Court File No. 07-CL-7120

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 PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO HOLLINGER INC., 4322525 CANADA INC. AND SUGRA LIMITED

APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

TWENTY-SECOND REPORT OF THE MONITOR
July 23, 2012

1. On August 1, 2007, Hollinger Inc. ("**Hollinger**") and certain of its subsidiaries (collectively, the "**Applicants**") filed for and obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to the Order of this Court dated August 1, 2007 (the "**Initial Order**"). Pursuant to the Initial Order, Ernst & Young Inc. was appointed as the monitor of the Applicants (the "**Monitor**") in these CCAA proceedings.

2. Capitalized terms not defined in this Report are as defined in the Initial Order or previous reports of the Monitor. All references to dollars are in Canadian currency unless otherwise noted.

PURPOSE

3. The purpose of this Twenty-Second Report of the Monitor (the "**Twenty-Second Report**") is to advise and update this Court on:

   i. the progress of the motions to approve the Settlements;

   ii. the non-party document production protocol between the Applicants, Torys and KPMG; and

iii. the draft proposed consolidated plan of compromise and arrangement filed by Conrad Black Capital Corporation and Conrad M. Black.

UPDATE ON THE SETTLEMENT APPROVAL PROCESS

4. In its Twenty-First Report and its Supplement to the Twenty-First Report, the Monitor provided a comprehensive update on the Applicants' receipts and disbursements through February 28, 2012 and commentary on the status of the KPMG, Torys, Fullerton Estate / CIBC and the Outside Directors' Settlement Agreements.

5. The Settlement Approval Motion to approve the KPMG, Torys, Fullerton Estate / CIBC and Outside Directors' Settlement Agreements was heard on April 19, 2012. The Motion is presently under reserve by Justice Campbell.

6. On May 11, 2012, counsel to the Monitor wrote a letter to the Service List (the "**May 11 Letter**") in order to confirm whether or not there were any claims over by any of the former inside directors and officers against Fullerton Estate / CIBC or the Outside Directors. A copy of the May 11 Letter is attached hereto as Appendix "A".

7. On May 23, 2012, counsel to the Monitor confirmed that there were no objections with respect to the Fullerton Estate / CIBC Settlement or the Outside Directors Settlement. At the attendance on July 10, 2012, the Monitor reported to the Court that no objections were received to these settlements.

8. At the May 9, 2012 hearing, counsel for the Applicants reported on the settlement with Ralph Barford. The scheduling of the hearing of the Barford Settlement will be addressed, if necessary, on July 24, 2012.

NON-PARTY DOCUMENT PROTOCOL

9. As reflected in a letter from the Monitor to the Service List on May 11, 2012 (attached at Appendix "A"), at the attendance on May 9th Justice Campbell:

i. indicated that he wished counsel for the Applicants/Black/Torys/KPMG to address the case management of the remaining litigation with the former inside directors and/or officers of Hollinger Inc. with a view to its implications for Torys and KPMG if those settlements are approved; and

ii. confirmed that counsel for Applicants indicated that a Statement of Claim reflecting the ultimate Claims against Conrad M. Black ("**Black**"), F. David Radler ("**Radler**") *et al.* (the "**Non-Settling Defendants**") would be delivered. This Statement of Claim would focus the process and discussions to be conducted with the assistance of the Monitor.

10. On June 14, 2012, the Applicants served an amended statement claim commenced by Hollinger Inc. *et al.* against the Non-Settling Defendants in Ontario Superior Court of Justice, Court File No. 06-CL-6261 (the "**Amended Claim**").

11. Following the delivery of the Amended Claim, the Monitor facilitated discussions between Torys, KPMG and the Applicants concerning Justice Campbell's request. Following a meeting between the parties, counsel to the Monitor prepared a draft protocol intended to describe the process for obtaining production of documents from KPMG and Torys (collectively "**the Non-Parties**") in the context of the Amended Claim. On July 9, 2012, counsel to the Monitor circulated a draft non-party document protocol (the "**Document Protocol**") to the Service List in advance of a scheduling hearing on July 10, 2012.

12. Prior to the scheduling hearing, a number of the Non-Settling Defendants objected to the Document Protocol and the provision of the Document Protocol to the Court. At the attendance on July 10, 2012 Justice Campbell required submissions with respect to the Document Protocol by July 19th. Justice Campbell further directed that if the parties could not agree to the form of Document Protocol the Monitor was to deliver a report.

13. Following the attendance on July 10, 2012, counsel to the Monitor had discussions with counsel to Black and Radler. In addition, counsel to Black and Radler each delivered submissions or correspondence in respect of the draft Document Protocol prior to the July 19, 2012 deadline. The submissions and correspondence are attached as Appendix "B" and "C" respectively.

14. On July 11, 2012 counsel to the Monitor confirmed to the relevant parties that the Protocol "does not, and was not intended to, waive or prejudice" rights pursuant to Rules

30.10 and 31.10 of the *Rules of Civil Procedure*. The Protocol is intended to provide the defendants to the Statement of Claim with the right to documentary production from the Non-Parties, as set out in the Protocol, without the need to bring a motion or obtain an order pursuant to Rule 30.10. As a "Document Production Protocol" the Protocol does not address rights or obligations pursuant to Rule 31.10 (oral discovery).

15. Based on information and feedback received, the Monitor proposed further revisions to the draft July 9, 2012 Document Protocol and engaged in discussions with the Non-Parties and the Applicants to address some of the issues raised in the correspondence and submissions. An amended version of the Document Protocol, which the Non-Parties and the Applicants have advised is agreeable, was circulated to counsel for Black and Radler on July 20, 2012. The revised draft addresses many, but not all, of the issues raised in the submissions and correspondence of Black and Radler. No further comments have been received.

16. Attached hereto as Appendix "D" is a copy of the Document Protocol that was circulated on July 20, 2012. This draft Document Protocol has been agreed by the Applicants, Torys and KMPG. No other interested party has expressed agreement with the Draft Protocol. It is provided to this Court to advise the Court of the progress made with Torys and KPMG with respect to document production in the event the settlements are approved.

DRAFT BLACK CCAA PLAN

17. On April 24, 2012, Conrad Black Capital Corporation ("**CBCC**") and Black filed a notice of motion to, amongst other things, allow for finalization, filing and mailing of a draft plan of compromise and arrangement (the "**Draft Black CCAA Plan**").

18. Counsel to CBCC and Black have sought certain creditor and claim information from the Monitor both as part of the April 24, 2012 motion and in recent correspondence with the Monitor. The Monitor discussed this request with the Applicants and responded to counsel to CBCC and Black on July 9, 2012, advising them that the information sought would be the subject of further discussion before this Court.

19. As part of the attendance before this Court on July 24, 2012, CBCC and Black are seeking to finalize a timetable for scheduling their motion with respect to the Draft Black CCAA Plan.

20. Further to the appearance on July 10, 2012, the Applicants agreed to set out their objections to the Black CCAA Plan. The Monitor understands that the Applicants will be delivering their objections prior to the July 24, 2012 attendance.

21. On July 23, 2012, the Monitor received a letter from DK, the largest arms-length creditor in the CCAA proceedings (copied to the Applicants), that expresses DK's position with respect to the Draft Black CCAA Plan and asks the Monitor to make DK's views known to the Court.

22. At the scheduling hearing on July 24, 2012, the Monitor will seek directions from this Court as to the timing and expectations with respect to the Monitor's reporting in relation to the Draft Black CCAA Plan including reporting on the positions of the stakeholders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 23rd DAY OF JULY, 2012:

ERNST & YOUNG INC.

In its capacity as Court-appointed
Monitor of Hollinger Inc. and certain of its affiliates

Per:

Brian M. Denega
Senior Vice President

Christopher Mediratta
Vice President

APPENDIX A

LENCZNER SLAGHT BARRISTERS

Direct Line: (416) 865-2921
Direct Fax: (416) 865-3558
Email: pgriffin@litigate.com

May 11, 2012

TO SERVICE LIST

Dear Members of the Service List:

Re: Hollinger Inc. CCAA Proceedings

I am writing further to the attendance before the Honourable Justice Campbell on May 9, 2012 respecting the motion record of Conrad Black Capital Corporation and Conrad M. Black served by Mr. Howard et al.

Justice Campbell:

1. indicated to the parties that he wished counsel for the Applicants, counsel for Black et al and counsel for Torys/KPMG etc. to address the management of the remaining litigation with the former inside directors and/or officers of Hollinger Inc. with a view to its implications on Torys and KPMG if those settlements are approved;

2. confirmed that counsel for the Applicants indicated that by the end of May a Statement of Claim reflecting the ultimate claims against Black et al would be delivered. This Statement of Claim will focus the process and discussions to be conducted with the assistance of the Monitor; and

3. communicated that he expects counsel to return to report at the end of May/early June.

As part of the discussion concerning any settlement approval presently under reserve by Justice Campbell, counsel for the Applicants identified to the Monitor those settlements for which approval was sought in which there is no claim over by any of the former inside directors and officers:

(a) CIBC/Fullerton; and

(b) the Outside Directors.

Service List May 11, 2012

Approval of those settlements, if His Honour was so inclined, could move forward in advance of those involving Torys/KPMG. Could Mr. Howard and any other party let the Monitor know whether they disagree?

As well, counsel for the Applicants reported on the settlement with Mr. Ralph Barford which is to be brought forward for approval by the Applicants shortly as well.

If we have agreement we will advise Justice Campbell by letter accordingly.

The Monitor is ready to assist the parties with advancing the discussions referred to above.

Yours very truly,

Peter H. Griffin

PHG/ky

cc. Matthew B. Lerner
Brian Denega
Chris Mediratta
Brad Newman

APPENDIX B

Court File No. 06-CL-6261

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

B E T W E E N :

HOLLINGER INC., DOMGROUP LTD., 4322525 CANADA INC., 10 TORONTO STREET INC. and SUGRA LIMITED

Plaintiffs

\- and -

CONRAD M. BLACK, BARBARA AMIEL-BLACK, F. DAVID RADLER, JOHN A. BOULTBEE, PETER Y. ATKINSON, PETER G. WHITE, DANIEL W. COLSON, THE RAVELSTON CORPORATION LIMITED, RAVELSTON MANAGEMENT INC., 509643 N.B. INC., 509644 N.B. INC., 509645 N.B. INC., 509646 N.B. INC., 509647 N.B. INC., MOFFATT MANAGEMENT INC., BLACK-AMIEL MANAGEMENT INC., ARGUS CORPORATION LIMITED, CONRAD BLACK CAPITAL CORPORATION, HOLLINGER AVIATION INC., MOWITZA HOLDINGS, INC., 364817 ONTARIO LIMITED, F.D. RADLER LTD., 1269940 ONTARIO LIMITED, 2753421 CANADA LIMITED, PETER G. WHITE MANAGEMENT LTD. and 1406684 ONTARIO LIMITED

Defendants

SUBMISSIONS OF CONRAD M. BLACK AND CONRAD BLACK CAPITAL CORPORATION
(Re Torys and KPMG Non-Party Document Production Protocol)

LERNERS LLP
Barristers & Solicitors
130 Adelaide Street West
Suite 2400
Toronto, ON M5H 3P5

Earl A. Cherniak Q.C., LSUC# 90113C
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Lawyers for Conrad M. Black and Conrad Black Capital Corporation

1. In the Fresh as Amended Statement of Claim, the plaintiffs seek at least $400 million in damages and other relief in respect of numerous transactions over a period of approximately ten years.

2. Conrad Black and Conrad Black Capital Corporation (together, "Black") intend to vigorously defend the claims. To a significant degree, the defence will include reliance on the legal, financial, tax and accounting advice received from Torys LLP and KPMG LLP over the entire period, and prior, upon which Black was entitled to rely.

3. Torys' and KPMG's professional advice is the basis for the contribution and indemnity claims by Black and other defendants, which are the claims that Hollinger Inc. seeks to bar on its settlement approval motion. In order to properly defend the action, Black requires full production and discovery from Torys and KPMG. Black will be unable to properly defend the action without it, given the intimate involvement of Torys and KPMG in every transaction at issue.

4. Black will need the Torys and KPMG productions to defend the claims of Hollinger Inc. However, because Hollinger Inc. says that it only intends to pursue Black for his proportionate share of liability, Hollinger Inc. will have little interest in Torys' or KPMG's productions, and will not take an active role in pursuing (or paying for) their production.

5. Black has already submitted that the bar order is unfair, in part because it would impair the ability to make full answer and defence in the action. The "Non-

Party Document Production Protocol" submitted by Hollinger Inc., Torys, and KPMG does not alleviate the substantive and procedural prejudice that Black will suffer if the Hollinger Inc. settlement agreements with Torys and KPMG are approved by this court in their current form. Nor does it address the numerous concerns raised by and in this court about the inevitable delays and costs associated with complex discovery motions involving Torys and KPMG. As previously submitted at the hearing of the Settlement Approval Motion, the settlements should not be approved without adequate protection against prejudice.

6. The draft Protocol was made without any input from the defendants, in particular Black and Mr. Radler, who are the most affected by it. Black respectfully submits that it should be rejected, and that the Monitor should be directed to consult with all parties to the litigation to prepare a new draft that reflects that consultation, with a clear statement of the issues, if any unresolved, for resolution by the court, after argument by the parties affected.

7. The revised Protocol should recognize that its purpose, and the principle upon which it should be drafted, is to provide a means for removing the settling parties from the litigation without prejudicing the remaining defendants from their right to make full answer and defence, given that their contribution and indemnity claims are to be eliminated by the settlement approval order sought.

8. Black's specific objections to the draft Protocol, which demonstrate the need to a fresh start in consultation with all the parties, are as follows.

The Protocol unfairly shifts the burden of ensuring full production

9. The draft Protocol contemplates that, *after* the close of pleadings *and* documentary production by the parties to the action, the parties are to identify the categories of relevant documents that they require from non-parties Torys and KPMG with sufficient particularity, specifically, the time period, document type, and the issue to which the documents are relevant. It does not deal at all with oral discovery obligations of Torys and KPMG.

10. This unfairly puts the burden of correctly identifying and listing categories of potentially relevant documents in the possession, custody, and control of Torys and KPMG upon those who are entirely ignorant of the universe of potentially relevant documents Torys and KPMG may have. It requires Black and the other parties to the litigation to correctly identify and request specific categories of potentially relevant documents, or they will not be produced in the litigation and no party will ever know of their existence.

11. The draft Protocol contemplates that, at first instance, Torys and KPMG will be the arbiters of what requests are sufficiently particularized and they retain the right to resist production on the basis that the document requests are overly broad. The draft Protocol specifically provides for the parties and/or Torys and KPMG "to enlist the assistance of the court, in case managing or resolving any issues that may arise during the implementation of the abovementioned document production protocol, including issues of relevance of the documents requested and the application and/or waiver of privilege". Disputes relating to document requests and motions arising from

those requests can be expected. The draft Protocol offers nothing that the parties to the litigation do not already have – the right to bring disputes about the scope of documentary production to the court for determination. In that sense, the draft Protocol provides no protection to Black for the rights sought to be eliminated by the bar order.

12. These risks and the possibility that relevant documents may not be produced are good reasons for Rule 30.02; it provides that parties to litigation, with the assistance of their counsel, bear the onus to identify the documents in their possession, power, and control, which may be relevant to matters in issue in the pleadings. Further, the party making production is required to provide a sworn affidavit of documents averring that those obligations have been met. As a practical matter, only that party is able identify all possible custodians and categories of documents in its possession and review them to determine whether they meet the test of relevance under the pleadings. That is the only way that the parties and the court may have comfort that all potentially relevant documents are disclosed. The draft Protocol, which shifts the burden of ensuring complete production to Black, offers no such comfort.

13. The draft Protocol, at paragraph 3, seems as well to limit the *plaintiffs'* documentary production obligations; that, of course is not a proper purpose of the Protocol, which should properly deal only with the obligations of Torys and KPMG.

The promise of economic neutrality to Black is broken

14. Hollinger Inc. has argued that the terms of settlement provide Black with "economic neutrality", because Hollinger Inc. has promised to abandon its claims of joint and several liability against him. However, the draft Protocol contemplates that as soon as the settlements are approved, Torys and KPMG will no longer be parties to the action and the entire burden of the costs associated with production will be borne by the parties. The draft Protocol provides that any party will be permitted access to the documents of Torys and KPMG which will arrange for copies to be made, not only to the requesting party, but to all other parties and that Torys and KPMG are to be paid "all reasonable expenses" they incur in so doing. In reality however, because it is only Black who has an interest in the Torys and KPMG documents, there is a real risk that Black alone will be asked to bear that burden.

15. Although the Torys and KPMG costs are limited to "reasonable expenses", there is no estimate of what they will be or the number of pages of documents that may be potentially relevant. (Is it thousands of documents? Hundreds of thousands? Millions?) Based upon the scope of the allegations against Black by Hollinger Inc. in a 55-page statement of claim, the number of transactions, and the fact that the relevant period of time spans a decade, it is clear that the documentary production required in the action will be voluminous. Since Black has alleged that he relied upon his professional advisors in respect of his conduct as former officer and director of Hollinger Inc. with respect to all of the transactions at issue over that entire period of the claims, it can be expected that the scope of documentary production from Torys and KPMG will also be extensive.

16. There is no basis for making the remaining parties subject to paying the costs of production from KPMG and Torys. If KPMG and Torys were to remain in the litigation, they would have production and discovery obligations at their own expense. Costs payable to Torys and KPMG with respect to their production and discovery obligations should be dealt with in the ordinary course at the conclusion of the litigation.

The Protocol does not address the rest of the substantive prejudice to Black

17. This draft Protocol is limited to document production issues, but ignores the many other ways in which the current terms of the settlement agreements prejudice Black:

> (a) The draft Protocol assumes that Torys and KPMG will be let out of the action entirely, which means that any rights which Black may have against them as parties to the litigation will be lost. He will face a presumption in the *Rules* against the involvement of non-parties in private litigation.
>
> (b) Black will still have to bring a motion for non-party oral discovery under *Rule* 31.10, although it is not simply hypothetical, but evident now that evidence from Torys and KPMG will be necessary in order to establish that he relied upon his professional advisors.
>
> (c) Nor will Black be permitted to call representatives of Torys and KPMG as adverse witnesses at trial under *Rule* 53.07, which would permit him to cross-examine them.
>
> (d) Further, Black will not be able to avail himself of the other rights against parties to ensure that the relevant evidence is before the court – requests to admit, seeking costs, for example.

18. In summary, this draft Protocol (as far as it goes) amounts to only a non-binding commitment on the part of Torys and KPMG as non-parties to the litigation to

consider requests for documentary production, so long as they do not incur any costs, which they can decide as they see fit, subject to determination by the court. Conversely, if the settlements are approved with a proviso that Torys and KPMG remain parties to the litigation, with all of the obligations that entails, Torys and KPMG will not be unduly prejudiced for two reasons. Their exposure to damages, both monetary and reputational, are already capped. They will no longer need to incur the expense of taking an active role in the proceedings. And their costs of production and discovery can be addressed by the trial judge at the conclusion of the action.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of July, 2012.

for

Earl A. Cherniak

Jason Squire

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HOLLINGER INC. ET AL. Plaintiffs and CONRAD M. BLACK ET AL. Defendants

Court File No: 06-CL-6261

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at TORONTO

SUBMISSIONS OF CONRAD M. BLACK AND CONRAD BLACK CAPITAL CORPORATION (Re Torys and KPMG Non-Party Document Production Protocol)

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2111604.2

APPENDIX C

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NATHANSON, SCHACHTER & THOMPSON LLP

BARRISTERS AND SOLICITORS

IRWIN G. NATHANSON, Q.C.*
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File: 11352-1
Reply to: Geoffrey B. Gomery, Q.C.
Email: *ggomery@nst.bc.ca*

July 12, 2012

VIA EMAIL

Lenczner Slaght
Barristers
130 Adelaide Street West, Suite 2600
Toronto, ON M5H 3P5

Attention: Matthew Lerner

Dear Sirs/Mesdames:

Re: Hollinger Inc: Your file 37165

I am in receipt of your letter of July 11, 2012.

In your email of July 9, 2012, forwarding the Protocol mentioned in your letter, you described it as a draft. I understood at the hearing on July 10 and when we spoke on July 11, that the terms of the Protocol are still open for discussion.

At the hearing on July 9, Justice Campbell directed that the parties objecting to the Protocol to state their objections in writing before July 19. Here are my objections tendered on behalf of my clients, David Radler and FD Radler Ltd.

The Protocol is being put forward as something to be considered in connection with the application to approve the proposed settlements with KPMG and Torys on terms that would remove them from the litigation and prevent claims for contribution from being pursued against them. It only addresses the question of document discovery and does not address the other objections we have to the approval of the settlement. In particular, it does not address the limited availability of oral discovery from non-parties, the problem of obtaining admissions, and the entitlement of the defendants to call and cross-examine witnesses from Torys and KPMG at trial for the purpose of establishing their relative fault.

So far as document discovery is concerned, I submit that the Protocol does not adequately protect the interests of the non-settling defendants. From my clients' point of view, it could be made adequate if changes were made.

Major points

The draft protocol sets out a request-driven process for the production of documents by Torys and KPMG under which the issue to which the documents are relevant must be specified in the request. It reserves to the court jurisdiction to resolve disputes as to relevance and privilege. It does not, however, state expressly what documents will be produced or the principles to be applied by the court in resolving disputes. These should be set out. I suggest that the two governing principles should be:

1. Requested relevant documents will be produced, subject only to claims of privilege; and

2. Requests should specify the categories of documents requested with sufficient specificity to make production proportionate and reasonable in the circumstances.

It follows from this statement of the governing principles that it is no objection to production on the part of Torys or KPMG that the documents in question have been produced by other parties. It will be important in the litigation to know that they were in the possession of Torys and KPMG.

Process points

There should be some commitment on the part of Torys and KPMG that they will produce documents according to the schedule to be established for the conduct of the litigation.

At para 3, the draft protocol adverts to the fact that some of Torys' documents are already on a CD-ROM, but the protocol only contemplates physical attendance to review physical files. It should state that, to the extent that requested documents are available in electronic form, they will be provided electronically.

At paras 4 and 5 the draft protocol imposes on any party requesting documents an obligation to pay for copies for every other party to the action. There are many parties, including a number of self-represented parties. To minimize the copying cost, the party requesting documents should be required to pay only the cost of having the documents scanned onto a CD-ROM, with all of the requested documents being made available to all parties in this way.

Cost of production

Para 5 of the draft protocol provides that the costs incurred by Torys and KPMG in copying the documents <u>and producing the documents</u> will be paid by the requesting party. The costs of production are intended to include internal costs incurred by Torys and KPMG in reviewing file materials. These may be very substantial. You told me that the justification for this lies in Rule 30.10(5), on the basis that Torys and KPMG are non-parties. The entire reason for the protocol is to settle the basis for Torys and KPMG's removal for the litigation, in order that they may attain the status of non-parties. At present, they are parties, and the costs of production are an incident of their involvement in the litigation. I submit that this should continue to be the case and the words I have underlined should be deleted.

If the Protocol were amended to addresses the points set out above, subject to any reasonable objections raised by counsel for other non-settling defendants, I would accept it as a reasonable means of resolving document discovery issues in the litigation. As I noted at the outset, it does not resolve the other objections we have to the approval of the settlements.

Yours truly,

Nathanson, Schachter & Thompson LLP

Per:

GBG:

cc: Lisa Munro
Raymond M Slattery
Peter Atkinson
John a Boultbee
Peter G White
Alex MacFarlane
Harry Burkman
Paul Guy
Peter FC Howard
Maria Konyukhova
Peter H Griffin
Monique Jilesen
Brian Denega
Chris Mediratta
Brad Newman
Michael Barrack
Megan Keenberg
John Lorn McDougall
Norm Emblem
Matthew Fleming
Ronald Foerster
Earl A Cherniak, Q.C.
client

APPENDIX D

NON-PARTY DOCUMENT PRODUCTION 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. 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.

Following the close of pleadings in the Action, the plaintiffs and the defendants 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.

Thereafter:

1. The parties will identify the categories of relevant documents that they require from the Non-Parties with sufficient particularity

regarding time period, document type and the issue(s) to which the requested documents are relevant all with the objective of making production proportionate and reasonable in the circumstances;

2. 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, in accordance with paragraphs 3 and 4 hereof and copies of such documents shall be produced in accordance with paragraphs 5, 6 and 7 hereof.

3. 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;

4. 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)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 8 hereof;

5. The parties will be permitted to access the aforementioned categories of documents for an agreed duration during which any party may request copies of them.

6. The Non-Parties will arrange for copies of the requested documents to be made and thereafter provided to, not only the party 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;

7. Any party that requests copies of documents pursuant to paragraph 6 agrees to pay all reasonable expenses incurred by the Non-Parties in copying or scanning the documents for both the party requesting the documents and all other parties who are entitled to receive a duplicate copy;

8. The parties 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 and the application and/or waiver of privilege. 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;

9. The deemed undertaking, as described in Rule 30.1 of the Rules of Civil Procedure shall apply to all documents made available for review by the Non-Parties; and

10. Nothing in this document protocol waives or prejudices the rights that the parties might have pursuant to Rule 30.10 of the Rules of Civil Procedure.