

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-THIRD REPORT OF THE MONITOR
August 17, 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. At the parties' last appearance on July 24, 2012 this Court requested that the Monitor meet with all concerned parties regarding the terms of the draft Document Protocol appended to the Monitor's Twenty-Second Report. This Court requested that the Monitor meet with the parties to attempt to achieve consensus regarding a discovery protocol relating to the ongoing litigation between the Applicants and the Non-Settling

Defendants in Ontario Superior Court of Justice, Court File No. 06-CL-6261 (the “**Inside Directors Litigation**”).

4. The purpose of this Twenty-Third Report of the Monitor (the “**Twenty-Third Report**”) is to advise and update this Court on the Monitor’s progress in the above-mentioned discussions.

NON-PARTY DISCOVERY/DOCUMENT PROTOCOL

5. Prior to the parties’ last attendance before the Court on July 24, 2012, the Monitor circulated on July 20, 2012 a draft Document Protocol (attached to the Twenty-Second Report of the Monitor) that had been agreed to by the Applicants, Torys and KPMG. For ease of reference, the draft Document Protocol is attached hereto as **Appendix “A”**.
6. No other interested party had expressed agreement with the draft Document Protocol. It was provided to this Court to advise of the progress made with Torys, KPMG and the Applicants with respect to document production from Torys and KPMG in the event the Settlements are approved as sought by the moving parties.
7. The Non-Settling Defendants did not agree that the terms of the draft Document Protocol adequately addressed their concerns regarding the discovery process for the Inside Directors Litigation. This Court directed the Monitor to convene further meetings with the parties to consult regarding a document protocol.
8. Pursuant to the Court’s direction, the Monitor canvassed all parties. The Monitor convened two without prejudice meetings on July 30 and August 8, 2012 of its counsel and counsel to Mr. Black *et al.*, Mr. Radler *et al.*, Torys, KPMG and the Applicants. Without prejudice discussions regarding the terms of the draft Document Protocol occurred both during the meetings and afterwards. No consensus has been reached.

9. Following the culmination of these meetings, on August 8, 2012, counsel to the Monitor wrote to the parties with a list of terms that it understood to be agreed and a list of issues that it understood remained to be resolved. Counsel to the Monitor requested that each party provide comments.
10. In response, on August 9, 2012, counsel for KPMG provided the correspondence attached hereto as **Appendix “B”** enclosing the form of document protocol that KPMG would be prepared to agree to for the purpose of its discovery obligations in the outstanding Inside Directors Litigation.
11. Similarly, on August 9, 2012, counsel for Torys provided the correspondence attached hereto as **Appendix “C”** enclosing an identical form of document protocol to **Appendix “B”** confirming their agreement with its terms.
12. The protocol circulated by KPMG and Torys on August 9, 2012 differs in certain respects from the protocol agreed to by those parties on July 20, 2012. Accordingly, for the Court’s assistance, the Monitor has created a “black-lined” version comparing the two forms of protocol which is attached hereto as **Appendix “D”**.
13. Counsel to Mr. Black *et al.* provided their position regarding the outstanding production and discovery issues by letter dated August 9, 2012 which is attached hereto as **Appendix “E”**.
14. Counsel to Mr. Radler *et al.* provided their position regarding the outstanding production and discovery issues by letter dated August 9, 2012 which is attached hereto as **Appendix “F”**.
15. On August 13, 2012 counsel to the Applicants provided their agreement to the form of protocol circulated by both Torys and KPMG on August 9 and also provided their response to the positions articulated by counsel to Mr. Black and counsel to Mr. Radler. This correspondence is attached hereto as **Appendix “G”**.

CONCLUSION & OBSERVATIONS

16. Despite the Monitor's efforts to find consensus in the terms of a production and discovery protocol governing the extent of Torys and KPMG's involvement in the Inside Directors Litigation in the event that the Settlements are approved, no consensus has been reached.
17. It is the Monitor's view that there is no reasonable prospect of achieving consensus on the terms of such a protocol at this time.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17th DAY OF AUGUST, 2012:

ERNST & YOUNG INC.

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

Per:

A handwritten signature in black ink, appearing to read "B. Denega", with a large, stylized loop at the end.

Brian M. Denega
Senior Vice President

Christopher Mediratta
Vice President

APPENDIX A

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.

APPENDIX B



Fraser Milner Casgrain LLP

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Toronto, ON, Canada M5K 0A1

MAIN 416 863 4511

FAX 416 863 4592

August 9, 2012

John Lorn McDougall, Q.C.

DIRECT 416 863 4624

john.lorn.mcdougall@fmc-law.com

DELIVERED VIA EMAIL

Mr. Peter Griffin
Lenczner Slaght Royce Smith Griffin LLP
2600 - 130 Adelaide Street West
Toronto, Ontario M5H 3P5

Dear Mr.Griffin:

RE: Hollinger Inc.

We acknowledge receipt of the email from Mr. Lerner yesterday evening enclosing a list of issues (the "**Issues List**").

We do not intend to respond to it directly. Instead, we enclose a Non-Party Protocol (the "**Protocol**") which has been developed together with Torsys and which is acceptable to KPMG. It will be clear from the Protocol which of the items in the Issues List KPMG is in agreement with, provided those items form part of the attached Protocol.

Yours truly,

FRASER MILNER CASGRAIN LLP

A handwritten signature in blue ink, appearing to read "J. Lorn McDougall", is written over a yellow rectangular background.

for: John Lorn McDougall

JLM/MF

c. Monique Jilesen
Matthew Lerner
Ronald Foerster
Earl Cherniak
Lisa Munro
Peter Howard
Irwin Nathanson
Michael Barrack
Megan Keenberg

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*.

APPENDIX C

Ronald Foerster
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August 9, 2012

By Email

Monique Jilesen
Matthew Lerner
Lenczner Slaght Royce Smith Griffin LLP
130 Adelaide Street West
Suite 2600
Toronto, Ontario
M5H 3P5

Dear Counsel

Re: Hollinger Inc. v. Conrad Black et al.

We acknowledge receipt of the list of issues agreed to and in dispute circulated yesterday evening.

As in the case of Mr. McDougall for KPMG, we do not intend to respond directly to the list, but enclose a copy of the protocol referred to in Mr. McDougall's letter dated August 9. The protocol is acceptable to Torys.

Yours very truly

A handwritten signature in blue ink, appearing to be 'R. Foerster', is written over the typed name 'Yours very truly'.

Ronald Foerster

cc. JL McDougall
Norm Emblem
Matthew Fleming
Michael Barrack
Megan Keenberg
Peter Howard
Earl Cherniak QC
Lisa Munro
Irwin Nathanson
Peter Griffin

NON-PARTY PROTOCOL

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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

certainly, 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*.

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. ([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 plaintiffs and the Action~~ [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.

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):

Thereafter:

1. The Parties to the Actionparties 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;
- 2.4. _____ 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, ~~in accordance with paragraphs 3 and, if requested, 4 hereof and~~ copies ~~of such documents~~ shall be produced, all in accordance with paragraphs 5 through [8], 6 and 7 hereof.

~~3-5.~~_____ 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;

~~4-6.~~_____ 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)~~4.~~ 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 ~~118~~ hereof;

~~5-7.~~_____ The Parties to the Action~~parties~~ will be permitted to access the aforementioned categories of documents for an agreed duration during which any such Party~~party~~ may request copies of them.

~~6-8.~~_____ The Non-Parties will arrange for copies of the requested documents to be made and thereafter provided to, not only the

Party to the Actionparty requesting copies of the documents, but also every other Partyparty to the Action. In the case of documents that are now in electronic form, production of such documents will be by electronic copies;

7.9. Any Party to the Actionparty that requests copies of documents pursuant to paragraph 6 agrees to pay all reasonable expenses ~~relating to~~incurred by the ~~Non-Parties in~~ 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 Partyparty requesting the documents and all other Parties to the Actionparties 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;

8.11. The Parties to the Actionparties 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 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;

~~9.12.~~ The deemed undertaking, as described in Rule 30.1 of the Rules of Civil Procedure shall apply to all documents made available for inspection~~review~~ by the Non-Parties; ~~and~~

13. Nothing in this document protocol waives or prejudices the rights that the Parties to the Action and the Non-Parties~~parties~~ might have pursuant to rules~~Rule~~ 30.10, 31.10 and 53.07 of the Rules of Civil Procedure and section 131 of the Courts of Justice Act.

APPENDIX E

LEARNERS



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August 9, 2012

FILE NUMBER 51366-00006

VIA EMAIL

Monique Jilesen
Matthew Lerner
LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP
130 Adelaide Street West
Suite 2600
Toronto, Ontario M5H 3P5

Dear Counsel:

Re: Conrad M. Black et al. ats Hollinger Inc. et al.

We set out here the Black parties' position on production and discovery issues in the current litigation, including the contribution and indemnity claims and the motions to approve the Torsys LLP, KPMG LLP, and Hollinger Inc. settlements.

Our primary position on the settlement approval motions remains that they should not be approved on the terms put forward but, even if approved, Torsys LLP and KPMG LLP should remain parties to the litigation so that Black's ability to defend the claims against him by Hollinger Inc. are not prejudiced by a bar order. This position is set out in detail in Black's factum and oral argument in response to the settlement approval motions.

However, if the court rules that Torsys LLP and KPMG LLP are no longer to be parties to the litigation and a bar order is to issue, there are certain minimal requirements to reduce the prejudice to Black, while imposing reasonable requirements on Torsys LLP and KPMG LLP. In essence, if a bar order issues dismissing Black's extant contribution and indemnity claims against Torsys LLP and KPMG LLP, Black needs certainty now that he will have no lesser rights (nor is he asking for greater rights) than those to which he would be entitled if Torsys LLP and KPMG LLP remained parties. He cannot agree that he, Torsys LLP, KPMG LLP, and Hollinger Inc. may simply reserve their rights on these critical issues, since to do so will be certain to create uncertainty, increased costs, and delay.

Unfortunately, the parties have been unable to reach agreement on a protocol that will ensure that Black's rights will be protected, while also addressing the concerns of Torsys LLP and KPMG LLP.

Our proposal is as follows:

- Issues relating to production and discovery in the main action will be pursuant to the Rules of Civil Procedure and determined by the case management judge, when one is appointed. These issues need not be further addressed at this time;
- Torys LLP and KPMG LLP each to provide a sworn affidavit of documents, including a detailed schedule B, listing all documents which are relevant to the issues raised in the pleadings;
- The settling parties to agree upon a reasonable cap for the costs to be incurred by Torys LLP and KPMG LLP associated with producing documents which are relevant to the issues raised in the pleadings and producing witnesses (both for examination for discovery and at trial) and funds to make those payments will be set aside, in trust, out of the settlement funds. The final arbiter of whether the costs incurred paid out of the fund were reasonable will be the CCCA case management judge; and
- Torys LLP and KPMG LLP to agree to cooperate in making available current members of their respective firms as witnesses, both for examination for discovery and at trial. Recognizing that Torys LLP and KPMG LLP cannot control former members of their firms, they must agree to cooperate in the efforts of counsel for the parties to the litigation to obtain the evidence of former members of their firms as witnesses at discovery and/or trial.

We think that this proposal addresses not only Black's concerns, but also the desire of Torys LLP and KPMG LLP to put an end to costs they must incur in respect of the action. It leaves the allocation of those costs between the parties to the litigation to be determined at the end of the litigation in the ordinary course.

This proposal and position is not without prejudice. It will be referred to, if necessary, when the matter comes on again before Justice Campbell. We ask that this letter be included in any report you prepare to Justice Campbell.

Yours truly,



Lisa C. Munro

LCM/emc/ra

cc: Service List

2144346.1

APPENDIX F

NATHANSON, SCHACHTER & THOMPSON LLP

BARRISTERS AND SOLICITORS

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

August 9, 2012

VIA EMAIL

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

**Attention: Monique Jilesen &
Matthew Lerner**

Dear Sirs/Mesdames:

Re: Hollinger Inc: Your file 37165

On behalf of the Radler defendants, this is the letter you requested. In light of the letters from Ms Munro, Mr Foerster and Mr McDougall, I will not address the course of negotiations. I will address the draft protocol tendered by Torys and KPMG.

I refer to Ms Munro's 'with prejudice' letter of August 9, 2012. On behalf of the Radler defendants, we adopt the position stated on behalf of the Black defendants in the second and third paragraphs of Ms Munro's letter. We view the proposals stated in the second, third and fourth bulleted paragraphs on the second page of Ms Munro's letter as the most reasonable approach to achieving procedural fairness, insofar as document production and obtaining the evidence of current and former members of KPMG and Torys are concerned.

The draft protocol is tendered by Torys and KPMG, whose interests lie in minimizing their exposure to discovery and the trial process. Inevitably, it represents a lesser standard of procedural fairness in respect of document production. We do not accept that a lesser standard is appropriate.

If the court is disposed to direct the protocol approach as an alternative to the more complete protection provided to the non-settling defendants under Black's proposal, we note the following difficulties with the draft protocol as it now stands:

- (a) Clause 4 states that 'requested non-privileged documents relevant to any matter in issue in the action, shall be made available for inspection' and it follows that the KPMG and Torys must review relevant documents that have been requested for

the purpose of ascertaining what is privileged and what is not. Clause 11 contemplates that the court may be required to resolve issues in relation to privilege. It is not clear how those issues can be addressed or even identified in the absence of a list provided by Torys or KPMG of the relevant documents that they object to producing on the basis of privilege. The draft protocol makes no provision for a list to be provided.

- (b) Clause 11 asserts that the documents that are subject to the waiver of privilege 'are in the possession of the Non-Parties'. In this context, the reference to the 'Non-Parties' is a reference to Torys. We do not agree that the documents which are the subject of the waiver of privilege are only in the possession of Torys, either as a matter of fact (which would imply that it is only documents in Torys' possession that are subject to the waiver) or in law (given that documents in Torys' possession may be considered as documents in the plaintiffs' possession or control).
- (c) Most important, if a document production protocol is put in place, it will only address the question of document discovery and not the other objections we have to approval of the settlements. As I noted in my letter of July 12, 2012, it will 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.

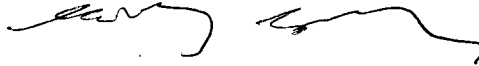
NATHANSON, SCHACHTER & THOMPSON LLP
BARRISTERS AND SOLICITORS

Page 3

Yours truly,

Nathanson, Schachter & Thompson LLP

Per:



GBG:

cc: Lisa Munro
Raymond M Slattery
Peter Atkinson
John a Boulbee
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 G

August 13, 2012

VIA EMAIL

Peter Griffin
Monique Jilesen
Matthew Lerner
Lenczner Slaght Royce Smith Griffin
Suite 2600
130 Adelaide Street West
Toronto, ON M5H 3P5
Canada

Dear Counsel:

Re: Hollinger Inc. Non-Party Production Protocol

We write in response to your request for comments on the Non-Party Protocol Issues List circulated at the meeting of August 8, 2012, and in response to the letters of Ms Munro, Mr. Gomery and Mr. McDougall of August 9, 2012.

Acknowledging the positions taken by others that no issues should be taken as “agreed” unless or until an entire protocol is fully agreed to, Hollinger is satisfied that the Issues List as created by the Monitor accurately distinguishes between the non-controversial issues and those that remain in dispute arising from the meetings between counsel.

In response to Ms Munro’s with prejudice letter of August 9, Hollinger maintains the position it advanced at the settlement approval motion, *i.e.*, that the bar orders in favour of Torys and KPMG are integral components of the settlements reached with those parties without which the settlements will not survive. Unlike the broad third party releases sought and granted in other CCAA cases, the releases and bar orders in favour of Torys and KPMG are akin to common Pierringer agreements. As set out in detail in Hollinger’s written and oral argument on the settlement approval motion, the case law in respect of continuing obligations for parties who are let out of ongoing litigation pursuant to Pierringer orders is clear that such obligations should be determined on motion at the appropriate time in the ongoing litigation, as required under the *Rules*.

Responding to the issue set out in the third bullet point of Ms Munro’s August 9 letter, Hollinger’s position is that it is premature to set cost caps or estimates for the costs to be incurred by Torys and KPMG in producing documents at this stage since the matters in issue have not yet been defined. The main action has been outstanding since 2006. The defendants opted not to file defences preserving their rights against self-incrimination in respect of the criminal trial in the

United States. As of about a year ago, the criminal trial has been finally resolved and all appeals have been exhausted. Nonetheless the defendants have failed to file their defences to this action, leaving the parties with uncertainty as to the scope of the matters in issue. In an effort to streamline the matters in issue for effective resolution, Hollinger further amended the statement of claim in June. We are advised that Black and others intend to bring motions attacking this pleading. No such motions have been brought to date.

Therefore the two necessary preconditions to the estimation of the scope and cost of production by parties or non-parties are (i) the resolution of any pleadings motions so that there may be certainty about the extent to which the allegations in the current pleading survive; and (ii) the filing of defences by the defendants so that any admissions contained therein may be reflected in the reduced scope of the matters in issue between the parties.

Since the Non-Party Production Protocol is being devised now, and these preconditions cannot be satisfied immediately, Hollinger maintains the position that the costs of production by Non-Parties should be borne by the party requesting productions from the Non-Parties, subject to recovery of the same as costs in the main action. This was the reasonable solution proposed by the Monitor, and Hollinger agrees that it fairly balances the interests of all the parties and non-parties.

In response to the revised Protocol developed by Torys and KPMG and circulated on August 9, Hollinger notes that the terms thereof are nearly identical to the Protocol developed by the Monitor in consultation with the non-parties and the parties. The terms of the revised Protocol are acceptable to Hollinger.

For the foregoing reasons, Hollinger disagrees with Mr. Gomery that the Protocol circulated by KPMG represents a lesser standard of procedural fairness in respect of document production.

In response to Mr. Gomery's second point regarding the documents in Torys possession that are subject to a waiver of privilege, Hollinger acknowledges that any of the documents relevant to the matters in issue in the main action (such as they may be once the scope of this issues is determined) that are in the physical possession of Torys and that were created or provided pursuant to a retainer of Torys by Hollinger are within the control of Hollinger. Accordingly, those documents will be produced by Hollinger as part of the party productions. Hollinger further acknowledges that the waiver of privilege over documents that were created by Torys for Hollinger in connection with the transactions in issue extends to documents fitting that description that are physically in the possession of Hollinger or its current counsel.

Finally, in response to Mr. Gomery's third point and Ms Munro's fourth point, both regarding the oral discovery / trial witnesses from the non-parties, Hollinger's position is that it is premature to set out non-party discovery and trial obligations at this time when, as set out above, the pleadings are still open and subject to challenge, no defences have been filed and the scope of the matters in dispute is still very much unknown. These issues should be determined at the appropriate time in the ongoing litigation, as required under the Rules.

Yours very truly,

Thornton Grout Finnigan LLP



Megan Keenberg
MK

- c. J. L. McDougall
Norm Emblem
Matthew Flemming
Ron Foerster
Earl Cherniak
Peter Howard
Lisa Munro
Irwin Nathanson
Geoffrey Gomery
Michael Barrack