



**Third Report of RSM Richter Inc.  
as CCAA Monitor of  
Nexient Learning Inc. and  
Nexient Learning Canada Inc.**

**RSM Richter Inc.**  
Toronto, August 10, 2009

RSM Richter is an independent member firm of RSM International,  
an affiliation of independent accounting and consulting firms.

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

**THIRD REPORT OF RSM RICHTER INC.  
AS CCAA MONITOR OF  
NEXIENT LEARNING INC. AND  
NEXIENT LEARNING CANADA INC.**

**August 10, 2009**

**1. INTRODUCTION**

On June 29, 2009, the *Ontario* Superior Court of Justice (the "Court") issued an order (the "Initial Order") granting Nexient Learning Inc. ("Nexient") and Nexient Learning Canada Inc. ("Nexient Canada") (jointly, the "Company") protection pursuant to the *Companies' Creditors Arrangement Act* ("CCAA"). Pursuant to the Initial Order, RSM Richter Inc. ("Richter") was appointed the Company's monitor ("Monitor"). A copy of the Amended and Restated Initial Order is attached as Appendix "A".

The primary purpose of these restructuring proceedings is to allow the Monitor the opportunity to conduct a stalking horse sale process (the "Sale Process") in order to maximize the value of the Company's business and assets.

## 1.1 Purposes of this Report

The purposes of this report (“Report”) are to:

- a) Provide background information concerning the Company and these restructuring proceedings; and
- b) Summarize issues requiring an extension of the deadline to complete a sale transaction from August 15, 2009 to August 21, 2009.

## 2. BACKGROUND

The Company carries on business across Canada - it is the largest provider of corporate training and consulting in Canada, specializing in the areas of information technology, leadership, business solutions and business process improvement.

Nexient is a public company, the common shares of which are listed on the NEX, a separate board of the TSX Venture Exchange. Nexient Canada is a wholly-owned subsidiary of Nexient. The Company’s head office is located in Toronto, Ontario. The Company operates from 13 leased facilities across Canada, from which it serves over 3,000 corporate and public sector clients, as well as individual learners.

## 3. SALE PROCESS TIMELINE<sup>1</sup>

The Sale Process approved by Order of Justice Cumming dated July 8, 2009 (the “Sale Process Order”) involves a stalking horse bid and specified bidding procedures. The stalking horse bid was submitted by 2210961 Ontario Limited<sup>2</sup> (the “Stalking Horse”) to purchase substantially all of the Company’s assets, property and undertaking (the “Stalking Horse

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<sup>1</sup> Capitalized terms in this section of the Report have the meanings ascribed to them in the Sale Process Order and/or the Sale Process Overview.

<sup>2</sup> An entity incorporated by The Vengrowth Traditional Industries Fund Inc. and/or other funds under affiliated management, the Company’s subordinate secured creditor and DIP lender in these proceedings.

Offer”). The terms of the Sale Process (the “Sale Process Overview”) and a copy of the Sale Process Order are attached as Appendices “B” and “C”, respectively.

The Sale Process contemplates the following timeline:

- August 4, 2009 – Offers were required to be submitted to the Monitor (the “Offer Deadline”);
- August 5, 2009 – In the event that one or more parties submitted a Qualified Bid, the Qualified Bidder(s) and the Stalking Horse were to be invited to submit a Final Offer by 5:00 p.m. on August 5, 2009 (the “Final Offer Deadline”); and
- August 15, 2009 – Closing date of a transaction.

The Monitor has the right to amend the Sale Process as it considers appropriate.

On or prior to the Offer Deadline, one or more parties submitted a Qualified Bid and, accordingly, bidders were required to submit a Final Offer by the Final Offer Deadline.

On August 6, 2009, in accordance with the Sale Process Order, the Monitor selected an offer as the Winning Bid.

The Monitor is working with the Purchaser to finalize certain business issues and agreements related to its offer and is drafting materials to seek court approval of the transaction with the Purchaser (“Transaction”). The Monitor anticipates that a sale approval motion will be heard on or around August 18, 2009 and that subject to the approval of this Honourable Court the Transaction will be completed on or prior to August 21, 2009.

Further details regarding the Sale Process and the Transaction will be provided in the Monitor’s report to be filed in connection with a sale approval motion.

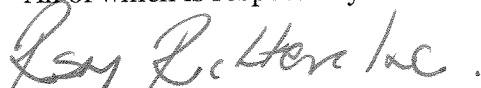
### 3.1 Extension

The Monitor has extended the deadline to complete a transaction under the Sale Process for the following reasons:

- The Transaction maximizes value and preserves the Company's business;
- The Monitor and the Purchaser require a brief extension to finalize all of the agreements and documents in connection with the Transaction;
- The Monitor requires time to complete its report to Court recommending the Transaction;
- The Purchaser consents to the extension;
- The extension will provide the Monitor with the opportunity to provide appropriate notice of the sale approval motion;
- The Vengrowth Traditional Industries Fund Inc. and/or other funds under affiliated management, the DIP lender and a secured lender of the Company, and Comerica Bank, the Company's operating lender, consent to the extension; and
- No stakeholder is prejudiced by the extension as there is sufficient funding for the Company to continue to operate through to August 21, 2009.

\* \* \*

All of which is respectfully submitted,



**RSM RICHTER INC.  
IN ITS CAPACITY AS CCAA MONITOR OF  
NEXIENT LEARNING INC. AND NEXIENT LEARNING CANADA INC.  
AND NOT IN ITS PERSONAL CAPACITY**



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

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

THE HONOURABLE MR.

)

WEDNESDAY, THE 8TH

)

JUSTICE CUMMING

)

DAY OF JULY, 2009

**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. (the "Applicants")**

**AMENDED AND RESTATED INITIAL ORDER**

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Donna de Winter sworn June 26, 2009 and the Exhibits thereto, the Affidavit of Donna de Winter sworn July 2, 2009 and the Exhibits thereto and the First Report and the Supplement to the First Report of RSM Richter Inc. in its capacity as court-appointed monitor of the Applicants (the "**Monitor**"), and on hearing the submissions of counsel for the Applicants, Comerica Bank, The Vengrowth Traditional Industries Fund Inc. and/or other funds under affiliated management, Fund 321 Limited Partnership, c.o.b. as Wellington Financial Fund II ("**Wellington**") and Clairvest Group Inc. ("**Clairvest**"), and on reading the consent of RSM Richter Inc. to act as the Monitor,



## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **APPLICATION**

2. THIS COURT ORDERS AND DECLARES that each of the Applicants is a company to which the CCAA applies.

## **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**") between, *inter alia*, the Applicants and one or more classes of their secured and/or unsecured creditors, as the Applicants deem appropriate.

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses payable on or after the date of this Order, in

each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

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

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

nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. THIS COURT ORDERS that, until such time as the Applicants deliver a notice in writing to repudiate a real property lease in accordance with paragraph 10(c) of this Order (a “**Notice of Repudiation**”), the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid. Upon delivery of a Notice of Repudiation, the Applicants shall pay all Rent due for the notice period stipulated in paragraph 10(c) of this Order, to the extent that Rent for such period has not already been paid.

9. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

10. THIS COURT ORDERS that the Applicants shall, subject to any covenants contained in the Definitive Documents (as defined below), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$500,000 in the aggregate, subject to paragraph (c), if applicable;

- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) in accordance with paragraphs 11 and 12, vacate, abandon or quit the whole but not part of any leased premises and/or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than seven (7) days notice in writing to the relevant landlord on such terms as may be agreed upon between the Applicants and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan; and
- (d) repudiate such of their arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicants deem appropriate on such terms as may be agreed upon between the Applicants and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan.

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

11. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants’ entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants repudiate the lease governing such leased premises in accordance with paragraph 10(c) of this Order and vacates such leased premises, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in paragraph 10(c) of this Order), and the repudiation of the lease shall be without prejudice to the Applicants’ claim to the fixtures in dispute.

12. THIS COURT ORDERS that if a Notice of Repudiation is delivered, then (a) during the notice period prior to the effective time of the repudiation, the landlord may show the affected

leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

13. THIS COURT ORDERS that, subject to the rights of a trustee in bankruptcy, (i) subject to paragraphs 8, 10, 11 and 12 of this Order, or except as expressly permitted by the terms of all of the real property leases (collectively, the "**Leases**"), none of the Leases shall be amended or varied, or deemed to be amended or varied, in any way without obtaining the prior written consent of the applicable landlords (collectively, the "**Landlords**"); and (ii) where any Leases are not, in accordance with their terms, transferable or assignable to a purchaser without first obtaining the consent of the applicable Landlord, none of the Leases shall, absent further Order of the Court, be transferred, conveyed, assigned or vested in a purchaser by operation of this Order, save and except to the extent that respective consents have been, or are in the future, obtained from the respective Landlords.

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

14. THIS COURT ORDERS that until and including July 29, 2009, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH RIGHTS**

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

### **CONTINUATION OF SERVICES**

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

agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

18. THIS COURT ORDERS that, notwithstanding anything else contained herein, no creditor of the Applicants shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

20. THIS COURT ORDERS that the Applicants shall indemnify its directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicants, both before and after the date hereof, to make payments of the nature referred to in subparagraphs 5(a), 7(a), 7(b) and 7(c) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

21. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1,000,000, as security for the indemnity

provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 39 and 41 herein.

22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

### **APPOINTMENT OF MONITOR**

23. THIS COURT ORDERS that RSM Richter Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicants' conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

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

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in the dissemination to the DIP Lender and its counsel on a periodic basis financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed



with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, as agreed to by the DIP Lender;

- (e) have full and complete access to the books, records and management, employees and advisors of the Applicants and to the Business and the Property to the extent required to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

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

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

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

28. THIS COURT ORDERS that that the Monitor shall provide Wellington, Clairvest, Comerica Bank and the DIP Lender (as defined below) with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

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

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$325,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order

in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 39 and 41 hereof.

### **DIP FINANCING**

32. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to obtain and borrow under a \$1,000,000 credit facility from The Vengrowth Traditional Industries Fund Inc. and/or other funds under affiliated management (the "**DIP Lender**") in order to finance the Applicants' working capital requirements provided that borrowings under such credit facility shall not exceed \$850,000 unless consented to by Comerica Bank or permitted by further Order of this Court.

33. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicants and the DIP Lender dated June 26, 2009 (the "**Commitment Letter**"), filed.

34. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents, as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof (collectively, the "**Definitive Documents**"), and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which charge shall not exceed the aggregate amount owed to the DIP Lender under the Definitive Documents. The DIP Lender's Charge shall have the priority set out in paragraphs 39 and 41 hereof.

36. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 5 days notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property (save that any such rights and remedies relating to Leases shall be subject to the terms of the applicable Leases and to applicable laws) under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants, and upon the occurrence of an event of default under the terms of the Definitive Documents, the DIP Lender shall be entitled to seize and retain proceeds from the sale of the Property and the cash flow of the Applicants to repay amounts owing to the DIP Lender in accordance with the Definitive Documents and the DIP Lender's Charge, but subject to the priorities as set out in paragraphs 33 and 35 of this Order; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

37. THIS COURT ORDERS AND DECLARES that the DIP Lender and Comerica Bank shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

38. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$325,000);

Second – Directors' Charge (to the maximum amount of \$1,000,000); and

Third – DIP Lender's Charge.

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

40. THIS COURT ORDERS that each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

41. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge, the DIP Lender's Charge or the Comerica Bank indebtedness, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender, Comerica Bank and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

42. THIS COURT ORDERS that the Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of

any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

43. THIS COURT ORDERS that any Charge created by this Order over Leases shall only be a Charge in the Applicants' interest in such Leases.

#### **SERVICE AND NOTICE**

44. THIS COURT ORDERS that the Applicants shall, within ten (10) business days of the date of entry of this Order, send a copy of this Order to their known creditors, other than employees and creditors to which the Applicants owes less than \$1,000, at their addresses as they appear on the Applicants' records, and shall promptly send a copy of this Order (a) to all parties filing a Notice of Appearance in respect of this Application, and (b) to any other interested Person requesting a copy of this Order, and the Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

45. THIS COURT ORDERS that the Applicants and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

46. THIS COURT ORDERS that the Applicants, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on its website.

#### **GENERAL**

47. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

48. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

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

50. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

51. THIS COURT ORDERS that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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

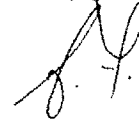
53. THIS COURT ORDERS that this Order shall supersede the Order of Madam Justice Pepall dated June 29, 2009 made in this proceeding.

July 8, 2009 Peter A. Cumming J.

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

JUL 08 2009

PER / PAR:





IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NEXIENT LEARNING INC. AND NEXIENT LEARNING CANADA INC.

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

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

Proceedings commenced at Toronto

**AMENDED AND RESTATED  
INITIAL CCAA ORDER**

**CHAITONS LLP**

Barristers and Solicitors  
185 Sheppard Avenue West  
Toronto, ON M2N 1M9

**Harvey Chaiton**

LSUC registration no. 21592F

Tel: (416) 218-1129

fax: (416) 218-1829

Lawyers for the Applicants

## SALE PROCESS OVERVIEW

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A summary of the proposed sale process ("Sale Process") is as follows:

1. Subject to Court approval, the Asset Purchase Agreement (the "Stalking Horse APA") among Nexient Learning Inc., Nexient Learning Canada Inc. (collectively, the "Company") and 2210961 Ontario Limited (the "Stalking Horse") would be a stalking horse offer in the Sale Process detailed herein.
2. The Stalking Horse APA contemplates that the Stalking Horse will acquire substantially all of the Company's business and assets (the "Assets").
3. The Monitor's corporate finance group was engaged prior to these proceedings to assist the Company with a sale process. The Monitor's corporate finance group, in consultation with the Company, has prepared a list of prospective purchasers which it believes could have an interest in acquiring the Company's Assets. The Monitor will contact all parties identified as well as any additional parties that come to its attention. Certain of the prospective purchasers have commenced diligence and continue to evaluate the opportunity.
4. An interest solicitation letter providing an overview of the Company's business, the transaction contemplated by the Stalking Horse APA and the acquisition opportunity will be distributed to all prospective purchasers identified by the Monitor.
5. Upon execution of a confidentiality agreement, the Monitor will provide prospective purchasers with a confidential information memorandum and access to an electronic data room which will include financial and other Company information.
6. The Monitor will facilitate diligence by prospective purchasers, including arranging meetings with the Company's management and key employees, as appropriate. All such meetings will be held in the presence of a representative of the Monitor.
7. Prospective purchasers will be provided with an electronic version of the Stalking Horse APA so that they can submit a form of offer in the form of the Stalking Horse APA.
8. Prospective purchasers will be entitled to submit offers for the assets of the Company on an individual basis or *en bloc*. Preference will be given to *en bloc* offers. Offers for portions of the business will still be required to meet the definition of a Qualified Bid, as defined in paragraph 10 below. The Monitor shall also have the right to combine offers submitted on piece-meal basis.
9. Offers will be required to be submitted to the Monitor by 10:00 am (Toronto time) on August 4, 2009 (the "Offer Deadline"), being four weeks from the contemplated making of the Sale Process order, if so made.

10. For a party to be a qualified bidder, the bidder's offer will have to be:

- substantially in the form of the Stalking Horse APA, with any changes to the offer blacklined against the Stalking Horse APA;
- at least \$100,000 greater than the purchase price in the Stalking Horse APA;
- submitted with a deposit of at least 15% of the Purchase Price;
- no more conditional or burdensome than the Stalking Horse APA;
- supported, in the sole discretion of the Monitor, by evidence of financing sufficient to close a transaction within the timelines detailed in these procedures;
- irrevocable until August 15, 2009 and specify that the closing shall take place prior to August 15, 2009; and
- for greater certainty, an offer shall not be considered a Qualified Bid unless it provides for cash consideration to satisfy the Comerica Debt in full, or, to the extent that Comerica consents, in its discretion, the assumption of the Comerica Debt.

The party submitting an offer that meets the above criteria would be a "Qualified Bidder" and any such offer would be a "Qualified Bid".

11. In the event that one or more parties submits a Qualified Bid, the Qualified Bidder or Qualified Bidders and the Stalking Horse will be invited to submit a final offer (each a "Final Offer" and collectively, the "Final Offers") by 5 pm on August 5, 2009 (the "Final Offer Deadline"). The Monitor, exercising its reasonable business judgement, will select the best of the Final Offers (the "Winning Bid") and will seek Court approval of the Winning Bid and a vesting order in connection with the transaction contemplated by the Winning Bid within five (5) business days following the Final Offer Deadline. Each of the Final Offers shall be irrevocable until August 15, 2009.
12. If no Qualified Bids are received by the Offer Deadline, the Monitor shall bring a motion for an approval and vesting order in connection with the transaction contemplated by the Stalking Horse APA by no later than August 11, 2009.
13. In executing the Sale Process, the Monitor will have the right to amend the Sale Process as it considers appropriate including, without limitation, extending the Offer Deadline and the Final Offer Deadline on notice to the Stalking Horse and all other prospective purchasers.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE

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**WEDNESDAY**  
~~MONDAY~~, THE 8TH

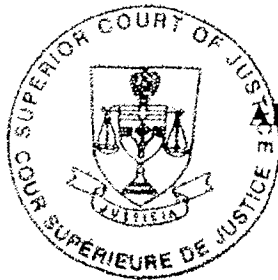
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JUSTICE CUMMING

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DAY OF JULY, 2009

**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. (THE "APPLICANTS")**

**ORDER**

**(Approval of Stalking Horse Offer and Sale Process)**

THIS MOTION, made by the Applicants, for an order (*inter alia*) approving the activities of RSM Richter Inc. in its capacity as court-appointed monitor of the Applicants (the "**Monitor**") as described in the First Report of the Monitor dated July 3, 2009 and the Supplement to the First Report of the Monitor dated July 7, 2009 (collectively, the "**First Report**"), approving the execution of an agreement of purchase and sale (the "**Stalking Horse Offer**") between the Applicants and 2210961 Ontario Limited (the "**Purchaser**") dated July 3, 2009, and approving the Sale Process (as that term is defined in the First Report), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Donna De Winter sworn July 2, 2009 and the First Report, and on hearing the submissions by counsel for the Applicants, Comerica Bank, The

Vengrowth Traditional Industries Fund Inc. and/or other funds under affiliated management, Fund 321 Limited Partnership, c.o.b. as Wellington Financial Fund II,

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today, and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that the First Report and the activities of the Monitor described therein are hereby approved.
3. THIS COURT ORDERS that the Monitor on behalf of the Applicants is hereby authorized and directed to execute the Stalking Horse Offer.
4. THIS COURT ORDERS that the Sale Process (as that term is defined in the First Report) is hereby approved, and the Monitor is hereby authorized and directed to proceed immediately with the Sale Process.
5. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada Personal Information Protection and Electronic Documents Act, the Monitor shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Applicants' assets (the "**Assets**") and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Assets (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Monitor, or

in the alternative destroy all such information. The purchaser of any Assets shall be entitled to continue to use the personal information provided to it, and related to the Assets purchased, in a manner which is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Monitor, or ensure that all other personal information is destroyed.

July 8, 2009 Peter A. Cumming J.

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

JUL 08 2009

PER / PAR:

*[Signature]*

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NEXIENT LEARNING INC. AND NEXIENT LEARNING CANADA INC.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

Proceedings commenced at TORONTO

**ORDER  
(Approval of Stalking Horse Offer  
and Sale Process)**

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