

Court File No. CV-09-8257-00CL

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

THE HONOURABLE *MR* ) FRIDAY, THE 7<sup>TH</sup> DAY  
JUSTICE *C C Campbell* ) OF MAY, 2010

**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 NEXIENT LEARNING INC. AND  
NEXIENT LEARNING CANADA INC.**

Applicants

**DISCHARGE ORDER**

THIS MOTION, made by Nexient Learning Inc. and Nexient Learning Canada Inc. (the "Applicants") for an Order:

1. approving the activities of RSM Richter Inc., in its capacity as court appointed Monitor (the "Monitor") as described in the Monitor's sixth report dated November 16, 2009 (the "Sixth Report") and the Monitor's seventh report dated May 3, 2010 (the "Seventh Report");
2. approving the fees and disbursements of the Monitor including those of its counsel, Ogilvy Renault LLP ("Ogilvy"), for the periods set out in the Fee Affidavits (defined below);
3. authorizing the Monitor to pay its fees and disbursements, the Applicants' counsel's fees and disbursements and Ogilvy's fees and disbursements incurred, or to be incurred, to completion of these proceedings without further Order of the Court, provided that such amounts do not exceed an aggregate of \$35,000;

4. authorizing a further holdback, in addition to the Remaining Fees (as defined below), in the amount of \$25,000 for future expenses of the Applicants, including the costs of the Applicants' pending bankruptcy proceedings;
5. authorizing the Monitor to distribute monies remaining in its hands to the parties and in the amounts set out in the Seventh Report in accordance with an Order of this Court made on September 21, 2009 (the "Distribution Order");
6. discharging the Monitor and releasing it from any and all liability, as set out in paragraph 8 of this Order;
7. terminating these proceedings and any charges granted pursuant to any order of this Honourable Court in these proceedings, including the Directors' Charge (as defined in the Initial Order of the Honourable Justice Pepall in these proceedings granted June 29, 2009, as amended), in accordance with the terms of this Order; and
8. such further and other relief as counsel may advise and to this Honourable Court may seem just,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Sixth Report, the Seventh Report, the affidavit of Robert Kofman sworn May 3, 2010 (the "Kofman Affidavit") and the affidavit of Mario Forte sworn April 28, 2010 (the "Forte Affidavit") as to fees of the Monitor and Ogilvy (collectively, the "Fee Affidavits"), respectively, and on hearing the submissions of counsel for the Applicant, the Monitor and those other parties present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Amy Casella sworn May 3, 2010, filed;

1. THIS COURT ORDERS that the Sixth Report and the Seventh Report and the activities of the Monitor, as set out in the Sixth Report and the Seventh Report, are hereby approved.
2. THIS COURT ORDERS that the fees and disbursements of the Monitor and of Ogilvy for the periods set out in the Fee Affidavits and the Seventh Report be and are hereby approved

and the Monitor shall pay such fees and disbursements from the funds of the Applicants under the Monitor's control.

3. THIS COURT ORDERS that in addition to the fees set out in the Fee Affidavits and the Seventh Report, the Monitor is authorized to pay its fees and disbursements, Ogilvy's fees and disbursements, and the Applicants' counsel's fees and disbursements incurred, or to be incurred, to the completion of these proceedings without further Order of the Court, from the funds of the Applicants under the Monitor's control, provided that such amounts do not exceed an aggregate of \$35,000 (the "Remaining Fees").

4. THIS COURT ORDERS that the Monitor shall pay the monies remaining in its hands to the parties and in the amounts set out in the Seventh Report in accordance with the Distribution Order, subject to an amount of \$60,000 that shall be held back to satisfy amounts that may be payable for future expenses of the Applicants, including the costs of a bankruptcy proceeding pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA"), and the Remaining Fees.

5. THIS COURT ORDERS that upon making the payments contemplated in paragraphs 3 and 4 above, the Monitor shall file a certificate substantially in the form of Schedule "A" hereto (the "Monitor's Certificate") and upon filing the Monitor's Certificate, the Monitor shall be discharged, provided however that notwithstanding its discharge herein (a) the Monitor shall remain Monitor for the performance of such incidental duties as may be required, including matters relating to the assignment into bankruptcy of the Applicants under the BIA, and (b) the Monitor shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Monitor.

6. THIS COURT ORDERS that the Directors' Charge be and is hereby fully and finally terminated, discharged and released.

7. THIS COURT ORDERS that upon the filing of the Monitor's Certificate, any other charges established by any order of this Honourable Court in these proceedings shall be fully and finally terminated, discharged and released and these CCAA Proceedings shall be terminated.

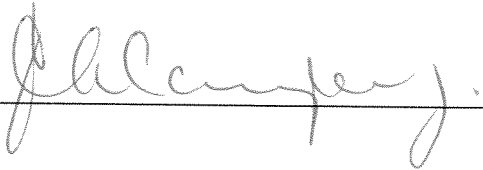
8. THIS COURT ORDERS that upon the filing of the Monitor's Certificate, the Monitor shall be released and discharged from any and all liability that the Monitor now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of the Monitor while acting in its capacity as Monitor herein, save and except for liability arising from its gross negligence or wilful misconduct. Without limiting the generality of the foregoing, the Monitor shall be forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, within these CCAA proceedings.

9. THIS COURT ORDERS that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court and on prior written notice to the Monitor and such further order securing, as security for costs, the solicitor and his own client costs of the Monitor in connection with any proposed action or proceeding as the Court hearing the motion for leave to proceed may deem just and appropriate.

10. THIS COURT ORDERS that nothing in this Order shall be deemed to effect, diminish, alter, release or waive the rights, if any, which the Applicants may currently have against Global Knowledge Network (Canada) Inc. ("Global Knowledge") in respect the right to be indemnified, if any, in respect of any costs award which the Applicants now or in the future may be required to pay in connection with or related to the litigation between ESI International Inc. ("ESI"), the Applicants and Global Knowledge connected with the Applicants' CCAA proceedings (the "ESI Litigation").

11. THIS COURT ORDERS that the Applicants' right, if any, to be indemnified by Global Knowledge in respect to any cost award in the ESI Litigation referred to above in paragraph 10, is assigned to ESI and that ESI shall stand in the same position as the Applicants with respect to the Applicants' rights, if any, against Global Knowledge thereunder.

12. THIS COURT ORDERS that notwithstanding paragraphs 10 and 11 of this Order and the bankruptcy of the Applicants, the rights, if any, of Global Knowledge and/or ESI in respect of any cost awards against the Applicants in the ESI Litigation, shall continue and nothing in this Order shall affect or prejudice those rights, if any, of these parties hereunder in respect of any such cost awards that may granted against the Applicants in connection with the ESI Litigation.



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ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

MAY 10 2010

PER / PAR: JSN

Joanne Nicoara  
Registrar, Superior Court of Justice

**SCHEDULE "A"**

Court File No. CV-09-8257-00CL

**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**

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ARRANGEMENT OF NEXIENT LEARNING INC. AND  
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**MONITOR'S CERTIFICATE**

A. **WHEREAS** on May ●, 2010, the Honourable Justice ● made an order authorizing the discharge of RSM Richter Inc. in its capacity as monitor (the "Monitor") in the *Companies' Creditors Arrangement Act* proceedings (the "CCAA Proceedings") of Nexient Learning Inc. and Nexient Learning Canada Inc. (collectively, the "Company"), effective upon the filing with this Court of a certificate in which the Monitor certifies that it has completed all outstanding matters, which in its discretion are necessary for the completion of the Company's CCAA Proceedings (the "Outstanding Items").

B. **AND WHEREAS** the Monitor has now completed all Outstanding Items and wishes that its above-referenced discharge be and become effective.

**NOW THEREFORE THE MONITOR CERTIFIES** the following:

1. The Monitor hereby certifies that it has completed all Outstanding Items.

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 2010.

**RSM RICHTER INC.** in its capacity as monitor in the *Companies' Creditors Arrangement Act* proceedings of Nexient Learning Inc. and Nexient Learning Canada Inc., and not in its personal capacity

Per: \_\_\_\_\_

Name: David Sieradzki

Title: Vice-President

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

Proceedings Commenced at Toronto

**ORDER**

**CHAITONS LLP**

Barristers And Solicitors  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

**George Benchetrit**

LSUC Registration No. 34163H

TEL: (416) 218-1141

FAX: (416) 218-1841

**Lawyers for Nexient Learning Inc. and  
Nexient Learning Canada Inc.**