Legislative Assembly of Ontario



Assemblée législative de l'Ontario

Official Report of Debates (Hansard)

P-3

Journal

des débats

(Hansard)

P-3

Standing Committee on Public Accounts

Committee business

2nd Session 42nd Parliament Wednesday 8 December 2021 Comité permanent des comptes publics

Travaux du comité

2^e session 42^e législature

Mercredi 8 décembre 2021

Chair: Taras Natyshak Clerk: Christopher Tyrell Président : Taras Natyshak Greffier : Christopher Tyrell

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON PUBLIC ACCOUNTS

Wednesday 8 December 2021

COMITÉ PERMANENT DES COMPTES PUBLICS

Mercredi 8 décembre 2021

The committee met at 1230 in room 151 and by video conference, following a closed session.

COMMITTEE BUSINESS

The Chair (Mr. Taras Natyshak): Welcome back, committee members. We are in open session, and we're joined here today by the government House leader, the Honourable Paul Calandra, and the official opposition whip, John Vanthof. Thank you very much, gentlemen, for appearing before us today and joining us today on such short notice. We appreciate your attendance here, and your support and help as we navigate through this specific issue.

With that, perhaps I should read this. For your information, the issue that we're dealing with pertains to Laurentian University and the production of documents through this committee, and the inability for this committee and the Auditor General to recover those documents and to have Laurentian be compelled to do so, after various attempts. So this committee is at its wits' end, so to speak.

On April 28, 2021, the Standing Committee on Public Accounts passed a motion requesting that the Auditor General conduct a value-for-money audit on Laurentian University's operations for the 2010-20 period. On October 6, 2021, the Auditor General updated the committee on restrictions imposed by the university on her office's work.

The committee sent three letters to Laurentian University, on October 15, October 22 and November 3, 2021. The first two letters requested that Laurentian produce to the committee the documents required by the Auditor General for her to fully conduct her audit. The committee received correspondence from counsel to the university on October 19, October 29 and November 10, 2021, indicating that the university was not willing to provide all of the documents requested by the committee. The letter from the committee on November 3 requested Laurentian to specify its objections to the committee's demand.

On November 18, 2021, the committee sent a letter inviting representatives from Laurentian University, with counsel, to appear before the committee.

On November 30, 2021, counsel for Laurentian University sent a letter to the committee offering to produce some, but not all, of the documents requested by the committee.

On December 1, 2021, representatives from Laurentian University and their counsel appeared before a closed session meeting of the committee.

To date, they have still not agreed to produce all of the documents requested by the committee.

Therefore, we are at this juncture in the function of the public accounts committee and we humbly ask your guidance and your support for the committee's work to move ahead.

With that, we're going to keep this a little bit informal. We have committee members joining us on the screen, virtually, and maybe I'll open it up to discussion.

MPP Parsa? Go ahead.

Mr. Michael Parsa: Thank you very much, Chair. I appreciate the opportunity. Mr. Calandra and Mr. Vanthof, I want to thank you both for agreeing to appear today on such notice. We've asked you to attend today so this committee can brief you on a very concerning situation which has developed over the last several months related to Laurentian University. The committee has conducted its work on this file almost exclusively in closed session, in an effort to be conciliatory and reasonable in our dealings with Laurentian. However, we have reached an impasse.

Dr. Robert Haché, Laurentian's president and vicechancellor, and Mr. Claude Lacroix, chair of the board of governors, have continually resisted this committee's demand for the production of documents necessary to audit the university's finances. Further, they have actively challenged this committee and this Parliament's authority to demand and receive documents.

As you know, Laurentian University was declared insolvent and entered proceedings under the Companies' Creditors Arrangement Act earlier this year. This is a publicly funded institution in dire financial circumstances, and yet they have fought this committee's oversight vigorously.

To understand the situation we're in, I will outline the actions this committee has taken to date and the responses from Laurentian. On April 28, 2021, this committee adopted a motion that the Auditor General conduct a value-formoney audit on Laurentian University's operations. By October 6, the committee decided that if there was to be any hope of this audit being completed, the committee would have to directly demand the delivery of documents from Laurentian University.

On October 19, Laurentian, through their legal counsel, responded to the committee's request. They initially

indicated a willingness to work with the committee, but immediately made efforts to delay the disclosure of documents, suggesting they would require significantly more time than requested by the committee. At the same time, the university cited concerns over the disclosure of documents relating to the CCAA process and the disclosure of documents subject to solicitor-client privilege. The response from Laurentian incorrectly cites rulings of Speaker Milliken and Speaker Levac, attempting to justify that Laurentian should not have to provide the committee privileged information.

On October 22, the committee wrote back to Laurentian University, clarifying that the committee exercising its parliamentary authority has the power to command the production of paper and things from Laurentian. The committee, of its own volition, decided that it would not publicly disclose the documents it was requesting, in order to address Laurentian's concerns around privilege and confidentiality, but was firm in reiterating that the committee requires all of the documents it had requested. Further, the committee identified a series of documents which appeared to be readily available and demanded the immediate disclosure of those documents.

On October 29, Laurentian again responded to the committee through counsel, and their response claimed that they were willing to discuss an arrangement which could allow them to disclose documents. However, they would require Chief Justice Morawetz to mediate this dispute—a clearly unacceptable suggestion for a parliamentary committee.

On November 3, this committee responded to Laurentian University, asking Laurentian to answer a series of questions relating to the university's lack of compliance with the committee's order for documents. I won't read each of these questions, but suffice it to say that the committee gave Laurentian every opportunity to explain themselves and to comply.

On November 10, Laurentian again responded to the committee through counsel. This response, in particular, was deeply concerning. It can only be characterized as a direct challenge to this committee and this Parliament's authority. Laurentian, through their counsel, said, "I recognize that parliamentary committees do on occasion request documents that are subject to solicitor-client privilege. I do not necessarily accept that the committee has the right to compel the production of such documents, in particular from an entity that is not part of government."

Minister and Mr. Vanthof, I think you both would agree that this is simply not the case. All of us members know that Parliament is its sole authority over its own business. This is a long history, as old as our system of Parliament itself, which maintains the right of Parliament to any documents it believes it requires, including solicitor-client privileged materials, materials subject to other privileges or even materials subject to national security protections.

One reference I will point to is the House of Commons Procedure and Practice, third edition, which members will know is an authoritative text on the rights, privileges and procedures of Parliament. It states: "Companies may be reluctant to release papers which could jeopardize their industrial security or infringe upon their legal obligations, particularly with regard to the protection of personal information. Others have cited solicitor-client privilege in refusing to allow access to legal papers or notices.

"These types of situations have absolutely no bearing on the power of committees to order the production of papers and records. No statute or practice diminishes the fullness of that power rooted in House privileges unless there is an explicit legal provision to that effect, or unless the House adopts a specific resolution limiting the power. The House has never set a limit on its power to order the production of papers and records."

Numerous rulings from Speakers, including our own former Speaker Dave Levac, confirm the simple fact that Parliament has the right to privileged documents and Parliament is the sole authority over its own rights.

In response to this letter, the committee asked Dr. Haché and Mr. Lacroix to appear at committee to justify their position and explain their plan to comply with the committee's request. The committee was wholly unsatisfied with the presentation made by Laurentian, and it became clear that Laurentian does not have any intention to fully or substantially comply with the committee's orders.

On November 30, Laurentian wrote to the committee and the Auditor General's office and proposed a resolution to the committee's request for documents. Laurentian proposed they would deliver materials, even those subject to solicitor-client privilege, but only up to March 2020, and certain materials after March 2020, but nothing subject to the CCAA process. I think it is clear to say that members of this committee do not believe that this disclosure would be sufficient. We have serious concerns over what happened between March 2020 and February 2021, when the university entered CCAA proceedings. In addition to this, Laurentian will require that the committee confirm this to be a full and final resolution of the committee's request. It would require that the committee will not continue to seek further disclosure of documents, and it would require that this committee and this Parliament submit to a settlement agreement outlined in a court order from Chief Justice Morawetz.

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Minister and Mr. Vanthof, I think you are both aware that Parliament is the highest court in the land. Parliament has the exclusive authority over itself, and any such agreement would be unprecedented in the history of our system of government. The situation we are in now is that this committee requires the documents it has requested in order to do its work. It is my hope that this committee will agree to a request that the Speaker issue a warrant for these documents. I know this is a rare step, but I believe we have no other choice. We need to assert the authority of Parliament and we need to hold this publicly funded institution to account. If this committee resolves to request a Speaker's warrant, I would ask that you, House leader, prioritize the consideration of this request so such a warrant can be

issued before the end of the year. Thank you very much, once again, for appearing before our committee.

The Chair (Mr. Taras Natyshak): Thank you very much, MPP Parsa.

We'll turn to MPP Gélinas.

M^{me} **France Gélinas:** First, were there any questions for MPP Parsa before I start or do you want to wait until we hear more?

Hon. Paul Calandra: Maybe, if Mr. Vanthof's in agreement, we'll wait until we hear a bit more.

M^{me} France Gélinas: Okay. I want to bring us back in time a little bit when, on April 28, I brought forward a motion to ask for a value-for-money audit of Laurentian University. The idea was really because of the hurt I could see in my community. After the CCAA process started at Laurentian University, many people lost their jobs. Many students lost the opportunity to ever hope of graduating from university because 69 programs were eliminated—28 of them in French. A French university education is even harder to get.

So when I made this request to our committee, it was really to bring closure to my community, so that the Auditor General would be this independent third party that people would trust, an independent third party that has the Auditor General Act. The act gives her the power to ask for information. It gives her the power to have access to records. It gives her the power to waive privilege. It gives her the power to enter premises and ask for information and documents. And all this so we could bring to my community the sense that this independent third party will come in, tell us exactly what led to this—where our university is now facing bankruptcy and has to go through CCAA, if there are any lessons to learn from this so that it doesn't happen to another community.

Because I can tell you that this has been going on for nine months now, and it has gone from complete shock and surprise to dismay, to wanting to know more, to, now, the level of anger and hatred toward the university is everywhere in my community. They don't trust them, and now they don't like them, and every week and every month it's just getting worse.

Laurentian is important. It has to survive. It has to be there if you want the people of the northeast to have access to a university education. Of the 600 people who didn't have a way to continue, many of them did not come to Toronto or Ottawa. They stayed home. They stayed home and gave up on the hope of ever having a university education. We know that the percentage of northerners who achieve a post-secondary education is way lower than it is in the rest of Ontario. Laurentian—we have to be able to rebuild that trust, and this is what the auditor will do.

Once the auditor has access to the information and emails and papers that she needs to do her work, we can assure everyone that in the over 100 years that we have had Auditors General in every single one of our provinces and at the federal level, there has never been a breach of confidentiality. Every auditor has gained access to solicitor-client privilege, they gain access to litigation privilege, to so many privileges—I don't even know what

those words mean, but I hear them lots. They have access to all of that information and they know how to treat it in a way that respects the confidentiality that needs to happen. But at the same time, they tell us the story of what happened, they tell us what needs to change and they make recommendations so that the initial goal of having this independent third party look at Laurentian and tell us where did they go wrong; what can we do so it doesn't happen to another university and how do we rebuild from there—that was the impetus behind the ask and it is just as important today as it was back in April.

We are all human beings, and when we don't know what's going on, we tend to assume the worst, and right now my community is assuming the worst. Some of the stories that I hear and some of the accusations that I hear of good people who have done good in my community but are linked to Laurentian are really hard to live with.

We need this independent third party to shed light. I don't know why they're giving the auditor such a hard time to let her do her work, but it has to be done.

As MPP Parsa said before, we've exhausted all of the possibilities that were available to us. There is one left, and there's a runway of about 24 hours to get it done because the House will rise tomorrow. That runway is for us to bring a report to the House, where we would ask the Speaker of the House to issue what is called a Speaker's warrant to ask Laurentian to comply with the wish of the House. It wouldn't be the wish of the committee anymore. It would be the wish of the Legislative Assembly.

This falls on your shoulders as House leader to make that happen. I realize it is a huge ask. I realize that there's lots on the docket between now and 24 hours or so when the House rises, but I want you to understand how important it is to get this done, to have the motion tabled in the House, discussed if needed, and agreed upon so that our Speaker can issue this warrant and the auditor can gain access to the documents she needs to bring peace back to my community.

The Chair (Mr. Taras Natyshak): Are there any further comments from committee members? MPP West.

Mr. Jamie West: I also want to thank the government House leader, Minister Calandra, and the NDP House leader, MPP Vanthof, for joining.

I want to start off by saying Laurentian is the cornerstone of our community in Sudbury. As the MPP for Sudbury, as a graduate of Laurentian, as a former sessional professor at Laurentian, I am 100% committed to the success of this university. I know how important it is. I know that I wouldn't have the critical thinking skills that I have if it wasn't for Laurentian University. As MPP Gélinas was saying, the affordability and location of Laurentian University, that success story, is important because I would never be able to afford to have left town to go to school and to come here. So it's truly, truly important to me that this is successful.

Sudbury, Chair, is a community that cares. It's a community that is constantly accomplishing incredible tasks. Sudbury is the home of the international Day of Mourning. We willed a cancer clinic into existence at a time when

people said, "You wouldn't have one in the north." We willed the original creation of Laurentian University into existence.

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These are all things that Sudbury willed into being. These are some of our success stories. And I believe, Chair, that if Sudburians were aware of the financial crisis of Laurentian University, we would have come together and we would have created another success story.

However, that's not what happened and, as we all know here, the CCAA route was chosen. That process started last year. Families, students, donors, researchers and small businesses were all directly affected, and they are still reeling from the news of the insolvency. Let's not forget, 200 people lost their jobs; 200 people lost their careers.

The CCAA process continues along today, and Sudburians are now concerned that Laurentian will be forced to sell off their green space. It's important to recognize that this doesn't just affect where people in Sudbury walk and ski and explore nature; this has the potential to adversely affect the drinking water of the city of Sudbury as well.

Last year, when the news came out about Laurentian going into insolvency, the economic impact of the CCAA process was estimated to be \$100 million a year on my city. The people of Sudbury, they deserve to now how we got here, and the Auditor General has the authority to tell us. We really need to know this.

As MPP Gélinas said, people are frustrated and angry, and when they don't know, they guess, and sometimes when they guess they get it wrong. And the strain on my community that this has had is unbearable. People are frustrated and angry. People are struggling to work in the environment. I know that people who were working at Laurentian are struggling as well and feeling the brunt of the public attacks and the public frustration. It's important that we can get the answers of how we got here, that we clear the story. As I said when we were previously talking with Laurentian, allow public accounts to help you by doing this.

And I want to thank all members of the public accounts committee, because this truly has been a non-partisan topic. It's been a pleasure working with them. MPP Parsa very eloquently detailed all the steps that this committee has done. They literally, Chair, have done everything they can to work with Laurentian University. It has been months, and the committee has exhausted every tool at their disposal.

Chair, MPP Vanthof, Minister Calandra, this process has been going on since April. It's now December—that's eight or nine months—and I am concerned about Laurentian's behaviour and the response to the Auditor General. I'm concerned not just because of Laurentian University, but I'm concerned about setting a precedent for future Auditor General requests, setting a precedent for the authority of this committee, setting a precedent for the authority of the Legislative Assembly of Ontario, because, rest assured, there are lawyers watching this and wondering, "Maybe this is the route that I should take if I'm ever asked for an audit by the Auditor General."

And so, MPP Vanthof, Minister Calandra, the people of Sudbury need your help. I need your help. I want to join the call to issue a warrant for the documents that the Auditor General has requested, and if there's anything I can do to be of service, please don't hesitate to call on me. Thank you, Chair.

The Chair (Mr. Taras Natyshak): Thank you very much, MPP West. Are there any further comments? Seeing none, we will turn the floor over to our guests.

Interjection.

The Chair (Mr. Taras Natyshak): Pardon me? Sorry, MPP Parsa. I'm sorry. I missed you.

Mr. Michael Parsa: No, I apologize. No, thank you, Chair. I apologize. I just wanted to know if—as soon as the opportunity presents, I will be moving a motion after our guests have finished speaking.

The Chair (Mr. Taras Natyshak): Okay, thank you very much, MPP Parsa.

Gentlemen, the floor is yours now to provide us some comments on what you've heard so far.

Hon. Paul Calandra: Thank you very much. I appreciate the invitation, Mr. Chair and members of the committee. I do appreciate it. It is, I guess, rather unusual to have House leaders appear before you in this type of fashion, so I do appreciate all the work that you have done and your invitation, Mr. Chair.

Because what you're asking is obviously very serious, and my memory doesn't allow me to think back of how often this has happened, but I imagine in very, very few instances. So I think it was Mr. Parsa or you, Mr. Chair, who said that officials of the university did appear before the committee. I assume that that obviously was in camera because I have not—

The Chair (Mr. Taras Natyshak): Yes, it was.

Hon. Paul Calandra: Okay, and that was obviously wholly unsatisfactory, or we would not be here today. And then, Ms. Gélinas, you said, I think, you requested this in April of 2021. Some documents have been delivered, but obviously not in a fashion that either the committee, in particular—and I appreciate the Auditor General's role as an officer of Parliament, but I think I'm going to just focus on the committee's authority, Madam Auditor General. So, that was obviously not satisfactory to the committee to fulfill Madame Gélinas's motion.

Then I think Mr. Parsa had mentioned—which, I think, would cause all of us concern—that at some point they had asked that whatever documents they had delivered would be considered full and complete and that we would not be able to ask for any more.

The Chair (Mr. Taras Natyshak): That's correct.

Hon. Paul Calandra: Okay; all right. And it's been going on for eight months.

Look, I can say this, and I'm not speaking for Mr. Vanthof: Given this and given that you've asked us to come here to brief us on this, I could say that should the committee decide to request the warrant, I am prepared to work with Mr. Vanthof to do whatever we have to do, to stay as late as we have to stay, to ensure that this gets done before we adjourn tomorrow. So, I can give you that

confirmation—not to speak for Mr. Vanthof. We can let him speak for himself. Should we go down that—I think it would be important, though, colleagues, that there be an opportunity in the House to also further explain why the committee is requesting this approach.

But just given everything that you've outlined and, as I said, respecting the Auditor General as an officer of Parliament, but more importantly that the committee is, I think Mr. Parsa said, and as obviously exercised through you, Mr. Chair—and very much appreciated—we are the highest court in the land. You've been extraordinarily patient to this point. We should protect that. From my end, that will not be a problem. You have my commitment that we will do that tomorrow, should you request it. I'll turn it over to Mr. Vanthof.

The Chair (Mr. Taras Natyshak): Thank you very much, Mr. Calandra.

Mr. Vanthof?

Mr. John Vanthof: Thank you, Chair. Thank you, Mr. Calandra, and thank you to the committee for inviting us. It is rather unusual.

I don't think it's a conflict of interest, but Laurentian University is very dear to me as well, because it is the bedrock university for northeastern Ontario. Having said that, I would, if I could, like to ask the Auditor General a couple of questions.

Basically, when the committee asked you to do a valuefor-money audit—I would expect that not everyone is ever eager for an audit, but were you expecting the level of resistance that, in your professional opinion, came back from the university?

Ms. Bonnie Lysyk: No. I can say that as an officer of the Legislature and as the representative of the Office of the Auditor General, we have never encountered the pushback we received from Laurentian University during the course of an audit.

Mr. John Vanthof: Thank you. One other question: When Laurentian entered into the CCAA process, that caught many of us by surprise as well. Have you had previous experience auditing an institution when it was going through that process?

Ms. Bonnie Lysyk: No. We have not audited a university or an entity that has gone through that process. Laurentian University, to my understanding, is the first publicly funded institution that has sought CCAA. Our audit would be looking at, as the committee requested, the process leading up to the filing of the CCAA process—all the way to the filing in February, so not after but up until that point.

Mr. John Vanthof: Okay, thank you.

Hon. Paul Calandra: Mr. Chair, do you mind if I just ask one last question?

The Chair (Mr. Taras Natyshak): Absolutely, go ahead.

Hon. Paul Calandra: Madame Gélinas, you requested it in April. When was the first set of documents even delivered to the committee, respecting that they were wholly inadequate for—

M^{me} **France Gélinas:** By memory, I would say not until the end of October, but we can give you a specific date. By memory, it was October 19.

1300

Hon. Paul Calandra: Wow, okay.

The Clerk of the Committee (Mr. Christopher Tyrell): November 17 was the day that the university first began to produce documents to the committee.

Hon. Paul Calandra: Okay. All right. I appreciate your frustration and anger, then, at this point. Thank you.

Mr. John Vanthof: I would like to offer—on behalf of the official opposition, we are prepared to work with the government to expedite this process. I agree with Mr. Calandra that there should be a discussion about it in the House, but not debate for the sake of debate, if I am safe to say that.

Hon. Paul Calandra: The ultimate goal is to respect what the committee has asked for and make sure that we honour the committee's request before we are out of here tomorrow, 100%.

Mr. John Vanthof: I commit to work with you on that. The Chair (Mr. Taras Natyshak): Are there any further questions or comments from any committee members? Okay. Seeing none, gentlemen, I want to thank you so much for taking the time. I know your time is precious in this House, especially as we get down to the final minutes of the sitting. I want to thank you for your clear understanding of the situation that the committee is presented with.

If you don't know already, this committee is unique in its structure. I didn't know that until I became the Chair because I never had the opportunity to sit as a member of the committee. This committee operates on a basis of collaboration, co-operation and compromise. It is unique in its structure and it is those virtues that make it a really special and important function of this Legislature and of Legislatures in parliamentary systems around the world.

I have been honoured to sit with the committee members, especially during this difficult time, because we found that measure of co-operation and collaboration. Today, your presence here with us, as opposition members and government members, reinforces those virtues. I commend you and I thank you very much for appearing before us today and continuing the work on behalf of the people of Ontario into the House, and to hopefully get some answers for the people of Sudbury.

MPP Parsa?

Mr. Michael Parsa: While we have the government House leader and Mr. Vanthof in the room, if you don't mind, I'd like to move a motion, please.

The Chair (Mr. Taras Natyshak): Absolutely. Go ahead.

Mr. Michael Parsa: I too want to join you in thanking both the government House leader, Mr. Calandra, and Mr. Vanthof on joining our committee on such short notice, and certainly I thank you, and the Auditor General and every member of this committee for all the collaboration that we've been able to show on this.

I move that the Standing Committee on Public Accounts report to the House on Thursday, December 9, 2021, that the committee has been unable to obtain the documents it has requested from Laurentian University, and recommends and requests that the Speaker now issue his warrant for the production of documents, addressed to Dr. Robert Haché and Mr. Claude Lacroix of Laurentian University, ordering them to provide the committee with the documents it has requested; and that the documents be delivered to the committee no later than February 1, 2022.

The Chair (Mr. Taras Natyshak): The motion is in on the floor. Are there any questions on the motion? Madame Gélinas?

M^{me} **France Gélinas:** We have a very good Clerk in this committee. If it would help the House leader, it could be done this afternoon, but to be respectful of the work of the Clerk it would be easier tomorrow, December 9. I'm just asking the House leader, is it better for you if we rush

through so that it's this afternoon, or is it okay if we wait till 1 o'clock tomorrow?

Hon. Paul Calandra: I appreciate the question. If the committee can complete its work, then I know that we can work together to ensure that by that time tomorrow it is done. You have, I think, our word, and we'll honour the request that you are making, absolutely. Take your time to do the work, because I do appreciate how important what you're asking is, so we will ensure that it gets done.

Mme France Gélinas: Thank you.

The Chair (Mr. Taras Natyshak): Thank you very much. Are there any further questions on the motion? Seeing none, all in favour of the motion? All opposed? The motion carries.

With that, gentlemen, you'll be hearing from us very shortly, and we appreciate it.

We'll now go into closed session.

The committee continued in closed session at 1306.

STANDING COMMITTEE ON PUBLIC ACCOUNTS

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Also taking part / Autres participants et participantes

Hon. Paul Calandra (Markham-Stouffville PC)

Mr. John Vanthof (Timiskaming-Cochrane ND)

Mr. Jamie West (Sudbury ND)

Ms. Bonnie Lysyk, Auditor General

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