

Some advice for Ravi Sood

3 June 2008

I see that Timminco (TIM:TSX) CEO Heinz Schimmelbusch is following in the footsteps of Eugene Melnyk. Suing analysts and portfolio managers isn't part of the daily life of the capital markets, as most folks on Bay Street and Wall Street assume that no one will ever sue them for their views — which issuer wants to attract that kind of attention, after all?

According to Timminco, it was slanderous and defamatory for Ravi Sood to say during a BNN interview that the company's solar technology is "virtually worthless". As Timminco is currently sporting a \$3 billion market cap., it's fair to say that more than a few folks disagree with Mr. Sood's characterization.

Now that the game is on for Lawrence Asset Management's Sood, here is the good news for the Defendant:

- Timminco shares are at their highest level in the past six months, which will should serve as a key element of your Statement of Defence; since the market cap. didn't drop on a sustained basis following your allegedly defamatory statements, where are Timminco's damages? What impact did you have on their business? The market cap. is a great proxy for such things as it serves as the reputational barometer for public companies. Unlike a person, a company can't really profess hurt feeling and embarrassment as a result of the "sting" of the alleged Slander.

- just this morning, Timminco announced that Canadian Solar Inc. is the customer behind an April 4, 2007 contract for 5000 mt of solar grade silicon to be delivered in 2011. The fact that Canadian Solar didn't cancel the contract as a result of your comment is the perfect second element of your Statement of Defence. If even one customer was prepared to proceed, despite your BNN remark, then Timminco will need to explain in their Reply what negative impact you had on their customer base.

- Ontario's Libel & Slander Act is slanted in your favour, assuming you did your own research and formed your own considered view and concluded that Timminco's technology is to solar what Bre-X was to the mining industry.

- a recent Ontario Court of Appeal decision ([Cusson v Quan](#)) may be of some assistance to you, as Mr. Justice Sharpe bent over backwards last November to make it easier to defame people and get away with it (see prior post "[Has Justice Robert J. Sharpe put process before truth in libel ruling?](#)", November 19-07).

- There are two fantastic Toronto-based Libel teams that might be available to assist you, in conjunction with your current lawyer: Bert Bruser at Blakes, and Jonathan Stainsby at Heenan Blaikie. Each are about as brilliant as you'll find in the entire Law Society of Upper Canada, and they've done this stuff before. For the same reason that you don't want your heart operated on by a general surgeon, you don't want to defend a Libel battle with a generic litigator — no matter how experienced and talented they are. Although I've never met him I'm sure that Clifford Lax's 38 years at the bar puts him at the peak of the Litigation business, and you're lucky to have the calibre of person on your team. But you still need a team, and every great lawyer benefits from a second brain. Either of Brothers Bruser and Stainsby make a great Consigliere.

- You'll be amazed how long you can drag this thing out without being accused of a filibuster. At each stage, conduct your legal action at a glacial pace. On the Affidavit of Documents (they'll want your emails btw), on the Discovery, regarding family holidays, Motions to the Master, etc. The court system appears to have been designed based upon a 30 week annual calendar, and since you're on defence, use that to your advantage. If Timminco's technology fails, you'll know that before it gets to Court. If it succeeds, where are their damages from your alleged Defamation?

- from the photo in the Globe, it looks as though you live off Diet Coke, Red Bull and water. I'm not the most healthy dieter myself, but those three make for a strange cocktail in your stomach.

- The last piece of advice is to get into this yourself; don't outsource your Defence to the lawyers, whoever they are. Read the precedent case law, understand why some decisions went against the Defence while others didn't. Although they are only somewhat relevant to your situation, read *Munro* and *Leenan* and *Myers* and *Richmond Review* and *King Emperor*....

Good luck with the fight. You're going to win, provided you did your homework. It's just going to take some time.

MRM