

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

**THE HONOURABLE
MR. JUSTICE CAMPBELL**

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**WEDNESDAY, THE
12th DAY OF SEPTEMBER, 2012**



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

**AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE
OR ARRANGEMENT WITH RESPECT TO HOLLINGER INC.,
4322525 CANADA INC. AND SUGRA LIMITED**

Applicants

**ORDER
(KPMG Settlement Approval)**

THIS MOTION brought by the Applicants for an Order approving the release and settlement agreement between Hollinger Inc. and KPMG LLP Canada dated October 1, 2010 (the "**KPMG Release and Settlement Agreement**") and for Orders releasing and barring claims against the released parties (the "**KPMG Releasees**") as more particularly defined below) was heard on April 19, 2012 at 330 University Avenue, Toronto, Ontario with Reasons for Decision delivered this day.

ON READING the Complete Motion Record of the Applicants for Settlement Approval and Related Motions, the Responding Motion Record of Conrad Black and Conrad Black Capital Corporation (collectively the "Black Respondents"), the

Supplementary Motion Record of the Black Respondents, the Omnibus Pleadings Brief and the Fresh as Amended Statement of Claim in Ontario Superior Court of Justice (Commercial List) Court File Number 06-CL-6261, amended June 19, 2012 (the "*Hollinger Inside Directors Litigation*");

ON HEARING the submissions of counsel for the Applicants, Torys LLP (Ontario) and Torys LLP (New York) (together, "Torys"), KPMG LLP Canada, Maureen J. Sabia, Douglas G. Bassett, Allan E. Gotlieb, Fredrik S. Eaton and Henry H. Ketcham III (the "Outside Directors"), the Black Respondents, F. David Radler and F.D. Radler Ltd. (the "Radler Respondents"), Argus Corporation Limited, Daniel W. Colson, the Indenture Trustees, Catalyst Fund General Partner I Inc., Canadian Imperial Bank of Commerce, Donald Fullerton and Ernst & Young Inc. (the "Monitor" of the Applicants);

UPON THIS COURT'S SUBSEQUENT DIRECTION to the Monitor to work with counsel for the Applicants, the Black Respondents, Torys and KPMG LLP Canada to address the case management of the *Hollinger Inside Directors Litigation* if the settlements between Hollinger Inc. and Torys and Hollinger Inc. and KPMG LLP Canada are approved;

UPON THE AGREEMENT of KPMG LLP Canada to be bound by the terms of the proposed Non-Party Protocol attached to this Order as **Appendix "A"** and;

UPON THE ACKNOWLEDGMENT of KPMG LLP Canada that it will have ongoing obligations as a Non-Party in the *Hollinger Inside Directors Litigation*, subject to management by the Court;

1. **THIS COURT ORDERS AND DECLARES** that the Service and Notice Procedure Order, dated November 12, 2010, respecting the service protocol for this motion has been complied with.

Approval of the KPMG Release and Settlement Agreement

2. **THIS COURT ORDERS** that the KPMG Release and Settlement Agreement is hereby approved in its entirety and that the parties thereto (the "**Parties**") are hereby bound by this Order and by the KPMG Release and Settlement Agreement and are authorized and directed to comply with their obligations thereunder, including, without limitation, to make the payment provided for therein.

3. **THIS COURT DECLARES** that the compromises, arrangements, exculpations, releases, discharges and injunctions contemplated in the KPMG Release and Settlement Agreement and, in particular, those granted by and for the benefit of the KPMG Releasees, are integral components of the settlement between Hollinger Inc. and KPMG LLP Canada and of the KPMG Release and Settlement Agreement and are necessary for, and vital to, the success of the settlement between Hollinger Inc. and KPMG LLP Canada and that, effective on the release of this Settlement Approval Order, all such compromises, arrangements, exculpations, releases, discharges and injunctions as set out in the KPMG Release and Settlement Agreement and this Settlement Approval Order are hereby sanctioned, approved and given full force and

effect in accordance with and subject to their respective terms and conditions as approved by this Settlement Approval Order.

Release by KPMG Releasees

4. **THIS COURT ORDERS AND DECLARES** that any and all claims filed by the KPMG Releasees in these proceedings be and are hereby extinguished and that the KPMG Releasees are hereby forever barred from asserting or advancing any claim in this proceeding, directly or indirectly, against the Applicants or any of their subsidiaries and all such claims are hereby waived.

Release by Hollinger

5. **THIS COURT ORDERS AND DECLARES** that each of the Applicants and their past, present and future subsidiaries and divisions including, without limitation, (a) 4322525 Canada Inc., Sugra Limited, Domgroup Ltd. and 10 Toronto Street Ltd. (but not including the Sun-Times Media Group, Inc. and its subsidiaries (collectively, "**STMG**"); (b) all partnerships in which any of the Applicants or any subsidiary thereof is the general partner and any corporation owned by such partnership; and (c) in respect of each of the foregoing, their respective current officers, directors, employees, servants, agents, assigns, successors, heirs, administrators, insurers and any person (as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended to the date hereof, "**Person**") who claims a right or interest through any of them ((a) to (c) collectively, "**Hollinger**") does hereby irrevocably and unconditionally fully and finally release, remise, acquit and forever discharge, without qualification or limitation, KPMG LLP Canada, KPMG LLP (U.S.), all other member firms of KPMG International and their

related or affiliated entities and their respective past, present and future partners, officers, directors, employees, servants, agents, assigns, insurers and counsel (collectively, the "**KPMG Releasees**") separately and jointly, of and from all rights, interests, obligations, debts, dues, sums of money, accounts, reckonings, damages, claims, actions, allegations, causes of action, counterclaims or demands whatsoever, whether known or unknown, in law or equity, of whatever kind or character, suspected, fixed or contingent, that have been, that could be, or that could have been asserted by Hollinger through to and including the date of the KPMG Release and Settlement Agreement (including, without limitation, any claim for contribution, indemnification, reimbursement or any other form of claim over related to the subject matter of the Settled KPMG Claims (as defined below) that could be asserted on or after the date of the KPMG Release and Settlement Agreement by Hollinger based on events occurring prior to and through the date thereof) against the KPMG Releasees concerning: (i) any and all professional services provided by the KPMG Releasees including but not limited to audit, tax and consultation work on behalf of Hollinger; (ii) allegations of injury to Hollinger caused by the KPMG Releasees; (iii) any Intended Claims, as defined in the KPMG Release and Settlement Agreement; and (iv) any and all other claims that Hollinger ever had or may have against the KPMG Releasees ((i) to (iv) collectively, the "**Settled KPMG Claims**").

Third Party Releasors

6. **THIS COURT ORDERS AND DECLARES** that all former and present shareholders, former officers and directors, and all creditors, parents, subsidiaries, affiliates, and related parties of Hollinger, and including, without limitation, STMG and its

past and present shareholders, and any other Person (collectively, the "**Third Party Releasors**") hereby release, remise, acquit and forever discharge, without qualification or limitation, the KPMG Releasees, separately and jointly, of and from any and all direct and indirect claims (contingent, liquidated or unliquidated, proven or unproven, known or unknown, in the nature of damages or otherwise, whether or not asserted and whether arising by contract, agreement, under statute, civil law, common law, or in equity, or otherwise in any jurisdiction) including, without limitation, for contribution, indemnification, reimbursement or other form of claim over against the KPMG Releasees for any liability to or in favour of any party against whom Hollinger has brought or in the future brings any claims against the KPMG Releasees relating in all cases in any way to the subject matter of the KPMG Settled Claims or to Hollinger.

7. **THIS COURT ORDERS AND DECLARES** that Hollinger's recovery from any Person against whom Hollinger pursues a claim for damages (a "Non-Settling Defendant") and with whom the KPMG Releasees are judicially determined to be jointly and severally liable to Hollinger for damages, will be limited to the Non-Settling Defendant's proportionate share of liability, as determined by this Court, PROVIDED THAT the Non-Settling Defendant successfully proves a claim for contribution and indemnity from the KPMG Releasees in respect of Hollinger's claim.

8. **UPON THE AGREEMENT** of KPMG LLP Canada thereto having been given, **THIS COURT ORDERS AND DECLARES** that KPMG LLP Canada shall be bound by the terms of the proposed Non-Party Protocol attached to this Order as **Appendix "A"**.

9. **UPON THE ACKNOWLEDGMENT** of KPMG LLP Canada that it has such obligations having been given, **THIS COURT ORDERS AND DECLARES** that KPMG LLP Canada will have ongoing obligations as a Non-Party in the Hollinger Inside Directors Litigation, subject to management by the Court.

Restriction

10. **THIS COURT ORDERS AND DECLARES** that notwithstanding the foregoing, the releases provided for in paragraphs 3, 4, 5 and 6 do not apply to a claim based on a final judgment that a plaintiff suffered damages, or if civil law applies to such claim, prejudice, as a direct result of such plaintiff's reliance on express fraudulent misrepresentations made by KPMG LLP Canada or its agents, when KPMG LLP Canada had actual knowledge that the misrepresentations were false.

Bar Orders

11. **THIS COURT ORDERS** that, without limiting the effect or validity of any provision of this Settlement Approval Order, all Third Party Releasers are permanently and forever barred, estopped, stayed and enjoined from commencing, conducting or continuing in any manner, directly or indirectly, any action, suits or demands, including without limitation, by way of contribution or indemnity or other relief, in common law or in equity, or under the provisions of any statute or regulation, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the KPMG Releasees or any of them in relation to or otherwise in connection with the subject matter of the KPMG Settled Claims or Hollinger. Without limiting the foregoing and for greater certainty, the

provisions of this paragraph apply to the claims against the KPMG Releasees or any of them that have been brought in the following proceedings:

- (a) Ontario Superior Court of Justice (Commercial List) Court File No. CV-08-00007549-00CL, entitled *Moffat Management Inc. et al. v. Sun-Times Media Group, Inc. et al.*; and
- (b) Ontario Superior Court of Justice (Commercial List) Court File No. 06-CL-6259, entitled *Conrad M. Black et al. v. Argus Corporation Limited et al.*

12. **THIS COURT ORDERS AND DECLARES** that each and every Third Party Releasor is hereby permanently and forever barred, stopped, stayed and enjoined, as of the date of this Order, from: (i) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree, or order against the KPMG Releasees or their property in respect of any claims relating in any way to the KPMG Settled Claims; or (ii) taking any action to interfere with the implementation and consummation of the KPMG Release and Settlement Agreement.

13. **THIS COURT ORDERS** that a copy of this Settlement Approval Order shall be filed in this court file and the following court files:

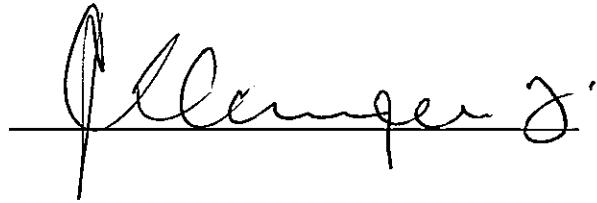
- (a) *Hollinger Inc. and Domgroup Ltd. v. The Ravelston Corporation et al.*, bearing Ontario Superior Court of Justice (Commercial List) Court File Number 05-CL-5822;

- (b) *Hollinger Inc. et al. v. The Ravelston Corporation*, bearing Ontario Superior Court of Justice (Commercial List) Court File Number 06-CL-6261;
- (c) *Hollinger Inc. v. Conrad M. Black et al.*, bearing Ontario Superior Court of Justice (Commercial List) Court File Number 07-CL-6954;
- (d) *Conrad M. Black et al. v. Argus Corporation et al.*, bearing Ontario Superior Court of Justice (Commercial List) Court File Number 06-CL-6259;
- (e) *Moffat Management Inc. et al. v. Sun-Times Media Group, Inc.*, bearing Ontario Superior Court of Justice (Commercial List) Court File Number CV-08-00007549-00CL;
- (f) *John A. Boulton v. KPMG LLP et al.*, bearing Ontario Superior Court of Justice (Commercial List) Court File Number 06-CL-6786;
- (g) *Daniel W. Colson v. KPMG LLP et al.*, bearing Ontario Superior Court of Justice (Commercial List) Court File Number 06-CL-6787;
- (h) *F. David Radler and North American Newspapers Ltd. v. Conrad M. Black et al.*, bearing Ontario Superior Court of Justice (Commercial List) Court File Number 07-CL-7334; and
- (i) *Barbara Amiel-Black v. Sun-Times Media Group Inc. et al.*, bearing Ontario Superior Court of Justice File Number CV-08-7581-00CL.

Recognition and Enforcement

14. **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 or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.



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APPENDIX "A"**NON-PARTY PROTOCOL**

This document production protocol is intended to describe the process for obtaining production of documents from KPMG LLP ("KPMG") and Torys LLP ("Torys") (collectively "the Non-Parties") in the context of the proceeding commenced by Hollinger Inc. et al. against Conrad M. Black, F. David Radler et al. (collectively the "Parties to the Action") in Ontario Superior Court of Justice, Court File No. 06-CL-6261 ("the Action"). The protocol assumes that the settlements between Torys and Hollinger Inc. et al. and KPMG and Hollinger Inc. et al. will be approved by the Court, including the bar orders sought.

The Non-Parties have confirmed that to the best of their knowledge documents related to Hollinger Inc. in their power, possession and control as of October 2004, and in the case of the Non-Party Torys those documents that were not transferred in response to directions from Hollinger Inc., have been preserved and will continue to be preserved until the Action has been finally resolved.

Following the close of pleadings in the Action, the Parties to the Action will exchange documentary production in the ordinary course as required by the *Rules of Civil Procedure*. In the case of the plaintiffs, such documentary production shall include all relevant, non-privileged documents in the possession, control or power of the Chief Restructuring Officer or the Litigation Trustee appointed pursuant to the Order of the Court dated May 21, 2008 (the "Multi-Party Settlement Order"). For greater certainty, the documents in the control of the Chief Restructuring Officer or the Litigation Trustee include all documents that are currently in the possession of the plaintiffs' former counsel who acted for the plaintiffs or any of them in connection with the Litigation Assets as defined in the Multi-Party Settlement Order.

In the event the plaintiffs or any of them did not retain a copy of any of their aforementioned relevant documents ("Documents"), the plaintiffs shall write to Ernst & Young Inc. ("E&Y"), in its capacity as court-appointed Inspector, to determine and ask whether it has a copy of the sought after Documents. If so, the plaintiffs shall thereafter seek an order, in the Inspectorship proceedings to obtain copies of the Documents in the possession of the Inspector.

After the close of pleadings and the production of documents by the Parties to the Action, and in accordance with the timetable set out in the Discovery Plan (as set out in paragraph 6 below):

1. The Parties to the Action will identify the categories of relevant documents that they require from the Non-Parties with sufficient particularity regarding time period, document type and the transaction or issue(s) to which the requested documents are relevant all with the objective of making production proportionate and reasonable in the circumstances (for example, "all documents reflecting work done or advice given, as the case may be, by [the Non-Party] in relation to [name of transaction]");
2. To the extent that any list responsive to a request from the Parties to the Action exists, the Non-Parties shall produce such list (subject to editing for relevance and privilege) to assist the Parties to the Action to identify the available documents which may be relevant.
3. Relevance of the documents requested will be defined by the pleadings;
4. Subject to the principles of proportionality and reasonableness set out in paragraph 1, requested non-privileged documents relevant to any matter in issue in the action, shall be made available for inspection and, if requested, copies shall be produced, all in accordance with paragraphs 5 through 8 hereof.
5. The Non-Party KPMG has advised E&Y in its capacity as Monitor that the documents KPMG has in its possession that may be related to the issues in the Action are not organized in an electronic document management database but are contained in paper files. The Non-Party Torys has advised E&Y in its capacity as Monitor that many of the documents it has in its possession that may be related to the issues in the Action are not organized in an electronic

document management database but are instead contained in paper files, some of which are available on CD-ROM. Accordingly, the Non-Parties will separately make the categories of documents requested by the parties available for inspection, subject to any applicable solicitor-client privilege, at a mutually acceptable location at mutually accepted times. To the extent that documents are available electronically they shall be made available for inspection in that format, upon request;

6. KPMG and Torys shall be consulted about the proposed schedule for production and discovery with respect to productions pursuant to this protocol before the finalization of the Discovery Plan pursuant to Rule 29.1.03(1) of the Rules of Civil Procedure. KPMG and Torys shall thereafter make documents available for inspection in accordance with the established schedule. Any dispute with respect to the schedule as it affects the Non-Parties may be referred to the Court pursuant to paragraph 11 hereof;
7. The Parties to the Action will be permitted to access the aforementioned categories of documents for an agreed duration during which any such Party may request copies of them.
8. The Non-Parties will arrange for copies of the requested documents to be made and thereafter provided to, not only the Party to the Action requesting copies of the documents, but also every other Party to the Action. In the case of documents that are now in electronic form, production of such documents will be by electronic copies;
9. Any Party to the Action that requests copies of documents pursuant to paragraph 6 agrees to pay all reasonable expenses relating to the copying or scanning of the requested documents incurred by the Non-Parties (including the costs incurred as a result

of a Non-Party retaining a third party vendor for such copying or scanning) for both the Party requesting the documents and all other Parties to the Action who are entitled to receive a duplicate copy, subject to the rights of the Parties to the Action to recover the same from the other Parties to the Action as costs in the Action. Nothing in this paragraph is intended to prevent the Parties to the Action from allocating the costs referred to among themselves in any way they agree is appropriate;

10. All other costs of the Non-Parties relating to the preparation for inspection and the production of documents shall be in the discretion of the Court pursuant to rule 30.10 of the Rules of Civil Procedure and s. 131 of the *Courts of Justice Act* and any Non-Party or Party to the Action may refer the issue of the responsibility for payment of such costs to the Court pursuant to paragraph 11 hereof;
11. The Parties to the Action and the Non-Parties may enlist the assistance of the Court, in case managing or resolving any issues that may arise during implementation of the abovementioned document production protocol, including issues of the relevance of the documents requested, the proportionality and reasonableness of the request in the circumstances, the application and/or waiver of privilege and the responsibility for costs incurred by the Non-Parties referred to in paragraph 10 hereof. The plaintiffs acknowledge that they have waived privilege over documents arising from Torys' representation of the Plaintiffs, which documents are in the possession of the Non-Parties. For greater certainty, the waiver of privilege does not extend to materials exchanged in the mediations that took place between Hollinger Inc. and the Non-Parties, respectively, which mediation materials remain privileged and confidential;

12. The deemed undertaking, as described in Rule 30.1 of the Rules of Civil Procedure shall apply to all documents made available for inspection by the Non-Parties;
13. Nothing in this document protocol waives or prejudices the rights that the Parties to the Action and the Non-Parties might have pursuant to rules 30.10, 31.10 and 53.07 of the Rules of Civil Procedure and section 131 of the *Courts of Justice Act*.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT
WITH RESPECT TO HOLLINGER INC., 4322525 CANADA INC. AND SUGRA LIMITED

Court File No: 07-CL-7120

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER
(KPMG Settlement Approval)**

Thornton Grout Finnigan LLP
Suite 3200, Canadian Pacific Tower
100 Wellington St. West, P.O. Box 329
Toronto-Dominion Centre
Toronto, ON M5K 1K7

Michael Barrack (LSUC# 21941W)
Megan Keenberg (LSUC# 53735G)
Tel: (416) 304-1616
Fax: (416) 304-1313

Lawyers for Hollinger Inc., 4322525 Canada
Inc. and Sugra Limited.

