



Court File No. 07-CL-7120

**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
(Torys Settlement Approval)**

THIS MOTION brought by the Applicants for an Order approving the release and settlement agreement between Hollinger Inc. and Torys LLP (Ontario) and Torys LLP (New York) (together, "**Torys**") dated March 26, 2010 (the "**Torys Release and Settlement Agreement**") and for Orders releasing and barring claims against the released parties (the "**Torys 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, 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 Torys to be bound by the terms of the proposed Non-Party Protocol attached to this order as “Appendix “A””; and

UPON THE ACKNOWLEDGEMENT of Torys 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 Torys Release and Settlement Agreement

2. **THIS COURT ORDERS** that the Torys Release and Settlement Agreement is hereby approved in its entirety and that Hollinger Inc. is hereby bound by this Order and by the Torys Release and Settlement Agreement and is authorized and directed to comply with its obligations thereunder.
3. **THIS COURT DECLARES** that the compromises, arrangements, exculpations, releases, discharges and injunctions contemplated in the Torys Release and Settlement Agreement and in this Settlement Approval Order and, in particular, those granted by and for the benefit of the Torys Releasees, are integral components of the settlement between Hollinger Inc. and Torys and of the Torys Release and Settlement Agreement and are necessary for, and vital to, the success of the settlement between Hollinger Inc. and Torys 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 Torys Release and Settlement Agreement and this Settlement Approval Order are hereby sanctioned and approved in accordance with and subject to their respective terms and conditions.

Release by Hollinger

4. **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; (c) in respect of each of the foregoing, their respective current officers, directors, employees, servants, agents, assigns, successors, heirs, administrators and insurers; and (d) 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 individual or entity referred to in (a) to (c), ((a) to (d) collectively, “**Hollinger**”) does hereby irrevocably and unconditionally fully and finally release, remise, acquit and forever discharge, without qualification or limitation, Torys and its past, present and future partners, employees, directors, officers, affiliates, agents, advisors, insurers and reinsurers, and their predecessors, successors and assigns (collectively, the “**Torys 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 hereof (including, without limitation, any claim for contribution, indemnification, reimbursement or any other form of claim over related to the subject matter of the Settled Torys Claims (as defined below) that could be

asserted on or after the date hereof by Hollinger based on events occurring prior to and through the date hereof) against the Torys Releasees concerning: (i) Torys' representation of and provision of professional services to Hollinger; (ii) any allegations of injury to Hollinger caused by or contributed by the Torys Releasees or any of them; and (iii) any and all other claims that Hollinger ever had or may have had against the Torys Releasees or any of them, including, without limitation, all claims raised or which could have been raised in the Intended Action, as defined in the Torys Release and Settlement Agreement (collectively, the "**Settled Torys Claims**").

Third Party Releases

5. **THIS COURT ORDERS AND DECLARES** that all former and present shareholders, former officers and directors, and all creditors, parents, subsidiaries (but not including STMG), and affiliates of Hollinger and any other Person (collectively, the "**Third Party Releasors**") hereby release, remise, acquit and forever discharge, without qualification or limitation, the Torys 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) in any way relating to the subject matter of the Settled Torys Claims or to Hollinger (the "**Third Party Claims**"), including, without limitation, all claims for contribution, indemnification, reimbursement or other form of claim over against the Torys Releasees in respect of any liability by a Third Party Releasor to Hollinger (the "**Third Party Contribution Claims**").

6. **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 Torys 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 against the Torys Releasees in respect of Hollinger's claim.
7. **UPON THE AGREEMENT** of Torys thereto having been given, **THIS COURT ORDERS AND DECLARES** that Torys shall be bound by the terms of the proposed Non-Party Protocol attached to this Order as **Appendix "A"**.
8. **UPON THE ACKNOWLEDGMENT** of Torys that it has such obligations having been given, **THIS COURT ORDERS AND DECLARES** that Torys will have ongoing obligations as a Non-Party in the Hollinger Inside Directors Litigation, subject to management by the Court.

Restriction

9. **THIS COURT ORDERS AND DECLARES** that notwithstanding the foregoing, the releases provided for in paragraph 5 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 and solely as a result of such plaintiff's reliance on express fraudulent misrepresentations made by Torys or its agents, if Torys had actual knowledge that the misrepresentations were false. The restriction set out in this paragraph does not apply to Third Party Contribution Claims.

Bar Orders

10. **THIS COURT ORDERS** that, without limiting the effect or validity of any provision of this Settlement Approval Order, all Third Party Releasors are permanently and forever barred, estopped, stayed and enjoined from commencing, conducting or continuing in any manner, directly or indirectly, any actions, 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 Torys Releasees or any of them in any way relating to or otherwise connected with the subject matter of the Settled Torys Claims or to Hollinger.

11. **THIS COURT ORDERS AND DECLARES** that each and every Third Party Releasor is hereby permanently and forever barred, estopped, 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 Torys Releasees or their property in respect of any claims relating in any way to the Settled Torys Claims; or (ii) taking any action to interfere with the implementation and consummation of the Torys Release and Settlement Agreement. The bar order set out in paragraph 8(i) does not apply to the orders issued by the Ontario Superior Court of Justice in *Drover et. al. v. Argus et. al.* (Court File No. CV-09-0037034-CP) and by the Saskatchewan Court of Queen's Bench in *Bethel et. al. v. Conrad Black et. al.* (QBG No. 1492 of 2004) approving the settlement of those class actions.

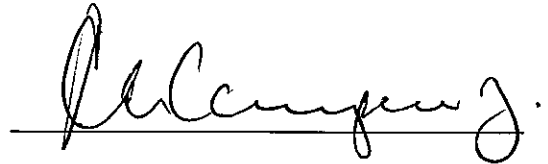
12. **THIS COURT ORDERS** that a copy of this Settlement Approval Order shall be filed in this court file and the following court files:

- (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

13. **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
(Torys Settlement Approval)

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