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The Lumsden Building Corporation
How a Money-Losing Company stays Rich

A public Ontario company with consistent losses in its main business, the operation of residential and commercial real estate, has taken over, amalgamated with, or tried to take over, a total of seven mostly cash-rich junior mining companies in the past few months. But in two cases the company, The Lumsden Building Corporation, formerly Anglo-Keno Developments Ltd, has been stopped, at least temporarily, by court orders from carrying out proposed moves. The orders were obtained by officials of the mining companies who say Lumsden's takeover techniques leave something to be desired.

The company, thought to be controlled by Toronto real estate dealer Mark Stein, is named after one of its two downtown Toronto office buildings, the Lumsden Building at 6 Adelaide Street East, in which the company says it has a one-third interest. The other office building is 67 Richmond Street West, in which Lumsden says it has a one-half interest. One of the complaints by management of the latest takeover target, Foremost Consolidated Explorations Ltd, is that Lumsden failed to mention in its circular to Foremost shareholders that the Richmond Street building is the subject of a foreclosure action by Great West Life Assurance Company.

In residential real estate, a company called Apartment Management and Appraisals Ltd, owned jointly by Lumsden and Municipal Savings and Loan Corporation, owns and operates older Toronto apartment buildings. Complaints by tenants of Apartment Management led the Ontario Attorney General's office to order an Ontario Provincial Police investigation into aspects of Stein's management activities. The investigation is continuing.

With respect to real estate financing and operation, Lumsden's financial statements don't refer to the specific residential properties. But a title search of the two downtown office buildings shows they were acquired in 1977, one of them for zero cash and the other mortgaged immediately to 100% of the acquisition price, and additional mortgages were registered as well. The company says it is negotiating to sell the Richmond Street building, which is subject to the foreclosure action. The Adelaide Street building was refinanced in September with a $2.1 million mortgage to Sterling Trust Corporation. The reported 1977 acquisition price for the building was $1.9 million.

With respect to real estate operations, Lumsden's 1977 earnings statement showed rental and interest income of $380,000, against rental operating costs of $220,000, and general and administrative costs of $80,000. But interest payments were $219,000, for a pre-tax cash loss on operations of about $139,000, together with a $90,000 loss on "sale of marketable securities." First-half 1978 operating loss was about $70,000, together with a loss on sale of securities of $20,000.

During this period of operating losses on heavily-mortgaged real estate, Lumsden has been actively gaining control of other public companies with significant treasuries.

Wolverine

The first two of Lumsden's recent takeover moves were apparently unopposed. In the first one, a previous underwriter of something called Wolverine Developments Inc. sold a block of Wolverine stock — enough to control the company — to Lumsden Building Corporation in late 1977. In mid-1977, Wolverine had $160,000 in marketable securities. In December 1977, the Lumsden-controlled Wolverine bought from Lumsden and Lumsden lawyer Harold Spring all the shares of Queen Dowling Apartments Ltd for $75,000 cash and some new Wolverine treasury stock. The $75,000 cash is thought to be about the amount Lumsden had paid for the Wolverine control block, making it in effect a self-financing takeover. Lumsden still controls the Queen Dowling company.

Viewpoint etc.

Lumsden's next unopposed move was to amalgamate with Wolverine and four other junior mining companies. The four other

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Reports on Canada's Press-Law

In Canadian law, "freedom of the press" is largely the combined effect of two exceptionally obscure and ill-understood areas of our law: defamation, and the *sub judice* or "before the courts" aspect of contempt of court. The situation is ironic, because the purpose of both areas of the law is to protect either individual reputations or the administration of justice at the expense of the right to publish. Nevertheless, the fact is that defences to, and exemptions from, the rules of defamation and contempt are the major areas of Canadian law bearing on "press freedom."

What the press law is, what writers and editors think it is, and what they cautiously assume judges will say it is, are probably the most important single factor in determing the orientation of Canadian news. Oddly enough, the Canadian media haven't been very forthright in reporting press law issues.

In both branches of the law, defamation and contempt, the essential elements are a judicially-recognized "public interest" in the dissemination of certain information, balanced against either the reputation of an individual or the functioning and image of the administration of justice.

Both areas of the law, the authorities agree, are extremely vague and unpredictable in Canada, and in the final analysis cases are decided by the relative weight given to the one or the other element: the technically "legal" points on which one ought to be able to rely are uncertain in the case of defamation, and practically non-existent in the case of contempt.

Moreover, in the Canadian law, the "public interest" component is perceptibly shrinking.

Starting this issue, Bimonthly Reports examines in a series of articles the background and current developments in this hidden area of the law.

Current Proceedings against Toronto Mortgage-Lawyers

Mortgage placement and mortgage syndication by Toronto lawyers has resulted in a number of civil, criminal and disciplinary charges against the lawyers. The cases will be providing some insight into the workings of this risky business.

In unrelated cases, lawyers Norman Mintzer, Joel Wagman, and Joseph Solomon are facing real estate related criminal charges. Wagman also faces disciplinary proceedings by the Law Society, and lawyer Victor Beube is seeking to quash a disbarment order.

Mintzer

Toronto lawyer Norman Mintzer was jointly indicted with William Stein of 400 Walmer Road on charges of fraud and false pretenses relating to about $1.1 million invested in mortgages for a client during 1976 and 1977, mainly on east end Toronto properties that were to be renovated and sold. Warwick Hotel owner Murray Sniderman and three of his companies, Bolet Investments Ltd, Monserrat Investments Ltd and Duffers Investments Ltd were allegedly defrauded in that the money, supposed to be placed in first mortgages, was in fact secured by third, fourth and fifth mortgages on the respective properties.

Metro police swore a further criminal information against Mintzer, his wife Marlene, and her parents Victor and Edith Bernard last June. They were charged with transferring the Mintzers' house at 55 Geraldton Crescent to the Bernards "with intent to defraud the creditors of Marlene and Norman Mintzer."

In September, Mintzer was arrested and taken into custody, based on police suspicion that he intended to go to Florida to avoid the Ontario criminal proceedings. A complicated bail review hearing was held last month, and Mintzer is still in custody. A trial date hasn't been set yet on the fraud and false pretense charges. The preliminary hearing on the charge of defrauding creditors began in Provincial Court recently. It is proceeding intermittently, because of the unavailability of a "special court." A "special, " in Provincial Court parlance, is a judge and courtroom available at the same time for several days in a row. The Toronto specials are apparently booked up until spring.

Beube

Negotiations of some kind are going on between lawyer Victor Beube and the Law Society of Upper Canada, relating to disciplinary proceedings against Beube, also the result of his mortgage-investment activities for clients. The Law Society's Discipline Committee held hearings in 1976 on a complaint that Beube misapplied mortgage funds he handled for clients, and falsified some of the relevant records. The committee found several of the charges to be substantiated, but it recommended only a reprimand with an undertaking that Beube accept supervision of his records by a chartered accountant approved by the Law Society.

At the meeting of Convocation on February 11, 1977, Beube's lawyer urged that the penalty be limited to what the committee had proposed. He said that for a period of two years, "It is Mr Beube's candid statement, and I suggest it is supported by the evidence of his accountant and his secretary, Mr Beube was not attending to business. He let matters slide. His bills fell into arrears. . . His accounts were not kept up. He was in the middle of rather sophisticated mortgage financing. He had convinced friends and relatives to lend money that he had put out on certain security that was not realized. When the loans did not pay the interest they should, Mr Beube, and I stress your committee's finding, under a fullest sense of obligation, made payments out of what were other clients' funds."

Beube undertook to pay the committee's costs of the investigation, and this led to an incident. Toward the end of the discussion, the chairman of the Discipline Committee, Mr Lochead, asked how the payment could be made, since there was a certificate of Sheriff's executions against Beube in the amount of $137,000. Beube's lawyer said he had the necessary funds in his trust account, and in any event, Beube's "net worth exceeds those amounts."

In due course Convocation voted for disbarment. Beube brought an application to the Divisional Court to quash the decision of Convocation, based mainly on the introduction of the certificate of executions in Convocation with no notice to him. Beube said, "When the list of executions was produced in Convocation, I immediately noticed that the Benchers assembled there were startled and were visibly affected by the document. The manner in which this document was produced and the time at which it was produced denied me the opportunity to defend myself with respect to an important issue in this proceeding." A court order last February stayed the disbarment order pending the Divisional Court hearing, on conditions, including this: "that pending the disposition of the appeal, the applicant will not borrow or obtain money from any of his clients for investment purposes."

Discipline Committee lawyer Stephen Traviss had drawn Lochead's attention to the executions. Traviss told him he was concerned about them "as it seemed to indicate there might be other persons who were clients who had had difficulties with the solicitor."

A Divisional Court hearing was scheduled for September 11, but it was adjourned, apparently while Beube and the Law Society negotiated. The hearing is now apparently scheduled for November 20. Some say the Law Society officials are "a bit circumspect" in discussing how the disciplinary system works. Others say the Law Society's security rivals that of a sovereign state.

Beube is not facing any criminal charges. But he was ordered committed to jail for seven days last August for giving unsatisfactory answers to questions about his property transactions, after one of his clients had obtained judgement against him for $40,000 that was advanced to be secured by a mortgage to bear interest at 17%. In his judgement debtor examination, Beube said the proposed mortgagor backed out of the transaction, and the $40,000 was put into a mortgage on an apartment development in Waterloo.

A complicated civil suit against Beube over a series of mortgages on an Ottawa apartment development could come to trial late this year.

Solomon

Toronto lawyer Joseph Solomon of the law firm of Solomon and Solomon has been charged along with another man, Brahim Hooseim, by Peel Region Police with conspiracy to defraud the Government of Ontario by evading payment of Land Speculation Tax in a Cambridge, Ontario real estate transaction. They are also charged with defrauding Egidio Simone, a Solomon client and purchaser of the property at 51 Wooley Street, Cambridge, of an undisclosed sum of money. The two charges relate to transactions in the same property. A civil suit by Simone is also pending.

Wagman

Lawyer Joel Wagman QC, and his company Interegion Centre Holdings Ltd went on trial October 25, charged with defrauding City Savings and Trust Company of $308,000 during 1974. The charge arose out of an investigation of the bankruptcy of two of Wagman's companies. In a second criminal charge, scheduled for trial February 9, Wagman and Interegion Assets Corp. are accused of defrauding six individuals of $25,000. That sum, according to the indictment, was secured by a mortgage registered in the Whitby registry office in 1974, and the alleged fraud was done "by executing and causing to be registered mortgage postponement agreements" without the consent of the six individuals. February 19 has been set for trial of a further case, in which Wagman; William Joseph Fitzsimmons, and Majestic Investment Corp. are charged with defrauding Rato Investments Inc. and Harry Bieberstein of $25,000.

Wagman lost an application to the Divisional Court earlier this year to halt Law Society Discipline Committee proceedings against him, involving allegations of professional misconduct. Wagman said various acts of the committee indicated there was an "apprehension of bias" on the part of the committee, and one of the instances he cited was the committee's refusal to postpone the disciplinary hearing pending the disposition of the criminal charges.

The Divsional Court ruled the Law Society was under no obligation to postpone its disciplinary proceedings pending the dispostion of the Criminal charges.□

Pat Sheridan's Empire Attacked By the Royal Bank

Messengers for The Royal Bank of Canada couldn't find the head offices of Sheridan Geophysics Ltd and public company New Hosco Mines Ltd to serve them with bankruptcy petitions in September. They went where they thought they were, at 4 King Street West, Toronto, and found the person they expected to find, J. Patrick Sheridan, and served him. The bank says New Hosco owes it $2 million and Sheridan Geophysics $3 million, and that both companies have "ceased to meet their liabilities generally as they become due." The bank asked for receiving orders and bankruptcy judgments. But Sheridan, whom they served with the papers, says he has not been an officer or director of either company "or otherwise involved in the day-to-day management" of the companies since December 1976. He said the companies' head offices are "in the City of Timmins in the Province of Ontario," but the bank's subsequent enquiries couldn't find an address.

Wayne Waters of the Royal Bank's Bay and Temperance Street branch took issue with Sheridan's statements. He said in an affidavit that the bank consistently, both before and after December 1976, dealt with Sheridan as an officer, director and the person in charge of the companies' affairs. "I myself," he said, "have spoken to Sheridan on numerous occasions on behalf of the company and have always reached him at the company's office, 4 King Street West, in the City of Toronto." Nevertheless, the "purported service on the companies" was set aside, and the bankruptcy judge authorized substitutional service on the companies by an advertisement in The Toronto Star. The bankruptcy judge noted the not unusual fact that the companies' public filings at the Ontario Consumer Ministry's Companies Branch are not up-to-date.

A related public company, White Star Copper Mines Ltd, was also the subject of a Royal Bank petition in bankruptcy. White Star was contingently liable as the guarantor of a bank loan to New Hosco for $1.7 million, and owned 900,000 New Hosco shares, according to its 1977 financial statements. But the company denies it is indebted to the bank in the amount claimed, which is $1.7 million, and denies it is insolvent. Bankruptcy hearings for White Star and another company, North Canadian Enterprises Ltd, are scheduled for November 14. A date hasn't been set yet for the New Hosco and Sheridan Geophysics hearings, pending the completion of service of the papers on the companies.

Following the company bankruptcy petitions, the Royal Bank in October filed a writ in Supreme Court of Ontario against Sheridan personally on promissory notes and guarantees. The bank is claiming payment on $52,000 in personal promissory notes and about $4 million worth of guarantees.

In addition to the alleged Royal Bank debt, records in the York County Sheriff's office show unsatisfied writs of execution against two of the companies, Sheridan Geophysics and North Canadian Enterprises, arising out of the provincial Corporations Tax Act. Corporations Tax Act writs are issued directly by the provincial Revenue Ministry, and they are based on both corporate income tax and capital tax. There is a writ in excess of $400,000 against Sheridan Geophysics and about $100,000 against North Canadian. The provincial writs were first issued in 1975.

The Royal Bank said Sheridan was attempting in late August to sell a piece of equipment, a crusher, belonging to North Canadian Enterprises Ltd, wholly-owned by Sheridan's wife Marjorie. The bank had appointed Coopers and Lybrand receiver and manager of the company in January under a 1975 demand debenture, and the bank said it feared the proceeds of the equipment sale "will not be available to the creditors." On that basis the court appointed Coopers and Lybrand as Interim Receiver under the bankruptcy legislation. The company moved to set aside that appointment, and filed transcripts of taped telephone conversations between Sheridan and others about the crusher.

Sheridan — That old crusher at Coppercorp, I'm getting a lot of heat on it.

— Who?

— Our friend Coopers and the Bank.

— They don't want you to take it out or they don't want you to sell it for $35,000.

— No, for $25,000.

In a second recorded conversation with the manufacturer of the crusher, Sheridan said:

— Listen, I've got an old crusher at one of the mines.

— That's nothing new.

— Well, I'll tell you the history. It was manufactured in 1934, its a 5½ foot shorthead, it was the original crusher that was at the Lakeshore.

— OK, I know that machine, it's not worth a damn.

— It's not worth a damn?

— No sir.... It's so goddamn antiquated it's not even funny.

— So it's really just worth scrap value eh?

— That's right ...

— And you think if I could get $25,000 for it, that would be a good sale?

— Yes, absolutely.

— OK, that's all I need to know.

— OK, when are you going into the new crusher business?

- -We're going to buy a new crusher as soon as we run out of used crushers.

— Very good Pat, nice talking to you.

In the main North Canadian bankruptcy petition, North Canadian denies it is insolvent, and says it has tendered on the bank sufficient funds to discharge the debenture, but the bank refused to deliver the discharge.□

Lost River

Lost River Mining Corporation, Toronto, which already has a voluntary bankruptcy proposal pending in US District Court in Alaska, now faces two bankruptcy petitions by company creditors in Toronto, scheduled to be heard this month. Lost River has a fluorospar prospect on a river of that name near Nome.

The Toronto bankruptcy petitioners are the estate of Lawrence J. McGuinness, of the distillery family, who were purchasers of a Lost River debenture in 1975, and a group of geological engineers and consultants who have a court judgment against Lost River for $200,000. The company's Alaska proposal, filed last May, is to issue one share of Lost River stock for each $1 of unsecured debt and also for each dollar of the debenture. The stock, which once traded on the Toronto Stock Exchange as high as $6.50, is now quoted in the 40¢/60¢ range. The Alaska court hasn't yet ruled on the proposal, which was opposed by Guaranty Trust Co. on behalf of several of the debenture-holders.

The company, which hasn't produced any fluorospar after claimed expenses of $6 million since 1970, said if its proposal succeeds, it is still looking for a development partner. In the court papers filed in Alaska, it said during the mid-1970s "The debtor encountered an acceleration of developmental costs." But it is optimistic: "Economic conditions have since returned to some degree of normalcy and interest has been shown by some companies capable of continuing the property development as a joint enterprise. Given relief from its debt burden of over $1,500,000 to debenture holders and over $1,000,000 to general creditors, the equity owners and creditors of the debtor would greatly benefit from such a joint enterprise by receiving a return on the investment well in excess of the original dollar commitment of either equity or debt."

Company records show $500,000 of the 1975 debenture was bought by an Alaskan native group called Bering Straits Native Corp. Under the proposal, they would get 500,000 shares of Lost River stock.

In opposing one of the Toronto petitions, the company said: "A receiving order in Ontario in effect would be redundant inasmuch as the assets of Lost River are beyond the jurisdiction of this Honourable Court." A Toronto hearing scheduled for November 20.

In other Lost River news, Toronto lawyer Irving Lindzon, who was a major shareholder and an officer of the company — he is no longer an officer or director — was ordered earlier this year to answer questions about his 1972-73 dealings in Lost River stock, as part of his examination for discovery in a lawsuit against him by a shareholder for damages. The shareholder, Jerry Steiner of Toronto, says Lindzon was acting for the company "for the purpose of promoting, selling and maintaining a market" in Lost River and a related company, Pan Central Explorations Ltd. Steiner says Lindzon also was Steiner's lawyer and advised him to buy Lost River and Pan Central stock in 1972 and 1973. He says Lindzon made false representations about the company, sold his own stock when he was an insider without filing a prospectus, and improperly took commissions on the sales, without being a registered securities salesman. Steiner also claims Lindzon breached the Rulings of the Professional Conduct Committee of the Law Society by failing to make full disclosure of his interest in the transactions, and failing to suggest that Steiner get an independent solicitor. Lindzon denies all the charges, and says they had been personal friends for many years, but he wasn't acting as Steiner's lawyer when he bought the stock.

Pre-trial discovery dealt, among other things, with a trip to Bermuda by Steiner and Lindzon, during which Steiner bought 10,000 Lost River shares for $5.75 each. Steiner says this was 5000 shares Lindzon had carried with him from Toronto to Bermuda, "and a further 5000 shares which were obtained from Lindzon's numbered bank account in Bermuda." Lindzon says the bank shares were not his, but belonged to a trust over which a client of his had "some control."

Examination for dicovery of both sides is still continuing, and a trial date would be at least a year after the completion of discovery.□

"Fair Comment" or "Innuendo" Canada's Uncertain Press-Law

In two libel cases decided earlier this year, Canadian courts have added a new wrinkle to the defence of "fair comment," and it may well make that defence considerably harder to plead successfully in the future. "Fair comment" is one of the three main defences available in a suit for defamation: the others are "justification," or proving that what was published is true, and "qualified privilege."

The plea of justification isn't too popular, because if the truth isn't successfully proved — a costly and uncertain procedure in complicated cases — the fact the defendant said the facts were true weighs against him in assessing damages. So the bread-and-butter defences are fair comment and the qualified privilege. The rationale of both these defences is that in some cases the public interest in publishing a report can outweigh possible damage from defamation to an individual.

In essence, the fair comment plea is that the fact or facts on which the comment is based is truly stated, and the comment is "fair comment made without malice upon a matter of public interest." Qualified privilege, on the other hand, means that the report was made in circumstances that relieve the defendant from having to prove the truth of the statements. The best-known example of an occasion of qualified privilege is a newspaper report of a trial. The meaning of "qualified" is that the report must be made without malice.

To understand the importance of the fair comment defence to Canadian media, it is necessary to understand what happened in 1960-61 to the qualified privilege defence, when its possible scope was drastically curtailed in a pair of Supreme Court of Canada decisions by Justice Cartwright.

The most important category of occasions of qualified privilege to the media are "statements made in the performance of a duty." Court and parliamentary reporting is one such "duty" recognized by the press-law. But there is — or rather was, in Canada — a much wider scope for the qualified privilege.

It was well expressed in two Toronto trial decisions in the period 1957-58, in both of which the trial judges found that The Globe and Mail came within the privilege in reporting on matters of public interest and public concern. In the first case the Globe had run this editorial entitled "Shabby Tactics." "One of the less creditable episodes of the election campaign occurred on Thursday evening in Parkdale constituency, in Toronto, when Mr John Boland, self-styled independent Conservative candidate, introduced an issue which does not exist in this election. McCarthy-style, he put forward an ex-Communist in an attempt to show the Liberals are 'soft on Communism.' The results were far from edifying. The reason for this disgusting performance was undoubtedly to mislead the so-called New Canadian vote in that riding, in the hope that their anti-Communist fears might be translated into an anti-Liberal anti-Conservative prejudice. An election won by such tactics would be a degradation of the whole democratic system of government in Canada. Let us have no more of that sort of thing, this time or ever."

The trial judge said: "I have come to the conclusion that a Federal Election in Canada is an occasion upon which a newspaper has a public duty to comment on the candidates, their campaigns and their platforms or policies, and Canadian citizens have an honest and very real interest in receiving their comments, and therefore this is an occasion of qualified privilege."

The decision was reversed in the Supreme Court of Canada in 1960 in a decision by Justice Cartwright, who said, "With respect, I am of the opinion that this is an erroneous statement of the law.... With respect it appears to me that, in the passage quoted above, the learned trial judge has confused the right which the publisher of a newspaper has, in common with all Her Majesty's subjects, to report truthfully and comment fairly upon matters of public interest with a duty of the sort which gives rise to an occasion of qualified privilege."

A similar case arrived at the Supreme Court of Canada in 1961. The trial judge had dismissed a libel suit by Seafarers International Union official Hal Banks against The Globe and Mail. The trial judge had said: "The class of cases to which the defence of qualified privilege extends, has, during the course of recent years, been extended, and that extension will cover editorial comment by a metropolitan newspaper on matters of public interest. It is difficult to conceive of a matter in which the public would be more interested in the year 1957 than the most important topic of industrial relations, when added to that there is the topic of the continued existence of a deep-sea fleet under Canadian registry.... There is no more efficient organ for informing the public and disseminating to the public intelligent comment on such matters than a great metropolitan newspaper... The members of the public have a real, a vital — I may go so far as to say — a paramount interest in receiving those comments."

Cartwright said there is no such privilege, and he quoted with approval his own judgement in the Boland case. He added, "The interest of the public and that of the publishers will be sufficiently safeguarded by the availability of the defence of fair comment in appropriate circumstances."

That brings us to fair comment, the subject of the two 1978 cases. English decisions have traditionally interpreted "fair comment" very broadly. The facts must be truly stated, but the English courts have been anxious to preserve the right to comment. The best expression is this often-quoted excerpt from an 1887 decision. "Every latitude must be given to opinion and to prejudice, and then an ordinary set of men with ordinary judgement must say whether any fair man would have made such a comment.... Mere exaggeration, or even gross exaggeration, would not make the comment unfair." Modern English judgements, and some Canadian ones, have followed that principle.

A Nova Scotia trial court last year applied that principle in a libel suit against the Canadian Broadcasting Corporation by an English doctor, Donald Barltrop, a paid consultant to Canada Metals Co., Toronto. The subject was a 1974 program called "Dying of Lead" on As it Happens. An American doctor had been asked, "What has been your experience with the use of experts in cases like this?" And the doctor replied, "I regret to say that my personal experience, and the experience of many of my colleagues in the States, with so-called experts on behalf of industry, has been very unfortunate. I've come to the belated conclusion that it is possible to buy the data you want. I've tested this particular viewpoint with relation to a very wide range of consumer and occupational problems in which I have been involved and I would be happy to substantiate for you the thesis that it is possible to buy any information you want, to substantiate any viewpoint. Dr Barltrop is a paid consultant to the lead industry. He is paid to say what he has just said."

The trial judge said the fact Barltrop was paid was a true fact, and "the comment is that he was paid to say what he said." The trial judge then quoted the 1887 case, and he said, "It seems to me that in the heat of the moment that Dr Epstein and Dr Needleman made remarks which amounted to 'very strong opinions.' They used strong language, but I am satisfied that the comments though exaggerated were made honestly and in an honest belief of what was said and were conclusions that a fair-minded man might well come to."

Earlier this year, the Nova Scotia Court of Appeal reversed that decision and convicted the CBC of libel. The Appeal Court said the statements objected to were not comment at all, but simply factual assertions which "directly and by innuendo," in the court's phrase, "state or imply" that Barltrop was professionally dishonest. In other words, the Appeal Court lumped together what the trial judge found were fact and comment, and found that the parts taken together constituted a "statement or implication" that Barltrop was professionally dishonest.

That decision can be read in contrast to this 1968 decision by the English judge, Lord Denning, who said: "It would be a sad day for free speech in this country if this kind of controversy on a matter of public interest were discouraged by the fear that every word written to be read in haste were subjected to the kind of minute linguistic analysis of the kind to which these letters have been subjected on this appeal. As the law of libel now stands, it is not easy to avoid it.... All kinds of imputations may be gleaned from the facts, the most important thing to determine is whether or not the writer was actuated by malice. If he was an honest man, expressing genuine opinion on a matter of public interest then, no matter that his words conveyed derogatory imputations... and no matter that it was badly expressed so that people read all sorts of innuendo into it, nevertheless, he has a good defence of fair comment."

The Nova Scotia Court of Appeal apparently did what Lord Denning warned against — they read a certain amount of innuendo into what the defence said was fact and opinion ("Barltrop is a paid consultant/You can buy any information you want") and came up with the fact-by-innuendo, not comment, that "Barltrop is professionally dishonest."

The Supreme Court of Canada has refused leave to appeal from that decision.

The same thing happened to the Vancouver Sun in a case decided last January. MP Simma Holt was a member of the House of Commons Committee on prisons, and when the committee toured prisons in California she met with Charles Manson groupie Lynette "Squeaky" Fromme. She later gave an interview to a Canadian Press reporter in which she said she would seek permission to convey a message from Fromme to Manson. (The judge said she later decided against it.)

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Fair Comment

The Vancouver Sun ran an editorial that included this: "... But interviewing or carrying messages for such as mass murderer Charlie Manson and his groupies in US jails is not what Mrs Holt and Mr Reynolds are paid to be doing as members of the Commons committee on prisons. What they are supposed to be doing is concentrating on finding ways of improving Canada's chaotic prison system. As someone who knows prisoners and prison conditions, Mrs Holt is eminently qualified to offer solutions if she can keep her mind on the task at hand...."

Holt sued, and the newspaper pleaded fair comment, unsuccessfully.

The crux of the judge's decision was this: "The defence of fair comment depends upon the comment having been made upon true facts. Were the words used true in substance and in fact? I think not. Upon the evidence I find that there is no basis upon which it can reasonably be said that interviewing Fromme or any prison inmate was beyond the scope of what the plaintiff was being paid to do as a member of the sub-committee on prisons, nor is there any basis for saying that she failed or neglected in her duty to concentrate on finding ways to improve Canada's prison system, or that she interviewed Charlie Manson or carried messages for him and his groupies in US jails, or that she failed to keep her mind on the task at hand."

The decision is curiously sketchy. When he says there is "no basis upon which it can reasonably be said..." does he mean that all the "facts" are wrong? Holt did in fact meet with Fromme. Or does he mean the "comments" are without any basis at all and no "fair man" — the traditional English criterion — would have made them. The judge didn't say. He dismissed the fair comment defence without even indicating what, if anything, in the editorial constituted "comment."

In effect, the trial judge must have done what the Nova Scotia Court of Appeal did in the Barltrop case. He grouped together facts — the Fromme meeting and the proposed message-carrying — with comment — that's not what he was paid to do — and came up with a set of "untrue facts." In this way the newspaper's clear comment — "What they are paid to be doing is concentrating on finding ways to improve Canada's chaotic prison system" — was apparently considered to be the equivalent of an untrue statement of fact — "She failed or neglected in her duty to concentrate on finding ways to improve Canada's prison system."

Given the approach to fair comment in the Canada Metals and the Simma Holt cases, it is possible to imagine the defence could never succeed. If a newspaper said an Alderman was absent from half the City Council sessions, and said, "In our opinion, an Alderman is supposed to concentrate on public affairs and not on his own private affairs," a judge could rule that is not a comment at all, but a statement of fact by innuendo that the Alderman was concentrating on his private affairs. The fair comment defence would fail, and the newspaper would have to "justify" by adducing evidence of the Alderman's attention to his private affairs. That is the type of situation the law of fair comment is supposed to provide relief from.

What keeps the law from falling into that — hopefully absurd — situation is that in matters of public interest, traditionally, fair comment is a legitimate defence, and if there is comment, judges will recognize it as such.

Timothy Lowman of Toronto, now an articling student, wrote a paper as an Osgoode Hall Law School student on fair comment, in which he cited the Canada Metals and Holt cases. On the Simma Holt case, he said, "Simply, Mr Justice Munro (the trial judge) has thrown out the defence of fair comment, allegedly on grounds of 'untrue facts,' when in reality, he merely disagrees with the comment in the Sun editorial."

Lowman cited another part of the decision of Lord Denning: "... The right of fair comment is one of the essential elements which go to make up our freedom of speech. We must ever maintain that right intact. It must not be whittled down by legal refinements." Lowman added: "Where the right of fair comment is 'whittled down,' as in the majority of cases examined above, the end product is uncertain case law and prohibitive awards. Faced with this situation, it is small wonder that the spectre of internal censorship looms large... with newspaper legal departments exercising perhaps an overabundance of caution in editing and holding back material."

It would be reassuring to hear from senior Canadian media officials some expression of interest in this key area of "press freedom."□

Next: Contempt of Court

Maurice Strong

Continued from page 8

ket for the actual tender to come. Stronat replied that both sets of offers were in fact above the quoted market price when they were made, and the market rose as a result.

Mutual is continuing its lawsuit claiming damages from Stronat for what it calls "this unique two for the one-half price of one tender." The suit also seeks an order declaring the Procor insiders' sales to Stronat null and void, and giving the other shareholders the right to rescind their sales to Stronat.

In his affidavit, Price set out the development of his thinking on the Procor situation. He said he became interested when he noticed Iowa Beef Processors Inc. sold a large block of Procor stock to Stronat. Price said he calculated the Procor book value at the time at over $7.

"Iowa Beef had sold its substantial block of 202,200 shares for $4.45 a share," Price said. "The market at the time was about $2.62 bid/$3.12 asked, and it seemed to me $4.45 was a bargain. IBF, a big NY Stock Exchange company, probably couldn't care less about its insignificant Procor investment and undoubtedly welcomed the chance to get out for cash. I also noted that Stronat, which bought from IBF, was apparently trying to get control. In that kind of a situation an investor has two things going for him: the potential values are probably substantial if a takeover company is interested; and in a takeover attempt the price is bound to go up. So we made our first purchase of 5500 shares on August 4th and 5th.

"We waited a while," Price continued, "to watch the progress of Stronat's efforts and were amazed to see that although Stronat increased its holdings substantially, the usual hypo effect of a takeover never happened — the market barely rose. At $3/$3.50 Procor seemed so cheap that early in January 1978 I decided to increase our position. Over the next eight months I continued to be convinced that Procor was vastly undervalued, and we purchased an additional 23,280 shares through August 11, 1978.

"Stronat's July 17, 1978 press release announcement of a $5 cash tender or merger 'intent' was so far out of line with the values of both companies," Price went on, "and so at odds with Stronat's obligation to be fair, that I felt something might be fishy. So I ordered all of the SEC filings of both companies for the last two years... reviewing them in depth with counsel. It required piecing together and comparing a tremendous amount of information, much of it hidden and not easily recognizable as material.

"Every day we kept finding more conflicts, inconsistencies and just downright false statements and glaring omissions. Then came the August 14, 1978 press release announcing not a merger but only a $5 cash tender 'plan.' That release, when coupled with our discoveries of Stronat's extraordinary exploitation of its insider positions, in not one but two targets, led us to look to see what we should do to protect our investment." That led to the lawsuit.

Price said the buying started at $2.50 a share and ended at $5 a share. "For 900,000 shares to push up the market only $2 is a major miracle."Price added:

"The following facts illustrate that the directors and Stronat contrived to conceal from Procor shareholders the real values so that Stronat could get them all for a song: (1) Although book value is not the only factor affecting a fair price, Procor has a nearly 2 to 1 ratio of current assets to current liabilities and what we call a clean balance sheet. In that kind of company a sale below book — where book gives no value at all to the AZL interest — is an economic absurdity. (2) What makes less than half of book value — with AZL at zero — even more absurd is that Procor's earnings have been increasing rapidly, nearly 70% in the last 21 months. (3) AZL, which has made a complete turnaround from huge losses to a profit last year and a larger one in the first six months of this year, obviously has incalculable potential because of its valuable acreage. (4) And where directors have the power to prevent a takeover, they invariably use it either to defeat it or to exact a high price. For months and years, the newspapers have been filled with stories of inside directors and officers, like the defendants here, who have successfully resisted a takeover. These defendants (the Procor insiders who are co-defendants along with Strong and Nathanson) never even tried.... (5) Finally, what disturbs me most is that by selling so cheap, the directors helped keep the market price down, so that Stronat can say to the minority shareholders, '$5 is a fair price — that's what we paid the insiders.' "

Having defeated the interim injunction, Stronat's New York lawyers will now either file the equivalent of a statement of defence in the action for damages, or else move to have the action dismissed.

The Royal Bank of Canada is playing a substantial role in the takeover. Stronat' s 66% interest cost about $3.9 million, and the circular says "such purchases were made with funds borrowed by Stronat from Royal Bank."

Then of the $10 million AZL debenture that Procor bought, $5 million was borrowed from the Royal Bank, with the personal guarantees of Strong, Nathanson and Stronat. The $5 million was later financed at a US bank.

Finally, for the $5 tender offer, "Stronat has agreed to lend (to its US subsidiary) the funds required... and has obtained a commitment from Royal Bank to lend it a total of $2.5 million for such purpose," at the bank's prime rate of interest plus one and one-half percent. The bank is charging Stronat no commitment fee.□

Lumsden

Continued from page 1

companies — Western Ontario Resources Ltd, Consolidated Midvale Explorations Ltd, Santa Rita Explorations Ltd, and Viewpoint Explorations Ltd — had combined "term deposits and cash in banks" of about $100,000. Three of the four companies had been underwritten by Herbert and Company Securities Ltd, a broker-dealer whose registration was cancelled by the Ontario Securities Commission in 1975.

The amalgamation was approved at shareholders meetings last June 30. Financial statements prepared to serve as a basis of the share-exchange ratios valued Lumsden shares at 31¢ each and the Lumsden-controlled Wolverine at 14¢ each. Shares of the other four companies were valued between two-tenths of a cent and 5¢ each. Lumsden shareholders, of whom the largest is Mark Stein's wife Esther, got one share of the amalgamated company for each share of the pre-amalgamation Lumsden. Shareholders of the other four companies got new shares at ratios between 1 for 6 old shares and 1 for 150 old shares. But the financial statements show that Lumsden's share values are based on an appraisal surplus of Lumsden's real estate — in other words, an estimated excess of "market value" of the real estate over the book or acquisition cost of the properties. Without the appraisal surplus, according to the amalgamation statements which wrote down the value of other investments, the Lumsden shares would have had a negative value of about 20¢ each, instead of a positive value of 31¢. And these are the properties Lumsden reports it is operating at a substantial loss.

The amalgamation financial statements say: "The assets of the amalgamating corporations were revalued to conform with relative values as computed and outlined by Coopers and Lybrand in their report dated June 5, 1978." The Coopers and Lybrand report is not part of the public file at the Ontario Securities Commission.

Mount Pleasant

While the multi-company amalgamation was in the works, Lumsden had also acquired stock in a company called Mount Pleasant Mines Ltd, and a set of disputed company minutes shows Mark's wife Esther Stein appointed a director and secretary-treasurer on January 31, 1978. December 31, 1977 financials show Mount Pleasant holding marketable securities valued at $186,000. Lumsden bought 212,000 Mount Pleasant shares on February 6, 1978 for $40,000. Then in May, according to papers filed in a court action, a directors resolution was prepared and forwarded to Mark Stein by Mount Pleasant's accountant allowing for the payment "forthwith" to Esther Stein of a fee of $50,000 "for her services as General Manager and an Officer of the Corporation for her past and anticipated services for the calendar year 1978." The copy filed in court is not signed by the directors.

The election of Esther Stein and the other Lumsden-related directors to the board of Mount Pleasant Mines Ltd was contested in court by Mount Pleasant director Alfred "Skip" Andrews, who obtained an injunction last June postponing the scheduled shareholders meeting and ordering the company — in effect, the Lumsden people — to provide Andrews with copies of all the minutes of directors and shareholders meetings for the past year. Counsel for the company also undertook that the company would not "change its status or issue further shares of the company, or enter into any transaction out of the ordinary course of business... and the company will not invest in any real estate property."

Andrew's application for a court order naming an impartial chariman for Mount Pleasant's shareholders meeting is expected to be decided early this month.

Forefront

Undaunted, Lumsden in September took aim at something called Forefront Consolidated Explorations Ltd (working capital at May 31, 1978: $140,000), offering Forefront shareholders one Lumsden share for each four Forefront shares. Forefront management urged their shareholders to reject the offer. A letter to shareholders from Foremost secretary-treasurer Fred Munger said the offer was improperly executed, had an improper payment provision, and was "totally deficient" in its description of Lumsden's business activities.

An application for an injunction restraining Lumsden from taking up any tendered shares was adjourned late last month, on Lumsden's promise that it would not do so, pending the resolution of Forefront's court action.

Lumsden's 1975 financial statements were audited by the firm of Soberman, Isenbaum, who have sued the company, claiming they were not paid for their 1975 work. For the 1976 and 1977 year-end statements, auditors were the firm of Finkelman, Singh and Hershoran. The 6-month 1977 statements were prepared, unaudited, by chartered accountant Norman H. Solmon. The Finkelman, Singh firm has now apparently combined with Solmon, and the 6-month statements for June 1978 were prepared by a firm called Solmon, Finkelman and Singh.

Property and company searches disclose that Solmon himself has an interest in the Lumsden company that isn't disclosed in either the year-end or the 6-month financials of 1977 or 1978. A note to the 1977 6-month statements prepared by Solmon says this: "On January 15, 1977, the company (Lumsden, then called Anglo-Keno) purchased all the outstanding shares of Queen Dowling Apartments Ltd for $340,000. As part of this agreement the purchaser was required within 45 days to discharge a bank loan of $60,000. To date, this loan is still outstanding. The company has granted Mr. H. Spring the right to purchase 25% of the shares of Queen Dowling Apartments Ltd." (Lumsden and Spring later in 1977 sold these shares to Wolverine for $75,000 cash and Wolverine treasury shares). The year-end 1977 financials, audited by Finkelman, Singh didn't mention the $340,000 figure, but they included a new bit of information in a note: "As part consideration on the purchase of Queen Dowling Apartments Ltd, the vendors are to receive 148,777 Series "A" preference shares (of Lumsden). As collateral for the amount owing, the vendors have received a second mortgage on the Queen Dowling Apartment. This second mortgage is to remain collateral to the said preference shares to be issued." The June 1978 notes prepared by Solmon, Finkelman repeated the Finkelman, Singh note.

The statements don't say who the vendors were. But the collateral mortgage registered against the apartment building in Toronto's Parkdale district indicates that the holders of the mortgage are Harry Firestone as to one-half, Norman Solmon as to one-third, and Helen Gross as to one-sixth. And a letter on file at the Companies Branch says the vendors of the Queen Dowling shares were Firestone, Solmon and Gross.

So what the financial statements don't disclose is that Norman Solmon, the accountant, was one of the three vendors of the Queen Dowling shares to Lumsden (for the reported $340,000), and presumably one of the three potential holders of the preference shares "to be issued." Described as 10% cumulative preference shares, they would presumably give their holders first claim on any corporate dividends.

Another unusual accounting feature is the treatment of the appraisal surplus. Properties carried at $2.9 million on December 30, 1977 were valued at $4 million as December 31, 1977 as reflected in the year-end statements audited by Finkelman Singh. No details were given of the appraisal, which on that statement raised shareholders equity from $200,000 to $1.3 million. Stranger still, the "Consolidated statement of changes in financial position" listed the amount of $1.1 million appraisal surplus as part of "funds provided from operations." And under "Application of funds" the statement showed the figure of $3.4 million as "real estate investments." The Finkelman Singh audit certificate was dated April 29, 1978.

In June the Finkelman firm sent shareholders two replacement pages of the financial statements and said, "Would you please remove your old sheets, destroy the same and insert the new pages." One of the pages was a new "Statement of changes in financial position" which eliminated the $1.1 million from "funds provided from operations," and diminished by that amount the "application of funds" for real estate investments.

The other new page added this with respect to the appraisal: "All real estate has been recorded on these financial statements at appraised market value. The said appraisal was reported to the company by John W. Coombs Jr., of John W. Coombs, Jr. and Associates, Real Estate Appraisers on April 10, 1978." The Coombs appraisal apparently wasn't provided with the new pages, and no other details were given.

Still another approach to the Lumsden appraisal surplus was provided in statements also audited by Finkelman Singh to provide net asset values for the June amalgamation of Lumsden with the other companies. These statements, which conform to the Coopers and Lybrand report — also not provided — show a real estate appraisal surplus of $1 million, balanced by a $350,000 write-down of "mining claims and interest" and "marketable securities and other investments."

Both statements show shareholders equity of $200,000 before these adjustments, so the write-down alone would have resulted in negative shareholders equity (more liabilities than assets), but the real estate appraisal surplus restores a positive shareholders equity.

Financial statements prepared for the current Forefront Consolidated takeover bid, audited by yet another chartered accountancy firm, return to the $1.1 million real estate appraisal surplus, with no write-down for mining interests or marketable securities.

Lumsden apparently relies on real estate sales for profit. In a letter to shareholders in September, president Esther Stein commented on the 6-month loss to June 1978 of a total of $189,000, of which $80,000 was an allowance for depreciation. Mrs Stein wrote: "The temporary loss indicated on our interim statement

Continued

Situations

Mohammed Khan of Toronto, charged in England with obtaining money by deception from depositors in something called International Bank and Trust Company of the Middle East Ltd, is still free on $100,000 bail, pending his extradition hearing, now scheduled from December 11 in Provincial Court in Scarboro. The location was changed from Toronto because the hearing is expected to take several days, and no court was available at the Old City Hall for several months. The English charges say the deception consisted of "false representations that (the bank) was an honest and genuine business carried on in an honest and genuine manner," that the money would be credited to the depositor at the bank, and that the bank was able to meet its liabilities.

Two partners in the law firm of Tory and Tory, Lorne Morphy and Laurence Patillo, son of the late chairman of the Ontario Securities Commission Sydney Patillo, were acting for Khan, but he has changed solicitors, and Clay Powell will be acting for him instead. Powell is the former chief white-collar prosecutor in the Ontario Attorney-General's office. As reported in the last issue, Khan is a judgment debtor of the Royal Bank, one of whose directors is a Tory and Tory partner. The bail proceedings were covered by a non-publication order.□

A preliminary hearing into a theft charge against Toronto landlord Kurt Pieckenhagen is scheduled for November 2 and 3 in Toronto's Old City Hall. Pickenhagen was charged with theft of about $3 million in a 1976 incident involving sale of several Toronto apartment buildings. In a civil trial that was going on at the time, officials of the Royal Bank were almost — but not quite — cited for contempt of court for refusing to produce the records of the Panamanian branch, where the proceeds of the sale had been sent.

If the preliminary inquiry isn't completed in the two days available, it will be adjourned to some time in the new year. "Special courts" in the Old City Hall — situations in which a judge and a courtroom are available for several days in a row — are apparantly booked up until spring. Frank Moskoff acts for the crown and Clay Powell for Pieckenhagen.

In a December 1977 transaction, as reported earlier, Pieckenhagen bought a group of North York high-rise apartment buildings — not those involved in the charge — from a company controlled by Alberta investor Peter Pocklington — who was simultaneously buying the buildings from Nelson Skalbania who was simultaneously buying them from Peel-Elder Ltd — and the result was an application for large rent increases to meet the heavy new "mortgage financing." In their decision released last July, the North York rent review officers included all Pieckenhagen's mortgages, including one co-guaranteed by the vendor Pocklington, in calculating Pieckenhagen's "financial loss."□

The preliminary hearing into false statement, fraud and theft charges involving International Chemalloy Corporation is scheduled to begin in Provincial Court in Toronto November 6. The three defendants who are expected to be before the court are former Chemalloy president David Winchell, lawyer Enver Hassim, and Samuel Ciglen. Robert Carter represents Winchell, and Edward Greenspan represents Hassim. Greenspan also represents one of the defendants in the dredging trial, which is expected to continue into the new year, and the Chemalloy proceedings, which were supposed to begin last May, could be again postponed. Samuel Ciglen is so far unrepresented. The Supreme Court of Canada refused earlier this year to grant him leave to appeal from an Ontario Appeal Court decision upholding the denial of legal aid to Ciglen, himself a disbarred lawyer. The charges, laid by the Ontario Securities Commission last year, involve the 1971 and 1973 issuance by Chemalloy of two convertible debentures, supposedly bought by the Handelskredit Bank of Zurich, for $3 million and $5 million respectively.□

Trial of Francesco Costantini of Gordon Securities Ltd in Montreal has begun and been adjourned until February 12 to hear evidence from witnesses who are now in England. Costantini was charged in 1976 by the Quebec Securities Commission with obtaining $2.9 million by false pretenses from Abitibi Paper Company, and with defrauding Price Company shareholders of about $1 million, by tendering 151,000 Price Company shares he didn't own, pursuant to the 1974 tender offer by Abitibi, which only took up 52% of the shares tendered.□

Phillip DeZwirek is one of several Toronto financiers who faces stock-related criminal charges both in Toronto and Montreal. Last year he was charged by the Quebec Securities Commission, jointly with Zave Climan of Montreal, with fraudulently kiting the shares of Viking Oil Resources Ltd from an issue price of 50¢ to a high of $10.50 during 1972-73. Viking was listed on the Canadian Stock Exchange in Montreal. They were also charged with falsifying the records of the brokerage firm of L.J. Forget and Company, in that Ontario customers were listed with addresses in Quebec, with making a false prospectus, and with obtaining money by false pretenses from a finance company.

Then earlier this year, Metro Toronto fraud squad officers charged DeZwirek with stock market offences relating to the recent promotion of New Dimension Resources Ltd, a company listed on the Toronto Stock Exchange. April 2 has been set for the New Dimension preliminary hearing. Austin Cooper appears for DeZwirek, Norman Chorney for the crown.□

Melvin Feder and Howard Ray, both of Toronto, are scheduled to go to trial November 27 in a stock-fraud case dating from the early 1970s that still hasn't been tried. They are charged with conspiracy to defraud Beaver Mining Corporation, a public company that was listed on the Canadian Stock Exchange in Montreal, and with conspiracy to make false statements about Beaver's debt to another company, with intent to deceive company shareholders and the Quebec Securities Commission. John Robinette acts for Ray, Robert Murray for Feder, and Norman Chorney for the crown.□

In addition to the Beaver charges, which will be tried in Toronto, Feder faces charges in Montreal relating to the 1971-72 promotion of Ontario land retailer Whiterock Estates Ltd. The charges relate not to the land dealings but to the company's stock-sales in Europe and related trading on the Montreal exchange. The charges were laid earlier this year by the Quebec Securities Commission, and a preliminary hearing is under way in Sessions Court in Montreal. Charged along with Feder are Ronald and Gary Bluestein, Jack, Lorraine and Victor Wall, Mickey and Eva Alter, Robert and Doreen Scolnick, Harold Schiff, and Irene Shoemaker. Quebec Superior Court has authorized a rogatory commission — in effect, an evidence-gathering trip — to hear evidence in Bermuda in the case, and the application is now being processed through the Federal Justice Department, who will request the co-operation of the Bermuda authorities.□

Information from the islands is also to be collected in the Montreal Sessions Court preliminary hearing into a $2.2 million theft charge against Sidney Rosen of Toronto. The inquiry got Quebec court authorization to take evidence in the Bahamas from ex-officers of Corporate Bank and Trust Company, and officers of the Bahamian Central Bank. The preliminary hearing is continuing. The alleged theft, in which Rosen's former secretary Sandra Ashford is co-accused, was of the treasuries of Quebec public companies, managed by Rosen's Valutrend Management Services Ltd, and deposited in the Corporate Bank, which is now in liquidation.□

Toronto charges still outstanding against Rosen include one of perjury relating to statements about control of Corporate Bank and Trust, one of defrauding public Ontario company Life Investors Ltd, along with four other co-defendants, and a recent charge of conspiracy to commit theft. Rosen was sentenced to four years in jail by County Court Judge James Trotter last month, after he found him guilty of defrauding public Ontario company Flemdon Ltd.

In the theft case, Rosen is jointly charged with Stanley Grossman of Erie Meat Products Ltd, a meat whoesaler. They are alleged to have made secret payments to an employee of the company supplying Erie to get delivery of more meat than Erie was paying for. The charge was laid by the RCMP last August. A date hasn't been set for the preliminary hearing. The Life Investors case is scheduled for trial during the last week in November. David Humphrey acts for Rosen, and David Doherty for the crown.□

Lumsden

Continued

for the first six months of 1978 is not truly significant, providing you note that in excess of $79,000 of the current so-called loss was attributed to depreciation. Traditionally, our real estate profits are generated in the second half of the year through substantial real estate sales."

A current rent review application by Lumsden for its 36-unit building at Queen and Dowling in Toronto shows income of $78,000, projected operating costs of $65,000, interest of $31,000 and principal repayment of $30,000 on a mortgage. Without the principal repayment, the figures are the basis of a proposed rent increase of 23% to break even. The tenants contested most of Lumsden's alleged operating costs, as well as its alleged 9% vacancy rate.

Mark Stein's father Morris and wife Esther are a director and president of Lumsden respectively. Mark Stein himself is not a director. There are several outstanding and unsatisfied writs of execution representing court judgements against Mark Stein personally in the hands of the York County Sheriff.□

Complaint against Maurice Strong In 1,000,000-Acre US Takeover

Maurice Strong and Paul Nathanson, co-owners of Stronat Investments Ltd. of Calgary and Toronto, are defending themselves in US District Court in New York against a lawsuit alleging market manipulation and false and misleading public announcements in a US company takeover. Strong is the well-known Canadian oil man who has been president of Power Corporation and Chairman of Petrocan, and he will be the Liberal candidate in the next federal election in the Toronto riding of Scarboro Centre. Paul Nathanson is a member of the Famous Players Nathanson family. The takeover is being financed by The Royal Bank of Canada.

The civil suit for damages is being brought by Mutual Shares Corporation, New York, a minority shareholder of Texas company Procor Inc. Stronat acquired 66% of the Procor stock between March 1977 and September 1978, and in September it made a tender offer for the remaining Procor shares. Mutual Shares Corp., the plaintiff, says that Stronat acquired Procor stock from Procor insiders at "incredible" discounts from their true value, and failed to make timely disclosure of its intention to effect a "double takeover" — first of Procor, which the plaintiff calls "the bootstrap target" and then of AZL Resources Inc., a large Texas landowner, which the plaintiff calls "the piggyback target." Mutual says in effect that Strong, Nathanson and Stronat have been manoeuvring to get themselves a terrific bargain at the expense of the Procor minority shareholders.

Mutual Shares was unsuccessful in its attempt to get an interim injunction in September to stop Stronat's tender offer for the rest of the publicly-held Procor shares. The judge said: "There has been adequate disclosure to Procor's shareholders of the information Mutual alleges was necessary for making an informed decision with respect to the tender offer. To the extent that the injured minority shareholders may be selling their shares at less than their true market value, their injury will be fully compensable by monetary damages." Whether that is the case will depend on the outcome of the lawsuit.

The Stronat takeover was done in two stages. From March 1977 until July 1977, Stronat bought Procor stock from persons other than Procor directors and officers for prices between $2.50 and $4.20 per share, to a total of 32% of the outstanding Procor stock. Then between October 1977 and August 1978, Stronat bought further large blocks (a total of 27%) of Procor stock from Procor directors, officers and their associates for prices between $4.20 and $5.00 per share. At the time of its September 1978 tender offer, Stronat had acquired 66% of the Procor stock.

Mutual Shares says the purchases from Procor insiders were at substantial discounts, rather than the premium one would expect to pay for control. "Stronat was enabled," Mutual said, "to acquire more than 50% of Procor's outstanding stock because Procor directors, officers, principal employees, their families and business associates sold to Stronat a total of 376,383 Procor shares, or approximately 27% of Procor's outstanding stock. Although control of public companies is often sold for a substantial premium, the insiders sold Stronat control at prices of $4.20, $4.50 and $5 per share. Procor's book value was $8.17 per share on December 31, 1977, and $8.82 per share on July 31, 1978, including the convertible debenture at cost." The Mutual Shares court papers stop short of alleging a side deal between Stronat and the Procor insiders, but a Mutual official said in an affidavit that "such discounts when premiums are the rule, are incredible."

Stronat replied that the insider sales were in fact at a premium over the quoted market price, and that the Procor insiders did quite well on the sales.

The second or "piggyback" takeover worked this way, the plaintiff says. On December 16, 1977, Procor, by then about 39% owned by Stronat, agreed to lend $10 million to AZL Resources Inc., in exchange for that amount of AZL debentures, convertible into AZL stock at $4. Conversion of the AZL debentures by Procor would give it ownership of 40% of AZL's outstanding stock after the conversion. As well, the agreement said the Chairman of the Board or the President of AZL had to be a person acceptable to Procor. The Mutual Shares complaint says Procor didn't tell its shareholders early this year that the conversion privilege represented about 40% of AZL stock after the conversion, or that "Stronat, through its control of Procor, was enabled to control AZL."

The September tender offer, which was for $5 for each Procor share, doesn't say what the plans are for AZL's land-holdings, but it does say their value is "considerably in excess of its cost as carried on AZL's financial statements." It says a 1975 appraisal showed lands booked at $2.2 million were then worth $22 million. The circular goes on: "(Stronat believes) that AZL has not obtained any appraisals of its ranch, agricultural and commercial lands which are more recent than that obtained in 1975," but Stronat believes the current values "may substantially exceed" the 1975 appraisal.

Michael Price of Mutual Shares said in an affidavit that "AZL's land is honey to the takeover bee because those acres are separate and saleable without interfering with its other operations; are unencumbered, with virtually no mortgages; and can be valued with a greater degree of precision than is true with most businesses because independent appraisals can be obtained." Price went on to say that "after running AZL for several months, Stronat must have... inside information, including vital data on the potential for uranium, tungsten and other mineral deposits. But we don't have to conjecture, because I telephoned AZL's corporate headquarters on August 10 or 11, 1978 and spoke to Gary Arnold, who I believe is AZL's controller. The following is the substance of our conversation:

"I asked Arnold about all that land. He said AZL 'just came in with an exhaustive study which shows big values — like $15 a share which is in-between what it's worth.' He said that $15 a share... is probably conservative. Arnold said the mortgages against the land were small.... Arnold said that some of the land is being put up for syndication; and that a separate wholly-owned company, AZL Inc., is being organized to retain mineral rights. The land would then be sold, but the mineral rights retained. AZL owns the Alamosa National Bank in Colorado and on August 22, 1978 I called and spoke to the executive vice-president, Jack Warner. He told me that survey crews had discovered commercial grades of uranium in the mountains east of AZL's properties."

Price said, "Stronat knows all about both the financial condition of Procor and the details of the values and potentials of AZL, one of Procor's biggest assets. But the Procor minority is told only what Stronat wants it to know.... With such an irreconcilable conflict, a Stronat tender would destroy the economic rights of the minority shareholders as surely as Medea killed her children." But the judge said Stronat's disclosure in the tender circular was "adequate."

As well, Mutual said the history of Stronat's public announcements had a manipulative aim. On July 1, 1977, Stronat announced it "intended to make" a $4 cash tender for 300,000 Procor shares, but the "intention" was abandoned 25 days later. On July 17, 1978, Stronat again announced its "intent" to tender or merge for $5 per Procor share. Then on August 14, 1978, Stronat announced a $5 cash tender "plan," and it finally made the actual offer in September. Mutual said in its complaint: "Stronat purported to 'plan' or to 'intend' to tender for $4 (1977) and $5 (1978) when the real plan and intention was to clamp those prices down on the market so as to condition the mar-

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We have enclosed an extra complimentary copy, with the idea that you might give it to a friend or colleague, with your comments (and draw their attention to the subscription order-form). We would appreciate it.