are significant. The CCAA proceedings have been ongoing for a year and LU is in the process of developing its restructuring plan. Disclosure of the positions of affected parties at this stage, including that of LU, would be problematic.

[70] I also find that the balance of convenience test favours LU. A hearing on the merits could be scheduled for February or March and there will only be a relatively short delay in enforcement of the Speaker's Warrant pending determination of the scope of the privilege. It is a serious issue which should be determined before it becomes a moot point.

Disposition

[71] A stay with respect to documents referenced in the Sealing Order and information and documents covered in the Mediation Order is granted.

[72] The stay does not impact any of the other documents requisitioned by the Committee.

[73] In view of the novel nature of the issues raised on this motion, I make no order as to costs.

[74] I thank counsel for their excellent submissions.

Chief Justice G.B. Morawetz

Date: January 26, 2022