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Powell/RCMP Wiretap Issue: "Expert" in his Own Case

Toronto lawyer Clay Powell — from 1967 to 1976 head of the Special Prosecutions Branch of the Ontario Department of the Attorney General — told a US District Court Judge that in his opinion the RCMP in May 1977 committed a criminal offence while investigating a case in which Powell is now a defence lawyer. Powell's expert evidence, which was based on his experience as an Ontario authority on the Criminal Code, was in conflict with that of the federal Justice Department's Director of Criminal Law, Saul Froomkin, who also gave evidence before the US District Court Judge.

The US appearances by Powell and Froomkin were on opposing sides of a successful application by Merchant Diamond Group Inc. of Buffalo, subsidiary of Merchant Diamond Group Ltd. of Toronto, for the return of materials seized in the execution of a US search warrant last May. The US warrant was obtained on the basis of an affidavit by a US government investigator, to whom the RCMP had disclosed the contents of court-authorized Canadian wiretaps.

Powell told US District Court Judge John Curtin in Buffalo that in his opinion an RCMP officer or officers committed an offence in disclosing to US Postal Inspector Ronald Snyder the existence and contents of the wiretap recordings. The federal official testified that a written federal Justice Department opinion circulated to the RCMP in April 1976 confirms the legality of the disclosure.

Powell, who worked closely with the RCMP in the provincial Special Prosecutions Branch, told me he wasn't aware of the document setting out the federal position when he was in the government. He resigned in September 1976.

The Buffalo company's allegation of unlawful disclosure by the RCMP — which Powell supported in his sworn testimony — also forms part of a $3 million damage suit the company filed in Toronto against four RCMP officers involved in the Merchant Diamond Group investigation.

Simultaneous raids were conducted in Toronto, Buffalo and New York last May, and three company associates were charged with fraud in Toronto. Powell acted for the Toronto company following the raid, and he represents the man the Toronto prosecutor calls "the main accused" in the fraud charge.

Powell, however, is not acting in the RCMP damage suit.

Powell's opinion that the RCMP committed a crime was based on interpreting the Protection of Privacy (wiretap) section of the Criminal Code, which forbids the disclosure of the existence or contents of wiretap recordings, subject to certain exceptions. The exceptions include disclosure properly made "to a peace officer," or "in the course of or for the purpose of any criminal investigation," as well as their use in court proceedings.

Powell was examined before Judge Curtin by Buffalo lawyer Warren Radler on June 15:

— Even if you assume the interceptions are lawful, it is your opinion that the release and disclosure and dissemination of that information to (US) Postal Inspector Snyder (on whose affidavit the search warrant was based) is not lawful under Canadian law, is that correct, sir?

— That is my opinion.

— As a matter of fact, does it constitute, in your opinion, an offence under Canadian law?

— Yes, it does.

— And in what respect would it constitute an offence?

— Well, it is a willful disclosure of both the content and substance of the conversations as I read it, and it is in detail and also the disclosure of the existence of the wiretaps and the only way, — that prima facie is a criminal offence, an indictable offence and unless it falls within one of the exceptions, then a person in my view is guilty of an offence. The only way it can fall in one of the exceptions is if those exceptions can be read to have extra territorial effect outside of Canada and in my view, it would specifically have to be legislated in that way and it has not been. The definition of peace officer is restricted.

Then on June 20, the Director of Criminal Law in the federal Justice Department, Saul Froomkin, was examined by Buffalo Strike Force attorney George Parry, and cross-examined by Radler. Froomkin told Radler:

"Sir, my opinion as I have expressed it is that if the purpose of the disclosure is solely to further an American investigation, that is unlawful, but if the disclosure is for the purpose of or in the course of the investigation of a crime in Canada and in addition thereto happens to assist American authorities, that is not unlawful so long as the original purpose is in the course of a criminal investigation in Canada. . . . My understanding from the prosecutor of the case in Canada and from the information I have obtained here is that the sole purpose of the disclosure was to further the Canadian investigation."

Froomkin also said: "The opinion I have expressed is in fact the official opinion of the Attorney General of Canada which opinion was expressed in writing to the RCMP over a year ago, April 13, 1976 in a different matter where the same question arose and the Government of Canada was asked for an opinion and myself and my superior Mr. Philip Landry, the Assistant Deputy Attorney General of Canada, prepared such an opinion. That opinion was sent in writing to the RCMP with a suggestion that it be turned over to all of their senior commanders, — I am sorry senior officers in the field, and we sent a copy of that opinion to all our regional offices across the country and that opinion is still in effect certainly with respect to the Federal Department of Justice and the RCMP as far as I am aware."

Powell, for his part, had also told Judge Curtin he had an important role in the interpretation of the wiretap provisions (which the US attorneys persisted in calling the Canadian Invasion of Privacy Act). Radler asked Powell:

— And can you tell us why it is or how it is that you are very familiar with the Canadian Invasion of Privacy Act.

— Well . . . (the wiretap legislation) was the first time in Canadian history that there was any legislation to deal with the control of wiretapping or invasion of privacy by electronic means and accordingly, in Ontario, the Attorney General felt and so directed me that he, as the person responsible for criminal law in Ontario, wanted to insure that the statute was given very, very consideration (so the transcript reads), and every policeman or prosecutor in Ontario knew exactly what it meant. Therefore, starting in 1974, we commenced a series of lectures, or I did, throughout Ontario to various police officers and we set up a procedure whereby once the law went into effect in the summer of '74, every wiretap application that was brought or granted in the Province of Ontario would be approved by myself. I had just one exception to that in relation to some narcotics matters, but basically anything to do with the criminal law became my responsibility and it was made clear to me that the Attorney General was holding me responsible for the enforcement of that statute and to make certain it remains within bounds."

Powell was asked if he continued "to administer that statute" until the "termination of his employment" in the Attorney General's department. Powell replied, ". . . yes, I did up until the end of August (1976) when I decided that at the age of forty, it was time to do something different."

Both Powell and Froomkin agreed in answer to questions that wiretap information could not be disclosed after an investigation is terminated, unless it is in the course of court proceedings in Canada. On that basis the tapes were not available to the US judge.

The Buffalo Strike Force produced RCMP officer John Rowland, who explained to the judge the procedures used in the diamond sales promotion, but his evidence was interrupted by an exchange between the judge and US attorney George Parry. The judge said to Parry:

— I told you in the beginning. You told me we would have the tapes available when you represented to me when I signed this form, you would have it available. You are absolutely asking me to make a decision in the dark and I will not do it. I made a bad mistake in this case, and furthermore, what is fraud? . . . All I am saying is

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Wald/Shefsky Lawsuits: Tax Benefits on Lovers Creek

The identity of the equity-holders in the South Simcoe Estates land assembly of about 4000 acres south of Barrie has been disclosed in a court action brought by the German financial backer of one of them. Investor Hubertus Wald recently filed a series of lawsuits against developers Gerald Shefsky and Edwin Cogan, whose companies operate as The Greater York Group, alleging they defaulted on their financial obligations to him. Included is a claim based on advances of over $1 million Wald says he made toward Greater York Group's contributions to the South Simcoe Estates venture.

The assembly, including a substantial amount of top quality farm land, would have been the principal beneficiary of the Ontario Municipal Board's bungled attempt to order part of Innisfil Township annexed to the City of Barrie.

The 4000 acres are in the northern part of Innisfil Township, whose council rejected a 1974 development proposal by the syndicate. Subsequently, following the 1976 report of the Simcoe-Georgian Task Force, the OMB approved an application by Barrie to annex lands primarily in Innisfil and including much of the South Simcoe Estates assembly. But in February the Divisional Court ordered a rehearing by the OMB because of its treatment of letters written by Ontario Treasurer Darcy McKeough to the OMB during the hearing.

The City of Barrie is seeking leave to appeal the Divisional Court decision to the Ontario Court of Appeal. Leave is likely to be granted, and the argument will be about the role of a tribunal in relation to the government's executive powers. The OMB stopped hearing evidence on regional population growth after it received McKeough's letter setting out government policy on the subject.

One of the lawyers for South Simcoe Estates before the OMB and the Divisional Court was Ronald Webb of Davis Webb and Hollindrake, the Brampton law firm of Ontario Premier William Davis.

251612 Holdings Ltd, 251598 Holdings Ltd, and Raynham Investments Ltd are the companies in whose name the syndicate's land is registered in the Barrie registry office. Documents filed in Wald's lawsuit disclose that the "South Simcoe Co-ownership" — not a partnership — was set up by agreement dated July 1972, and amended May 1974, with the following equity interests and their individual guarantors:

Bartor Holdings Ltd	20%	Henry Bernick
Fairland Contracting Ltd	30%	Frank Ruscica
Cogan Developments Ltd and Shefsky Developments Ltd:		Edwin Cogan and
"The Greater York Group"	20%	Gerald Shefsky
Hillcrest General Leasing Ltd	22½%	Harry Hershoran
Allenwood Investments Ltd	7½%	Arthur Zimet

The parties agreed that Cogan Real Estate Ltd "may be entitled upon the decision of the manager to act as real estate agent with respect to the sale of the lands of behalf of the co-ownership." And they agreed that "Ruscica Construction Ltd shall have the first right of refusal on a competitive basis on any service work in the lands of the co-ownership, where its services could be used." Manager of the undertaking is Bernick and Co.

Another document filed with Wald's writ lists Innisfil Township properties acquired by the syndicate in closings between September 1972 and February 1973. The list accounts for 3138 acres at a total price of $6,660,700 — an average price of $2123 per acre. The list shows prices divided between "deposit," "mortgage back," and "due on closing." A mortgage now registered against the lands secures a loan of up to $3,250,000 at 15% payable to the Royal Bank of Canada on demand.

Wald says in his writ that between February 1972 and October 1975 he advanced $965,000 to the Greater York Group for its funding obligations to the co-ownership, and that from then to November 1977 he advanced a further $155,000 "as a result of default by Greater York Group of its funding obligations in the South Simcoe Project." Wald says the Greater York Group defaulted on its repayment obligations to him on July 15, 1976.

Wald is seeking a declaration that 10% of the Innisfil Township lands — one half of the Greater York Group participation — is held in trust for him. And he says he is entitled to repayment of one-half of the principal amount of $965,000 together with interest on the full $965,000.

Wald and Shefsky appear to have operated according to a complicated set of agreements, based primarily on tax advantages available to Wald.

In a number of his suits, including the South Simcoe one, Wald cites and files a 1971 guarantee according to which he says Shefsky "guaranteed all loans including interest and costs made to Canada by Mr Hubertus Wald, personally or by firms or individuals associated with him, where the funds advanced were or will, at some future date, be used in connection with business projects in which Mr Wald and Mr Shefsky participate." The guarantee also says, "The agreement of 11 March 1968 is still effective in principle." Wald filed an agreement bearing that date between him and Shefsky.

In the 1968 agreement, Wald undertook to raise the equity capital necessary for their joint projects, and it was agreed the money would be secured by mortgages on real estate at a fixed rate, which would then be postponed in favor of further financing.

Half the equity was to be Wald's, and half Shefsky's, and to the extent that Wald contributed Shefsky's equity, that would be treated as a loan payable by Shefsky to Wald at the same fixed rate. Those loans had to be repaid as to principle and interest before Shefsky could lay claim to his share of "profits or other payments" from the projects, or so the documents appear to indicate.

The 1968 agreement also says: "Wald is participating in the Canadian projects in order to utilize fully the tax advantages that are possible through the present relief from double taxation. In consideration of the fact that Wald is supplying all the equity capital, Shefsky is obliged to cooperate in acts and agreements that will benefit Wald's tax situation. Likewise, Wald is obliged to cooperate in obtaining tax benefits for Shefsky, insofar as he can do so without interfering with his own tax position."

The 1954 German-Canadian Tax Treaty, still in effect, provides relief from German tax on interest earned in Canada, provided the loan is secured by real estate, and that Canadian withholding tax was payable. For wealthy Germans, it meant paying withholding tax of 15% — now 25% — as opposed to a rate of more than 50% that would otherwise be payable in Germany. Efforts to modernize the treaty, including new draft treaties drawn up and initialled in 1973, 1975, and 1976, have not been put into effect. The reason: "the German Senate has too many fat cats in it who themselves are benefitting from the present arrangement," according to a tax specialist.

Documents filed so far don't indicate how Wald raised the capital in Germany, and they aren't likely to be.

Wald's South Simcoe writ and others were "specially endorsed," meaning they set out the details of the alleged debt. Shefsky and Cogan have applied to have the special endorsements struck out. The immediate effect of the special endorsement would be that the defendants must first file an affidavit setting out the gist of their defence, and they are then subject to cross-examination by the plaintiff on the contents of that affidavit. Special endorsement gives a tactical advantage, as well as added speed, to the plaintiff.

The application to strike out the special endorsement was heard by Ontario Supreme Court Master David Sandler last December, but at the end of March his judgment was still reserved.

In another big real estate deal, Wald says he and Greater York Group each held 45% interest in 243 acres of land in Brampton. In a statement of claim filed in an action in February, he says he agreed to sell his 45% interest in October 1974 "to a third party at a price reduced by $3 million," in exchange for a promise that The Greater York Group, holder of the other 45% interest, would pay him up to $500,000 out of its ultimate profit from its 45% interest. Wald says Greater York sold its interest in January 1976 to Fobasco Ltd, but he didn't get the proceeds he was supposed to get. He claims he hasn't even been able to find out what the profits were on the sale. In addition to $500,000 and interest at 15%, Wald claims damages of $100,000 because of losses due to currency fluctuations since January 1976.

Meanwhile, at the Innisfil Township office at the Eighth Line and Highway 11, where the GO-bus stops only on request, officials have never heard of Hubertus Wald, but on the Council-chamber wall there is a huge map showing the various land-holdings in different colors, superimposed with lines showing various annexation proposals. The pink of South Simcoe Estates almost fills the area to the north between Highways 11 and 400, from the Ninth Line to the Twelfth Line, bisected by Lovers Creek. Inevitably, the promoters' 1974 proposal to the township was called "Innisvale: A new community on Lovers Creek." Locals still remember a fancy specially produced film showing the area's development potential. In the written submission, the promoters had "social planners" prepare a section called "Creating a caring community" with a subsection called "Staging and design of the environment."

Not all of the prose was completely meaningless. For example, this X-rated section about long-term goals: "to create a human-centered 'caring' community which maximizes each person's ability to achieve the fullest potential in

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Seel MIC 1977 Financials: The Bad Loans Aren't Disclosed

Seel Mortgage Investment Corporation, an over the counter entity that first offered its shares to the public in 1976, had a busy bad loan experience in 1977 — not mentioned in its report to shareholders — including loans to the two drugstore-chain lawyers who swindled the CIBC out of almost $1 million, the west-end Toronto property that triggered the municipal plumbing-inspection scandal, and a downtown house-renovation project destroyed by arson, among other loans. But Seel MIC president Eric Exton, who also heads the company's "advisor," private company Seel Enterprises Ltd, said in an interview that the west-end project, recently sold to the mortgage's insurer, was the only case where he anticipates Seel MIC would take "a small loss" after disposal of the property.

In that case, would-be house renovators bought houses at the corner of King Street West and Gwynne Avenue from the Meridian Building Group Ltd, and financed their project with a loan from Seel. The houses now will probably be demolished and the property resold by the insurance company as raw land. A Supreme Court of Ontario judge ordered three-storey additions to the houses removed last year on the application of the City of Toronto Building Commissioner who said the work had been done illegally.

Another judge, Garth Moore of the County Court, found after his inquiry into the conduct of city plumbing chief Brian Risdon that there was "no or insufficient credible evidence" for him to make any findings about the King Street properties, about which he had heard considerable evidence.

Another would-be renovator, former real estate salesman Branko Stanojevic, had two projects financed with Seel MIC mortgages. Both went bad and both properties were sold under power of sale during 1977. Exton says Seel MIC recovered its investment in both. One of the projects, 37-45 Gloucester Street near Yonge Street, was destroyed by fire that the Ontario Fire Marshall blamed on arson but didn't solve. The property was sold by a subsequent mortgagee who paid Seel, Exton said. The other project, at 677 College Street, was sold by Seel.

Another loan that went bad in 1977 was advertised for sale by Exton's company, but Exton said no offers were received, and foreclosure proceedings have been begun. The loan was on an office building on Kennedy Avenue near Bloor and Jane Street.

A loan on a substantial parcel of development land in Cornwall Ontario to Stenan Developments Ltd led to a foreclosure action that is still going on, as did a loan for a small house-building project in the village of Grand Valley, Dufferin County, registered in the name of one Minnie Watt.

The drugstore loans, to Saro Realty Corporation, were on properties in Alliston and the Town of Mount Forest. Saro was Samuel Grant and J. Ronald Smith, Toronto lawyers who were disbarred after their fraud conviction last year in connection with a cheque-kiting scheme in G and J Discount Drug Marts. The fraud investigation was begun after the bankruptcies of the Saro company and others.

All of these loans were made in 1976, and they went bad between December 1976 and the end of 1977. They were all at interest rates between 13½% and 14½%, and many of them called for interest payments only during the one to two year term of the loan.

Their total face value was about $3.2 million, but some or all of them involved several participants, Exton said, of which Seel MIC was only one. Some were insured and some were not. The federal Department of Insurance began in April 1976 to require that mortgages in which Seel MIC participated be registered in its name. However, the "participation agreements" are not registered on title, and it is not possible to know exactly what proportion of the $3.2 million was the MIC's. Seel MIC's year-end 1976 loans were $10.7 million, and $11.6 million in 1977.

Whatever the percentage it held in the bad loans, Seel MIC's bad loan experience was substantial, and the 1977 financial statements make no reference to bad loans, to recovery through the sale of properties, or to foreclosures.

The 1977 earnings statement shows a "reserve for mortgage arrears" of $14,000, but Seel is undoubtedly missing more interest payments that that. Here's what is probably being done.

When a loan permanently stops producing repayments, the repayments owing are simply no longer accrued in the books, and they aren't part of the year-end "mortgage interest income" figure. Since the amount isn't part of "income," naturally there isn't a reserve to cover its "doubtful" collectibility. In effect, the reserve is there in the sense that the income figure doesn't include the arrears in question. The problem is that a reader of the statement assumes that all loans are good except what is covered by the reserve.

There are two ways to disclose the bad loan situation. One would be to segregate the assets into "mortgages" and "mortgages not paying interest," while accruing the interest in the earnings statement and adding the appropriate reserve. Or the bad mortgages could simply be disclosed in a note. Seel MIC does neither. The statement presentation, together with non-disclosure on title of the percentage participation by the MIC, makes it impossible to tell what the MIC's bad loan exposure is.

A real estate specialist said the practice of simply not accruing the interest would be normal in cases where the property could be taken over and sold quickly for the recovery of the loan and any interest arrears. But in any other case, the statements really contain a hidden reserve, so that the loans carried on the books look good to the statement reader, but aren't.

Coopers and Lybrand took over the Seel MIC account for the 1977 year end after Harold Lipton, the Laventhol and Horwath partner who was in charge of the Seel account, left to form his own accounting firm.

Toronto lawyer Bruce Finkler, whose law firm of Lewis Marrus and Finkler does Seel's real estate work, sits on the Seel MIC executive committee which approves of all mortgage loans. The other members are Exton, who is also well known as a private mortgage syndicator, Homer Borland, and David Philpott. Borland, formerly a senior CMHC official, now runs the HUDAC new home warranty program. Philpott is a shopping center consultant and former president of Trizec Equities Ltd. Exton represents the mortgage brokerage industry on the provincial government's Commercial Registration Appeal Tribunal, which hears appeals from administrative bodies including the HUDAC warranty program.

Representatives of Gordon Securities Ltd have been members of Seel's board of directors. A. Michael Gilbert, who was the securities firm's real estate advisor, was replaced on Seel's board last year by Monte Gordon.

A Gordon Securities pamphlet, published in January 1978 by its investment research section, calls Seel MIC an "intriguing proposition." "Seel MIC," the pamphlet says, "has interesting internal growth prospects emanating from the mortgage loan origination capabilities of its advisor, Seel Enterprises Ltd. Currently it is utilizing about 85% of the product available to it from the advisor." It says mortgage yields in Seel MIC's portfolio are higher than "portfolios composed of single family NHA or conventional mortgages," adding, "we expect these higher yields for Seel MIC to persist based on the loan origination capability of the advisor." It doesn't say anything about defaults. □

Shefsky

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relationships with self, others, the community, and the natural environment; and to develop a community which enriches the area, the municipality, the region, and the province, and respects the integrity of the neighboring communities of Barrie, Painswick and Stroud."

A look at the township's big colored map shows Painswick and Stroud's "integrity" involve something a little more specific than, for example, their maximized relationship with self. The dominant color around Stroud is not the pink of South Simcoe Estates, but the yellow of Starbush Holdings Ltd and Coventry Group Ltd. And adjoining Painswick are the green of Paramount Development Corp. and the blue of Heritage Glen, an affiliate of Abbey Glen Development Corp. At the OMB, Robert W. Macaulay and another lawyer acted for the Abbey Glen companies, Edwin A. Goodman and a law partner for Starbush and Coventry, and Allan Blott for Paramount. According to the line the OMB drew, Painswick and the surrounding assembly is in, and the Stroud area is out.

The line will have to be redrawn following a new hearing, however, unless the Ontario Court of Appeal overturns the Divisional Court decision and approves the OMB's earlier decision.

In a new hearing, Innisfil would again argue that even if the 125,000-person population goal of the Simcoe-Georgian task force is adopted — the subject of the ill-fated McKeough letters — then the Task Force interim land use program should be adopted as well. And that would involve immediate annexation of a concentric area around the city, the township says. Such an area was designated for city annexation in Innisfil's 1976 Official Plan. The offered area excluded the major assemblies to the south except about half the Heritage Glen lands and only a very small portion of South Simcoe. □

Checking on Real Estate Resale With Ministry's Dwindling Staff

The two real estate brokers' hearings before the Commerical Registration Appeal Tribunal in the first three months of this year disclosed self-dealing by salesmen, and close lawyer-salesman relationships in small-town Ontario. But the role of lawyers is not part of the Tribunal's jurisdiction, and the registration and inspection system for registrants is itself a low government priority.

Neither of the two appeal cases came to light as a result of the periodic inspection visits routinely carried out by provincial inspectors. The number of real estate inspectors has been cut by one half since 1970, from about 12 to about 6, while in the same period of time the number of registered brokers and salesmen has more than doubled to its present total of about 35,000. In one of the recent hearings an inspector testified that registrants are unlikely to be visited as often as once every five years, and another ministry source said the deterrent effect of the periodic visits now is practically nil.

The Ontario government has "approved in principle" self-regulation by the real estate resale industry.

Ontario's present regulatory structure has two levels. First, the Registrar of the Real Estate and Business Brokers Act, with his staff, periodically check on the registered brokers and salesmen, and when they wish to take action against one of them, they draw up a formal "proposal." If the registrant opposes the proposal, he can require a hearing before the Commercial Registration Appeal Tribunal, which can affirm, reject or modify the proposal after a hearing. The Tribunal, under the chairmanship of Jacie C. Horwitz, hears similar appeals from other sections of the Ministry's Business Practices Division, as well as the HUDAC warranty plan. Its biggest volume is hearings about used car dealers.

The principal category under the Act is "broker." A "salesman" is someone registered to trade in real estate as an employee of a broker, and under the broker's supervision. The industry-run course to qualify as a broker is longer than that required to qualify as a salesman. The Act requires all the shareholders of corporate brokers to be disclosed to the Registrar of the Act.

In a January hearing in London Ontario, the registrar recited a transaction in which a purchaser was referred by the realtor to lawyer Paul Downs. The transaction was completed but the purchaser couldn't keep up his payments on financing arranged by lawyer Downs. Downs then acted for the first mortgagee in securing judgment against his purchaser-client and garnishment of 30% of his income as an employee of The Dresden Red and White Store, according to the registrar. It was one of a series of transactions involving registrants and lawyer Downs in the registrar's "proposal."

Downs had in fact supplied the money by which his sister and another woman (now Mrs Downs) had acquired the brokerage firm in question in another series of transactions detailed by the registrar.

The firm's clients, as well as the registrar, were kept in the dark about Downs' role, the registrar said. The company and its salesmen negotiated and completed real estate transactions, according to the proposal, "using the name of Downs and Sandra Pilgrim, who, I understand, is Downs' secretary . . . without making the necessary full disclosure of Downs' or Pilgrim's identity." The company and its salesmen "acted or appear to have acted more in favor of Downs or Ruth Ann Downs than in favor of their principals (the clients), with respect to trades for purchase and resale . . . without making full disclosure of Downs' position, association or relationship with the registrants at all material times," the registrar said in his proposal.

No allegations of wrongdoing were made against Downs.

Hescamp's brokerage registration was suspended for two years.

The case was investigated by Ministry inspectors after they received an annual statement showing that Hescamp was holding his 51% interest in the company in trust for Gough and Downs' sister. The Act requires 51% of the voting shares of a broker company to be held by a registered broker.

An Appeal Tribunal hearing in February concerned the Hacking real estate family of Cambridge Ontario. According to the proposal in that case, Ken Hacking, his wife Susan, and his father Harold were all registered real estate salesmen but not brokers, so they had to work for someone else. The solution, according to evidence in the case, was a brokerage licence for Kehare Realty Ltd, with 51% of its stock held by registered broker Russel Innanen. No financial interest in the company was held by Innanen, who held the stock in trust for Ken Hacking. The trust agreement wasn't disclosed to the registrar. Innanen testified he tried but couldn't control what the firm and its salesmen were doing.

The case came to the Ministry's attention when Innanen at length fired all of "his" staff.

Innanen now works selling new houses in the Cambridge area for a developer, and is therefore outside the jurisdiction of the registrar and the Tribunal, which regulate only the resale industry. He was the main witness at the February hearing into the registrar's proposal to revoke the salesmen's licences of the Hackings.

Among the deals documented at the hearing were two in which members of the Hacking family bought property from one client and sold the same property to others — one pair of deals closed the same day — at markups of several thousand dollars. One agreement of purchase and sale showed Ken and Harold Hacking would buy land from Bintje Dehaan for $65,000. The agreement was signed by Dehaan on March 24, 1976, and the next day the Hackings signed an agreement to sell the property to Paul and Andrea Mitchell for $67,000, with both closings to take place on April 15, 1976.

Similarly, on April 20, 1976, Harold Hacking signed an agreement to buy 109 Selkirk Street, Cambridge from Brian Gray for $42,000. On April 21, he signed an agreement to sell it to Thomas and Doreen Battler for $45,000.

In both cases, the required "trade record sheet" was found in the files for the resale by the Hackings, but none was found for the sale to them. The trade record sheets for the resales show the same lawyer, William T. Dyer of Cambridge, acted for the purchasers as well as for the Hackings as sellers. There was no allegation of wrongdoing against Dyer.

Documents attached to the respective sales, according to the Tribunal's exhibits, were drawn up in this august language: "The vendor(s) hereby acknowledges that Ken W. Hacking and Harold Hacking are registered real estate agents in the province of Ontario and may be purchasing the property so described in the attached Agreement of Purchase and Sale." The papers were headed "Schedule B" even though the respective agreements of purchase and sale refer to no such schedule.

Innanen said the acknowledgments do not satisfy the disclosure requirements of the Act, and he said some of the acknowledgements in the firm's files were drawn up and signed after the fact.

Innanen also said a list of mortgage foreclosure cases obtained from a lawyer's office where Susan Hacking worked was used by salesmen for the real estate firm — as well as by himself — to obtain likely prospects for real estate listings.

After two and a half days of evidence introduced by the registrar on these and other allegations, Ken Hacking, noting the time, asked for a luncheon recess, "as to ascertain the proper way to portray my defence." But after lunch, rather than portray his defence, he and his wife and father arrived at a settlement approved by the registrar and ratified by the Tribunal.

Harold Hacking and Ken's wife Susan remained registered as real estate salesmen, but they undertake not to trade in real estate as principals for two years. Ken Hacking voluntarily suspends his registration for one year, and he will then observe the same two-year restriction on principal trades. Susan Hacking agrees to put off for two years her application for registration as a broker. Two-year bonds for each of the three are raised from $1000 to $5000.

An intriguing "mistake" in a government task force report recommended stronger enforcement of the Act by an official who in fact has no power to enforce the Act at all. One of the report's co-authors said the reason fundamental enforcement changes were not recommended: "there's not enough staff."

The Registrar of the Real Estate and Business Brokers Act — in effect, the chief enforcement officer — said the Kealy Task Force, which recommends that "more vigorous action" be taken by the "Registrar of the Commercial Registration Appeal Tribunal" — in effect, the appointments secretary for the Tribunal — "didn't know what they were doing." A ministry solicitor said the recommendation should have referred to "the Chairman of the Commercial Registration Appeal Tribunal" taking more vigorous action. The recommendation couldn't be directed to the staff level, she said, because there aren't enough staff to do it. Besides, she said the Task Force thought condominium sales could best be controlled another way.

The Kealy report noted that complaints about misrepresentation by real estate salesmen are "not uncommon," but that no salesman's or

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Okun Theater Family: Frolic Holdings Cash Mystery

A court-appointed inspector reports that $820,000 receivable from would-be real estate developer Edward Okun by Frolic Holdings Ltd, an Okun family estate company, probably won't be realized. In addition to the Frolic suit brought by his uncle Meyer Okun, Edward faces separate lawsuits by other relatives also alleging misuse of family funds.

Meyer Okun, 70, wants a receiver-manager for Frolic appointed by the court, and he also seeks damages from Edward and his mother, and from a lawyer, "for breach of their fiduciary obligations as directors of Frolic Holdings Ltd," which is a holding company for the assets of Edward's late father Benjamin.

Chartered accountant Joseph Sprackman, appointed interim inspector in the Frolic suit, says in a report that Edward's three Toronto real estate projects, in the process of being sold by mortgagees, don't show any promise for the recovery of Frolic's funds. He says before he can present a final report to the court, "various persons who had dealings with the assets of the company should be examined under oath." He recommends that directions be given by the court "with respect to the control of the remaining assets of the company."

In addition to the action by his uncle, Edward also faces two actions by his sister Annice Rothbart, and one by his father-in-law Percy Cohen, all alleging he improperly used family funds for his own purposes.

Meyer Okun said in an affidavit that last summer "Edward advised that he had been beaten up and his life threatened unless $25,000 was produced on or before Tuesday, July 26." Despite the urgings of some of those present, the police were not called in, Meyer Okun said, adding the money was obtained "from other persons." He said at about this time he became aware that Edward "was attempting to borrow money on the security of the shares of the theatre companies owning movie houses in the Biltmore Theatre Chain which were owned by Frolic."

Frolic had two major types of assets: investment in mortgages, and 25% of the common shares of five theatre companies. They are Biltmore Theatre Ltd, with the names Gerrard, Kitchener, Weston, Soo, and Toronto in brackets. The Gerrard company owns the Coronet theatre at Gerrard and Yonge Streets. (A recent double feature was Massage Parlor Hookers, and Love Under Seventeen).

An identical 25% interest in the common shares of these companies is also held by two other branches of the Okun family, the estate of the late Bernard Max Okun (Blue Forest Investments Ltd), and Meyer Okun, whose corporation is Okun Enterprises and Holdings (Toronto) Ltd. The late Benjamin (Frolic Holdings), who was Edward's father, and the late Bernard (Blue Forest), were Meyer's brothers. The Biltmore companies, which lease the theatre properties to the Odeon chain, pay annual dividends to the Okun holding companies.

In addition to receiving the Biltmore dividends, Frolic Holdings used to earn income from mortgage investments. Sprackman explains in his report: "From time to time the company invested the funds it accumulated (or borrowed from its bankers) in various large mortgage syndications which were assembled by Benjamin Pape and Associates Ltd, Lou Lokash Ltd, and Monte C. Beber, mortgage brokers."

Edward's personal company, Transurban Investments Ltd, also invested in such syndications, the report indicates.

Sprackman explains how the system worked: "In most cases, whenever an investment opportunity was presented to Frolic by a mortgage broker, it was usually supported by a detailed presentation of the pertinent financial details of the underlying property being mortgaged and forming the principal security, names and background of the guarantors of the mortgage and such other information as would have been required in order to make a reasonable assessment of the potential investment.

"If the company decided to become a participant in any mortgage, it was followed up by written confirmation of the amount of Frolic's participation and eventually Frolic received a full report on the transactions from a firm of solicitors who acted on behalf of all the participants. These reports included a copy of the original mortgage agreement and/or other legal documents where applicable."

Sprackman says he requested similar documentation to support advances by Frolic to Edward Okun's development companies, William Smith Productions Ltd and Edward Okun Ltd, but he hasn't received any.

Not all the previous affairs of Frolic were done with that kind of documentation, however. Meyer Okun said in a deposition that when he was running the company on behalf of the estate, he would borrow from the company from time to time on his personal promise to repay, and then reinvest the monies personally in a riskier venture at a correspondingly higher return. He said not all the details were reported to his co-executors, "Because for many years it was clearly understood that I was managing the affairs at that particular time satisfactorily to them, giving them quarterly or half-yearly reports on the overall activity of the entire family holdings."

In any event, ostensibly to support his real estate ventures, Edward Okun began borrowing from the mortgage syndicators, and as part security for those loans, Frolic Holdings assigned its interests in mortgage "participation investments" to his lenders. In one such case, Sprackman says he was unable to find any minutes of shareholders authorizing the company to provide that security for the loan to Edward, "nor have I been able to determine the benefit, if any, derived by the company (Frolic) from this transaction." In another case, Sprackman quotes Frolic's auditors as saying a loan nominally to Frolic passed through the trust account of a lawyer, who in turn made his trust cheque for $95,000 payable to Edward Okun Ltd.

In the summer of 1975, while Edward was arranging such loans, he approached his father-in-law, Percy Cohen of Albany Georgia, according to Cohen. In an action for the recovery of $150,000 from Edward, Cohen says he and his wife were approached by Edward in about August 1975, "and asked whether they had funds available for investment purposes in Toronto, Ontario. The plaintiffs advised the defendant that they had the sum of $150,000 in US funds available for investment." He says Edward told him in August "that provided the funds were available for immediate investment, he could invest the said funds in mortgages in Toronto. In order to induce the plaintiffs to forward the said funds, the defendant represented to the plaintiffs that the said mortgages were not risky, that they were for a term of two years and yield interest at the rate of 14% per annum."

Without giving details, the statement of claim says the funds were "fraudulently misappropriated and fraudulently converted to the defendant's own use."

Edward was charged by Metro police last August with theft of $150,000 on the complaint of Percy Cohen, but the charge was dismissed last November when Cohen failed to come to Toronto to testify. Cohen's civil action was filed in November.

In addition to the actions by Meyer Okun and Percy Cohen, Edward's sister Annice Rothbart alleges in two court actions that Edward improperly dealt with money from her own company, Biltmore Investments (Toronto) Ltd. She also says the CBIC and the Bank of Nova Scotia were lax at best in connection with the dealings.

None of the actions has come to trial.

Edward bought out the interest of his two partners in the ceramic red brick office building at 111 Elizabeth Street, behind Toronto City Hall, in July 1975, and in May 1976, according to second mortgagee Canada Trust Co., default was made on their mortgage. A bomb blast in the ground floor restaurant of the otherwise vacant building in September 1976 didn't help the rental situation any. The blast was investigated by police but wasn't solved. And the market for office space in downtown Toronto continued to deteriorate.

Lawyer Irving Solnik and developer John Fabry, Jr., principals of the companies Okun bought out in 1975, are defending an action by Canada Trust Co. against them and Okun as joint guarantors of the second mortgage. They say Canada Trust didn't take reasonable steps to protect its position after default. The mortgage, originally to Lincoln Trust and Savings Co., which was acquired by Canada Trust, was for $600,000 at 14%. □

Real Estate

Continued

broker's license has ever been suspended for reasons of misrepresentation.

The Registrar of the Act, J.P. Cox, told me he couldn't comment on whether he is understaffed or not. He said he has "no idea at all" how often registrants in Ontario are inspected by his staff, and he said when he needs more staff he borrows them from other sections of the ministry.

Deals in which a lawyer acts for both vendor and purchaser in the same transaction are a major issue in the industry. The practice is said to be encouraged by real estate salesmen, because there is less chance of a deal collapsing when the lawyer has, in effect, a double incentive to see the deal close. The practice has been the occasion of a great many claims against the Law Society's insurance fund, brought by vendors or purchasers who say they were not adequately represented. The practice is generally discouraged by the Law Society. □

Vannini on the Last Days Of Malone/Lynch and Freehold

Almost seven years between the events and the (now scheduled) sentencing have turned one of the most publicized Toronto brokerage failures into one of the least publicized stock-fraud cases. The recently-released transcript of the 123-page judgment by County Court Judge I.A. Vannini, on the basis of which he found Terrence Malone and Michael Edgecombe guilty last December, recounts the Malone Lynch Securities Ltd role in a disastrous 1971 underwriting of Freehold Gas and Oil Ltd, which resulted in the Malone Lynch bankruptcy. Malone and Edgecombe will appeal their conviction on a charge of conspiracy to fraudulently affect the public market price of Freehold securities. Meanwhile, their sentencing is now scheduled for May 1.

Judge Vannini considered the role of a great many people as holders, or nominal or potential holders, of Freehold securities in the period in question. The major names he considered were: Alex Fisher, Edward Millner, Roger St Germain, Richard Bonnycastle, Mark Stein, Thomas Capozzi, Gino Del Zotto, and Donald King. None of the persons listed were found by the judge to have been participants in the scheme.

In addition to the two accused, named coconspirators were John Vance and Lowell Williamson. Williamson, an American who controlled and promoted Freehold, was charged but did not come to Canada for the trial. Vance, the principal crown witness and operator of the "box" in Freehold at the Malone Lynch firm, was not charged.

The judge said the Malone Lynch firm agreed to take up 160,000 shares, with warrants attached, for 75¢ each, as part of a 400,000 share underwriting being carried out by Freehold through the facilities of the Vancouver Stock Exchange. Malone Lynch was a member firm of the Toronto Stock Exchange. When Malone Lynch salesman John Vance met with promoter Williamson, "It was understood that following the offering and distribution of the 400,000 shares, Vance's responsibility in the after market was to make and maintain an orderly market and that to this end Williamson, on a handshake with Vance, would not sell any of his shares on the after market."

Williamson then met with Malone, Lynch and Vance in Toronto, the judge said. Williamson "told them of a company called West Growth, which Vance described as a shell of a company... in which he (Williamson) had the controlling interest as he had in Freehold. He spoke of his plans to do an underwriting of West Growth through the facilities of Malone Lynch; of putting the position he held in Freehold into West Growth when Freehold was at a higher price — something in the neighbourhood of $1.00, and that the onus would be on Vance to see that the stock in Freehold reached a higher price through the facilities of Malone Lynch."

The judge didn't further describe the mechanics of the proposed West Growth deal, which never materialized. But his finding that there was an agreement with Williamson to cause the price of Freehold stock to rise through Vance's running the "box" was a central part of his verdict.

In the course of raising the price, the judge found that Vance, with the agreement of Malone and Edgecombe, bought large blocks of Freehold stock with no money or client to pay for it, and tried to get people to hold Freehold stock at "prices" below the "market" — or with a buy-back agreement for a higher price — to keep the stock off the market. The judge also found there was an effort to keep Freehold stock off the Malone Lynch house account books to fool the Toronto Stock Exchange.

The judge said Vance discussed Williamson's proposal with Malone and Lynch, and "it was agreed that it (the 160,000-share acquisition) could be effected with money from certain of their clients and, more particularly, from Alex Fisher and Edward Millner." Millner didn't know it, the judge said, but his personal account was to be the "box." Wealthy, but naive in the stock market, Millner made a lot of money through the sale of a refrigeration business, the judge said. "Millner was very well off financially. He was a very close friend of Vance's father and had started trading through Vance at Malone Lynch in January, 1971, and soon became his largest client. Vance was now his financial adviser and Millner reposed great confidence in him. Because of his inexperience in trading on the market Millner accepted the advice Vance gave him and in his buys and sells in speculative stocks by Vance he was fairly successful. Vance was confident that he could persuade Millner to take a substantial position in the stock and by means of it and through this account maintain an after market in the stock of Freehold..."

Fisher's role was quite different, according to the judge's findings. He said: "Likewise, from Vance, Malone and E.T. Lynch, one Samuel Sugarman, a salesman with Malone Lynch, learned of the proposed secondary distribution by the firm of Freehold, that they liked the security and thought that the stock had a very good chance and because of this Sugarman committed Alex Fisher, a client of his, to take up $40,000 worth of the new security.

"Fisher was well known to Vance and in the financial circles of Toronto as 'gold plate,' that is, good for any amount, and as a shrewd operator in the market, and for this reason it was understood that of the shares he was expected to pick up he was going to sell them immediately on the market at the rate of 1000 to 1500 shares a day.

"On the other hand, Millner, on the advice of (and) sole decision of Vance, would be expected to hold onto his initial acquisition for a longer period of time because of Vance's expectations that the price of the stock would go up — marginally at first and substantially later."

The rest of the judgment is silent about the account of Fisher, who was not called as a witness.

Although the judge found that Terrence Malone conspired with Vance and Edgecombe to fraudulently raise the stock price, he also said Malone had another role. "Terrence Malone was also personally involved in transactions in Freehold through an account at the Toronto brokerage house of Tom and Barnt Ltd which was in the name of Daphne Malone, his wife....

"The account came very much alive on July 28, 1971, and from then to August 1971, all the transactions recorded were in securities of Freehold on a day to day basis and most of them were in warrants. None of them involved any buys. They were all sales of stocks and warrants that were delivered by Terrence Malone to the brokerage house with instructions from him to sell in the discretion of the salesman in a businesslike manner.

"The volume of sales and the prices were such that as of August 10 there was a credit balance in the account of $165,284.78. On August 12, when Malone Lynch were forced to close their doors to business, Tom and Barnt, on the instructions of Terrence Malone, delivered a cheque to him to the order of his wife for $150,000 leaving a credit balance in the account of $15,284.78.

"In brief, in the short period from July 28 to August 11 this account appeared to have made a profit from tradings in securities of Freehold of $165,284.78."

The judge said he found "that Terrence Malone was indeed selling shares and warrants of Freehold on a grand scale into the mass of buying power which he and Vance, acting in concert, had deliberately and purposely created for their personal gain and to this end Malone permitted Vance a free hand in the use he made of the facilities of Malone Lynch in trading of Freehold securities."

Edgecombe too made a substantial personal profit trading in Freehold securities in this short period of time, the judge found.

The greater part of the judgment deals with Vance's attempts — with the agreement of Malone and Edgecombe — to "find a home" for Freehold stock he was buying at successively higher prices, while waiting for Williamson and his US connections to "come in and take over."

Vance first turned to two stock salesmen at Mills Spence and Co., Michael Edgecombe and Roger St Germain. The judge said St Germain "was at one time a client of Edgecombe at Mills Spence and a personal friend as well. It was Edgecombe who later brought him into that firm as a registered representative in 1970 and thereafter they worked very closely together as salesmen in the brokerage business and as partners in personal tradings on the market.... St Germain and Edgecombe traded in securities as equal partners through Eridanus Holdings Ltd.... They traded jointly in Freehold in the

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Powell

Continued from page 1

that as far as what was said on the tapes that I want to hear what was said on the tapes and I want to hear it now. What is the position? Is the position that you can not produce the tapes here in this court?

— The position is that I have been told that the tapes are unavailable for production in this court....

— We have waited long enough. We will do this; we will reconvene at 2:00 tomorrow afternoon and at that time you are to have the tapes. If you do not have the tapes here then I am going to sign an order lifting the restriction on the bank account and also granting an order under Rule 41 returning the property to you (Merchant Diamond Group).

Which he did.

The US Court of Appeals ruled last November that he was wrong, reversed his order, and "remanded the matter to Judge Curtin for a determination as to what property may be returned to the appellee." But the property had already been returned. US investigators are now trying to determine where it is.

Judge Curtin ordered the return of the Buffalo material in June, the damage suit was filed in September, and the Appeal Court judgment was issued in November. In February Canadian Federal Court Judge Campbell Grant dismissed a motion by the four RCMP officers to strike out all or parts of the Merchant Diamond Group Inc. statement of claim. And last month, lawyer Harry Black of the Special Prosecutions Branch failed to block an adjournment of the Toronto criminal trial of the Merchant Diamond Group associates until next September.

The damage suit, filed by Toronto lawyers Irwin Singer and Martin Teplitsky, cites Judge Curtin's order returning the materials. The RCMP motion to strike out the statement of claim cites the US Appeal Court order reversing Curtin's decision. A statement of defence was filed last month by the four RCMP officers and by the Deputy Attorney General of Canada.

The application for the return of materials, and the Toronto damage suit, also allege the RCMP information supplied to the US inspector contained inaccuracies about the diamond sales. Judge Curtin said he agreed, and he wanted to hear the tapes. The US Court of Appeals said what Judge Curtin wanted was irrelevant. "It appears that the order below was based upon the failure of the government to produce certain tapes made by the RCMP," the Appeal Court said. "This would appear to be irrelevant, since the accuracy of RCMP's information is not at issue."

The Toronto criminal case is proceeding. Prosecutor Harry Black told County Court Judge Stanton Hogg last month it is important the trial of the three Merchant Diamond Group defendants proceed promptly. But he was not successful in opposing an adjournment until next September, which was granted because one of the accused is represented by David Humphrey, who is representing a defendant in the dredging trial. Black said it is unreasonable that any one of the 16 lawyers in that case could have any other case he is involved in postponed for six months. Black said Humphrey has told a client in another case he'd have to get another lawyer.

Black said the case has serious economic and legal implications. He said it involves a telephone sales solicitation involving gross sales of $5.3 million, and is an example of a "scheme that has proliferated here and elsewhere recently." It is important the scheme be exposed, Black said, but that cannot be done through wiretap evidence until that evidence is admissible in a court.

Judge Hogg said it is important to take into account the public interest in setting dates in some cases, and he said in the past he has criticized prosecutors for not dealing swiftly enough with charges involving sexual attacks on children. "It may well be that cases involving a great deal of money should get priority as well," he said, but he added it is not unreasonable in the circumstances to adjourn the diamonds case until September, on Humphrey's undertaking that if he is not ready, he will brief other counsel and the case will proceed then.

Powell acts for Gerald Doren, Humphrey for Eric Marks, and lawyer Ronald Hoffman acts for the third accused, Allan Lindzon. □

Freehold

Continued from page 6

Eridanus account by means of financing through the Toronto-Dominion bank, Queen and Spadina branch, and after acquiring a block of stock in this account they would split the acquisition and put their respective shares into their separate investment account."

St Germain did the banking while Edgecombe looked after the trading, the judge said.

Their heaviest involvement came after Millner was "flabbergasted, and understandably so," when he was told on July 30 that he owed $670,000 on his Malone Lynch account.

"Unable to meet this, Millner suggests to the bank manager that he call Vance about it.

"Vance turns to Edgecombe and St Germain. On August 4 and again on August 5, he prevailed upon them to buy 100,000 shares each time at $2.50 per share on his undertaking, with the knowledge and consent of Malone, that Malone Lynch would buy them back within a few days at $3.00 per share.

"These purchases by Edgecombe and St Germain in the total amount of $500,000 were financed through their bank against the delivery of the stock to the bank and on condition that the stock be delivered out, that is, sold in a relatively short period of time as evidenced by a sale confirmation to this effect to Malone Lynch.

"Malone Lynch did purport to purchase $125,000 of these shares at $3.00 per share on the Cavendish Investment account which was operated by Bonnycastle.

Richard Bonnycastle, who has since become a director of Torstar Corp., owner of the Toronto Star, with the sale to Torstar of his family's Harlequin book publishing business, was described this way in the judgment. "Bonnycastle is a business executive of Calgary and Winnipeg and is a person of some substantial financial means. He is the president of a family company called Cavendish Investing Ltd in which he is the major shareholder. In 1969 he traded in some Freehold on the advice of Malone and E.T. Lynch through E. T. Lynch and Co. In 1971 he maintained a number of trading accounts at the Malone Lynch firm — one in his personal name, one in the name of Cavendish Investing Ltd, and a third in the name of Goose Lake Cattle Company. He is said to have had a reputation among brokers of reneging on his purchases if the stock dropped in price between value date and payment date, or delivery of the stock to the extent, at least, that the credit manager at Malone Lynch posted a directive prohibiting margin selling to Bonnycastle."

Judge Vannini concluded his consideration of Bonnycastle's role as follows. "Mindful of Bonnycastle's reputation for reneging on buys when it suits him to do so, and that his trading on margin had been suspended, and of the delay in repudiating the two purported purchases, his evidence in the material aspects thereof, touching upon the main issue, stands uncontradicted and is sustained, in part, by the evidence of Vance and of King and, accordingly, I do find on the evidence before me that Bonnycastle did not in fact place or authorize either of these two particular purchases."

The judge went on: "Vance and Edgecombe learned at lunch on August 3 not to expect the heavy financing they sought from Bonnycastle and had committed him to and in desperation turn to Mark Stein. Mark Stein dealt with Roger St Germain as his sales representative on an account with Mills Spence."

Vance, Edgecombe and Malone met with Stein. "An agreement was reached," the judge said, "and evidenced to some extent in writing by Vance on a paper table napkin, Exhibit No. 2, which is said to be initialled by Vance, Stein and Edgecombe. Stein testified that by the agreement he was to put $10,000 in cash and get 20,000 warrants at 50¢, being at a substantially lower price than the then current market value as an inducement to him to go into the market and buy upwards of $200,000 worth of shares in Freehold.... Stein reflected upon the whole thing over the weekend and because of doubts that were engendered he sought his banker's advice on Monday morning, August 9, and as a result he commenced selling his holdings in Freehold that day through A. E. Ames and Co., and in the next two or three days the market price of the shares dropped dramatically."

Another element of the market manipulation, the judge found, was this. Vance suspected a Vancouver broker was "backdooring" stock — selling it secretly — while Vance was buying it. So he and Malone agreed to acquire the 116,000 Freehold shares the broker held, in order to have a surer control of the market. "Neither Malone Lynch, nor Malone or Vance and none of their clients," the judge said, "were in a position to pay for the stock or buy it. Malone and Vance discussed the situtation and agreed that Vance would find the customers for that particular block of stock on a short-term basis only. It was expected that Malone could exert enough influence on these customers to hold onto the shares for a short time at least. Malone and Vance did not want to sell this block of shares on the market for that would have precipitated a sharp drop in the market price of the stock amounting to a crash in the market... This being the situation, the entire block was placed by Malone Lynch in the account of Gino Del Zotto under the date of July 22."

Then Donald King, the senior partner in the Toronto brokerage firm of Grant Johnston, agreed to take part of that stock for about 90¢ per share, and Del Zotto took the rest at the same price, when the stock was trading, the judge said, between $1.22 and $1.38 per share. The judge found Vance and Malone deceived both Del Zotto and King. □

Ominous Clothing Deal

On January 20 last year, The Hip Pocket Ltd chain of retail clothing stores was taken over by the bank, declared bankrupt, sold, re-opened, and the previous owner hired back as general manager, all in one day. The $225,000 cash on closing was paid to the CIBC under its $250,000 debenture, and $630,000 of unsecured claimants, including suppliers, got nothing. The sale price, according to bankruptcy records, represented 25% of the stock's full retail value.

President and major shareholder of The Hip Pocket Ltd, and general manager of the new operation, was Harold Arviv, also operator of the "Arviv" clothing store at 15 Bloor West. Purchaser was a numbered company apparently controlled by Bente Mamman, of 16 Coreydale Court. Acting in the dual capacity of receiver-manager under the bank's debenture and trustee in the bankruptcy was Bruce Buckley of Thorne Riddell and Co. Buckley represented the vendor in his capacity as receiver-manager for the bank. Another $25,000 was to be paid for the store leases.

In his capacity as trustee in the bankruptcy, Buckley submitted a report in which he said The Hip Pocket Ltd authorized him, seven days before the bankruptcy order, to examine its financial affairs and report directly to the CIBC. Then on the day before the bankruptcy order, Buckley said The Hip Pocket received the $250,000 offer from the numbered company. On the same day as the bankruptcy order, Buckley was appointed receiver-manager by the bank, which alleged default under its debenture, the bank accepted the $250,000 offer, and The Hip Pocket consented to Buckley's being named as trustee in the bankruptcy as well.

Then at the first creditors meeting on February 11, 1977, Buckley's lawyer said "Mr Buckley felt that there was a serious conflict of interest in his acting as receiver-manager as well as trustee in bankruptcy, and he therefore wished to resign as trustee of the estate, and asked that the creditors name a replacement trustee." The creditors named Jerry Friedman of Laventhol and Horwath.

There followed some litigation before the Bankruptcy Registrar which was very interesting to bankruptcy professionals, involving the store leases. The new trustee didn't "elect to retain the leased premises" under a bankruptcy-related section of the Landlord and Tenant Act. The assets, including the leases, were the bank's, under its debenture. But the bank couldn't deliver them to Mamman's company and collect its final $25,000 unless the bankruptcy trustee "elected to retain." Eventually the Bankruptcy Registrar ordered the trustee to elect to retain the leases.

Last month, Arviv and four other men were charged with conspiracy to extort $250,000 from Mamman, in an investigation police said began in December 1977. The four other men are Arviv's brother-in-law Michael Andrew Chesler of Orchardview Blvd, Satanar Singh of Orchardview Blvd, Irving Grad of Brookview Drive, and Francesco Lenti of Yorkdale Crescent. □

Tenants, anyone?

Michael Overs' May 1976 rent review application for 15-21 Glenfern Avenue, a 20-unit apartment building in the Beaches district of Toronto, recorded his February 1976 purchase price for the building as $500,000. He said he was suffering financial loss renting the building and requested rent increases between 20% and 59% for the units.

The tenants — not the rent review officer — noticed a discrepancy between the $500,000 figure and the figure on Overs' February Land Transfer Tax Affidavit. They brought the matter to the attention of the Ontario Ministry of Revenue.

In July 1976 Overs swore in another affidavit that the purchase price was indeed $500,000. He said the price included $300,000 in mortgages, with a deposit of $10,000. But he added there was also to be a transfer to the vendor (Robert Henry Wilson, also known as Peter Wilson, of Donlands Avenue) of two Pizza Pizza stores, but there was a dispute as to their value. "After additional fruitless negotiations on the matter of the number of stores and their value," Overs swore, "I unilaterally drew up a fifth mortgage for the sum of $195,000 on the property and registered it myself and mailed a copy to Peter Wilson."

In September 1976, the rent review officer, later upheld by the Rent Review Board, allowed substantially the increases that were asked for, and in doing so he allowed the owner to recover in rents the financing costs of 85% of the purchase price, which he determined to be $500,000. The 85% rule is a little-known rule of thumb used by rent review officers.

The vendor Wilson pleaded guilty last month in Provincial Court to wilfully evading payment of the Land Speculation Tax in that he falsely indicated in an application for Lien Clearance Certificate that no Speculation Tax was payable on the sale. It was the first prosecution ever for evading the Speculation Tax.

It was also an unusual indication that the Speculation Tax depends on the honour system. Provincial Court Judge Vincent McEwan was told the tax evasion was a particularly serious offence because enforcement of the tax depends on voluntary compliance, and the offence only came to light because of the tenants' involvement in the rent review application. Wilson was fined $12,500 and given one year to pay.

The purchaser Overs, for his part, is scheduled for a court appearance April 25. He has been charged with swearing a false Transfer Tax Affidavit, showing a $300,000 sale price.

Overs resold the building last February to Toronto Lakefront Properties Ltd. for $545,000. Even though the price of the building has gone up, a rent review application dated February 1978 claims the building is still losing money and again asks for approval of substantial rent increases.

This time the rent review officer is asked to allow the recovery in rents of 85% of $545,000, or $462,000, under the "guideline." □

Olan waits

County Court Judge Edward Houston set April 28 for sentencing of Samuel Olan, who pleaded guilty last September to two counts of forgery and two counts of uttering forged minutes and a lawyer's letter in connection with private Ontario company Plan Tec Ltd. The forged name on the Plan Tec letter is "S. Grant," representing now-disbarred lawyer Samuel Grant, who was one of the lawyers convicted in the G and S Discount Drug Marts-CIBC cheque-kiting fraud last December.

Judge Houston has set dates for sentencing Olan in October, November, December, and February. He is waiting to know the outcome of a Supreme Court of Canada appeal by the crown in another case involving Olan. That case, involving a "daylight loan" takeover of public Ontario company Langleys Ltd, was argued before the Supreme Court of Canada last January 30 and 31, but a decision was reserved. Olan's two coaccused are Americans, resident in Texas. One is a lawyer and the other was a principal in companies that acquired control of Langleys. Olan got a finders fee. The 1974 jury convictions were overturned by an Ontario Court of Appeal decision given by Judge John Arnup, and the crown appealed to the Supreme Court of Canada.

Arnup said in effect that the assets put into Langleys in exchange for its treasury and its blue-chip investment portfolio were not of so little worth as to be fraudulent. The crown argued for a somewhat broader view of what can constitute evidence of fraud. For example, the crown said the series of transactions resulting in the takeover was made with the "personal goal of acquiring Langleys," and not for bona fide corporate purposes.□