

Post-Secondary Institutions and Insolvency – Lessons Learned from Laurentian University

Setting the Stage
By: Cheryl Foy



What happened?

February 1, 2021 - Laurentian University of Sudbury (“LU”) commenced court-supervised restructuring proceedings under the Companies’ Creditors Arrangement Act (“CCAA”), in order to, obtain a stay of proceedings against it, and to provide an opportunity to financially and operationally restructure. Ernst & Young Inc. was appointed as monitor of LU pursuant to an Order of the Ontario Superior Court of Justice (Commercial List).

In the tenth order of the proceedings on January 27, 2022 – creditor protection was extended to May 31, 2022.



Why is it of interest?

- First time in Canadian history a university sought protection under the CCAA.
- The university (like all universities) has a complex set of relationships with other educational and community institutions. The ripple effect is wide.
- Decision has had a devastating effect on the university itself, its employees, students, affiliate and partner institutions, Sudbury, other northern communities, other Canadian universities and the higher education sector in general. i.e. 69 programs discontinued, 100 jobs lost (83 faculty members plus 27 vacant positions eliminated, extremely limited severance payouts). Some cuts to programs were very controversial e.g. midwifery
- Decision to use the CCAA has been widely criticized and questioned.
- Key questions around the appropriateness of the CCAA for a not for profit broader public sector organization
- Very public legal battle between the university and the Auditor General of Ontario over whether the AG is entitled to see documents over which solicitor client privilege is claimed by the university.
- Size of the proceedings - Over 20 counsel involved (3 for Laurentian, 3 for the monitor, 2 for RBC, 2 for TD, 1 For BoM, 1 for LU Board, 2 for Huntington, 2 for Thorneloe, 2 for NOSM, 1 for LU student association, 1 for Canada Foundation for Innovation, 1 for University of Sudbury, 1 for faculty association and ...



Some quotations (from Ken Steele's page)

"Humanities and social sciences will get gutted in this process. It's basically doing what, I think, the government wanted to do in the first place, which is get rid of the soft programs and just focus on the sciences." – [Christopher Duncanson-Hales](#), sessional philosophy prof, Laurentian U

Not surprisingly, the City of Greater Sudbury city council has voted unanimously to write the Premier and MCU to urge funding "to stabilize Laurentian University's operations." [CBC](#)

"Asking the senate to consider and vote on an omnibus programming package, without input on the academic criteria and in the span of a single day during an in-camera session is a clear violation of collegial governance, senate's mandate and the responsibility of a public institution to the community it serves." – [Rahul Sapra](#), president, OCUFA

"The federated universities... are deeply embedded in Laurentian's culture. This action will tear a hole in the fabric of the university's mission, one that may prove impossible to repair." – [Christopher Duncanson-Hales](#), prof, uSudbury

"We've opened up the floodgates for other universities and colleges to be treated similarly, as though we were a private-sector corporation." – [Jen Johnson](#), gender and sexuality studies prof, Thorneloe U

"We will oppose this attempt by Laurentian to shut down Thorneloe as a scapegoat for Laurentian's self-inflicted financial problems." [John Gibaut](#), president, Thorneloe U



Some quotations (from Ken Steele's page)

"Let's make no mistake. Management by the board and senior administration at Laurentian was outrageously bad." [Brenda Austin-Smith](#), president of CAUT

"Faculty knew that the board of governors was notoriously resistant to reporting financial details. But without giving any notice to anyone, and in a shocking display of contempt for collective agreements bargained in good faith to protect the workplace rights of staff, the Laurentian board decided to downplay its status as a public institution." – [Brenda Austin-Smith](#), president of CAUT

110 Faculty, 41 Staff and 36 Administrators lost their jobs on Monday. The LUFA membership was voting on a new collective agreement yesterday, reached through a process "construed as a mediation, but it's not really." [Sudbury.com](#)

Laurentian's School of the Environment has been eliminated, along with the Ecology and Restoration Biology programs. "The entire legacy of the re-greening of Sudbury has been wiped out." (Symbolically, Sudbury has been decimated by another man-made disaster this year.) [CBC](#)

"I've got friends and colleagues whose lives are destroyed. It's brutal... I have to go back to work, and how am I going to handle working for an administration that implemented this grossly inhumane and cruel plan?" – [Albrecht Schulte-Hostedde](#), Biology prof, CRC Chair, Laurentian U

"Universities are much more complicated than pulp mills in terms of their programs and what they do in communities." – [Livio Di Matteo](#), economist, Lakehead U



Some quotations (from Ken Steele's page)

"To take an institution like Laurentian and sell it off like you're at a yard sale, or treat it like a bankrupt company, hasational importance." – [Charlie Angus](#), MP for Timmins-James Bay

"In one e-mail sent at 10:01 pm, the university had undone decades of education for the humanities including fields of communications, Indigenous studies, gerontology, and gender and sexuality." – [Jackson Pind](#), Laurentian alumnus

OCUFA is calling for the resignation of minister of colleges and universities Ross Romano, and for the province to provide immediate financial support to LU. [CBC](#)

"Without the provincial government at the table, we were in an impossible position. It now appears clear that this was the outcome that both Laurentian's senior administration and Minister Romano were working toward." – [Fabrice Colin](#), Laurentian U Faculty Association president

Among the 69 programs cut on Monday for "low enrolment" was Canada's only bilingual Midwifery program – and *unlike* the others, it was extremely popular with students and cost LU nothing. The program attracted 300 applications last year, for just 30 available seats – a cap imposed by the province. Since the program is grant funded by MCU and the Ministry of Health, "Laurentian does not pay for this program at all." (Supporters of the program are circulating a [petition in English](#) and [en français](#), with a deadline of today.) [The Lambda](#)

Sometime last summer, one of LU's major bank lenders, Desjardins, somehow got paid out in full, while RBC and TD were left holding \$90M in debt as the university slipped into creditor protection. Alex Usher asks if the bank called its line of credit, what tipped them off? Or worse, did LU "actually *choose* to renounce the line of credit in order to provoke a crisis? (The careful wording of Haché's affidavit is ambiguous on this point.)" As I've suggested before, Alex also points out that "Laurentian's problems could have been solved with much less fuss" if MCU had simply loaned them ~\$35M for repayment over 5-7 years. (I think one or both parties – MCU and LU's administration or board – must not have *wanted* to avoid the university's implosion. If so, I think they seriously underestimate the long-term damage this will do to the university.) [HESA](#)



A note about universities:

- All Ontario universities are independent corporate entities with their own boards.
- While they are designated as part of the broader public sector because they receive a significant amount of revenue from government, they are NOT part of government.
- Most universities receive significantly less than half of their funding from government.
- University governance is unique. They are not top-down organizations. While the board is accountable like other boards, it is expected in the university environment that there will be collegial decision-making – that faculty have a say in running the university particularly in academic matters (approval of courses, programs, admissions standards, academic quality, academic conduct etc.). This is called shared governance.
- The implications of Laurentian’s insolvency are troubling not just from the use of the CCAA in a broader public sector context, but from the perspective that it invites government to be interested in more tightly controlling universities. Concept of academic freedom – protection of academic freedom – in order to do this, universities need to retain their autonomy. Fallis describes universities that provide “liberal education, graduate education and professional education” as “multiversities” (p.3) . A quotation from G. Fallis, *Multiversities, Ideas, and Democracy* (University of Toronto Press, 2007) p. 351:

Multiversities serve democracy, but paradoxically the authority of elected governments over the multiversity must be highly attenuated. The multiversity’s democratic purposes are best served with institutional autonomy and academic freedom. The new idea of a university is well suited to existing principles of governance.



Additional Resources:

All publicly-available documents are filed on an E&Y site at:

<https://documentcentre.ey.com/#/detail-engmt?eid=459>

Ken Steele (Higher Education Futurist) at: <http://eduvation.ca/2021/04/laurentian-in-limbo/>

Alex Usher (Higher Education Strategy Associates) at: <https://higherstrategy.com/tag/laurentian-university/>

Cheryl Foy, *An Introduction to University Governance* (Irwin Law, 2021)

T. Shanahan et al, *Handbook of Canadian Higher Education Law* (McGill-Queen's University Press, 2015)

