

**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 FINANCIAL GROUP LTD.**

**NOTICE OF RETURN OF MOTION
(Discharging Representative Counsel for the Noteholders)**

Douglas Turner Q.C., in his capacity as the Representative Counsel for the Noteholders of Nelson Financial Group Ltd. appointed by this Court (the "Representative Counsel"), will make a motion before a judge of the Ontario Superior Court of Justice sitting on the Commercial List on Thursday, December 22, 2011 at 10:00 am or as soon after that time as the motion can be heard at 330 University Avenue, in the City of Toronto.

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

THE MOTION IS FOR an Order substantially in the form attached hereto as Schedule "A" granting, *inter alia*, the following relief:

1. an Order abridging the time for service of the Notice of Motion and Motion Record herein, if necessary, and dispensing with any further

service thereof such that the motion is properly returnable on the date fixed by the Court;

2. an Order approving the activities of the Representative Counsel, as set out in his reports filed dated November 3, 2010, November 13, 2010, November 29, 2010, April 16, 2011 and August 8, 2011;
3. an Order passing and approving the accounts for professional services rendered by the Representative Counsel from October 26, 2010 to April 21, 2011 and rendered by Richard B. Jones, his special counsel retained pursuant to the Representative Counsel Appointment Order, from October 22, 2010 to April 21, 2011;
4. an Order discharging and releasing the Representative Counsel for the Noteholders of the Applicant of and from all duties, authorities and responsibilities imposed upon the Representative Counsel pursuant to the Order of the Honourable Madam Justice Pepall made on June 15, 2010, as amended by Orders of August 27, 2010 and of November 22, 2010, provided however that notwithstanding his discharge the Representative Counsel and his special counsel 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 Representative Counsel and his special counsel; and
5. such further and other relief as counsel may request and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- a) Pursuant to an Order of the Honourable Madam Justice Pepall dated made on June 15, 2010 as amended by Orders of August 27, 2010 and of November 22, 2010, (collectively, the “Representative Counsel Appointment Order”), the Court appointed Douglas Turner, Q.C. as the representative counsel for the holders of promissory notes issued by Nelson Financial Group Ltd., the Applicant, (the “Noteholders”) and instructed the Representative Counsel to take various steps to protect and advance the interests of the Noteholders;
- b) In accordance with the direction of this Honourable Court in the Representative Counsel Appointment Order, the Representative Counsel retained the services of Richard B. Jones as his special counsel in respect of CCAA issues and proceeded to perform the Mandate and the additional tasks and to take the proceedings authorized by this Honourable Court for the benefit of the Noteholders;
- c) In accordance with the direction of the Order of August 27, 2010, the Representative Counsel brought a motion that asked this Honourable Court to determine the characterization of some \$14 million of outstanding preferred shares of the Applicant and the characterization of the creditor claims of the investors in such shares, which motion resulted in all such claims being determined to be equity claims for the purposes of the *Companies’ Creditors Arrangement Act* (the “CCAA”);

- d) The Representative Counsel sought and this Honourable Court granted the appointment of the Interim Operating Officer under its Order made on November 22, 2010;
- e) The Representative Counsel worked with the Interim Operating Officer to develop a plan for the restructuring of the business and assets of the Applicant in a manner that sought to maximize recoveries for the unsecured creditors who were almost entirely the noteholders of the Applicant;
- f) The Plan of Compromise and Arrangement in respect of the Applicant was dated February 11, 2011, subsequently amended, approved at a meeting of affected creditors held pursuant to Order of the Court on April 16, 2011 and sanctioned by an Order of the Honourable Justice Morawetz made on April 21, 2011 (the “Sanction Order”);
- g) The Articles of Reorganization have been filed and the Plan of Compromise and Arrangement in respect of the Applicant has been implemented in accordance with the Sanction Order;
- h) All functions and responsibilities of the Representative Counsel pursuant to the Representative Counsel Appointment Order have been fully performed;
- i) All accounts for the services of the Representative Counsel from May 20, 2010 to October 25, 2010 and of Richard B. Jones as his special counsel

from June 16, 2010 to October 21, 2010 were approved by the Order of the Honourable Madame Justice Peppal made on December 9, 2010 and have been paid in full;

- j) All subsequent accounts of the Representative Counsel and of his special counsel have been approved by the Interim Operating Officer and, subsequent to the making of the Sanction Order, unmanimously approved by the board of directors of the Applicant appointed pursuant to the Sanction Order, and all such accounts have been paid in full;
- k) There are no further functions or other duties necessitating the continuing appointment of a representative counsel for the creditors of the Applicant and it is appropriate that the Representative Counsel should be discharged and his activities as reported to this Honourable Court should be approved;
- l) Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C36, as amended;
- m) Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*; and,
- n) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- a) The Representative Counsel Appointment Order made by the Honourable Madam Justice Pepall on June 15, 2010 as amended by an Order of August 27, 2010 and further Order of November 22, 2010;
- b) The First Report of the Representative Counsel dated November 3, 2010;
- c) The Second Report of the Representative Counsel dated November 13, 2011;
- d) The Third Report of the Representative Counsel dated November 29, 2010;
- e) The Fourth Report of the Representative Counsel dated April 16, 2011
- f) The Fifth Report of the Representative Counsel dated August 8, 2011;
- g) The Third Report of the Interim Operating Officer dated August 8, 2011;
- h) The Affidavit of Douglas Turner Q.C. sworn September 30, 2011;
- i) The Affidavit of Richard B. Jones sworn October 4, 2011; and
- j) Such further and other materials as counsel may advise and this Honourable Court may permit.

December 13, 2011

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Special Counsel for the Representative
Counsel

TO: **THE SERVICE LIST ATTACHED**

SCHEDULE "A"

Court File No. 10-8630-00CL

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

**THE HONOURABLE MISTER) THURSDAY, THE 22nd
JUSTICE MORAWETZ) DAY OF DECEMBER, 2011**

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OF NELSON FINANCIAL GROUP LTD.

Applicant

**ORDER
(Discharge of Representative Counsel)**

THE MOTION, made by Douglas Turner, Q.C., in his capacity as the Representative Counsel for the Noteholders of Nelson Financial Group Ltd. appointed by this Court (the "Representative Counsel"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion and the Motion Record, including the Fifth Report of the Representative Counsel dated August 8, 2011, the fee affidavit of Douglas Turner, Q.C. sworn September 30, 2011, and the fee affidavit of Richard B. Jones sworn October 4, 2011, both such fee affidavits being filed on a sealed basis, and on hearing the submissions of the Representative Counsel, the special counsel for the Representative

Counsel, counsel for the Monitor, no other persons appearing although duly served, and having considered the consent of the Applicant;

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 it is hereby abridged and the service of the Notice of Motion and Motion Record herein as effected by the Applicant is hereby validated in all respects and any further service is dispensed with.
2. **THIS COURT ORDERS** that the activities of the Representative Counsel, as set out in his reports dated November 3, 2010, November 13, 2010, November 29, 2010, April 16, 2011, and August 8, 2011, be and the same are hereby approved;
3. **THIS COURT ORDERS** that the accounts of the Representative Counsel for services rendered as such between October 26, 2010 and April 21, 2011 and of his special counsel, Richard B. Jones for services rendered between October 22, 2010 and April 21, 2011, as filed with the Court, be and the same are passed and approved;
4. **THIS COURT ORDERS** that the Representative Counsel of the Noteholders of the Applicant be and he is hereby discharged and released of and from all duties, authorities and responsibilities imposed upon the Representative Counsel pursuant to the Order of the Honourable Madam Justice Pepall made on June 15, 2010 as amended by an Order of August 27, 2010 and the further Order of November 22, 2010, provided however that, notwithstanding his discharge, the Representative Counsel, and his special counsel, 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 Representative Counsel and the special counsel as such and in respect of all acts done in their capacity as such.
