

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

and

**IN THE MATTER OF AN INTEREST ARBITRATION TO RESOLVE THE OUTSTANDING ISSUES
RELATED TO THE COLLECTIVE AGREEMENT**

BETWEEN:

Laurentian University

and

The Laurentian University Faculty Association

Before: William Kaplan
Sole Arbitrator

Appearances

For the University: Michael Kennedy
Hicks Morley
Barristers & Solicitors

For the Association: David Wright
Mae J. Nam
Ryder Wright Blair & Holmes
Barristers & Solicitors

The matters in dispute proceeded by Zoom on June 15, 2021.

Introduction

On February 1, 2021, Laurentian University (University) filed for insolvency protection under the *Companies' Creditors Arrangement Act* (CCAA). Mr. Justice Dunphy was appointed by the court to serve as mediator to facilitate resolution with numerous interested stakeholders. The initial focus of these discussions was on negotiating agreements between the University and the Laurentian University Faculty Association (Association), other labour partners, and a variety of stakeholders to ensure that the University could continue operating as a going concern. On April 7, 2021, the University and Association signed a term sheet resolving some collective agreement issues in dispute. A number of outstanding matters, however, could not be resolved, and the parties agreed to proceed to final and binding interest arbitration. The previous collective agreement expired on June 30, 2020. By agreement of the parties the new collective agreement will have a five-year term beginning on July 1, 2020 and ending on June 30, 2025.

The outstanding issues proceeded to a hearing held by Zoom on June 15, 2021. Prior to that hearing both parties filed detailed written briefs. Both parties agreed that this was a most unusual interest arbitration occurring, as it was, under the CCAA. Clearly, the context was non-normative. The impact of the consequent restructuring on both the University and the Association was profound. Indeed, the Association agreed to significant concessions in an effort to save the University. Program elimination and curtailment of course offerings were implemented. More than one third of tenured faculty, and countless sessional instructors, and others, lost their jobs. Remaining faculty agreed to salary reductions and unpaid furloughs,

together with increased workload. The accepted justification for this heavy toll was repositioning the University so that it can recover and thrive.

The parties did not agree about the criteria that should inform the adjudication of this dispute. The Association pointed to its sacrifices and sought a number of improvements going forward, justified by replication and other grounds. The University insisted that no Association proposal with a financial impact be awarded. Instead, it sought a period of stability, which, together with the award of its additional proposals revamping parts of the collective agreement, would foster additional administrative efficiency and, in that way, best position the restructured University, its faculty and its students, for a successful transition out of CCAA. Mention must be made of the fact that this interest arbitration is taking place in current circumstances, and they are ones where the University is insolvent. The approval of a Plan by the University's creditors, as well as the Court's approval, will be required for the University to emerge from CCAA protection.

Of all the criteria considered by interest arbitrations, replication is the Holy Grail: replicating at interest arbitration what the parties would have likely agreed upon in free collective bargaining. Obviously, replication in the middle of CCAA – where no university in Canadian history has ever previously sought its protection – is challenging. Suffice it to say that the Association and its members have made heroic sacrifices to ensure the present and future of the University.

There is no doubt, as already agreed, that an examination of governance and necessary reforms – including legislative changes as may be required – is overdue and must proceed on an urgent

basis. Accordingly, and bearing in mind the Association sacrifices and concessions to date, this award takes the lightest possible touch to the collective agreement. Any University or Association proposal not addressed in this award is dismissed. The successor collective agreement shall, therefore, consist of the unexpired unamended provisions of the prior collective agreement, the agreed-upon items (including Article 5.40/8(h)(iv) which was agreed at the hearing) and the terms of this award.

Award

Coordinator Credits

Association proposal awarded. Add to 5.40 "...unless the program to which coordinator credits applied has been closed as a result of the CCAA process."

Low Enrollment Courses

University proposal awarded.

Pregnancy, Parental & Adoption Leaves

No change to status quo. Provision remitted to parties to ensure statutory compliance as discussed at hearing. It is directed that the parties complete this task within two weeks from the date of this award.

Conclusion

At the request of the parties, I remain seized with the implementation of this award.

DATED at Toronto this 21st day of June 2021.

“William Kaplan”

William Kaplan, Sole Arbitrator