



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

-AND-

**IN THE MATTER OF
CONRAD M. BLACK, JOHN A. BOULTBEE
AND PETER Y. ATKINSON**

**AMENDED STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Further to Notices of Hearing dated March 18, 2005 and July 12, 2013, Staff of the Ontario Securities Commission (“Staff”) make the following allegations:

Overview

1. This proceeding arises out of a scheme pursuant to which former directors and officers of Hollinger Inc. (“Hollinger”) and Hollinger International Inc. (“International”) diverted certain proceeds from International to themselves through contrived “non-competition” payments. These former directors and officers did not obtain approval for the payments from International’s Board of Directors and made misrepresentations regarding the payments in public disclosures.
2. This proceeding was adjourned on multiple occasions pursuant to the requests of certain Respondents, and was finally adjourned *sine die* on October 17, 2009 pending the outcome of appeals in a related United States criminal case. The Respondents have now exhausted their appeals in that matter.

The Respondents

(a) Conrad M. Black

3. Conrad M. Black (“Black”) was Chairman of the Board of Directors and Chief Executive Officer of Hollinger beginning in 1978. Black was also the Chairman and Chief Executive Officer of International beginning in 1995.

4. On November 19, 2003, Black retired as CEO of International. On or around January 17, 2004, Black was removed as the Chairman of the Board of Directors of International. On or around November 2, 2004, Black resigned as Chairman, Chief Executive Officer and a director of Hollinger.

(b) John A. Boulton

5. John A. Boulton (“Boulton”) was a director of Hollinger beginning in 1987. At various times thereafter, he also held positions as Hollinger’s Vice President of Finance and Treasury, Chief Financial Officer and Executive Vice President. On November 18, 2004, Boulton was removed as a director of Hollinger. On December 1, 2004, Hollinger announced that Boulton was no longer serving as the Executive Vice President of Hollinger.

6. Boulton was a director of International from 1990 until 1995. From 1995 through 2002, Boulton was International’s Chief Financial Officer. In 1999, Boulton became Executive Vice-President of International and remained in that position until his termination on or about November 16, 2003.

(c) Peter Y. Atkinson

7. Peter Y. Atkinson (“Atkinson”) was a director of Hollinger beginning in 1996. From 1996 through 2001, Atkinson was also Vice-President of Hollinger. Atkinson then became the Executive Vice President of Hollinger and remained in that position until April 27, 2004, when he resigned as a director and officer of Hollinger.

8. Atkinson was an Executive Vice-President of International beginning in 2000 and a director beginning in May 2002. He remained a director of International until January 2002 and an Executive Vice President of International until April 27, 2004.

Related Parties

(a) Hollinger Inc.

9. During the relevant period, Hollinger was a reporting issuer in Ontario, with its principal place of business in Toronto, Ontario. Hollinger's shares were listed for trading on the Toronto Stock Exchange and were also registered with the United States Securities and Exchange Commission (the "SEC").

10. Hollinger operated largely as a holding company. Its primary asset consisted of its investment in International, where it controlled approximately 84% of the voting shares and approximately 60% of the equity.

(b) Hollinger International Inc.

11. During the relevant period, International was the principal subsidiary of Hollinger. It was a reporting issuer in Ontario, with its principal place of business in Chicago, Illinois. International's common shares were registered with the SEC and were listed for trading on the New York Stock Exchange.

12. International owned and operated newspaper and publication businesses, including the National Post, the Chicago Sun-Times, the Daily Telegraph, and the Jerusalem Post.

Prior Proceedings

(a) The Commission Proceeding

13. By Notice of Hearing and Statement of Allegations dated March 18, 2005 (the "Initial Statement of Allegations"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider whether, pursuant to s. 127 and s. 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the

“Act”), it would be in the public interest for the Commission to make certain orders in relation to Hollinger, Black, Boulton, Atkinson and F. David Radler (“Radler”).

14. On November 14, 2012, the Commission approved a settlement agreement reached between Staff and Radler and approved an Order resolving the proceeding against Radler.

15. On July 12, 2013, Staff withdrew the allegations contained in the Initial Statement of Allegations against Hollinger, which remains subject to proceedings in the Ontario Superior Court of Justice pursuant to the *Companies’ Creditor Arrangements Act*.

(b) The United States Criminal Proceeding

16. On November 17, 2005, a Grand Jury in the United States District Court for the Northern District of Illinois (the “District Court”) indicted Black and Boulton on eight counts of criminal fraud and Atkinson on six counts of criminal fraud.

17. On July 13, 2007, after approximately four months of trial, Black, Atkinson, and Boulton were each convicted by a jury of three counts of fraud. Two of the fraud counts related to the Respondents’ collection of purported non-competition payments pursuant to agreements with American Publishing Company (“APC”), an International subsidiary. One fraud count related to the Respondents’ collection of purported non-competition payments in connection with International’s sale of assets to Forum Communications Inc. (“Forum”) and PMG Acquisition Corp. (“Paxton”). In addition, Black was convicted on one count of obstruction of justice relating to his removal of certain documents from the Toronto offices of Hollinger.

18. Each Respondent moved for a judgment of acquittal on the convictions, but the trial judge reviewed the evidence and denied the motions in a detailed decision issued on November 5, 2007 (the “Conviction Appeal Judgment”). The Respondents appealed their convictions to the Seventh Circuit Court of Appeals (the “Seventh Circuit”), but that Court denied their appeal in a decision issued on June 25, 2008.

19. Certain of the Respondents then appealed the Seventh Circuit denial to the United States Supreme Court, and on June 24, 2010, the Supreme Court issued a parallel decision narrowing the scope of the “honest services” provision of the U.S. fraud statute. The Supreme Court then vacated the Seventh Circuit decision and remanded the criminal proceeding back to the Seventh Circuit for further consideration.

20. On October 29, 2010, the Seventh Circuit vacated the two original conviction counts related to the APC payments after it was unable to conclude beyond reasonable doubt whether the jury’s verdict on the APC payments had been rendered under the “honest services” section of the fraud statute or the “pecuniary fraud” section of the statute. In its decision, however, the Seventh Circuit noted that the jury had “likely” convicted the Respondents on the pecuniary fraud section of the statute, that the evidence at trial was “certainly sufficient” to prove a pecuniary fraud, and that the trial judge could consider evidence relating to the APC counts during resentencing.

21. The Seventh Circuit did not disturb the convictions related to the Forum and Paxton payments or Black’s obstruction of justice. All of the Respondents sought leave to appeal this decision to the United States Supreme Court, but leave was denied on May 31, 2011.

22. On remand at the trial court, the Respondents were resentenced based on the fraud convictions relating to the Forum and Paxton payments. Black was also resentenced based on his obstruction of justice conviction. Boulton was sentenced to time served (329 days), was fined \$500 and was ordered to pay \$15,000 in restitution to the Sun-Times Media Group. Atkinson was sentenced to time served (345 days) and was fined \$3,000. Black was sentenced to 42 months of incarceration and was fined \$125,000.

(c) The United States Securities and Exchange Commission Proceedings

23. On November 15, 2004, Staff of the SEC instituted a separate civil proceeding against Black, Radler and Hollinger in the District Court (the “SEC Proceeding”). The

proceeding included allegations relating to the APC, Forum and Paxton payments and the failure to disclose material facts regarding those payments in public disclosures.

24. On September 24, 2008, the District Court found that Black had failed to accurately disclose the circumstances surrounding the APC, Forum and Paxton payments in securities filings. As a result, the District Court found Black liable for securities fraud and other violations of the U.S. Securities Exchange Act of 1934 (the “Exchange Act”), as well as certain rules promulgated under the Exchange Act. The District Court subsequently entered an order imposing various forms of injunctive relief against Black, including a permanent bar from serving as a director or officer of a reporting issuer in the United States.

25. On October 9, 2009, Staff of the SEC instituted an administrative proceeding against Atkinson in relation to the APC, Forum and Paxton payments, and the failure to accurately disclose the circumstances surrounding the payments in securities filings. Pursuant to a settlement offer, the SEC found that Atkinson had committed securities fraud and violated certain other provisions of the Exchange Act. As a result, the SEC issued an order imposing various forms of injunctive relief against him, including a permanent bar from serving as a director or officer of a reporting issuer in the United States (the “Administrative Ruling”).

26. Following the Seventh Circuit’s decision vacating the APC criminal fraud convictions, Black moved to vacate the injunctive relief imposed against him in the SEC Proceeding. On February 21, 2012, the District Court denied the request. On October 9, 2012, the District Court entered final judgment barring Black from acting as a director or officer of a reporting issuer in the United States and requiring disgorgement of \$3.8 million and interest payments of \$2.3 million.

27. Black filed a notice of appeal of the District Court’s final judgment but agreed to settle the appeal in exchange for a reduction in the amount of the monetary judgment. On July 2, 2013, the parties filed a joint motion in the District Court seeking approval of the settlement.

The Findings of the United States District Courts

28. In the Conviction Appeal Judgment, the criminal trial judge made findings relating to the Respondents' convictions in the U.S. criminal proceedings. In the SEC Judgment and Administrative Ruling, additional findings were made against certain of the Respondents relating to disclosures in securities filings. These findings, as set forth below, were left undisturbed by the Seventh Circuit and the U.S. Supreme Court.

(a) The APC Payments

29. APC was a subsidiary of International which had been engaged in the community newspaper business. During 2000 and 2001, it was in the process of selling its newspaper holdings.

30. In February of 2001, the Respondents executed non-competition agreements with APC providing that they would not compete with APC for three years after they left their positions at International. Pursuant to these agreements, Black received a payment of \$2,612,500 and Atkinson and Boulton each received a payment of \$137,500 (together, the "APC Payments").

31. However, at the time that the Respondents executed the agreements, APC had sold nearly all of its newspaper holdings. It retained only one small weekly newsletter in Mammoth Lake, California, which it planned to sell. Accordingly, the criminal trial court found that the Respondents had obtained non-compete payments even though "there was essentially nothing to compete against," and that the payments were "bonus payments fraudulently disguised as non-competition payments."

32. In addition, although the Respondents had made the non-competition agreements with a related party (a subsidiary of their own employer), they failed to inform International's Board of Directors about the agreements. The criminal trial court found that the Defendants had "essentially paid themselves not to compete with themselves."

33. None of the Respondents disclosed the APC Payments in the proxy questionnaires that they completed relating to International's 2001 fiscal year. Moreover, none of the

Respondents accurately disclosed the APC Payments in the annual 10-K report filed by International with the SEC for its 2001 fiscal year.

(b) The Forum and Paxton Payments

34. In 2000, International entered into an agreement to sell certain newspaper assets to Forum for \$14 million and Paxton for \$59 million. In the spring of 2001, there was \$600,000 remaining in an International reserve account relating to these two transactions.

35. Upon learning of the existence of the \$600,000 reserve, Black arranged for \$285,000 from the reserve to be distributed to himself, \$15,000 to Boulton and \$15,000 to Atkinson. International employees then caused cheques to be issued in these amounts to the Respondents (the “Forum and Paxton Payments”), characterizing them as “supplemental non-competition payments”.

36. However, no non-competition agreements had been executed in connection with the Forum and Paxton transactions. Moreover, the Board of Directors of International had never approved any non-competition agreements, and Forum and Paxton had never requested such agreements.

37. None of the Respondents disclosed the Forum and Paxton Payments in the proxy questionnaires that they completed relating to International’s 2001 fiscal year.

38. In addition, none of the Respondents accurately disclosed the Forum and Paxton Payments in the annual 10-K report filed by International with the SEC for its 2001 fiscal year. The 10-K report disclosed that a \$600,000 payment had been made to Black and senior executives, but represented that the payments were made “to satisfy a closing condition” involving the sales of United States newspaper properties and were made pursuant to non-competition agreements with the buyers. The filing further represented that the Forum and Paxton Payments were made with the approval of International’s independent Directors. All of these representations were false.

(c) Black's Obstruction of Justice

39. In May of 2007, Black removed 13 boxes of documents from Hollinger's Toronto offices in an attempt to conceal the documents from official proceedings. Specifically, the boxes included documents pertinent to ongoing criminal and SEC proceedings that culminated in the convictions and civil judgments described above.

Conduct Contrary to the Public Interest

40. The facts set out above authorize the Commission to make an Order against each of the Respondents pursuant to section 127(10) of the Act.

41. In addition, by engaging in the conduct described above, each of the Respondents acted in a manner contrary to the public interest, and an order is warranted pursuant to section 127(1) of the Act.

42. Staff reserves the right to make such other allegations as it may advise and the Commission may permit.

DATED at Toronto this 12th day of July, 2013.