



Court File No. CV15-10961-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE
JUSTICE NEWBOULD

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MONDAY, THE 8TH
DAY OF JUNE, 2015

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF NELSON EDUCATION LTD.
AND NELSON EDUCATION HOLDINGS LTD.**

Applicants

AMENDED AND RESTATED INITIAL ORDER

THIS MOTION, made by Nelson Education Ltd. ("**Nelson Education**") and Nelson Education Holdings Ltd. ("**Holdings**", together with Nelson Education, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Amended and Restated Initial Order was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Greg Nordal sworn June 3, 2015 and the Exhibits thereto (the "**June Affidavit**"), the First Report of FTI Consulting Canada Inc. ("**FTI**") as the Court-appointed monitor (the "**Monitor**"), and on hearing the submissions of counsel for the Applicants, the Monitor, the First Lien Steering Committee and the First Lien Agent (each as defined in the May Affidavit (as defined below)), Royal Bank of Canada in its capacities as the non-Consenting First Lien Lender, Second Lien Agent, Second Lien Lender and provider of the Applicants' Cash Management System (each as defined in the May Affidavit (as defined below)) and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Sydney Young, filed.

CAPITALIZED TERMS

1. THIS COURT ORDERS that, unless otherwise indicated or defined herein, capitalized terms have the meaning given to them in the affidavit of Greg Nordal sworn May 11, 2015 (the “**May Affidavit**”).

AMENDED AND RESTATED ORDER

2. THIS COURT ORDERS that, other than as it relates to the appointment of FTI as Monitor which shall be effective from and after May 29, 2015, effective on and from the date hereof, this Amended and Restated Order shall amend and restate the Initial Order granted on May 12, 2015 in these proceedings (the “**Initial Order**”).

POSSESSION OF PROPERTY AND OPERATIONS

3. THIS COURT ORDERS that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicants shall each continue to carry on business in the ordinary course and in a manner consistent with the preservation of their business (the “**Business**”) and the Property.

4. THIS COURT ORDERS that, subject to the provisions of paragraph 5 hereof, the Applicants shall be entitled to continue to utilize the central cash management system currently in place, including the Applicants’ current business forms, cheques and bank accounts, as described in the May Affidavit (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, and shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System.

5. THIS COURT ORDERS that Royal Bank of Canada, in its capacity as provider of the Cash Management System (“**RBC**”), shall be entitled to the benefit of and is hereby granted a charge (the “**Cash Management Charge**”) on the Property, as security for any obligations of the Applicants to RBC that may arise in connection with RBC’s provision of the Cash Management System. The Applicants or any interested party shall have the right to bring a motion or as otherwise directed by the Court to establish the aggregate amount of the Cash Management Charge. The Cash Management Charge shall have the priority set out in paragraphs 26 and 28 hereof.

6. THIS COURT ORDERS that, subject to review of the Monitor, the Applicants shall be entitled but not required to pay expenses and satisfy obligations whether incurred prior to, on or after the making of this Order, in the ordinary course of business.

7. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees’ wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of

secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. THIS COURT ORDERS that, notwithstanding anything else contained herein, from and after June 2, 2015, without further order of the Court, the Applicants shall not make any payments (including but not limited to interest and professional fees and expenses) to the First Lien Lenders, the First Lien Agent, the Second Lien Lenders or the Second Lien Agent.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

9. THIS COURT ORDERS that until and including July 17, 2015, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

11. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with an Applicant or statutory or regulatory mandates for the supply of goods, content and/or services, including without limitation all computer software, communication and other data services, licenses, distribution, printing, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or an Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods, content or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods, content or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier, content provider or service provider and each of the applicable Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

13. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

14. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

15. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

16. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$2.2 million, as security for the indemnity provided in paragraph 15 of this Order. The Directors' Charge shall have the priority set out in paragraphs 26 and 28 herein.

17. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 15 of this Order.

APPOINTMENT OF MONITOR

18. THIS COURT ORDERS that, effective May 29, 2015, FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, employees, consultants, agents, experts, accountants, counsel and such other persons currently retained or employed by them shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

19. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicants in their preparation of their cash flow statements, which information shall be reviewed with the Monitor, as required from time to time, which may be used in these proceedings;
- (d) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (e) take such steps as the Monitor considers necessary or desirable in reviewing the SISP and the activities undertaken by the Applicants and their advisors in connection with the SISP and any sale approval motion;

- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

20. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

21. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

22. THIS COURT ORDERS that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is

confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

23. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

24. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

25. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Applicants and the financial advisor to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$750,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor, counsel to the Monitor, counsel to the Applicants and the financial advisor to the Applicants both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 26 and 28 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

26. THIS COURT ORDERS that the priorities of the Administration Charge, the Directors’ Charge and the Cash Management Charge, as among them, shall be as follows, subject to paragraph 28 of this Order:

- (a) First – Administration Charge (to the maximum amount of \$750,000);
- (b) Second – Directors’ Charge (to the maximum amount of \$2.2 million); and
- (c) Third – Cash Management Charge.

27. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge, the Directors' Charge and the Cash Management Charge (together, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

28. THIS COURT ORDERS that the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, notwithstanding the order of perfection or attachment, except for any validly perfected security interest in favour of a "secured creditor" as defined in the CCAA existing as at the date hereof other than any validly perfected security interest in favour of the First Lien Agent, the First Lien Lenders, the Second Lien Agent or the Second Lien Lenders. Nothing in this Order affects the priority of the First Lien Agent, the Second Lien Agent, the First Lien Lenders and the Second Lien Lenders against the rights of each other and third parties (other than beneficiaries of the Charges) as of the date of this Order. The Applicants shall be entitled to seek priority of the Charges ahead of all or certain of the other Encumbrances on a subsequent motion on notice to those parties likely to be affected thereby.

29. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection registration or performance of any documents in respect thereof shall create or be deemed to constitute a breach by an Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Applicants pursuant to this Order and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

30. THIS COURT ORDERS that the Charges created by this Order over leases of real property in Canada shall only be a charge in the Applicants' interest in such real property leases.

SEALING ORDER

31. THIS COURT ORDERS that each of (i) the summary of the key employee retention program attached as Exhibit J to the May Affidavit, and (ii) the Stockholders and Registration Rights Agreement attached as Exhibit H to the May Affidavit be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of this Court.

SERVICE AND NOTICE

32. THIS COURT ORDERS that the Monitor shall, without delay, publish in *The Globe and Mail* a notice containing the information prescribed under the CCAA, and shall not, without further order of the Court, (i) send any prescribed notices to creditors, or (ii) make

publicly available any list showing the names and addresses of creditors or the estimated amounts of creditors' claims.

33. THIS COURT ORDERS that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at: www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <http://cfcanada.fticonsulting.com/NelsonEducationLtd/>.

34. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

35. THIS COURT ORDERS that, except with respect to an urgent motion subject to further Order of this Court, any interested party that wishes to object to the relief to be sought in a motion brought in these proceedings shall, subject to further Order of this Court, provide the Service List with responding motion materials or a written notice (including by e-mail) stating its objection to the motion no later than three (3) business days prior to the date such motion is returnable (the “**Objection Deadline**”). The Monitor shall have the right to extend the Objection Deadline after consulting with the Applicants.

36. THIS COURT ORDERS that following the expiry of the Objection Deadline, the Monitor or counsel to the Applicants shall inform the Court, including by way of a 9:30 a.m. appointment, of the absence or the status of any objections to the motion and the judge having carriage of the motion may determine (a) whether a hearing in respect of the motion is necessary, (b) whether such hearing will be in person, by telephone or by written submissions only and (c) the parties from whom submissions are required. In the absence of any such determination, a hearing will be held in the ordinary course on the date specified in the notice of motion.

GENERAL

37. THIS COURT ORDERS that each of the Applicants and the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

38. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

39. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

40. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

20 June 2015

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
NELSON EDUCATION LTD. AND NELSON EDUCATION HOLDINGS LTD.

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE-
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AMENDED AND RESTATED
INITIAL ORDER**

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