

April 2010 Upcoming Hearings
(Updated on April 27, 2010)

DARREN ELLIOT SUKONICK

From: City of Toronto, Ontario
First hearing: April 26 and 29, 2010
LSUC Counsel: Paul Stern
Lawyer's Counsel: Ian Smith

Particulars of alleged professional misconduct from the Notice of Application dated April 30, 2009:

1. In connection with the matters detailed below, you acted in a conflict of interest within the meaning of Rule 2.04 of the Rules of Professional Conduct, as amended from time to time, in that you failed to make adequate disclosure of your conflict of interest and to obtain the informed consent of your clients, as required by the Rule.
 - a. **The sale to Canwest Global Communications:**
 - i. Between May 1, 2000 and September 30, 2001, you rendered legal services in connection with the sale by Hollinger International Inc. and its subsidiaries, and Hollinger Canadian Newspapers Limited Partnership, and its subsidiaries, of newspaper assets to Canwest Global Communications, which included the provision of non-competition covenants and payments in respect of which the interests of two or more of your clients were not aligned.
 - ii. You had a solicitor-client relationship at the material times with Hollinger International Inc. and its subsidiaries, Hollinger Canadian Newspapers Limited Partnership and its subsidiaries, Hollinger Inc. and its subsidiaries, and the following recipients of the non-competition payments, The Ravelston Corporation Limited, and Messrs. Conrad Black, Peter Atkinson, and John Boulton.
 - iii. Your conflict of interest involved the following issues:
 - i) who was to receive compensation for their non-competition covenant;
 - ii) how much was to be received;
 - iii) what was the true purpose of the non-competition payments;
 - iv) which vendor would bear the burden of the payments;
 - v) what was required to be publicly disclosed in connection with the payments; and
 - vi) what was the appropriate tax treatment for the payments.
 - b. **The sale to Osprey Media Holdings Inc.:**
 - i. In the period between Feb. 1, 2001 and March 31, 2002, you rendered legal services in connection with the sale by Hollinger International Inc. and Hollinger

Canadian Newspapers Limited General Partnership (“HCNLP”) and their subsidiaries, of newspaper assets to Osprey Media Holdings Inc. which included the provision of non-competition covenants and payments in respect of which the interests of two or more of your clients were not aligned.

- ii. You had a solicitor-client relationship at the material times with Hollinger International Inc. and its subsidiaries, HCNLP and its subsidiaries, Hollinger Inc. and its subsidiaries, and the recipients of the non-competition payments, The Ravelston Corporation Limited, and Messrs. Conrad Black, Peter Atkinson, and John Boulton.
- iii. Your conflict of interest involved the following issues:
 - i) who was to receive compensation for their non-competition covenant;
 - ii) how much was to be received;
 - iii) what was the true purpose of the non-competition payments;
 - iv) which vendor would bear the burden of the payments;
 - v) what was required to be publicly disclosed in connection with the payments; and
 - vi) what was the appropriate tax treatment for the payments.

c. The Sale of NP Holdings Company:

- i. In the period of October 1, 2001 to February 28, 2002, you rendered legal services in connection with the sale by Hollinger International Inc. and/or its subsidiaries of NP Holdings Company to The Ravelston Corporation Limited and/or its subsidiaries, a transaction in respect of which the interests of two or more of your clients were not aligned.
- ii. You had a solicitor-client relationship at the material times with Hollinger International Inc. and/or its subsidiaries, Hollinger Inc. and its subsidiaries, and The Ravelston Corporation Limited and its subsidiaries, and the following The Ravelston Corporation Limited shareholders Messrs. Conrad Black, Peter Atkinson, and John Boulton.
- iii. Your conflict of interest involved the following issues:
 - i) The valuation of NP Holdings Company;
 - ii) The liability of your client NP Holdings to Canwest, and the similar liability of your client Hollinger International Inc. to Canwest;
 - iii) The infusion of \$22.5 million from your client Hollinger Canadian Publishing Holdings Co. (“HCPH”) to your client NP Holdings; and
 - iv) The creation and terms of a promissory note from your client HCPH promising to pay your client NP Holdings \$22.5 million.

d. The loan to 504468 N.B. Inc. (“504”):

- i. In the period between May 1, 2000 and March 31, 2003, you rendered legal services in connection with a loan from Hollinger International Inc. and/or its subsidiaries, to 504, an indirectly wholly owned subsidiary of Hollinger Inc., in the amount of US\$36.8 million where the interests of two or more of your clients were not aligned.

- ii. You had a solicitor-client relationship at the material times with 504 and with Hollinger International Inc. and its subsidiaries, Hollinger Inc. and its subsidiaries, The Ravelston Corporation Limited and its subsidiaries, and Messrs. Conrad Black, Peter Atkinson, and John Boulton.
- iii. Your conflict of interest involved the following issues:
 - i) Your knowledge and advice as to whether there was an alternative to making the loan;
 - ii) The security, or lack thereof, to be provided to your lender client by your borrower client; and
 - iii) The reduction of the interest rate in favour of your borrower client in a manner detrimental to your lender client.

e. The Offsetting Debt Transaction - the 504 debt to HII and the HCPH (NP Holdings) debt to RMI:

- i. In the period between March 1, 2003, and September 30, 2003, you rendered legal services in connection with the reduction of the loan debt owed by 504 to Hollinger International Inc., from US\$20.4 million to US\$4.7 million, by means of offsetting the promissory note previously entered into by HCPH to NP Holdings, now through corporate reorganizations owing to Ravelston Management Inc., where the interests of two or more of your clients were not aligned.
- ii. You had a solicitor-client relationship at the material times with 504, Hollinger International Inc. and its subsidiaries, Hollinger Inc. and its subsidiaries, The Ravelston Corporation Limited and its subsidiaries including Ravelston Management Inc., and Messrs. Conrad Black, Peter Atkinson, and John Boulton.
- iii. Your conflict of interest involved the following issues:
 - i) Whether or not the HCPH to NP Holdings promissory note could be utilized to offset the debt where it was initially intended to be a contingent asset only;
 - ii) Whether your client Hollinger International Inc. continued to have an independent obligation to Canwest where it had now paid the same obligation to Ravelston Management Inc. unconditionally;
 - iii) Whether or not proper approval was obtained for this related party transaction; and
 - iv) Who remained liable to Canwest upon demand for payment by Canwest on the \$22.5 million obligation.

f. Conrad Black's renunciation of his Canadian citizenship:

- i. In the period January 1, 2001, to December 31, 2003, you rendered legal services in connection with Mr. Conrad Black's renunciation of his Canadian citizenship, where the interests of two or more of your clients were not aligned.
- ii. You had a solicitor-client relationship at the material times with Hollinger International Inc. and its subsidiaries, Hollinger Inc. and its subsidiaries, The Ravelston Corporation Limited and its subsidiaries, and Mr. Conrad Black.
- iii. Your conflict of interest involved the following issues:

- i) Whether renunciation of Canadian citizenship by your client Mr. Black would be detrimental to the interests of your other clients Hollinger International Inc. and its subsidiaries, and Hollinger Inc. and its subsidiaries, particularly due to:
 - a. The effect of s. 19 of the *Income Tax Act* (whereby advertisers would not be allowed to deduct advertising expense in media controlled by a non-Canadian); and
 - b. The potential breach of the National Post partnership agreement with Canwest.
- ii) What was required to be publicly disclosed respecting the potential consequences of Mr. Black's actions.