

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER PO-4196-I

Appeal PA19-00587

Laurentian University

October 8, 2021

**Summary:** The appellant filed a request under *FIPPA* with the university for email records between two named individuals sent during a specific period. The university located responsive records and granted the appellant partial access to them. The university withheld some records under the solicitor-client privilege exemption in section 19 of the *Act*. The appellant appealed the university's decision to the IPC. During the inquiry, the university entered restructuring proceedings under the *CCAA* and the Ontario Superior Court of Justice granted the university a Stay of Proceedings (the Stay). The university claimed the Stay applied to appeals before the IPC and it should not be required to participate in the inquiry at this time. The adjudicator finds that section 11.1(2) of the *CCAA* applies to exempt the IPC appeal from the Stay. The IPC's inquiry will proceed.

**Statutes Considered:** *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, sections 11.02, 11.1(1), (2), and (3).

**Cases Considered:** *Laurentian University of Sudbury*, (2021) ONSC (Commercial List), CV-21-656040-00CL; *Laurentian University of Sudbury*, 2021 ONSC 1121 and 2021 ONSC 1098; *Laurentian University of Sudbury v. Huntington University*, 2021 ONSC 5771; *Sears Canada Inc. v International Brotherhood of Electrical Workers, Local 213*, 2017 CanLII 69395 (BC LRB); and *Terrace Bay Pulp Inc. (Re)*, 2013 ONSC 5111.

### OVERVIEW:

[1] The issue to be decided in this interim order is whether a stay of proceedings issued by the Ontario Superior Court of Justice under the *Companies' Creditors*

*Arrangement Act* to Laurentian University (the Stay) applies to this appeal before the Information and Privacy Commissioner of Ontario (the IPC). In the discussion that follows, I find the Stay does not apply to this appeal.

### **The Stay Proceedings**

[2] On February 1, 2021, Laurentian University (the university) commenced a court proceeding for a formal restructuring to be undertaken pursuant to the *Companies' Creditors Arrangement Act* (the *CCAA*) to address the university's insolvency. The Ontario Superior Court of Justice (the court) issued an Amended and Restated Initial Order and its endorsements on February 11 and 12, 2021 (the Initial Stay Order) under section 11.02 of the *CCAA*. In response to a specific request by the university, the Initial Stay Order included a stay of the university's obligations to respond to requests made to it under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*). The court found it was reasonable and appropriate to grant the university's request to include access requests under the *Act* in the Initial Stay Order, because of the university's assertion that it "expects to receive a high volume of *FIPPA* requests at this time and the limited resources of the [university] should not be diverted from its restructuring efforts."<sup>1</sup> However, at paragraph 61 of its February 12, 2021 endorsement, the court provided the IPC with the opportunity to revisit the issue in 30 days:

... I am unable to determine at this stage of the proceeding as to whether it would be appropriate to extend this specific provision of the stay for an indefinite period of time. I am prepared to continue the stay on the understanding that the Information and Privacy Commissioner can request this issue to be revisited in 30 days.<sup>2</sup>

In the motion for the Initial Stay Order, the university did not request a stay of any current appeals before the IPC. Accordingly, the court did not mention whether the stay applied to the university's current *appeals* before the IPC (as opposed to *FIPPA* access requests made to the university).

[3] Prior to the expiry of the Initial Stay Order's April 30, 2021 deadline, the university brought a motion to extend the stay granted by the Initial Stay Order until August 31, 2021. In the course of the university's motion to extend the stay, it did not ask the court to broaden the scope of the stay to proceedings or appeals *before the IPC*.<sup>3</sup> The court granted the extension (the Extended Stay Order) but included the same condition permitting the IPC to request that the Stay in respect of *FIPPA* access requests made to the university be revisited as it had in the Initial Stay Order.

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<sup>1</sup> *Laurentian University of Sudbury*, 2021 ONSC 1121 and 2021 ONSC 1098 at para 60.

<sup>2</sup> *Ibid.* at para 61.

<sup>3</sup> *Laurentian University of Sudbury*, (2021) ONSC (Commercial List), CV-21-656040-00CL (Notice of Motion dated 21 April 2021).

[4] The court has now again, upon further request by the university, extended the Stay, this time until January 31, 2022. Once again, the university did not ask the court to broaden the scope of the stay to proceedings or appeals before the IPC in its Notice of Motion.<sup>4</sup> In its endorsement to the order granting the further extension, dated August 27, 2021, the court also extended the provision regarding the IPC outlined in the Initial Stay Order, as quoted above. Specifically, the court states,

Finally, the Information and Privacy Commissioner of Ontario took no position on the stay extension but did request that the accommodation provided to the Commissioner at paragraph [61] of the Endorsement of February 12, 2021 be maintained. This provision provides that the Commissioner can request reconsideration of the applicability of the stay at a future date. This accommodation is to be maintained.<sup>5</sup>

### **Appeal PA19-00587**

[5] On June 3, 2019, the appellant filed a request under the *Act* with the university for emails and attachments between two named individuals over a specific period. The university located seventeen records. On December 12, 2019, the university issued a final access decision to the appellant, disclosing twelve of the records, in full, and denying access to the remaining five records. The university withheld the five records under the discretionary exemption in section 19 (solicitor-client privilege) of the *Act*.

[6] The appellant appealed the university's decision to the IPC on December 19, 2019.

[7] During mediation, the university confirmed its section 19 exemption claim for the five records and advised the IPC it would not provide copies of the records to this office. The university also advised it would not disclose any information about the records to the appellant. The appellant confirmed his interest in pursuing access to the records.

[8] As further mediation was not possible, the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry under the *Act*. The adjudicator who had initial carriage of the appeal began the inquiry by inviting the university to submit representations in response to a Notice of Inquiry, which summarized the facts and issues under appeal. The adjudicator issued the Notice of Inquiry on January 4, 2021 and the university's representations were due on January 25, 2021.

[9] On January 8, 2021, the university requested an additional two weeks to make its representations in response to the Notice of Inquiry. The adjudicator granted the

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<sup>4</sup> *Laurentian University of Sudbury*, (2021) ONSC (Commercial List), CV-21-656040-00CL (Notice of Motion dated 27 August 2021).

<sup>5</sup> *Laurentian University of Sudbury v. Huntington University*, 2021 ONSC 5771 at para 17.

university's requested and extended the deadline to February 8, 2021.

[10] After the Initial Stay Order was issued by the court, the university requested an additional extension of time to submit representations in response to the Notice of Inquiry. The university asked the adjudicator to extend the deadline until ten days after the stay of proceeding under the *CCAA* was lifted, i.e. ten days after April 30, 2021. The university also noted paragraph 21 of the Initial Stay Order included a stay of all existing, pending or future requests under the *Act*.

[11] The adjudicator sought representations from the appellant on the university's further extension request and then further representations in response from the university. The adjudicator then sought and received further representations from the appellant. After reviewing the parties' representations, the adjudicator decided to grant the university's request for a time extension. The adjudicator explained her decision as follows:

It would appear that the university is the first public educational institution to commence proceedings under the *CCAA*. The university is currently operating under considerable extenuating circumstances. As recognized by the Court, the university needs to focus on its proposed restructuring. The Court also recognized that at this time, the university's limited resources should not be diverted from its restructuring efforts.

I have also carefully considered the appellant's arguments regarding the prejudice to him (and his wife) if the extension is granted. In other circumstances, these prejudices may outweigh the prejudice an institution would face if the extension is not granted. However, the current situation is highly unusual and I agree with the Court that the university needs to focus on its proposed restructuring and its limited resources should not be diverted from these efforts. I also agree that it is more practical in the circumstances to wait and see whether the university could successfully restructure before continuing with the inquiry.

[12] I note the adjudicator did not apply the Stay to the appeal nor did she consider whether it applied to the appeal in this decision letter. Rather, the adjudicator considered the university's request for a time extension in the usual course by considering issues such as the university's need for an extension and any prejudice to the appellant.

[13] The appeal was then transferred to me to continue the inquiry. The university had not submitted its representations nor had it requested any further extension to submit its representations. On June 3, 2021, I wrote to the university advising the extension of time to submit representations had expired. I also noted the Monitor's

Report dated May 27, 2021<sup>6</sup> and court endorsements (e.g. the endorsement dated May 14, 2021<sup>7</sup>) indicated that the university continues to operate and has made progress in its restructuring efforts. Given these circumstances, I granted the university a final extension to June 23, 2021 to submit its representations.

[14] In response, the university claimed the Stay, as ordered in the various *CCAA* court orders, applies to stay Appeal PA19-00587. As such, the university took the position that it is not required to make representations in response to the Notice of Inquiry at this time.

[15] I invited the university to provide more fulsome representations on the effect of the Stay on the appeal. The university made representations. I then sought and received representations from the appellant in response to the university's representations, which were shared in accordance with Practice Direction Number 7 in the IPC's *Code of Procedure*.

[16] In the discussion that follows, I find the Stay does not apply to this appeal. My Inquiry into the appeal continues.

## **DISCUSSION:**

### **Does the Stay of Proceedings apply to Appeal PA19-00587?**

[17] The Initial Stay Order confirming the Stay was made under section 11.02 of the *CCAA*. Section 11.02 of the *CCAA* reads:

(1) A Court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act,

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

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<sup>6</sup> *Laurentian University of Sudbury*, (2021) ONSC (Commercial List), CV-21-656040-00CL (Fourth Report of the Monitor dated May 27, 2021).

<sup>7</sup> *Laurentian University of Sudbury*, (2021) ONSC (Commercial List), CV-21-656040-00CL (Endorsement with Reasons – Laurentian Stay Extension Motion dated May 14, 2021).

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

[18] However, section 11.1 of the *CCAA* exempts regulatory bodies from section 11.02 stay orders, with an exception:

(1) In this section, regulatory body means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.

(2) Subject to subsection (3), no order made under section 11.02 affects a regulatory body's investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or for the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.

(3) *On application by the company and on notice to the regulatory body and to the persons who are likely to be affected by the order*, the court may order that subsection (2) not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court's opinion

(a) a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and

(b) it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02. [Emphasis added]

[19] In my Notice of Inquiry asking for representations on the effect of the Stay on the IPC appeal, I asked the parties to consider whether the IPC is a *regulatory body* within the meaning of section 11.1(2) of the *CCAA* and address whether the stay applies to *appeals* before the IPC and not just *requests* as identified in the Initial Order.

[20] In addition, I asked the parties to review and comment on two cases relating to the application of sections 11.1(1) and (2) of the *CCAA*. The first is *Sears Canada Inc. v. International Brotherhood of Electrical Workers, Local 213*<sup>8</sup> (*Sears Canada*). Sears Canada Inc. (Sears) received protection under the *CCAA* and was granted an initial stay order similar to that of the university. However, the union in that case commenced an application to have the British Columbia Labour Relations Board (the Board) to hear five grievances, arguing that the Board is a regulatory body according to sections 11.1(1) and (2) of the *CCAA*. Sears argued the stay order applied to stay those grievances. The

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<sup>8</sup> 2017 CanLII 69395 (BC LRB).

Board found it was a regulatory body and its proceedings were therefore exempt from the stay under section 11.1(2) of the *CCAA*, with the exception of an order the Board might make requiring payment by Sears.

[21] In the second case, *Terrace Bay Pulp Inc. Re*,<sup>9</sup> (*Terrace Bay*) the Ontario Superior Court of Justice upheld the Ministry of Labour's (the ministry) finding that a stay obtained under the *CCAA* did not stay prosecutions under the *Occupational Health and Safety Act (OHS)*. The ministry was responsible for the *OHS* prosecutions and argued it was a regulatory body under sections 11.1(1) and (2). The Ontario Superior Court of Justice held in favour of the ministry and found the stay did not apply to the *OHS* proceedings because the ministry was seeking compliance with regulatory proceedings and there were no financial obligations.

### ***The parties' representations***

[22] The university confirms it continues to operate and has made progress in its restructuring efforts. However, the university states that an "extraordinary amount of work" remains to be completed before it is able to emerge from *CCAA* protection and resume ordinary operations. The university submits there is a limited amount of resources that can be devoted to these tasks. The university also notes it has experienced a significant reduction in staff, which further constrained its limited resources.

[23] The university agrees the jurisdiction of the court to grant a stay of proceedings in favour of a debtor (in this case, the university) under section 11.02 of the *CCAA* is restricted by section 11.1(2) of the *CCAA*. However, the university submits that section 11.1(3) of the *CCAA* provides that a debtor, on notice to a regulatory body, may request relief from the court in the form of an order that section 11.1(2) of the *CCAA* does not apply in respect of one or more actions, suits, or proceedings taken by or before the regulatory body.

[24] In this case, the university states the IPC is aware of the Stay as it relates to access to information requests made under the *Act*. For this reason, the university submits the exception in section 11.1(3) of the *CCAA* applies in these circumstances.

[25] The university also submits that a temporary suspension of Appeal PA19-00587 until Laurentian emerges from the *CCAA* is a "practical solution." The university submits there are two possible outcomes if I find the Stay does not apply to Appeal PA19-00587 and the appeal proceeds. First, I could, at the conclusion of my inquiry into the appeal, uphold the university's access decision and "the issue is finally resolved." Alternatively, I could find the university must disclose the records at issue to the appellant. In this second scenario, the university submits the access to information request that is the subject of this appeal is clearly caught by the language of the Stay. Therefore, the

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<sup>9</sup> 2013 ONSC 5111. (*Terrace Bay*)

appellant would not receive the information requested until the university emerges from the *CCAA* protection.

[26] Finally, the university takes the position that *Sears Canada* and *Terrace Bay* are distinguishable from the circumstances before me. The university states the Initial Orders granted in *Sears Canada* and *Terrace Bay* did not expressly include language staying any aspect related to the regulatory body at issue. Further, neither the British Columbia Labour Relations Board in the *Sears Canada CCAA* proceeding nor the Ministry of Labour in the *Terrace Bay CCAA* proceeding were included on the Service List in those *CCAA* proceedings and did not receive notice of the stay of proceedings requested by the debtors. In contrast, the university states the Initial Stay Order relating to it specifically contemplates the Stay extending to access to information requests under the *Act* and the IPC has been kept apprised of these proceedings.

[27] In his representations, the appellant states his initial request was filed on June 3, 2019, and the university has since imposed numerous delays in disclosing the responsive records and in responding to this appeal. The appellant notes the university has already identified the five records at issue in this appeal and no additional human resources are required to search for and locate them.

[28] The appellant states the Stay applies to *requests* made to institutions under the *Act* and not to *appeals* before the IPC. The appellant claims the university's attempt to include appeals within the scope of the Stay is an attempt to unjustly delay the adjudication of this appeal.

[29] The appellant disagrees with the university's position that section 11.1(3) of the *CCAA* applies in the circumstances of this appeal. Rather, the appellant submits that section 11.1(2) of the *CCAA* exempts Appeal PA19-00587 from the Stay and the inquiry should be able to proceed. The appellant notes that the court has not issued any order that section 11.1(2) of the *CCAA* does not apply to the IPC, proceedings before the IPC, or to Appeal PA19-00587. Furthermore, the appellant states the university has not applied for such an order from the court. The appellant acknowledges the IPC is included on the *CCAA* Service List and has been kept apprised of all relief sought in the related proceeding. The appellant states that for section 11.1(3) to apply, however, the university would need to bring an application before the court, which would advise the court of this particular Appeal and argue the merits of allowing the stay to apply to the Appeal, notwithstanding the exception in section 11.1(2) of the *CCAA*. The university has not applied to the court for this relief.

[30] The appellant submits the *Sears Canada* and *Terrace Bay* cases are analogous to the circumstances before me. The appellant submits the IPC is a regulatory body within the meaning of section 11.1(2) of the *CCAA* and notes the university did not argue that the IPC is not one.

[31] The appellant submits that similar to the university in this case, the debtor in



*Terrace Bay* did not move for an order under section 11.1(3) of the *CCAA*, thereby suggesting that the debtor was aware it would not meet the test. The appellant also referred to the court's finding that the ministry was acting not as a creditor but as a regulator or prosecutor in the *OHS*A proceedings. The appellant also refers to the court's finding that *Terrace Bay* chose to participate in the *OHS*A prosecution and was not required to do so. Similarly, the appellant submits any expenditure of time and resources are at the university's sole discretion and should be minimal or non-existent, as the responsive records were already located and retrieved by the university.

### ***Analysis and Findings***

[32] Based on my review of the circumstances, the Court orders issued in relation to the university's restructuring process under the *CCAA*, and the parties' representations, I find the Stay does not apply to appeals before the IPC, and in particular, the Stay does not apply to the appeal before me.

[33] The Initial Stay Order does not state that the Stay applies to the university's current appeals before the IPC. It only states that it applies to requests made to the university under the *Act*. The language of the Initial Stay Order reflects the university's concern that it would be inundated with *FIPPA* access requests that would inhibit its ability to focus on its restructuring efforts. Similarly, the Extended Stay Order does not state the Stay applies to the university's current appeals before the IPC. While the language in the Extended Stay Order provides the "stay does apply to the Commissioner",<sup>10</sup> the language does not clearly extend the stay to apply to appeals. In the context of the motion for the Extended Stay Order, the Stay continues to refer to the university's obligations to respond to requests made under *FIPPA*. As noted above, the court's most recent stay order dated August 27, 2021 does not mention appeals or proceedings before the IPC and only extends the Initial Stay Order. Therefore, nothing in the court proceedings and orders suggests that the Stay was intended to be so broad as to apply to appeals before the IPC.

[34] In any case, even if the Stay could be said to be ambiguous on this point, section 11.1 of the *CCAA* exempts regulatory bodies from section 11.02 stay orders. While an application can be made to the court for an order that the exemption not apply, an applicant would be required to give notice to the regulatory body and any affected parties and meet the threshold test set out in section 11.1(3) of the *CCAA*.

[35] In light of the functions of the IPC, I find the IPC is a *regulatory body* as that term is defined in section 11.1(1) of the *CCAA*. The IPC "has powers, duties or functions relating to the enforcement or administration of an Act" of Ontario, specifically the *Freedom of Information and Protection of Privacy Act*. The university did not dispute this fact. Therefore, I find the IPC is a regulatory body within the meaning of section 11.1(1) of the *CCAA*.

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<sup>10</sup> *Laurentian University of Sudbury*, 2021 ONSC 3545.

[36] I find support for this finding in *Sears Canada*, in which the British Columbia Labour Relations Board (the Board) found that it is a regulatory body according to sections 11.1(1) and (2) of the *CCAA* and the Board's proceedings, including its tribunal proceedings, were exempt from the stay of proceedings. Similar to the Board in *Sears Canada*, the IPC is acting as a tribunal in its consideration of Appeal PA19-00587.

[37] Accordingly, I find the IPC and appeals before the IPC fall under the exemption in section 11.1(2) of the *CCAA*. Section 11.1(2) states that no order made under section 11.02 of the *CCAA* affects a regulatory body's investigation in respect of the debtor company (in this case, the university) or an action, suit or proceeding that is taken in respect of the university by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court. In other words, it appears the Stay would not affect a proceeding before the IPC unless it is an enforcement of a payment ordered by the IPC. Given the nature of appeals under the *Act*, this IPC appeal would not result in any enforcement of payments against the university. Generally, the three potential outcomes of the appeal would be:

- (1) upholding the university's decision to withhold the records under section 19 of the *Act*,
- (2) finding that section 19 applies but ordering the university to re-exercise its discretion under section 19 of the *Act*, and
- (3) finding the records do not qualify for exemption under the *Act* and ordering the university to disclose them.

The IPC would not order or enforce any payment by the university in any of these potential outcomes. Accordingly, I find that section 11.1(2) applies to exempt Appeal PA19-00587 from the Stay of Proceedings.

[38] I am aware of the potential financial resources that may be required in participating in the inquiry, specifically in the form of obtaining legal counsel. However, I refer to *Terrace Bay*, in which the Ontario Superior Court of Justice found as follows:

The second type of financial obligation is the expenditure of resources to defend its actions. I do not doubt that if Terrace Bay makes a decision to defend the action, it will incur a financial obligation. However, it does, in this case, have a choice. It can choose to either defend or not to defend the OHS Proceedings. That is not to suggest that the choice is an enviable one. Clearly it is not. However, the fact remains that Terrace Bay can either choose to incur a financial obligation, by defending, or not to incur a financial obligation, by not defending. In this respect, the Nortel and Northstar decisions are distinguishable.

At this stage, the OHS Proceedings do not force or require Terrace Bay to expend any funds or resources. Terrace Bay is not being asked to

respond to any orders issued by the Ministry. Further, any time and resources that Terrace Bay expends in relation to the OHS Proceedings, are at its sole discretion.

At this stage, it seems to me that the Ministry cannot be considered to be acting as a creditor with respect to the OHS Proceedings. Its activities, at this stage, are regulatory or prosecutorial in nature.<sup>11</sup>

I agree with and adopt this analysis for the purposes of this appeal. The university may choose to incur expenses in its defence of its application of the exemption in section 19 to the records at issue. However, any time and resources expended by the university in relation to Appeal PA19-00587 are at the university's sole discretion. Furthermore, as the appellant noted in his representations, the university has already located and issued an access decision regarding the five responsive records. Therefore, no other resources would be required to locate the records.

[39] In any case, the university did not explicitly address the financial or other resources that would be required to proceed with the inquiry, beyond noting there is a limited amount of resources that can be devoted to its restructuring and insolvency. Moreover, the IPC is not acting as a creditor with respect to Appeal PA19-00587. As indicated above, this IPC appeal would not result in any enforcement of payments against the university. Rather, the IPC's activities in this inquiry are regulatory in nature with the IPC acting as a tribunal. Given these circumstances, I find the exemption in section 11.1(2) of the *CCAA* applies to Appeal PA19-00587 and the appeal is exempt from the Stay.

[40] The university argues that the circumstances before me and those in *Sears Canada* and *Terrace Bay* are distinguishable because the IPC was included on the Service List in the *CCAA* proceedings. However, the university did not elaborate on how the inclusion of the IPC on the *CCAA* Service List would affect the application of the Stay to the IPC's appeals. In the absence of any explanation, I find the inclusion of the IPC on the *CCAA* Service List has no bearing on a determination of whether section 11.1(2) applies to the Stay.

[41] While an application can be made to the court for an order that the section 11.1(2) exemption does not apply, an applicant would be required to give notice to the regulatory body and any affected parties and meet the threshold test set out in section 11.1(3) of the *CCAA*.

[42] Section 11.1(3) of the *CCAA* provides that:

(3) On application by the company and on notice to the regulatory body and to the persons who are likely to be affected by the order, the court may order that subsection (2) not apply in respect of one or more of the

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<sup>11</sup> *Terrace Bay*, *supra* note 9 at para 38.

actions, suits or proceedings taken by or before the regulatory body if in the court's opinion

(a) a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and

(b) it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02.

To date, the IPC has not been notified of any application to the court pursuant to section 11.1(3) of the *CCAA*. In its representations, the university submits the exception in section 11.1(3) applies to Appeal PA19-00587 because the IPC "is aware of the Stay as it relates to information requests made under the [*Act*]." The university appears to take the position that section 11.1(3) applies to the appeal simply by virtue of the IPC's knowledge of the Stay, although it does not offer any further explanation on this point. I disagree with the university's suggestion that the IPC's awareness of the Stay is sufficient for the application of section 11.1(3).

[43] The university has not offered any authority for the proposition that a regulatory body's awareness of a Stay under section 11.02 of the *CCAA* would result in the application of the exception in section 11.1(3). In any case, I agree with the appellant's submission that the university would be required to bring an application to the court in order to have section 11.1(2) not apply to IPC appeals. The university did not bring such an application to the court nor did it notify the IPC or the appellant of such an application. Therefore, I find section 11.1(3) does not apply.

[44] I note the university submits a temporary suspension of Appeal PA19-00587 until Laurentian emerges from the *CCAA* is a "practical solution." I do not agree. A temporary suspension of Appeal PA19-00587 would result in further delay to the appellant, who filed his original request in June 2019. I have found the Stay does not apply to the appeal pursuant to section 11.1(2) of the *CCAA*. Therefore, it does not appear any practical purpose would be served in causing any further delay to the appeal.

[45] Furthermore, as the university states, there could be a determination that the university is not required to disclose the records to the appellant and "the issue is finally resolved." I find this potential outcome would offer finality and closure to a long request and appeal process to both the university and the appellant. It would, in fact, be a "practical solution." On the other hand, were I to order the university to disclose the records, the university submits the existing information request would be "clearly caught" by the language of the Stay. The issue of whether the stay would apply to an eventual order to disclose the records is not before me and I decline to decide this issue. However, I note there is a clear distinction between an access request under the *Act* and an order of the IPC. My reasoning regarding the stay above may apply similarly to any potential future order of the IPC regarding disclosure of the records. In any case, I do not agree with the university that the continued suspension of this appeal would be

a practical or fair solution.

[46] In conclusion, I find the Stay granted to the university under section 11.02 of the *CCAA* does not apply to Appeal PA19-00587. The adjudication of the appeal will proceed.

**ORDER:**

I find the Stay issued pursuant to section 11.02 of the *CCAA* does not stay Appeal PA19- 00587.

Original signed by: \_\_\_\_\_  
Justine Wai  
Adjudicator

\_\_\_\_\_ October 8, 2021