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## After Approving Illegal Payments, And Backing Off from a Receivership Application, The OSC Laid Astra Charges in Secret: The Commission Owes an Explanation

The Ontario Securities Commission, Canada's leading business regulator, played a crucial role in the Astra Trust affair, and it is a record of consistent failures. Pooled investment funds under OSC jurisdiction accounted for the bulk of the Astra-related losses. And some \$6 million of investors' money—\$4.5 million of it unrecoverable—was funneled through Carlo Montemurro's investment funds while the OSC was monitoring his affairs. These funds were able to continue operating in 1979 and 1980 thanks to a series of peculiar OSC activities. The OSC:

- Failed to lay criminal charges until it was too late;
- Gave authorization for illegal payments;
- Approved holding off a key receivership application;
- Approved, or condoned, holding off proceeding with Securities Act charges;
- Held off freezing the funds of the key investment company.

A detailed examination of what happened breaks down as follows.

- The OSC took no criminal action for over a year after it was aware of at least three areas of past activity by Astra principals that were apparently fraudulent.
- The OSC, in May 1979, even held off proceeding with less serious charges of violating the Ontario Securities Act. This was supposedly because of an ongoing police investigation, but OSC staff told me there was no such police investigation.
- There is no record anywhere of these charges, sworn by an OSC investigator, except for the one copy that was taken back to the OSC offices. There is no record of them in the Provincial Court office where they were sworn, and the OSC could find no Commission minutes reflecting a decision to adopt this unusual procedure.
- Both OSC vice-chairman Harry Bray and minister Frank Drea had testified that the charges were "lodged with a court" (Bray), and "filed" (Drea), which was not the case. Only after I confronted Bray with his sworn evidence on this point was I allowed to see the charges.

● As well, the OSC could find no Commission minutes respecting a key civil court application that helped prolong the life of these companies.

● The OSC specifically authorized illegal Astra advances on an unsecured Spanish loan. And the Commission record is at variance with the evidence given by Harry Bray.

● Two OSC Commissioners authorized another \$100,000 payment by Astra, supposedly on a Canadian mortgage, but which the company advanced to its illegal Spanish loan. Chairman James Baillie and vice-chairman Harry Bray made this authorization the day they met and discussed Astra with, among others, former Ontario cabinet minister John T. Clement.

● All trace of the OSC's public file, which used to contain some of the "partial release orders," has disappeared from the Commission's filing room.

● The OSC failed to take regulatory action for over two months after it became aware of another illegal investment operation, thus enabling even more investors' funds to be siphoned off. This was in spite of the fact that OSC staff say they had opposed the issuance of a mortgage brokers licence to this company a year earlier.

The Justice Committee of the Ontario Legislature held hearings last January into the regulatory aspects of Astra and its related companies. "The men responsible for the demise of the whole thing, or for the investigations that really went after it—it really has to be divided between Harry Bray and [OSC staff director] Charles Salter, who never let up," the Committee was told by former minister of Consumer and Commercial Relations Frank Drea. Some Committee members found parts of Bray's evidence "bizarre," even "incredible," but the Committee's treatment of the OSC was incomplete, because the provincial election was called on the Monday following Bray's Friday appearance, automatically dissolving the Committee. OSC chairman James Baillie and deputy director enforcement John Leybourne were among the scheduled witnesses who weren't heard.

### Early problems

Astra Trust Company was chartered federally in late 1976, after years of lobbying, and licenced to do business in Ontario in February 1977. Solicitors who worked on obtaining the federal charter were Liberal Senator Richard J. Stanbury and David A. Anderson, both of the Toronto law firm of Cassels, Brock. And the solicitor for the provincial licencing was former provincial minister of Consumer and Commercial Relations and former Attorney General John T. Clement, of the law firm of Shibley, Righton, McCutcheon.

The prime mover and chief executive officer of Astra was Carlo Montemurro, who comes from Rouyn, Quebec, where his family is in the grocery business. The second key figure, and Astra officer, was Welland lawyer Patrick Luciani, who had been active with various clients and/or associates in land development in the Niagara Peninsula. Montemurro and three of his branch managers had been salesmen with IOS of Canada Ltd until the early 1970s, when they went into the investment sales business on their own.

In fact, investors in Montemurro's investment company unwittingly provided most of the initial capital of Astra. C&M Financial Consultants Ltd was formed by Montemurro in 1972. It was in the business of soliciting investment funds from the public, supposedly to be invested in mortgages, but among its unsecured loans were non-arms-length advances to Montemurro and his associates to provide the capital for Astra.

During the trust company's first year of operation in 1977, the federal regulatory authorities had expressed concern about Astra's own non-arms-length lending, over-expansion, the quality of its investments and earnings, above-market interest rates offered investors, and its capital base. And Montemurro failed to comply with a promise to terminate the activities of C&M. The federal authorities didn't close the company down, but they began to require licence-renewals at three-month intervals.

### Bray: Fairly satisfied

The OSC says it regulates pooled investment funds, and it was involved with various Astra-related funds and companies from May 1978 until the final collapse of these companies in the spring and summer of 1980. Montemurro's use of pooled investment funds flourished during that period, and the apparently fraudulent use of the public's monies invested in those funds was exposed.

For example, one of Montemurro's companies was to be wound down, with payment by Montemurro of \$500,000 cash as security. The OSC investigated the source of this \$500,000, without discovering that half of it was siphoned from another illegal investment fund, of which the OSC was apparently completely unaware.

Harry Bray was asked:

—The Re-Mor, Astra, C&M, Montemurro collapse has resulted in absolutely no changes within the Ontario Securities Commission?

—None whatsoever, sir.

—It hasn't changed your procedure one whit?

—No sir.

—I take it from that you must be fairly satisfied with the way the OSC dealt with this matter?

—That is correct, sir.

Harry Bray set up the OSC's investigation and enforcement system when he was staff director in the 1960s, and he described himself as an "enforcement-oriented person." He is by far the senior of the eight Commissioners. He first joined the Commission in 1951 as a staff lawyer, and except for a period in the ministry of the Attorney General, he has been at the OSC ever since, becoming staff director in 1965, and vice-chairman of the Commission itself in 1968.

### The Spanish project

The first involvement by the OSC concerned the so-called Astra Trust "Agency Fund," and in particular an Agency Fund loan to a project in Spain.

Normally, the term "agency" refers to an investment situation in which a financial intermediary acts purely as an agent for an investor in a secured loan. For example, if an investor's money is invested by the intermediary in a mortgage, and the mortgage is held by the intermediary on behalf of the investor, the intermediary is acting as the investor's "agent." The opposite type of arrangement is a pooled fund, in which various investors' money is intermingled, and placed in investments which are held by the financial institution. The so-called Agency Fund was in fact a pooled fund, and in May 1978 trust company regulators drew it to the attention of the OSC, which generally takes the position that such investments are "securities" under the Ontario Securities Act, and cannot be sold to the public without the issuance of a prospectus, describing, for example, the fund's management and the investments held by the fund.

John Clement said he was called by Montemurro about an "innovative and imaginative" Astra investment fund in January 1978, but it isn't clear when Clement first approached the OSC about it.

It was agreed among the various regulatory bodies that the OSC would use its power under the Securities Act to freeze the assets of the fund—supposedly making further investment by the fund impossible—pending regulatory compliance. The OSC freeze commenced July 25, 1978.

The major concern was the Agency Fund's investment in the construction of a condominium building in Spain, known simply as the "Spanish loan." The loan was to a Spanish company called Bahia Romana SA, whose promoter was Samuel E. Carpenter, a former president of the Republican Party of Virginia, packager of resource tax-shelter investments, and purportedly a real estate developer in the US. Somehow he met Patrick Luciani, the Welland lawyer, and when Carpenter went to Spain in the early 1970s he and Luciani entered into an agreement for the construction of a 121-unit residential condominium building in Marbella. Part of the agreement was that Luciani would earn further shares in Bahia Romana according to the amount of mortgage money he could arrange. C&M Financial Consultants made 4d-

vances to Luciani and/or the Spanish project, and then after the licencing of Astra Trust, the Astra Agency Fund paid out the C&M advances and made further advances, totalling \$2.44 million by December 1978.

In addition to Sam Carpenter, the other figure in the Bahia Romana affair was one Claude Persoons. Convicted of bankruptcy fraud in Belgium in 1974, Persoons was, says Montemurro, introduced to him in July 1978 as the accountant for Bahia Romana and a major shareholder (which he was not) in a Swiss bank, Compagnie Bancaire pour l'Industrie. In 1979 Persoons was arrested in Spain for possession of counterfeit pesetas.

There were many problems with the Spanish loan. First, trust companies are not permitted to invest in mortgages outside Canada. Also, there had been no compliance with Spanish currency regulations bringing the money into Spain, which presented a problem in eventually getting the money out. There was also a problem with the degree of foreign equity ownership. And Luciani was a principal of the borrower, at the same time that he was a director and lawyer for Astra, and he failed to provide any security for the loan.

On December 15, 1978, under pressure from the federal authorities, Montemurro, Luciani, and another Astra director, Frank Vasko, agreed to pay back the \$2.44 million to the Agency Fund, and after that repayment was complete they would take over whatever rights Astra had in Spain. It was serious, according to a letter from Astra lawyer David Anderson to Montemurro: "[The authorities] have taken the position that there is no valid security for this loan and that it was not entered into in a proper legal or commercial fashion.... If there is any default with the very onerous repayments demanded by the authorities, then the very existence of the Trust Company is in peril."

Before the buy-back agreement was made, the Astra Agency Fund in fact made three large payments to its illegal Spanish loan account during the time the OSC freeze was in effect. How did this happen?

Harry Bray told the Justice Committee that he had recently reviewed the OSC's list of "partial release orders" under its freeze, and that he had authorized only one payment by the Agency Fund to the Spanish project, by way of such a partial release, and Bray said that was in August. He testified: "We had been asked over the course of the summer to release funds from the Agency Fund to make certain payments. One of those payments—and I refreshed myself perhaps six weeks ago on this subject—was a payment towards the Spanish condominium deal, which we, I might say, released pretty reluctantly.... I do recall requesting that payment specifically. I was assured that it ought to go ahead."

Then Bray said that on October 23, 1978, OSC chairman James Baillie and provincial trust companies regulator Murray Thompson told Montemurro and lawyer John Clement that there would be no further consents to advances by the Agency Fund to Spain.

The evidence of Clement likewise referred to only one payment by the Agency Fund to Spain under the freeze. Clement said the OSC authorized one payment in late

July 1978, and "I don't recall very much happening in August in the matter. Then, in October, there was a meeting conducted in Mr Thompson's office," when Montemurro and Clement were told: no more authorizations.

Bray was asked about the circumstances of the authorization. He said:

—We obviously made a decision, a Commission decision—

—Upon negotiation with Carlo Montemurro and his legal advisers.

—That is not so, sir; that is not so.

—Sure it is.

—That is not so. I am sorry. I never had any negotiations with Carlo Montemurro.

—Who did you think Clement and Judson [Clement's law partner] were?

—Let's put this in context. Clement and Judson did not appear on the scene, as far as I was concerned, until the fall. The payment we are talking about, one single payment, is in August....

Astra Trust Company records show three payments to the Spanish account in this period, two in August and one in October, all of about \$100,000. Confronted with the discrepancy, the OSC permitted me to see some of its partial release orders. They show that Bray and Baillie authorized the first two of these payments on being told they were for Spain. And they show that Bray and Baillie authorized the third payment on October 23—the same day they met with Clement and Montemurro. But an OSC staffer was authorized to tell me this. The October approval was made after Bray and Baillie were told the payment was not for Spain, but for a Canadian loan, as bridge financing on a real estate project for which there was a first mortgage commitment from another trust company. It was a bizarre game of hide-and-seek with the Commission records, and I was unable to find out in the Commission record contains any document to that effect.

The staffer authorized to give me these glimpses into the Commission record made a point of showing me what appeared to be recommendations from the trust company regulators that the first two of these payments be authorized.

The OSC's public file on Astra Trust used to contain some of the partial release orders, but all trace of an Astra public file has now disappeared from the Commission's filing room. Some of these orders were micro-filmed and are available elsewhere. But the OSC was able to eradicate all trace of its public file, and this raises the obvious question about the rest of its records.

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Another relevant document has inexplicably disappeared from the files of the Supreme Court of Ontario. John Clement's law firm billed Astra for its legal work but apparently the company didn't pay the full amount billed, and the firm "taxed" the account: that is, it applied to a court official for an order respecting the amount owed. As a matter of course, taxation files include the lawyer's itemized account. Court staff were unable to account for the absence of this particular file from its records.

#### "Go see a lawyer"

In the course of its investigation of the Agency Fund, the OSC became aware of another matter, which was also not only a securities violation but also an apparent fraud. It was the affair of the "voting trust certificates."

The Commission discovered that on the same day in February 1977 that Clement had obtained Astra's licence to do business in Ontario, the Astra directors had done the following. They split the 200,000 issued shares five-for-one, and replaced them with one million voting trust certificates, under a voting trust agreement. It provided that no matter who held the certificates, they would be voted by Montemurro and Luciani. Some Astra directors then sold the certificates at a five-times mark-up. Having paid \$5 for the stock—the pre-split price—they then sold the new certificates, also for \$5.

A memorandum by OSC staff to the Commission, dated in November 1978, put it this way:

"Astra's original capital of \$1.5 million was received from the sale of 207,500 common shares at \$5.75 per share to ten individuals shortly after receiving its federal charter. On the day it received provincial registration, the common shares split five for one, and all, except directors' qualifying shares, were placed in a voting trust.

"Voting trust shares were then issued to replace common shares, each entitling the owner to dividends in Astra and a common share when the voting trust agreement expires in 1987. There are now more than 130 people holding voting trust shares at Astra. Approximately 300,000 voting trust shares were re-sold by Astra promoters, nearly all at the pre-split price of \$5.75 a share. One original subscriber paid \$342,700 for 298,000 shares [i.e., 59,600 original shares] and then sold 212,000 shares for in excess of \$1.2 million."

John Clement, the lawyer who obtained the provincial registration the same day as the share-split, told the Justice Committee he didn't know about the share-split and sales at the time. But he said:

—In August or September [of 1978] when we started to get into this information about the sale of the shares, bit by bit we found out that some of the directors of Astra had in fact sold shares that were subject to the voting trust. That, to my mind, indicated some type of fraudulent behavior, certainly not of all, but on the part of one or two people involved.... I thought there might have been a fraud practiced.

—And did you not find it prudent to discuss this with your client at the time?

—No.

—Why not?

—Well, because my client was Astra Trust. Who am I going to talk to about the fraud that has been practiced?

Clement continued to act for the company. (And it included his October meeting with Bray and Baillie, where they appear to have been duped into approving the third Spanish payment.)

An OSC staffer told me with a straight face, "We tried to find evidence of fraud [in the voting trust certificate matter] and we couldn't." But one of the victims told *Globe and Mail* reporter Jack Willoughby that he phoned the OSC in 1979 to complain, and was told "It was a civil matter.... to go see a lawyer."

Another said: "A man came to our house from the OSC.... and he seemed to know more about it than we did. He told us exactly the number of shares we bought and he said we were going to hear from him again. But to this day we have never heard from them."

#### The secret charges

Up to this point, the OSC is aware of at least two apparently fraudulent situations. One is the Agency Fund, from which an unsecured loan was made to a Spanish company in which the lawyer for Astra was a principal. The other is the voting trust shares, which were re-sold, without voting rights, at a five-times mark-up. Both of these situations also involve violations of the Ontario Securities Act, because securities were sold to the public without compliance with the prospectus and registration requirements of the Act. The OSC can lay charges either under the Criminal Code or under the Securities Act.

The OSC laid Securities Act charges in May 1979, but it did so in absolute secrecy. An OSC investigator swore informations against Astra, Montemurro, and Luciani in connection with the Agency Fund and against Luciani and three Astra branch managers in connection with the voting trust certificates. The charges weren't filed in court, weren't served on the accused, and the OSC couldn't even find any Commission minutes relating to this. The charges were sworn May 15 before a Justice of the Peace in Toronto Provincial Court, but the list of "informations only"—kept by the Court to keep track of cases like this—doesn't refer to any of these charges on that day. The one copy of the charges was taken back to the OSC offices and kept there. Such charges are laid with the consent of the minister of Consumer and Commercial Relations; minister Frank Drea's consent was obtained in April, but the Commission could find no record of the request for consent.

The charges were laid at that time because the Securities Act provides that proceedings cannot be "commenced in a court" more than one year after the facts come to the attention of the OSC. An OSC staffer told me—apparently an authorized explanation—that this was like a drug-trafficking investigation, in which the investigator doesn't want the suspect to know he is under investigation! On a more serious level, when asked about Frank Drea's assertion before the Justice Committee that these charges weren't proceeded with because of a police request to hold off pending a police investiga-

tion, the staffer told me he was aware of no Astra police investigation at this time.

### **An unexplainable deal**

The third investment vehicle to be the subject of the OSC's unique law-enforcement techniques was C&M Financial Consultants Ltd. OSC investigators became aware of this company during an October 1978 visit to the offices of Astra. On November 16, following an appointment that was made with lawyers John Clement and John Judson, the investigators went to Niagara Falls to inspect the C&M records at the C&M office. But they didn't find any accounting records. Then on November 20 the OSC formally authorized an investigation of C&M, and its staff obtained a search warrant. Execution of the warrant was delayed for a week, and when it was executed on November 27, the OSC staff again found no accounting records, which were in fact lodged in an adjacent law office.

Meanwhile Montemurro had retained criminal lawyer Gerry Kluwak of the law firm of Bastedo, Cooper, Kluwak and Shostak; and through the good offices of Kluwak and the OSC records were delivered to the OSC on December 4. On December 6, according to Bray, he and Baillie decided to support the staff recommendation to apply to court to have a receiver appointed to liquidate C&M. OSC accountant James Widdowson prepared an affidavit in which he said that more than half of the company's loans receivable were due from the company's own directors and their affiliated companies. He said that most of the interest payments due to investors were being paid out of funds provided by new investments from the public.

Lawyer Kluwak made a counterproposal on December 6 that Montemurro be given a free hand for two years to wind down the company himself, with his personal guarantee to pay out any investors who were not paid out by then. The idea was that there were so many non-arms-length loans, that Carlo's personal touch was necessary in order to collect them. OSC investigator Dennis Bigham said he and other staff rejected the idea, with the notation: "Want to try HSB [Bray]? Sure."

The "counterproposal" was ultimately accepted by the OSC, with the additions that Montemurro would put up \$500,000 as security, and accountants Touche Ross and Co. would "supervise" the winding-down. But once again, the OSC could find no minutes reflecting this decision. A staffer was authorized to tell me that Bray "agreed with the general provisions...but no details worked out yet," on February 12, 1979, and that on February 15 a staffer "briefed Baillie on the C&M settlement," with the note that this was "very brief."

(By a pure coincidence, John Clement met with officials of the ministry's Business Practices Division on February 15. It was to discuss the ministry's hiring of the Clement law firm in connection with something else. The Justice Committee was told C&M wasn't discussed.)

The C&M approval appears to be connected in some way with the controversial approval of a mortgage

brokers licence for another Montemurro company, Re-Mor Investment Management Corp. The application was made to the Registrar of Mortgage Brokers (part of the Business Practices Division) in January 1979, but on January 29, the Registrar wrote: "...I am not prepared to consider the application until your client has resolved his problems with the OSC." Then on February 21, after the OSC settlement of which it has no minutes, the Registrar wrote: "In any case, it has been decided that since the C&M matter has not been finalized, we will proceed to issue a provisional registration to Re-Mor, and which will be subject to review." It was simple. A provisional solution to the C&M situation meant a provisional registration for Re-Mor. (It doesn't matter that there is no such thing in the Mortgage Brokers Act as a "provisional registration"—the company was simply granted a registration.)

Bray ascribed the responsibility for the C&M deal to the judge. "It was a direction of the court, as I recall it, and he in effect acted as an arbitrator and directed it.... I would rather have seen the receiver called in."

What the judge had in fact said in his reported remarks was this. "If such arrangements [as those finally arrived at] can be worked out and they are satisfactory in my view," then he would entertain such an application from the parties. "Otherwise that order [a receivership order] will take full force and effect."

In effect, the OSC says it was afraid it would lose its receivership application if it didn't agree to the compromise. At best, it was a form of cowardice, and at worst, an unexplainable deal.

### **Duped again**

Actually, Re-Mor was not the first pooled investment vehicle Montemurro designed after the Agency Fund was closed down. In September 1978, just two months after the freeze of the Agency Fund, another pooled fund was started within Astra, and it was called the Personal Investment Account (PIA). In spite of the fact that from a securities law point of view such a fund, without a prospectus, was just as objectionable as the Agency Fund, I couldn't find any evidence the OSC investigated the PIA, or even knew about it. Which is difficult to believe, because in October, John Clement's law partner John Judson wrote to the federal trust company regulators about the PIA, with a copy to the provincial trust company regulators. And the federal reply to Judson, which raised objections, was also copied to the provincial trust company authorities. But the provincial authorities have no record or recollection of the PIA. In any event, after a short pause while the letters were exchanged, the PIA fund-raising continued, and between September 1978 and February 1979, the PIA had \$800,000 of investors' money.

Now as it happens, one of the requirements for the staying of the C&M receivership order was that Montemurro deposit \$500,000 with Touche Ross, something the firm considered as security for its fees. The OSC investigated the source of that payment, and was satisfied that in part it was from a bank loan. Indeed it was. PIA

funds of \$225,000 were loaned to Patrick Luciani, who deposited the money in the Toronto Dominion Bank in the name of Drummond Terrace Apartments Ltd, one of his companies, as a 60-day Term Deposit. That Term Deposit was then collateralized in favor of the TD Bank, Rouyn, where Carlo's brother Santo borrowed \$225,000 against that security. It was the first part of Carlo's security deposit to Touche Ross. And it was a "bank loan." And when the 60-day Term Deposit came due, it was used to pay back the TD Rouyn "loan."

During 1979, Astra decided to switch the entire PIA apparatus—monies owed to investors, and the "mortgage assets" supposedly receivable—from Astra to Re-Mor Investment Management. The Luciani debt of \$200,000 (\$25,000 had been paid back) is represented on the books of Re-Mor as a mortgage on a property owned by a Luciani company.

#### The lawyers' trust accounts

After the PIA, but before Re-Mor Investment Management got started, Carlo had another investment vehicle. He borrowed Luciani's mortgage broker company Via Mare Ventures Ltd, as you or I would borrow a cigarette, and started something called Re-Mor a Division of Via Mare Ventures Ltd. That company raised about \$2 million from investors in early 1979, and in the words of the solicitor for Re-Mor's bankruptcy trustee, "This operation had little internal pretense to actually invest investors' funds in mortgages but funds were simply used by Mr Luciani as needed for Astra's purposes." These purposes included about \$600,000 which flowed through the Luciani trust account to the trust account of Cassels, Brock (the Stanbury/Anderson firm) where they formed part of the installments on the Spanish loan buy-back agreement of Luciani, Montemurro and Vasko.

#### Good progress

And so it was that by the spring of 1979 at the Ontario Securities Commission everything seemed to be going fine. By this time about \$1 million of the \$2.44 million in the Spanish buy-back agreement had been paid—purportedly by the three directors, but in fact by flowing various Re-Mor and other monies through the Luciani and Cassels, Brock trust accounts. In fact, progress was so good that in April 1979, Clement and Anderson met with Bray, Baillie and investigator Bigham, and the idea was that they would begin to think of preparing a prospectus for Astra Trust Company so that eventually its stock could be freely sold to the public. At this meeting, so an eyewitness tells me, investigator Dennis Bigham said this was not a good idea and the principals were crooks, but he was reprimanded by chairman Baillie.

In June, the Re-Mor brokerage-licence came up for renewal, and it was granted. According to Business Practices Division director R. A. Simpson, if the May 1979 charges against Montemurro and others had been filed and announced, it would have "put the cap on" the brokerage registration. He said when he first found out about the charges in 1980, he couldn't figure out how his staff had missed it. Then he found out the OSC had kept

the charges secret.

Meanwhile, back in Spain, the building contractor working for Bahía Romana, Promotora Gibralfaro SA (Progisa) was owed some \$1.5 million and wanted to be paid. This resulted in the "Niagara Falls Agreement" of early February. It is a peculiar document. The full agreement is in the Spanish language, dated February 7, 1979, with various initials at the top of each of its two pages. Various signatures appear at the bottom of another page, below what appears to be an English language summary, dated February 8. But the two versions differ substantially in their provisions for security and payment. For example, the English summary omits provision for an immediate payment of \$100,000, contained in the Spanish version. And a mortgage as security for the balance is for three months in the Spanish version, and for nine months in the English version.

The two versions seem to agree, however, on one point, because the English version says, "Bahía Romana (the Canadians) shall give Progisa authority to sell the individual units or the whole enterprise as its agent."

The Progisa lawyer says he was paid with a rubber cheque for 7 million pesetas under the agreement (\$122,000 US), and the mortgage wasn't executed. To make matters worse, Sam Carpenter, on whose promissory notes the builder was relying in the absence of any better security, was reported to have died on February 25.

On February 13, Claude Persoons had cabled Astra lawyer Anderson—a message to be forwarded to Montemurro—that "Sam Carpenter out of the game and is most uninteresting and cannot harm."

It may be that Carpenter died, or it may be—according to some well-informed speculation—that he merely disappeared, but that is another story.

In any event, the Progisa lawyer complains that instead of naming Progisa or Progisa's nominee to arrange the sale of the project, the Canadians appointed Claude Persoons.

It appears that certain condominium units had already been sold, but in any event Persoons set out to sell the entire project for \$10 million. Astra Trust had retained all of its interest in the project until the entire buy-back agreement had been paid. In spite of its interest it wasn't a party to any of the sale negotiations. Then in late 1979 Persoons was arrested for possession of counterfeit.

Finally Progisa obtained judgment against Bahía Romana for \$1.9 million, and the building, poorly located, badly designed, and uncompleted, was put up for auction. There were apparently no offers in excess of what was owed to the builder.

The best estimate is that some \$3 million, including the payments that were authorized by the OSC, left Canada for Spain, and that perhaps \$1 million was actually used for the project. The fate of the rest of the money isn't known.

One of the problems with the Spanish project was that the Canadian investment was not cleared through the necessary Spanish regulatory channels. But money also

flowed the other way. In July 1979, US actor Sidney Lanier, having funds that were apparently blocked in Spain by the exchange controls, entrusted some 13 million pesetas to Persoons, who transported the currency to Niagara Falls, where, the US actor thought, they were to be converted to dollars and placed in a renewable Term Deposit with Astra Trust. The pesetas were then transported to Montreal, where they were converted to \$211,000 Canadian by the brokerage firm of Geoffrion, Robert and Gelinas, and remitted to Astra Trust. But instead of going into a Term Deposit, the money found its way to the law firm of Cassels Brock, where it formed part of another of the installments pursuant to the Spanish buy-back agreement.

As well, Montemurro has said Persoons opened four or five accounts for Astra Trust in Jamaica, and was soliciting customers for Astra in Jamaica and Miami.

### The inside kite

Then there was the Astra Trust inter-branch kite. From July until about October 1979, a series of cheques was exchanged between Montemurro and two of his branch managers, made out for similar amounts of money in what appeared to be an interlocking series. "Kiting" is normally an operation by customers of different financial institutions, whereby A's cheque to B is covered in A's account by C's cheque to A, while in C's account, the cheque is covered by B's cheque to C. The operation depends on delays in clearing the cheques, and the key is timing. The aim is normally to get money from financial institutions based on nothing but the exchange of paper.

This peculiar exchange of cheques, which was not between customers but between branch managers, was brought to the attention of Touche Ross and Co., who were "supervising" the winding-down of C&M, and Touche Ross undoubtedly discussed it with OSC staff. But nothing was done.

After the kite was let down in October, Re-Mor monies started to be disbursed to Astra. The lawyer for Re-Mor's bankruptcy trustee says these funds "seem to have been moved extensively through various accounts in Astra as part of an operation to maintain an overstated appearance of liquidity, and to let down a branch kite operated within Astra, to make payments due under mortgage assets of Astra, C&M, and Re-Mor..."

For example, about November 1, 1979, Luciani arranged for what was supposedly a mortgage on a property belonging to a company for which he acted. The money was paid by Re-Mor into the Luciani trust account, but approximately \$160,000 of that money was then disbursed, not to the borrower, but to Astra Trust Company.

Other monies from this supposed mortgage advance were paid out in exact amounts to Astra and Via Mare Ventures Ltd, and they represented interest payments on earlier Luciani "mortgages."

This use of new advances to keep the interest payments on earlier advances up to date is just the pattern that had been discovered by OSC staff with respect to C&M in late 1978.

### The prospectus

In early October 1979, everything was going so well that lawyers Anderson and his partner Lois Andal met with OSC staff to discuss further the eventual prospectus. They reported with some satisfaction that the outspoken Bigham did not attend. The OSC staff pointed out that if a preliminary prospectus were filed with the OSC, it would be a document available to the public, and this would involve two undesirable risks: lawsuits and newspaper articles. One staff member suggested that the staff review a draft on a confidential basis first, adding that "they were prepared to take all the time that was required to review and comment upon this prospectus and assist in bringing it into acceptable form."

A draft prospectus was ready by December 1979, and in early January 1980, Lois Andal telexed a draft of the section on "Material Contracts" to Montemurro to fill in some details. It was about the Spanish loan and buy-back agreement. It didn't mention the fact that Luciani had acted for the lender Astra when he had an interest in the borrower, or the reported death of his partner Carpenter, or the apparent sale of some of the units, or the sale attempts by Persoons, or his arrest. Nor did it mention that Montemurro had accused his European agent Persoons of absconding with \$57,000 of the money that was supposed to be paid to the contractor. And it made no mention of the Securities Act charges against Montemurro and Luciani with respect to the Agency Fund. The charade was being played out. Since these charges had not been filed or served on the accused, they didn't know about them, and couldn't be expected to disclose them.

### The Glen Meadow investigation

In early 1980, the OPP became aware of, and started investigating, cash-flow puzzles relating to the Montemurro companies. But the investigation was not initiated as a result of any activities of the OSC, or any other regulatory agency. What happened was this.

By November 1979, Bigham and the OSC staff, dissatisfied with the Touche Ross reports on C&M, started interviewing "borrowers" from C&M, with a view to laying criminal charges. But they weren't investigating the cash flows through the Luciani trust account from Re-Mor and other sources, because, according to the official account—which not everyone believes—nobody in the government was aware of that until later.

In late 1979 there was a meeting of officers from the RCMP, Niagara Regional Police Force, OPP, OSC, and others, and what was discussed was a group of apparently related investigations. Various areas were assigned. The OSC was to investigate C&M, and the OPP were to investigate a Welland-area real estate project.

Various real estate companies owned by Welland lawyer Luciani and ten other Welland businessmen who were his associates and/or clients, had amalgamated their land holdings and concluded an agreement with a company called Glen Meadow Construction Ltd, under which Glen Meadow was to purchase and develop the lands. Glen Meadow was owned by one Florindo Volpi

(or Volpe; the name is spelled both ways in court documents). Some of Luciani's associates and/or clients did not receive their money, even though the lands were sold to Glen Meadow. At some point the OPP appeared, and in early 1980 they raided Luciani's law office and seized some of his trust records.

With respect to the Glen Meadow deal, some of the vendors say they were told they would receive their money out of the mortgage advances to Glen Meadow. The money was paid by the two mortgage lenders, Grey-mac Credit Corporation and Municipal Savings and Loan Corporation, to the Luciani trust account. One of the vendor companies says in a court action that Luciani disbursed monies from those advances to entities unrelated to the deal: \$80,000 to Astra Trust Company; \$35,000 to Carlo Montemurro; and \$100,000 to Commonwealth International Shippers (UK) Ltd. (The latter company was a creditor of another Volpi company, an importer by the name of Eastroc Industries.)

It was this discovery of irregularities in the Luciani trust account that led the OPP to study Re-Mor and the related companies.

#### OSC still doesn't act

On February 5, 1980 an OSC investigator obtained a search warrant for the premises of Re-Mor. He alleged one case of an investor who received an "investment contract" from Re-Mor, which he alleged was a security under the Securities Act. He didn't allege any cash-flow irregularities, the OSC being still officially unaware of them.

Commission staff tried to execute the warrant on February 6, but Gerry Kluwak on behalf of Re-Mor moved in court to quash the warrant. Montemurro, in a court affidavit dated February 8, said Re-Mor was a licenced mortgage broker. On February 19 the warrant was quashed on the grounds it was too broad. It purported to authorize the seizure of all Re-Mor's records based on one allegation of a Securities Act violation. And the incident was reported in the *Globe and Mail* on February 21. The OSC didn't obtain the records.

During March, after it was clear to all that Re-Mor existed and had a mortgage brokers licence, and in the absence of any OSC regulatory order against the company—and in particular no freeze-order—Montemurro was able to disburse \$275,000 from Re-Mor and Re-Mor's account at Astra, which he then converted to his own use. According to the lawyer for Re-Mor's bankruptcy trustee, "This money was converted substantially to cash by Mr Montemurro and has now disappeared. These funds were paid out before any documentation whatsoever towards a mortgage transaction were prepared..." although Montemurro wrote to the Bastedo, Cooper firm in early April instructing them to prepare some mortgage documentation.

On March 26, Carlo sold his one-quarter interest in the family grocery business to his brother Santo and transferred the \$1.57 million proceeds to a Montreal bank account. And on March 31, he transferred \$1.47 million out of that account to an account in the name of

Carlo Montemurro and Associates at Credit Suisse, Geneva. Also on March 31, Montemurro wrote to the C&M investors to tell them he was withdrawing his personal guarantee for their repayment.

On February 26, Touche Ross and the OSC had agreed to continue to let Montemurro wind down C&M himself, but finally in April, and only after Carlo withdrew his guarantee, the OSC moved in court to make Touche Ross Ltd the receivers of C&M, still taking no action against Re-Mor.

On April 24, the OSC charged Montemurro and others with defrauding the C&M investors. The basic allegations—that investors were told they were investing in mortgages when in fact they were getting promissory notes of C&M, and that the company was insolvent—were those that had been developed by OSC staff by December 1978, some 16 months earlier.

The C&M preliminary hearing was held last November before a judge who is a former law partner of John Clement, Provincial Court Judge D. J. Wallace.

Further liquidations and criminal charges followed.

#### The tapes

It is reliably reported that the OPP seized a box of tape-recordings made by Montemurro of his phone conversations. The *Burlington Post* reported the contents of one of these calls as follows. Montemurro discusses with John Clement why a government investigation into C&M is being pressed. Clement says that high government officials aren't aware of it, and the investigation must be at a lower level. The reported contents of another call: Montemurro tells organized crime figure George Bagnato that Clement has been paid \$15,000, and he has done nothing. The *Post* didn't report dates for these conversations.

Said one lawyer: "They tell me there's nothing on them [the tapes]. So if that's the case, let's all hear them."

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