

**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

**MOTION RECORD  
(Returnable September 29, 2015)**

**GOODMANS LLP**

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SUPERIOR COURT OF JUSTICE**

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# TAB 1

**ONTARIO  
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Applicants

**NOTICE OF MOTION  
(Returnable September 29, 2015)**

The Applicants will bring a motion before the Honourable Justice Newbould on September 29, 2015, at 9:30 a.m. or as soon before or after that time as the matter may be heard at 330 University Avenue, Toronto, Ontario.<sup>1</sup>

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**1. THE APPLICANTS MAKE A MOTION FOR AN ORDER:**

- (a) abridging the time for and validating the service of this Notice of Motion and the Motion Record and dispensing with further service thereof;
- (b) approving the Cash Management Services Transition Agreement (as defined below);
- (c) extending the Stay Period (as defined below) to December 15, 2015; and
- (d) such further and other relief as this Court deems just.

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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, attached as Tab 2 to the Application Record of the Applicants, filed.

2. **THE GROUNDS FOR THE MOTION ARE:**

- (a) on May 12, 2015, the Applicants commenced these proceedings pursuant to the CCAA and this Court granted an Order (the “**Initial Order**”), *inter alia*, (i) granting a stay of proceedings under the CCAA in respect of the Applicants until June 10, 2015 (the “**Stay Period**”), which Stay Period has been subsequently extended by Orders of this Court to September 30, 2015;
- (b) on August 13 and August 27, 2015, this Court heard a motion of the Applicants seeking Court approval of the proposed Transaction (the “**Sale Approval Motion**”);
- (c) on September 8, 2015, this Court issued an Endorsement in respect of the Sale Approval Motion, among other things, directing that an Order be granted approving the Transaction and, on closing of the Transaction, 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 Purchase Agreement (the “**Sale Approval Decision**”);
- (d) since the Initial Order, the Applicants have acted and continue to act in good faith and with due diligence in carrying out the terms of the Orders of this Court and in respect of all matters relating to the CCAA proceedings;
- (e) since the Sale Approval Motion, the Applicants have been working diligently with the Purchaser and its advisors to implement the Transaction and are working to complete the Transaction by the end of September 2015 (with closing effective October 1, 2015);
- (f) the Applicants require an extension of the Stay Period to December 15, 2015 to, among other things, (i) attend to the necessary corporate and commercial steps required to implement the Transaction; (ii) continue to work with stakeholders in connection with matters related to the Applicants and these proceedings; (iii) address various post-closing matters, including final tax returns and other filings

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related to employee taxes or other remittances; and (iv) attend to the orderly termination of these CCAA proceedings and the discharge of the Monitor;

- (g) under the Purchase Agreement, on closing of the Transaction, the Applicants will retain a cash reserve of \$1.15 million post-closing (the “**Cash Reserve**”) to complete post-closing and CCAA matters, and any funds remaining in the Cash Reserve on the earlier of the wind-down of the Company or 18 months from the closing of the Transaction are required to be returned to the Purchaser pursuant to the Purchase Agreement and the Approval and Vesting Order;
- (h) the Cash Reserve is expected to provide sufficient funding for the Applicants during the proposed extension of the Stay Period beyond the closing of the Transaction;
- (i) in connection with the Cash Management System, pursuant to the Amended and Restated Initial Order dated June 8, 2015 (the “**Amended and Restated Initial Order**”), the Court granted a charge (the “**Cash Management Charge**”) in favour of RBC, in its capacity as provider of the Cash Management System, on the Property (as defined in the Amended and Restated Initial Order) of the Applicants as security for any obligations of the Applicants to RBC that may arise in connection with RBC’s provision of the Cash Management System;
- (j) pursuant to the Sale Approval Decision, on closing of the Transaction, all of Nelson Education’s right, title and interest in and to the purchased assets under the Purchase Agreement (including the cash in the Company’s bank accounts) shall vest in the Purchaser free and clear of all interests, liens, charges (including the Cash Management Charge) and encumbrances, other than the permitted encumbrances and assumed liabilities contemplated in the Purchase Agreement;
- (k) accordingly, the Applicants, RBC, in its capacity as provider of the Cash Management System, the Purchaser and Bank of Montreal, in its capacity as provider of cash management services to the Purchaser, intend to enter into an Agreement re: Transition of Cash Management Services (as may be amended, varied or supplemented pursuant to its terms, the “**Cash Management Services**”

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**Transition Agreement**”), in order to ensure the continuation of certain cash management, treasury and depository services for a period of ninety calendar days following the closing of the Transaction (the “**Final Transition Date**”), and the indemnification and reimbursement of RBC for the cash management services provided to Nelson Education prior to closing, and after closing until the Final Transition Date, all subject to the terms of the Cash Management Services Transition Agreement;

- (l) the provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
- (m) Rules 1.04, 1.05, 2.03, 3.02, 16, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (n) such further and other grounds as counsel may advise and this Court may permit.

**3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:**

- (a) the affidavit of Greg Nordal sworn September 24, 2015;
- (b) the Monitor’s Fifth Report and any appendices attached thereto, filed; and
- (c) such materials as counsel may advise and this Court may permit.

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Date: September 24, 2015

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TO: THE SERVICE LIST

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  
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Applicants

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

Court File No: CV15-10961-00C1

**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

**NOTICE OF MOTION  
(Returnable September 29, 2015)**

**GOODMANS LLP**

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# **TAB 2**

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Applicants

AFFIDAVIT OF GREG NORDAL  
(Sworn September 24, 2015)

I, Greg Nordal, of the City of Toronto, in the Province of Ontario, MAKE OATH AND  
SAY:

I. INTRODUCTION

1. I am the President and Chief Executive Officer of Nelson Education Ltd. ("**Nelson Education**" or the "**Company**")<sup>1</sup>, 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. I have been the President and Chief Executive Officer of Nelson Education since September 2008 and have been actively engaged in the discussions and negotiations surrounding the restructuring of Nelson Education. I am also a director on the board of directors of Nelson Education and a director on the board of directors of Nelson Education Holdings Ltd. ("**Holdings**" and collectively with Nelson Education, the "**Applicants**"), the sole shareholder of Nelson Education. Accordingly, I have

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<sup>1</sup> Any capitalized terms that are not defined herein shall have the meanings ascribed to them in the Nordal May Affidavit (as defined below).

knowledge of the matters deposed to herein. Where I have relied upon other sources of information, I have stated the source of that information and believe such information to be true.

2. This affidavit is sworn in support of the motion of the Applicants for an Order (i) approving the Cash Management Services Transition Agreement (as defined below), and (ii) extending the Stay Period (as defined below) to December 15, 2015.

## II. OVERVIEW

3. On May 12, 2015, the Applicants commenced these proceedings pursuant to the CCAA and this Court granted an Order (the “**Initial Order**”), *inter alia*, granting a stay of proceedings under the CCAA in respect of the Applicants until June 10, 2015 (the “**Stay Period**”), which Stay Period has been subsequently extended by Orders of this Court to September 30, 2015.

4. I swore an affidavit on May 11, 2015 in support of the Initial Order (the “**Nordal May Affidavit**”). The Nordal May Affidavit sets out comprehensive background information with respect to the Applicants, the Nelson Business, and the circumstances that resulted in these CCAA proceedings and the Transaction.

5. On August 13 and August 27, 2015, this Court heard a motion of the Applicants seeking Court approval of the proposed Transaction (the “**Sale Approval Motion**”).

6. On September 8, 2015, this Court issued an Endorsement in respect of the Sale Approval Motion, among other things, directing that an Order be granted approving the Transaction and, on closing of the Transaction, 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 Purchase Agreement (the “**Sale Approval Decision**”).

### **III. ACTIVITIES SINCE THE SALE APPROVAL MOTION**

7. The Applicants’ activities since the Sale Approval Motion include:

- (a) the Applicants have been working diligently with the Purchaser and its advisors to implement the Transaction and are working to complete the Transaction by the end of September 2015 (with closing effective October 1, 2015);
- (b) the Applicants and their advisors have responded to inquiries from various stakeholders, including customers, suppliers, employees and members of management, regarding the status of the CCAA proceedings and the Transaction;
- (c) the Applicants have continued paying their employees in the ordinary course;
- (d) the Applicants have continued to pay their suppliers and authors for goods, services and content, as applicable, contracted for and provided to the Applicants in the ordinary course; and
- (e) the Applicants have continued to manage and operate the Nelson Business in the ordinary course.

### **IV. CASH MANAGEMENT SERVICES**

8. As discussed in the Nordal May Affidavit, the Applicants’ Cash Management System is operated through its accounts held at RBC. The Applicants continue to use the existing Cash

Management System and to maintain the banking arrangements that were already in place prior to the commencement of these proceedings.

9. In connection with the Cash Management System, pursuant to the Amended and Restated Initial Order dated June 8, 2015 (the “**Amended and Restated Initial Order**”), the Court granted a charge in favour of RBC, in its capacity as provider of the Cash Management System (the “**Cash Management Charge**”) on the Property (as defined in the Amended and Restated Initial Order) of the Applicants as security for any obligations of the Applicants to RBC that may arise in connection with RBC’s provision of the Cash Management System.

10. As noted above, pursuant to the Sale Approval Decision, on closing of the Transaction, all of Nelson Education’s right, title and interest in and to the purchased assets (including the cash in the Company’s bank accounts) shall vest in the Purchaser, free and clear of all interests, liens, charges (including the Cash Management Charge) and encumbrances, other than the permitted encumbrances and assumed liabilities contemplated in the Purchase Agreement.

11. Accordingly, the Applicants, RBC, in its capacity as provider of the Cash Management System, the Purchaser and Bank of Montreal, in its capacity as provider of cash management services to the Purchaser, intend to enter into an Agreement re: Transition of Cash Management Services substantially in the form attached as Exhibit “A” hereto (as may be amended, varied or supplemented pursuant to its terms, the “**Cash Management Services Transition Agreement**”), pursuant to which, among other things, (i) RBC will continue to make certain cash management, treasury and depository services available to Nelson Education (the “**Continuing Cash Management Services**”) from the Closing Date (as defined in the Purchase Agreement) to a date that is ninety calendar days following the Closing Date (the “**Final**

**Transition Date**”), and (ii) RBC will be indemnified and reimbursed for Existing Cash Management Services (as defined in the Cash Management Services Transition Agreement) provided to Nelson Education prior to the Closing Date and for all Continuing Cash Management Services provided to Nelson Education from the Closing Date to the Final Transition Date, all subject to the terms of the Cash Management Services Transition Agreement.

12. The Applicants are seeking the Court’s approval of the Cash Management Services Transition Agreement in connection with the implementation of the Cash Management Services Transition Agreement and the completion of the Transaction on the consent of the parties in these proceedings.

#### **V. EXTENSION OF THE STAY PERIOD**

13. The Applicants have continued to act diligently and in good faith in respect of all matters relating to the CCAA proceedings, including the steps taken in furtherance of the Transaction.

14. There are several matters that remain to be addressed in connection with the CCAA proceedings and the Transaction, including:

- (a) continuing to work with the Purchaser and its advisors to implement the Transaction by the end of September 2015 (with closing effective October 1, 2015);
- (b) attending to the necessary corporate and commercial steps required to implement the Transaction;

- (c) continuing to work with stakeholders in connection with matters related to the Applicants and these proceedings;
- (d) addressing various post-closing matters, including completing final tax returns and other filings related to employee taxes or other remittances; and
- (e) attending to the orderly termination of the CCAA proceedings and the discharge of the Monitor.

15. With respect to the proposed post-closing wind-down of the Applicants, the Purchase Agreement provides that, on closing of the Transaction, the Applicants will retain a cash reserve of \$1.15 million post-closing (the “**Cash Reserve**”) to complete post-closing and CCAA matters. The Cash Reserve shall be held by the Monitor on behalf of the Seller in an account opened at a Canadian chartered bank for this purpose and the Monitor shall make distributions from the Cash Reserve on behalf of the Seller as authorized by the Approval and Vesting Order. Any funds remaining in the Cash Reserve on the earlier of the wind-down of the Company or 18 months from the closing of the Transaction are required to be returned to the Purchaser pursuant to the Purchase Agreement and the Approval and Vesting Order.

16. The Cash Holdback discussed above shall be held in the Seller’s existing accounts with RBC as provider of the Cash Management System to the Applicants for a period of three months following the completion of the Transaction, subject to the terms of the Purchase Agreement and the Cash Management Services Transition Agreement. Any funds remaining in the Cash Holdback three months following the completion of the Transaction are required to be returned to the Purchaser pursuant to the Purchase Agreement and the Approval and Vesting Order.

17. The Applicants expect to close the Transaction in escrow by the end of September 2015 (with closing effective October 1, 2015), and are seeking an extension of the Stay Period to address post-closing matters in connection with the CCAA proceedings and the Transaction as described above.

18. The current Stay Period covers the period until and including September 30, 2015. The Applicants are requesting an extension of the Stay Period to and including December 15, 2015.

19. The Cash Reserve is expected to provide sufficient funding for the Applicants during the proposed extension of the Stay Period beyond the closing of the Transaction.

**VI. CONCLUSION**

20. I believe that the relief is appropriate and necessary to enable the Applicants to continue working towards the implementation of the Transaction and the orderly completion of these CCAA proceedings.

SWORN before me in the City of Toronto, in the Province of Ontario, on September 24, 2015.

  
A Commissioner for taking affidavits  
Caroline Descours

}   
Greg Nordal

# TAB A

**THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF GREG NORDAL**

**SWORN BEFORE ME**

**ON THIS 24<sup>TH</sup> DAY OF SEPTEMBER, 2015**

A handwritten signature in black ink, consisting of a large, stylized 'O' followed by a series of horizontal strokes, positioned above a solid horizontal line.

**A COMMISSIONER FOR TAKING AFFIDAVITS**

**AGREEMENT RE: TRANSITION OF CASH MANAGEMENT SERVICES**

THIS AGREEMENT (the “**Agreement**”) is made and entered into as of this \_\_\_\_ day of September, 2015 by and among ROYAL BANK OF CANADA (together with its affiliates and subsidiaries, collectively referred to herein as “**RBC**”), BANK OF MONTREAL (“**BMO**”), Nelson Education Ltd. (“**Nelson**”) and, solely for the purpose of section 7 of this Agreement, 682534 N.B. Inc. and its successors and assigns (collectively, “**Borrower**”).

**RECITALS:**

- A. RBC currently provides various treasury, depository and cash management services (the “**Existing Cash Management Services**”) to Nelson. The obligations of Nelson and Nelson Education Holdings Ltd. (“**Holdings**”) to RBC that may arise in connection with such Existing Cash Management Services are secured in favour of RBC over (i) the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively the “**Property**”) of Nelson and Holdings, including (without limitation) over all sums on deposit in account(s) with RBC, pursuant to a court-ordered charge over the Property pursuant to the Amended and Restated Initial Order granted by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on June 8, 2015 in the proceedings of Nelson and Holdings under the *Companies’ Creditors Arrangement Act* and/or (ii) Collateral pursuant to the Collateral Documents (each as defined in the First Lien Credit Agreement dated as of July 5, 2007 among Nelson, Holdings, Wilmington Trust, National Association as Administrative Agent and Collateral Agent, and the lenders party thereto, as may be amended from time to time) (collectively, the “**Security Interest**”).
- B. Nelson has advised RBC that Borrower will acquire substantially all of the assets of Nelson pursuant to an Asset Purchase Agreement between Nelson and Borrower (the “**Purchase Agreement**”), and in connection therewith, substantially all of the assets of Nelson which are currently subject to the Security Interest are to be transferred to Borrower on the Transfer Date (as defined below).
- C. BMO has agreed to provide cash management, treasury and depository services to Borrower as of and from the Transfer Date. As an accommodation to Nelson in respect of its arrangements with Borrower, and in consideration of the covenants, indemnity and other premises set out herein, RBC has agreed to continue to make certain cash management, treasury and depository services available to Nelson (the “**Continuing Cash Management Services**”) from the Transfer Date to a date that is ninety (90) calendar days following the Transfer Date (the “**Final Transition Date**”). All of Nelson’s accounts with RBC, with the exception of those accounts set out on Schedule “A” hereto (the “**Remaining RBC Accounts**”) shall be terminated as of the day after the Transfer Date and any funds in such terminated accounts shall be transferred to Borrower’s accounts with BMO the day after the Transfer Date.

- D. Pursuant to an Approval and Vesting Order granted on September 8, 2015, the Security Interest is to be released and discharged immediately on the Transfer Date and, in connection therewith, RBC, Nelson, BMO and Borrower have agreed to enter into this Agreement in order to set forth their relative rights and duties with respect to the termination of the Existing Cash Management Services, the provision of the Continuing Cash Management Services from the Transfer Date to the Final Transition Date, and all rights of RBC to recover, and be fully reimbursed for, all Returned Items (as defined below), Reimbursement Charges (as defined below) and all Charges (as defined below), all subject to the terms hereof and all existing agreements between Nelson and RBC governing the treasury, depository and cash management services provided by RBC (the “**RBC Account Agreements**”).
- E. This Agreement is expressly intended to ensure that, and the parties hereto agree that, in consideration of the transfer of any funds to BMO upon the day after the Transfer Date, the provision of the Continuing Cash Management Services by RBC from the Transfer Date to the Final Transition Date and the transfer of funds by RBC to BMO on the Final Transition Date and notwithstanding the discharge of the Security Interest in favour of RBC, RBC will be fully indemnified and will be fully reimbursed for Existing Cash Management Services provided to Nelson prior to the Transfer Date and for all Continuing Cash Management Services provided to Nelson from the Transfer Date to the Final Transition Date, all subject to the terms hereof.

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. Effectiveness. This Agreement shall take effect immediately upon its execution by all parties. The Recitals to this Agreement are incorporated in and form part of this Agreement.
2. Directions. RBC hereby confirms Nelson’s irrevocable direction that, effectively immediately upon the Transfer Date, all Existing Cash Management Services of any kind previously provided by RBC to Nelson shall be terminated, with the exception of those Continuing Cash Management Services set out in section 3 below. For greater certainty, subject to section 3 below, effectively immediately upon the Transfer Date, all payments to be made through an ACH file with a value date on or after close of business on the day preceding the Transfer Date will be cancelled.
3. Remaining RBC Accounts and Continuing Cash Management Services. For a ninety (90) day period from the Transfer Date to the Final Transition Date, RBC agrees that it shall continue to provide the following Continuing Cash Management Services:
  - (i) continue to honour all items (including, without limitation, all cheques, bank drafts, money orders and other items of value received by RBC) presented for clearing on any of the Remaining RBC Accounts to the extent that there are funds available and on deposit sufficient to clear all items presented on that day in the Remaining RBC Account on which each item was drawn;

- (ii) continue to process all electronic transactions (both debits (to the extent of funds which are available and on deposit) and credits);
- (iii) continue to process all transactions subject to the Disbursement Auditor service and honour all cheques to the extent of funds which are available and on deposit in the Remaining RBC Accounts designated as Disbursement Auditor Accounts to honour all cheques presented on a given day; and
- (iv) continue to provide lockbox services to Nelson on the existing terms.

Effective immediately upon the Final Transition Date:

- (i) all items presented for clearing on the Remaining RBC Accounts will be returned as “account closed”;
- (ii) all electronic transactions (both debits and credits) will be automatically returned to the originator as “account closed”;
- (iii) all transactions subject to the Disbursement Auditor service will be terminated and all cheques will be returned as “account closed”;
- (iv) all merchant transactions will be rejected as “account closed”;
- (v) RBC will forward any credit balances in the Remaining RBC Accounts to Borrower’s new lockbox at BMO set out on Schedule “A” hereto (the “**BMO Lockbox**”); and
- (vi) all cash, cheques, bank drafts, money orders and other items of value received in any lockbox maintained by RBC for Nelson (collectively, “**Lockbox Receipts**”) shall, for a period of thirty (30) days following the Final Transition Date, be sent to the BMO Lockbox on a daily basis in accordance with the details set out on Schedule “A” hereto.

4. Reliance Upon Instructions. Nelson is responsible for, and RBC may rely upon, the contents of any notice or instructions that RBC believes in good faith to be from Nelson without any independent investigation, including notices or directions received from Nelson in furtherance of, contemplation of or pursuant to the notice provisions of this Agreement. RBC and its respective officers, directors, employees and agents, successors and assigns shall have no duty to inquire into the authority of the person in giving such notice or instructions. Nelson shall provide not less than two (2) clear business days’ written notice to RBC of the closing of the transactions under the Purchase Agreement (the “**Transfer Date**”), to be received by 12 pm (noon) Toronto time. An electronic mail copy of such notice shall also be sent to RBC’s counsel Ms. D.J. Miller, as follows: [djmiller@tgf.ca](mailto:djmiller@tgf.ca)

Nelson hereby provides its irrevocable direction to RBC, effective as of the Transfer Date, to implement the terms set out in the Agreement, including but not limited to the transfer of any

funds or Lockbox Receipts to Borrower's accounts at BMO, at the times and in the manner set out herein.

5. Reimbursement to RBC. In the event that any items previously honoured by RBC are dishonoured or otherwise returned to RBC (the "**Returned Items**") or any customary charges, fees and expenses are incurred by RBC or any overdraft is created in any of Nelson's accounts in respect of the Existing Cash Management Services as set out in paragraph 2 hereof or the Continuing Cash Management Services as set out in paragraph 3 hereof (the "**Reimbursement Charges**"), RBC shall promptly notify BMO in writing (a "**Reimbursement Notice**") of such Returned Items (and provide copies thereof together with such Reimbursement Notice) and Reimbursement Charges. BMO shall, no later than seven (7) days after receipt of such Reimbursement Notice, pay RBC the amount of (a) such Returned Items and Reimbursement Charges, and (b) all of the customary charges, fees and expenses incurred by RBC with respect to such Returned Items and Reimbursement Charges as set forth in the Reimbursement Notice (the "**Charges**") by wire transfer to such account as is specified in the Reimbursement Notice; provided that BMO shall have received the Reimbursement Notice from RBC within ninety (90) days after the Returned Item was returned to RBC in accordance with the Canadian Payments Association Rules (the "**CPA Rules**") and timeframes (or in the event that the return of such Returned Item is not subject to the CPA Rules, within ninety (90) days after RBC is in receipt of information enabling it to make or act upon a decision to dishonour the applicable Returned Item). Other than as set out in this paragraph 5, no other notice is required to be given by RBC in respect of Returned Items, Reimbursement Charges or Charges.

6. Indemnity. BMO hereby agrees to indemnify, defend and save harmless RBC and their respective past and present officers, directors, employees and agents, successors and assigns (individually, an "**RBC Indemnitee**" and collectively, the "**RBC Indemnitees**") from and against any and all losses, damages, debts, expenses, liability, claims, causes of action, suits and legal fees (including reasonable fees of external counsel) (individually, a "**Claim**" and collectively, "**Claims**") which may at any time be suffered or incurred by any of them in connection with this Agreement including any enforcement of its terms, and including but not limited to the Returned Items, Reimbursement Charges and Charges (except to the extent due to such RBC Indemnitee's willful misconduct or gross negligence).

7. Release of RBC. Nelson, Nelson Holdings, BMO and Borrower (collectively, the "**Releasees**") agree that RBC shall have no liability to any of them (including their affiliates, subsidiaries, successors and assigns) for any Claims that any of them may claim to have suffered or incurred, either directly or indirectly, by reason of this Agreement or any implementation hereof, including but not limited to the termination of Existing Cash Management Services set out in paragraph 2 herein or the Continuing Cash Management Services set out in paragraph 3 herein (in each case, except to the extent due to RBC's willful misconduct or gross negligence, and only then in respect of RBC's customers Nelson and Holdings), and each of the Releasees hereby releases RBC from any and all such claims (except to the extent due to RBC's willful misconduct or gross negligence).

8. Notices. All notices, requests or other communications given to the parties hereto shall be given in writing by registered mail (postage prepaid), prepaid courier or facsimile at as the address specified below:

RBC:

**Royal Bank of Canada**  
200 Bay Street, 12<sup>th</sup> Floor  
Royal Bank Plaza, South Tower  
Toronto, ON M5J 2W7

Attention: Ann Hurley  
Telephone: (416) 842-3996  
Facsimile: (416) 842-4023

And to:

**Royal Bank of Canada**  
Senior Markets, Corporate Accounts  
RBC WaterPark Place  
88 Queens Quay West, 11th floor  
Toronto, ON M5J 0B8

Attention: Senior Relationship Manager re Nelson Education  
Telephone: (416) 974-6707  
Facsimile: (416) 974- 7636

And to:

**Royal Bank of Canada**  
Global Banking Business Centre  
483 Bay Street, 11th Floor, North Tower  
Toronto, ON M5G 2E7

Attention: Service Manager re Nelson Education  
Telephone: (416) 974-4118  
Facsimile: (416) 974- 1444

BMO:

**Bank of Montreal**  
Asset Based Lending  
100 King Street West, 11th Floor  
Toronto, ON M5X 1A1

Attention: Lauren Thompson  
Telephone: (416) 643-4351

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And to:

Treasury & Payment Solutions, Corporate Finance Division  
100 King Street West, 22nd Floor  
Toronto, ON M5X 1A1

Attention: Mimi Dato  
Telephone: (416) 867-3087  
Facsimile: (416) 867-3119  
Email address for notification of Returned Items: [mimi.dato@bmo.com](mailto:mimi.dato@bmo.com)

And to:

Treasury & Payment Solutions, Corporate Finance Division  
100 King Street West, 22nd Floor  
Toronto, ON M5X 1A1  
Attention: Domenic Defina

Attention: Domenic Defina  
Telephone: (416) 867-3087  
Facsimile: (416) 867-3119  
Email address for notification of Returned Items: [domenic.defina@bmo.com](mailto:domenic.defina@bmo.com)

Nelson:

**Nelson Education Ltd.**  
1120 Birchmount Road  
Scarborough, ON, M1K 5G4

Attention: Stephen Aubert and Erise Fung  
Telephone: (416) 752-9100  
Facsimile: (416) 752-8101

Borrower:

**682534 N.B. Inc.**  
1120 Birchmount Road  
Scarborough, ON, M1K 5G4

Attention: Stephen Aubert and Erise Fung  
Telephone: (416) 752-9100  
Facsimile: (416) 752-8101

Any party may change its address for notice hereunder by notice to each other party hereunder given in accordance with this paragraph 8. Each notice, request or other communication shall be effective (a) if given by facsimile, when such facsimile is transmitted to the facsimile number specified in this paragraph 8 and confirmation of receipt is made by the appropriate party, (b) if given by prepaid courier, when such notice is received by the party for which it is intended on the date of actual delivery thereof if such delivery occurs prior to 5:00 p.m. on such business day and, otherwise, on the next following business day, or (c) if given by registered mail, when delivered at the address specified in this paragraph 8. Any notices sent by RBC to BMO in respect of any Returned Items, Reimbursement Charges or Charges shall be effective on the day of transmission if sent by electronic mail to Mimi Dato and Domenic Defina of BMO at the email address provided herein.

9. Miscellaneous.

(a) This Agreement may be amended only by a written instrument executed by the parties hereto acting by their respective duly authorized representatives.

(b) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(c) This Agreement may be executed in any number of several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(d) Borrower is a party to this Agreement for the sole purpose of providing the release in favour of RBC as set out in paragraph 7 herein, and for no other purpose.

(e) In the event of any conflict between the terms of the RBC Account Agreements and this Agreement, this Agreement shall govern.

(f) THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO (WITHOUT GIVING EFFECT TO ITS CONFLICTS OF LAW RULES).

[Signature page follows]

IN WITNESS WHEREOF, each of the parties has executed and delivered this Agreement as of the day and year first above set forth.

**ROYAL BANK OF CANADA**

Per: \_\_\_\_\_  
Name:  
Title:  
Duly Authorized Signatory

Per: \_\_\_\_\_  
Name:  
Title:  
Duly Authorized Signatory

**BANK OF MONTREAL**

Per: \_\_\_\_\_  
Name:  
Title:  
Duly Authorized Signatory

Per: \_\_\_\_\_  
Name:  
Title:  
Duly Authorized Signatory

**NELSON EDUCATION LTD.**

Per: \_\_\_\_\_  
Name:  
Title:  
Duly Authorized Signatory

Per: \_\_\_\_\_  
Name:  
Title:  
Duly Authorized Signatory

**NELSON EDUCATION HOLDINGS LTD.**

Per: \_\_\_\_\_  
Name:  
Title:  
Duly Authorized Signatory

Per: \_\_\_\_\_  
Name:  
Title:  
Duly Authorized Signatory

**682534 N.B. INC.**

Per: \_\_\_\_\_  
Name:  
Title:  
Duly Authorized Signatory

Per: \_\_\_\_\_  
Name:  
Title:  
Duly Authorized Signatory

**Schedule "A"**

**Redacted**

**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

**AFFIDAVIT OF GREG NORDAL  
(sworn September 24, 2015)**

**GOODMANS LLP**

Barristers & Solicitors

333 Bay Street, Suite 3400

Toronto, Canada M5H 2S7

Robert J. Chadwick LSUC#: 35165K

[rhadwick@goodmans.ca](mailto:rhadwick@goodmans.ca)

Caroline Descours LSUC#: 58251A

[cdescours@goodmans.ca](mailto:cdescours@goodmans.ca)

Tel: (416) 979-2211

Fax: (416) 979-1234

Lawyers for the Applicants

# **TAB 3**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE MR. ) ●, THE ●  
JUSTICE NEWBOULD )  
DAY OF SEPTEMBER, 2015

**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF NELSON EDUCATION LTD. AND  
NELSON EDUCATION HOLDINGS LTD.**

Applicants

**ORDER**

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

**ON READING** the Notice of Motion, the Affidavit of Greg Nordal sworn September ●, 2015 (the "**Nordal Affidavit**"), the Fifth Report of FTI Consulting Canada Inc. in its capacity as the Court-appointed Monitor of the Applicants (the "**Monitor**"), and on hearing the submissions of counsel for the Applicants, the Monitor, the First Lien Steering Committee and the First Lien Agent (each as defined in the Amended and Restated Initial Order of this Court dated June 8, 2015 (the "**Amended and Restated Initial Order**")), and the Royal Bank of Canada, in its capacities as First Lien Lender, Second Lien Agent, Second Lien Lender and provider of the Applicants' Cash Management System (each as defined in the Amended and Restated Initial

**DRAFT: 1 - September 24, 2015**

Order), and no one else appearing although duly served as appears from the affidavit of service of ● sworn ●, 2015, filed,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record in respect of this Motion be and is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the Cash Management Services Transition Agreement (as defined in the Nordal Affidavit) substantially in the form attached as Exhibit “A” to the Nordal Affidavit is hereby approved.

3. **THIS COURT ORDERS** that the Stay Period, as such term is defined in the Amended and Restated Initial Order, be and is hereby extended to and including 11:59 p.m. on December 15, 2015, and that all other terms of the Amended and Restated Initial Order shall remain in full force and effect, unamended, except as may be required to give effect to this paragraph or otherwise provided in this Order.

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

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

Court File No: CV15-10961-00C]

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

**ORDER**

**GOODMANS LLP**

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Fax: (416) 979-1234

Lawyers for the Applicants

**DRAFT: 1 - September 24, 2015**

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

Court File No: CV15-10961-00C]

**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

**MOTION RECORD  
(Returnable September 29, 2015)**

**GOODMANS LLP**

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