



# News Release

For Immediate Release

May 1, 2023

## Historical Access to Auditee Information Restricted Due to Court Ruling that Language in the *Auditor General Act* is Unclear: Auditor General

(Toronto) The Ontario Court of Appeal has upheld the ruling of the Ontario Superior Court of Justice that language in the *Auditor General Act* is not sufficiently clear to enable the Office of the Auditor General of Ontario to continue to have unfettered access to an auditee's privileged information and records in the conduct of its work in accordance with the *Auditor General Act*.

"I am disappointed that the long-standing wording in the *Auditor General Act* is no longer considered sufficient to allow us to access all information we require to do our work," said Bonnie Lysyk, the Auditor General of Ontario. "An updated *Auditor General Act* with clear, unambiguous language would once again provide the Office with this necessary access to continue to effectively do its work for the Legislative Assembly and the people of Ontario. Such language is present in the current Bill 19 – Auditor General Amendment Act, 2022, with wording derived from the January 12, 2022 ruling from Chief Justice Geoffrey B. Morawetz of the Ontario Superior Court of Justice.

"For decades, the Office has had access to all auditees' information and records (including privileged information and records). This has been, and remains essential for my Office's ability to work effectively on behalf of the Legislative Assembly and the people of Ontario to ensure accountability, transparency and value-for-money in the management and use of public funds," said Lysyk. "Auditor General Offices in Canada typically operate with this access. This is important so that the use of privilege cannot be a means for auditees to withhold information."

On April 28, 2021, the Standing Committee on Public Accounts of the Legislative Assembly unanimously passed a motion requesting that the Auditor General conduct a special audit on Laurentian University's operations. During discussion on the motion, the Committee indicated that it wanted the Auditor General to examine what led Laurentian into the *Companies' Creditors Arrangement Act* (CCAA) process, bring transparency to the situation, and identify lessons learned to "ensure something like this does not happen in another academic institution."

The Office of the Auditor General faced unprecedented pushback from Laurentian University and its legal counsel and from the court-appointed monitor handling the CCAA process for Laurentian University that took a position that the *Auditor General Act* did not give the Office unfettered access to all information and records. As such, the Office was not given the access to information, records and people necessary to effectively conduct its work. In light of this, the Auditor General sought an interpretation of relevant sections in the *Auditor General Act* from the Ontario Superior Court of Justice in order to obtain the information and records needed to conduct an audit.

The Chief Justice of the Ontario Superior Court of Justice ruled on January 12, 2022 that the language in the *Auditor General Act* was not clear enough and therefore the Office did not have the legal right to free and unfettered access to privileged information and records of its auditees. The Auditor General filed an appeal with the Ontario Court of Appeal that was heard on November 15, 2022.

As well, in response to the pushback that both the Office and the Standing Committee on Public Accounts had experienced from Laurentian University, the Legislative Assembly of Ontario issued Speaker's Warrants in December 2021 to obtain the information and records that were not being provided directly to the Office of the Auditor General by Laurentian University. However, not all information requested was received in an unfettered manner, and the Office still did not have the ability to freely speak to people regarding all aspects of the situation that led Laurentian to file for CCAA protection.

"The passing of Bill 19 would convey to Ontarians the strong support of the Legislative Assembly of Ontario of the importance of accountability, transparency and value-for-money in our democratic system, and the continuing support of the independent Office of the Auditor General," Lysyk said.

-30-

For more information, please contact:

Bonnie Lysyk  
Auditor General  
(647) 267-9263

Read the report at [www.auditor.on.ca](http://www.auditor.on.ca)

 @OntarioAuditor

The Office of the Auditor General is an independent Office of the Legislative Assembly that conducts value-for-money and financial audits of the provincial government, its ministries and agencies. We also audit organizations in the broader public sector and grant recipients that receive provincial funding. Our vision is to deliver exceptional value and assurance to members of the Legislative Assembly, the Standing Committee on Public Accounts, and all Ontarians through high-quality work that promotes accountability, transparency and value for money in the Ontario public sector.