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Rohmer & Macaulay Testimony: Why was "New Town" Killed?

Private meetings were held between Ontario cabinet ministers and officials of Century City Developments Ltd, a subsidiary of Revenue Properties Co. Ltd between 1968 and the final death of the Century City project in 1973. And the lawyers who promoted these meetings on behalf of the company — Richard Rohmer and then Robert Macaulay — both had prior links the government in planning matters. They testified in a Federal Court of Canada trial of Century City's claim to additional compensation from the federal government following the 1973 expropriation of the lands for the Pickering Airport.

The first such meeting took place in 1968 before there had been any announcement of the Century City proposal, and before any land had been acquired. One minister who was there, Charles MacNaughton, testified he later told a company official he shared his feeling that there was a "sense of implied commitment" to the project arising out of the meeting. A few weeks after the meeting, the company began the 6000 acre land assembly, located in the southwest corner of Uxbridge Township, with as much speed and secrecy as possible, company officials told the judge. The proposal was originally for a "new town" or "satellite city" of 150,000 people. Uxbridge Township has a population of about 10,000.

After the project had suffered several reverses and been scaled down, Robert Macaulay, himself an Ontario cabinet minister in the 1950s, was retained by the company in 1972 and he too testified before Justice Campbell Grant at the trial. He said he had a series of meetings respectively with Darcy McKeough, Dalton Bales, and Premier William Davis about a scaled-down proposal in which Macaulay testified the "bargaining" went from an opening figure of 10,000 population to 7,000.

But soon after Macaulay's meetings, the lands were expropriated for the Pickering Airport, and the lands that were not expropriated were subjected to a provincial "freeze order" prohibiting development in the noise zone of the proposed airport. There has been no development on the lands.

The trial, with its unique revelations about the developer-government relationship, arises out of the developer's claim for further compensation from the federal government for the expropriation and the freeze order. Although the freeze order was a provincial measure, the plaintiff is attempting to link his problems to the federal airport scheme.

Expropriation law provides that if changes in land value are related to the project for which the land is taken, then those changes are not to be considered in arriving at compensation. The developer says it was the federal airport project — and not provincial moves into regional planning — that made its land non-developable. It therefore claims compensation based on what it says is the pre-airport value. The federal government, on the other hand, says it was the provincial government's regional planning initiatives, in particular the Toronto-Centered Region Plan, that took the land out of any development potential it might have had.

The trial began May 8, but the claim was settled late last month for $900,000 additional compensation for the lands expropriated, and $250,000 on account of costs. That brought the total paid for the expropriated lands to $4 million. The plaintiff had claimed $11 million, along with $25 million for injurious affection to the neighbouring lands.

Author and development lawyer Richard Rohmer testified that the basis for regional planning was set out in a 1966 document called "Design for Development", and Rohmer said he was a special consultant to Premier Robarts and Trade and Development Minister Stanley Randall in the preparation of that document. Rohmer was then counsel to Century City Developments from 1968 to 1971, when his place was taken by Robert Macaulay. For his part, Macaulay told the judge he helped Premier Frost write the province's planning legislation.

Rohmer and Macaulay testified in almost identical terms about the purpose of their meetings with cabinet ministers. Rohmer told Judge Grant the purpose of the 1968 meeting was "to see if they had any policies that would prevent this type of development." He said he had a "favorable reception." He couldn't ask for approval, Rohmer said, "but we had a firm assurance there was no government policy in existence that would prevent us from developing such an urban area." Planner John Bousfield, who was then with the partnership of Proctor Redfern Bousfield and Bacon, testified he went with Rohmer to the meeting, and he testified in similar terms about the result. He also said in cross-examination that they got authorization to deal with senior provincial staff in working out technical details of the proposal.

Interestingly, nobody at the meeting seemed to remember whether the name of the "client" — Century City / Revenue Properties — was disclosed by Rohmer or Bousfield at the meeting. R. B. Robinson of the law firm of Weir and Foulds, who represented the federal government, told one witness in cross-examination, "We have the impression it wasn't."

Macaulay described his meetings three years later in much the same way Rohmer described his. He said that after meeting with McKeough and then with Bales, "one of us suggested I should see the Premier (William Davis) to see whether there was any government policy that would preclude us from going on" with the scaled-down 1971 proposal.

Herbert Green, who was in effect project manager for the Century City project, testified that after the 1968 meeting, which he himself did not attend, the decision was taken to purchase rather than option the lands, "because the company had confidence in the approval in principle that had been obtained at the meeting."

As for the 1971 meeting, Macaulay testified it was agreed that he or a planner working with him would "get back to the Premier" with more specifics as to numbers, locations, units, staging, and so on. He had decided to "go to the government," Macaulay testified, because "this had a rather elevated profile. . . . I wanted to be sure it was salable at the provincial level. After a meeting with McKeough and "a meeting or so" with Bales, Macaulay went to see Davis. No commitment was made, Macaulay said, but as a result he suggested the company think of a population level around 7000.

The company hired a new planner who took a rough plan and met with Davis and McKeough. The planner, Douglas Reddington, testified he left the plan with them, with the idea it would go down to the staff level, and "I think McKeough indicated there were people we were to contact" to follow up.

Reddington's meeting was February 22, 1972, just a week before the joint federal-provincial announcement of the Pickering Airport.

Stanley Randall also testified. With respect to the 1968 meeting, which he attended, he said it was general practice when a minister had a project that would involve other ministries to convene such "ad hoc meetings" — as opposed to official cabinet meetings — to see if other ministers had any objections to the project in question. "There didn't seem to be any objections I could discern from the ministers," Randall told Judge Grant. "Certainly, I had no objections," Randall said, adding he was interested in acquiring building lots for the Ontario Housing Corporation's Home Ownership Made Easy program. Randall wasn't asked to spell out what type of "projects" these ad hoc meetings were for, but he did say that at such meetings he probably received "more objections than anybody in cabinet" arising out of the location of proposed OHC subsidized housing projects.

Testimony has been full of surprises. Green of Century City testified about a meeting of land developers in the boardroom of the Consumers Gas Company, at which he said they exchanged information about "the land they controlled or might control" east of Toronto. Green said the meeting arose this way. In early summer of 1969 a Consumers Gas representative called him and asked to see him about sewage disposal in the area. Green said he was told an unnamed (by Green at least) Ontario government official had called Okah Jones suggesting Consumers Gas, rather than the province, think of building a sewage disposal plant on Lake Ontario to serve the region east of Toronto. The message was, Green said, that it was difficult for the province to find funds to build it at that time, and that private financing would enable investors to write off plant depreciation against their income. The write-off couldn't be achieved through general provincial debt, and it could result in less expensive financing, according to the proposal. The boardroom meeting followed, and the consulting firm of Proctor and Redfern drew up a brief

Continued on page 7

"Unfortunate Consequences": Report on GCA Capital Corp

An English entity called Crown Agents for Overseas Governments and Administrations funded a Toronto "merchant banking" company operated by Toronto lawyer Jack A. Gilbert, but following an inquiry by the Crown Agents into an expensive Florida land deal, the company, GCA Capital Corporation, was put in liquidation, and its assets found to be valueless. The account of the Toronto contribution to the extensive world-wide losses of the Crown Agents was disclosed in the report of a Committee of Inquiry set up in 1975 by the British Ministry of Overseas Development, whose report was published last December.

The Crown Agents also suffered heavy losses in a Bahamian entity active in Canada called E. D. Sassoon Bank and Trust International Ltd, one of whose officers had first introduced Gilbert to the Crown Agents.

The Fay Committee, named after its chairman, was set up to inquire "into the circumstances which led to the Crown Agents requesting financial assistance from the Government in 1974."

A further judicial inquiry into the Crown Agents affair is scheduled to begin hearings in September.

The report says one original problem was that even cabinet ministers were unsure of the legal status of the Crown Agents. They originally acted as agents for colonial governments in the provision of supplies and services, including acting as their agents for borrowing. "With the dissolution of the colonial Empire," the Fay Report says, "the Crown Agents' status was inevitably changed," but with a staff of over 1000, the agency fought to survive.

They rapidly became involved in what the Report calls "own-account" financing, as opposed to their traditional agency work, which was beginning to show losses. The Report describes various speculative property and securities investments and loans in England and around the world, and the substantial losses that ensued.

The Report concludes: "These unfortunate results flow from (i) and unwise decision to operate as financiers on own-account, (ii) the folly and euphoria with which some of the operations were conducted, compounded by lack of expertise and neglect of accounting systems and professional safeguard controls, and (iii) the failure of the government to inform itself of the developments, to appreciate the risks and grasp the need for quick action."

The Crown Agents' involvement with Toronto lawyer Jack Gilbert came about through an obscure banking company whose parent firm was called, in 1967, E. D. Sassoon Banking Co. Ltd, but which was later split off from the parent, and is best known to the Canadian junior securities industry in the early 1970s as E. D. Sassoon Bank and Trust International Ltd.

The original contact leading up to the first Sassoon involvement was a Crown Agents' senior executive officer named Bernard Wheatley. The Fay Report says Wheatley died in 1977 while awaiting trial on corruption charges arising out of loans to a company unconnected with the Sassoon group. In 1967, as a result of a series of introductions, a Crown Agents' emanation called Four Millbank Investments Ltd bought a 40% interest in the bank, while another 40% was bought by Continental Illinois Bank and Trust Co. of Chicago. The involvement of a "leading American bank" overcame the objections of the Bank of England to the investment, the Fay Report says.

The venture was apparently not very active up until 1972. Here's how the Fay Report describes what happened then.

"This merchant bank, one of the Crown Agents' first ventures into own-account ownership, had proved a disappointment. Its business was small and its profits unsatisfactory. Sir Stephen Luke (head of Crown Agents) who remained on the board until 1972, described the company as 'not quite first class' and attributed its stagnation partly to the unwillingness of the Crown Agents' staff to co-operate with them. . . . At all events, in 1972 Continental Illinois left, and a new partner came in, in the shape of an old established firm of East India merchants and merchant bankers named Wallace Brothers. . . .

"Sassoons had a subsidiary, E. D. Sassoon Banking International Ltd, based in the Bahamas. This was split off from its parent company when Wallace Brothers came in, and became jointly owned by the Crown Agents and Wallace Brothers. Continental Illinois did not wish to continue in this bank; they had no wish, so their executive vice-president, Mr Alfred Miossi told us, to assist in tax-haven operations for US citizens and were 'not terribly comfortable' with the bank's operations — as, he said, the Crown Agents well knew. . . .

"We have had evidence," the Fay Committee Report goes on, "from Mr D. H. Mansfield, its managing director since 1972, but we know little about its activities owing to the strict Bahamian laws on banking confidentiality. The Bahamas have of course been well known as a 'tax haven'. Mr Mansfield has however indicated that, partly owing to the UK dismantling the sterling area in 1972 there was then what he called 'a marked absence of good lending situations.' This led directly to the Crown Agents becoming involved with GCA Capital Corporation, with unfortunate consequences.

"(GCA) was incorporated in Ontario in 1973 and was intended to form the Canadian link in the Crown Agents' chain of merchant banks around the world. Because of Canadian banking law it could not function as a merchant bank as that term is understood in London, but it could deploy funds to take advantage of local situations. The seeds of this idea were sown during a visit by Mr Challis (head of the Crown Agents' Finance Directorate) to Mr Mansfield, of Sassoons Bahamas, in Nassau in January 1973.

"Mr Mansfield says that Mr Challis suggested such a merchant bank; Mr Challis says the suggestion came from Mr Mansfield. The latter then went to Toronto to make inquiries, and produced Mr Jack Gilbert, a Toronto lawyer, as a likely promoter. Mr Gilbert formulated a scheme, which was supported by Mr Mansfield, and followed by a visit by Mr Challis to Toronto to see Mr Gilbert. Mr Mansfield had apparently known and had dealings with Mr Gilbert for many years, and Mr Challis was favourably impressed.

"In consequence a proposal to form this finance house was put before the Four Millbank board on 3 May 1973 and approved in principle.

"Mr Gilbert then came to London and met the board . . . when the project was accepted. Four Millbank took up 540,000 preference shares and 60,000 common shares. The other subscribers were Mr Gilbert 102,000 common shares, Sassoons Bahamas 60,000 preference and 20,000 common shares, and the same 'for a client' 18,000 common shares. The shares were of $1.00 issued at par and paid for in cash. But $800,000 was insufficient capital for such a money-lending business, and loan capital was needed. Not surprisingly this came from the Crown Agents. Four Millbank guaranteed a bank facility of $1.6 million and themselves opened a $2 million line of credit. . . .

"There are one or two unsatisfactory features about the inception of the GCA Capital Corporation," the Fay Report continues. The first was that the Crown Agents board was apparently not told about the Crown Agents' loan financing.

"There seems to have been a lack of liaison between London and Nassau, because another curious feature is that no one at the Crown Agents knew that the amount Mr Gilbert subscribed for his shares was lent to him by Sassoons Bahamas, nor that 'the client' for whom Sassoons Bahamas also subscribed was likewise Mr Gilbert, using money borrowed from Sassoons Bahamas. These matters emerged later when, as will be narrated in due course, the company collapsed and the Crown Agents discovered that through Four Millbank on the one hand and Sassoons Bahamas on the other, they were carrying the entire loss.

"A further matter is that Mr Gilbert had some unsatisfactory associations in the past; this too was unknown to Crown Agents' officials, except Mr Challis, who knew that Mr Gilbert's father-in-law 'had problems' as he put it; but he had been told, he said, by senior managers of two leading Canadian banks that they held him in extremely high regard, and he felt these sentiments and Mr Mansfield's recommendation worthy of acceptance. There seems to have been an undue reliance upon Mr Mansfield in this affair. And after the corporation commenced business no attempt was made by the Crown Agents to monitor its performance: its affairs were conducted by Mr Gilbert without any supervision, as Mr Mansfield agreed, from the directors, or, he added, the shareholders."

The Report then carries on with the description of other "unfortunate" Crown Agents undertakings, returning to GCA only to describe its termination in 1974.

Toronto records show GCA was soon buying stock in junior Ontario securities. Some of them were things called Crowduck Bay Mines Ltd, Moffat Lake Explorations Ltd, Warwick Universal Ltd, and Unicol Collection Agencies Ltd.

GCA also made substantial investments by way of debt financing in Midair Overseas Ltd, and Life Investors International Ltd.

E. D. Sassoon Bank and Trust International Ltd participated directly along with GCA in the Life Investors International investment, and the Sassoon bank was also taking positions in Ontario junior mining promotions and other situations.

The Fay Committee Report has this to say about the Life Investors deal.

"These companies (Sassoons Bahamas and GCA) came to grief over a Florida land deal. A company called Life Investors had acquired an option to purchase a lease of land in Florida, using money borrowed from GCA and also from Sassoons Bahamas. Periodical payments were needed to keep open the option, represented to be valuable, and GCA and Sassoons

Continued on page 6

What Makes a Deal Fraudulent? Judge Arnup was Wrong Again

"Courts, for good reason, have been loath to attempt anything in the nature of an exhaustive definition of 'defraud', but one may safely say, upon the authorities, that two elements are essential: 'dishonesty', and 'deprivation'. To succeed, the crown must establish dishonest deprivation.... It is not essential that there be actual economic loss as the outcome of the fraud."

So said the Supreme Court of Canada in a unanimous decision ordering a new trial of fraud charges arising out of a 1971 company takeover. Samuel Olan of Toronto, and William Hudson and Thomas Hartnett of Texas were convicted by a Supreme Court of Ontario jury in 1974, but their conviction was overturned by the Ontario Court of Appeal in a judgment by Justice John Arnup in 1975. The crown's appeal to the Supreme Court of Canada was heard last January and the decision was released last month.

The charge was that the three men defrauded the company, Langley's Ltd, of money in its treasury which they contrived to use, in a round-about way, to acquire the control block of the company's shares. It wasn't the first or the last use of that particular takeover technique, and the related criminal law issues have been debated from some time.

The Supreme Court of Canada decision has significantly broadened the scope of "fraud" from what was implied in the Arnup decision in the Ontario Appeal Court. Or, to put it another way, the Supreme Court found Arnup's decision rested on an unduly narrow concept of "fraud".

It was the second Supreme Court of Canada reversal of an Arnup decision in a leading commercial crime case in recent months. Arnup had ordered the acquittal of Toronto promoter Norton Cooper on a charge of unlawfully conferring a benefit on a government official with respect to government dealings, after Cooper had been convicted in a jury trial. The Supreme Court of Canada restored the conviction, and in doing so it limited the applicability of something called "the rule in Hodge's case," which it said has been "slavishly" followed for too long. The Supreme Court said it was sufficient to prove Cooper intended to confer the benefits "with respect to" his dealings with the government "beyond a reasonable doubt," without applying, as Arnup had done, the even stricter "Hodge's case" rule that the evidence had to be "inconsistent with any other rational explanation." Cooper's defence had been that he and the government official had a common interest in horses.

(Hodge's case was tried in England in 1838, and in it the Judge warned the jury they shouldn't identify the accused man as the man who had committed the crime — since the identification was based entirely on circumstantial evidence — unless that circumstantial evidence was inconsistent with any other rational explanation. Arnup applied the rule to the question whether Cooper's benefit was "with respect to" his government dealings with the official. The Supreme Court of Canada said the rule had no applicability to the Cooper case.)

The latest case involves the 1971 takeover of the control block of public company Langley's Ltd, using the treasury of Langley's to help pay for it. A similar case in Manitoba involving Brandon Packers Ltd led to a 1963 Supreme Court of Canada decision called *Cox and Paton*. But the Manitoba case still left some areas of the law of fraud undecided.

The facts were similar in the two cases. In each case, money from the treasury of the company to be taken over found its way through two levels of companies and was then paid to the vendor of the control block. Brandon Packers paid cash for shares of a shell company called Fropak, and Fropak paid out the cash and took back unsecured promissory notes from two personal holding corporations controlled by the accused. Then those two holding corporations paid the money for the control block of Brandon Packers shares. So Brandon Packers had acquired shares of Fropak, whose only asset was its unsecured notes from the personal holding corporations. And in return it had given up cash which was ultimately used to buy the control block.

The Langley's facts were much more complicated. But as the Supreme Court decision outlines it, $790,000 of Langley's money was "used to purchase shares" in a company set up by the accused called Beauport Financial Ltd, and Beauport Financial corresponds to Fropak in the earlier case. Then the money was paid out as a demand loan to Beauport Holdings Ltd, corresponding to the two personal holding corporations in the earlier case. And that money, the court said, enabled Beauport Holdings Ltd to acquire the control block of Langley's Ltd. The actual transactions were so numerous and so complicated that a reading of the Supreme Court of Canada decision alone doesn't completely show how this outline is arrived at, but in any case that is what happened in essence, the court found.

The court dealt with two issues, one of which it said was settled in the *Cox and Paton* case, and one of which was not. The deceit/dishonesty issue was settled, the court said, while the economic loss/deprivation issue required elaboration.

On the first issue, the decision by Judge Dickson reads as follows. "In *Cox and Paton* the guilt of the accused rested essentially on the conclusion that the investment of $200,000 in the shares of Fropak was not a legitimate bona fide investment for Brandon Packers. It is apparent from (the earlier judgment) that proof of deceit is not essential to support a conviction.... Where it is alleged that a corporation has been defrauded by its directors, deception of the corporation is not an essential element of the offence. The words "other fraudulent means" in s. 338(1) (of the Criminal Code) include means which are not in the nature of a falsehood or a deceit; they encompass all other means which can properly be stigmatized as dishonest.... Using the assets of the corporation for personal purposes rather than bona fide for the benefit of the corporation can constitute dishonesty in a case of alleged fraud by directors of a corporation. This proposition finds full support in *Cox and Paton*."

In respect to the Langley's case, the court said, this issue is "whether the $790,000 of Langley's assets used to purchase shares in Beauport Financial were expended in furtherance of the bona fide business interests of Langley's, or expended in advancing the personal interests of the accused."

By expressing the issue this way, the court accepted the crown's submission that there is a significant difference between the individual transactions each taken separately, and the series of transactions in its entirety. While there may have been no actual falsehood or deceit in any single transaction, the deal as a whole was dishonest, the crown contended. The court agreed that evidence of such "dishonesty" could constitute evidence of fraud.

The Arnup decision had said there was no evidence of fraud to go to the jury.

There was a second type of dishonesty alleged by the crown, but the court didn't deal with it. In its application for leave to appeal, the crown said, "It is submitted that the respondents concealed their own intention to utilize Langley's assets for personal purposes in a deliberately obfuscatory web of intercorporate transfers amongst the companies they controlled.... Although the individual steps in these transactions may have been accurately described in the separate and distinct records of the companies involved, at no time could anyone without access to the bank records and the books of all the separate companies have discovered the true nature and import of the transactions.... This concealment would operate to deceive the corporation's creditors, its minority shareholders, and other interested outsiders."

The Supreme Court of Canada decision has nothing to say on the issue of concealment.

The second element of fraud, "loss" or "deprivation", was dealt with in this way. "The element of deprivation is satisfied on proof of detriment, prejudice or risk of prejudice to the economic interests of the victim. It is not essential that there be actual economic loss as the outcome of fraud." So the second part of the issue as the court saw it was "whether Langley's suffered deprivation, in the sense described above, as a result of this action.... Did this investment (in the shares of Beauport Financial) cause detriment, prejudice, or risk of prejudice to Langley's?"

The court found there was evidence to go to the jury that it did indeed.

"The principal asset, indeed almost the only asset, of Beauport Financial was the indebtedness to it of Beauport Holdings," the court said. This corresponds to the indebtedness of the two personal holding corporations to Fropak in the earlier case. "Therefore, the worth of the investment by Langley's in Beauport Financial is determined by the ability of the ultimate recipient of the funds, Beauport Holdings, to repay the moneys loaned. It should be noted that this loan was by way of unsecured demand notes. The issue thus resolves itself into an examination of the ability of Beauport Holdings to repay on demand the loan of $790,000 made to it by Beauport Financial."

Judge Arnup in the Ontario Court of Appeal had said this: "Undoubtedly the investment, indirect as it was, in Beauport Holdings, was much more speculative than the shares sold out of the investment portfolio of Langley's, but in no way can it be said on the evidence that the assets of Beauport Holdings were worthless or even of negligible value. Its assets were of substantial value. How substantial is a matter of conjecture; to determine it accurately would require an exhaustive examination and evalua-

Continued on page 6

Rent Review Enigma: Unaccountable 'Financial Losses'

Sometime in 1975, Ontario's landlord industry began beating the drum for the inevitability of about $100-per-month rent increases. Their position was this. Economic rents for new construction are about $100 above comparable existing rents, they claimed, and new construction will not occur until existing rents are high enough to make the new rents competitive. They cited higher production costs for new housing.

Savvy sorts who are close to the industry know enough to take those cost figures with a grain of salt. For example, McLeod Young Weir vice-president David Sullivan explained their idea of "cost" this way in a paper to the Canadian Tax Foundation 1977 conference on real estate. "Cost and value are independent concepts. Value generally is based on income generation. Cost is more of a subjective concept as indicated by the fact that cost figures submitted to a permanent lender do not always accord with cost figures presented to the interim lender, and both usually differ with (read: from) the figures used by the developer" (that is, in his own books).

But after some lobbying, the industry recently succeeded in getting its position endorsed in the Ontario government Green Paper on "continuing tenant protection," the working paper on rent review. The paper said: "If new buildings can only generate revenues that fall far short of costs in the initial years of full operation, an intolerable strain is placed on the financial resources of the investor. Under such conditions, new rental building will not occur." And the green paper, apparently adopting the industry's own figures, agreed that is the situation that now exists.

The green paper says the rent review program is based on cost pass-through. "The principle that rents could be increased only to the extent that costs have risen (the cost pass-through principle) is the core of the current Rent Review program," the paper says. And so it is — in theory. The cost pass-through principle "means no narrowing in the gap between the costs of new supply and the generally prevailing level of rents," the paper says. Therefore, it concludes, a relaxation of the program is in order. The "narrowing of the gap' — more plainly, the raising of average rents by about $100 a month — has become, through the green paper, a major public objective of the Ontario government, as well as of the industry.

In fact, that objective appears to be realizable under the present administration of the rent review program, through a procedure the government says is used only in the case of "exceptions". The green paper describes it this way. "An exception to the cost pass-through principle was made in the case of financial loss. It was recognized that it would be both unfair and undesirable to lock a landlord into a loss situation with no mechanism for relief. Failure to provide such relief would lead to rapid deterioration and perhaps abandonment of existing rental stock.

The information policy of the rent review program is furtive at best, but program statistics show that these "exceptions" accounted for more than half of the dollar-increases authorized by rent review in 1977, and tenant representatives say the proportion has become even higher in recent months.

What was originally, or theoretically, to be an escape mechanism where rents were below market has apparently become a device for processing the kind of huge increases the industry has been lobbying for since 1975.

Stripped of its technicalities, the "financial loss" provision of the rent review program enables a landlord to include his mortgage principle repayments along with mortgage interest and all operating costs, from which total he subtracts his gross rental income in order to arrive at his "financial loss". The allowance of mortgage principal repayments as an expense was a novelty not to be found in any other sphere of accounting or taxation, but the government maintained the financial loss calculation was only to be used in cases where otherwise there would be "undue hardship".

Senior program officials knew that there would be a tide of new mortgage financing that would be advanced by landlords in order to come within the "financial loss" category. The rent review officers' Manual, prepared and distributed in early 1976, shortly after the program began, tried to set out guidelines. "Financing up to remove equity from a building," the Manual said, was not to be allowed either as a pass-through cost, or as mortgage financing that could be included in the calculation of financial loss. Refinancing with increased principal was only to be considered "in the light of the deployment of any additional funds generated." The Manual continued: "The overall principle is that rents should not vary by reason of changes in the debt-equity ratio. In cases where landlords have financed up and not placed the proceeds into the building, (1) such financing is seldom a necessary and unavoidable expense, (2) the tenants do not derive any increases in services, (3) where market rents are already charged, the return to capital is already at a suitable level, and (4) the landlord will be earning a rate of return elsewhere on the equity he has withdrawn and these earnings can be applied against the debt payment."

So the Manual was clearly against the existing owner "financing up" without any investment in the building.

But where sales of rental buildings were concerned, the position was not nearly so clear. The Manual said this: "The interest payments and principal repayments resulting from the refinancing of a building or project pursuant to an agreement of purchase and sale where vendor and purchaser are dealing at arms length will usually be considered as an expense *only* for the purpose of determining whether the landlord has sustained, or may sustain, a financial loss." In other words, the step-up in financing charges to the new owner from those of the old owner cannot simply be "passed through" as an increased cost leading to increased rents, but the new owner can use his new financing charges, principal and interest, to show he is suffering a financial loss with his new acquisition.

The Manual elaborates: "Financing up to remove equity from a building or project will not be permitted as a pass-through cost. In addition, where market rents are already prevailing at time of sale, increased financing should not lead to increased rents as the existing rents already provide an adequate return of capital. Allowing such increased financing for establishing cases of financial loss, however, is to avoid undue hardship in cases where market rents were not charged previous to the time of sale for whatever reason."

And so it is that at the program's beginning the expression "financial loss", at least in theory, was to apply to market sales of rental buildings at market prices, but where the rents in existence were below the market for whatever reason. Program director William Robbins told me this has in fact been the major type of financial loss application, and he said it is generally the result of sale by a long-time owner who has not bothered to raise rents to reflect market conditions.

The statistics tell a different story. Moreover, the "financial loss" statistics for 1976 seem to come in two versions, one of which — apparently the later one — is closer to the official version of financial loss than the other version.

I asked Robbins for the statistics the program has released, and he supplied me with a set of tables entitled "Statistical Supplement from the Annual Reports of 1976 and 1977." When I then asked for the Annual Reports themselves, a program official told me the rent review program was not authorized to release them, and he thought the reason was because they had been tabled in the Legislature by the Minister. He seemed to agree with me that didn't make any sense, but he said I could get them through the office of the Minister, Larry Grossman. Grossman's special assistant, John Gustavson, said he could supply me with the 1977 report, and suggested I try the Legislative Library for the 1976 report, because he didn't have a copy. I resisted that idea, and the situation was resolved in an amicable, if somewhat goofy, fashion. Gustavson had the rent review program send a copy of the report to him by courier, and he then provided it to me.

The statistical tables in these reports, which are supposed to be the same tables as in the "Statistical Summary", show the dollar amount of rent requested by the landlord (one average figure for each city), the average percentage increase granted, and the average dollar increase granted. There is a table based on "a selection" of rent review hearings including all types of applications, and one based on financial loss applications. The format is designed to show how much the program "saved" tenants. Newspaper readers will remember periodic announcements of lump sums that tenants in particular areas had been saved by the rent review program. The tables don't show what the initial rents were — the so-called "base rent", which is the amount of rent before the landlord's application.

But by combining the percentage increase and the dollar rent granted, it is possible to work back to the base rent. If the program worked the way Robbins says it did, one would expect to find, in the table for hearings involving financial loss, that the base rents were significantly lower than the base rents in non-financial loss situations.

But according to the 1976 Annual Report — the one that was so difficult to obtain — there was less than a dollar difference between the average base rents in the "financial loss" category and the other cases, and as a result of the rent review awards, "financial loss" rents came out $7.50 higher than the other rents. So the financial loss award were greater than the non-financial loss awards, but not because the base rents in those cases were lower. From the point of view of the program's operation, the financial loss provisions simply triggered higher

Continued on page 5

Rent review *Continued*

increases. Or so the 1976 Annual Report statistics indicate.

The Statistical Summary released in April 1978 has one curious difference in the financial loss table. The "dollar rent requested" column is identical, as is the "percent increase granted" column. But all the figures in the "dollar rent granted" column are lower. Naturally, only if the base rents were lower, could the same percentage increase yield lower results. So when you do the calculations, the April 1978 version of the 1976 figures appears to indicate that the average base rent in financial loss applications was $2.50 below the average base rent in other cases. (The financial loss increases still yield rents about $8.00 higher than the other increases.) It doesn't lend much credence — but at least more than the 1976 version of the figures — to the claim that financial loss awards occurred when rents were below market.

Officials say the 1978 version is the correct one, and they don't know how any other set of figures could have been produced.

If below-market rents were not the cause of "financial loss", what was? The Manual offers a clue. Having said the financial loss system is only to alleviate undue hardship, the Manual continues: "On the other hand, there may be cases where properties are 100% financed and being held for either appreciation of land values or future development, in which instances, allowing all of such increased financing may not be warranted. As a general rule, the owner must have reasonable equity in a property before the rent review officer can consider allowing full financing payments in determining an operating loss. The Industry consider that a reasonable equity would be 15% of the cost of the project, with a resulting 85% financing. In addition the financing should be at arms length at reasonable rates with a reasonable amortization period. . . . When the rent review officer is not certain that a particular complicated arrangement is acceptable in determining an operating loss, he should contact the rent review program Operational Support Branch. . . ."

It appears that the major factor contributing to the larger "financial loss" rent increases has been new financing of recent purchases to the extent of 85% of the reported cost of the transaction. Such applications have become a routine way of getting apartment rent increases greater than what could be justified by cost pass-through. Normally in these cases the rent review officer will authorize increases of a level that will phase in the loss-related increase over a period of three years.

There are two puzzling aspects. One is why landlords are buying buildings that will show losses for three years. The other puzzling aspect is that the large vendor take-back mortgages on these sales contain no personal covenant of repayment by the new owner, so if he defaults, the vendor simply gets his property back. Normally, the riskier the investment, the more likely the vendor-mortgagee will insist on the buyer's personal covenant. In these situations, there will be an apparent loss for three years, and yet the mortgage is non-recourse.

Here's an example of how the system is apparently working now.

A major Toronto landlord bought a 102-unit apartment building at 206 St George Street in midtown Toronto last September for $1,575,000, with $1,475,000 in mortgages. The third mortgage is in trust to the purchaser's own lawyer for $300,000 at 10% with a 5-year amortization. The company told rent review earlier this year its total rents were $241,000, its operating costs for the projected year $243,000, and financing costs on 85% of its cost of acquisition $185.000 per year.

Mortgages of $1,175,000 back to the vendor contain no personal guarantees.

The company also claimed something called "projected capital expense write-off for 1978 — $24,070" indicating it planned about $220,000 in capital expenses in 1978 of which it would claim about 10% depreciation, in accordance with rent review practices. All in all, the company claimed a total projected loss for the year on their new acquisition of $219,000, for an indicated rent increase of 91% over existing average rents of $207.

The rent review officer (RRO) made some adjustments, reclassified some figures, and arrived at a projected loss of $120,000, which would have meant a 48% rent increase, but he said part of the loss should be phased in over three years, and he allowed an immediate increase of 23%. The indicated 48% would yield almost exactly the $100 increase the green paper says separates economic rents of new units from existing rents.

The RRO's adjustments and reclassifications illustrate how the program works. Here are the highlights of the two sets of figures.

Financing according to the Landlord

Building cost: $1,575,000

Mortgages				Payments
1st	$1,125,000	8.5%	15 yrs	$101,264
2nd	50,000	9%	2 yrs	29,500
3rd	182,400	10%	5 yrs	54,720
85% of cost	1,357,400			185,484

(The landlord claimed financing on his third mortgage, which is for $300,000, only up to a total principal amount for all financing of 85% of the price.)

There is a natural tendency of landlords in the "financial loss" category to show mortgages with excessively short amortization periods. The shorter the period, the more principal is repayable each year, and according to the rent review scheme that means a higher "loss" and a greater allowable rent increase. The Manual alerted RROs to this issue. And in this case the periods were lengthened for rent review purposes by the RRO. But at the same time, the RRO showed the program is not without its own creativity. He transferred about $330,000 from maintenance and capital expenses and included it in an "adjusted building cost" on the basis that they are first time costs something like a component of the cost of acquisition. That meant the landlord could claim both interest and capital repayments on 85% of the added amount. In the net effect, the RRO reduced the allowed financial payments from the $185,484 asked for by the landlord to $172,000, as follows:

Financing according to the RRO

Building cost (adjusted): $1,932,447

Mortgages				Payments
1st & 2nd	$1,175,000	8.5%	25 years	$112,146
3rd	300,000	10%	15 years	38,242
Bank loan	169,580	10 3/8%	15 years	21,804
85% of adjusted cost	1,644,580			172,192

So the RRO, in allowing the writeoff of 85% of the "adjusted" building cost, actually allowed more than 100% of the actual cost of the building to be considered as financing costs written off as current expenses, both principal and interest, each year. And in order to do so, he added principal and interest payments on the landlord's bank financing as additional expenses contributing to the loss.

Loss of the transferred maintenance and capital expenses from their otherwise appointed places in the cost-revenue galaxy, together with minor cuts, resulted in the RRO's final version of net loss of $120,000, in place of the landlord's version of $219,000. The landlord has appealed the decision to the Rent Review Appeal Board.

An interesting provision in the $50,000 second mortgage of the landlord back to the vendor apparently wasn't considered by the RRO in his decision. The document says the vendor-mortgagee agrees that the $50,000 principal sum of the mortgage "shall be reduced automatically by an amount equal to any amounts which the mortgagor shall have paid in relation to any costs, fines, damages, rebates or any other moneys . . ." pursuant to court or government board orders. By bringing in that amount by way of a deflatable mortgage, the new owner is ensuring that under the rent review practice he will be allowed to deduct the payments in computing his "financial loss", while the same treatment would not necessarily be accorded to the "costs, fines, damages, rebates and other moneys" themselves.

The case of 206 St George Street is not an isolated one. For example, in the case of an apartment building at 740 Eglinton Avenue West, the RRO recently allowed the same 23% immediate increase, and in that case too it was only to be the first stage of a three-year phasing in of a larger increase on the basis of financial loss. The "loss" was similarly the result of financing costs on the 1977 purchase of the building, including a large non-recourse mortgage back to the vendor.

In the 740 Eglinton case, the vendors were themselves selling under the power of sale contained in a mortgage from the previous owner, an electrician by trade, who had defaulted under a similar financing scheme.

Tenant delegations before the Legislative Committee on rent review uniformly criticized the rent review program's allowance of mortgage principal repayments as an expense in financial loss applications, on the basis that the tenant is paying not only for the landlord's financing charges, but he is in effect paying him his equity position as well.

The landlords, on the other hand — and the Ontario government's Green Paper — criticize the program for not allowing for a return on equity. The Manual puts it a little differently. It says the cost pass-through approach does not "allow for any *explicit* consideration of a landlord's rate of return . . ." And program director William Robbins told the Legislative Committee if a landlord is in a break-even position, "*in theory* he stays there."

Accounting isn't the only dubious area of rent review. There's the question of whether the Act has been enforced at all.

Green Paper statistics show only 25% of rental units subject to the legislation were the subject of rent review hearings in 1976, and even less in 1977. It says this means the other 75% of the rental units had increases within the 8% guideline. It says: "In 1976, approximately 75% of the rental units regulated by the legislation were subject to legal rent increases of 8% or

Continued on page 6

Rent review

Continued from page 5

less. In 1977 the percentage was even higher."

What the Green Paper doesn't say — and what senior rent review officials didn't tell the Legislative Committee — is they recognize there are tens of thousands of illegal rent increases levied each year, and their policy is that the program will not prosecute landlords who charge illegal increases. Prosecution is left either to the Attorney General or to the tenants themselves.

Program director Robbins told me the program knows roughly how many illegal rent increases there are, from studying Ministry of Housing rental surveys, and he said, "we have an idea from looking at those studies" that 15% of all rent increases in Ontario are illegal. But he said even though they are illegal, they are done with the consent of the tenant. His reasoning: Otherwise, the tenant could complain to rent review.

In fact tenants complained in great numbers to the Legislative Committee about illegal rent increases and the inaction of the rent review program — not "voluntary" illegal increases either — but Robbins told me the deputations that appeared before the committee are "the exception and not the rule." He said they represent a small number in proportion to the total population, and an extreme position on rent review.

Asked about a North Bay landlord spokesman who told the committee landlords often charge illegal increases, Robbins said he didn't remember reading that in the Hansard report of the proceedings. The spokesman, E. Beck of the North Bay and District Landlord Association, said this: "As you said before, and as was said last week, the landlords are increasing their rents illegally. Sure, why shouldn't they? It doesn't help to go to the rent review board...."

A committee member asked Mr Beck to elaborate on these illegal rent raises, and Beck said: "I would say that rather than go to the rent review board, they do as they said last week. They put a little increase on the apartment the following month and, if the tenant doesn't like it, he moves. If he is smart, he goes to the rent review board. In many cases, I guess they're not too smart. They take it or they find another apartment."

Robbins said there are three prosecutions since 1976 that he knows of for illegal rent increases, all brought by parties other than the rent review program.

The program's non-prosecution policy also applies to false information supplied to the program. The program will not initiate any action arising out of information placed before it, the program's legal counsel, G. Gross told me. If someone else brings an action, the program will respond to a subpoena.

Here is an extract from a rent review officer's memo. Written in 1976, it apparently predates the official policy of non-prosecution. The RRO wrote to his superior: "I believe that the misinformation of the landlord's Form 5As had the effect of misleading this office in accepting applications as valid, that were in fact invalid. The landlord sought rent increases based on false information and completely in disregard of the provisions of the Landlord and Tenant Act and the RPRR Act....

"As you are aware, there was considerable agitation by the tenants at this hearing. The filing of misinformation by the landlord contributed in no small way to the unsatisfactory conclusion of the hearing.... I feel strongly that the landlord's certification of information that he must have known, or ought to have known, as fake or at least, incorrect, should subject him to penalties as provided by law. We are not dealing here with an unknowledgeable landlord, but with one with principals who are most aware of legislation and who have recourse to the best counsel. I would ask that you convey this information and my recommendations to the District Director for appropriate action as he may see fit."

Not only was no action taken, but the District Director wrote that "because the amount involved is quite substantial the landlord will likely apply for Judicial Review if we should throw out their application." So the landlord was requested to simply amend the application by substituting the correct information.

Finally, Gross told me it isn't fair to use information supplied to rent review for any other purpose, and for that reason any material photocopied and supplied to the other party is stamped "The photocopied material is to be used for the purpose of rent review only." He referred to the case that was reported in Bimonthly Reports No. 3, in which the tenants brought to the attention of the Succession Duty Branch a discrepancy between the sale price reported to rent review ($500,000), and that reported on the transfer tax affidavit registered on title ($300,000). In the result, the vendor was convicted in Provincial Court of wilfully evading payment of the Land Speculation Tax. It was the first prosecution ever for evading the Speculation Tax. Gross said it is largely to discourage such use of rent review material that the photocopies are stamped as they are. He said it was just a "reminder" with no statutory basis.

continued on page 7

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GCA Capital

Continued from page 2

Bahamas advanced further sums, all provided by the Crown Agents. After the change in chairmanship (of Crown Agents in 1974) the Crown Agents commissioned an inquiry into the situation, and were advised the lease was valueless. No further funds were provided, and GCA was put into liquidation. Its assets have proved to be valueless; in consequence the Crown Agents have lost the entire investment of 1.9 million pounds. These and other apparently imprudent advances cast doubt upon the viability of the Sassoons Bahamas, and to ensure its solvency the Crown Agents took over 4.2 million pounds of possibly irrecoverable loans, of which 3.9 million pounds related to GCA and Life Investors."

The Report says it was Finance Directorate head A. H. Challis who was behind the loans to GCA. "Mr. Challis would have us believe," the Report says, "that he did not influence the courses taken by the money market managers, and said to us more than once that he had not ever ordered that a loan be granted. We do not believe him. It may well be that he did not direct the day to day operations of the managers: there was no reason why he should. But we have no doubt that the major decisions were his and that, for example, the loans to Stern and the GCA Capital Corporation were made at his behest. It was upon Mr. Challis that the lack of accountability worked its effects. His subordinates were accountable to him, but he was in practice accountable to no one."

Gilbert's father-in-law, referred to but not by name in the Fay Report, is former Toronto lawyer Samuel Ciglen. □

Arnup

Continued from page 3

tion of some of its assets. Since the crown sought in part to prove fraud from the dubious nature of this asset, the onus in our view was on the crown to prove the lack of worth in Beauport Holdings. There was in our view no evidence fit to go to the jury that the value of this asset was so tenuous and illusory as to taint the whole transaction with fraud."

Judge Dickson replied in his decision. "In my opinion, with great respect, the Court of Appeal erred in these findings. First, it erred in law in applying a test of 'worthless' or 'negligible'. The proper question was whether there was detriment or prejudice to Langley's. Second, it erred in its assessment of the asset position of Beauport Holdings which, apart from the Langley's shares, consisted of a $250,000 deposit, committed to another project, and some mining claims. None of those assets could be regarded as a current asset readily available for payment of a demand loan. Third, it erred in ignoring the liability position of Beauport Holdings and, in particular, the current liabilities which exceeded $1,160,000. In assessing ability to pay, the liabilities of the debtor are of equal or perhaps greater importance than the assets."

The crown originally asked for the conviction to be restored. But Judge Arnup had found other errors which he said would have required a new trial, and the crown was granted leave to appeal to the Supreme Court of Canada only on the "definition of fraud" issue and not on those other issues. So the result is an order for a new trial.

Meanwhile, County Court Judge Edward Houston sentenced Olan to a fine of $8000, and his wife Marie to $500, with six months to pay, on a separate set of charges of forging company minutes and a lawyer's letter in connection with private Ontario company Plan Tec Ltd, to which the Olans pleaded guilty last September. After waiting since then to know the outcome of the Langley's case, Judge Houston finally sentenced the couple May 5, three weeks before the Supreme Court of Canada decision was handed down. Olan already had a record of several criminal convictions in Ontario. □

New Town

Continued from page 1

report confirming the feasibility of the scheme.

Green and other witnesses told the judge that sewage disposal is the major factor in the planning of a development on the scale of Century City. Green said Consumers Gas had the necessary expertise in financing, piped networks, easements, and the like, to manage the proposal. But it soon became evident the province was going to build it, Green said.

The Consumers Gas proposal was also mentioned in a letter from Rohmer to Green dated August 28, 1968. This was after the meeting with the ministers but before any public announcement, and Rohmer was referring to the scheme as "Project X" for security reasons. In the letter, Rohmer outlined steps to be taken in Project X. In addition to starting talks about getting GO-train service to the area, about the route of the proposed easterly extension of Highway 407, about sales of lots to OHC, and other matters, the letter referred to partnership financing with Consumers Gas. Rohmer testified the item referred to a proposed "utilities kind of company," but he said his recollection of it is "not that direct."

(Another item in Rohmer's letter referred to getting the names and background of the members of Uxbridge Township Council. Rohmer explained the item this way. "It is fundamental in dealing with a municipality to have as amicable and direct a relationship as possible." Testimony disclosed that success in this area was mixed.)

In addition to hearing about plans for Century City, Judge Grant has probably heard more than anyone else outside the government about MTARTS and the TCR. MTARTS is the Metropolitan Toronto and Region Transportation Study, and TCR is the Toronto-Centered Region plan. Both are titles attached to a series of provincial government planning documents, and they represent the core of the provincial government's attempt during the late 1960s and early 1970s to control provincial growth by regions.

For Century City, witnesses said the documents were good news and bad news. The good news was that the government wanted to "stimulate" growth to the east of Toronto to help arrest urban sprawl to the west. But the bad news was that the Century City site appeared to fall into the green belt area that was contemplated as a separation between the growth zone along the lake, and district growth areas to the north. Part of the plaintiff's claim is that the planning boundaries were in effect gerrymandered to accommodate the coming Airport proposal, by keeping development out of the proposed airport area.

Three major planning documents were released by the province during the life of the Century City proposal. There was the June 1968 MTARTS study, then the May 1970 unveiling of the Toronto-Centered Region Plan, and finally in August 1971 the "Status Report" on the TCR. The last two reports were particularly unfavourable to the Century City proposal, and each was followed by another meeting between the company and Ontario cabinet ministers.

As a result of the 1968 MTARTS study, Rohmer said he recommended scaling down the proposal to a population of 32,000 on the basis that the Stoufville area, which the Century City lands abutted, showed a projected population of 50,000. The May 1970 TCR document deleted that population designation, and Rohmer said if the plan were to be followed it would preclude the development. He said civil servants followed these plans rigidly, even though, in his opinion, they did not have "the force of law." Following the TCR announcement, Rohmer said he had a meeting with Charles MacNaughton in July, 1970.

It was at this meeting that MacNaughton testified he agreed about the "sense of implied commitment" in the 1968 meeting. MacNaughton, now a director of stockbrokers Burns Fry Ltd and chairman of the Ontario Racing Commission, said he was concerned about the rigidity of various lines of demarcation and of the population estimates. Rohmer testified that after this meeting he wrote to MacNaughton's deputy minister H. Ian MacDonald and told him the company was now unable to meet its mortgage commitments to the vendors of the properties it had assembled. Rohmer explained to the judge: "I was urging the government to come to a favourable conclusion quickly."

Rohmer also said he made arrangements for Century City's German financial backers to meet with the Provincial Treasurer, and they did.

As well, there was a July, 1971 meeting attended by McKeough, the new company president Samuel Gotfrid, and other company officials, according to testimony of Louis Devor, who was working on the project.

Then the August 1971 "Status Report" named the Century City proposal and others, and said specifically they would not be allowed to proceed. After that, Macaulay took over from Rohmer as counsel. □

Ex-fugitive

Continued from page 8

would indicate that about $2 million was left over in the hands of Pieckenhagen. So one of the things he had in common with Pocklington was cash.

The payments in question under the WAM mortgages between their respective companies amount to about $315,000 per year, and when that is spread over the three buildings, it represents a rent payment from each tenant of about $30 per month.

Pieckenhagen claims he also needs an amount equal to about $14 per month per unit to pay for the advertising he has to do to keep the buildings rented, in spite of the fact that the vacancy rate in 50 Graydon Hall, for example, is less than 1%.

Last April, Pieckenhagen liquidated four Toronto apartment buildings: 15 Cougar Court, 40 Stevenson Road, 30 Esterbrook Avenue, and 2801 Jane Street. The events began in 1974 when Frischke sued him for an accounting of monies he said he had advanced to the Pieckenhagens to invest for him in Canadian real estate. According to the affidavit of one lawyer who was involved in the case, here's what happened: "The trial commenced on April 18, 1977 before the Honourable Mr Justice Garrett. At the request of Mr Catzman (then lawyer for the Pieckenhagens) and on the ground that Julita Pieckenhagen (Frischke's daughter and Pieckenhagen's wife) had the week before been committed to the psychiatric ward of St Josephs Hospital in Toronto, the learned trial judge ordered the trial adjourned to June 6, 1977. The original defendants (the Pieckenhagens) were ordered to produce certain business records in the interim.

"I am advised by my partner," the affidavit goes on "... that on May 4, 1977 he received a telephone call from Mr Catzman who advised that he had learned that the Pieckenhagens had sold four apartment buildings and had left the country. This was confirmed later on that week and warrants issued for the arrest of Julita and Kurt Pieckenhagen in respect of a charge of theft of over $3 million. The police investigation indicates that on the instructions of Kurt Pieckenhagen, $2,903,450 was transferred from the Royal Bank Plaza Branch of the Royal Bank of Canada to its branch in Panama City on April 29, 1977, that Julita and Kurt Pieckenhagen flew to Panama City on the same date and that they went to Brazil on May 20, 1977. Their present (July 1977) whereabouts is unknown."

According to an affidavit by the purchaser of the four apartment buildings, Torpit Investments Ltd, "On or about the 29th day of April, 1977, the plaintiff purchased from the defendants four properties in accordance with the terms and conditions of an agreement of purchase and sale dated the 15th day of April, 1977 and in accordance with a statement of adjustments drawn as of the 28th day of April, 1977... Messrs Macaulay Lipson and Joseph, barristers and solicitors, were retained by the plaintiff and the defendants to act on their behalf in the subject transaction."

Once he learned what had happened, the father-in-law Frischke sued Pieckenhagen under the terms of the Fraudulent Conveyances Act, but that action was apparently discontinued as part of their settlement.

Torpit has sued for another $56,000 for costs it says it had to meet on the four buildings that the Pieckenhagens had agreed to pay. The Pieckenhagens deny the Torpit claim, and they add that a third mortgage of $1.3 million they took back from Torpit was supposed to bear interest at 9%. They say they haven't been paid on the mortgage.

Frischke, in his successful civil action for an accounting, said he himself lived in Canada between 1959 and 1961, and he progressively liquidated his assets in Europe and transferred the cash to Canada either directly or through Dereka Corporation, a wholly-owned Liechtenstein company.

Frischke said Pieckenhagen was to get three percent of the gross annual rental income from the investments.

Toronto lawyer Clay Powell represents Pieckenhagen on the theft charge, but not the current real estate deal. □

Rent review

continued from page 6

The Legislative Committee recommended the continuation of the program for two more years, with additional jurisdiction for other landlord and tenant matters. For example, it is recommended that repair and maintenance problems be dealt with together with applications for rent increases.

The Committee recommended the program be placed under the jurisdiction of a single ministry, but it didn't say which one. The program is now in the Ministry of Consumer and Commercial Relations. The other candidate to operate the program is the Ministry of the Attorney General.

With respect to the question of "financial loss", the committee said there should be some definition of what is meant by arms length and non arms length transactions. The NDP had urged that landlords not be allowed to include mortgage principal repayments in the calculation of "financial loss".

Most of the tenant deputations before the Committee in its Toronto sittings were from groups affiliated with the Federation of Metro Tenants Association. □

Ex-Fugitive's "Financial Loss" Rents Could Rise by 30%

Kurt Pieckenhagen's application to raise rents in his newly acquired North York apartment buildings by 30% promises to have a long and interesting history. The North York rent review officers who first heard the case during the first week in June have shipped the file down to the program's head office on Bloor Street. They say Pieckenhagen's financing is too complicated for them to rule on. (See inside for a description of the unusual accounting involved in rent review.) Pieckenhagen is the man who whizzed $2.9 million out of Canada last year during an adjournment of a court case that ended in a declaration the $2.9 million wasn't his, but his father-in-law's. Pieckenhagen was reported to be in Brazil, and when he returned to Canada he was charged with theft of about $3 million. A preliminary hearing was to have been held last February, but it was adjourned and a new date was to be set June 20.

Numbers 50, 100, and 150 Graydon Hall Drive are high-rise apartment buildings, constructed in 1968 and run profitably by Peel-Elder Ltd until their sale last December, but Pieckenhagen, who bought the buildings then, says he has to raise the rents by 30% in order to break even.

Title documents appear to show a sale from Peel-Elder to 373041 Ontario Ltd, Pieckenhagen's company, but Pieckenhagen says he bought the buildings from something called Rosepierre Investments (Ontario) Ltd, a company controlled by Alberta investor Peter Pocklington, who bought a larger block of Peel-Elder real estate and immediately resold these three buildings to Pieckenhagen. According to one report, Pocklington didn't buy directly from Peel-Elder either, but from someone who "flipped" the property to him.

In any event, Pieckenhagen's resulting mortgaging is unique, in that his third mortgage back to his "vendor" is registered on title in two different versions. The two versions are dovetailed, so to speak, but only one of the documents was used by Pieckenhagen in his rent review application.

According to version no. 1, a principal amount of $3.9 million, blanketing the three buildings, bears interest at 8% for two years until maturity in December 1979. The first version further says this interest is "payable as hereinafter provided." But instead of providing a payment schedule, the document goes on to say several paragraphs later: "On the maturity of this mortgage (in December 1979), principal and interest shall become due and payable in accordance with a mortgage of even date hereinafter referred to as WAM 2 (the second version) between the parties hereto . . . and the mortgagor shall be entitled to a discharge of the within mortgage without any payment of any kind whatsoever, and the debt under this mortgage shall be merged in full in the WAM 2 mortgage."

The WAM 2 mortgage falls due in December 1982, three years after the WAM 1 maturity, and in those three years, WAM 2 says the $3.9 million bears interest at 0%. It also says the interest that was "calculated" during the first two years, 1977-79, is actually payable during the last three years, December 1979-December 1982. So although the first version appears to call for interest at 8% in the first two years, only by looking at the second version does one find it isn't payable in those years. On his cost-revenue statement for rent review purposes, Pieckenhagen shows only version no. 1, with the full 8% annual interest contributing to his alleged "financial loss". The statement doesn't refer to version no. 2.

Moreover, Pieckenhagen says it is an arms-length obligation. But another mortgage from Pieckenhagen's company — this one for $4.3 million at 11.5% cast in the role of a second mortgage — bears the personal guarantees of both Pieckenhagen and the principal of the Rosepierre company, Peter Pocklington. By contrast, the WAM mortgages bear no personal guarantee. So the well-documented apparent obligation to pay 8% on $3.9 million for the next two years is really a deal between the two men who are co-guarantors of the prior $4.3 million mortgage.

Pocklington is the Edmonton businessman who announced — also in December 1977 — that he intended to buy 54% of the stock of Pop Shoppes International Inc. in a deal that was to include cash of $5 million. The deal wasn't carried out. Of Pokington, the announcement said he has "extensive interests in real estate in Alberta, British Columbia, Ontario, and the United States and is currently proceeding with the purchase of certain real estate owned by Peel-Elder Properties in the Toronto and Brampton area. He is the sole owner of Westown Ford, Edmonton, one of the largest Ford dealerships in North America, and is the owner of the WHA Edmonton Oilers."

It isn't known how he met Mr Pieckenhagen, who had in the meantime arrived at a settlement with his father-in-law, Karl Frischke, about the monies the Toronto judge had ruled were Frischke's. The settlement, negotiated through Toronto lawyers, is said to have involved the payment by Pieckenhagen to Frischke of $850,000, and the agreement by Frischke to discontinue any claims against Pieckenhagen. That

Continued on page 7

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Archie suddenly returns

Archie Campbell, one of Ontario Attorney General Roy McMurtry's closest friends and political confidants, is returning to a senior position in the ministry after less than a year as staff director of Parkdale Community Legal Services. Campbell left Parkdale with less than a month's notice, on the eve of a crucial province-wide policy meeting of community legal clinics, which will consider ways of dealing with the government and the Law Society on funding. In announcing his abrupt departure, Campbell produced a letter from McMurtry saying in effect Campbell is indispensable to him in the administration of justice. Campbell was head of the ministry's Policy Development Division before going to Parkdale. He will have a variety of special assignments, and probably the title of Assistant Deputy Minister. Some say he will be Deputy Minister soon.

The reason for the urgency in Campbell's return seems to be that McMurtry's ministry is long on law reform and policy ideas, but short on administrators McMurtry considers politically reliable to carry them out. The problem was made worse when, soon after Campbell left, Graham Scott, who had been responsible for courts administration, left to become associate secretary of Cabinet.

Speculation that Campbell would head the new Public Defender project is probably wrong, however, because he has no defence experience, and McMurtry will probably want someone with weight among the criminal lawyers to make the program at all palatable to the bar.

One well-placed official summed it up this way: "Archie will be McMurtry's Kissinger."

With respect to the community law movement, of which Campbell now has an inside knowledge, the Attorney General's ministry is in a unique position. To the right is the Law Society with its latent opposition to publicly-funded staff lawyers. To the left is the clinical movement, of which Parkdale is the largest and most experienced office, who say more money should be allocated to the clinics. McMurtry has given his support to the clinics in speeches, but the present funding system remains typically non-committal. It is based on a January 1976 regulation under the Legal Aid Act setting up a Clinical Funding Committee composed of two representatives of the Law Society and one representative of the Attorney General. But the committee has no known criteria on which it bases its decisions and the portion of the legal aid budget allocated to the clinics is determined in some unknown fashion. Campbell used to be the AG's representative on that committee. He was succeeded by Graham Scott. □