

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

**- and -**

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

**(BEING THE PERSONS AND COMPANIES LISTED  
IN SCHEDULE “A” HERETO)**

**(Application under Section 144 of the Act)**

**SUBMISSION OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

**OVERVIEW**

1. This submission sets out the views of the Staff of the Commission (“Staff”) in connection with the application dated March 12, 2007 (the “Application”) brought by the Applicant, Hollinger Inc. (“Hollinger” or the “Applicant”), pursuant to section 144 of the Act to revoke the Commission Order dated June 1, 2004, as subsequently amended on March 8, 2005, August 10, 2005 and April 28, 2006 (collectively the “Hollinger MCTO”).
2. The Hollinger MCTO provides that all trading, whether direct or indirect, by the persons and companies listed in Schedule “A” to the Hollinger MCTO (collectively, the “Respondents”) in the securities of Hollinger shall cease, subject to certain exceptions as provided for in the Hollinger MCTO, until two business days following the receipt by the Commission of all filings Hollinger is required to make pursuant to Ontario securities law.
3. The Commission issued the Hollinger MCTO in June 2004 as a result of the failure by Hollinger to comply with its obligations under Ontario securities law to file certain interim and annual financial statements, related Management’s Discussion and Analysis (“MD&A”), and an Annual Information Form (“AIF”).

The Hollinger MCTO was issued in accordance with the terms of OSC Policy 57-603 *Defaults by Reporting Issuers in Complying with Financial Statement Filing Requirements* (the “MCTO Policy”).

4. On December 7, 2006, the Applicant received an Order from the Commission and from certain other Canadian securities regulatory authorities (the “December MRRS Decision”) which granted relief from certain form and content requirements of the financial statement filing requirements in Canadian securities legislation. This relief was granted on the condition that the alternative filings contemplated by the December MRRS Decision be made within 90 days of the December MRRS Decision.
5. On March 7, 2007 Hollinger filed with the Commission the alternative filings contemplated by the MRRS Decision (“the Required Filings”). Specifically, Hollinger filed audited financial statements for its fiscal years ended December 31, 2003, December 31, 2004, December 31, 2005 and March 31, 2006 as well as unaudited interim financial statements for the three, six and nine month periods ended June 30, 2006, September 30, 2006, and December 31, 2006. As well, Hollinger filed its Annual Information Form for the fiscal years ended December 31, 2005 and March 31, 2006.
6. The terms of the Hollinger MCTO provide that the Hollinger MCTO will remain in effect until two full business days after all required filings have been made with the Commission.
7. As described at paragraph 19 of the Application, the Applicant has made this Application to revoke the Hollinger MCTO because the Hollinger MCTO arguably has not lapsed automatically in accordance with its terms.
8. This is because, as acknowledged by the Applicant in paragraph 21 of the Application, the Required Filings made in accordance with the December MRRS Decision do not include certain of the Applicant’s historical continuous disclosure documents.

#### **STAFF POSITION**

9. Staff support the Applicant’s request that the Hollinger MCTO be revoked.
10. As described below, the Applicant has now made the Required Filings that were contemplated by the December MRRS Decision. The Applicant made the Required Filings on March 7, 2007.
11. Having regard to the guidance set forth in the MCTO Policy and the Proposed MCTO Policy (as defined below), Staff are of the view that it would not be prejudicial to the public interest to revoke the Hollinger MCTO.

12. Staff have also taken into consideration the fact that the individual respondents who have been named in the Notice of Hearing and Statement of Allegations issued on March 18, 2005 (*In the Matter of Hollinger Inc., Conrad M. Black, F. David Radler, John A. Boulton, and Peter Y. Atkinson*), have provided to the Commission undertakings in connection with the Commissions Orders dated March 30, 2006 and April 4, 2007. Specifically, the undertakings provided by the individual respondents to the Commission include the term that they cease all trading in and all acquisitions of securities of Hollinger.

## FACTS

### December MRRS Decision

13. In addition to the facts set out in the Application, Staff would like to highlight the following additional facts as set out in the December MRRS Decision.

*December MRRS Decision*, paragraphs 3, 10, 32, 40 and 36,  
Staff Submissions, Tab 2B.

14. The Applicant made the following representations to the Commission in support of the requested relief, including the following:
  - (i) The Applicant's principal asset is its interest in Sun-Times Media Group, Inc. (formerly Hollinger International Inc.) ("Sun-Times"), a corporation governed by the laws of the State of Delaware. Sun-Times is a newspaper publisher, the assets of which include the Chicago Sun-Times and a large number of community newspapers in the Chicago area. As of July 31, 2006, the Applicant owned, directly or indirectly 782,923 Class A Common shares of Sun-Times (the "Sun-Times A Shares") and 14,990,000 Class B Common shares of Sun-Times (the "Sun-Times B Shares") (collectively, the "Sun-Times Shares"), being approximately 19.7% of the equity and 70.1% of the voting interest in Sun-Times. (**para. 3**);
  - (ii) The business and affairs of the Applicant, Sun-Times and their respective subsidiaries were predicated on the fact that, as a majority shareholder of Sun-Times, the Applicant controlled Sun-Times in that it managed, or supervised the management of, the business and affairs of Sun-Times. However, during and following November 2003, certain events occurred that the Applicant submits caused it to cease to control or exercise significant influence over Sun-Times, as those terms are defined in the CICA Handbook. Those events included the following:
    - a. the Applicant no longer had a majority of the nominees forming part of the board of directors of Sun-Times (the "Sun-Times

Board”);

- b. Sun-Times co-operated in an attempt to obtain an order from a United States court in Chicago affecting the Applicant’s right to exercise its ordinary powers as a majority shareholder, including with respect to the composition of the Sun-Times Board;
  - c. substantially all of the powers of the Sun-Times Board were delegated to a committee thereof, of which none of the nominees of the Applicant was a member;
  - d. Sun-Times commenced litigation against the Applicant and the Applicant made certain counterclaims against Sun-Times in respect of matters which continue to be unresolved;
  - e. restrictions were imposed on the Applicant by a United States court order relating to the alienation of its interests in Sun-Times and the alienation of any controlling interest in the Applicant itself;
  - f. the Applicant became unable to exercise certain fundamental rights associated with being a majority voting shareholder of Sun-Times, including amending the by-laws of Sun-Times and supervising the overall strategic, business and operating initiatives of Sun-Times;
  - g. without the consent or involvement of the Applicant or its nominees on the Sun-Times Board, the Sun-Times Board delegated to a committee thereof the authority to review and evaluate Sun-Times' strategic alternatives, including a possible sale of Sun-Times or one or more of its assets;
  - h. the Applicant and its auditors were denied access to the books and records of Sun-Times; and
  - i. the relationship between the Applicant and Sun-Times had deteriorated into one in which there was very little mutual co-operation, assistance or regard to the interests of the Applicant and Sun-Times as a group (**para. 10**);
- (iii) On November 2, 2004, Lord Black resigned as a director and officer of the Applicant. During that same month the Ontario Superior Court of Justice ordered the removal of Lord Black, Lady Black, Mr. Radler and Mr. Boulton from the board of directors of the Applicant. (**para. 32**)
- (iv) On July 8, 2005, Justice Campbell of the Ontario Superior Court of Justice approved a consent Order reconstituting the Applicant's board of directors. The consent Order provided for the removal of two of the then remaining

four interim directors and the appointment of five new directors. Later that month, the two remaining interim directors resigned from the Applicant's board of directors, and four new directors, namely Stanley Beck, Joseph Wright, Newton Glassman and Randall Benson were appointed to the Applicant's board of directors. Mr. Benson was appointed as the Applicant's Chief Restructuring Officer. The four new directors, together with David Drinkwater and David Rattee, who were appointed in August 2005, formed a new board of directors of the Applicant. **(para. 40)**

- (v) On March 18, 2005, the OSC issued a Notice of Hearing in connection with a hearing (the "Hearing") to consider whether, pursuant to sections 127(1) and 127.1 of the *Securities Act* (Ontario), it is in the public interest for the OSC to make certain orders in respect of the Applicant, Lord Black, Mr. Radler, Mr. Boulton and Mr. Atkinson. The statement of allegations prepared by OSC staff (the "Statement of Allegations") includes allegations relating to the failure by the Applicant to file interim statements (and management's discussion and analysis related thereto) for the three-month period ended March 31, 2004 and subsequent interim filing requirements, and failed to file its annual financial statements (and management's discussion and analysis related thereto) and its Annual Information Form ("AIF") for the year ended December 31, 2003, contrary to the requirements of Ontario securities law. The Applicant acknowledges that the Requested Relief is intended to be prospective in nature and is without prejudice to the matters to be determined at the Hearing. ... **(para. 36)**

15. In the December MRRS Decision, the Applicant provided the following explanation as to the need for relief:

- The Applicant believes that it is unable to prepare the December 2003 Financial Statements in accordance with GAAP or have the December 2003 Financial Statements or the December 2004 Financial Statements audited in accordance with GAAS and accompanied by an auditor's report that does not contain a reservation since to prepare and audit the financial statements in accordance with the requirements requires that the Applicant and its auditors to have co-operation by Sun-Times management and by Sun-Times' auditors. The co-operation has been refused. Relief is needed because the Proposed Filings do not comply with certain form and content requirements contained in the Legislation, including requirements contained in NI 51-102 and NI 52-107. **(para. 57)**
- The Applicant acknowledges that the Requested Relief is intended to be prospective in nature and is requested solely to permit the Applicant to make certain filings after the date of the decision that do not meet certain form and content requirements contained in the Legislation, including NI

51-102 and NI 52-107. The Requested Relief will not, if granted, have retroactive effect or alter the default status of the Applicant for the period preceding the date the Applicant makes the Proposed Filings in accordance with this decision. (**para. 58**)

*December MRRS Decision*, paragraphs 57 and 58,  
Staff Submissions, Tab 2B.

16. On December 7, 2006, the December MRRS Decision was issued by the Commission and from certain other Canadian securities regulatory authorities.
17. On March 7, 2007, the Applicant made the Required Filings contemplated by the December MRRS Decision.

### **OSC Enforcement Proceeding**

18. As indicated above, on March 18, 2005, the Commission issued a Notice of Hearing pursuant to sections 127 and 127(1) of the Act accompanied by Staff's Statement of Allegations in relation to Hollinger, Black, Radler, Boulton and Atkinson.
19. On January 24, 2006, the Commission issued its Decision and Reasons setting down the matter for a hearing on the merits, subject to each of the individual respondents agreeing to execute an undertaking to abide by interim terms of a protective nature within 30 days of that Decision.
20. On March 30, 2006 and April 4, 2007, the Commission made Orders concerning the scheduling of the hearing on the merits. In connection with these Orders, the individual respondents, namely Black, Radler, Boulton and Atkinson, provided undertakings that they would abide by certain terms and conditions that were deemed satisfactory by the Commission.

Order of the Commission dated April 4, 2007 and attached undertakings of the individual respondents,  
Staff Submissions, Tab 4.

21. The undertakings include a term that they cease all trading in and all acquisitions of securities of Hollinger, whether direct or indirect.

### **LEGAL PRINCIPLES**

#### *(a) Section 144*

22. Section 144 of the Act provides that the Commission may make an order revoking or varying an order of the Commission if, in the Commission's opinion, to do so would not be prejudicial to the public interest.

23. The Commission has recently indicated that the exercise of discretion involved in a section 144 application to vary a management cease trade order should not be viewed as a narrow, “technical” exercise, but rather requires a broad consideration of the all of the facts and circumstances relevant to the Application.

*In the Matter of Certain Directors, Officers and Insiders of Hollinger Inc. et al.*, dated March 27, 2005, para. 27, Staff Submissions, Tab 3.

*(b) Revocation of MCTO*

24. As described above, the Commission issued the Hollinger MCTO in June 2004 as a result of the failure by Hollinger to file certain interim and annual financial statements, related MD&A, and an AIF.
25. The Hollinger MCTO was issued in accordance with the terms of OSC Policy 57-603 *Defaults by Reporting Issuers in Complying with Financial Statement Filing Requirements* (the “MCTO Policy”).

*OSC Policy 57-603 Defaults by Reporting Issuers in Complying with Financial Statement Filing Requirements*  
Staff Submissions, Tab 5.

26. The Commission has provided the following guidance in the MCTO Policy in relation to applications to revoke an MCTO:

**PART 5 REVOCATION OF CEASE TRADE ORDERS**

**5.1 Revocation of Cease Trade Orders**

Where a Management and Insider Cease Trade Order or an Issuer Cease Trade Order has been issued as a consequence of the Financial Statement Filing Requirement default, the Commission will consider revoking the order:

- (i) upon the Defaulting Reporting Issuer complying with the Financial Statement Filing Requirement; and
- (ii) provided the Defaulting Reporting Issuer is not otherwise in default of any requirement of the Act or regulations which would cause the reporting issuer to be placed on the Default List.

The Commission's consideration of any application for revocation will be based upon its review of the financial statements which are submitted, the period of time the issuer has been the subject of a Cease Trade Order, and any other factors or circumstances which it determines to be of significance in the particular case. In particular, the Commission may consider whether, before revoking an Issuer Cease Trade Order that has been outstanding for some time, the issuer should also bring its disclosure up to date by providing prospectus-level disclosure.

*OSC Policy 57-603 Defaults by Reporting Issuers in Complying with Financial Statement Filing Requirements*, Part 5,  
Staff Submissions, Tab 5.

27. On January 5, 2007, the Commission published for comment proposed National Policy 12-202 *Revocation of a Compliance-Related Cease Trade Order* (“Proposed NP 12-202”).<sup>1</sup>

Proposed National Policy 12-202 *Revocation of a Compliance-Related Cease Trade Order*  
Staff Submissions, Tab 6.

28. As described in the Request for Comment, Proposed NP 12-202 describes how the Canadian Securities Administrators (the “CSA”) will generally exercise their discretion when deciding whether to revoke a cease trade order prohibiting trading in the securities of an issuer for failure to comply with continuous disclosure requirements. The Policy applies to cease trade orders imposed against an issuer as well as management cease trade orders as described in the MCTO Policy.
29. Section 3.1 of Proposed NP 12-202 states that generally the CSA jurisdictions will not exercise their discretion to grant a full revocation order unless the issuer has filed all its outstanding continuous disclosure documents. However, the proposed policy contains the following exceptions:

(2) Exceptions to interim filing requirements

In exercising our discretion to revoke a CTO, we may not require the issuer to file certain outstanding interim financial statements, interim MD&A, interim certificates or interim MRFP, if the issuer has filed:

- (a) all outstanding audited annual financial statements, annual MD&A, annual certificates and annual MRFP required to be filed under applicable securities legislation;
- (b) all outstanding annual information forms, information circulars and material change reports required to be filed under applicable securities legislation; and
- (c) all outstanding interim financial statements (which include the applicable comparatives from the prior fiscal year), interim MD&A, interim certificates and interim MRFP for all interim periods in the current fiscal year required to be filed under applicable securities legislation.

(3) Exceptions to annual filing requirements

In certain cases, an issuer seeking a revocation order may consider that the length of time that has elapsed since the date of the CTO may make the preparation and filing of all outstanding disclosure difficult, or of limited use to investors. This may particularly apply to disclosure for older periods, or periods prior to a significant change in the issuer's business. An issuer seeking a revocation order in these circumstances should make detailed submissions explaining its position. In appropriate cases, we will consider whether the filing of certain outstanding disclosure might not be necessary as a precondition of a revocation order. The factors we may consider include:

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<sup>1</sup> The comment period expired March 6, 2007. Proposed NP 12-202 is not yet in force as a policy.

(a) age of information to be contained in the filing -- information from older periods may be less relevant than information from more recent periods;

(b) access to records -- lack of access to records may hinder compliance with some filing requirements;

(c) activity during the period -- if an issuer was inactive or changed its business during a certain period, disclosure of information from or prior to this period may be less relevant;

(d) length of time the CTO has been in effect;

(e) changes to issuer's management; and

(f) whether the historical disclosure relates to significant transactions or litigation.

However, we generally consider that disclosure for periods within the most recent three financial years of the issuer is useful information for investors. We generally do not consider the time and cost required to prepare disclosure to be a compelling factor in our determination of the disclosure to be provided in connection with an application to revoke a CTO.

Proposed National Policy 12-202 *Revocation of a Compliance-Related Cease Trade Order*, section 3  
Staff Submissions, Tab 6.

## CONSIDERATIONS

30. As described above, the Applicant has made this Application to revoke the Hollinger MCTO because the Applicant has now made the Required Filings that were contemplated by the December MRRS Decision. The Applicant made the Required Filings on March 7, 2007.
31. As described in the Application, for technical reasons, the Hollinger MCTO has not lapsed automatically in accordance with its terms.
32. This is because, as acknowledged by the Applicant in paragraph 21 of the Application, the Required Filings made in accordance with the December MRRS Decision do not include certain of the Applicant's historical continuous disclosure documents, including:
  - (i) unaudited interim financial statements and related interim MD&A for the interim periods from March 31, 2004 to September 30, 2005, inclusive; and
  - (ii) annual information forms for the financial years ended December 31, 2003 and 2004.
33. The Applicant has submitted, in paragraph 21 of the Application, that "the filing of such historical disclosure documents would in large part repeat the information

contained in the Required Filings and that the Required filings include all financial and other information needed for current investor understanding of the Applicant”.

34. Consistent with the guidance set forth in Part 5 of the MCTO Policy and subsections 3.1(2) and 3.1(3) of the Proposed NP 12-202 (referred to above), Staff have considered the unique and exceptional circumstances in respect of this Application, including:

- (i) The representations made by the Applicant to the Commission in the December MRRS Decision, and specifically, the representations referred to above relating to loss of control over Sun-Times, loss of access to books and records relating to historical periods, removal of Black, Radler, and Boulton from the Applicant’s board of directors in November 2004 pursuant to Court Order and reconstitution of the Applicant’s board of directors under the supervision of the Ontario Superior Court;
- (ii) The representations made by the Applicant to the Commission in the context of the December MRRS Decision and in the present Application that “the filing of such historical disclosure documents would in large part repeat the information contained in the Required Filings”; and
- (iii) The representations made by the Applicant to the Commission in the context of the December MRRS Decision and in the present Application that “the Required filings include all financial and other information needed for current investor understanding of the Applicant”.

35. Following a review of the Required Filings, Staff determined that the Required Filings appeared to be consistent with the terms and conditions of the December MRRS Decision.

36. Accordingly, on or about March 14, 2007, Hollinger was removed from the list of reporting issuers in default that is maintained in accordance with Ontario Securities Commission Policy 51-601 *Reporting Issuer Defaults* consistent with the Commission’s guidance in subsection 2.2(2) of Policy 51-601:

Thirdly, where an issuer has been noted in default, the default notation may subsequently be removed if it is determined that the default has ceased to be material. For example, an issuer may be noted in default for failing to file interim financial statements and related MD&A, and then remain in default for an extended period of time. In these circumstances, the Commission may be prepared to remove the default notation, and revoke a cease trade order if one has been issued, where the Commission is satisfied that the issuer has substantially brought its filings up to date. The Commission will generally consider this to be the case where the issuer files audited annual financial statements and related MD&A for the three most recently completed financial years and interim financial statements and related MD&A for the current financial year. In these circumstances, the Commission may, depending upon its review of all relevant factors, accept that the issuer should no longer be considered in default of a current material continuous disclosure requirement and remove the default notation. As a technical matter, the issuer remains in default of those filing requirements that have not been met.

OSC Policy 51-601 *Reporting Issuer Defaults*,  
Staff Submissions, Tab 7.

37. Having regard to the factors discussed above and the guidance set forth in the MCTO Policy and the Proposed MCTO Policy, Staff are of the view that it would not be prejudicial to the public interest to revoke the Hollinger MCTO.
38. Accordingly, Staff support the Applicant's request that the Hollinger MCTO be revoked.

April 5, 2007

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

*"Johanna Superina"*

Senior Litigation Counsel

*"Paul Hayward"*

Senior Legal Counsel

*"Marcel Tillie"*

Senior Forensic Accountant

**Schedule “A”**

509645 N.B. Inc.  
509646 N.B. Inc.  
1269940 Ontario Limited  
2753421 Canada Limited  
Amiel Black, Barbara  
Argus Corporation Limited  
Atkinson, Peter Y.  
Black, Conrad M. (Lord)  
Boulton, J. A.  
Burt, The Hon. Richard  
Carroll, Paul A.  
Colson, Daniel W.  
Conrad Black Capital Corporation  
Cowan, Charles G.  
Creasey, Frederick A.  
Cruickshank, John  
Deedes, Jeremy  
Dodd, David  
Duckworth, Claire F.  
Healy, Paul B.  
Kipnis, Mark  
Kissinger, The Hon. Henry A.  
Lane, Peter K.  
Loye, Linda  
Maida, Joan  
McCarthy, Helen  
Meitar, Shmuel  
O'Donnell-Keenan, Niamh  
Paris, Gordon  
Perle, The Hon. Richard N.  
Radler, F. David

The Ravelston Corporation Limited

Rohmer, Richard, OC, QC

Ross, Sherrie L.

Samila, Tatiana

Savage, Graham

Seitz, The Hon. Raymond G.H.

Smith, Robert T.

Stevenson, Mark

Thompson, The Hon. James R.

Van Horn, James R.

Walker, Gordon W.

White, Peter G.

Vale, Donald M.J.

Delorme, Monique L.

Richardson, James A.

Marler, Jonathan H.

Tyrrell, Robert Emmett

Metcalf, Robert J.

Wakefield, Allan

509643 N.B. Inc.

509644 N.B. Inc.

509647 N.B. Inc.

Benson, Randall

Wright, Joseph

Beck, Stanley

Glassman, Newton

Rattee, David

Drinkwater, David

Mitchell, Ronald