

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

Applicants

3rd REPORT OF HON. JOHN D. GROUND, Q.C. (retired justice)
IN HIS CAPACITY AS
LITIGATION TRUSTEE OF THE APPLICANTS

DATED APRIL 16, 2012

1. I provide this 3rd Report of the Litigation Trustee as a supplement to the Report of the Litigation Trustee dated March 31, 2011 and the 2nd Report of the Litigation Trustee dated November 7, 2011.
2. As a result of the investigation of potential claims of Hollinger against others, potential claims against R. Donald Fullerton ("**Fullerton**"), a former director of Hollinger, and against the Canadian Imperial Bank of Commerce ("**CIBC**"), a former lender of Hollinger, were identified.
3. On November 16, 2006, Hollinger entered into a standstill agreement with Fullerton in which it was agreed to toll any applicable limitation periods.
4. By Statement of Claim dated June 29, 2007 (Notice of Action issued on May 31, 2007) Hollinger commenced an action bearing Court File No. 07-CL-7043 (the "**Banks Action**") against CIBC, the Toronto-Dominion Bank and the Bank of Nova Scotia (together, the "**Banks**").
5. On or about December 17, 2010, Hollinger advised Fullerton of its intention to commence an action against him and other former directors of Hollinger. Around the same time, Hollinger advised Fullerton and the Banks of its intention to amend the Banks Action to include Fullerton as a named defendant to that action.
6. On May 29, 2011 Fullerton passed away. Judith Ann Fullerton, Leslie Ann Fullerton, Geoffrey Stuart Fullerton and Warren Bruce Fullerton serve as executors and estate trustees of Fullerton's estate (the "**Fullerton Estate**").

7. Hollinger, the Fullerton Estate and CIBC agreed to engage the services of the Honourable George Adams, Q.C. (retired justice) (“**Adams**”) to conduct a mediation in respect of Hollinger’s claims against Fullerton and CIBC.
8. On December 23, 2011, an extensive, confidential mediation was conducted with the Fullerton Estate and CIBC with the assistance of Adams who acted as mediator. Adams is a highly regarded professional mediator and former justice of the Ontario Superior Court of Justice. Adams has substantial experience as a mediator and facilitator in a wide range of conflicts and has been involved in other mediations leading to settlements that are before this Honourable Court for approval. While on the bench, Adams handled major cases in all areas of the Superior Court of Justice including the Commercial List and Divisional Court and many of his decisions are widely reported.
9. As part of the mediation process, all claims by Hollinger against Fullerton and CIBC were set out and fully canvassed as were all possible defences. I personally attended the mediation with Mr. William Aziz, the Chief Restructuring Officer of the Applicants (“**Aziz**”) and representatives of Thornton Grout Finnigan LLP (“**TGF**”) and Paliare Roland Rosenberg Rothstein LLP (“**PRRR**”), counsel to the Applicants. The mediation lasted a full day and involved intense negotiations.
10. During the course of the mediation, I was in telephone contact with Mr. Arnold Cader, the representative of the Noteholders on the Litigation Advisory Committee (“**Cader**”), and Mr. William Brock, the representative of the Applicants on the Litigation Advisory Committee (“**Brock**”). The Litigation Advisory Committee was established as part of the

Multi-Party Settlement Agreement (“MPSA”) approved by this Honourable Court by order dated May 21, 2008.

11. Following the mediation, negotiations between the parties continued, culminating in a settlement in principle reached on April 9, 2012. The settlement was considered to be a reasonable settlement of Hollinger’s claims by Adams, Cader, Brock, Aziz and myself, as well as counsel from TGF and PRRR. Each of these persons has extensive experience in litigation matters.
12. In these negotiations the Fullerton Estate and CIBC were represented by experienced lawyers. This was an arms’-length negotiation which was conducted in good faith.
13. The Settlement Agreement entered into between Hollinger and the Fullerton Estate and CIBC provides that the settlement is conditional upon the issuance of a satisfactory bar order giving effect to the third party releases (the “**Release Order**”).
14. In order to obtain the necessary Release Order, Hollinger is applying to the Court under the CCAA for an order approving the terms, including the third-party releases, of the Settlement Agreement. The application to the Court for approval of the settlement will be brought on notice to the Service List, as defined in the Service and Notice Procedure Order of November 12, 2010, which includes all the non-settling defendants.
15. I believe, consistent with the advice of the mediator, that Hollinger’s offer of the third party releases to the Fullerton Estate and CIBC resulted in a higher settlement offer from those parties than otherwise might have been the case.

16. In my experience as a former judge and lawyer, and as a specialist in alternative dispute resolution, I have had occasion to participate in or preside over numerous pre-trial conferences, mediations, arbitrations, trials and other dispute resolution processes. Based on my experience and being cognizant of the mandate of the Litigation Trustee and my duties as an officer of the Court, I affirm that in my view the settlement with the Fullerton Estate and CIBC is well within the zone of reasonableness and appropriate in the circumstances.
17. In coming to this conclusion, I have considered the potential future expense and potential duration of litigation against the Fullerton Estate and CIBC.
18. An additional benefit flowing from this settlement is that Hollinger will soon have substantial funds coming into the Litigation Trustee's accounts, which will be used in part to fund the Litigation Trustee's initiatives in respect of non-settling defendants against whom Hollinger has more substantial claims, and, to the extent not required for those initiatives, be available to the Estates of the Applicants for distribution, all in accordance with and subject to the provisions of the MPSA.
19. In consultation with the Litigation Advisory Committee, and in accordance with the MPSA, I am currently considering what portion of these proceeds should be used to fund future settlement negotiations, mediations and litigation. The balance will be made available to the Estates of the Applicants for distribution.
20. I would be pleased to provide any additional information or further detail that may be required by the Court.

Dated at Toronto, Ontario this 16th day of April , 2012.



Honourable John D. Ground, Q.C. (retired Justice)
Litigation Trustee of the Applicants