

**IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, CHAPTER S.5, AS AMENDED (the “Act”)**

AND

**IN THE MATTER OF
CERTAIN DIRECTORS, OFFICERS AND INSIDERS OF
HOLLINGER INC.**

**Application to vary under section 144 of the Act
to be heard April 21, 2005**

**SUBMISSION OF STAFF OF THE ONTARIO SECURITIES COMMISSION
REGARDING INTERVENOR STATUS**

Overview

1. The Commission has been asked to consider an application by Argus Corporation Limited and its subsidiaries to vary a cease trade order made against management and insiders of Hollinger Inc. A number of proposed intervenors are asking to participate in the hearing of this application, either as full parties or as friends of the tribunal.
2. Set out below is a summary of the relevant case law and principles regarding intervention in Commission hearings, together with Staff of the Commission’s position regarding the current applications to intervene.

Applications for Intervenor Status

3. The Commission has considered applications for intervenor status in a number of previous decisions.

Re Crabbe Huson Group Inc. (1999), 22 OSCB 5310 (Tab 1)

Re Reuters Information Services (Canada) Ltd. (1997), 20 OSCB 2277,
as affirmed [1997] O.J. No. 2152 (Div. Ct.) (Tab 2)

Re Albino (1991), 14 OSCB 365 (Tab 3)

Re Canadian Tire Corp. (1987), 10 OSCB 857 (Tab 4)

Re Torstar Corp. (1985), 8 OSCB 5068 (Tab 5)

4. Types of Intervenor Status

These decisions have identified two potential types of intervention:

- a. full participation as a party, and
 - b. “Torstar”(or friend of the tribunal) standing.
5. “Torstar” standing takes its name from the *Re Torstar Corp.* decision, and refers to a party entitled to make submissions before the Commission, but not entitled to tender any evidence in the proceeding.

Re Torstar Corp., supra

Tests to be Applied

6. Subsequent cases have considered both the issue of when intervenor status should be granted and the type of intervention permitted. The *Re Albino* case articulated a test which has been employed in a number Commission decisions, setting out that:

...on requests for standing the Commission must first and foremost consider the nature of the issue and the likelihood that the intervenors will be able to make a useful contribution without injustice to the immediate parties (the MacMillan Bloedel test, adopted in Torstar). Where a would-be intervenor has a direct financial interest, in that the person may acquire a benefit or incur a loss as an immediate result of a Commission decision, full standing is appropriate. The clearest application of that principle is to security holders and to those who have announced an intention (i.e. offereors in take-over bids) to acquire

securities. Where the intending intervenor has a clear financial interest – most obviously, as a holder of securities of the subject issuer – but that interest will not be immediately affected by the decision the Commission may make, then only restricted (i.e. Torstar) standing is to be granted.

Re Albino, supra at 425-426

7. In summary, the *Albino* case suggests that the following issues should be considered:
- a. the nature of the proceeding;
 - b. whether the proposed intervenor will make a useful contribution to the proceeding;
 - c. whether the proposed intervention would unfairly prejudice the interests of the existing parties; and
 - d. the effect, if any, of the proceeding's potential outcomes on the economic interests of the proposed intervenor.

Re Albino, supra

8. These factors are similar to those articulated by the Ontario Court of Appeal in considering applications for leave to intervene in civil proceedings:

...the matters to be considered are the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties.

Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd. (1990), 74 O.R. (2d) 164 (C.A.) at 167 (Tab 6)

(a) Nature of Proceeding

9. In examining the nature of the proceeding, both the purpose of the proceeding and the issues at stake should be considered. Hearings before the Commission may have varied purposes, including discipline for breaches of the *Securities Act* and/or conduct contrary to the public interest, consideration of take-over bids,

reviews of decisions of self-regulatory organizations, or reviews of decisions of a Director.

Securities Act, R.S.O. 1990, c S-5, as amended, ss. 8, 21.7 and 127 (the “Act”) (Tab 7)

10. The Commission has previously observed in a related context that issues of standing should be viewed differently, for example, in cases involving take-over bids than in cases involving registration status or discipline. In general, the Commission has granted broader intervention rights in bid-related matters than in other types of hearings.

Re Instinet Corp (1995), 18 O.S.C.B. 5439 at 5446 (Tab 8)

Re Canadian Tire Corp., *supra*

(b) Useful Contribution

11. In reviewing this factor, the Commission may wish to consider whether the proposed intervenor will advance arguments or evidence that may not otherwise be presented. In the words of the British Columbia Court of Appeal, a successful intervenor should “bring a different perspective to the issue before the court”.

MacMillan Bloedel v. Mullin [1985] B.C.J. No. 2076 (C.A.) at para. 6 (Tab 9)

12. Where an existing party can adequately advance a position, interventions may be neither helpful nor necessary.

Re Albino, *supra* at 5084

(c) Prejudice to Existing Parties

13. The Commission must be mindful of the need to deal fairly with existing parties. In reviewing settlement agreements, for example, the Commission has observed

that the introduction of new facts at a settlement hearing may work an injustice on the respondent.

Re Crabbe Huson, supra

14. The Commission has also expressed concerns that excessive interventions may unduly protract its proceedings and thus unfairly prejudice existing parties.

Re Albino, supra at 426

15. It is clear that the Commission has the ability to control its own processes in order to avoid any such unfair outcome.

Re Ontario Securities Commission and Electra Investments (Canada) Ltd. (1983), 44 O.R. (2d) 61 (Div. Ct.) (Tab 10)

(d) Effect on Economic Interests

16. Previous decisions have established that a successful applicant for intervention must establish that its economic interests will be affected by the Commission's decision in the proceeding. Economic effects have been defined as the potential to acquire a benefit or incur a liability.

Re Albino, supra

Re O.S.C. and Electra Investments, supra at 64

17. The extent and immediacy of the economic impact may affect the type of standing granted: larger or more immediate effects are suggestive of full participation, while smaller or more indirect effects indicate that Torstar standing may be appropriate.

Re Albino, supra

Staff Position with respect to Requests for Standing

18. As of the date of this submission, Staff is aware of the following requests for standing in connection this Application:
- a. A request for standing dated April 15, 2005 from John Joseph Cameron, including an e-mail message of support from Stanley Miller dated April 16, 2005 (the “Cameron Standing Request”);
 - b. A request dated April 18, 2005 from Hollinger Inc. for limited standing to provide written submissions for consideration by the Commission (the “Hollinger Standing Request”),
 - c. A request dated April 18, 2005 from Kenneth McLaren, David Wilkes and Stephen Jarislowsky for *Torstar* standing (the “McLaren Group Standing Request”); and
 - d. A request dated April 18, 2005 from Catalyst Fund General Partner I Inc. for *Torstar* standing (the “Catalyst Standing Request”).

(a) The Cameron Standing Request

19. Mr. Cameron has asked to intervene in the application and make submissions as a preference shareholder of Argus. Given his financial interest in the outcome of the application, Staff do not oppose his request to make submissions at the hearing.

(b) The Hollinger Standing Request

20. Hollinger Inc. has asked that a letter dated April 18, 2005 setting out its position on the Application be provided to the Commission.

21. Given the fact that it is Hollinger Inc. shares that the Applicants are seeking to trade, Staff submit that it is appropriate that Hollinger Inc's views be presented to the Commission for its consideration. Staff therefore recommend that the Commission receive and review the Hollinger Inc. letter.

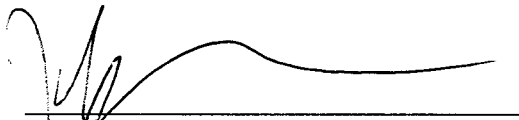
(c) The McLaren Group Standing Request and the Catalyst Standing Request

22. Both the McLaren Group and Catalyst Fund General Partner I Inc. are minority shareholders of Hollinger Inc. The McLaren Group states that it represents person who own approximately 1,000,000 retractable common shares of Hollinger Inc. Catalyst states that it owns 1,398,000 Series II preference shares and approximately 883,000 common shares of Hollinger Inc.

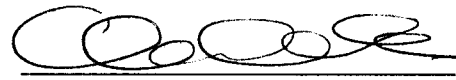
23. Both the McLaren Group and Catalyst have filed written submissions indicating that there are discrete issues that they wish to raise concerning the application, and that they seek only *Torstar* standing. Staff of the Commission support the request for standing of the McLaren Group and Catalyst.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

April 20, 2005



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