The Pain of the Obdurate Rump: Conrad Black and the Flouting of Corporate Governance

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In the face of growing complaints from shareholders in the spring of 2003 that New York-based Hollinger International Inc. had for years been seriously mismanaged, company chairman Conrad Black publicly dismissed corporate governance as a "fad." He described as "zealots" those investors who called for corporate governance principles to be instituted in the company he had founded, which many felt he used his voting control over to run to his own benefit (Morton, 2003). In 1998, Hollinger ranked as the world's third-largest newspaper company, after only News Corp. and Gannett, and included such titles as the London *Daily Telegraph*, the Chicago *Sun-Times* and the Jerusalem *Post*, along with Canada's largest newspaper chain (Jones, 1998: 40). By the fall of 2003, however, the company was divesting assets rapidly and Black was forced to defend himself against charges that he and Hollinger International president David Radler had improperly enriched themselves at the expense of other shareholders by taking millions of dollars in unauthorized expenses, "management" fees and "non-compete" payments. Included in the questionable disbursements was US$8 million paid for a collection of the personal papers of former U.S. president Franklin Delano Roosevelt, on whom Black was writing a biography. Never one to back down from a dispute, the Canadian press lord characterized the dissident shareholders as "corporate governance terrorists" (Leonard, 2003).

Black has made his disdain for corporate governance well known for many years. In 1996, while he was in the process of taking over Canada's oldest and largest newspaper chain, Southam Inc., Black fought—and won—a celebrated battle with that company's independent directors. After the five directors, who together had served a combined 81 years on Southam's board, opposed Black's plan to break up the former family-owned firm, he described them as an "obdurate rump." Black had proposed taking ten of Southam's smaller dailies for his Canadian company, Hollinger Inc., in exchange for his 20 percent ownership of Southam shares. Thwarted in that attempt, Black instead bought out Southam's other major shareholder, giving him effective control of the company with 41 percent of its shares. Black quickly convened a special meeting of Southam shareholders and used his voting control to oust the independent directors who had stood in his way. He then dismissed Southam's CEO and installed himself as the company's head without even bothering to convene a meeting of the company's reconstituted board of directors (Brehl, 1996). One expert called the episode "a dark day for corporate governance in Canada." Several of the deposed Southam board members, including some of Canada's leading executives, were harsh in their criticism of Black's new management regime. "They obviously expected the Southam board to be a rubber stamp," said Hugh Hallward, president of Montreal-based Argo Construction Ltd. Another was even more prophetic. "Radler and Conrad Black don't believe in a board," said Ronald Cliff, chairman of B.C. Gas. "They don't believe in corporate governance" (Ferguson, 1996). Canada's national newspaper, the *Globe and Mail* headlined the brouhaha: "The pain of the obdurate rump" (Goold, 1996).

In late 2003, as Black embarked on a publicity tour to promote his 1,296-page biography, *Franklin Delano Roosevelt: Champion of Freedom*, Hollinger International announced that he had agreed to resign as its CEO. Black and Radler had both promised to repay US$7.2 million in unauthorized payments, the company added. But on December 22, Black invoked his Firth Amendment rights in refusing to testify at hearings convened by the U.S. Securities and Exchange Commission (SEC) into the finances of Hollinger International, and the following week he failed to make the first installment of his promised repayment of unauthorized fees to Hollinger. In early 2004, Hollinger International filed a lawsuit against Black, Radler, three other executives, and companies they control, claiming US$200 million in damages. After selling the crown jewel of his newspaper holdings, the *Telegraph*, Black commenced a lawsuit of his own against Hollinger International in April over disputed stock options. The following month, Hollinger International increased the amount of damages it claimed from Black and his co-defendants to $1.25 billion, including trebled actual losses under U.S. racketeering laws. A press release issued by the company outlining the legal claim quickly brought a lawsuit in response from Black, which was filed in Ontario Superior Court, claiming C$800 million in damages for libel (Burt, 2004).

On August 30, 2004, a 513-page report to the SEC described Hollinger International under the management of Black and Radler as a "corporate kleptocracy." The report by a special committee of Hollinger International directors detailed what it called a "self-righteous and aggressive looting" of the company by its controlling shareholders over a period of years. It counted more than US$400 million it claimed Black and others had appropriated for their own use between 1997 and 2003, or more than 95 percent of Hollinger International's adjusted net income during that period. The claimed abuses were made possible in large part, according to the report, by a lack of basic corporate governance safeguards in place at Hollinger International. Seats on the company's board of directors had been handed out by Black to members his circle of social and political associates, including former U.S. Secretary of State Henry Kissinger. Perhaps the most serious lapse of corporate governance chronicled in the report involved Hollinger International board member Richard Perle, a former U.S. Assistant Secretary of Defense. Perle served as the third member of Hollinger International's executive committee, along with Black and Radler, but according to the report he admitted not discussing the documents he signed with the company's principals and that he "generally did not even read them or understand the transactions to which they applied" (Report, 2004: 483).

Black then increased his libel claim against Breeden and senior Hollinger International directors from C$800 million to more than C$2 billion (Burt, 2004). In October, Black succeeded in a legal challenge to Hollinger International's bid to pursue racketeering charges against him when a federal court judge in Chicago returned the case to state court, thwarting the company's bid to recover trebled damages (Kirchgaessner, 2004). The following month, however, the SEC filed suit against Black and Radler in Chicago, seeking the return to Hollinger International of US$85 million in "ill-gotten gains." The lawsuit also sought to prevent Black from exercising control over his shares in Hollinger International by having them placed in a voting trust, and to bar both men from serving as a director of any public company (Steinberg, 2004).

Regardless of the ultimate outcome of the various legal actions that have been commenced, however, the case of Hollinger International looms as a cautionary tale of the perils for media companies of failing to adhere to standards of corporate governance. It is thus worth examining, despite the preliminary nature of the established facts, while of course holding in abeyance any final judgments of wrongdoing.

Background

While he was born into money, Black is fond of pointing out that he began assembling his newspaper empire before receiving his inheritance. He and Radler, together with silent partner Peter White, purchased the failing Sherbrooke Record in their home province of Quebec for C$18,000 in 1969, cutting its payroll by more than 40 percent almost immediately. Once he acquired his C$7 million inheritance, Black began to display the takeover tactics that would gain him notoriety in his native land, eventually gaining control over assets worth C$4 billion (Newman, 2003). He inherited an interest in the giant Canadian holding company, Argus Corp., of which he proceeded to gain control, largely from the widows of its founders. Black then began selling off the most valuable Argus assets piecemeal. One of his more controversial moves involved claiming for Argus a C$38-million pension fund surplus from the Dominion supermarket chain it controlled. An ensuing lawsuit resulted in a court order that Argus pay the money back, with interest. Black wrote a column for the Toronto *Sun* describing the investigative reporters who followed the story for years as "swarming, grunting masses of jackals" (Siklos, 1996: 210).

Black soon divested most of his non-newspaper holdings and began to concentrate on assembling a newspaper empire to rival that of his boyhood idol, William Randolph Hearst. The modest, 15-paper chain of small-city titles he and Radler assembled during their first decade in the newspaper business, Sterling Newspapers, proved extremely profitable. By 1973, the modest chain owned 42 percent by Black was worth an estimated C$20 million (Winter, 1997: 39). The secret of Sterling's success, Radler revealed in testimony before the 1980 Canadian Royal Commission on Newspapers hearing, was "the three-man newsroom, and two of them sell ads" (Black, 1993: 378). But Sterling's small size did little to satisfy Black's lofty ambitions. Using the proceeds of his sale of Argus divisions, Black entered a high-stakes bidding war in 1980 for control of F.P. Publications, Canada's second-largest newspaper chain. F.P. Publications had briefly grown even larger than Southam in the mid-1960s and at its height included the Toronto *Globe and Mail,* Winnipeg *Free Press*, Vancouver *Sun*, Ottawa *Journal*, and Montreal *Star*. Black's main rival for F.P. Publications, however, turned out to be Canada's only billionaire, Ken Thomson, who had inherited the title Lord Thomson of Fleet, along with the *Times* of London, from his father Roy in 1976.

Out-bid by Thomson for F.P. Publications, Black then set his sights on Southam, which by the mid-1980s had become widely held as a public company. A fourth generation of Southams by then held only an estimated 30 percent of the issued shares in the newspaper chain printer William Southam had formed in 1897 by adding the Ottawa *Citizen* to the Hamilton *Spectator* he already owned. This diffusion of ownership made the family firm vulnerable to takeover, and Black was one of the aspiring acquisitors, buying up five percent of the company's outstanding shares in 1985. A defensive "share swap" between Southam and the Torstar Corp., owners of Canada's largest-circulation daily, the *Toronto Star*, ended the takeover speculation at least temporarily, however. In exchange for a 30-percent interest in the smaller Torstar, Southam gave up 20 percent of its shares in a "near merger" that made its takeover a practical impossibility (Edge, 2004: 229).

Thus thwarted, Black sold his Southam shares for a profit and turned his attention elsewhere in his quest for acquisitions. Starting in 1986 with the purchase of 34 small-town newspapers in the U.S. for $106 million, Black and Radler built their Hollinger subsidiary American Publishing into a chain of 340 titles over the next decade, investing a further US$302 million in more than 100 purchases in the process. A regular classified ad in the trade magazine *Editor & Publisher* attracted buyers, many of whom were encouraged to sell by changes to U.S. capital gains tax rules. The small-town newspapers Hollinger acquired became money spinners under the management of Radler, who became known as the "human chain saw" for the sight-unseen method he once explained for reducing labor costs at each new publication Hollinger acquired.

> *I visit the office of each prospective property at night and count the desks....That tells me how many people work there. If the place has, say 42 desks, I know I can put that paper out with 30 people, and that means a dozen people will be leaving the payroll even though I haven't seen their faces yet (Newman, 1992).*

After buying the faltering Chicago *Sun-Times*, then the eighth-largest daily in the U.S., for US$180 million in late 1993, Hollinger followed the same cost-cutting strategy it used successfully at smaller newspapers, setting aside US$10 million for voluntary redundancies at the unionized daily. After a 20-percent reduction in staff, the paper's cash flow doubled, and within a year the *Sun-Times* was generating a 15-percent return on revenue (Jones, 1995). Not everyone at the 500,000-circulation daily was happy with the cost-cutting measures imposed by Radler at the *Sun-Times*, however, as eight senior editors left within a year, along with popular columnist Mike Royko. By 1995, American Publishing ranked as the second-largest newspaper chain in the U.S. by number of titles, but only 12th in size by total circulation (Siklos, 1996).

Hollinger's worldwide expansion was financed in large part by Black's acquisition of the London *Daily Telegraph* for US$60 million in 1985, when the venerable newspaper was badly underperforming, as were most other Fleet Street titles, due to high labor costs brought by powerful unions. By joining the non-union movement out of Fleet Street, combined with Hollinger's payroll cutting, almost three quarters of the 3,900 *Telegraph* staff was soon jettisoned. (Siklos, 1996, 155) From an annual loss of £8.9 million in 1986, Telegraph plc recorded a profit of £41.5 million in 1989. That year, Black utilized the newspaper's new computerized typesetting equipment to publish during a strike by journalists, using only management personnel. The victory, he wrote in his 1993 autobiography, exposed "one of the great myths of the industry: that journalists are essential to producing a newspaper" (Black 1993: 405). According to Black biographer Richard Siklos (1996: 156), the *Telegraph* became a "newspaper cash machine capable of funding its owner's desire to pursue the acquisition of practically any newspaper in the world." One of the newspapers Black and Radler coveted was the Jerusalem *Post*, offering US$20 million for it when the highest bid for the faltering daily to that point had been US$8 million. According to deposed publisher Irwin Frenkel, after first promising not to interfere with the editorial content of the traditionally-liberal daily, Radler (who is Jewish) took a direct interest in the newspaper's politics. After the purchase was complete, noted Frenkel, Radler instituted a radical change in editorial policy by installing as publisher a friend who had been a colonel in the Israeli army but who had no previous newspaper experience.

> *He wanted a newspaper that served and reflected the prevailing nationalist temper and did not criticize occupation or settlement of the West Bank or Gaza. Like his bosses, he had little respect for journalists and what he considered their pretensions to know better (Frenkel, 1994: 168).*

The change in editorial direction prompted thirty-two *Post* journalists to threaten to resign, and Radler gratefully accepted the cost savings brought by the uncompensated terminations. "It was convenient for me," he said, "because there were 32 too many people, if not more, in the editorial department at that time" (Wells, 1996).

Another country in which Black and Hollinger invested their *Telegraph* profits was Australia, purchasing 20 percent of the Fairfax group, which included the Sydney *Herald* and the Melbourne *Age*, for more than A$100 million in 1991. Black set about reducing the chain's workforce of 4,340, which boosted profits and doubled Fairfax stock price, but foreign-ownership laws prevented him from increasing his interest in the company. That didn't stop Black from becoming, according to Siklos (1996: 241), "the central character in one of the most vicious and highly-politicized takeover battles that Australia has ever seen." The firestorm of controversy that saw Black beat a hasty retreat from Down Under and sell his Fairfax investment was prompted by revelations he made in his 1993 autobiography, *A Life in Progress*. Black wrote of meeting Australian Prime Minister Paul Keating in 1992 about raising the country's limit on foreign ownership of media. "If he was re-elected and Fairfax political coverage was 'balanced,' he would entertain an application to go higher," Black wrote (1993: 453-454), adding that the opposition leader had "already promised that if he was elected he would remove restraints on our ownership." The published remarks caused an uproar in Australia, because Black had indeed been allowed to increase his stake in Fairfax to 25 percent only weeks after Keating had been re-elected the previous year, amid protests from journalists and politicians (Siklos, 1996: 349). A Senate inquiry into the affair in 1994 resulted, and the attendant publicity prevented any possibility Black would be allowed to increase his ownership of Australia's press any further. Two years later he sold his stake in Fairfax for a profit of A$300 million (Dalglish, 1996).

Conquering Southam

Despite Hollinger's international success, Black and Radler had been shut out of major newspaper acquisitions in their native Canada following their failures to take over F.P. Publications in 1980 and Southam Inc. in 1985. The defensive "share swap" between Southam and Torstar that had prevented a takeover of the newspaper chain was challenged by minority shareholders of Southam in a long-running court battle, however. They claimed the motion to approve the share swap had been improperly passed because there had been insufficient notice given to shareholders before an extraordinary meeting had been called to vote on it. Before the matter could come to court, however, the lawsuit was settled in 1988 with a compromise that its ten-year "standstill" period, during which each company agreed not increase its holdings in the other, would be reduced to only five years. That meant Southam would be "in play" as a takeover target again in 1990, with Torstar as its largest shareholder in a position to control its fate. Black made repeated offers to Torstar for its stake in Southam as a result of this development, and in 1992 he finally acquired its 20 percent ownership by agreeing to pay a 15-percent premium over the stock's market value (Edge, 2004: 229).

Southam family members, who were concerned that Black would impose his conservative politics on their traditionally liberal dailies, then made a fateful move in a last attempt to keep him from acquiring control of the newspaper chain. They recruited one of the few Canadian newspaper owners with the financial resources to counterbalance Black's influence on Southam's board, citing a company bylaw that allowed them to issue C$200 million worth of new shares to Montreal businessman Paul Desmarais. Southam family members had first sounded out Desmarais, whose Power Corp. owned a chain of forty-one newspapers in Quebec, on his willingness to continue the Southam tradition of quality newspapers, and reportedly received his agreement. But when Black began using his control of seats on the Southam board of directors to push for cost-cutting measures at the chain, Desmarais backed his plan due to the company's continuing financial losses. Soon, according to Siklos (1996: 404), the pair found themselves shut out of Southam financial information by the company's independent directors on the grounds that their own companies were industry competitors. Out of frustration, Black offered to buy Desmarais' shares in Southam. Desmarais countered with a proposal to break up the historic chain, with Hollinger taking ten of its smaller dailies in exchange for its one-fifth ownership. When that plan was blocked by the independent directors, Desmarais accepted Black's long-standing offer to buy his Southam shares and the Hollinger head's victory over the "obdurate rump" was assured.

Five days after consolidating his control of Southam, Black used the coincidental occasion of Hollinger's annual meeting to publicly scold the conquered company's management, particularly its vanquished independent directors. According to Black, Southam management had "long accepted inadequate returns for the shareholders, published generally undistinguished products for the readers and received exaggerated laudations from the working press for the resulting lack of financial and editorial rigour." Black admonished the former first family of Canadian newspapers for panicking into its 1985 share swap with Torstar to forestall his takeover ambitions, pointing out that the move ultimately backfired. "If Southam's management had been a little more courageous," he crowed to stunned silence, "it might still be a family-controlled company" (Miller, 1998: 62).

In his bid for total control of Southam, Black utilized a combination of ingenuity and persistence over the next several years. He first made an offer to shareholders in late 1996 of C$18.75 a share in an attempt to bring his holdings in the company above 50 percent. When his first offer failed to acquire sufficient stock, Black then sweetened the bid to C$20 a share early in 1997, which resulted in 8.5 million Southam shares being tendered. That was sufficient to bring Black's holdings in Southam, through his control of Hollinger, to 50.7 percent of issued shares. Black then used his majority control of the company in April, 1997 to disburse most of Southam's treasury in a C$2.50 "special dividend." That enriched Hollinger most of all, and Black used the C$47 million windfall to finance a leveraged bid for the Southam shares that remained outstanding in an attempt to acquire enough of its stock to take the company private by having it "de-listed" from the stock exchanges as a public company. His complex offer, which included both cash and shares in Hollinger, was only enough to increase Black's holdings of Southam stock to 58.6 percent, however. (Edge, 2004: 232).

After acquiring a key block of Southam shares held by a New York mutual find in 1998, paying a 22-percent premium over market price to raise his stake to 69.2 percent, Black again made a bid for the company's remaining stock. This time he used his voting control on the Southam board to authorize the borrowing of C$523 million to finance the offer, using the money to declare another extraordinary dividend, this time of C$7 a share. Black used the cash that accrued to Hollinger as a result to finance another offer to Southam shareholders, this time of C$22 a share for all outstanding stock. When that failed to persuade several key institutional investors to sell, Black sweetened the offer to $25.25 a share early in 1999, which resulted in 90 percent of outstanding shares being tendered, raising Hollinger's holdings in the company to 97 percent. That was sufficient to allow Black to apply to the Ontario Securities Commission to de-list the company, which had begun trading on the Toronto Stock Exchange in 1945 (Edge, 2004: 232).

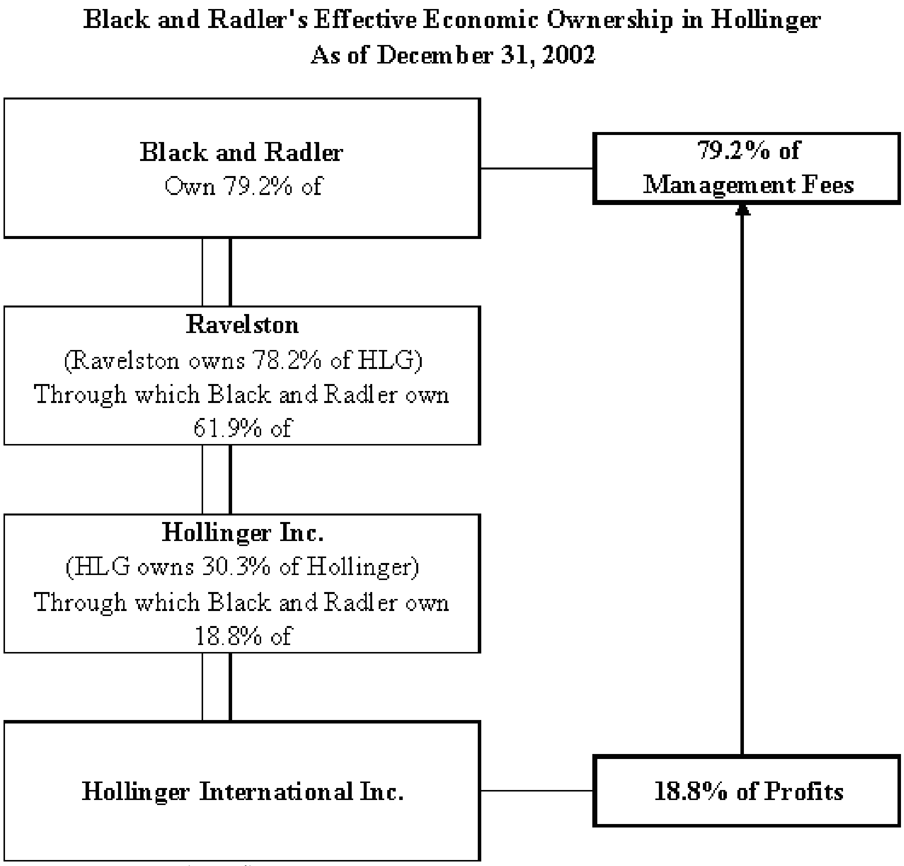
One of the first major moves Black made as controlling shareholder of Southam was to utilize the company's nation-wide resources in publishing a second national newspaper in Canada in competition with the *Globe and Mail*, whose liberal politics he opposed. Despite publishing most of the country's leading dailies, Southam had never published a newspaper in its hometown of Toronto, which was dominated by the *Star*, Canada's largest-circulation daily, the *Globe and Mail*, and the tabloid *Sun*. This Black moved into the Toronto market by first acquiring in mid-1998 the *Financial Post* national business daily from the *Toronto Sun* chain in exchange for Southam's original *Spectator* in nearby Hamilton, three smaller Southern Ontario dailies, and C$150 million. (Cobb, 2004: 86) Utilizing Southam's head office plant in suburban Toronto, Black assembled a newspaper staff from across Canada and around the world, drawing largely on journalists from his newly-acquired chain of dailies across the country. In October, 1998 the *National Post* began publishing, but its start-up costs soon began to weigh down Southam and Hollinger financially. Its first-year losses of C$44 million caused Hollinger's share price to drop almost 20 percent that year, as investors nervously eyed the company's accumulated C$2.4 billion in debt (Edge, 2004: 232).

The conservative politics of the *National Post* did little to endear Black to Canadian Prime Minister Jean Chretien for the newspaper's persistent coverage of a growing patronage scandal in his riding, and its editorial efforts to "unite the right" in opposition to his Liberal Party. In mid-1999, when the *Telegraph* owner was offered by British Prime Minister Tony Blair the seat in the House of Lords that traditionally accompanies such a position, Chretien vetoed the peerage by citing an obscure provision requiring federal approval for Canadian citizens to hold foreign titles. Black responded with a lawsuit against Chretien for abuse of process, and when it was thrown out of court in 2000, he renounced his Canadian citizenship in order to take up his peerage as Lord Black of Crossharbour. As foreign ownership of the press is restricted in Canada, Black sold the Southam chain he had worked for so long to acquire to television network CanWest Global Communications in August of that year for C$3.5 billion (Edge, 2004: 232).

Corporate Structure

In order to separate its Canadian holdings from its growing international newspaper empire, Toronto-based Hollinger Inc. established a New York-based subsidiary called Hollinger International Inc., which went public with an IPO in 1994. The corporate structure Black set up to control Hollinger International was just as ingenious as the takeover strategy he used to acquire Southam. It provided for a "pyramid" of control that allowed him to exercise control over Hollinger International despite owning less than a quarter of its shares. His majority control of Hollinger Inc., along with Radler's minority position, was held in the name of a company they controlled, called Ravelston Inc. It in turn owned a majority of a company called HLG, which in turn owned a minority of Hollinger International Inc. Thus, while they exercised control over Hollinger International through this "pyramid" structure, Black and Radler owned 18.8% of its shares in 2002 (See Figure 1).

Black and Radler controlled Hollinger International through Hollinger Inc.'s ownership of all 14.9 million Hollinger International Class B preferred shares, which each carried 10 votes compared with only one vote for each of the company's Class A common shares. Thus, despite owning only 30 percent of Hollinger International stock, Black exercised an estimated 73.8 percent of voting control over the company (Leonard, 2003). It was through this majority voting control in Hollinger International that other shareholders complained that Black was running the company to his own advantage.



Source: Report (2004), 8.

Figure 1. Black and Radler's Effective Economic Ownership in Hollinger

Corporate Governance

Hollinger International directors were appointed to the board by Black personally, through his control of its voting shares, and they tended to include not business experts but instead members of his social circle. Among the Hollinger International directors appointed by Black, who is keenly interested in world politics, was former U.S. secretary of state Henry Kissinger, former Illinois governor James Thompson, former U.S. ambassador to Germany Richard Burt, and Black's wife, columnist Barabara Amiel. "Black had the votes to replace any member of the board, and they all knew it," concluded the 513-page report of Hollinger International's independent directors. "Black called the shots, and he wanted a board filled with prominent people who wouldn't make waves" (Report, 2004: 43). As a result, the report alleged, the Hollinger

International board was "not alert" when Black and Radler began "looting" the company to the detriment of non-controlling shareholders. Board meetings, the report claimed, "functioned more like a social club or public policy association than as the board of a major corporation, enjoying extremely short meetings followed by a good lunch and discussion of world affairs" (Report, 2004: 38).

The report does not attach blame to the inert directors, claiming they were "fed distorted information by Black and Radler," but it does note that the political appointees "did little to seek independent advice of their own." Instead, the report's findings reserve most of the blame for Black, Radler, their circle of controlling insiders, and the system of corporate governance they created at Hollinger International.

> *The inherently dangerous aspects of a dual voting structure, separating governance power from economic interest, make heightened sensitivity and scrutiny highly important to protect the interest of noncontrolling shareholders. Hollinger didn't get either sensitivity or scrutiny, and the shareholders paid the price (Report, 2004: 38).*

Shareholder concerns

After Hollinger International sold off its Southam newspaper chain in 2000, the company's second-largest institutional investor (after Southeastern Asset Management) began to ask questions about a sharp increase in management fees that were paid to Black and Radler through Ravelston. New York investment dealer Tweedy Browne Co. LLC, an 80-year-old firm that that oversees US$8.5 billion in assets and specializes in companies it considers undervalued, began investing in Hollinger International in 1999. By 2001, it owned about 18 percent of the company's shares, and after the Southam sale it began to question an almost tenfold increase in management fees flowing to Ravelston. Unlike most firms, Hollinger International compensated its senior executives not with salary and stock options but instead through management fees paid to companies Black and Radler controlled. Tweedy Browne pointed to the fact that from US$4.1million in 1995, the management fees paid by Hollinger International to Black, Radler, and several other senior executives through Ravelston had increased to US$38 million in 1999 and over an eight-year period had totaled more than US$203 million. That level of compensation, Tweedy noted, far outstripped what was being paid to senior executives at other major newspaper companies. It also questioned almost US$74 million in "non-competition fees" paid to Ravelston following a series of Hollinger International's newspaper sales in 2000 and 2001, including the sale of Southam (Kirchgaessner, 2003).

Some pointed for clues to what was going on to the fact that Black's Toronto-based company, Hollinger, Inc., upon which he had built his pyramid of international media control, was highly leveraged. Estimates placed the annual debt-servicing costs on the US$120 million in high-yield bonds Hollinger Inc. had issued to finance Black's press empire at US$14 million. (Cherney, 2003) When the recession of 2001 reduced Hollinger Inc.'s revenues and is share price tumbled from $16 to $9, Hollinger Inc.'s debt ratio more than doubled from its already-high level of five times EBITDA to more than ten times gross earnings. Tweedy Browne questioned the extraordinary level of management fees being paid to Ravelston in such lean times, filing a complaint with the SEC in the spring of 2003. It also wrote a letter to members of the Hollinger International board of directors on the eve of the company's May 2003 annual meeting, demanding an investigation and threatening a lawsuit if none resulted (Leonard, 2003). The investment firm's hand had been strengthened immeasurably, as had that of all corporate governance advocates, with the February 2003 ruling of a Delaware court that Disney's directors could be sued by shareholders over a contentious US$140-million severance payment they had approved for company president Michael Ovitz. As a result of this sudden legal liability of Hollinger International directors for failing to exercise good corporate governance, Browne was able to convince them to appoint two new independent directors to the board and to convene a special committee to investigate the company's finances. Wall Street investment banker Gordon Paris was drafted onto the board and commissioned to chair the special committee (Maich & Tedesco, 2003).

Others pointed to the lavish lifestyle Black and his wife enjoyed, which included a private jet to fly them between residences in London, New York, and Palm Beach, Florida. Hollinger International's accounting firm, KPMG, noted that the company was paying almost US$250,000 annually to maintain those residences, provide Black with a car and driver in London, and keep up his private jet. KPMG pressed Hollinger International for increased disclosure of these expenditures and also questioned the US$8 million paid by Hollinger International for Roosevelt's correspondence to his cousin, some of which hung framed on the walls of Black's various residences (Leonard, 2003). When the special committee of Hollinger International directors discovered US$32 million in payments made to Ravelston in 2001 that had apparently not been approved by the company's audit committee or board, nor properly disclosed in the company's filing to the SEC, the dissident shareholders had the smoking gun they long smelled. According to the *Financial Post*, Paris confronted Thompson, who served as chairman of Hollinger International's audit committee, and got his agreement to the removal of Black and Radler from the company's management structure, along with several other senior executives, including the company's corporate counsel. The agreement of other Hollinger International directors was then obtained, the newspaper reported, including that of Kissinger, who was consulted by telephone from Beijing. Paris then confronted Black, who when faced with the findings and told that the company's filings to the SEC would have to be delayed as a result, agreed to repay US$7.2 million in unauthorized management fees paid to him and to step down as Hollinger International's CEO (Maich & Tedesco, 2003).

After Black refused to certify it on the advice of legal counsel, the company's quarterly earnings report was filed with the SEC five days late, and the regulatory body launched an investigation of its own. The late filing admitted that Hollinger International had overstated profit by roughly US$17 million over a period of years due to the unauthorized and undisclosed payments to Black and other top executives. In January, 2004 Hollinger directors commenced a lawsuit in Illinois district court to recover US$380 million in funds it claimed Black and others misappropriated over a seven-year period, along with more than US$100 million in interest. Under federal racketeering laws, the directors are seeking the company's actual damages to be trebled, for a total damage award of US$1.25 billion. The SEC followed suit with a lawsuit of its own against Black, which reportedly could bring criminal sanctions as a result of his 1982 agreement to refrain from future securities law violations in settling a complaint that he had made misleading statements in his takeover of Cleveland-based Hanna Mining (Stewart & Partridge, 2003).

The Paris Report

The committee of Hollinger International's newly-installed independent directors that Paris chaired commissioned forensic analyst Richard Breeden, a former SEC chairman and bankruptcy monitor at WorldCom, to conduct a 14-month investigation and to write a report. Its voluminous findings released on August 30, 2004 provided more detailed allegations of malfeasance against Black, whom it claimed used his control of Hollinger International to make it a personal "piggy bank" to finance his lavish lifestyle, including:

- US$3-million to subsidize the purchase of a condominium residence for the Blacks on New York's Upper East Side;

- Lavish expense claims by Black, including one totaling US$24,950 for "summer drinks," and another for US$42,870 to hold a birthday gala for Mrs. Black attended by Barbara Walters and Peter Jennings, among others;

- US$8.9 million paid by Hollinger between 1996 and 2001 to acquire FDR papers and memorabilia without Board approval;

- US$3-4 million annually to lease a Gulfstream IV jet aircraft for Black's use.

It also noted that the company purchased a US$11.6-million Challenger aircraft for Radler, who at one point was publisher of four major dailies in three countries: The Chicago *Sun-Times*, the *Jerusalem* Post, and the *Vancouver Sun* and *Province* (Report, 2004: 24).

The compensation paid to Hollinger International's top five executives in 2000 totaled US$122 million, the report revealed, including nearly US$53 million in non-compete payments from the sale of Southam to CanWest Global.

> *This represented a nearly unbelievable 30.2% of Hollinger's 2000 adjusted EBITDA, and 61.6% of Hollinger's adjusted net income. For an encore, Black and his four senior officers received total compensation in 2001 that the Committee estimates was more than $69 million, representing 73.4% of Hollinger's adjusted EBITDA in a year Hollinger reported a net loss of over $337 million (Report, 2004: 30).*

The report claimed that in addition to the "non-compete" payments, Black and Radler also received through Ravelston US$3.9 million in annual management fees from CanWest perpetually in exchange for reducing the purchase price paid to Hollinger International for Southam by US$39 million (Report, 2004: 194). Even more "stunning in its audacity and its utter disregard for either market practices or the legal standards of fiduciary behavior," the report added, was the fact that until 2003 Hollinger's proxy statement compensation tables "did not include disclosure of even $1 in compensation to Black, Radler and the other Ravelston executives resulting from more than $226 million in management fees Hollinger paid to Ravelston since 1996" (Report, 2004: 30).

Even more complex—and profitable—than the executive compensation structure of Hollinger International, according to the report, was the web of "related-party" transactions that allegedly enriched Black and Radler by selling them many of the down-sizing company's newspapers at cut-rate prices, even as low as $1. In some cases, the report pointed out, Hollinger International even paid companies with links to Black and Radler to take over the titles. The transactions often took place, according to the report, despite more attractive offers being made for the newspapers by other companies. Several of the most glaring examples occurred in the Canadian province of British Columbia, where Hollinger's control over newspapers had resulted in a divestiture order from the Canadian Competition Bureau.

> *Throughout 2000, Radler failed to inform the Board of offers from an unaffiliated purchaser to buy Hollinger's Kelowna Capital for between $7.4 million and $8.1 million, and chose instead to sell the newspaper for $5 million to West Partners....Approximately five months after being given $2.3 million to take Hollinger's Vernon Sun, West Partners sold it for $213,000. Approximately*

> *two years after acquiring Hollinger's Kelowna Capital for approximately $5 million, West Partners sold it for $13.7 million (Report, 2004: 66).*

The report's harshest criticism, however, was reserved for Perle, who served as a director of Hollinger International starting in 1994 and as a member of its executive committee from early 1996. Perle, who served in the Reagan administration, is credited by many with masterminding the 2003 U.S. invasion of Iraq as a member of the Pentagon's volunteer Defense Policy Board, which he chaired (Hersh, 2003). Perle also headed Hollinger International's failed internet subsidiary Hollinger Digital from 2000 until 2003, for which he received an annual salary of US$300,000. Despite making investments that lost US$49 million for Hollinger Digital, Perle collected lucrative bonuses, the report noted, because he was rewarded for the company's online successes, but not penalized for those that lost money. As a result, Perle's bonus for 2000 totaled US$3 million despite the division's overall losses. The report points to the fact that Black and Radler controlled this system of compensation as creating a direct conflict for Perle's role as the third member of Hollinger International's executive committee. In interviews with the special committee, the report stated that Perle admitted to simply signing the documents he was given in that capacity, without reading them first.

> *It is difficult to imagine a more flagrant abdication of duty than a director rubber-stamping transactions that directly benefit a controlling shareholder without any thought, comprehension or analysis....Perle clearly had a motive to abdicate his fiduciary duties as an Executive Committee member so as to accommodate the persons responsible for his huge Hollinger compensation, Black and Radler (Report, 2004: 488).*

Conclusions

In early 2005, Hollinger International finally filed its 2003 annual report, which showed a US$73.4 million loss for the year. It also revised the company's earnings for the four previous years, including losses of US$230.6 million in 2002 and US$326 million in 2001 (Condie, 2005). Later that January, Hollinger Inc. announced new "rigorous governance policies" that it said "meet or exceed" regulatory requirements for Canadian publicly listed corporations (Norris, 2005).

While legal proceedings involving the accusations detailed in the report of the Hollinger International committee are ongoing, ultimate conclusions in this case cannot, of course, be drawn. Black and Radler have denied the allegations of malfeasance made against them, issuing a statement through Ravelston that described the Paris committee report's findings as "exaggerated claims laced with outright lies" (Weber, 2004). However, given Black's well-known disregard for corporate governance and the allegations that now surround him and the company he founded, it is not premature to note a connection. Whatever the final outcome of the case might be, more regard for the rights of non-controlling shareholders might have helped to insulate Black and his senior executives in Hollinger International from these allegations of malfeasance, extravagance, and self-dealing. Black's mistake, some claim, was in managing Hollinger International as if it were a private company. As a result, the noted history buff and Napoleon devotee, some predict, may have finally met his own corporate Waterloo.

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