

# ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



## LAURENTIAN UNIVERSITY OF SUDBURY, 2021 ONSC 659

Superior Court of Justice, Ontario, Morawetz CJ, 1 February 2021

Whether a university in Ontario was entitled to creditor protection under the Companies' Creditors Arrangement Act

**Key words: University, Canada, Incorporated Entity, Registered Charity, Insolvency, Interim Protection from Creditors**

1. Laurentian University (LU) is a publicly funded, bilingual and tricultural postsecondary institution in Sudbury, Ontario. It became insolvent, and sought protection under *the Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (CCAA).
2. LU is a non-share capital corporation that was incorporated pursuant to *An Act to Incorporate Laurentian University of Sudbury*, S.O. 1960, c. 151, as amended by S.O. 1961-62, c. 154 (the LU Act), and is a registered charity pursuant to the [Income Tax Act, R.S.C. 1985, c. 1 \(5th Supp.\)](#).
3. The governance structure of LU is bicameral. The Board of Governors (the Board), the President, and the Vice-Chancellor generally have powers over the operational and financial management of LU, whereas the Senate of LU is responsible for the academic policy of LU.
4. LU has a federated structure, having formal affiliations with several independent universities under the overall LU umbrella: the University of Sudbury, the University of Thorneloe, and Huntington University. The Federated Universities are integrated into LU, but each is a separate legal entity and is governed by Boards that are independent of LU.
5. As at 30 April 2020, LU had assets with a book value totalling approximately \$358 million, of which approximately \$33 million was comprised of current assets such as cash and short-term investments, accounts receivable, and other current assets. The remaining assets of LU consisted primarily of investments in LU's segregated endowment fund (\$53 million) and capital assets (\$272 million), comprising LU's land and buildings.
6. At the same date, LU had liabilities with a book value totalling approximately \$322 million, consisting of: (i) approximately \$43 million of current liabilities; (ii) approximately \$168 million of deferred contributions; and (iii) approximately \$110 million in long-term liabilities.

7. LU had experienced recurring operational deficits in the millions of dollars each year for a significant period of time. These operational deficits led to an accumulated deficit in the operational fund of LU of approximately \$20 million at the end of 2019-20 fiscal year. In the current 2020-21 fiscal year, LU projected a further operational deficit of \$5.6 million. By the end of February 2021, LU projected that it would have no cash to pay staff.
8. Under its CCAA filing LU proposed a restructure to address its financial concerns. This included a review of its academic offerings, a reconsideration of its enrolment numbers, a review of its federated structure, negotiations with unions, and sale of real property.
9. The court considered whether the CCAA applied to a university and decided that it did because it could be embraced by the term 'company' for the purposes of the CCAA. The court also agreed that LU was 'plainly insolvent' and faced 'a severe liquidity crisis' (at [33]).
10. The order for temporary relief under the CCAA was granted.

## IMPLICATIONS



This is the first occasion on which a publicly funded university has entered insolvency in Canada. The implications have been widespread. Although chartered by the provincial parliament and, as such, an independent body, LU is owned by the government of Ontario, which has refused to fund it further. More than 100 academics have lost their jobs to date, and 69 programs, including philosophy, ecology, environment, modern languages and music, as well as many francophone and indigenous programs for which the university was designed, have been cut from the university's curriculum. In addition, the insolvency has had an adverse impact on the economy of Sudbury and on new enrolments for the 2021-22 academic year, which are down by 30%.

There have been several subsequent hearings related to the insolvency of LU: see [Laurentian University of Sudbury](#), 2021 ONSC 1098; [Laurentian University of Sudbury](#), 2021 ONSC 1453; [Laurentian University of Sudbury](#), 2021 ONSC 1975; [Laurentian University of Sudbury](#), 2021 ONSC 2983; [Laurentian University of Sudbury](#), 2021 ONSC 3230; [Laurentian University of Sudbury](#), 2021 ONSC 3545; [Laurentian University of Sudbury](#), 2021 ONSC 3885; [Laurentian University v Laurentian University Faculty Association](#), 2021 CanLII 53318 (ON LA). These hearings concerned technicalities.

A more substantive decision on 2 May 2021 permitted LU to continue operating protected from creditors until 31 August 2021: [Laurentian University of Sudbury](#), 2021 ONSC 3271. Also litigated was the disclaimer by LU of the federation of LU with the Universities of Sudbury, Thornloe and Huntingdon. Huntingdon University agreed to the disclaimer, but both Sudbury and Thornloe Universities opposed it on the basis that they would also be precipitated into insolvency and that their students were now deprived of the degree-conferring institution (LU) they were connected to. Both their motions to oppose the disclaimer were dismissed: see [Laurentian University of Sudbury](#), 2021 ONSC 3272; [Laurentian University v. Sudbury University](#), 2021 ONSC 3392. An appeal by Thornloe University to submit

fresh evidence on the matter of its opposition to the disclaimer was dismissed by the Ontario Court of Appeal on 23 June 2021: see [Laurentian University of Sudbury \(Re\)](#), 2021 ONCA 448.

## VIEW THE CASE



This case may be viewed at <https://canlii.ca/t/jcxkz>

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