

Court File No. CV15-10961-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

**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

FACTUM OF THE APPLICANTS

**(Sale Approval Motion
returnable August 13, 2015)**

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PART I – OVERVIEW

1. The Applicants Nelson Education Ltd. (“**Nelson Education**” or the “**Company**”) and Nelson Education Holdings Ltd. (“**Holdings**”) seek this Court’s approval of the sale of substantially all of the assets and business of the Company (the “**Transaction**” as further described below) to a newly incorporated entity to be owned indirectly by the Company’s first ranked secured lenders (the “**First Lien Lenders**”) on the terms set out in the proposed Approval and Vesting Order.
2. The Transaction is the result of a lengthy strategic review process which commenced in March 2013 with the engagement of Alvarez & Marsal Canada Securities ULC (“**A&M**”) as the Company’s financial advisor and included a comprehensive sale and investment process (“**SISP**”) commenced in September 2014 to identify potential purchasers or investors in the Nelson Business.
3. Throughout its strategic review process the Company attempted to achieve as its primary objective a consensual transaction that would address its outstanding obligations to both its First Lien Lenders and Second Lien Lenders and that would be supported by all of the First Lien Lenders and Second Lien Lenders.

4. The Company explored all potential options and alternatives, advanced numerous different transaction term sheets and attended multiple meetings with the First Lien Lenders and with the Second Lien Lenders, including meetings directly among principals of the Company and certain First Lien Lenders and Second Lien Lenders in order to achieve that objective.
5. In September 2014, after approximately 15 months of working with the First Lien Lenders and the Second Lien Lenders to advance restructuring solutions, no consensual resolution could be achieved that would satisfy both the First Lien Lenders and Second Lien Lenders. The Company therefore entered into the First Lien Support Agreement with 21 out of the 22 First Lien Lenders¹ representing approximately 88% of the obligations outstanding under the First Lien Credit Agreement (the “**Consenting First Lien Lenders**”) pursuant to which such Consenting First Lien Lenders agreed to not take any enforcement action against the Company notwithstanding that the First Lien Credit Agreement had matured in July 2014, agreed to support an out-of-court sale process, and, if the sale process was not successful, agreed to complete the presently proposed Transaction pursuant to which substantially all of the assets will be acquired by the First Lien Lenders in exchange for their debt, and substantially all of the trade and employee obligations will be assumed.
6. From September 2014 to early 2015, the SISP was conducted. However, it failed to identify a sale transaction that would result in proceeds sufficient to repay its obligations to the First Lien Lenders in full or otherwise be supported by the First Lien Lenders.
7. The Company recognizes that the Transaction will not provide any recovery to the Second Lien Lenders. But that is the result of a fundamental fact. The Company’s assets and prospects simply do not have a value in excess of the First Lien Debt. The Company, with the assistance of A&M and its legal advisors, has therefore determined that proceeding with the Transaction is in the best interests of the Applicants and their

¹ At the time of the execution of the First Lien Support Agreement there were 22 First Lien Lenders. The Applicants understand that one of the Consenting First Lien Lenders has since sold its position to one of the other Consenting First Lien Lenders pursuant to the terms of the First Lien Support Agreement. As such, the Applicants understand that there are currently 21 First Lien Lenders.

stakeholders. The Transaction has the support of the Consenting First Lien Lenders representing approximately 88% of the Company's outstanding obligations under the First Lien Credit Agreement.

8. The Transaction provides a number of benefits. It will enable the Nelson Business, in the hands of new owners, to continue as a going concern, preserving the employment of the Company's employees, honouring trade payables and honouring the expectations of suppliers, authors and customers of the Company. It includes:
- (a) the transfer of substantially all of the Company's assets to a newly incorporated entity (the "**Purchaser**") to be owned indirectly by the First Lien Lenders;
 - (b) the assumption by the Purchaser of substantially all of the Company's trade payables, contractual obligations and employment obligations incurred in the ordinary course and as reflected in the Company's balance sheet (other than as set out in paragraphs 57 and 58 below);
 - (c) an offer of employment by the Purchaser to all of the Company's employees; and
 - (d) a release by the First Lien Lenders of all of the indebtedness owing under the First Lien Credit Agreement in exchange for: (i) 100% of the common shares of a newly incorporated entity ("**Purchaser Holdco**") that will own 100% of the common shares of the Purchaser, and (ii) the obligations under a new US\$200 million first lien term facility to be entered into by the Purchaser.

9. The Transaction is not only proposed by the Company based on the advice of its advisors, but comes with another important endorsement. Based on its review of the SISP and the Transaction, and having had a full briefing from RBC and its advisors about all of their concerns,² the Monitor has concluded that:
- (a) the SISP was a thorough market test and can be relied on to establish that there is no value in the company beyond the First Lien Debt;³
 - (b) there is no reasonable prospect that the Company could obtain a new source of financing sufficient to repay the First Lien Debt;⁴
 - (c) an alternative debt restructuring that might create value for the Second Lien Lenders is not a viable alternative at this time;⁵
 - (d) there is no reasonable prospect of a new sale process generating a transaction at a value in excess of the First Lien Debt;⁶ and
 - (e) it does not appear that there are significant operational improvements reasonably available that would materially improve profitability in the short-term such that the value of the Nelson Education business would increase to the extent necessary to repay the First Lien Debt and, accordingly, there is no apparent benefit from delaying the sale of the business.⁷
10. Accordingly, the Monitor has stated that it supports the Company's request for approval of the Transaction.

² Affidavit of Les Vowell sworn July 21, 2015 at paras. 10 and 16 and Exhibits "C" to "G" thereto; Responding Motion Record of RBC returnable August 13, 2015, Tab 1, and Vowell Cross-Examination, p. 103-106, Q. 345-357.

³ Monitor's Second Report at paras. 14(h) and 79.

⁴ Monitor's Second Report at paras. 15(a) and 97.

⁵ Monitor's Second Report at paras. 15(b) and 99.

⁶ Monitor's Second Report at paras. 15(c) and 104.

⁷ Monitor's Second Report at paras. 15(d) and 115.

11. The proposed Approval and Vesting Order provides for the fulfillment of certain conditions of the Transaction, including authorizing the distribution from the Company's cash on hand to the First Lien Lenders of outstanding fees and interest, effecting mutual releases of parties associated with the Transaction, and deeming the Stockholders and Registration Rights Agreement to bind all shareholders of Purchaser Holdco. The Applicants submit that such ancillary relief is fair and reasonable in the circumstances, and within this Court's broad jurisdiction under sections 36 and 11 of the CCAA.

PART II – THE FACTS

A. BACKGROUND

12. Nelson Education is Canada's leading education publishing company, providing learning solutions to universities, colleges, students, teachers, professors, libraries, government agencies, schools, professionals and corporations across the country. Nelson Education has a deep line of products focused across the various segments of the education market. It is also a leading developer of digital educational resources.

Affidavit of Dean Mullett sworn May 11, 2015 (“**Mullett Affidavit**”) at para. 7;
Motion Record of the Applicants returnable August 13, 2015 (the “**Sale Approval Motion Record**”), Tab 2.

13. Certain private equity investors acquired the business and assets of Nelson in July 2007 from The Thomson Corporation together with the U.S. business and assets of the Thomson Learning Group (the “**2007 Acquisition**”). Shortly afterwards, Thomson Learning Group, outside of Canada changed its name to Cengage Learning Holdings II, LP (“**Cengage**”), which is a separate corporation from the Applicants but which remains a key business partner of Nelson Education.

Mullett Affidavit at para. 9; Sale Approval Motion Record, Tab 2.

14. In connection with the 2007 Acquisition, the Company became subject to:
 - (a) First lien debt in the initial aggregate principal amount of US\$311,438,278.60 with a further revolver facility in an initial aggregate principal amount of \$50

million pursuant to the First Lien Credit Agreement dated as of July 5, 2007 (the “**First Lien Credit Agreement**”) among Nelson Education, Holdings, Royal Bank of Canada as Administrative Agent, Collateral Agent and Swing Line Lender and the lenders party thereto (the “**First Lien Lenders**”). RBC was subsequently replaced by Wilmington Trust, National Association as Administrative Agent and Collateral Agent (the “**First Lien Agent**”).

- (b) Second lien debt in an initial aggregate principal amount of US\$171,291,053.23 pursuant to the Second Lien Credit Agreement dated as of July 5, 2007 (the “**Second Lien Credit Agreement**,” together with the First Lien Credit Agreement, the “**Credit Agreements**”) among Nelson Education, Holdings, Royal Bank of Canada, as Administrative Agent and Collateral Agent (the “**Second Lien Agent**”) and the lenders party thereto (the “**Second Lien Lenders**”).

At the time of the 2007 Acquisition, the value of the Canadian dollar to the U.S. dollar was approximately \$1.00 to US\$0.9463.

Mullett Affidavit at paras. 10-11 and 13; Sale Approval Motion Record, Tab 2.

15. Nelson Education, Holdings, Royal Bank of Canada, in its capacity as collateral agent for the obligations under the First Lien Credit Agreement, and Royal Bank of Canada, in its capacity as Second Lien Agent, entered into an Intercreditor Agreement dated July 5, 2007 (the “**Intercreditor Agreement**”), by which the Second Lien Agent agreed that it “will raise no objection or oppose a sale or other disposition of any Collateral free and clear of its Liens or other claims under Section 363 of the Bankruptcy Code (or any similar provision of any other Bankruptcy Law or any order of a court of competent jurisdiction) if the First Lien Claimholders have consented to such sale or disposition of such assets” and “will be deemed to have consented ... to any sale supported by the First Lien Claimholders.”

Affidavit of Greg Nordal sworn May 11, 2015 (the “**May Nordal Affidavit**”) at para. 66; Application Record of the Applicants returnable May 12, 2015 (the “**Application Record**”), Tab 2.

Intercreditor Agreement, s. 6.1(a), Exhibit "F" to the May Nordal Affidavit;
Application Record, Tab 2F.

16. An independent legal opinion obtained by A&M concludes that the Company granted valid security interests to the First Lien Agent on behalf of the First Lien Lenders and the Second Lien Agent on behalf of the Second Lien Lenders, respectively, in substantially all of the assets of the Company, which have been properly perfected and confirms that there are no registrations prior in time, other than one pertaining to a motor vehicle lease agreement.

Pre-filing Report of the Proposed Monitor Alvarez & Marsal Canada Inc. dated
May 11, 2015 at para. 4.13.

17. Despite significant efforts to address its financial challenges and existing debt levels, including pursuing efforts to pay down debt, implementing cost-saving initiatives, engaging in extensive discussions with its stakeholders and exploring numerous potential transaction alternatives, Nelson Education has been unable to repay or refinance its obligations under the First Lien Credit Agreement, which matured in July, 2014, and under its Second Lien Credit Agreement, which matured as of July 3, 2015. Holdings, a guarantor under each of the Credit Agreements, has been unable to satisfy its guarantee obligations.

Mullett Affidavit at para. 13; Sale Approval Motion Record, Tab 2.

18. For the fiscal year ended March 31, 2015, the Company had, in the aggregate, over US\$430 million (or over \$544 million in Canadian dollars) of secured first and second lien debt (including accrued interest) outstanding under its Credit Agreements, resulting in an unsustainable leverage ratio of debt to EBITDA, net of pre-publication expenditures, of approximately 17:1.

Mullett Affidavit at para. 11; Sale Approval Motion Record, Tab 2.

19. On May 12, 2015, Nelson Education and Holdings sought and obtained an Order (the "**Initial Order**") protecting them from their creditors pursuant to the *Companies'*

Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and appointing A&M as monitor. The Applicants at that time advised the Court that they had reached an agreement for the sale of substantially all of the assets and business of Nelson Education to the First Lien Lenders and intended to bring a subsequent motion seeking Court approval of the transaction.

May Nordal Affidavit at paras. 15 and 106; Application Record, Tab 2.

20. In response to concerns raised by the Agent for the Second Lien Lenders at the comeback hearing in respect of the Initial Order (the “**Comeback Hearing**”), the Court, while affirming its confidence in the integrity and professionalism of A&M, appointed FTI Consulting Canada Inc. (“**FTI**”) as monitor (the “**Monitor**”) to ensure the Monitor was fully independent and perceived as such.

Nelson Education Limited (Re), 2015 ONSC 3580 at paras. 32 and 39 [*Nelson Education*]; Book of Authorities, Tab A.

21. The Court subsequently issued the Amended and Restated Initial Order dated June 8, 2015. Along with providing for the appointment of FTI as Monitor effective May 29, 2015, the Amended and Restated Order imposed a charge in favour of RBC in its capacity as provider of the Company’s Cash Management System, and a prohibition on further payments by the Applicants to the First Lien Lenders, the First Lien Agent, the Second Lien Lenders and the Second Lien Agent until further order of the Court.

B. PROCESS LEADING TO THE TRANSACTION

(1) March 2013-July 2014: Strategic Review and Discussions with Stakeholders

22. In March 2013, Nelson Education engaged A&M, the Canadian corporate finance arm of Alvarez & Marsal, a global professional services firm and a leading provider of corporate advisory services, to assist the Company in reviewing and considering potential strategic alternatives. The Second Lien Agent also engaged a financial advisor in March 2013 and the First Lien Steering Committee engaged a financial advisor in June 2013.

Mullett Affidavit at paras. 1 and 15; Sale Approval Motion Record, Tab 2.

May Nordal Affidavit at para. 86; Application Record, Tab 2.

23. Commencing in April 2013, Nelson Education, with the assistance of its advisors, entered into discussions with stakeholders including the Second Lien Agent, a steering committee of First Lien Lenders (the “**First Lien Steering Committee**”), and their respective advisors. The Company sought to achieve as its primary objective a consensual transaction that would be supported by all of the First Lien Lenders and Second Lien Lenders. The Company hoped that with the support of the First Lien Lenders and RBC, representing approximately 85% of the second lien debt, a consensual resolution could be achieved for the benefit of the Company and its stakeholders.

Mullett Affidavit at para. 21; Sale Approval Motion Record, Tab 2.

Minutes of the Meeting of the Board of Directors of Nelson Education Ltd., June 27, 2014 (the “**June 27 Minutes**”), Exhibit 14 to the Cross-Examination of Greg Nordal held on August 4, 2015 (the “**Nordal Cross-Examination**”).

Minutes of the Meeting of the Board of Directors of Nelson Education Ltd., August 5, 2014 (the “**August 5 Minutes**”), Exhibit 15 to the Nordal Cross-Examination.

Nordal Cross-Examination, p. 31, Q. 103.

Cross-Examination of Les Vowell held August 5, 2015 (the “**Vowell Cross-Examination**”), p. 101, Q. 340.

Credit Report dated September 24, 2013, Tab A of Exhibit 1 to the Vowell Cross-Examination.

24. The Company’s dialogue with its lenders included the exchange of a number of without prejudice and confidential proposed transaction term sheets between August 2013 and September 2014. Members of the Company’s management and its advisors also attended several in-person meetings with the First Lien Steering Committee and the Second Lien Agent and their respective advisors. The Company diligently pursued a consensual solution that would be satisfactory to both the First Lien Lenders and the Second Lien Lenders. However, this was not possible. Indeed, for an extended period of time, there was even a lack of consensus among the First Lien Lenders with respect to an overall solution.

Mullett Affidavit at para. 22; Sale Approval Motion Record, Tab 2.

Affidavit of Greg Nordal sworn July 22, 2015 (the “**July Nordal Affidavit**”) at paras. 9 and 14-15; Responding Motion Record of the Applicants returnable August 13, 2015 (the “**Responding Motion Record**”), Tab 1.

Nordal Cross-Examination, p. 31, Q. 104

Nordal Cross-Examination, p. 31, Q. 107.

June 27 Minutes, Exhibit 14 to the Nordal Cross-Examination.

August 5 Minutes, Exhibit 15 to the Nordal Cross-Examination.

25. In April 2014, the Company and the Second Lien Lenders agreed to two extensions of the cure period under the Second Lien Credit Agreement in respect of the second lien interest payment due on March 31, 2014 (the “**March Interest Payment**”), to May 30, 2014. In connection with these extensions, the Company made a partial payment of US\$350,000 in respect of the March Interest Payment, paid certain professional fees of the Second Lien Lenders and provided certain financial and other information to the Second Lien Lenders pursuant to the terms of the Grace Period Extension Agreement dated April 9, 2014 and the Second Grace Period Extension Agreement dated as of April 30, 2014 (together, the “**Second Lien Extensions**”). The Company requested a further extension of the second lien cure period beyond May 30, 2014, but the Second Lien Lenders did not agree. Thereafter, the Company defaulted under the Second Lien Credit Agreement and failed to make further interest payments to the Second Lien Lenders.

Responses to Written Questions on May Nordal Affidavit, dated May 25, 2015 (the “**Responses to Nordal Questions**”) at paras. 9-18; Transcript Brief, Tab IV.

26. During, and following the expiry of, the extended cure period under the Second Lien Extensions, the Company and its advisors continued to advance restructuring term sheets to address the Company’s obligations under the Credit Agreements, and provided various draft restructuring term sheets to the Second Lien Agent and its advisors, and to the First Lien Steering Committee and its advisors.

Responses to Nordal Questions at para. 19; Transcript Brief, Tab IV.

May Nordal Affidavit at para. 87; Application Record, Tab 2.

(2) July 2014: First Lien Credit Agreement Matures

27. The First Lien Credit Agreement matured on July 3, 2014. On July 7, 2014, the Company proposed an amendment and extension of the First Lien Credit Agreement and solicited consent from its First Lien Lenders (the “**July Consent Solicitation Process**”).

May Nordal Affidavit at para. 59; Application Record, Tab 2.

Mullett Affidavit at para. 24; Sale Approval Motion Record, Tab 2.

28. Pursuant to the July Consent Solicitation Process, RBC (as First Lien Lender but with the entire RBC credit exposure in mind) executed the Company’s Consent and Support Agreement dated as of July 7, 2014 (the “**July Support Agreement**”), agreeing to the Term Sheet attached thereto as Schedule “A” (the “**July Term Sheet**”).

Responses to Nordal Questions at para. 21; Transcript Brief, Tab IV.

Vowell Cross-Examination, pp. 27-28, Q. 87-88 and pp. 38-42, Q. 127-140.

29. The July Term Sheet provided for the amendment and extension of the First Lien Credit Agreements and did not specifically address the obligations under the Second Lien Credit Agreement, other than including a condition that the indebtedness under the Second Lien Credit Agreement be resolved in a manner involving no cash payment of interest to lenders under the Second Lien Credit Agreement. The July Support Agreement did not ultimately receive the support of the other First Lien Lenders.

Responses to Nordal Questions at para. 21; Transcript Brief, Tab IV.

May Nordal Affidavit at para. 89; Application Record, Tab 2.

30. At that time, the Company and the Second Lien Advisors were considering, among other things, a potential transaction structure pursuant to which the indebtedness under the Second Lien Credit Agreement would have been extinguished in exchange for an out of the money warrant. No such transaction was ultimately agreed to by the parties.

Vowell Cross-Examination, p. 40, Q. 132.

Vowell Cross-Examination, p. 40, Q. 135.

Vowell Cross-Examination, p. 42, Q. 141.

Vowell Cross-Examination, p. 75, Q. 252.

31. At no time have the Second Lien Lenders sought to refinance or repay the obligations outstanding under the First Lien Credit Agreement.

(3) September 2014: First Lien Support Agreement

32. Following July of 2014, the Company and its advisors continued to have discussions and meetings with the First Lien Steering Committee and the Second Lien Agent and their respective advisors, with the aim of achieving a consensual solution that would be supported by Nelson Education's lenders.

Mullett Affidavit at para. 25; Sale Approval Motion Record, Tab 2.

33. In September, 2014, the Company proposed to the First Lien Lenders a transaction framework for a sale or restructuring of the business on the terms set out in the First Lien Term Sheet dated September 10, 2014 (the "**First Lien Term Sheet**") and sought their support. This led to Nelson Education and Holdings entering into the First Lien Support Agreement dated as of September 10, 2014 (the "**First Lien Support Agreement**") with the Consenting First Lien Lenders. RBC is the only First Lien Lender that is not a Consenting First Lien Lender.

May Nordal Affidavit at para. 8; Application Record, Tab 2.

Mullett Affidavit at paras. 26 and 28; Sale Approval Motion Record, Tab 2.

Affidavit of Les Vowell sworn July 21, 2015 at paras. 3 and 7-8; Responding Motion Record of RBC returnable August 13, 2015, Tab 1.

34. The First Lien Term Sheet provided that the Company would conduct a comprehensive and open SISP to attempt to identify one or more potential purchasers of, or investors in, the Nelson Business on terms that would provide for net sale or investment proceeds sufficient to pay in full all obligations under the First Lien Credit Agreement or that was otherwise acceptable to First Lien Lenders holding at least 66 2/3% of the outstanding

obligations under the First Lien Credit Agreement (a “**Superior Offer**”). If a Superior Offer was not identified pursuant to the SISP, the First Lien Lenders would form the Purchaser and purchase substantially all of the assets of the Company in exchange for the conversion by all of the First Lien Lenders of all of the debt owing to them under the First Lien Credit Agreement into a new first lien term facility and common shares of the Purchaser (i.e. the Transaction).

Mullett Affidavit at para. 27; Sale Approval Motion Record, Tab 2.

May Nordal Affidavit at para. 92; Application Record, Tab 2.

35. On September 19, 2014, the Company’s legal advisors provided to RBC’s legal counsel a copy of the First Lien Support Agreement (which attached a copy of the First Lien Term Sheet and a copy of the SISP) and a copy of the Company’s presentation to the First Lien Lenders dated September 10, 2014 relating to the Transaction, all of which had previously been made available to all First Lien Lenders including RBC.

Letter from Goodmans to Paul Hastings dated September 19, 2014 (the “**September 19, 2014 Letter**”), Exhibit 3 to the Vowell Cross-Examination.

36. In its correspondence of September 19, 2014, RBC’s legal counsel was advised that “[t]he Company has until mid-November 2014 to determine a process for implementing the Transaction,” that “the Company intends to continue to work cooperatively with the Second Lien Agent and seek its views with respect to any such process,” and that “[i]f the Company does not obtain the support of the Second Lien Agent for such a process, the Company may require a court process to implement the Transaction.”

September 19, 2014 Letter, Exhibit 3 to the Vowell Cross-Examination.

37. Between March of 2013 and September of 2014, the Company expended extensive efforts to achieve a consensual resolution with its lenders while at the same time working to manage its business and create overall stability for the benefit of the Company and its stakeholders. In addition to its own costs, the Company also paid a significant amount of fees to the legal and financial advisors to the First Lien Steering Committee and the Second Lien Agent to assist in the process and to attempt to achieve an acceptable

resolution. The lenders, including RBC, were very well aware that absent a consensual transaction a Court process would be required. Had a consensual transaction been agreed to by the lenders, the Company's CCAA filing could have been avoided.

August 5 Minutes, Exhibit 15 to the Nordal Cross-Examination.

July Nordal Affidavit at para. 18; Responding Motion Record, Tab 1.

Nordal Cross-Examination, p. 13, Q. 45.

Credit Reports dated September 24, 2013 and April 15, 2015, Tabs A and K, respectively, of Exhibit 1 to the Vowell Cross-Examination.

(4) Sale and Investment Solicitation Process under the Support Agreement

38. In September 2014, the company engaged A&M to assist with the SISP. By that time, A&M had been advising the Company for over 17 months and had gained a strong understanding of the Nelson Business and the educational publishing industry.

Mullett Affidavit at para. 30; Sale Approval Motion Record, Tab 2.

39. The SISP undertaken by A&M was comprehensive and was developed on the same basis as if it had been conducted under a CCAA proceeding. The SISP was structured as a two-phase process.

Mullett Affidavit at paras. 31, 33 and 35; Sale Approval Motion Record, Tab 2.

(a) Solicitation of Offers

40. Phase 1 involved (i) contacting 168 potential purchasers, including both financial and strategic parties located in Canada, the United States and Europe, and 11 potential lenders to ascertain their potential interest in a transaction, (ii) initial due diligence and (iii) receipt by the Company of non-binding letters of interest ("LOIs"). The SISP provided that interested parties could propose a purchase of the whole or parts of the business or an investment in the Company.

Mullett Affidavit at paras. 33, 37 and 39; Sale Approval Motion Record, Tab 2.

Second Report of the Monitor dated July 8, 2015 (the “**Monitor’s Second Report**”) at paras. 35, 49 and 53.

41. Seven potential purchasers submitted LOIs under Phase 1, six of which were offers to purchase substantially all of the Nelson Business and one of which was an offer to acquire only the K-12 Business. The Company reviewed the LOIs with the assistance of its advisors, and following consultation with the First Lien Steering Committee and its advisors, invited five of the parties that submitted LOIs to Phase 2 of the SISP (the “**Phase 2 Participants**”).

Mullett Affidavit at paras. 42-44; Sale Approval Motion Record, Tab 2.

42. Phase 2 of the SISP involved additional due diligence, data room access and management presentations aimed at completion of binding documentation for a Superior Offer.

Mullett Affidavit at para. 34; Sale Approval Motion Record, Tab 2.

Monitor’s Second Report at para. 78.

43. Three Phase 2 Participants submitted non-binding offers by the deadline of December 19, 2014, two of which were for the purchase of substantially all of the Nelson Business and one of which was for the acquisition of the K-12 Business. All three offers remained subject to further due diligence and reflected values that were significantly below the value of the obligations under the First Lien Credit Agreement.

Mullett Affidavit at para. 50; Sale Approval Motion Record, Tab 2.

44. On December 19, 2014, one of the Phase 2 Participants advised A&M that it required additional time to complete and submit its offer (which additional time was granted, following discussions with key stakeholders). An offer was subsequently submitted but not ultimately advanced by the bidder.

Mullett Affidavit at para. 51; Sale Approval Motion Record, Tab 2.

45. The Company, with the assistance of its advisors, maintained communications with Cengage throughout its restructuring efforts. Cengage submitted an expression of interest

for the Higher Education Business that, even in combination with the offer received for the K-12 Business, was substantially lower than the amount of the First Lien Debt. In February 2015, Cengage and Nelson Education terminated discussions about a potential sale transaction.

Mullett Affidavit at para. 52; Sale Approval Motion Record, Tab 2.

Monitor's Second Report at para. 48.

(b) Updates to Lenders

46. The First Lien Steering Committee, which had agreed to the confidentiality provisions in the First Lien Support Agreement, was provided with periodic updates throughout the SISP.

Monitor's Second Report at para. 126.

47. RBC's counsel had initially advised on October 1, 2014 that RBC would agree to execute a reasonable non-disclosure agreement in connection with obtaining information relating to the SISP. Following the Company's provision of a form of confidentiality agreement to RBC's counsel for their consideration, RBC's counsel subsequently advised that RBC would only consider the confidentiality agreement once payment of the Second Lien Agent's fees had been resolved. RBC did not ultimately execute a confidentiality agreement in connection with the SISP or the Transaction. However, A&M provided RBC with verbal updates during the SISP. The Monitor does not believe that the SISP was adversely affected by any lack of consultation with the Second Lien Lenders or that any material change in the outcome of the SISP would have resulted from such additional consultation.

Monitor's Second Report at paras. 127 and 131.

Vowell Cross-Examination, p. 95, Q. 317, p. 98, Q. 327 and p. 99, Q. 329-337.

Letter from Paul Hastings to Goodmans dated October 1, 2014, Exhibit 5 to the Nordal Cross-Examination.

Correspondence between counsel for the Applicants and RBC dated October 31 to November 18, 2014, Exhibit "E" to the Affidavit of Les Vowell sworn July

13, 2015; Motion Record of RBC returnable August 13, 2015, Tab 2E.

First Lien Support Agreement, s. 12(b), Exhibit "G" to the May Nordal Affidavit; Application Record, Tab 2G.

(c) Results of the SISP

48. Ultimately, Phase 2 of the SISP did not result in a Superior Offer, that is an executable transaction that would generate proceeds sufficient to repay the obligations under the First Lien Credit Agreement in full or would otherwise be supported by the First Lien Lenders. Accordingly, the Company, with the assistance of A&M and its legal advisors, and in consultation with the First Lien Steering Committee, determined that it should proceed with the Transaction pursuant to the First Lien Support Agreement.

Mullett Affidavit at paras. 53-54; Sale Approval Motion Record, Tab 2.

(d) Monitor's Review of the SISP

49. Following its appointment as Monitor, FTI completed a comprehensive review of the SISP conducted by A&M and concluded that:
- (a) the design of the SISP was typical of such marketing processes and was consistent with processes that have been approved by the courts in many CCAA proceedings;
 - (b) the activities undertaken by A&M were consistent with the activities that any investment banker or sale advisor engaged to assist in the sale of a business would be expected to undertake; and
 - (c) both key senior management and A&M were incentivised to achieve the best value available and there was no impediment to doing so;
 - (d) results of the SISP clearly demonstrate that none of the interested parties would, or would be likely to, offer a price for the Nelson business that would be sufficient to repay the First Lien Debt; and

- (e) the SISP was a thorough market test and can be relied upon to establish that there is no value beyond the First Lien Debt.

Monitor's Second Report at paras. 14 and 78-79.

50. The Monitor contacted each of the Phase 2 Participants and reported that the primary reasons given for not further pursuing a transaction were that a value at levels approaching the amount of the First Lien Debt was not supportable; and there was uncertainty with respect to the K-12 Business, which had been in decline, and as to when, or if, there might be growth in the K-12 segment.

Monitor's Second Report at para. 74.

51. The Monitor also considered whether the requirements under the *Investment Canada Act* for approval by Heritage Canada of a sale of the Nelson Business to a non-Canadian could have had an adverse influence on the results of the SISP. The Monitor made enquiries with the Phase 2 Participants who confirmed that such approval was not considered an insurmountable concern but was viewed simply as a necessary step in the process to acquiring the Nelson Business to the extent the purchaser was non-Canadian.

Monitor's Second Report at paras. 69 and 71.

52. The Monitor also considered whether reopening the sales process in the CCAA Proceedings might reasonably be expected to generate a result that would repay the First Lien Debt and provide some recovery for the Second Lien Lenders and concluded that there is no reasonable prospect of a new sale process generating a transaction at a value in excess of the First Lien Debt. Since December 2014 when the SISP was substantially completed, there has been no material improvement in the business or market conditions that would suggest that a different result could be achieved if the sales process was reopened at this time. The decline in the Canadian dollar as compared to the US dollar is an important factor as Nelson's revenues and profits are denominated in Canadian dollars and the First Lien Debt is denominated in US dollars.

Monitor's Second Report at paras. 100-104.

53. The Monitor reported in its Second Report that since its appointment it had received two unsolicited enquiries from parties expressing an interest in the acquisition of Nelson. Since the issuance of the Monitor's Second Report, the Monitor has advised that both parties subsequently confirmed that they are not interested in pursuing a transaction with Nelson Education.

Monitor's Second Report at para. 75.

Third Report of the Monitor dated August 4, 2015 at paras. 17-18.

C. THE TRANSACTION

(1) Development and Terms

54. During the SISP, the Company and its advisors worked with the First Lien Steering Committee on the terms of the transaction that would apply in the event a Superior Offer was not achieved. Following the determination to proceed with the Transaction, the parties agreed pursuant to the Supplemental Support Agreement dated May 11, 2015 to execute an Asset Purchase Agreement upon entry of the requested Approval and Vesting Order approving the Transaction.

Mullett Affidavit at para. 55; Sale Approval Motion Record, Tab 2.

Monitor's Second Report at para. 119.

55. The Transaction represents the best offer and highest purchase price that could be obtained for the assets of the Company, and the Asset Purchase Agreement represents an enterprise value for the Purchased Assets (as defined in the Asset Purchase Agreement) that is significantly higher than any viable offer for the Nelson Business made in the course of the comprehensive SISP.

Mullett Affidavit at para. 57; Sale Approval Motion Record, Tab 2.

56. The Transaction enables the Nelson Business to continue as a going concern under new ownership. The Asset Purchase Agreement provides for the assumption by the Purchaser of substantially all of the Company's trade payables, contractual obligations and

employment obligations incurred in the ordinary course and as reflected in the Company's balance sheet (other than as set out in paragraphs 57 and 58 below), and calls for offers of employment by the Purchaser to all of the Company's employees, thereby resulting in a transition of ownership with minimal disruption to the Nelson Business.

Mullett Affidavit at para. 58; Sale Approval Motion Record, Tab 2.

57. Under the Transaction, the Purchaser will not assume certain of the Company's obligations, including (i) any of the Company's obligations to the Second Lien Agent or the Second Lien Lenders under the Second Lien Credit Agreement, (ii) any liabilities relating to excluded assets, including excluded contracts (if any), (iii) any pre-closing environmental liabilities of the Company, except as required under applicable law, (iv) any liabilities of the Company with respect to any pre-closing infringement, misappropriation, misuse or passing off of intellectual property, and (v) any other liability of the Company not expressly assumed under the Asset Purchase Agreement, including the Nelson Education Promissory Note.⁸

Mullett Affidavit at para. 60; Sale Approval Motion Record, Tab 2.

58. The Company is not aware of any trade payables, contractual obligations or employment obligations that are not being assumed by the Purchaser pursuant to the Transaction, other than certain obligations in respect of former employees, obligations relating to the Second Lien Credit Agreement, and the Nelson Education Promissory Notes.

May Nordal Affidavit at para. 109; Application Record, Tab 2.

59. The Transaction is subject to customary conditions and receipt of requisite approvals. Heritage Canada has verbally confirmed to counsel to the First Lien Steering Committee that it agrees that the Transaction is exempt from review under the *Investment Canada Act*. Based on exchanges with Heritage Canada, the Company does not believe that there

⁸ The Nelson Education Promissory Note is an intercompany promissory note in the amount of approximately \$102.3 million as of March 2015 owing by Nelson Education to Holdings and is not relevant for purposes of this motion.

are any consents required from Heritage Canada prior to the completion of the Transaction.

Nordal Affidavit at para. 117; Application Record, Tab 2.

Mullett Affidavit at para. 64; Sale Approval Motion Record, Tab 2.

Monitor's Second Report at para. 68.

60. The Company maintains the ability to complete a sale transaction that would result in proceeds sufficient to repay the obligations under the First Lien Credit Agreement in full prior to the closing of the Transaction.

Mullett Affidavit at paras. 61-62; Sale Approval Motion Record, Tab 2.

61. The Transaction will eliminate uncertainty, significantly reduce the Company's debt levels and improve its balance sheet, and provide stability to the Nelson Business under new ownership in a process that is fair and reasonable to all stakeholders. Nelson Education believes that the implementation of the Transaction, which will result in a business with a stronger financial foundation, better positioned to solidify its role as Canada's leading education publisher and take advantage of improved market and industry conditions. The Transaction thus represents the best available alternative for the Applicants in the circumstances.

May Nordal Affidavit at para. 116; Application Record, Tab 2.

Mullett Affidavit at para. 63; Sale Approval Motion Record, Tab 2.

(2) Monitor's Review

62. The Monitor supports the company's request for approval of the Transaction.

Monitor's Second Report at para. 138.

63. The Monitor has undertaken a comprehensive review of the SISP and has reached the conclusions summarized in paragraph 9 above. The Monitor reached these views having been fully briefed by RBC about RBC's objections about the SISP and its outcome and

having considered RBC's and its advisors' views and presentations about value maximization, process and other indicators of value.

(3) Creditor Support

64. Notice of this motion has been served on, among others, the First Lien Steering Committee, the First Lien Agent, RBC and other parties with a registered security interest under the *Personal Property Security Act* (Ontario).

Affidavit of Service of Sydney Young sworn May 19, 2015.

65. The Transaction has the support of the Consenting First Lien Lenders representing approximately 88% of the First Lien Debt.

Mullet Affidavit at para. 28; Sale Approval Motion Record, Tab 2.

May Nordal Affidavit at paras. 8 and 94; Application Record, Tab 2.

66. RBC has advised that it does not oppose approval of the Transaction (although it opposes certain of the ancillary relief which relates to conditions of the Transaction). Pursuant to the Intercreditor Agreement, the Second Lien Agent is deemed to have consented to the Transaction.

Intercreditor Agreement, s. 6.1(a), Exhibit "F" to the May Nordal Affidavit; Application Record, Tab 2F.

67. Subject to the above, the Applicants are not aware of any party opposing approval of the Transaction.

D. ANCILLARY RELIEF

68. The Applicants seek the following relief pursuant to the proposed Approval and Vesting Order which is necessary as a result of the terms of the Transaction: (i) vesting in the Purchaser all of the Company's right, title and interest in and to the Purchased Assets (as defined in the Asset Purchase Agreement), (ii) authorizing the Company to make payments in respect of amounts owing to the First Lien Agent, the Supplementary Agent,

the First Lien Lenders and their advisors, (iii) ordering that the Stockholders and Registration Rights Agreement be effective and binding on all holders of the common shares of Purchaser Holdco with the same force and effect as if such persons were signatories to the agreement, (iv) authorizing certain administrative matters in connection with the change of the Applicants' names as required under the Asset Purchase Agreement and approving a corresponding change to the title of these proceedings; and (v) approving a mutual release of claims among the Applicants, the Purchaser, their respective affiliates, the First Lien Lenders, the First Lien Agent, the Supplemental Agent and their respective directors, officers, employees, advisors and other representatives in connection with the Nelson Business, the SISP, the Transaction, the First Lien Credit Agreement, these proceedings, and other related matters (the "Release"). Each is discussed below.

PART III – ISSUES AND THE LAW

A. THE TRANSACTION IS IN THE BEST INTERESTS OF STAKEHOLDERS GENERALLY AND SHOULD BE APPROVED

(1) The Court has the jurisdiction to approve a sale of all or substantially all of the assets of a debtor company in a CCAA proceeding

69. It is well established that the Court has the jurisdiction to approve a sale of all or substantially all of the assets of a debtor company in a CCAA proceeding in the absence of a plan of arrangement where the sale is in the best interests of the stakeholders generally.

Re Nortel Networks Corp. (2009), 55 C.B.R. (5th) 229 (Ont. Sup. Ct. J. [Commercial List]) at paras. 35-40 and 48; Book of Authorities, Tab B.

Re Brainhunter Inc. 2009 CarswellOnt 7627 (Sup. Ct. J. [Commercial List]) at paras. 12-13; Book of Authorities, Tab C. See also *Re Brainhunter Inc.*, 2009 CarswellOnt 8207, 62 C.B.R. (5th) 41 (Ont. Sup. Ct. J. [Commercial List]) at para. 15; Book of Authorities, Tab D.

CCAA, Section 36(1).

70. Section 36(3) of the CCAA sets out a non-exhaustive list of factors for the Court to consider in determining whether to grant the authorization for a debtor company to sell its assets outside of the ordinary course of business in a CCAA proceeding:
- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b) whether the monitor approved the process leading to the proposed sale or disposition;
 - (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
 - (d) the extent to which the creditors were consulted;
 - (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
 - (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

CCAA, Section 36(3).

Re White Birch Paper Holding Co. (2010), 72 C.B.R. (5th) 49 (Que. Sup. Ct.) at paras. 46-49; Book of Authorities, Tab E.

71. Prior to the enactment of Section 36(3), CCAA Courts in reviewing a proposed sale of assets in a CCAA proceeding considered the following factors adopted by the Ontario Court of Appeal in *Royal Bank v. Soundair Corp.* relating to a sale of assets by a receiver. These factors overlap with the Section 36(3) factors and continue to be applied by CCAA Courts in conjunction with them:
- (a) whether sufficient effort has been made to obtain the best price and that the receiver or debtor (as applicable) has not acted improvidently;
 - (b) whether the interests of all parties have been considered;

- (c) the efficacy and integrity of the process by which offers have been obtained; and
- (d) whether there has been unfairness in the working out of the process.

Royal Bank v. Soundair Corp. (1991), 83 D.L.R. (4th) 76 (Ont. C.A.) at para. 16 [*Soundair*]; Book of Authorities, Tab F.

Re Nortel Networks Corp. (2009), 56 C.B.R. (5th) 224 (Ont. Sup. Ct. J. [Commercial List]) at paras. 34-36; Book of Authorities, Tab G.

Re Camwest Publishing, Inc./Publications Camwest Inc. (2010), 68 C.B.R. (5th) 233 at para. 13 (Ont. Sup. Ct. J. [Commercial List]) at para. 13; Book of Authorities, Tab H.

72. Furthermore, where a sale transaction is in the best interests of stakeholders generally, it is appropriate for it to be approved notwithstanding that the debtor undertook the sale process before making an insolvency filing, particularly where there is some risk in delaying the process and the transaction has the support of the debtor's secured creditors. Weight is to be given to the business judgment of the sellers and their advisors.⁹

Bloom Lake, Re, 2015 QCCS 1920 at paras. 29 and 60 [*Bloom Lake*]; Book of Authorities, Tab M.

73. A “pre-packaged” transaction may be approved where it is the best available alternative in the circumstances. Specific consideration must be given to the economic realities of the business and the transaction in question. In particular, approval may be granted where an immediate sale is the only realistic way to provide maximum recovery for a creditor who stands in a clear priority of economic interest to all others, and delay of the transaction will erode the realization of the security of the creditor with the sole economic interest.

⁹ In addition to the decisions discussed below, courts overseeing an insolvency proceeding have on many occasions approved a sale transaction where the applicant debtor had run a sale and investment solicitation process before filing for creditor protection: *Re Armtec Infrastructure Inc.*, Approval and Vesting Order granted May 11, 2015, Court File No. CV15-10950-00CL at para. 3 (Ont. Sup. Ct. J.) [*Armtec Approval and Vesting Order*]; Book of Authorities, Tab I; *Re Cinram International Inc.*, Approval and Vesting Order granted July 12, 2012, Court File No. CV12-9767-00CL at para. 2 (Ont. Sup. Ct.); Book of Authorities, Tab J; *Maax Corporation et al., Re*, Sale and Vesting Order granted July 10, 2008, Court File No. 500-11-033561-081 at para. 4 (Que. Sup. Ct. [Commercial Division]); Book of Authorities, Tab K; *Re Extreme Fitness, Inc.*, Endorsement dated March 27, 2013, Court File No. CV-13-10000-00CL (Ont. Supt. Ct. J.); Book of Authorities, Tab L.

Elleway Acquisitions Ltd. v. 4358376 Canada Inc., 2013 ONSC 7009 at paras. 33 and 37; Book of Authorities, Tab N.

Re Tool-Plas Systems Inc., 2008 CanLII 54791 (Ont. Sup. Ct. J. [Commercial List]) at paras. 18-19 [*Tool-Plas*]; Book of Authorities, Tab O.

Montrose Mortgage Corp. v. Kingsway Arms Ottawa Inc., 2013 ONSC 6905 at para. 10 (Commercial List); Book of Authorities, Tab P.

74. The Court should consider the impact on various parties and consider whether their position and proposed treatment would realistically be any different if an extended sales process were followed; this is unlikely to be the case where the process actually followed is consistent with what a court would have approved.

Tool-Plas, supra at para. 15; Book of Authorities, Tab O.

Karrys Bros. Ltd. (Re), 2014 ONSC 7465 at para. 16; Book of Authorities, Tab Q.

75. Where reasonable marketing efforts have been undertaken with the assistance of appropriate professional advisors and the debtor's Board has given reasoned consideration to the proposed transaction, it should be approved.

Fund 321 Ltd. Partnership v. Samsys Technologies Inc., 2006 CarswellOnt 2541, 21 C.B.R. (5th) 1 at paras. 11, 44, 49 and 51 (Sup. Ct. J. [Commercial List]); Book of Authorities, Tab R.

(2) The Transaction meets all the criteria for approval

76. The Transaction meets the requirements of section 36 of the CCAA, fulfills the *Soundair* factors, and is in the best interest of the stakeholders generally.

(b) The process leading to the proposed sale was reasonable in the circumstances and there is no concern as to its efficacy and integrity. The Company undertook significant efforts to obtain the best price and has not acted improvidently.

77. The Company and A&M, which has extensive knowledge of the Nelson Business and the financial marketplace and significant experience in mergers and acquisitions, completed a comprehensive SISF with the goal of maximizing value for the Company's stakeholders.

Mullett Affidavit at paras. 16 and 30; Sale Approval Motion Record, Tab 2.

May Nordal Affidavit at para. 178; Application Record, Tab 2.

78. The Monitor's review of the SISP confirms this. The Monitor has reported that the design of the SISP was typical of such marketing processes and consistent with processes that have been approved by the courts in many CCAA proceedings, was undertaken in a thorough and professional manner, and that there is no reason to believe that the SISP, or its prospects of success, were adversely influenced by the First Lien Lenders or that there was any intention or motive of the First Lien Lenders, the Company or its advisors to achieve a result that was not the highest and best offer for the Nelson Business.

Monitor's Second Report at paras. 62 and 78-79.

(c) The Monitor's approval of the process

79. While the SISP was carried out in advance of the commencement of the CCAA Proceedings to minimize disruption to the business, it had been developed on the basis as if such process would have been conducted under a CCAA process.

Mullett Affidavit at para. 31; Sale Approval Motion Record, Tab 2.

Monitor's Second Report at paras. 78 and 125.

80. The Monitor has investigated the design, implementation and conduct of the SISP and has considered the SISP in light of principles of leading decisions regarding Court-approved sales of assets. It is satisfied the process was fair, transparent and reasonable in the circumstances.

Monitor's Second Report at para. 124.

(d) The Monitor believes the Transaction is more beneficial to the Company's creditors than a liquidation

81. In the Monitor's Second Report, the Monitor has concluded that there is no reasonable possibility that the liquidation value of the Company's assets is greater than the amount realized under the Transaction, that is the amount owing to the First Lien Lenders.

Monitor's Second Report at para. 92.

82. Indeed, in addition of satisfying the First Lien Lenders' debt, the Transaction provides for the assumption by the Purchaser of substantially all of the Company's trade payables, contractual obligations and employment obligations incurred in the ordinary course and as reflected in the Company's balance sheet, as well as for offers of employment to all of the Company's employees, providing a recovery that may not be available in other circumstances.

Monitor's Second Report at paras. 132-133.

83. The Monitor is of the view that the Transaction represents the best available outcome for all stakeholders and is not prejudicial to the creditors owed Excluded Liabilities.

Monitor's Second Report at para. 136.

(e) Creditors were consulted, the interests of all parties have been considered and there has been no unfairness in the working out of the process

84. The Company, with the assistance of its advisors, explored a variety of transaction alternatives with the Second Lien Agent and the First Lien Steering Committee in an effort to achieve a transaction that would address the Company's obligations under its Credit Agreements on a consensual basis and protect value.

Mullett Affidavit at paras. 2 and 21; Sale Approval Motion Record, Tab 2.

May Nordal Affidavit at para. 7; Application Record, Tab 2.

85. The Company consulted with the First Lien Steering Committee in connection with the development of the SISF, provided periodic updates throughout the process to the First Lien Steering Committee, and provided verbal updates to RBC during the SISF.

Mullett Affidavit at para. 31; Sale Approval Motion Record, Tab 2.

Monitor's Second Report at paras. 126-127.

86. The Monitor has reported that further consultation with the Second Lien Lenders would not have resulted in a better outcome.

Monitor's Second Report at para. 131.

(f) The Effect of the Transaction on the Company's stakeholders is positive

87. The Transaction has the support of the Consenting First Lien Lenders.

Mullett Affidavit at para. 28; Sale Approval Motion Record, Tab 2.

May Nordal Affidavit at paras. 8 and 94; Application Record, Tab 2.

88. The Transaction also provides for the assumption of substantially all of the Company's trade payables, contractual obligations and employment obligations incurred in the ordinary course and as reflected in the Company's balance sheet, as well as offers of employment to all of the Company's employees, providing a recovery that may not be available in other circumstances.

Monitor's Second Report at paras. 132-133.

89. The completion of the Transaction will allow for the continuation of the Nelson Business under new ownership with a better capital structure therefore continuing to benefit customers, suppliers, authors and employees.

Mullett Affidavit at para. 67; Sale Approval Motion Record, Tab 2.

90. While creditors owed Excluded Liabilities under the Transaction, including the Second Lien Lenders and certain former employees, will not receive recovery on outstanding amounts owing to them under the Transaction, there is no reasonable prospect of any alternative solution that would provide a recovery for those creditors, all of whom rank subordinate to the First Lien Lenders. The value of the Company's assets and prospects is simply insufficient to realize a recovery for these creditors.

Monitor's Second Report at para. 134.

91. The Monitor is of the view that the Transaction represents the best available outcome for all stakeholders and is not prejudicial to the creditors owed Excluded Liabilities.

Monitor's Second Report at para. 136.

(g) *The consideration to be received for the assets is reasonable and fair taking into account the market value of the assets*

92. The Monitor has reported that:

- (a) the SISP was a thorough market test and can be relied upon to establish that there is no value beyond the obligations owing to the First Lien Lenders;

Monitor's Second Report at paras. 14, 79-80 and 101.

- (b) the results of the SISP indicate that the consideration under the Transaction is fair and reasonable in the circumstances;

Monitor's Second Report at para. 137.

- (c) there are no significant operational improvements reasonably available that would materially improve profitability in the short-term such that the value of the Nelson Business would increase to the extent necessary to repay the First Lien Debt and accordingly there is no apparent benefit from delaying the sale of the business.

Monitor's Second Report at paras. 15 and 115.

93. The Transaction is the only realistic alternative available to preserve the Nelson Business and provide maximum recovery to the First Lien Lenders, who are the creditors "in sole economic interest." The Monitor has concluded that there is no realistic prospect that the company could obtain a new source of financing sufficient to repay the First Lien Lenders, that there is no reasonable prospect of a new sale process generating a transaction at a value in excess of the First Lien Debt, that there is no reasonable possibility that the liquidation value of the Company's assets is greater than the amount

owing to the First Lien Lenders, and that an alternative debt restructuring that might create value for the Second Lien Lenders is not a viable alternative at this time.

Monitor's Second Report at paras. 15, 92, 97, 99 and 104

94. A court must give "due consideration" to both the business judgment rule and the recommendation of the Monitor in deciding whether a sale should be approved. Gascon J. (as he then was) observed that a "court will not lightly interfere with the exercise of this commercial and business judgment in the context of an asset sale where the marketing process was fair, reasonable, transparent and efficient."

AbitibiBowater Inc., Re, 2010 QCCS 1742 at paras. 70-71; Book of Authorities, Tab S.

See also *Bloom Lake, supra* at paras. 28 and 60; Book of Authorities, Tab M.

95. After considering the results of the SISP, the circumstances of the Applicants, the status of the Nelson Business and the benefits to the Applicants' stakeholders, the Applicants determined that proceeding with the Transaction under the terms and conditions of the Asset Purchase Agreement is in the best interests of the Applicants and their stakeholders. The Monitor's support for the Transaction, and the reasons it has given, show that such a judgment is reasonable.

Mullett Affidavit at para. 53; Sale Approval Motion Record, Tab 2.

Monitor's Second Report at paras. 124, 136 and 138.

B. THE TERMS OF THE APPROVAL AND VESTING ORDER ARE FAIR AND REASONABLE

(1) The CCAA Authorizes the Issuance of a Vesting Order in the Circumstances

96. The Applicants seek an Order from this Court vesting all of Nelson Education's right, title and interest in and to the Purchased Assets in the Purchaser, free and clear of all interests, liens, charges and encumbrances, other than the permitted encumbrances and assumed liabilities contemplated in the Asset Purchase Agreement. The Court has the jurisdiction to make such an Order pursuant to Section 36(6) of the CCAA:

CCAA, Section 36(6).

97. Pursuant to Section 36(7) of the CCAA, “[t]he court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement.” (It has been noted that the reference to paragraph 6(4)(a) in Section 36(7) should be to paragraph 6(6)(a).) These payments consist of certain payments to employees in the case of Section 6(5)(a) and in respect of certain pension contribution amounts in the case of Section 6(6)(a).

CCAA, Section 36(7).

Re Canwest Global Communications, 2009 CarswellOnt 7169 (Sup. Ct. J. [Commercial List]) at para. 28, FN 2; Book of Authorities, Tab T.

98. The Transaction complies with Section 36(7) of the CCAA. It contemplates that the Purchaser will offer employment to all existing employees of the Company, assume employment obligations incurred in the ordinary course and assume the Company’s pension plans. Accordingly, such obligations are unaffected by the Transaction and the requirements of Section 6(5)(a) and Section 6(6)(a) are satisfied.

CCAA, Sections 6(5)(a) and 6(6)(a).

May Nordal Affidavit at para. 10; Application Record, Tab 2.

99. The Applicants understand that RBC is seeking certain relief providing for the payment of certain amounts to RBC as a condition to closing of the Transaction. As further discussed in the companion factum opposing RBC’s motion, the Company does not believe that RBC is entitled to such payments in the circumstance and does not believe that any such conditions to the completion of the Transaction ought to be imposed.

(2) The Further Ancillary Relief Requested is Appropriate

100. Pursuant to s. 11 of the CCAA, this Court may make any order that it considers appropriate in the circumstances in order to achieve the CCAA objectives. For the

reasons stated below, the Applicants submit that the further ancillary relief described below falls within this broad power.

CCAA, Section 11.

Re Nortel Networks Corporation et al, 2014 ONSC 4777 at paras. 53-55; Book of Authorities, Tab U.

101. This Court has the authority and jurisdiction necessary to depart from the Model Order (for sale approvals) as reasonable and necessary to achieve a successful restructuring. The Applicants submit that, for the reasons stated below, the amendments they seek to the Model Approval and Vesting Order are reasonable and are necessary to conform it to the terms of the Asset Purchase Agreement.

Re Cinram International Inc., 2012 ONSC 3767, 91 C.B.R. (5th) 46 at para. 37 and Sch. C, paras. 59-60 (Commercial List); Book of Authorities, Tab V.

(b) Payment of Amounts to First Lien Lenders

102. As conditions to the completion of the Transaction, the Company must have paid all accrued and unpaid interest owing to the First Lien Lenders and all unpaid professional fees of the First Lien Agent and the First Lien Lenders outstanding under the First Lien Credit Agreement.

First Lien Support Agreement, s. 5 and Sch. A, Term Sheet, s. V, pp. 6-7, Exhibit "G" to the May Nordal Affidavit; Application Record, Tab 2G.

103. In the June 2, 2015 Endorsement in connection with the Comeback Hearing, the Court found that, on the basis of the evidence before it, there was no justification for the Company to be paying all of the interest, costs and expenses of the First Lien Lenders while it was not paying such amounts to the Second Lien Lenders.

Nelson Education, supra at para. 47; Book of Authorities, Tab A.

Nelson Education Limited (Re), Amended and Restated Initial Order dated June 8, 2015, Court File No. CV15-10961-00CL at para. 8 (Ont. Sup. Ct.); Book of Authorities, Tab W.

104. At the time of the Comeback Hearing, the Sale Approval Motion Record, the Monitor's Second Report, the Credit Reports of RBC and evidence on cross-examination of the RBC witness, Les Vowell, were not yet before the Court.

105. As discussed above, the Monitor's Second Report confirms that there is no value available to the Second Lien Lenders, and that the Transaction represents the best available outcome for all stakeholders and is not prejudicial to the creditors owed Excluded Liabilities.

Monitor's Second Report at paras. 14(h), 15-16 and 136.

106. It is clear from the Credit Reports of RBC that the Second Lien Agent expected the Company to continue to pay interest and fees to the First Lien Lenders but not to the Second Lien Lenders. In March of 2014, RBC was simply hoping to "squeeze[e] out one more payment" on the Second Lien Credit Agreement.

E-mail from Raymond Chang to Les Vowell dated March 26, 2014, Exhibit 7 to the Vowell Cross-Examination.

Credit Report dated January 15, 2014, Tab B of Exhibit 1 to the Vowell Cross-Examination.

107. The Intercreditor Agreement provides that the claims of the First Lien Lenders rank in priority to the claims of the Second Lien Lenders and that as long as the First Lien Debt remains outstanding, whether or not an insolvency proceeding has been commenced, any proceeds from the sale of the Collateral (as defined in the Intercreditor Agreement) shall be first applied to satisfaction of the obligations under the First Lien Credit Agreement.

Intercreditor Agreement, ss. 2.1 and 4.1, Exhibit "F" to the May Nordal Affidavit; Application Record, Tab 2F.

108. The First Lien Lenders are contractually entitled to the payments sought, in priority to other creditors, including, pursuant to the Intercreditor Agreement, the Second Lien

Lenders.¹⁰ While the Second Lien Agent held out the prospect of some greater value at the comeback hearing as a basis for “equal treatment” of both groups of lenders, it is now clear that there is no basis for that hope. RBC’s own internal analysis (not disclosed to the Court) dating back to March 2014 indicated insufficient value to repay the Second Lien Credit Agreement and dating back to April 2015 indicated insufficient value to repay even the First Lien Credit Agreement in full under various valuation scenarios, exactly what the SISP and the Monitor have confirmed. Despite Mr. Vowell having denied working with or sharing his analysis with RBC’s financial advisors, the credit reports in which such valuations appear indicate otherwise: “*Working with CDG, estimated 2nd lien recoveries were calculated on the business plan prepared by the company. While all scenarios showed a recovery in 5-years, the sale of the company or refinancing we yield no value for the 2nd lien.*”

Vowell Cross-Examination, pp. 159-161, Q. 561-569.

Credit Report dated March 31, 2014 and Credit Report dated April 15, 2015, Tabs E and K, respectively, of Exhibit 1 to the Vowell Cross-Examination.

109. It is appropriate now to reinstate the authority under the Initial Order for the Applicants to make payments to the First Lien Lenders in respect of the amounts owing to them under the First Lien Credit Agreement. The payments are necessary to allow the Transaction to proceed and do not prejudice the Second Lien Lenders as they do not represent value otherwise available to them.

(c) *Stockholders and Registration Rights Agreement*

110. The Applicants seek to have the Stockholders and Registration Rights Agreement declared effective and binding on all persons entitled to receive common shares of Purchaser Holdco in connection with the Transaction as though such persons were signatories to the Stockholders and Registration Rights Agreement.

¹⁰ Given the First Lien Lenders’ position as the Company’s primary secured creditors, this is not a case in which concerns about *pari passu* treatment of unsecured creditors require that interest stop accruing on the filing date (see *Re Nortel Networks Corporation et al*, 2014 ONSC 4777).

111. The First Lien Term Sheet provides that corporate governance and shareholder agreements acceptable to the Purchaser and the First Lien Steering Committee be entered into in connection with the Transaction as a condition of the Transaction. The Stockholders and Registration Rights Agreement was negotiated and agreed to by Purchaser Holdco and the First Lien Steering Committee, and is part of the implementation of the overall Transaction. The First Lien Steering Committee requires that all of the First Lien Lenders be bound to the terms of the Stockholders and Registration Rights Agreement.

Support Agreement, Sch. A, First Lien Term Sheet, s. V, p. 7, Exhibit "G" to the May Nordal Affidavit; Application Record, Tab 2G.

May Nordal Affidavit at paras. 121 and 123; Application Record, Tab 2.

112. RBC may choose to align its position on this motion with its interest as a Second Lien Lender, but the Court can grant relief in the interests of the First Lien Lenders, including RBC where it is inherently conflicted and its conflict is negatively affecting the interests of the other First Lien Lenders.

Vowell Cross-Examination, pp. 27-28, Q. 88.

113. The Applicants submit that, in connection with the approval of the Transaction, it is appropriate to grant the requested relief in the circumstances. Similar relief has previously been granted in a CCAA proceeding and in the context of an arrangement under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44.

Re Skylink Aviation Inc., Plan Sanction Order granted April 23, 2013, Court File No. 13-1003300-CL at para. 17; Book of Authorities, Tab X.

Re 7588674 Canada Inc., Gateway Casinos & Entertainment Inc. and Gateway Casinos & Entertainment Limited, Final Order granted August 16, 2010, S-105095 (BC SC) at para. 9; Book of Authorities, Tab Y.

May Nordal Affidavit at paras. 121 and 124; Application Record, Tab 2.

(d) *Mutual Releases*

114. The First Lien Term Sheet requires usual and customary mutual releases for transactions of this nature.

May Nordal Affidavit at para. 120; Application Record, Tab 2.

First Lien Support Agreement, Sch. A, First Lien Term Sheet, s. V, p. 8, Exhibit "G" to the May Nordal Affidavit; Application Record, Tab 2G.

115. The Applicants submit that it is appropriate for this Court to grant the Release as a term of the Approval and Vesting Order. The Release is a limited release for parties relating to the Transaction, was negotiated within the framework of the First Lien Support Agreement and is rationally related to the Transaction. The Released Parties release each other from claims in connection with Nelson, the Nelson Business, the Sale Agreement, the Transaction, these proceedings, the First Lien Support Agreement, the Supplemental Support Agreement, the Payment and Settlement Agreement, the First Lien Credit Agreement and the other Loan Documents or the transactions contemplated by them. Released Parties are not released from their other obligations or from claims of fraud. The Release also does not deal with the Second Lien Credit Agreement or the Second Lien Lenders. The Release is fair and reasonable and not overly broad. Much broader releases extending to claims of third parties have been granted in other cases.

Draft Approval and Vesting Order at para. 16; Sale Approval Motion Record, Tab 3.

ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp. (2008), 45 C.B.R. (5th) 163 (Ont. C.A.) at paras. 70-71 and 113; leave to appeal refused (2008), 257 O.A.C. 400 (SCC); Book of Authorities, Tab Z.

116. Similar releases have been granted in the context of sale transactions.

Re Mobilicity, Vesting Order granted June 29, 2015, Court File No. CV-13-10274-00CL at para. 18 and Sch. C; Book of Authorities, Tab AA.

Re Canwest Publishing Inc., Conditional Credit Acquisition Sanction, Approval and Vesting Order granted May 17, 2010 at paras. 43-44, Court file No. CV-10-8533-00CL; Book of Authorities, Tab BB.

117. All of the First Lien Lenders other than RBC are supportive of the proposed releases. RBC has confirmed that it is not aware of any claims that it might wish to preserve by its objection to the releases, other than the ones in RBC's motion returnable August 13, 2015, that it has against the Applicants or its officers, directors, employees, or advisors. The claims raised in RBC's motion will be addressed at such motion and will either be ordered paid or not in advance of the Effective Date of the Transaction and the releases so there is no principled reason for RBC's objection.

Vowell Cross-Examination, p. 15, Q. 44.

118. To the contrary, RBC was previously prepared to agree to similar releases contained in the July Support Agreement in connection with the transaction under the July Term Sheet (a transaction that RBC supported), which were contemplated to have been effectuated either by way of separate releases executed by consenting lenders or by a Court order had such transaction proceeded. Thus, the principle of Court-ordered releases in the context of a transaction cannot be objectionable to RBC.

Vowell Cross-Examination, p. 35, Q. 115-116.

(e) Change to Title of Proceedings

119. Section 5.5 of the Asset Purchase Agreement provides for Nelson Education to take, and cause Holdings to take, all reasonably necessary action to change its name to a name that does not contain the words "Nelson" or "Education".

Asset Purchase Agreement, s. 5.5, Exhibit "B" to the Mullett Affidavit; Sale Approval Motion Record, Tab 2B.

120. Accordingly, the requested Approval and Vesting Order includes a provision providing for a change in the title of the within proceedings to refer to the changed legal names of the Applicants. That provision would take effect upon the official change of the legal names of the Applicants, which is to occur only once the Transaction has closed.

Draft Approval and Vesting Order at para. 15; Sale Approval Motion Record, Tab 3.

121. This Court has previously granted an Order changing the title of proceedings within the context of a sale of the Applicants' business.

Elleway Acquisitions Limited v. The Cruise Professionals Limited, 4358376 Canada Inc. (Operating as ITravel2000.com) and 7500106 Canada Inc., Order granted December 4, 2013, CV-13-10320-00CL at para. 1 (Ont. Sup. Ct. J. [Commercial List]); Book of Authorities, Tab CC.

Re Cinram International Inc., Administrative Reserve/Distribution/Transition Order granted October 19, 2012, Toronto CV12-9767-00CL at para. 31 (Ont. Sup. Ct. J. – Commercial List); Book of Authorities, Tab DD.

Armtec Approval and Vesting Order, *supra* at para. 11; Book of Authorities, Tab I.

122. In order to address Section 5.5 of the APA, the Applicants submit that it is appropriate for this Court to order that the title of proceedings be changed in this manner upon the official change of the legal names of the Applicants.

PART IV – RELIEF REQUESTED

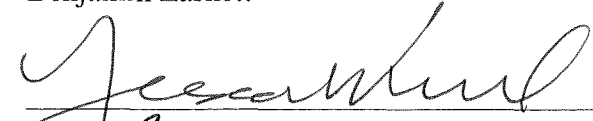
123. Based on all of the circumstances, the Applicants believe that the Transaction is fair and reasonable and in the best interests of the Company and its stakeholders.
124. For the reasons set out above, the Applicants request that this Court approve the Transaction and grant the Approval and Vesting Order in the form requested.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

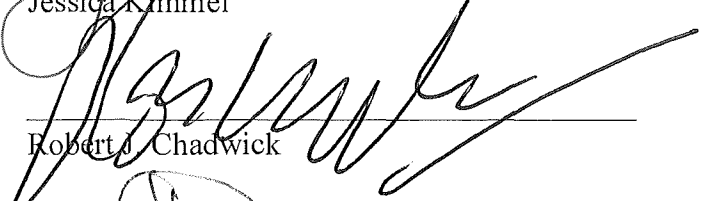
August 11, 2015




Benjamin Zarnett



Jessica Kimmel



Robert J. Chadwick



Caroline Descours

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Nelson Education Limited (Re)*, 2015 ONSC 3580
2. *Re Nortel Networks Corp.* (2009), 55 C.B.R. (5th) 229 (Ont. Sup. Ct. J. [Commercial List])
3. *Re Brainhunter Inc.*, 2009 CarswellOnt 7627 (Sup. Ct. J. [Commercial List])
4. *Re Brainhunter Inc.* (2009), 62 C.B.R. (5th) 41 (Ont. Sup. Ct. J. [Commercial List])
5. *Re White Birch Paper Holding Co.* (2010), 72 C.B.R. (5th) 49 (Que. Sup. Ct.)
6. *Royal Bank v. Soundair Corp.* (1991), 83 D.L.R. (4th) 76 (Ont. C.A.)
7. *Re Nortel Networks Corp.* (2009), 56 C.B.R. (5th) 224 (Ont. Sup. Ct. J. [Commercial List])
8. *Re Canwest Publishing Inc./Publications Canwest Inc.* (2010), 68 C.B.R. (5th) 233 (Ont. Sup. Ct. J. [Commercial List])
9. *Re Armtec Infrastructure Inc.*, Approval and Vesting Order granted May 11, 2015, Court File No. CV15-10950-00CL (Ont. Sup. Ct. J.)
10. *Re Cinram International Inc.*, Approval and Vesting Order granted July 12, 2012, Court File No. CV12-9767-00CL (Ont. Sup. Ct.)
11. *Maax Corporation et al., Re*, Sale and Vesting Order granted July 10, 2008, Court File No. 500-11-033561-081 (Que. Sup. Ct. [Commercial Division])
12. *Re Extreme Fitness, Inc.*, Endorsement dated March 27, 2013, Court File No. CV-13-10000-00CL (Ont. Supt. Ct. J.)
13. *Bloom Lake General Partner Ltd., et al., Re*, 2015 QCCS 1920
14. *Elleway Acquisitions Ltd. v. 4358376 Canada Inc.*, 2013 ONSC 7009
15. *Re Tool-Plas Systems Inc.*, 2008 CanLII 54791 (Ont. Sup. Ct. J. [Commercial List])
16. *Montrose Mortgage Corp. v. Kingsway Arms Ottawa Inc.*, 2013 ONSC 6905 (Commercial List)
17. *Karrys Bros. Ltd. (Re)*, 2014 ONSC 7465
18. *Fund 321 Ltd. Partnership v. Samsys Technologies Inc.*, 2006 CarswellOnt 2541, 21 C.B.R. (5th) 1 (Sup. Ct. J. [Commercial List])

19. *AbitibiBowater Inc., Re*, 2010 QCCS 1742
20. *Re Canwest Global Communications*, 2009 CarswellOnt 7169 (Sup. Ct. J. [Commercial List])
21. *Re Nortel Networks Corporation et al*, 2014 ONSC 4777
22. *Re Cinram International Inc.*, 2012 ONSC 3767, 91 C.B.R. (5th) 46 (Commercial List)
23. *Nelson Education Limited (Re)*, Amended and Restated Initial Order dated June 8, 2015, Court File No. CV15-10961-00CL (Ont. Sup. Ct.)
24. *Skylink Aviation Inc., Re*, Plan Sanction Order granted April 23, 2013, Court File No. 13-1003300-CL
25. *7588674 Canada Inc., Gateway Casinos & Entertainment Inc. and Gateway Casinos & Entertainment Limited, Re*, Final Order granted August 16, 2010, S-105095 (BC SC)
26. *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 45 C.B.R. (5th) 163 (Ont. C.A.); leave to appeal refused (2008), 257 O.A.C. 400 (SCC)
27. *Re Mobilicity*, Vesting Order granted June 29, 2015, Court File No. CV-13-10274-00CL
28. *Re Canwest Publishing Inc.*, Conditional Credit Acquisition Sanction, Approval and Vesting Order granted May 17, 2010, Court file No. CV-10-8533-00CL
29. *Elleway Acquisitions Limited v. The Cruise Professionals Limited, 4358376 Canada Inc. (Operating as ITravel2000.com) and 7500106 Canada Inc.*, Order granted December 4, 2013, CV-13-10320-00CL (Ont. Sup. Ct. J. [Commercial List])
30. *Re Cinram International Inc.*, Administrative Reserve/Distribution/Transition Order granted October 19, 2012, Toronto CV12-9767-00CL (Ont. Sup. Ct. J. – Commercial List)

**SCHEDULE “B”
STATUTORY REFERENCES**

***COMPANIES’ CREDITORS ARRANGEMENT ACT*
R.S.C. 1985, c. C-36**

s. 6(5)

Restriction – employees, etc. – The court may sanction a compromise or an arrangement only if:

(a) the compromise or arrangement provides for payment to the employees and former employees of the company, immediately after the court’s sanction, of:

(i) amounts at least equal to the amounts that they would have been qualified to receive under paragraph 136(1)(d) of the *Bankruptcy and Insolvency Act* if the company had become bankrupt on the day on which proceedings commenced under this Act, and

(ii) wages, salaries, commissions or compensation for services rendered after proceedings commence under this Act and before the court sanctions the compromise or arrangement, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the company’s business during the same period; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

s. 6(6)

Restriction – pension plan – If the company participates in a prescribed pension plan for the benefit of its employees, the court may sanction a compromise or an arrangement in respect of the company only if

(a) the compromise or arrangement provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

(i) an amount equal to the sum of all amounts that were deducted from the employees’ remuneration for payment to the fund,

(ii) if the prescribed pension plan is regulated by an Act of Parliament,

(A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that was required to be paid by the employer to the fund, and

(B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*,

(C) an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the *Pooled Registered Pension Plans Act*, and

(iii) in the case of any other prescribed pension plan,

(A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(B) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, if the prescribed plan were regulated by an Act of Parliament,

(C) an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the *Pooled Registered Pension Plans Act*; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

s.11

General power of court – Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

s. 36(1)

Restriction on disposition of business assets – A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

s. 36(3)

Factors to be considered – In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

s. 36(6)

Assets may be disposed of free and clear – The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

s. 36(7)

Restriction – employers – The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement.

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

Court File No: CV15-10961-00CL

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

**FACTUM OF THE APPLICANTS
(Sale Approval Motion
returnable August 13, 2015)**

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