

THE TRIAL OF CONRAD BLACK

Introduction

Focus

This month we report on the trial and conviction of Lord Black of Crossharbour on charges of fraud and obstruction of justice in a Chicago court. After a spectacular business career, Black finds himself an exile from Canada facing a long sentence as a prisoner in a U.S. jail. This *News in Review* module explains some of the reasons why this has happened.

Further Research

A detailed timeline of major events in the life of Conrad Black can be found on the CBC Web site at www.cbc.ca/news/background/black_conrad/timeline.html.

The verdicts are in, and the future is somewhat unclear. One thing, however, is certain. Conrad Black—Lord Black of Crossharbour—has fallen a long way. A convicted felon, Black faces a sentence of up to 35 years in jail. He remains free on \$21-million bail, but is restricted to living in either the Chicago area (where he will be sentenced) or in his Palm Beach, Florida, home.

A former Canadian who gave up his citizenship for a British honour, Black may never be able to return to his Toronto home. His conviction will likely prevent him from ever being able to regain his Canadian citizenship. Hundreds of people have already begun a campaign to revoke his Order of Canada (only two people have so far had their membership revoked).

His major business enterprises are in tatters. His personal assets are frozen. U.S. government prosecutors are seeking the forfeiture of his Palm Beach property as well as his ownership interest in the company he was convicted of defrauding.

During his trial, more than a dozen lawsuits against Black were put on hold. These will now resume, and they include serious cases involving the Ontario Securities Commission and the U.S. Securities and Exchange Commission. The biggest civil lawsuit—for \$542-million—was brought by Sun Times Media (formerly Hollinger International). It involves issues identical to those for which Black and other executives were facing charges in the criminal trial.

How could this happen?

In a devastating article in *The Globe and Mail* (July 14, 2007), Jacquie McNish gave a one-word answer: pride. She wrote: “Conrad Black has blamed

many enemies for the prosecution that led to yesterday’s guilty verdicts. He condemns the U.S. justice system for a ‘vicious and relentless’ inquisition. He fingered his first accuser, former U.S. securities regulator Richard Breeden, as a corporate-governance ‘zealot.’ And he has cast his rebellious shareholders as ‘ingrates’ and ‘terrorists.’

“The one person Lord Black seems genetically incapable of blaming is himself. For the sad truth is, he was his own worst enemy. Had he simply folded his losing hand when shareholders of Hollinger International Inc. first called him a ‘thief’ in 2002, Lord Black would probably not be facing the humiliation of prison.”

According to McNish, it was Black’s pride that made it almost impossible for him to avoid a good fight. He had battled with shareholders and employees throughout his career. He never admitted any wrongdoing. And, she writes, “. . . he enriched a generation of libel lawyers with a furious barrage of defamation lawsuits against anyone who accused him of wrongdoing.” Ultimately, this kind of behaviour probably forced the justice system to go after him.

Black’s trial became a spectacle for Canadians who watched his career for decades with fascination, if not always with admiration. He had built an international newspaper empire that gave him entry to the highest reaches of society at home and abroad. Unhappy with the political leanings of most Canadian newspapers, he founded the *National Post* to give a strong voice to Canada’s conservatives. Himself a writer, he was respected for his biographies of Maurice Duplessis and Franklin Delano Roosevelt (his recent biography of Richard Nixon was perhaps somewhat

Did you know . . .

Out of the more than 5 500 Order of Canada honours awarded over the last 40 years, only two have been rescinded: aboriginal leader David Ahenakew for anti-Semitic comments and hockey lawyer Alan Eagleson after his conviction on fraud charges.

Definition

Schadenfreude is a very useful German word that has no exact equivalent in English. *The Canadian Oxford Dictionary* defines it as "the malicious enjoyment of another's misfortunes."

less successful). Black and his wife Barbara Amiel (also a writer) maintained elaborate homes in Toronto, London, and Palm Beach.

Some Canadians felt a little bit of *schadenfreude* when the guilty verdicts were announced. But polls have indicated that the majority, while unsurprised, were saddened by the news.

It's a good thing that Conrad Black loves a good fight. Few legal experts think his appeal in the criminal case

stands much of a chance. Most expect that he faces somewhere between five and 10 years in prison.

Even should the appeal succeed, the legal battles will continue.

Lawsuits and legal fees will eat away at what is left of Black's corporate empire—and likely a good part of his personal fortune as well. All in all, a sad ending to a notable—and often notorious—career.

For Discussion

In 1990, Conrad Black received one of Canada's most prestigious awards, membership in the Order of Canada (www.gg.ca/honours/nat-ord/oc/index_e.asp). A movement is underway to strip him of this honour; the advisory council on the Order of Canada to the Governor General is expected to discuss his award this fall. In your opinion, does his conviction in a U.S. court on fraud charges justify taking away his membership? If it does, should the advisory council wait until the appeal process is completed?

THE TRIAL OF CONRAD BLACK

Video Review

Quote

"Greed is a motive that has not failed to move me." — Conrad Black, quoted in the *National Post* September 1, 2004

Did you know . . .

Conrad Black spearheaded fundraising to complete the largest Canadian war memorial in Britain. The Canada Memorial sits near Buckingham Palace and is a tribute to Canada's efforts to help Britain in two world wars. Today the memorial is in disrepair, and Black is unable to fund its restoration.

Answer the following questions in the spaces provided.

1. Name the first newspaper that Conrad Black acquired. _____
2. What was "his first big corporate prize"? _____
How much was it worth? _____
3. Which of Black's special interests turned into "a stage-managed metaphor for his career"?

4. Why was ownership of the London *Daily Telegraph* so important to Black?

5. How many newspapers did Black's company own at the height of his career? _____
6. Which national newspaper did Black found in Canada? _____
7. What did Black have to give up in order to become a member of Britain's House of Lords?

8. What would it have cost Black to settle his dispute with the board of directors of Hollinger International? _____
9. Who gave key evidence against Black during his trial? What was his relationship to Black?

10. What does a newspaper owner guarantee when he sells a newspaper and receives a non-compete payment?

11. Black finally faced a total of 13 different counts or criminal charges. Of how many was he found guilty? _____
12. What step has Black already taken as part of his appeal process?

THE TRIAL OF CONRAD BLACK

The Charges

Further Research

The charges against Black are outlined in greater detail at www.cbc.ca/news/background/black_conrad/charges.html.

Did you know . . .

Hollinger International is the American corporation whose stockholders' accusations against Black led to the filing of U.S. criminal charges. However, Hollinger Inc. is a Canadian holding company that Black and his associates own, and that holds a majority voting interest in Hollinger International.

Few observers would doubt that the U.S. government prosecutors, when they filed their charges, were out to make an example of Conrad Black. Black was originally indicted on a total of 14 criminal counts. If convicted on all of them, he faced a total of up to 101 years in prison and \$164-million in fines. He would also have to forfeit up to \$92-million in assets.

One charge against Black—that of money laundering—was dropped during the trial. The remaining 13 fell into several categories.

Non-Compete Agreements

The bulk of the charges related to non-compete payments made to Black and two other defendants. Non-compete payments are not uncommon in the newspaper industry. When a newspaper is sold, the new owner will often seek an agreement that prevents the seller from starting another paper in the same market. To obtain this agreement, the purchaser will agree to pay an additional sum to the seller as a non-compete payment.

What was uncommon in the cases cited by the prosecutors was the recipient of the non-compete payments. In non-compete agreements, the compensation almost always goes to the company (and thus, ultimately, to all its shareholders). In these cases, some of the money went directly to Black and some of his associates. The total amount of money involved in the non-compete payments in question totalled \$80-million.

Abusing Company Perks

Black was also charged with using company funds for personal purposes. Three examples were highlighted. These

included a party that Black threw for his wife Barbara Amiel's 60th birthday, costing about \$65 000. Black had Hollinger pick up part of the tab, calling it as much a business gathering as a personal function. The second example was the use of a company jet to fly the couple to a private holiday on Bora Bora. The third example involved the purchase by Black of his New York apartment from Hollinger International. The prosecutors alleged that the apartment, purchased by Black for \$3-million, was intentionally grossly undervalued. (When the apartment was sold in October 2005, the Chicago U.S. Attorney seized the \$9-million proceeds from the sale.)

Tax Fraud

Black and the three other defendants were also charged with tax fraud related to Hollinger International's 1999 and 2000 tax returns. Both charges accuse the defendants of underreporting the corporation's income by several million dollars.

Obstruction of Justice

The charge of obstruction of justice related to a notorious incident actually captured on camera. On May 20, 2005, Black, his chauffeur, and his personal assistant removed 13 boxes of papers from Hollinger Inc.'s offices in Toronto. As they worked, they were photographed by a surveillance camera. Photographs of the team carrying out the boxes soon appeared in several newspapers.

At the time of the removal, an Ontario court order was in effect forbidding Black's taking any papers from the building. A U.S. subpoena of the papers was also pending. Black returned the boxes within a matter of days, but

Did you know . . .

Conrad Black was expelled from the prestigious Upper Canada College in 1959 for stealing and then selling examinations. He allegedly earned \$1500.

Did you know . . .

Black was not tried alone but shared charges with Jack Boulton, Peter Atkinson, and Mark Kipnis. All three were also found guilty of some of the charges.

prosecutors decided to proceed with the charge. With a maximum penalty of 20 years in prison and a \$250 000 fine, this was one of the most serious charges faced by Black.

Racketeering

The racketeering charge was considered as serious as obstruction of justice (the same maximum penalty) but more difficult to prove. Racketeering requires prosecutors to demonstrate a regular pattern of criminal behaviour on the part of a defendant. The prosecution alleged

that Black saw Hollinger International as a regular source of fraudulent funds for himself and certain associates.

The indictment listed seven separate examples that, it was argued, established the necessary pattern of behaviour.

With the exception of obstruction of justice and racketeering, the charges all were filed as either mail fraud or wire fraud. This means that the charges alleged that the U.S. Mails or different wire services had been used for interstate or international transfers of documents or funds related to various fraudulent activities.

For Discussion

Some commentators felt that the prosecution was filing an excessive number of charges in an attempt to convince potential jurors that where there was so much smoke there had to be at least some fires. One charge was withdrawn before trial and another dropped just before the prosecution rested its case. In the light of the ultimate result—four convictions on 13 charges— would you agree that this was likely the prosecution strategy? In your view, would the prosecution have been more or less successful if it had focused on fewer charges? Explain.

THE TRIAL OF CONRAD BLACK

The Prosecution Strategy

Quote:

"Bank robbers use masks and carry guns. These four dressed in ties and wore suits." — Prosecutor Jeffrey Cramer, quoted in *The Globe and Mail*, July 14, 2007

Further Research

An excellent introduction to the career and the role of Patrick Fitzgerald in the Black trial is available from *Maclean's* at www.macleans.ca/homepage/magazine/article.jsp?content=20070312_103133_103133.

The indictment against Black and the other Hollinger International defendants was brought by Patrick Fitzgerald, one of the most famous U.S. Attorneys. Just prior to the trial, Fitzgerald had won the government's case against Lewis Libby, an important official in the Bush administration who had been accused of lying in his testimony to a U.S. grand jury. Fitzgerald had also led the successful prosecution of several other corporate executives accused of fraud in their business dealings.

Though Fitzgerald brought the charges, he did not personally prosecute the case. Instead, he selected a team of young attorneys to handle the courtroom work. The team was led by Eric Sussman, an eight-year veteran with the Justice Department. He was assisted by three other lawyers. Perhaps the most notable of these was Julie Ruder, who made such a strong impact on the jury during her cross-examination of witnesses that Sussman selected her to lead the prosecution's summing up.

David Radler

Many observers believed that the testimony of David Radler, Conrad Black's closest associate, would be critical to the success of the prosecution's case. Radler had worked with Black since their first investment in newspapers with the purchase of the *Sherbrooke Daily Record* in the 1960s. Together they built what became a huge newspaper empire.

Like Black, Radler was charged with several counts of fraud by the U.S. Justice department. Unlike Black, however, Radler arranged a plea bargain with the U.S. Attorneys. In exchange for his testimony against Black, Radler's charges were reduced to a single count

of mail fraud, to which he pleaded guilty. The resulting sentence would be a maximum of 29 months in prison and a fine of \$250 000. The prosecutors also agreed that they would not object to Radler's application to serve his time in Canada, which should actually result in a much shorter time in jail. He also repaid to Hollinger \$8.65-million that he had received from the non-compete agreements. Radler is to be sentenced on December 10, 2007.

Radler testified that Black was the man behind the idea to use non-compete agreements to generate extra cash for the two newspaper executives. According to Radler, in a January 1999 phone call, Black first suggested that 25 per cent of a non-compete payment should go to Hollinger Inc., the parent company of Hollinger International, which Black controlled.

According to Radler, it was in August 2000 that Black and Radler decided to add themselves to future non-compete agreements. This was after CanWest purchased \$3.2-billion worth of Hollinger newspapers and asked for individual non-compete agreements with Black and Radler. Each received \$19-million as part of the deal. After this, their names began to appear in all non-compete deals involving Hollinger International.

Radler's testimony was important to the prosecution's case, but they did not believe it to be critical. In their closing arguments, the prosecution stated to the jurors that they "do not need to believe a word David Radler told you to convict every single one of these defendants" (www.ctv.ca/servlet/ArticleNews/story/CTVNews/20070626/black_trial_070626/20070626/).

Quote

"He suggested that we insert ourselves into the non-compete process and I agreed."

— David Radler, quoted in *The Globe and Mail*, May 9, 2007

Obstruction

One major charge gave the prosecution great confidence: obstruction of justice. The camera evidence was undeniable: Black on film removing files from his former offices at a time when he was under a court order not to do so. The testimony of his personal assistant, Joan Maida, that the removal did not intentionally constitute obstruction because the papers were all personal was unconvincing. Almost all professional trial observers felt that this one charge would be very difficult for Black to overcome.

Non-Competes

But the heart of the case against Black and the other defendants was the use of non-compete agreements for personal enrichment. The testimony of three witnesses involved in the purchase of newspapers from Hollinger International made an especially strong case against Black.

Analysis

How would you evaluate the effectiveness of the prosecution strategy? Note any changes that you might suggest.

Mike Reed, Lloyd Case, and David Paxton own and run several dozen small-town newspapers across the U.S. All purchased papers from Hollinger International, and all were asked to pay a portion of the non-compete fees that normally would go to Hollinger to individuals, including Black. As Reed testified, "It just didn't seem like the right thing to do. . . . We did not view these individuals as potential competitors" (*The Globe and Mail*, July 14, 2007). Black, three other executives, and Hollinger Inc. received a total of \$30-million as a result of these deals.

In her closing argument, Julie Ruder emphasized these three non-competes. "The buyers didn't request it. The case is about why. Why was the money paid?" (*The Globe and Mail*, July 14, 2007).

THE TRIAL OF CONRAD BLACK

The Defence Strategy

As his trial was about to begin, Conrad Black proclaimed his innocence and predicted a complete victory. “The charges are nonsense and I am looking forward to putting this cataract of horrors finally behind me,” he wrote in an e-mail to the *Financial Times* (March 12, 2007).

Black chose two high-powered (and high-priced) lawyers to represent him during the trial. To the surprise of many observers, one of these was a Canadian who had never argued a case in a U.S. court.

Edward Greenspan

The Canadian was Edward Greenspan, one of Canada’s most famous criminal lawyers. Greenspan has defended a number of celebrity clients, such as former Nova Scotia premier Gerald Regan. He is known as an especially effective cross-examiner. But this was his first appearance in a U.S. courtroom, and U.S. courts place far less emphasis on verbal argument than Canadian courts. It seemed to take Greenspan a bit of time to adapt to the new arena.

Edward Genson

Edward Genson was chosen as Black’s second attorney. Genson is one of Chicago’s top criminal lawyers. He, too, has defended a number of high-profile clients (most recently, he defended R&B singer R. Kelly against child pornography charges). Genson, who has a neuromuscular condition that requires him to use an electric scooter, is considered “colourful.” He likes to bang his cane on tables during trials as an attention-getting device.

The defence strategy anticipated the prosecution’s arguments and attempted to overturn them.

Discrediting David Radler

The defence argued that David Radler was the real villain, if any fraudulent activity had actually taken place. Only Radler’s testimony indicated that Black had been the partner who came up with the idea for inserting individuals into the non-competes. The defence argued that it was far more likely that any wrongdoing at Hollinger was Radler’s responsibility. He, they claimed, was responsible for the day-to-day operations in Chicago. While Black was focused on operations in Eastern Canada and Europe, they said, Radler was responsible for Western Canada and the U.S. (where the alleged illegal activities had taken place).

Furthermore, Radler had received a sweetheart deal because of his plea bargain, and this gave him the incentive to testify against Black. In his cross-examination of Radler, Greenspan tried to force him to admit that, just as he had lied to prosecutors before he made his plea bargain, he was now lying to convict Black. While Radler was evasive in some of his testimony, most trial observers felt that the defence failed to totally discredit his testimony. In her instructions to the jury, however, Judge Amy St. Eve ordered them to consider Radler’s testimony “with caution and great care” (*Financial Times*, June 28, 2007).

Legitimizing the Non-Competes

The defence argued that the non-compete agreements, central to the charges against Black and the other defendants, were a normal and appropriate business practice in the newspaper industry. In the case of these particular agreements, they argued that all of them had been disclosed to

Did you know . . .

In May 2005, several members of the Hollinger International board of directors agreed to pay \$50-million to settle a lawsuit brought by shareholders. The lawsuit charged that they had been derelict in carrying out their duties.

Hollinger International's auditors and authorized by the Hollinger Board of Directors. Several members of the board testified that they had indeed signed off on the payments, although they could not remember actually reading the papers that they had signed.

No Obstruction Intended

The defence argued that Black had intended no obstruction of justice when he removed the boxes of files from his former office at Hollinger Inc. in Toronto. Black, they said, believed that the Ontario court order did not apply to his personal papers, which were all that the boxes contained. When he was informed that the order applied to all his papers, he returned them. The defence called Black's personal assistant, Joan Maida, to testify; however, she became confused on the stand and failed to make the defence's case.

The boxes finally made their way to court on May 8. The contents found within them at that time were indeed mostly personal papers such as tax forms and bank records.

No Testimony by the Defendants

None of the defendants in the trial took the stand to testify in their own defence. In Black's case, defence lawyers were reported to be especially concerned that he might come across to jurors as pompous and arrogant. Black's past experience as a witness was not positive. He had previously testified on his own behalf in another case that went to trial in Delaware. The judge handling the trial said that he found Black "evasive and unreliable. His explanations of key events and of his own motivations do not have the ring of truth" (*Vanity Fair*, February 2007).

Analysis

1. How would you personally assess the effectiveness of the defence strategy? Identify any changes you would have made.
2. In your view, should defendants be forced to testify during trials? Explain.

THE TRIAL OF CONRAD BLACK

The Verdict

Quote

"I ask you to find him not guilty in the name of justice, in the name of fairness, in the name of equality, and in the name of equal justice for all. . . . He is a rich man, . . . but in America you do not convict someone because they are rich." — Edward Greenspan, quoted in *The Globe and Mail*, June 20, 2007.

On June 12, Conrad Black and the three other defendants gave up their right to testify in their own defence for the last time. After 47 days of testimony by 21 prosecution witnesses and 13 defence witnesses, the defence rested its case (the prosecution rested on May 30). Only closing arguments remained before the judge, Amy St. Eve, gave the case to the jury for their decision.

Closing Arguments

The closing arguments made exactly the points that observers expected. In a seven-hour presentation, prosecutor Julie Ruder called Black a liar who stole from Hollinger International's shareholders because he believed he was above the rules. Ruder urged jurors to ignore the paper trail of documents that indicated Hollinger's directors signed off on the transactions. "It doesn't matter that there is a paper trail. So what? That's not what this is about. It's about the 'why.' There was no reason for Hollinger International shareholders to lose this money" (*The Globe and Mail*, June 19, 2007).

In their summing up, the defence argued that the prosecution failed to prove beyond a reasonable doubt that Black had intended to defraud anyone. Eddie Greenspan was especially contemptuous of the testimony of David Radler, whom he referred to as a "serial liar" who only testified against his associate Black because he received such a good deal from the prosecution.

Deliberations

On June 27, the judge read to the jury 77 pages of instructions and then sent them off to begin their deliberations. These deliberations continued for many days—a sign that both the defence and the prosecution saw as favourable for them.

On July 10, the jury informed the judge that they were having difficulty reaching unanimity on some of the charges. She asked them to go back and make another attempt to resolve their differences. On July 13, the jury finally announced that they had reached a verdict on all the charges under consideration.

Guilty

The jury found all four defendants guilty on three of the charges of mail fraud. Black was also found guilty of obstruction of justice.

The three mail fraud charges were all related to the non-compete agreements at the heart of the defence case. Two of the charges involved companies that had been required to sign agreements that diverted money to Black and other defendants despite their owners seeing no valid reason for doing so.

The third conviction was the result of a bizarre non-compete agreement in which Black and his associates collected a non-compete payment from a small Hollinger subsidiary called American Publishing Company. In effect, Black was collecting money for agreeing to not compete against himself. Prosecutors successfully argued that this was intended to disguise the payments so that they would be tax-free, as were all non-competes in Canada. Each mail-fraud charge carries a maximum penalty of five years in jail and a fine of \$250 000.

Only Black faced and was convicted on the most serious charge: obstruction of justice. Caught on a security camera removing materials from his former headquarters, Black had no way of denying his actions. The defence argued that he had not intended to do anything wrong, but was only removing personal

Quote

Just before the verdict was rendered, Hugh Totten, a Chicago lawyer and non-compete expert discussed the Black case with other legal experts for *Maclean's*. He commented on the obstruction of justice charge: "There's a question, I think, in the average jury's mind: 'Why would Conrad Black show up on a weekend, when he's got a butler and a driver and an assistant, and then decide he'd all of a sudden comply with his landlord's wishes to evict the premises.'" *Maclean's*, June 25, 2007

Quote

"We move on to the next phase of a long war. We got rid of most of [the charges], and expect to get rid of the rest on appeal." — Conrad Black, quoted in *The Globe and Mail*, July 16, 2007

papers from an office from which he was being evicted. The jury found it impossible to accept that argument.

An obstruction of justice conviction carries a maximum sentence of 20 years in jail and a fine of \$250 000. Sentencing on all charges has been scheduled for November 30, 2007.

Appeal

Immediately after the verdict was announced, Black's lawyers announced that he was maintaining his innocence and would be appealing the decision. They brought on board Andrew Frey, a former deputy solicitor-general with the U.S. Department of Justice, to assist with the appeal. The process began on August 27, when Black's lawyers

filed a motion with Judge Amy St. Eve requesting that she order a new trial. In a separate motion, they asked her to grant an acquittal, arguing that the government failed to prove its case beyond a reasonable doubt. Few observers expect that either motion will succeed.

The next step will be to take the appeal to the U.S. Court of Appeals, where a three-judge panel will hear the case. If the appeal is unsuccessful at this stage, it may be reviewed by a full panel of all the appeal court's judges. Should it again fail, the defendant may then request the U.S. Supreme Court to review the decision. It will probably take a year or two for the appeal to run its course; during that period Black may remain free on bail.

Analysis

1. In your view, was the trial of Conrad Black fair? Explain.
2. What is your personal response to the findings of the jury. Explain fully.

THE TRIAL OF CONRAD BLACK

Activity: The Sentence

What prison sentence do you feel would be appropriate for Conrad Black if his conviction stands?

Even though he is appealing the verdict, Black has been convicted of four crimes and will be sentenced by Judge Amy St. Eve on November 30. The possibility exists that Black, who just turned 63 on August 25, could spend the rest of his life in jail. Each of the three counts of mail fraud of which he was convicted carries a maximum penalty of five years in jail. The obstruction of justice charge has a maximum 20-year penalty. Theoretically, Black could face a 35-year jail term and a \$1-million fine.

The prosecution team has stated that they will be seeking a prison term of 15-20 years. The defence has said it will argue that sentences for these kinds of offences are customarily considerably shorter. Judge St. Eve will hear the arguments from both sides and make the final decision. She will also issue a sentencing statement outlining the reasons for her decision. Black is expected to appeal whatever sentence she gives him, just as he is appealing the verdict in the trial.

For the purposes of this exercise, you must decide the total number of years you feel Black should spend in jail for the crimes of which he has been convicted. You should base your decision only on what you have learned about the nature of the crimes themselves and Black's actions in committing them. Black's lifestyle and past adventures should not enter into your consideration.

As you ponder your decision, you might bear in mind that, in the U.S., criminals really *do* serve their time. The most a prisoner can get off for good behaviour is 15 per cent of his or her sentence. Before you write your report, gather in a group with four or five of your peers to discuss your ideas and intentions.

Once you have made your decision, write a brief (one page or less) sentencing report explaining how you arrived at that decision. Be prepared to share your report with your classmates.

Notes:
