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Pattern of Ministry Foul-ups: Public Documents Destroyed

The Ontario Consumer Ministry's quiet 1977 destruction of about 1000 cubic feet of documents containing irreplaceable public information—now called an "honest mistake" by minister Larry Grossman—is a serious casualty, but not the first or the last such incident, in the battle for records management in the Ontario government. The documents were pre-1972 annual returns of information of active Ontario companies showing directors, officers and other basic information.

A few weeks before Grossman's admission last month, Companies Services Branch director Henry Ozolins told me the destruction was justified because the documents were "of no interest to the public." But the ministry had cosigned a schedule in 1972 with the Ontario Archivist that indicated the documents would be microfilmed before being destroyed, and records management officials are still awaiting a definitive report from the ministry on what happened. It appears that pre-1972 annual returns of information of companies incorporated between 1935 and 1960 have been destroyed without being microfilmed. They were the only publicly available information showing control of Ontario limited companies (except for public companies having filings with the Ontario Securities Commission).

The Companies Branch "mistake" was remarkably similar to an incident four years ago that almost resulted in the destruction of all Ontario pre-1973 declarations of partnership and sole-proprietorship—also the only source of information on control of the entities in question. That fiasco resulted in the documents being rescued by the Ontario Archives, which is now serving in effect as the repository of some current records.

And at least one other series of Consumer Ministry public documents is currently the subject of selective destruction within the ministry, also in violation of a records-management schedule cosigned by the Ontario Archivist and the ministry.

The ministry officials responsible for the Companies Branch are Henry Ozolins and his boss Benson Howard, executive director of the Companies Services Division of the ministry. Other officials in the ministry were apparently not aware of the program of destroying documents. The ministry official theoretically in charge of records management, Mrs. Linda Fischer, said she was informed annual returns have never been destroyed, "only insignificant correspondence between companies and our branch." And she said according to a pencilled note in her file all the documents in question have been microfilmed back to 1909.

In the same vein, Company Law Branch director R. G. Cooper said as far as he knew the ministry does not carry out the destruction of documents, and that "everything we have is on microfilm."

Documents filed under the Corporations Information Act have apparently been microfilmed on a current basis since 1971 or 1972, and Ozolins told me in 1976 that the backlog—documents filed before those years—were being progressively microfilmed as well. But he and Benson Howard refused to disclose how many of the pre-1971 annual returns had been microfilmed, and according to what schedule. It was generally understood that the purpose of such a program was to save space by allowing the microfilm to be retained and the "hard copy" then destroyed.

Following a fire in 1976 at the ministry's Yonge Street offices that was blamed on arson, Ozolins said that to disclose which of the backlog of pre-1971 files are microfilmed, and which are not, would enable vandals to deliberately destroy non-microfilmed files.

As it turned out, the information might well have been useful in preventing government officials from ordering the destruction of documents.

The documents in question were supposed to be subject to schedules signed in 1972 by ministry officials and by the Archivist of Ontario. The creation and implementation of such schedules, which apply to most series of government documents, is governed by the Advisory Committee on Records Management (ACORM), which includes the Archivist, and officials of Management Board and the Government Services Ministry, as well as a representative of the ministries' Records Officers.

ACORM member Frank White said the schedule in question calls for the retention of documents filed for five years, with the assumtion they would be microfilmed while in the Ministry's possession. The schedule says the microfilm is to be retained for 60 years by the ministry, and then turned over to the Archives. A second schedule, he said, called for a security copy of the microfilm to be retained permanently by the government. Recent company searches done by Bimonthly Reports indicate some of the microfilm that has been made is practically illegible.

The destruction was carried out under a new Corporations Information Act and new regulations, both enacted in December 1976, permitting the Ministry of Consumer and Commercial Relations to destroy documents filed under the act after they are five years old. But it was assumed any such destruction would be subject to the ministry's microfilming program, and to the schedules, which are part of the government-wide records management program.

As well, the Archives Act says that "Subject to the regulations, no official document, paper, pamphlet or report in the possession of any department or branch of the public service ... shall be destroyed or permanently removed without the knowledge and concurrence of the Archivist."

If the "mistake" apparently involved enabling legislation, it also involved elaborate preparation in the department. Ozolins told me the fact the documents "don't seem to serve any public use" was established through a survey conducted "about three or four years ago" by the Companies Branch, which he said showed that people searching the files were mainly interested in current information enabling them to effect legal service on the company.

Until recently, three kinds of documents were found in the public files. Copies of incorporation documents, amendments, amalgamation and dissolution documents and the like have not been destroyed, and they have apparently all been microfilmed. The other two classes of documents were the annual returns of information and correspondence relating to documents filed. All of these are covered in the schedule.

The earlier incident with partnership records also arose from a legislative amendment. In 1975, the ministry changed its registration procedures for partnerships and sole proprietorships under a new Partnerships Registration Act. The ministry proposed under that act to destroy all the partnership and proprietorship declarations filed under the old system, together with the indexes and copy books. In that case, too, there was confusion as to what documents had or had not been microfilmed.

But in that case, the documents proposed to be destroyed still apparently had legal validity, and lawyers are still being referred to the Archives to search the records. The new Partnerships Registration Act said partnership declarations filed before 1973 would automatically expire on January 1, 1975, but it also said they would be deemed not to have expired until some future date, on application made up until January 1, 1980. Under the ministry's proposed destruction, it would apparently have been extending the legal life of a partnership of whose existence it not longer had a record.

A systematic destruction procedure, also in violation of a records-management schedule, is going on in the Ontario Securities Commission, part of the Consumer Ministry, but the procedure hasn't yet come to the attention of records-management officials. A schedule signed in 1976 says "operational records used for public searches" are to be retained five years in the OSC office, and then 25 years in the government's Cooksville records center, after which they will be reviewed by the Ontario Archivist. In such cases, the retention periods are measured from when the file folder becomes full, or the company becomes inactive.

But some of the files won't really be reviewed by anybody, because if a public company's charter is cancelled or it dissolves, after a waiting period of two years within which it could be revived, the company file is routinely destroyed at the Cooksville records center.

Ironically, the OSC's name for the Cooksville records center is "the archives."□

Melvin Feder Stock Deal: A Guarantee for Friends

A man with an "unlimited source for money" handed out cash to a stock-salesman and promised a quick 40% profit to persons who would buy Devon Resources Ltd. stock with it, according to a sworn statement that led to recent stock-fraud convictions. The name of the money-man, Melvin Feder, did not appear anywhere in the company's prospectus, which was approved by the Ontario Securities Commission (OSC) in 1973. And according to other evidence in the Devon case, it wasn't the only stock promotion that cleared the OSC where Feder had a hidden role.

Parts of the Devon stock promotion story were told in a preliminary hearing in 1975, under the usual ban against publication of evidence heard in such enquiries. The material became publishable late last year after Feder pleaded guilty to conspiracy to effect an unlawful purpose, "namely in circumstances of dishonesty to interfere with the ordinary course of the primary distribution to the public of the capital stock of Devon Resources Ltd."

"Primary distribution" is the name given to the original sale of stock by the issuing company, or by a broker, to members of the public. At that stage the price of the stock is limited to the price set out in the prospectus. Once the stock is supposedly in the hands of the public, and being bought and sold freely, the price limit no longer applies.

Feder also pleaded guilty to a charge that he: "knowing the Devon Resources Ltd. prospectus to be false, caused the Ontario Securities Commission to act upon it as though it were genuine."

County Court Judge Edward Houston sentenced Feder last November to a fine of $1000 or 15 days on the false document charge, and a fine of $4000 or three months on the conspiracy charge.

Evidence in the Devon preliminary hearing was that the stock was sold in 1973 by Goodwin Harris and Co. of Toronto, as agents for Devon, to about 75 customers in the primary distribution. The price was 23½¢ per share with a 1¢ commission to the brokerage firm. But when the primary distribution was over, the stock was bought back by Goodwin Harris and by Standard Securities Ltd., another Toronto firm. From there, different blocks of stock were sold to Toronto brokers Brown Baldwin Nisker Ltd., T. A. Richardson and Co., N. L. Sandler and Co., and Yorkton Securities Ltd., respectively, and the stock eventually wound up in the hands of two parties, Melvin Feder and E. D. Sassoon Bank and Trust International Ltd. The disposition of the stock was shown on a flow chart prepared by an investigator for the Toronto Stock Exchange and placed in evidence in the preliminary hearing.

The operation is called "warehousing," and it enables insiders to control newly issued stocks while creating the appearance that the stock is in the hands of the public, so that any eventual price-rise would benefit the insiders.

A statement by stock salesman Gerald Perlmutar, now a schoolteacher who says he keeps clear of the securities industry, contained a narrative account of key parts of the warehousing scheme. In the statement placed before the preliminary enquiry, Perlmutar said Feder gave him money to give to persons so they could "purchase" Devon stock, with the understanding they could soon resell at a profit. After they sold, the money would be given back to Perlmutar, who would give it back to Feder, "and whatever profit was made was to be held by the people I approached. And at that time he (Feder) once again told me that he could foresee eight to ten cents a share profit, since it was coming out at the issue price of 23¢, I felt it was a good deal for family and friends."

Perlmutar was originally one of the accused in the conspiracy charge, and in another charge of attempting to defraud the public. His sworn statement, made in answer to questions by crown attorney William Parker, was placed before Judge Vincent McEwen hearing the Devon preliminary enquiry, to substitute for Perlmutar's examination-in-chief. The statement was received subject to disregarding hearsay, and it was not made an exhibit.

Perlmutar elaborated in his statement:

—. . . it was done quite simplistically because it was a family affair around this period of time and all the Perlmutars were present and it was just a matter of minutes that word was put amongst the family.

—And did you mention to them, what, if any, profit they might make in this transaction?

—Yes, I believe that I stated to them that it looked like they would make eight to ten cents a share without any difficulty, which would be, I think, about forty per cent upon the money.

—Would any of them feel entitled as a result of what you said to trade the stock at a time other than that which you told them to trade it?

—I would think not, even in the light of what I said to them, since they had individually stated, 'Make certain you tell us when to sell.'...

—Well how did you know when to sell the stock?

—Again, Mel Feder told me directly when to advise these people to sell. Now in reference to the other people which I did in fact give money to, given to me by Mr. Feder, there was not a tremendous amount of dialogue because, looking at it practically, if someone hands you money to buy a stock there is no way in hell that you can lose; in fact, it's the only guarantee I've ever heard of in the market.

Perlmutar defined warehousing as placing stock "in the hands of another person, to take it out of primary distribution to get it to the level of secondary," at which time "the stock would in all likelihood go to a higher price than it had been in primary," when the price was limited to the issue price. Perlmutar said he did not know who was to repurchase the stock, and he took Feder's word that "his 'big people' were stepping in, and not to be concerned, that all my people would be taken out."

Perlmutar said in cross-examination he thought his contacts were bona fide purchasers, not nominees as the crown maintained.

Perlmutar said when Feder told him to advise the people to sell, the price was around 26 or 27 cents a share, and he had a "quasi argument" with Feder because the expected profit had not materialized. "Although bear in mind," Perlmutar said, "he couldn't become too angry with me at that point because I in fact was still holding his money through some of these people."

Perlmutar himself was not eligible to buy Devon stock, because he was at the time a resident of Quebec, employed by a Montreal brokerage firm, and the Ontario Securities Commission permission to sell Devon stock only applied to Ontario residents.

The "president" of Devon Resources according to the prospectus was Charles Blidner. Perlmutar said Feder told him "he was helping a Mr. Blidner, and Mr. Blidner was interested in the mining business, and Mr. Blidner was involved with him, and . . . I accepted what he stated . . . . I shortly thereafter learned that Mr. Blidner was in fact the gentleman that was going out to get coffee all the time, and the role of president did not seem to fit the what appeared to be menial tasks that he was doing for Mr. Feder. . . . I really did not hear any conversations of any length between Mr. Feder and Mr. Blidner pertaining to the market. As stated earlier, primarily it was, 'Chuck, run down and get a couple of cups of coffee and some sandwiches for myself and G. J.' "

After a while he recognized Blidner, Perlmutar said.

—I didn't really know the name at the time; after seeing Mr. Blidner around I remembered that I had met him some years ago at Tops Restaurant.

—In what connection was that?

—He was employed by Mr. Phil Feder, Mel's father, and I don't know what capacity his employment was, but certainly it was divorced from anything pertaining to the stock market.

—When you say employment, was the employment relationship clear to you?

—At Tops Restaurant, I would state that it was clear, because I had seen him a number of times behind the cash register taking cash.

—I see, Tops Restaurant is something owned by the Feders, or was it?

—Yes . . . .

Feder didn't seem short of money, Perlmutar said, and he flew in and out of Toronto the way other people use the subway. Sometimes he could be contacted at his Florida houseboat. "I just assumed," Perlmutar said, "that he in fact did have a great deal of money at that point. He did state to me that he was in real good financial shape and had a source for money as well." As to whose money it was, Perlmutar said, "He never suggested to me it was Blidner's money. He said he had an unlimited source, and I sure as hell knew that it couldn't have been Blidner.

A Goodwin Harris official at the time of the Devon deal admitted at the preliminary hearing that "warehousing" is a term that is used in the securities business. However, he said he had never seen it done in all his years in the business, "but it could be a common occurrence," he said.

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All the articles in Bimonthly Reports are by John Whitelaw, unless otherwise indicated. Comments and communications are welcomed.

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Pullman Tax Litigation Was He Doing Business?

Canadian federal tax officials say early 1970's money-lending by Swiss resident John Pullman was part of a "larger business activity" which "included the transport, concealment and disguising or 'laundering' of certain monies for the purpose of reinvesting such monies in business." They say Pullman carried on the business of money-lending in Canada and that his income is taxable on that basis even though he resided in Switzerland. The tax authorities deny that the allegation of "laundering" is an allegation of criminal or quasi-criminal activity. They say it is relevant to the tax case, and is an answer to Pullman's contention that he was "in a state of virtual retirement" and engaged only in "periodic investments." After argument last summer, a Federal Court Judge ordered the allegation struck out of the crown's formal pleading.

Two Federal Court actions resulting from 1971-72 tax assessments against Pullman are proceeding simultaneously. One is the judgment debtor examination of Pullman, reported in Bimonthly Reports No. 1, which said papers in that case don't disclose how the alleged tax arose, or what steps Pullman may be taking to contest it. Pullman's appeal proceeding, by way of statements of claim and defence in a separate action, answers both questions. Pullman has waived the administrative appeals that would normally precede the court appeal.

Pullman's assertion of "virtual retirement" is contained in his Federal Court statement of claim filed in 1976 as his appeal from the assessments. In his amended statement of claim, Pullman says: "The Plaintiff has, since 1960, been a resident of Switzerland and not a resident of Canada, and, specifically, during the 1971 and 1972 taxation years was a resident of Switzerland and not a resident of Canada. At no time since 1960 had the Plaintiff been employed in Canada or carried on business in Canada. The Plaintiff had no office, place of business or permanent establishment in Canada, negotiated no transactions in Canada, and did nothing that could be considered to constitute an act in furtherance of any business in Canada. The Plaintiff's only income producing activity in the years in question was the making of periodic investments. He is now 74 years of age and in a state of virtual retirement. Withholding tax on interest paid to him by residents of Canada has been withheld and remitted to the Receiver General for Canada."

The statement continues that the Minister of National Revenue directed "that the taxes, penalties and interest be paid forthwith on assessment. He did not form the opinion, required by subsection 158(2) of the Income Tax Act that the Plaintiff was attempting to avoid payment of taxes, or, in the alternative, if he did, he had no grounds for doing so. In consequence of the direction, the Minister caused the Plaintiff's assets to be seized and thereby caused the Plaintiff damage and embarrassment. The Plaintiff, in order to obtain the return of his assets, was forced under duress to pay the tax, interest, and penalties assessed under the assessments."

The revenue department's assertions are in their 1977 statement of defence. Pullman's lawyers succeeded in having the "transport, concealment and disguising" paragraph struck out as contrary to the rules of the court, but in argument the tax authorities said their assertion is relevant quite apart from their statement of defence.

"It is respectfully submitted," the federal Justice Department lawyers wrote, "that even if the allegation...had not been pleaded, it would have been relevant and material for the crown to adduce evidence at trial that the taxpayer as a resident of Switzerland was engaged in a larger business of laundering money in order that the Court could assess, on the one hand, the Minister of National Revenue's contention that the taxpayer as part of that overall activity was carrying on in Canada the business of money-lending, and, on the other hand, the taxpayer's contention that he was merely making "periodic investments;" and could examine the specific series of transactions undertaken by the taxpayer in Canada in the light of his overall business activity in determining whether such transactions in Canada constituted the carrying on of a business."

The federal lawyers go on to say that the proof of the laundering allegation "could well be the decisive factor in determining the central issue in this appeal, namely, did the series of transactions undertaken by the taxpayer constitute carrying on business in Canada as opposed to merely investing."

The Federal Court papers provide some details of the assessment against Pullman for 1971 and 1972. "In assessing the Plaintiff for the taxation year 1971 the Minister included the amount of $1,116,712 in computing the Plaintiff's income for the said taxation year from a business carried on by the Plaintiff in Canada as a non-resident.... For the taxation year 1972 the Minister included the amount of $934,691" along with interest of $362,424 and penalties of $1000 for the two years. In making the assessment, the statement of defence says the Minister assumed Pullman earned the 1971 amount "from a money-lending business carried on by him in Canada which amount was earned in respect of the following loan transactions," and there follows a list of 351 items for 1971 showing the name of the borrower, date, and amount of income. The 1972 income, the statement says, was earned in respect of 357 income items, listed in the same way. Forty-six different borrowers are involved.

The "Minister's assumptions" continue: "The Plaintiff is and was at all material times a Canadian citizen, and, inter alia, has three sisters residing in Canada, sojourns at frequent intervals in Canada, maintains in Canada bank accounts, a safety deposit box and trading accounts with Toronto securities dealers, owns or controls several Ontario corporations and directly or indirectly holds various long term investments in Canada."

Two Toronto lawyers, one of them a Pullman brother-in-law, held power of attorney respectively for two Pullman bank accounts at the CIBC in Toronto, the statement goes on, and the income in question was deposited in those accounts.

The listed loan transactions were mainly with development and construction companies, but the borrowers appear to include several nursing home companies and two companies in the food business.

One listed borrower, Food Chain Properties Ltd., was incorporated in 1956 and its directors were members of the Bennett real estate family whose flagship company, Principal Investments Ltd., was liquidated in a receivership that began in 1963. A major Toronto landholder for much of the post-war period, Principal Investments and the Bennetts had financial dealings with Pullman as early as the 1950's. Principal owned properties at Yonge and Bloor, Yonge and St. Clair, Yonge and Eglinton, Yonge and Sheppard, among many others.

The tax department's list shows $23,000 income from loans to several Food Chain projects in 1971 and 1972. Food Chain amalgamated on December 31, 1971 with four other companies to form Lawrence Manor (1972) Ltd.

When he gave evidence leading to his acquittal last year in the Aquablast case, Pullman said at one time he helped the Bennetts' Principal Investments Ltd. complete the shopping center at the Dufferin Racetrack—Dufferin Plaza near Bloor St.—when they didn't have the financing to finish it. Pullman also said he was associated with a company in the insurance and mortgage business called Collins and Cowan, and that he owned the Yonge St. Arcade, the Rexall Drug Store on Bay St. near King—now demolished—which Pullman said he built, and he had an interest in property on Bloor St.

Pullman told the jury he went to school in Toronto until he was 10 years old, later working as a bellhop on an island at Penetanguishene, and that he went to the US in 1917, where he engaged in business. He said he was involved in Federal Bakery, and then in a chain of automotive parts stores in the midwest.

In a declaration filed in 1950 in an Ontario Registry Office, Pullman stated he was a merchant carrying on business under the name of Pullman's Shoe Mart.□

Feder *Continued*

He said the only thing that would have made him suspicious about the customers-list on the flow chart was the substantial amount of stock bought by the Toronto-Dominion Bank, the Royal Bank, and the CIBC. He said he would have wondered why the banks were subscribing for a penny stock. The question wasn't answered.

Toronto lawyer William Brown testified he incorporated Devon Resources, and drew up the prospectus that was approved by the Ontario Securities Commission. He said Blidner instructed him, and Feder was helping Blidner. Feder "was instrumental in helping" others in similar cases, Brown said. He named Thomas Bennett in connection with Diversified Mines Ltd., Paul Martin in connection with Magister Mining Corporation Ltd., and Blidner in connection with another company, Equitable Mines Ltd., as having been "helped."

Blidner testified he signed papers without knowing what they were about, and that he was to be paid $5,000 "for every deal that went through," apparently meaning that was approved for sale by the OSC. In the Devon prospectus, Blidner was called "an investor principally in mortgages and real estate."

Ontario Securities Commission files show Bennett, Martin, and Blidner as "president" of Diversified, Magister and Equitable respectively. All did underwritings, as Devon did, in 1973.

Feder and another man face trial in February on charges relating to 1973-4 affairs of Beaver Mining Corp.□

Legal Aid Financial Standards: There Really Aren't Any

Over ten years after the creation of the Ontario Legal Aid Plan, the Ontario government is now considering a proposal that would establish financial standards to help determine who is to be issued legal aid certificates. Such standards were widely thought to exist already, particularly since the Regulations enacted under the Legal Aid Act require them.

In a recent decision on an application by former lawyer Samuel Ciglen to order a re-hearing of his application for legal aid, the Divisional Court said even if such standards did exist—their Lordships apparently thought they did exist—they would not limit the discretion of the lawyer whose job it is to rule on the issuance of the certificates. So any such standards would have to be accompanied by an amendment to the Legal Aid Act to make them effective bars to the discretion now enjoyed by the lawyer who decides on the issuance of the certificate. Such an amendment is thought to be part of the Social Services Ministry's proposal to cabinet.

Under the Legal Aid Plan, an Area Director is appointed in each area of the province by the Law Society of Upper Canada, Ontario's bar association. The Area Director is required by the statute to get a financial report on the applicant from an "assessment officer" in the Ministry of Community and Social Services before deciding on the issuance of the certificate, but he isn't limited by what the report says. And the reports themselves, in violation of the Regulations, are made in the absence of standards of personal income and expenses.

Section 16 of the Legal Aid Act, and Section 44 of the Regulations, are the key elements in this bizarre situation, and the Divisional Court in the Ciglen case has provided what is apparently the first decided case on how the system fits together.

In their decision, the court upheld the refusal of a legal aid certificate to disbarred lawyer Ciglen, whose wife reportedly has $500,000 in assets. Ciglen's lawyer Igor Kaplan argued that the Area Director, and the area committee which reviews his decision, can only take into account those financial considerations spelled out in the Legal Aid Act. And that, Kaplan argued, means the needs of the applicant's dependants may be considered, but not the financial status of those persons of whom the applicant is himself a dependant.

But the Divisional Court ruled the Area Director has a very wide discretion. Here's what the court said:

"Section 12 of the Legal Aid Act provides as follows: '...a certificate shall be issued to *a person otherwise entitled thereto* in respect of any proceeding or proposed proceeding...where the applicant is charged with an indictable offence....' To determine who is 'a person otherwise entitled' to a legal aid certificate as provided in section 12, it is necessary to consider section 16 of the Act, which provides: '...the area director may issue a certificate only when he has received the report of the assessment officer, and only where in the opinion of the area director the issue of a certificate is justified.' "

On the subject of the Assessment Officer's report, the judges note that section 44 of the Regulations provide that "the financial abilities and needs of applicants shall be determined in accordance with standards established by the Department of Social and Family Services."

In oral discussion with counsel, one of the judges said "presumably" these standards exist, and Kaplan maintained they are "actual dollar amounts needed to live" beyond which the applicant can contribute to his legal costs. The judges didn't pursue that question, and the reason appears in their judgment. They say: "It is difficult to interpret exactly what is meant by this section; and 'standards' established by the department may change periodically. Counsel for the applicant submitted that the 'standards' mentioned in section 44 refer to the actual dollar amounts required by applicants and their dependants to sustain their needs. In any case, both counsel agree that eligibility for a legal aid certificate in this case must be determined by the Area Director (and area committee) pursuant to section 16 of the Act. It is my opinion that section 44 of the Regulations is not inconsistent with the Legal Aid Act itself, but to the extent that it might appear to restrict the discretion of the area director or the area committee, it is not effective. Nothing in that regulation shall be considered to sanction a departure from the provisions of section 16 of the Legal Aid Act."

A little earlier in the judgment, the same conclusion was put even more bluntly. "The issue of a legal aid certificate is dependent upon whether in the opinion of the area director 'the issue of a certificate is justified' pursuant to section 16(5) of the Act."

In other words, even if there were minimum "standards", the Act is written in such a way that they cannot limit the discretion of the Area Director, either to grant or refuse a certificate, or to order partial or installment payment by the applicant.

Kaplan's application for leave to appeal to the Ontario Court of Appeal said the Divisional Court erred in finding the Area Director had an

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Ciglen Family Holdings

A $400,000 Bebe Ciglen Trust Fund in Corporate Bank and Trust Co., Freeport produced income of $4000 per month, but not for the last two years, according to an assessment officer's notes filed with the Divisional Court. The Corporate Bank is now in liquidation. Capital of the fund belongs to the Ciglen's four daughters, and its trustees are A. J. Bennett, Stephen C. Wengle, a lawyer and Ciglen son-in-law, and Leon Temkin, Mrs. Ciglen's nephew.

Ciglen's lawyer Igor Kaplan explained as follows, according to Legal Aid area committee minutes:

"(Mrs. Ciglen) obtained over $400,000 in cash which was put into a Trust fund in 1965 on terms whereby she gets the income for life and then if her husband survives her he gets the income for life and the principal is to be distributed among their daughters and grandchildren. The funds were entrusted to Corporate Bank and Trust originally operating in Nassau and then in Freeport. . . . The trust has produced no income for over two years.

Sidney Rosen, who was Canadian agent of Corporate Bank, is a son-in-law of Ciglen.

Also held by Corporate Bank, Kaplan said, are some notes that don't look too hopeful. They arose from the sale of an interest in something called Canazuela, a Venezuelan development company.

The minutes reflect other company holdings:

"Mr. Ciglen advised that Resource Financial and Management Services is a company set up in about 1971, which made some profits as finders fees and the like, but at the present time its income is minimal, but it does cover the expenses of a rented car, golf club fees, and certain other small items. The company is owned by his wife, but he acts as consulting manager without salary.

"He further advised that Ciglen Investments Ltd. is a company in which his daughters own the common shares, and his wife did own the preferred shares, which were transferred to the Bebe Ciglen Trust about 1965, when the trust was created. Ciglen Investments Ltd. owns shares in about 40 mining companies, most of which are defunct, but at the present time its principal investment is in Amos Mines, which is a copper mine which may at some time be valuable, but which cannot now be sold.

"Mr. Kaplan then advised that Mr. Ciglen owned 17,700 shares of a company called Duchesne Red Lake Mines Ltd., which were escrow shares, and therefore not tradeable, but for what they were worth he would agree to make a transfer of these to Legal Aid. There is no trading in the free shares of this company at the present time."

Kaplan went on to say that without prejudice to his position that Mrs. Ciglen's financial condition should not be taken into account, both she and Samuel Ciglen had indicated they are willing to assign to Legal Aid any income that may be received by them in the future from the trust fund.

Kaplan also outlined Mrs. Ciglen's interest in mortgages on real estate in which her total investment is $105,000.

Kaplan told the area committee that Samuel Ciglen's indebtedness to the income tax authorities was $8 million plus interest, being a total of about $10 million. He said Ciglen, 72, practiced law from 1929 to 1970. "He was prosecuted by the Department of National Revenue from 1957 to 1970 concerning income tax evasion," arising out of oils and mines promotions of the 1950's. Kaplan said Ciglen was imprisoned in Kingston Penitentiary from March to December 1970, and disbarred in that year. He said the $8 million judgment arises out of the same facts as the tax evasion case.

Kaplan said Mrs. Ciglen is still receiving payments arising out of the sale of the office building at 67 Richmond St. West which she jointly owned with Lawrence Manor Investments Ltd. Reviewing the assessment officer's report, Kaplan noted something that "appears to mean that Mrs. Ciglen has an interest in Lawrence Manor Investments Ltd., but Mr. Kaplan explained that Lawrence Manor was owned by a man named Bennett . . . . Neither Mr. nor Mrs. Ciglen have any interest in that company."

Lawrence Manor amalgamated in 1971 with Food Chain Properties Ltd. and other companies to form Lawrence Manor (1972) Ltd. The building was sold in 1971.□

"unfettered and unbridled discretion" pursuant to the Act.

The reason it was thought fixed standards exist is that applicants are required to supply personal financial information, and the assessment officer then recommends to the Area Director whether the applicant should pay "no part, some part, or the whole of the cost of the legal aid applied for." What wasn't widely realized is that the personal financial information did not have to be uniformly treated.

The place where the standards are supposed to be set is a little-known document called "Rules for determining financial eligibility." It sets out from (a) to (l) what items are to be included as part of the applicant's income, and then it sets out from (a) to (k) the items making up his "requirements" and his "living expenses." But only for item (a) of expenses—food and clothing—are there figures in existence showing how much may be allowed for the item. For the other items the assessment officers either accept the applicant's actual expenses as his "requirements", or else fill in some lesser figure according to their discretion—it isn't really known which system is supposed to be used.

Then having somehow arrived at a "disposable income" figure, the rules say the Assessment Officer is to multiply that by one and one-half to arrive at the amount the applicant can contribute to his legal costs.

In the Ciglen case, the assessment officer's interview report, filed with the court, contains this: "Applicant keeps stating they give a lot of money and expensive gifts to their children and grandchildren. He wants it understood that he cannot expect his wife and family to change their way of life because applicant is in trouble. He states he was a millionaire and lived as one and Legal Aid cannot expect his family to pay applicant's legal fees and thereby make his children and grandchildren be deprived of something they are used to having. He wants Legal Aid to realize that they will not change their method of living. He was very well dressed and smoking expensive Havana cigars. It is still our opinion that applicant has the means behind him to obtain money for his legal fees without depriving his wife, children and grandchildren." (Kaplan told the court in argument it was agreed the cigars were seconds.)

Faced with a court ruling that it is really the opinion of the Area Director that determines financial eligibility, the government faces the task of adopting financial standards that can realistically be applied, and of making those standards an effective part of the legal aid system.

Alternatively, the government may leave it to the Law Society's officers to avoid cases of embarassing publicity, and leave the determination of eligibility to their discretion in each case.

The last paragraph of the Divisional Court's decision reads as follows:

"I wish to emphasize that this judgment is not intended to establish any principle or rule that an applicant for legal aid is disqualified therefrom solely because he or she is living with a wealthy or well-to-do spouse; or for example that the child of wealthy or well-to-do parents is for that reason only excluded from legal aid. These are financial circumstances to be considered by the area director with all other circumstances and other requirements of the Legal Aid Act in each case in determining whether in his opinion the issue of a certificate is justified."

Asked about the relationship of "all other circumstances" to "financial circumstances" in the court's decision, legal aid officials say their discretion is limited to financial considerations, and they say the judgment says that when it is read in context.

It took ten years to establish that the entire financial discretion was in the hands of the area directors. In the absence of new legislation, it may take another ten to decide if that discretion extends any further, since under the present system the area director is not required to give reasons for his decision. And persons denied legal aid can seldom afford a lawyer to argue on their behalf in the Divisional Court.

Although cases of dependants of rich parents or spouses have attracted the most attention to the Legal Aid Plan, financial standards would also deal with the traditional legal aid applicant who is poor. Under the present system, no matter how poor the applicant, his level of income alone is not enough to make him automatically eligible. The area director's discretion applies to everyone. □

Rosen

Kitchener businessman Darwin Clay pleaded guilty to fraud and false document charges relating to the 1972-3 affairs of Ontario public company Life Investors Ltd., according to Etobicoke Provincial Court records. Clay's lawyer James Riley refused to confirm the guilty plea.

Clay was admitted to the psychiatric ward of Toronto General Hospital last November 14, and four days later he pleaded guilty before Provincial Court Judge John Cannon, who sentenced him to three months definite and three months indeterminate. Clay was discharged from hospital December 6. Provincial Correctional Services officials wouldn't say whether Clay served any part of his sentence. "Inmate records" shows Clay discharged January 18.

The guilty plea was probably the result of negotiations with crown attorney David Doherty, and Clay will probably be a crown witness in the trial of the remaining accused in the Life Investors charges. They are Blaine Froats of Oakville, Murray Sinclair, Sidney Rosen, Samuel Ciglen and Edward O'Brien of Toronto, along with Donald Gordon Badger as a co-accused in one of the sets of charges.

The events behind what has been called the "main fraud" charge took place in the summer of 1972; a preliminary hearing was held in Toronto Provincial Court in the fall of 1975; a trial date is now set for April 1978, but it isn't certain the trial will proceed then.

The April 17 date was set in the hope the legal aid application by Samuel Ciglen will have been decided by then. The Divisional Court has refused to order a rehearing of the application by legal aid officials. Ciglen's application to the Court of Appeal for leave to appeal the Divisional Court's refusal is scheduled for February.

Lawrence Wynne, a former officer of Corporate Bank and Trust Co., Freeport, was one of those originally charged in the Life Investors affair, but the charge was dropped against him when he appeared as a crown witness in another preliminary hearing involving Corporate Bank and Rosen. However, Wynne has been enjoined by a Bahamian court order from leaving the Bahamas, in connection with possible breaches of bank secrecy laws, and Wynne's application to set aside that injunction hasn't been heard yet.

The hearing in which Wynne appeared dealt with a charge that Rosen and his accountant Irving Noble defrauded public company Flemdon Ltd. A date for their trial was fixed for January 23, but on that day it was discovered the York County Court didn't have any Judges available—not an unusual occurrence. Other defence lawyers whose trials had been set for that day complained bitterly as they faced new dates in May and June. March 13 is the new date for the Flemdon trial. However, Rosen's lawyer David Humphrey represents one of the accused in the dredging conspiracy case, which might get under way in February and last several months, in which case the Flemdon trial might have to be postponed until next fall.

In the January 23 court appearance, crown attorney Doherty announced that the Flemdon charge has been withdrawn against Noble. He didn't say if any agreement had been made in connection with the withdrawal.□

Wagman

The Divisional Court of the Supreme Court of Ontario is the body that hears what are in effect appeals from the innumerable semi-judicial and semi-administrative bodies like royal commissions of inquiry or the Labor Relations Board. In a normal appeal, the appellate court can overturn a decision only if it involves some "error in law" made by the lower court; it cannot simply reverse a lower court's finding of fact. The jurisdiction of the Divisional Court is supposed to be even more limited, and it involves only errors in jurisdiction by the tribunals. "Natural justice," "excess of jurisdiction," "reasonable apprehension of bias," are some of the catchwords whose interpretation gives the court jurisdiction to review, when asked, procedures of lower bodies—just to ensure that they are properly "judicial," and within their "jurisdiction."

And so it is that bankrupt Toronto lawyer Joel Wagman applied to the Divisional Court recently to review his treatment at the hands of the Discipline Committee of the Law Society of Upper Canada, after a Law Society official alleged professional misconduct. Wagman said a series of events and comments by the committee, individually and in their cumulative effect, could produce a "reasonable apprehension of bias" on the part of an informed person, and he said the proceedings should be halted.

A Discipline Committee transcript placed before the Divisional Court contains evidence that a bankruptcy trustee's report to the Superintendant in Bankruptcy triggered an RCMP investigation into Wagman's affairs in August 1976. The Law Society's auditors had inspected Wagman's books almost a year earlier, and Wagman says the later proceedings by the Law Society were influenced by the RCMP involvement.

One of the instances of bias Wagman alleged was the committee's refusal to postpone its disciplinary hearing pending the disposition of criminal charges against him. One of the lawyers who acted for Wagman said he told Wagman he didn't agree there was "some kind of intervention by the RCMP;" he said there was another explanation for the Law Society's "zeal," in refusing the adjournment. He didn't tell the committee what that other explanation was, but Wagman later told the committee the lawyer "said to me I want to use the exact words that the Law Society would much prefer having a disbarred lawyer appear before the criminal bar than a lawyer who was charged with offences who

could be convicted." Wagman faces trial May 27 on one count of fraud arising out of the RCMP investigation.

Discipline Committee chairman Stuart Thom refused the request to adjourn pending the criminal proceedings. He said, "The main point is ... that these are matters of great significance to the Society, to its members, to the public. It is the obligation of the Society that when matters of this nature, alleged misappropriation of funds by one of its members, comes to the attention of the governing body, that appropriate, quick and effective action should be taken."

Wagman's lawyer said it took the Society 17 months to bring forward the complaints. He said, "It raises a question in the mind of a reasonably informed person as to why it became so urgent."

Wagman made his application to the Divisional Court last October, after the hearing had proceeded intermittently. Once Wagman made his application, H. Lorne Morphy of the Tory and Tory law-firm loomed up on retainer from the Law Society to tell the committee that it was "unusual" to allege bias after participating in the hearing, but that it was "appropriate, in view of the nature of the allegations," for the committee to adjourn for the Divisional Court application to be decided. However, he said the adjournment should be made only on conditions designed to expedite the application. The committee was so pleased with Morphy's proposed conditions that it said they should be followed both by Wagman and by the Law Society. Wagman took the latter part to be an attempt to interfere with his ability to retain independent counsel (since all lawyers are members of the Law Society), and that formed a further instance of bias in his Divisional Court application.

Stuart Thom was chairman of the Discipline Committee panel hearing the Wagman case, but on January 3, Morphy told the court, "Mr. Thom announced that he had recently been advised that his partner J. Edgar Sexton, Esq., Q. C., was engaged in an action against the applicant (Wagman), and that, accordingly, he was withdrawing from further participation in deliberations of the Discipline Committee."

Wagman's application was rejected last month. Law Society Secretary Kenneth Jarvis later refused to say how the case will proceed. He said the Society never comments on disciplinary proceedings.

Meanwhile, Metro police charged Wagman and another man with fraud and uttering a false document in September 1977, in connection with a $25,000 cheque, and a Provincial Court preliminary hearing into those charges got under way January 30.□

Burnett

Ian Outerbridge, lawyer for Joseph Burnett, lost his preliminary application to quash the revenue department's search and seizure authorization relating to Burnett's corporate records. However, the cross-examination of Burnett and others, that the tax department seeks to continue, is postponed pending Outerbridge's appeal of the latest judgment to the Federal Court of Appeal.

The search and seizure authorization was approved by County Court Judge Cornish in February 1977, and Outerbridge immediately sought to have it quashed based on affidavits setting out documentation that the tax department allegedly didn't show Judge Cornish. Cross-examination of the three, Burnett, his accountant Meyer Zeifman, and Zoltan Roth of Puerto Rico, was begun, but motions relating to further cross-examination were met with Outerbridge's "preliminary objections."

Judge Patrick Mahoney said he didn't have to deal with all eight of the preliminary objections at this stage of the proceedings. He said, in particular, that the "undisclosed documents" issue could not weigh in Outerbridge's favor, because "it seems self-evident that where the argument is advanced with a view to avoiding further cross-examination on affidavits, recourse cannot be had to facts averred in those affidavits."

Two issues he said could be argued were the alleged lack of particularity in the authorization to search, and the argument that the authorization was approved for a purpose not authorized by the relevant section of The Income Tax Act.

The judge rejected the first argument, and as to the second, he said:

"The Applicants' argument is that, under subsection 231(4), an authorization must be limited to evidence pertinent to the violation or violations which the Minister has determined have been or are likely to be committed. All of the authorities cited in support of this proposition dealt with search warrants under the Criminal Code.... The basic schemes (of the search warrant sections of the Income Tax Act and the Criminal Code) are but superficially similar. Both require the formation of an initial belief that a factual situation exists and both require that the belief be predicated on reasonable grounds. What the justice must believe is that evidence with respect to the commission of a crime 'is in a building, receptacle or place' and what he can authorize is a search of 'the building, receptacle or place' for 'such thing' and the seizure of 'it.' What the minister must believe is that there has been, or is likely to be, a violation of the Income Tax Act or regulations and what he may authorize is a search of 'any building, receptacle or place' for 'things that may afford evidence as to the violation of any provision' of the Act or regulations and the seizure of 'any such' thing."

The judge said the Income Tax Act section "contemplates, in clear and unambiguous language, that an authorization may extend to 'evidence as to the violation of *any* provision'—the emphasis mine—of the Act or regulations, not only the violation initially apprehended by the Minister."□

Goldman

Toronto lawyer Gordon David Goldman faces a second trial on a charge of conspiracy to possess counterfeit money during May 1976. The first trial resulted in the dismissal of the charge against Goldman, after tape recordings of his discussions with unindicted co-conspirator Michael Emmet Dwyer were ruled inadmissible. Dwyer had disappeared completely—he has not been seen since—and the crown had anticipated introducing the tapes based on Dwyer's consent to their being played in evidence.

As wiretap buffs are aware, recordings can be introduced in evidence, according to the Criminal Code, if their admission is consented to by one of the parties to the conversation, or if the recordings "were lawfully made." In another section of the wiretap area of the Code, the two exceptions to the general ban on wiretapping are set out: they are wiretaps duly authorized by a judge, and those to which one of the parties consents.

The defence in the first Goldman trial argued that the phrase "lawfully made" in reference to admissibility refers strictly to wiretaps made with the authorization of a judge. Dwyer's consent to making the wiretaps made them not unlawful, but he didn't consent—before his disappearance—to their admission into evidence in a future trial, and they weren't "lawfully made" under the admissibility section, the defence argued. The trial judge agreed, the tapes were not admitted, and the charge against Goldman was dismissed.

The Court of Appeal reversed that decision, in a judgment written by Justice John Brooke. "With the greatest of deference," he wrote, "I do not agree with the conclusion that the recordings were inadmissible in evidence as the interception was not lawful within the meaning of (the admissibility section of the Code)."

He set out how the recordings came to be:

"The story begins in Florida," he wrote, "when Dwyer was apprehended attempting to pass a counterfeit $50 United States bank note. Local, state, and federal police were soon involved and it is said that Dwyer was very co-operative. . . . Dwyer was charged with a relatively minor offence. He appeared before a judge in chambers where he was tried, convicted and released on his own recognizance in the sum of $4000. The police agreed that this disposition of the matter was an extraordinary procedure. . . . After one or two days Dwyer flew to Toronto with representatives of the United States Secret Service and here he was met by members of the Metro Toronto police force, the OPP, and the RCMP. Dwyer was interviewed by officers from those forces for some time as to the source of the counterfeit money. It appears that he was not entirely co-operative, for he attempted to mislead the police by lying to them with respect to sources of counterfeit money here and, indeed, set up and attended at a meet with a supplier, but no one appeared.

"The police were angry with this deceit. They accused Dwyer of lying and using them. It was said that Dwyer then became serious in his co-operation. He made a telephone call from a detective's office, knowing that the telephone was rigged to record what was said and he then, wearing a transmitter which had been fitted to his body by the police, met the respondent Goldman at a location agreed upon between them. The two talked and their conversation was intercepted by a police officer some distance away who transcribed what was said. . . .

"After meeting with the respondent Goldman, Dwyer left Canada immediately. He was seen in Florida some six months before the case was called for trial by a representative of the defence but has not been seen since that time. The crown's efforts to find him and cause his attendance at the trial came to naught."

The judge also noted that Goldman's co-accused, Luigi Cremascoli, has since died.□

Situations

A decision by the Nova Scotia Court of Appeal is expected soon in a libel suit against the Canadian Broadcasting Corporation "As It Happens" program over a 1974 program about lead pollution in Toronto. The libel suit by Dr. Donald Barltrop was dismissed after a trial by the province's Supreme Court, and an appeal launched by Barltrop was scheduled for January 31 in Halifax. The words Barltrop complained of included this statement by another doctor:

"I regret to say that my personal experience,

and the experience of many of my colleagues in the States, with so-called experts on behalf of industry has been very unfortunate. I've come to the belated conclusion that it is possible to buy the data you want. I've tested this particular viewpoint with relation to a very wide range of consumer and occupational problems in which I have been involved, and I would be happy to substantiate for you the thesis that it is possible to buy any information you want, to substantiate any viewpoint.

"Dr. Barltrop is a paid consultant to the lead industry. He is paid to say what he has just said."

CBC said the words were "fair comment made in good faith and without malice on a matter of public interest," the traditional form of the "fair comment" plea. To succeed the defendant has to show the words were in fact comment and not presented as statements of fact, that it was "fair" comment, and that it is "on a matter of public interest." English court decisions have established that "fair" is to be interpreted broadly as the expression of an opinion that could be held by a fair-minded man. Perhaps strangely, the key element in cases of "fair comment" libel situations is the element of "public interest." Barltrop said the comments made specifically about him were not in the "public interest" sphere. The Judge said:

"Was the subject matter of the comments one of public interest? Counsel for the plaintiff argued that the comments were made about Dr. Barltrop and he was not a matter of public interest. The plaintiff argued that the matter of public interest involved was the use and significance of expert opinions and testimony generally, and specifically as they relate to the opinions on lead poisoning.

"Reading the comments made in the broadcast in their context I am of the opinion that the subject matter was directly that of lead poisoning by industrial pollution and indirectly the importance of the expert opinion that was given on this subject. Dr. Barltrop did make some comments which might lead to the conclusion that the lead companies were not responsible for "environmental lead poisoning." It seems to me that the general discussion was certainly a matter of public interest."

Newspapers routinely rely on the fair comment principle for their restaurant and movie reviews, and for editorial comment on politics and politicians. Other situations that might involve a "fair comment" situation are generally vetoed by newspaper libel lawyers because of their uncertainty about the "public interest" element of the "fair comment" defence in Canada.

The Barltrop affair began January 29, 1974, when lawyer Ian Outerbridge, acting for Canada Metal Co. and Toronto Refiners and Smelters Co., obtained an injunction against the words complained of, which resulted in deletions from the "As It Happens" program in areas west of the maritime provinces, where the program was already on the air. The CBC had recorded Outerbridge as saying among other things, "...we brought in the best man in the world, a Dr. Barltrop from England, and he was regarded as a whitewash. I don't think really people want to hear the truth." That was one of the quotations Outerbridge succeeded in having suppressed.□

Last year's investigation into Disposal Services Ltd.'s 1974 Tory "donation" by Touche Ross and Co., assisted by Ontario Provincial Police officers, unearthed what had been disclosed two years earlier in a regular audit carried out by Arthur Andersen and Co., but little else. The Touche-Ross-OPP report was prepared for the commission of enquiry headed by Justice Samuel Hughes.

The Chicago audit manager at Arthur Andersen—now controller of Waste Management Inc.—told John Orr of Touche Ross that "the donation had only been raised as an audit question in respect of its legality in Canada. This legality was subsequently established to the auditors' satisfaction with the legal counsel in Canada of Disposal Services Ltd., Goodman and Goodman." The Goodman and Goodman letter was one of the documents Waste Management Inc. supplied to the SEC.

An internal memo generated by the Arthur Andersen audit indicated the company felt more was involved than the one land fill permit issued a week after the donation. Company officials wrote that the permit in question was the beginning of a program that would eventually lead to control of all solid waste disposal in the Metro Toronto area—an estimated two million tons per year. The memo showed the $35,000 donation and other costs represented only 6¢ per ton on the basis of two million tons for a 25 year period.

J. H. "Jake" Howard, commission counsel at the federal RCMP enquiry, represented Waste Management at the Hughes enquiry.□

"Gaming in stocks" is a little-known Criminal Code offence that involves ordering the sale or purchase of stock, if no delivery is made or received, without the bona fide intention of making or receiving delivery. Michael Klencz, also known as Prince Michael, House of Carolath, who lives in Burlington, and Bruce Hahn of Brampton were charged with that offence December 30, along with fraud and obtaining credit by false pretences. Alleged victim was Watt Carmichael Securities Ltd. The three charges, with three related charges of conspiracy, are all based on the same transaction, which was an order to buy stock that was expected to rise in price.

John Robinette is acting for Prince Michael, Donald Cosway for Hahn, and Franklin Moskoff for the crown.□

Sentencing of Terrence Malone and Michael Edgecombe is now scheduled for March 13. They stood trial in September and were found guilty December 13 of charges involving fraudulent dealing in securities of Freehold Gas and Oil Ltd. in 1971. Collapse of the Freehold stock brought about the bankruptcy of Malone Lynch Securities Ltd. of which Malone was president. Judge Vannini's lengthy judgment included his findings in detail on how the Freehold scheme worked. A transcript is not yet available.□

May 8 is set for the preliminary hearing into fraud charges relating to International Chemalloy Corp. Edward Greenspan, representing defendant lawyer Enver Hassim, also represents a defendant in the dredging conspiracy case, set for trial—or more likely pre-trial motions—February 13, and no one knows how long the 23-defendant dredging case will take. As well, legal aid officials have postponed consideration of Samuel Ciglen's application for legal aid in the Chemalloy charges until his application in the Life Investors case is finally decided. Robert Carter will represent Chemalloy president David Winchell.□

Stock market, gold bullion, and real estate investments brought narcotics runner David Land's net worth from nil in 1971 to $158,000 in 1975, Revenue Department special investigators found after Land was arrested by police in a 1975 drug investigation. Land pleaded guilty last month to a drug trafficking charge and to a charge of evading tax of $70,000 on income of $219,000 from 1971 to 1975. On January 20 he was sentenced by Provincial Court Judge Donald Graham to jail for 18 months on the tax charge, and on January 25 in Peel County Court, he was sentenced to seven years by Judge Stephen Borins, concurrent with his other sentence.□

Simultaneous police raids in Toronto, Montreal, and Miami by the Metro police force, the Quebec Provincial Police and Florida state police were part of a continuing investigation into trading in the shares of New Dimension Resources Ltd. Public trading in New Dimension, née Consolidated Red Poplar Minerals Ltd., was halted by the Toronto Stock Exchange the day of the raids, but a company announcement referred only to proposed corporate transactions and didn't mention the investigation. Trading was resumed after the TSE announced the investigation, and the company said it was "unaware of any irregularities." The stock was trading at $1.18 before the halt—the 1977-78 high-low range was 49¢ to $1.18—and on reopening it was down a trifle. New Dimension president is Philip DeZwirek of Toronto.

Last July, DeZwirek was arrested and charged by the Quebec Securities Commission with market manipulation and other alleged offences in the 1972-3 affairs of Viking Oil Resources Inc., listed on the Montreal Stock Exchange. DeZwirek was president of Viceroy Investment Corp., Toronto, described as "a consulting and management company."

New Dimension has an agreement to buy all the shares of private Florida company Consumer Energy Corp. from Arie Leo From and Ronald K. Shafer of Miami. New Dimension says Consumer Energy is "engaged in the manufacture and sale of solar collectors for the purpose of converting hot water and swimming pool heating from the use of conventional energy to the use of solar energy." The Miami Herald reported the Consumer Energy office was searched by Florida police, and it quoted a police source as saying the company's co-owner Shafer had been barred from re-entry to the Bahamas by their immigration officials. Shafer was a principal in something called Intercoastal Realty Ltd., Freeport.

New Dimension president Philip DeZwirek's Toronto home and business were searched, in addition to Toronto and Montreal offices of Yorkton Securities Ltd. Some records were seized.

Present management of New Dimension has been in control for four years. The 1976 annual report listed DeZwirek as president, John A. Murphy, a corporate secretary, as secretary-treasurer, and Peggy Singer DeZwirek, a registered representative with Yorkton Securities Ltd., as assistant secretary-treasurer.□

Another Tely Autopsy
$10 Million Tax Review

Torstar Corp., owner of The Toronto Star, has filed suit in Federal Court against the Minister of National Revenue over the tax interpretation of its 1971 deal with the Toronto Telegram publisher John Bassett. If the suit goes to trial, it should produce some answers for those who feel the circumstances of the Telegram's demise were not fully explained in the terse announcements at the time.

The revenue department says the $10 milion the Star paid for the Telegram's subscription lists was a capital outlay and not a legitimate deduction from income for tax purposes. Torstar deducted the $10 million in its 1971 tax return, and if it was wrong, it will have to pay $1.2 million tax on income of $3 million, instead of the $7 million loss reported to the tax authorities.

Torstar, in its statement of claim filed in early 1977, repeats the account of the list sale that was released by Beland Honderich the same day John Bassett announced the Telegram's closing. Torstar says the Telegram advised it "that it had been unable to sell the business of publishing the Toronto Telegram as a going concern and that it had decided to cease the publication and sell the assets of the Toronto Telegram. Thus following negotiations between them, by letter dated September 15, 1971, the Telegram Corp. offered to sell the up-to-date subscription list and goodwill of the Toronto Telegram to Torstar for the sum of $10 million, and this offer was subsequently accepted by Torstar."

Torstar also said it leased the Telegram plant facilitles for two years at $1 million per year.

GLOBE PAYS FOR SPECIAL ACCESS TO PUBLIC DOCUMENTS

The Globe and Mail paid a court official to supervise its access to public documents when the court wouldn't pay overtime to its staff. The incident occurred January 25, after County Court Judge Edward Houston indicated photocopies of exhibits in a trial should not be made available to reporters. Since the trial was in progress, the exhibits were available for inspection only during breaks in the court sessions. A Globe request to peruse the documents in the evening was agreed to by a court administrator only if the Globe would pay the court clerk's overtime rate of pay to supervise the perusal. Staff shortages and restrictions on permission for overtime were apparently the reason. At least one Globe reported argued access to public documents should not be paid for, but he was overruled at Globe headquarters, and payment was arranged on the basis it was a fee for a service.

The exhibits in question were transcripts of wiretap recordings. in the trial of four Toronto policemen charged with conspiracy to try to obstruct a police investigation.□

The revenue department doesn't think that is the whole story. It "admits that the Telegram Corp. and Torstar entered into an agreement, but states that the terms of that agreement are not fully set out in the letter addressed to Torstar dated September 15, 1971."

The revenue department's assessment is based on the assumption that Torstar's $12 million payment assigned to the lists and the plant rental was really to buy the business of the Telegram "as a going concern for the purpose of integrating it into its own operation," and that the $10 million assigned to the lists was "for the acquisition of the business, goodwill, name of the Toronto Telegram, and for the elimination of competition therefrom." On that basis the minister says the $10 million was not a current business expense, but a capital outlay.

On Torstar's theory, the cost of the lists was simply a current business expense for the purpose of increasing circulation at a low cost. Torstar elaborates: "The purchase of the circulation lists enabled Torstar to immediately approach the subscribers of the Toronto Telegram to enlist them to be subscribers of its newspaper, the Toronto Star. This immediate, direct approach, which resulted in Torstar's successful acquisition of a significant number of new subscribers at a much lower cost per new subscriber than was normally incurred by Torstar, and than would otherwise have been incurred by Torstar, effectively exhausted the economic value to Torstar of the subscription lists which it had purchased."

The tax department points out that Torstar's accounting treatment of the $12 million appears to be contrary to Torstar's own position. A section of the government's statement reads: "Torstar in preparing its financial statements . . . (a) disclosed as an asset "subscription list and plant rental commitment note" with a value as of that date of $12 million; and (b) did not disclose in its income statements as part of its operating cost any portion of the monies which it had paid to the Telegram."

The only documents filed in court up to now are the statement of claim by Torstar and the statement of defence by the revenue department. The documents are designed to show what areas of evidence will be introduced by the two sides. The part of the revenue department's case that appears to clash with the Honderich and Bassett announcements at the time are that the terms of their agreement are not fully set out in the September 15 letter, and that what the Star really did was buy the business of the Telegram "as a going concern for the purpose of integrating it into its own operation."

A Telegram story at the time said Bassett "had three meetings with the Star for the purpose of selling the Telegram subscription lists. Agreement in principle was reached September 15, the day before the "strike if necessary" votes (by the unions representing Telegram employees), and final detail was agreed on next day."

The Council of Toronto Newspaper Unions tried to stop the circulation list sale. In telegrams to government officials they asked, among other things, "When was the sale negotiated and consummated?... What attempt was made by Mr. Bassett to sell the paper as a going concern to any other newspaper publisher or parties?"

St. Clair Balfour, board chairman of Southam Press Ltd. was quoted as saying the announcement to kill the Telegram was "one of the saddest and blackest days in Canadian journalism. Over the years, we never discussed the sale of the Telegram other than in a casual fashion, but in the last instance, we were never approached at all."

Senator Keith Davey reportedly said, "I had heard more rumours about Lord Thomson of Fleet buying it than anybody else."

Broadcasters Charles Templeton and Pierre Berton said an offer had been made to them in August to buy the paper.

Lawyer Alick Ryder, counsel for one of the Telegram unions, said an offer to examine the Telegram books made in July 1971 confirmed three things: (1) the paper was losing money, (2) the projections for recovery were hopeful, and (3) steps were planned by the Telegram to 'turn the paper around' and improve its competitive position. Ryder said "something" apparently changed the minds of the Telegram people in the interval.□