OGILVY RENAULT

Direct Dial: (416) 216-4023
Direct Fax: (416) 216-3930
stenai@ogilvyrenault.com

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VIA E-MAIL & COURIER

Toronto, March 17, 2005

The Secretary to the Commission
Ontario Securities Commission
20 Queen St. W.
P.O. Box 55, Suite 1900
Toronto, Ontario
M5H 3S8

Attention: Mr. John Stevenson
jstevenson@osc.gov.on.ca

And to counsel on the attached service list

Dear Sirs/Madam:

RE: Hollinger Inc., Application for an Order to Vary the Hollinger and International MCTO under Section 144 of the *Securities Act* (Ontario)

Please find enclosed the Submissions on behalf of 1269940 Ontario Limited, 2753421 Canada Limited, Conrad Black Capital Corporation, Conrad M. Black, and Ravelston Corporation Limited.

Yours very truly,

Steve Tenai

RAC/

Encl.

SERVICE LIST

Fogler, Rubinoff LLP
1200 – 95 Wellington St. W.
Toronto, ON M5J 2Z9

Dale Denis
Tel: (416) 941-8876
Fax: (416) 941-8852
E-mail: ddenis@foglerubinoff.com

Avi S. Greenspoon
Tel: (416) 941-8836
Fax: (416) 941-8852
E-mail: asg@foglerubinoff.com

Counsel for the Applicant, Hollinger Inc.

Harry Burkman
Suite 1410, 1 First Canadian Place
P.O. Box 129, Stn. 1st Can. Pl.
Toronto, ON M5X 1A4

Tel: (416) 364-3831
Fax: (416) 364-3832
E-mail: hburkman@burkman.com

Counsel for the Applicants, 509643 N.B. Inc.,
509644 N.B. Inc., 509645 N.B. Inc., 509646 N.B. Inc.,
509647 N.B. Inc., Argus Corporation Limited

Bellmore & Moore
Barristers & Solicitors
393 University Avenue, Suite 1600
Toronto, ON M5G 1E6

David C. Moore
Tel: (416) 581-1818
Fax: (416) 581-1279
E-mail: david@bellmore.ca

Counsel for Catalyst Fund General Partner I Inc.

Paliare Roland Barristers
Suite 501, 250 University Avenue
Toronto, Ontario M5G 1E6

Gordon Capern
Tel: (416) 646-4311
Fax: (416) 646-4312
E-mail: gordon.capern@paliareroland.com

Counsel for Kenneth McLaren and other minority shareholders

Bennett Jones LLP
3400-One First Canadian Place
P.O. Box 130, Stn. 1st Can. Pl.
Toronto, ON M5X 1A4

Robert W. Staley
Tel: (416) 777-4857
Fax: (416) 863-1716
E-mail: staleyr@bennettjones.ca

Jeff Kerbel
Tel: (416) 777-5772
Fax: (416) 863-1716
E-mail: KERBELJ@bennettjones.ca

Alan Bell
Tel: (416) 777-5770
Fax: (416) 863-1716
E-mail: bella@bennettjones.ca

Counsel for Hollinger International Inc. and the
Special Committee for Hollinger International Inc.

Staff of the Ontario Securities Commission
20 Queen Street W.
19th Floor, P.O. Box 55
Toronto, ON M5H 3S8

Johanna Superina
Tel: (416) 593-8210
Fax: (416) 593-2319
E-mail: jsuperina@osc.gov.on.ca

ONTARIO SECURITIES COMMISSION

IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S. 5, AS AMENDED

- and -

IN THE MATTER OF
CERTAIN DIRECTORS, OFFICERS AND INSIDERS OF
HOLLINGER INTERNATIONAL INC.
(BEING THE PERSONS AND COMPANIES LISTED
IN SCHEDULE "A" HERETO)

- and -

IN THE MATTER OF
CERTAIN DIRECTORS, OFFICERS AND INSIDERS OF
HOLLINGER INC.
(BEING THE PERSONS AND COMPANIES LISTED
IN SCHEDULE "B" HERETO)

SUBMISSIONS OF 1269940 ONTARIO LIMITED, 2753421 CANADA LIMITED, CONRAD BLACK CAPITAL CORPORATION, CONRAD M. BLACK, RAVELSTON CORPORATION LIMITED

(Application to vary under section 144 March 23 and 24, 2005)

OGILVY RENAULT LLP
Barristers and Solicitors
Suite 3800, P.O. Box 84
Royal Bank Plaza, South Tower
200 Bay Street, Toronto, ON M5J 2Z4

Alan Mark *LSUC #: 21772U*
Tel: (416) 216-4865
Fax: (416) 216-3930

Ava G. Yaskiel *LSUC#*: 28716C
Tel: (416) 216-3902
Fax: (416) 216-3930

Steve Tenai *LSUC #: 33726R*
Tel: (416) 216-4023
Fax: (416) 216-3930

Counsel for the Applicants, 1269940 Ontario Limited, 2753421 Canada Limited, Conrad Black Capital Corporation, Conrad M. Black, The Ravelston Corporation Limited

TO: **FOGLER, RUBINOFF LLP**
1200 – 95 Wellington St. W.
Toronto, ON M5J 2Z9

Dale Denis
Tel: (416) 941-8876
Fax: (416) 941-8852
E-mail: ddenis@foglerubinoff.com

Avi S. Greenspoon
Tel: (416) 941-8836
Fax: (416) 941-8852
E-mail: asg@foglerubinoff.com

Counsel for the Applicant, Hollinger Inc.

AND TO: **HARRY BURKMAN**
Suite 1410, 1 First Canadian Place
P.O. Box 129, Stn. 1st Can. Pl.
Toronto, ON M5X 1A4

Tel: (416) 364-3831
Fax: (416) 364-3832
E-mail: hburkman@burkman.com

Counsel for the Applicants, 509643 N.B. Inc., 509644 N.B. Inc., 509645 N.B. Inc., 509646 N.B. Inc., 509647 N.B. Inc., Argus Corporation Limited

AND TO: **BELLMORE & MOORE**
Barristers & Solicitors
393 University Avenue, Suite 1600
Toronto, ON M5G 1E6

David C. Moore
Tel: (416) 581-1818
Fax: (416) 581-1279
E-mail: david@bellmore.ca

Counsel for Catalyst Fund General Partner I Inc.

PALIARE ROLAND BARRISTERS
Suite 501, 250 University Avenue
Toronto, Ontario M5G 1E6

Gordon Capern
Tel: (416) 646-4311
Fax: (416) 646-4312
E-mail: gordon.capern@paliareroland.com

Counsel for Kenneth McLaren and other minority shareholders

AND TO: **BENNETT JONES LLP**
3400-One First Canadian Place
P.O. Box 130, Stn. 1st Can. Pl.
Toronto, ON M5X 1A4

Robert W. Staley
Tel: (416) 777-4857
Fax: (416) 863-1716
E-mail: staleyr@bennettjones.ca

Jeff Kerbel
Tel: (416) 777-5772
Fax: (416) 863-1716
E-mail: KERBELJ@bennettjones.ca

Alan Bell
Tel: (416) 777-5770
Fax: (416) 863-1716
E-mail: bella@bennettjones.ca

Counsel for Hollinger International Inc. and the
Special Committee for Hollinger International Inc.

AND TO: **STAFF OF THE ONTARIO SECURITIES COMMISSION**
20 Queen Street W.
19th Floor, P.O. Box 55
Toronto, ON M5H 3S8

Johanna Superina
Tel: (416) 593-8210
Fax: (416) 593-2319
E-mail: jsuperina@osc.gov.on.ca

ONTARIO SECURITIES COMMISSION

IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S. 5, AS AMENDED

- and -

IN THE MATTER OF
CERTAIN DIRECTORS, OFFICERS AND INSIDERS OF
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(BEING THE PERSONS AND COMPANIES LISTED
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- and -

IN THE MATTER OF
CERTAIN DIRECTORS, OFFICERS AND INSIDERS OF
HOLLINGER INC.
(BEING THE PERSONS AND COMPANIES LISTED
IN SCHEDULE "B" HERETO)

SUBMISSIONS OF 1269940 ONTARIO LIMITED, 2753421 CANADA LIMITED, CONRAD BLACK CAPITAL CORPORATION, CONRAD M. BLACK, RAVELSTON CORPORATION LIMITED

(Application to vary under section 144
March 23 and 24, 2005)

Overview

1. This application seeks variations of two MCTOs[1] to permit a proposed going private transaction to be put before shareholders of Hollinger, and if approved by them, to permit completion of the transaction. Hollinger's Independent Privatization Committee has recommended to the Board that the transaction be submitted to a meeting of the holders of

[1] All capitalized terms in this submission have the meanings defined in the Application for an Order to Vary the Hollinger MCTO dated March 15, 2005 (the "Application")

Common Shares and the Series II Preference Shares of Hollinger on March 31, 2005. Hollinger's Board unanimously adopted a resolution to call the meeting without making a recommendation as to whether shareholders should accept or reject the proposed resolutions in respect of the transaction.

2. The MCTOs do not apply to minority shareholders. They remain free to trade or dispose of their shares at such a time, and in such a manner, as they consider advantageous to do so. The MCTOs should be varied in order to permit minority shareholders to take advantage of the value maximizing transaction now available to them, if they wish to do so.

3. The MCTOs resulted from Hollinger's inability to complete and file its financial statements, largely because its operating subsidiary, and principal asset, Hollinger International, is not current in filing its financial statements. This deficiency is addressed by the application in two important ways:

(a) Shareholders have been sent an information and proxy circular in accordance with the requisite disclosure requirements including disclosure of a formal valuation by GMP Securities Limited in accordance with OSC Rule 61-501 which indicates the proposed consideration to be paid to holders of the Common Shares is in excess of the value range determined by GMP.

(b) In addition, the amounts paid to holders of the Common Shares will be increased if, the financial statements of International when released result in an increase in the valuation of Hollinger.

4. As well, holders of the Common Shares also may exercise their dissent rights and elect to be paid at fair value as determined by a court.

5. The holders of a small percentage of the Common Shares (approximately 2% of the minority) have voiced an additional concern about the fact that a court-ordered inspection into possible related party transactions at Hollinger has not yet been completed, and thus there may be some uncertainty about the true value of the Common Shares. This concern is completely answered by the proposal to establish a litigation claims trust whereby

independent trustees will be entitled, on behalf of shareholders, to prosecute any such claims identified by the Inspection, or otherwise identified. The proposal even provides that the privatized Hollinger will finance the litigation against the related parties.

6. If the holders of Common Shares are not permitted to consider and approve this value-maximizing transaction, they are likely to find themselves locked into an illiquid investment at a substantially lower price in a company which is facing claims against it in excess of its equity value. It will take years of very expensive litigation to resolve these claims. There is no prospect of there being any other value-maximizing transaction available to shareholders.

7. All necessary approvals for the transaction, including shareholder approval, must be obtained by no later than March 31, 2005, failing which the necessary consents from Hollinger's senior secured creditors expires. When the consent was obtained in October, 2004, the Independent Directors of Hollinger considered the March 31st date to be sufficient. No extension of the date is available, despite an approach for that purpose by Hollinger's Independent Directors.

8. In any event, an extension of the March 31 date, even if available, would not yield any better result for shareholders, and might worsen their position:

(a) there is no way of knowing or controlling when International's financial statements, or the Inspection, will be completed, and thus there can be no assurances that any extension obtained would be sufficient;

(b) there can be no assurance that the transaction presently available will be available in the future;

(c) there is a substantial risk that the value of Hollinger will deteriorate in the meantime; and

(d) the shareholders are actually in a better position with the litigation trust than if they waited for the Inspection to be completed. Even with a report of the Inspection in hand, holders of the Common Shares would

> still face the task of having to attribute a value to the potential and uncertain claims. With the litigation trust, they face no such uncertainty; they are assured of receiving their pro rata share of the actual proceeds of such claims, with the claims being prosecuted by independent trustees and financed by a privatized Hollinger.

9. The proposed transaction is beneficial for the holders of the Series II Preference Shares, and if not approved by them, but approved by the holders of the Common Shares, it will not adversely affect them.

10. The Series II Preference Shares are non-voting, non-participating shares. They are convertible into shares of International at a fixed exchange ratio, and their value is thus entirely derivative of the value of International shares. If the Consolidation resolution is approved by them, they will receive payment of accrued and unpaid dividends plus the number of International shares determined by the fixed exchange ratio. If not approved, they will continue to hold the Series II Preference Shares with all of their present attributes, and the value of the shares will not be affected by the changes to the composition of the group of persons holding the common shares.

Current circumstances of Hollinger and its minority shareholders

11. Hollinger presently has only two classes of shares that are issued and outstanding – 34,945,776 Common Shares and 1,701,995 Series II Preference Shares. The only voting securities of Hollinger are the Common Shares.[2] The Series II Preference Shares are non-voting, non-participating shares. Both of the classes of shares are retractable at the option of the holder. On retraction, the Series II Preference Shares are exchangeable into a fixed number (being 0.46) of Hollinger's International A Shares or, at Hollinger's option, cash of equivalent value. All of Hollinger's International A Shares are currently being held in escrow with a licensed trust company in support of retractions of Series II Preference Shares.[3]

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[2] Application, p. 2.
[3] Application, p. 2.

12. Hollinger has substantial claims against it, including various class actions. Litigation has consumed much of management's time and the resources of Hollinger. Claims have been filed against Hollinger in Illinois, Delaware, New York, Ontario and Saskatchewan. The total amounts claimed against Hollinger significantly exceed the value of its net assets and, even if only some suits are successful, any shareholder equity in Hollinger could be destroyed. In one action alone, International has sued Hollinger seeking U.S. $542 million which is approximately double Hollinger's current market capitalization. Hollinger's ongoing legal expenses in defending the various claims throughout the various different forums alone are substantial.

13. Hollinger's principal asset consists of its holdings of International Class A and Class B common shares.[4] It is a mutual fund corporation and, as such, is generally precluded from carrying on any business other than the investing of its funds in property (other than real property or an interest in real property).[5] International's principal assets consist of cash from recent asset dispositions and one major daily newspaper.

14. Hollinger currently has outstanding U.S. $93 million Senior Notes due 2011. The Senior Notes are secured by, among other things, a first priority lien on all of the Class B common shares of International presently owned by Hollinger.[6] Hollinger has also recently received correspondence from counsel purporting to represent a majority of the aggregate principal amount of the Senior Notes in which such counsel asserts that the proceeds of the special dividends received by Hollinger from International on January 18, 2005 and March 1, 2005 must be delivered to the collateral trustee for such Senior Notes as collateral for the Senior Notes.[7]

15. Hollinger is further subject to ongoing costs associated with the Inspection ordered by the Honourable Justice Campbell. As at March 8, 2005, the cost to Hollinger of the Inspection (including the costs associated with E & Y and its legal counsel and Hollinger's lead counsel) exceeded $5.25 million. No date has been identified for the completion of the Inspection. E

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[4] Application, p. 3.
[5] Application, p. 2.
[6] Application, p. 3.
[7] Application, pp. 15 & 16.

& Y has estimated that it will require no less than four months to complete the next phase of the Inspection. The estimated costs for E & Y for that phase alone are between $865,000 to $1,015,000 per month.[8]

16. The Company remains in default of its filing obligations of audited financial statements under the Act. Completion of Hollinger's audited financial statements depends both on the completion of International's audited financial statements (for which no completion date has been set) and the co-operation of International and KPMG LLP (International's current auditors and Hollinger's former auditors). Such co-operation remains under negotiation with respect to International and, to date, not sufficiently forthcoming with respect to KPMG LLP to enable an audit of Hollinger's financial statements to be completed. Unfortunately, as stated in the Application, in the absence of such co-operation, there can be no assurance as to when or whether Hollinger will be in a position to file its audited financial statements.[9]

Limited liquidity opportunities for minority shareholders

17. In the face of these various uncertainties confronting Hollinger and the substantial and ongoing expenses being incurred by it, in both in respect of the Inspection and in defending itself in various different proceedings, continuing to deplete the Company's available cash, Hollinger's minority common shareholders presently have very limited options to divest their holdings in Hollinger and exit from Hollinger with fair value.

18. International has adopted a "poison pill" under which any person or group who acquires 20% or more of the voting power of International's outstanding common stock without the approval of the International board of directors (or the Corporate Review Committee of the board of directors of International) would give rise to a triggering event potentially causing significant dilution in the voting power of such person or group. Although the International Pill exempts Hollinger as the current holder of over 20% of the voting power of International's common stock, it does not exempt any direct or indirect transferee of that

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[8] Application, p. 6.
[9] Application, p. 5.

interest.[10] Consequently, any third party not affiliated with Ravelston (the current controlling shareholder of Hollinger) who may wish to acquire a controlling interest in Hollinger, and thereby pay a premium to shareholders over the trading price of Hollinger shares on the TSX, will not only require the support of Ravelston but also the approval of International. The continuing existence of the International Pill (extended by a Special Committee of the International Board of Directors until February 5, 2014) therefore impinges upon the likelihood of a third party seeking to bid for control of Hollinger (and the opportunity it would provide minority shareholders to exit Hollinger at a price reflective of its fair value).

19. In addition, because of concerns over impairing its liquidity, Hollinger has been unable to complete retractions of any Common Shares submitted after May 31, 2004. Therefore, minority common shareholders are essentially unable to use retraction rights under the Common Shares to divest their investment in Hollinger.[11]

20. Absent the Going Private Transaction, minority common shareholders are left only with the option of divesting their interest in Hollinger through trades on the TSX, and to the extent this option is available, the pricing is subject to substantial downward pressure given that it is thinly traded. While the announcement by Hollinger of the Going Private Transaction has caused the market price for the Common Shares to substantially rise to its closing price of $7.28 on March 11, 2005 (as compared to a market price of less than $4.00 prior to the announcement of the Going Private Transaction), as the withdrawal of the proposed acquisition (initiated by Ravelston) of Hollinger by Barclays at $8.44 per share amply illustrated, the market price of the Common Shares will precipitously drop if the Going Private Transaction does not proceed.

21. Therefore, absent the Going Private Transaction, Hollinger's minority common shareholders are left with the unenviable option of either divesting their interest at Hollinger at less than its fair value or waiting for an indeterminate, and perhaps indefinite, period of time for all of the uncertainties associated with Hollinger to be resolved all the while facing

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[10] Application, pp. 6 & 7.
[11] Application, pp. 14 & 15.

the very real risk that the value of Hollinger's equity will be significantly, if not completely, eroded in the meantime.

22. In contrast, the Going Private Transaction provides minority shareholders with a real and immediate opportunity to a no risk divesture of their interest in Hollinger at a price which exceeds the valuation range set by GMP Securities Ltd. in its formal valuation prepared in accordance with OSC Rule 61-501 while also providing minority common shareholders the benefit of any additional value that might be identified following the completion of International's audited financial statements or that might arise from the successful litigation of claims against related parties based on information identified upon the completion of the Inspection (plus additional benefits they would not otherwise enjoy in respect of the pursuit of potential claims against related parties).

Substantial benefit of the Going Private Transaction to minority shareholders

23. As set forth in the Circular, the Going Private Transaction upon which minority shareholders will be asked to vote on March 30, 2005 includes the following essential elements (the mechanics of the Consolidation itself not being addressed):

(a) holders of Common Shares not exercising dissent rights (other than Ravelston and certain of its affiliated entities) would receive $7.60 in cash for each share held by them at the date on which articles of amendment of Hollinger are filed.[12] The GMP Valuation estimates that, as at March 1, 2005, the fair market value of the outstanding Common Shares was in the range of $7.21 to $7.57 per Common Share;[13]

(b) holders of Series II Preference Shares not exercising dissent rights will be entitled to 0.46 of an International A Share for each Series II Preference Share held at the date on which articles of amendment of

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[12] Application, p. 13.
[13] Application, p. 9.

Hollinger are filed.[14] The GMP Valuation estimates that, as at March 1, 2005, the fair market value of an outstanding Series II Preference Share is equivalent to 0.46 of an International A Share;[15]

(c) in addition, following the filing by International of its 2004 Form 10-K, which would include its audited financial statements for the fiscal year ended December 31, 2004, a second independent valuation the Common Shares will be undertaken and, to the extent necessary, update the value range determined for the Common Shares contained in the GMP Valuation based on information set out in the International audited financial statements. Each holder of Common Shares who does not exercise dissent rights (other than Ravelston and certain of its affiliated entities) will receive an additional amount per Common Share equal to the amount, if any, by which the mid-point of the Updated Valuation Range exceeds $7.39 (being the mid-point of the GMP Valuation). In no event, will there be an adjustment downward of the consideration per Common Share received by minority common shareholders (i.e. the Additional Amount per Share will never be less than zero)[16];

(d) in order to address any concerns about the possible uncertainty of value in respect of potential claims by Hollinger against Ravelston or Ravelston-related entities or persons arising from related party transactions not already recorded as book debts by Hollinger, in the event the CS Consolidation is effected, holders of Common Shares (other than holders exercising dissent rights and, in certain circumstances, U.S. holders) will also be entitled to receive one Contingent Cash Payment Right or CCPR for each common share held. The CCPR would entitle holders of Common Shares to participate in

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[14] Application, p. 13
[15] Application, p. 9.
[16] Application, p. 10.

their proportionate interest in the economic benefit of any settlement or judgment in respect of such claims or litigation;[17] and

(e) alternatively, holders of Common Shares and Series II Preference Shares will have the right to dissent in respect of the Consolidation and to be paid the fair value for their shares in accordance with appraisal rights under the CBCA.[18]

24. In summary, holders of Common Shares will either receive for their shares in Hollinger cash compensation, at a premium over fair value as determined by the GMP Valuation, or have the right to exercise their dissent rights under the CBCA. To address any concern that upon the filing of International's audited financial statements additional value might be identified, holders of Common Shares who do not dissent will receive an additional amount per Common Share equal to the amount, if any, by which the mid-point of the Updated Valuation Range exceeds $7.39 in a second valuation to be carried out following the filing of the International statements. Moreover, a CCPR will be granted to each holder of a Common Share (other than holders exercising dissent rights) which will entitle CCPR holders to receive their proportionate interest in any settlement or judgment of possible claims or litigation against Ravelston and its related entities and persons. Holders of Series II Preference Shares will receive the fixed number of Hollinger International A Shares (being 0.46) as provided for under the terms of those shares.

25. Holders of Common Shares will, in fact, be in a better position as a result of the CCPR than if they have the benefit of the E & Y report today. If they had the E & Y report, they would still be left with the difficult task of ascribing a value to any possible claims identified in the report. With the CCPR, they will ultimately receive the precise value of any such claims – their pro rata share of the proceeds of the litigation advancing the claims.

26. Additionally, the CCPR mechanism provides for a method of advancing those claims by trustees on behalf of the shareholders (akin to a class action) and the litigation costs will be financed by the privatized Hollinger. As well, there will be limits on the funds which the

[17] Application, pp. 10 & 11.
[18] Application, p. 13.

controlling shareholders can remove from Hollinger while the claims are pending – a protection which would not otherwise be available to them.

27. The result is that minority common shareholders assume none of the risk that may be associated with value uncertainty due to informational concerns.

28. It should be noted, however, that the Going Private Transaction constitutes a "business combination" and as such is subject to the formal valuation and minority approval requirements of Rule 61-501 which, taken together, are designed to provide shareholders with important information regarding the value of the subject matter of the proposed transaction in order to make an informed investment decision in situations where a conflict or perceived conflict exists.

29. Drafts of the GMP Valuation were reviewed by staff of the Corporation Finance branch of the OSC. Moreover, the final terms and conditions of the Going Private Transaction reflect the continuous and constructive dialogue that occurred between staff of the OSC and the various counsel for Hollinger, the Independent Privatization Committee and the Independent Committee of the Board since November 2004 in connection with various issues related to the Going Private Transaction.[19]

30. In addition to the Hollinger Circular and the GMP Valuation, shareholders will have substantial information available to them to a reasoned judgment on the proposed transaction. For example, the following information is available to Hollinger shareholders in considering the Going Private Transaction:

(a) Alternative Financial Information disclosed by Hollinger on March 4, 2005 in the form of an unaudited consolidated balance sheet as at September 30, 2004, together with notes thereto;

(b) International's 2003 Form 10-K, including its audited financial statements for the fiscal year ended December 31, 2003 and related MD&A;

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[19] Application, pp. 13 & 23.

(c) default status reports and other press releases of each of Hollinger and International;

(d) the reports, to date, of E & Y filed with the Court in respect of the Inspection;

(e) the various records filed with the Court from proceedings commenced by Catalyst and by Hollinger Inc.'s independent directors;

(f) the pleadings filed in the various legal proceedings filed against Hollinger:

(g) the August 30, 2004 report of the Special Committee of International; and

(h) extensive global media coverage.

31. The Series II Preference Shares will be largely unaffected by the Going Private Transaction, whether it is completed or not. If approved by the holders of the Series II Preference Shares, they will receive precisely the number of International A Shares they would currently be entitled to. If not approved, they will retain all of the rights they presently have. The Series II Preference Shares are not participating shares and whether or not the holders of the Common Shares approve the Consolidation will not have an economic impact on their shares. In fact, the holders of the Series II Preference Shares will benefit from some of the protections put in place, e.g. a procedure for the prosecution of claims and protections against extraordinary business transactions and distributions.

32. Caution must be used when considering any objections by the holders of the Series II Preference Shares. As the value of the Series II Preference Shares is derivative of the value of International shares, it is in the economic interest of the Series II Preference Shares to transfer value from Hollinger to International, which would be against the interest of the holders of the Common Shares. For example, a substantial portion of the value of the Common Shares is attributable to the control premium, and it is in the interest of the Series II Preference Shares to cause the control premium to be lost to Hollinger common shareholders and thus transferred to

International shareholders and Series II Preference shareholders. The Commission should consider very carefully the precise motivations of those holders of Series II Preference Shares who object to the Consolidation proceeding for the holders of the Common Shares.

Consolidation of shares not a "trade"

33. The Act defines a "trade" to include:

> any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include the purchase a security ....

34. The requirement of a "sale or disposition" presupposes some positive act or, at a minimum, consent on the part of a shareholder in order for a transaction to constitute a trade. The CS Consolidation does not contemplate any positive act or consent on the part of shareholders. On the contrary, if the transaction is approved by shareholders, their shares will be consolidated as a matter of law. Further, as they will be cashed out if the requisite resolution is passed, their share ownership will automatically be extinguished.

35. If a share consolidation is considered a trade, absent an available exemption, an issuer contemplating such a transaction would need to prepare and file a prospectus and a registrant would need to be engaged. There is no precedent for such being done in share consolidations, and there are no precedents for a securities regulator commencing enforcement proceedings against issuers who have undertaken share consolidations. This further supports the premise that a share consolidation does not constitute a trade.

Variance of the MCTO would not be prejudicial to the public interest

36. In any event, pursuant to section 144 of the Act, the Commission may make an order revoking or varying a decision of the Commission if in the Commission's opinion the order would not be prejudicial to the public interest.[20]

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[20] Section 144(1) reads, "The Commission may make an order revoking or varying a decision of the Commission, on the application of the Executive Director or a person or company affected by the decision, if in the Commission's opinion the order would not be prejudicial to the public interest." Section 144(2) further provides that, "The order may be made on such terms and conditions as the Commission may impose."

37. As stated by the Commission in *YBM Magnex International Inc.*,[21] there is no definition of "the public interest" but rather "it is as much a matter of opinion as fact."

38. Further, the Ontario Court of Appeal in *Committee for the Equal Treatment of Asbestos Minority Shareholders* v. *OSC*[22] noted:

> The exercise of the Commission's discretion under [s. 127] is guided by the two broad purposes of the Act set out in section .1 – to provide protection to investors from unfair, improper or fraudulent practices; and to foster fair and efficient capital markets – and by the six "fundamental principles" set out in s. 2.1.

39. Whatever standard is applied in determining whether something is prejudicial to the public interest, whether it be abusiveness/unfairness in the context of hearings held under s. 127 of the Act, or some other relevant factors in the context of applications for relief such as in the present circumstance, the Commission must look at the facts before it in determining if the principles underlying the Act are being prejudiced.

40. In making such determinations the Commission has repeatedly determined that there must exist compelling reasons to deny shareholders of a target company the opportunity to dispose of their shares.[23]

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[21] (2000), 23 O.S.C.B. 623.
[22] 43 O.R. (3d) 257 (C.A.), aff'd [2001] 2 S.C.R. 132.
[23] See e.g. *Canadian Jorex Ltd.* (1992), 15 O.S.C.B. 257:

> [...] For us, the public interest lies in allowing shareholders of a target company, to exercise one of the fundamental rights of share ownership -- the ability to dispose of shares as one wishes – without undue hindrance from, among other things, defensive tactics that may have been adopted by the board with the best of intentions, but that are either misguided from the outset or, as here, have outlived their usefulness.
>
> In so stating our view of the public interest, we must be taken as disagreeing with the views of another of Jorex's witnesses, Mr. David Ward (also of Burns, Fry), who stated most emphatically that, in his opinion, "shareholders can't individually handle a lot of this". In Mr. Ward's view, therefore, the ultimate decision as to the value and appropriateness of a given bid, and thus as to whether or not it should be considered to be acceptable, should be left in the hands of the target board or its independent committee, and their professional advisors. Clearly, this is not the view that we take (nor does National Policy 38, for that matter), since we have every confidence that the shareholder of a target company will ultimately be quite able to decide for themselves, with the benefit of the advice they receive from the target board and others, including their own advisers, whether or not to dispose of their shares and, if so, at what price and on what terms. And to us the public interest lies in allowing them to do just that.

See further *Canfor Corp.* (1995), 18 O.S.C.B. 475 and National Policy 62-202 ("Takeover Bids Defensive Tactics")

41. Ravelston submits that based on the facts (including compliance with Rule 61-501) and the steps taken to remove any value risk that may be associated with informational uncertainties, the variances sought to the Hollinger MCTO and the International MCTO would not undermine the principles underlying the Act and therefore to grant such relief would not be prejudicial to the public interest for the following reasons:

(a) the Going Private Transaction represents a time limited opportunity for minority shareholders to obtain liquidity for their shares at fair value in circumstances where minority shareholders otherwise have very limited opportunities for liquidity and at substantially less value;

(b) notwithstanding Hollinger's filing deficiencies in respect of financial statements and related MD&A as detailed below, minority shareholders will have the benefit of substantial information to be able to form a reasoned judgment concerning the Going Private Transaction and should therefore have the opportunity to exercise that judgment;

(c) any concerns arising from the absence of International's audited financial statements or the completion of the Inspection, and any potential impact either may have on the value of Hollinger Common Shares, are fully addressed in the Going Private Transaction through: (i) the provision of a second independent valuation following the filing by International of its audited financial statements (and the potential for an upward common share price adjustment arising there from); and (ii) the formation of a litigation trust for the pursuit of possible claims and litigation against Ravelston and Ravelston-related entities or persons for the benefit of Hollinger's minority shareholders issued CCPRs entitling CCPR holders to their proportionate interest in the economic benefit of any claim or litigation brought by the trustees;

(d) the variance sought is merely incidental to a consolidation overwhelmingly aimed at shareholders not subject to any cease trade order (i.e. the public minority shareholders). It would be patently unfair to deny those shareholders the liquidity and pricing opportunity the Going Private Transaction offers shareholders given the very limited and inadequate alternatives available to those shareholders to exit Hollinger.

42. As noted, the public interest lies in allowing shareholders the opportunity to consider whether or not to dispose of their shares.

43. Indeed, when, in response to Hollinger's failure to file financial statements as required, the Commission determined to issue a MCTO as opposed to an issuer CTO, it is reasonable to conclude that the Commission implicitly acknowledged that Hollinger's public shareholders should be able to freely trade their shares notwithstanding Hollinger's existing disclosure deficiencies and that to allow such trading was not prejudicial to the public interest. It would neither be logical nor reasonable that the Commission should deny the same group of shareholders a possible exit strategy by way of the proposed Going Private Transaction on the grounds that it would be prejudicial to the public interest. This is especially so given the additional measures that are being applied to ensure that the consideration to be received by the public shareholders is not undervalued.

44. The Commission has previously granted variances to cease trade orders notwithstanding an issuer's continuing non-compliance with its filing obligations in respect of financial statements.[24]

a) time limited opportunity

45. In order to proceed with the Going Private Transaction, amendments to the Indentures for the Senior Notes are required. In the absence of these amendments, Hollinger would be prohibited under the Indentures from implementing the Consolidation.

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[24] *Cinar Corporation* (2004), 27 OSCB 1191

46. As set forth in the Application, Consents were negotiated in October 2004 from holders of a majority in aggregate principal amount of the outstanding Senior Notes to the necessary amendments to the Indentures on terms that required all necessary corporate, shareholder and regulatory approvals in connection with the CS Consolidation to be obtained on or before March 31, 2005. In the event that such approvals are not obtained by this date, absent a further consent of the holders of a requisite amount of the Senior Notes, Hollinger will not be permitted under the terms of the Indentures to effect the Consolidation.[25]

47. The consent was negotiated in conjunction with the receipt of debt commitments of such Principal Noteholders to enable Hollinger to be able to draw upon up to an additional U.S. $40 million to finance a substantial portion of the costs associated with the completion of the Going Private Transaction. The Debt Commitments are binding commitments to finance for a five month period ending on March 31, 2005 which cannot be withdrawn by the Principal Noteholders except if the requisite approvals to the Going Private Transaction are not obtained on or before March 31, 2005. Having regard both to the fact that the consent from the Principal Noteholders also entailed a binding financing commitment for a fixed period of time and the usual length of time required to effect a going private transaction, Hollinger believed in October 2004 that a five month deadline afforded Hollinger a significant and reasonable period of time in which to seek the needed approvals including shareholder approvals.[26]

48. No extensions to the March 31, 2005 have been secured by Hollinger, despite an approach for that purpose by Hollinger's Independent Privatization Committee. For the various reasons set forth on pages 17 - 19 of the Application, there be any assurance that after March 31st: (i) the further consent of the holders of a requisite amount of Senior Notes can be obtained; (ii) if amenable to a further consent, the cost and terms will be reasonable and acceptable; or (iii) Ravelston will continue to support a transaction for the consideration presently set forth.

49. It is important to recognize that neither the completion of the Inspection nor audited financial statements for International or Hollinger are imminent in the sense of any date

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[25] Application, pp. 8 & 9.
[26] Application, p. 16.

having been set for their completion in the near future and, for the most part, are not within the control of Hollinger or its shareholders. How long a second consent would need to be secured for is unknown.

50. Moreover, the completion of the Inspection is not going to resolve the value of any potential related party claims. The Inspection is limited to factual findings and will not, and cannot, make any legal findings.[27] Matters of liability and damages will have to be resolved through litigation and be subject to the inherent delay associated with litigation. As noted above, the shareholders will actually be in a better position with the protections now incorporated into the Going Private Transaction then if they waited, even assuming a going private transaction would be available at a later date.

51. Absent the Going Private Transaction, shareholders would receive the E & Y report and still be unable to determine with any certainty the value of any potential claims that might come to light from the report until those claims were resolved or litigated. The CCPRs provide further assurance that the consideration to be received by holders of Common Shares will not be undervalued.

52. Any concerns associated with the filing deficiencies of International and the corresponding absence of up-to-date audited financial statements for International is fully addressed under the terms of the Going Private Transaction which provides for a mechanism for an upward adjustment to the cash consideration to be received by minority common shareholders following the release of International's statements based on a second independent valuation.

53. Likewise, the CCPR serves as a proxy for the final E & Y report and further places minority shareholders in a superior position than they would be in if they actually had the final report.

b) variance sought merely incidental to transaction

54. Ravelston submits that an order varying the Hollinger MCTO to permit:

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[27] *Canada (Canada Business Corporations Act, Director)* v. *Royal Trustco Ltd.* (1981), 14 B.L.R. 307 (Ont.H.C.)

(a) Common Shares of three Respondents (Barbara Amiel-Black, J.A. Boultbee and Peter Y. Atkinson) who collectively own only 0.024% of the Common Shares, to be subject to the Consolidation;

(b) a transfer of registered title to (but not beneficial ownership of) certain Common Shares by one Argus subsidiary to another Argus subsidiary to ensure that any one Argus subsidiary does not hold fewer than 5,766,783 Common Shares so that Ravelston will not, directly or indirectly, receive any consideration as a consequence of the Consolidation;

(c) the holding of the Meeting and any of the Respondents owning Common Shares and/or Series II Preference Shares exercising their voting rights thereat,

would not be prejudicial to the public interest. Rather, it would be unfair to Hollinger's minority shareholders, and counter to the general public interest of allowing shareholders the opportunity to consider a proposal for their shares, to allow the existing cease trade orders to cause the Going Private Transaction not to be placed before the overwhelming majority of Hollinger's common shareholders who are in no way subject to a cease trade order.

55. The MICTO does not apply to the minority shareholders and they are, and should remain, free to dispose of their shares if they so desire. The Going Private Transaction provides them with the only real alternative to public market trades for disposing their shares. This application seeks a variation in order to permit shareholders the opportunity to make that very decision. Rather than being in the public interest to deny the requested relief, we submit that it would be contrary to the public interest and contrary to the very purpose of the MICTO, to deny minority shareholders that opportunity.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

March 17, 2005

OGILVY RENAULT LLP

Alan H. Mark

Ava Yaskiel

Steve Tenai

Counsel for the Applicants, 1269940 Ontario Limited, 2753421 Canada Limited, Conrad Black Capital Corporation, Conrad M. Black and Ravelston Corporation Limited