Amicus Brief

Submitted into Court in the Case against Sir Conrad Black, brought by The United States Government, on criminal charges - which include fraud in addition to obstruction of justice.

This document is prepared and submitted on behalf of The Euro British Coalition (based in Canada) by its Leader and Founder Mr. Michael Rizzo Chessman. We are an interested party to these proceedings in that we deem there to have been profound errors in judgment in having these proceedings against Conrad Black, the sort of errors in judgment that will have profound implications for all that will live with the consequences wherever such a case may be construed to be of the nature such as to establish a valid sense of values on which such actions may be brought against a man, and in such fashion equally. We therefore are making this submission in the hopes of having, a better established sense of what the issues have been, and why a possible, further miscarriage of justice needs to be prevented even at this late stage, by speaking into the record as is our hope and intent, so as to bring better judgment to prevail as the magnitude of the injustices that have already gone before us in this case are of the gravest consequences, as is our honest submission at this juncture. Indeed we have done our best to successfully bring international attention to the matters of this case, in our communications with government leaders worldwide, these past years, since the charges were first announced.

In respect of the charges of fraud, I wish to address myself to this issue of "non-compete payments" as this is the charge most seriously brought against Sir black as somehow having constituted an act of fraud, and against his fiduciary obligations to the shareholders of Hollinger, the company that he founded and led.

Fact: The concept of a "non compete payment" as incentive to avoid a source of competition is in fact a valid legal device, recognized by the courts as such, and indeed to the extent that the courts even take an interest to ensure that adequate amounts or consideration has been received by the grantor of the promise not to compete. The courts are generally not otherwise deemed to be interested in "re-making" a bargain between participants in re-visiting the matter of consideration. In respect of a non compete clause however, employers are cautioned that the courts do insist that their employees be paid adequately for a promise not to compete, and this should apply just as much to the case of Sir Conrad Black in what payments were received from purchasers of assets of Hollinger, who were only willing to undertake such a purchase as they chose to, provided the promise of sir Conrad Black, as an individual were available in what was a parallel bargain, ensuring the making of the whole as it were.

It must be noted that to constitute fraud, a prima facie case could never have been envisioned here as having been established. The very worst circumstances that Lord Black (as he would have been referred to at the time) might have envisioned would have been a civil lawsuit brought by disgruntled shareholders questioning his fee on principle – seeking to have his monies re-diverted to the company perhaps, in spite of the value he personally gave to the buyers in order to have earned the monies involved.

The buyers are not being sought for fraud here. Nor are the professionals involved in the audits and such that were aware of the arrangements on behalf of both the buyers of Hollinger assets, Hollinger itself and any other parties that might have been involved as conscientious observers along the way, in whatever manner they may have been privy to the events. Indeed, it involved the judgment of the buyer mainly as to whether they felt the arrangement was objectionable and even beyond possible subsequent scrutiny for appropriateness by the courts, in respect of the amounts given variously to Hollinger, and to Black personally in respect of what was acquired by their payment. Were it not a matter in which they must have been seen to have proceeded with a clear enough conscience, no doubt they would have been deemed to have sought to defraud the shareholders of Hollinger in making their purchase – and this scenario is in fact altogether envisionable. It would have been possible to have paid less than a fair value for the asset, based on nothing more than having bribed the company management with personal "non compete payments" in making the purchase. Was that in fact so? If not, then the case against Sir Conrad Black fails to have any meaning at all. It goes without saying that Conrad Black, having given consideration of a valuable promise not to compete, would be entitled to personal payment in respect thereof. That is clearly enough established in that his departure from Hollinger was a devastating blow of confidence that the company lost much value quite quickly. It is established therefore that by his well known reputation and in fact the record of the financial effects of his presence even at Hollinger certainly, that the man was quite a valuable player indeed, in his own right, and was every bit entitled to value for this fact. So payment to Conrad Black for an agreement not to compete was in fact NOT a valid basis to consider that an act of fraud is prima facie established. Yet this must have been the primary attitude of the state, or a criminal complaint against Sir Black could not have been brought in the first place. Yet we see by the facts, that it was wrong to take such an attitude of a valid enough instrument by which players can seek to protect their interests in an arrangement that involves this element of concern – that competition following acquisition of a business asset may render the acquisition considerably impaired in its value – if not somehow prevented beforehand by the use of a non – compete agreement (where possible and indeed advisable as a method in fact).

Then of course one might suggest that sir Black could have been asked to give up his own personal rights to compete, without any consideration coming to him personally – other than what was already his arrangement as a Head executive of Hollinger. We see of course that this would have been wrong to think of as fair. These considerations were over and above the arrangement he already had, and we see in fact that Conrad Black was already being paid far less at Hollinger than he might have bargained for had he the disposition to do so. He might have just threatened to leave his employment as we are all aware of the right to strike and its effects on an employer – Sir Black could have used similar tactics to improve his position on the payroll at Hollinger, but was obviously not the sort of man who though to do so, having been a willing enough man to accept less than his due perhaps – or certainly if viewed from the objective point of view of his financial worth to the company, as seen by the events that unfolded for the company based on his departure alone.

What then can we say of this entire case other than reckless endangerment of the rights and interests of the shareholders, and indeed the stake of Conrad Black even to the extent of risk to his life (due to stress and imprisonment related stress especially) was in fact precisely what was orchestrated and mainly set upon him by the state in fact along with personal detractors who envy his good natured spirit and the value it brought to him as the company head at Hollinger.

As such we must question the Judgment in the making of the comments by the trial Judge the Honourable Ms. Amy St Eve, that it was instead Conrad Black that had caused the harm to the shareholders by putting their interests at risk. Were one well intentioned to have protected the shareholders involved in what the situation was in respect of the conflicts which arose from these transactions, the right course of action would have been to sue. There is every bit of recourse available in this. There could even have been a vote against Conrad Black at a shareholders meeting - which could in fact have been declared. For some or other outcome against Lord Black perhaps. But then this would have flown in the face of the interests of the company. He was the best they had for the prospects of financial health as we know was the case throughout (following his departure). This was not the course of action taken by those involved. As such it was instead a spirit of malicious endangerment, of brinkmanship, of egos that were not in-check that were responsible for the actions brought against Lord Black and that harmed the interest of the shareholders of his company to such a devastating effect. In fact, the Prosecutor for the state at the time, at a personal website on the internet chose to gloat about his great upcoming "great day" of seeing a man in jail (Conrad black) when there was no valid basis on the evidence for taking such an attitude except that he has clearly a differing style and manner – one which is less comforting to me as a man of British schooling in that I find I much prefer the willingness of the likes of Conrad Black to be

civil and fair in his dealings rather than openly on the style of a cowboy as it were, who cares not for standards of decorum to show clearly that civility and fairness are in fact respected by the state equally in its own affairs.

Of course there is a question as to whether we can be better certain of the fairness of the said payments involved if all such dealings are to be publicly announced at the time. I believe this is in fact wisest. It is probably the best manner in which to protect the interests of all concerned. But the failure to do so would not of itself have constituted fraud. Nor would a prima facie case for fraud have arisen from this fact alone – as this would have been an insufficient basis on which to judge the matter. You would have to be willing to second guess the buyer as to how much was paid for the various assets and promises involved so as to clearly establish that not only is the view problematic, it is in fact one that is clearly of what might consider criminal proportions. In which case, the buyers would no doubt be also implicated as there would have to be a prima facie assumption here, if the case against those involved in making a bad sale were in fact so much culpable as to render them to have acted in clear criminal fashion and extent. We all know what our obligations are in maintaining honest dealings with the public, and this includes making a purchase from a public company in clear conscience as to all that is involved – including any arrangements made separately with any shareholders involved – who are asked to give special added consideration of their own.

We therefore, in view of all the preceding facts cannot think of why Conrad Black could have been so threatened as to theoretically be facing a century behind bars on being convicted of the charges brought against him – most of which were at best frivolous at the outset – only the obstruction charge would have had some validity – and that we deal with next.

We have already established the Conrad Black was honesty entitled to his payments and in fact Hollinger could and likely should have paid him much much more in view of what was his known value to the company. Furthermore he gave value to those that sought his non-compete agreements, and Hollinger would have been just as wise to have made the payments to him instead after collecting from the buyer on his behalf. The point is that the man honestly deserved what he received, and he received what he earned legally and fairly based on objective evidence of the fortunes of the company as relates to his needed involvement there. That should mainly guide us in these matters in what are the substantive considerations. We could always allow for feigns to overpay an executive simply based on popularity alone with a class of shareholder perhaps. This is not what Conrad Black was asking for. He only expected his fair due, and to a lesser extent than he might have, certainly! He should have been paid more.

If a man can be so wrongly accused, by high handed unreasonable players in behalf of the state, could he be blamed for keeping his records to himself pending a better scenario becoming clearer to him in what was the spirit of the charges that were being cooked up against him? I do not say this to negate that there is wrong that occurs when a man acts against the direct orders of a court where he has in fact done so, and done so with intent to obstruct justice. In order to obstruct justice, the man must be guilty of a crime that the act of obstruction seeks to obfuscate the evidence of or access to evidence of. If on the other hand, the man has acted with a clear conscience. If in fact the charges of fraud are in fact nothing but frivolous and maliciously brought and established to be so – as it already clear to him at the time – than we do not have a case of obstruction of justice, but a case at best of disobeying a court order – the defence of which would have to be that the state was acting unreasonably at the time in what was its own conduct against an innocent man. It would have been quite possible to have brought on a heart attack in a man of his age and experience, and could yet be something he has to live with given the harm caused to him by the state in what has taken place.

We think it now irrelevant that the court be concerned with his personal finances. Unless of course the state is seeking to make restitution to the man for what has been the losses he has suffered in all this. We cannot see why (as recently reported in the press) he would be obstructed in renewing his British passport as is his right as a subject of her majesty. We cannot see that his travel arrangements pending the clearing up of matters pending before the court that are now mere procedural in ending the affair – that there should be any concern here as to think he has anything to gain by putting himself into a position where he wouldn't be willing to return to conclude matters, given how far they have already come, and his obvious profile as a well known and respected public figure – on the Newspaper publishing industry certainly – and very much in government circles – as we have found to be the case for him. The United states is not without recourse in bringing witnesses to its courts if need be – and its time the posturing all came to an end at it merely seems silly and mean spirited rather than honest and fair and wise in fact.

He has now already served a lengthy prison sentence (even a six year sentence should have had early parole provision and he has served almost half as much as this – without the confidence of knowing he would be certain of an early release, as such he was done as much as the full sentence of the crimes he was wrongly convicted of in the first place) - which was certainly unreasonable to impose. He was not guilty of fraud as the record indicates and was always clear from the outset to a truly and honestly reasonable enough man looking at these matters as we indicate. His disobeying of the court in removing some records – if that were in fact true, should under the circumstances have been a withdrawn complaint given the state was clearly acting outside the bounds of fairness in their

threats against him – despite his innocence. The state is also not above the spirit of the law and must sometimes accept as much as it is willing to do from those that seek to shake off its tyranny.

Michael Chessman July 25th, 2010
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