

**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  
(Motion for an Amended and Restated Initial Order  
returnable June 8, 2015)**

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PART I – INTRODUCTION

1. On May 12, 2015, the Court granted an Initial Order (the “**Initial Order**”), *inter alia*, granting a stay of proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) in respect of the Applicants until June 10, 2015 (the “**Stay Period**”).<sup>1</sup>

Affidavit of Greg Nordal sworn June 3, 2015 (the “**Nordal Affidavit**”) at para. 2; Motion Record of the Applicants returnable June 8, 2015 (the “**Motion Record**”), Tab 4.

2. This factum is filed in support of the Applicants’ request for an extension of the Stay Period until and including July 17, 2015.

Nordal Affidavit at para. 2; Motion Record, Tab 4.

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<sup>1</sup> Any capitalized terms that are not defined herein shall have the meanings ascribed to them in the Affidavit of Greg Nordal sworn May 11, 2015 (the “**May Affidavit**”), included (without exhibits) in the Motion Record at Tab 5.

## PART II – THE FACTS

### A. BACKGROUND

3. The Applicants' activities since the Initial Order include the following:

- (a) on May 13, 2015, the Applicants provided letters to their employees to inform them of the CCAA proceedings and the Transaction, and senior management held a town hall meeting to inform employees of the CCAA proceedings and to explain the rationale for the proceedings and the anticipated impact on employees and other stakeholders;
- (b) on May 13, 2015, the Applicants updated Nelson Education's internal and external websites to include information for employees and stakeholders, respectively, about the CCAA proceedings and the Transaction and the anticipated impact of the CCAA proceedings on the Company's stakeholders;
- (c) on June 2 and 3, 2015, the Applicants updated Nelson Education's internal and external websites to provide updated information with respect to the Monitor and the new website for the Monitor;
- (d) the Applicants and their advisors have responded to various inquiries from stakeholders regarding the effect of the CCAA proceedings and the Transaction;
- (e) the Applicants and their advisors have been working to review with the Monitor matters relating to Transaction, which remains subject to the approval of the Court;
- (f) the Applicants and their advisors have been discussing and working with the Monitor, the First Lien Steering Committee and RBC, and their respective advisors, to address matters raised at the Initial Application Hearing and the Comeback Hearing and other matters;
- (g) the Applicants and their advisors have been working with the Monitor and its counsel to provide information and materials in connection with the Company,

the Nelson Business, the Applicants' cash flows, the SISP and the proposed Transaction;

- (h) in accordance with the Initial Order, the Applicants have continued to pay expenses and satisfy obligations incurred in the ordinary course of business; and
- (i) the Applicants have continued to operate and manage the Nelson Business and fulfill ongoing contracts in the ordinary course.

Nordal Affidavit at para. 5; Motion Record, Tab 4.

**B. THE STAY PERIOD**

- 4. Since the issuance of the Initial Order, the Applicants and their advisors have continued to act diligently and in good faith in respect of all matters relating to the CCAA proceedings, including steps taken in furtherance of the Transaction.

Nordal Affidavit at para. 6; Motion Record, Tab 4.

- 5. There are several matters that remain to be addressed in the CCAA proceedings, including:
  - (a) continuing to work with FTI as Monitor in these CCAA proceedings;
  - (b) reviewing matters relating to the Transaction with the Monitor;
  - (c) continuing to work with stakeholders in connection with matters related to the Applicants and these proceedings;
  - (d) continuing to respond to and address stakeholder inquiries; and
  - (e) continuing to manage and operate the Nelson Business in the ordinary course.

Nordal Affidavit at para. 7; Motion Record, Tab 4.

6. The Stay Period granted in the Initial Order covered the period from the date of the Initial Order until and including June 10, 2015. The Applicants are requesting an extension of the Stay Period to and including July 17, 2015.

Nordal Affidavit at para. 8; Motion Record, Tab 4.

7. The Applicants believe that it is important for the Company to complete the Transaction as soon as possible.

Nordal Affidavit at para. 9; Motion Record, Tab 4.

8. The Applicants are discussing and reviewing their cash flow forecast with their financial advisor and the Monitor based on the current status of outstanding matters. The Monitor will file a copy of the Applicants' cash flow forecast with the First Report of the Monitor, to be filed in connection with this motion.

Nordal Affidavit at para. 10; Motion Record, Tab 4.

**C. FURTHER FACTUAL BACKGROUND**

9. The facts relating to the requested relief are more fully set out in the Nordal Affidavit.

**PART III – ISSUES AND THE LAW**

**A. EXTENSION OF THE STAY PERIOD**

10. Section 11.02(2) of the CCAA states:

A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

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

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

CCAA, Section 11.02(2).

11. In order to make an order pursuant to Section 11.02(2), the Court must be satisfied that:
- (i) circumstances exist that make the order appropriate; and
  - (ii) the applicant has acted, and is acting, in good faith and with due diligence.

CCAA, Section 11.02(3).

12. The Applicants submit that an Order extending the Stay Period to and including July 17, 2015 is appropriate in the circumstances because:

- (a) the Applicants and their advisors have been discussing and working with the Monitor, the First Lien Steering Committee and RBC, and their respective advisors, to address matters raised at the Initial Application Hearing and the Comeback Hearing and other matters;
- (b) the Applicants and their advisors have been working to review with the Monitor matters relating to the Transaction, which remains subject to the approval of the Court;
- (c) the extension of the Stay Period to July 17, 2015 is necessary in order to, among other things, enable the Applicants to continue to manage and operate the Nelson Business in the ordinary course and continue to review matters relating to the Transaction with the Monitor;
- (d) the Applicants are discussing and reviewing their cash flow forecast with their financial advisor and the Monitor based on the current status of outstanding matters, and expect to have sufficient funds to continue operating in the ordinary course through the extended Stay Period;
- (e) creditors will not suffer any material prejudice if the Stay Period is extended; and

- (f) the Monitor is supportive of the Applicants' requested extension of the Stay Period.

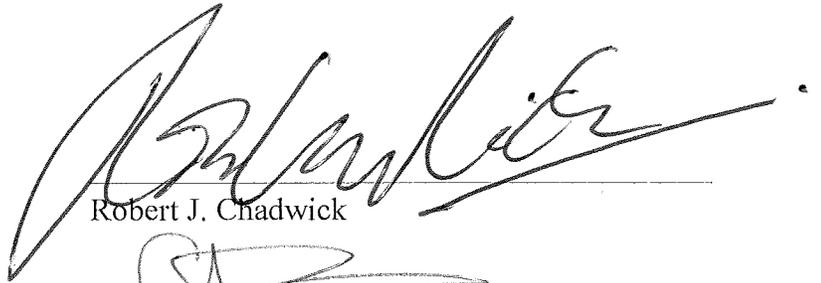
Nordal Affidavit at paras. 4 and 6-9; Motion Record, Tab 4.

**PART IV – ORDER REQUESTED**

For the reasons set out above, the Applicants submit that it is appropriate for this Court to extend the Stay Period to and including July 17, 2015, and respectfully request that this Court grant the requested Amended and Restated Initial Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

June 4, 2015

A large, stylized handwritten signature in black ink, appearing to read 'R. Chadwick', written over a horizontal line.

Robert J. Chadwick

A smaller, stylized handwritten signature in black ink, appearing to read 'C. Descours', written over a horizontal line.

Caroline Descours

**SCHEDULE “A”  
STATUTORY REFERENCES**

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

s.11.02(2)

*Stays, etc. — other than initial application* – A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

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

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

s.11.02(3)

*Burden of proof on application* – The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

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Court File No: CV15-10961-00C]

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Proceeding commenced at Toronto

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