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# A Developer's Account of Hidden Land-profits

Toronto developer Louis Charles was raided by special income tax investigators in 1978, pleaded guilty to a reduced tax-evasion charge in 1980, was fined, and became a crown witness.

Charles gave trial evidence last month about offshore concealment of land-profits—with passing indications of local corruption—in a land-market dominated by the Ontario Housing Corporation. He said he was a $200-a-week consultant to developer Robert H. McGregor, who is the son of an obscure former Conservative Member of Parliament. The deals in question were in Sudbury during the early 1970s.

Charles said he also acted as consultant to the DelZotto real estate family, "to advise on real estate matters." He said the DelZottos approached him to find situations in which they could deal with the Ontario Housing Corporation (OHC), and a DelZotto company was the ultimate buyer in a series of simultaneous deals for the same parcel of land, each at a mark-up. McGregor was charged with tax-evasion.

For reasons he didn't spell out, Charles said his own name, along with that of McGregor and Sudbury Mayor Joseph J. Fabbro and family, had to be kept out of deals in order to do business with OHC. Although there wasn't evidence of any actual sales to OHC, Charles said the crown corporation was the main purchaser in the market for serviced land.

This led to the use of a nominee which the prosecution said represented McGregor. The defence, on the other hand, said the beneficiary was the crown witness Charles.

Another major crown witness was Raymond S. Tower, formerly vice president, real estate and law, of the Grand Bahama Port Authority Ltd, then a member of the Bahamian law firm of Depuch and Turnquest, and now vice president, law, of the National Harbour Board, Ottawa.

Tower testified that McGregor was the beneficial owner of two Bahamian companies, Glenorchy Ltd and Forth Ltd, involved in offshore transfers of funds.

**A long, obscure career**

Lou Charles said he is now "one of the principals" in the Concord Square development project in Don Mills, the largest current project in Toronto. In land development since 1948, Charles said he worked for Principal Investments Ltd from 1951 until its liquidation in 1963. (Principal, one of whose financiers was John Pullman, was the major Canadian land-holder and shopping-center developer during those years.) Afterward, Charles worked for companies connected with the prominent Tannenbaum real estate family. And in the early 1970s, Charles said he worked as a consultant to various real estate interests including the DelZotto companies, and land dealer Edward Cogan, as well as the defendant Robert H. McGregor.

Charles said he first met Sudbury Mayor Joseph J. Fabbro in the late 1960s, and Fabbro told him a land and housing boom was imminent. (At the first meeting with Fabbro, he was the ex-mayor and soon to be re-elected. But Charles said he was always "Mayor" Fabbro, "like a Kentucky Colonel." Fabbro was mayor for most of the years between 1956 and 1975. He has since died.)

Charles said Fabbro suggested a parcel of land that might be available for sale, and it was the Fairway Golf Course, soon to be called Cambrian Heights subdivision. Charles said the Cambrian Heights deal went like this. He negotiated its purchase at the Toronto apartment of one of the owners, an automotive parts dealer named Greenspoon, in a meeting attended by himself, Greenspoon, McGregor, and Sudbury Mayor Fabbro. The option on the land was taken by Naafkopf Trust Registered, a Liechtenstein company Charles said belonged to McGregor, for $275,000. Then Naafkopf assigned the option to Municipal Consultants Ltd, another McGregor company, Charles said, and the closing was for cash and a mortgage back to the vendors, totalling the $275,000 price—as well as a mortgage to Naafkopf Trust for $875,000. This Naafkopf mortgage was later sold and resold to various parties, including mortgage brokers Charles Orenstein and Alan Feldman. Crown prosecutors Robert Hubbard and Bernard Dans said McGregor concealed that $875,000 component of profit. It wasn't the subject of the tax charges, but it was offered by the crown as "similar act" evidence.

Charles said the Cambrian Heights land was eventually sold to a company controlled by the DelZottos, in a deal negotiated in Mayor Fabbro's room in a Sudbury motel Fabbro was running.

Charles also said he took McGregor to the offices of OHC because it was to become the major buyer in the market for serviced land. As a result of the meeting, Charles said, the decision was that McGregor should buy as much land as he could, for servicing and eventual resale to OHC. Charles said McGregor was paying him consulting fees of $200 per week, along with expenses and the use of a Cadillac. He said he was promised a share in profits—not in writing—that he never received. "I was gullible," said Charles.

The DelZottos were paying him $2000 per month, Charles said, and once again the promise of a future "relationship" didn't materialize.

**What the witness said**

In a second land-acquisition, Charles said he arranged McGregor's purchase "from a local judge" of a large parcel called Mailey Park. He said Mayor Fabbro had taken an option on that property and then assigned it—presumably at a profit—to the McGregor entity. Charles didn't elaborate, but it appears that during the time in question Charles and McGregor were dealing with local Sudbury authorities for the development of the Cambrian Heights property.

The third parcel of land was 176 acres directly adjoining Mailey Park, and it is the subject of the current tax charges. It was originally held by a group of 30 Sudbury businessmen in a company called Nickledale Lands Ltd. Charles said he tried at first to get an option on the lands in his own name in trust. However, said Charles, at about this time McGregor told him he had been to a meeting with OHC officials, accompanied by Mayor Fabbro's nephew, and the message was this: it would be politically impossible to do any business with OHC with the involvement of the names Fabbro, McGregor or Louis Charles. The reason given, said Charles, was that there was too much flak in Ontario over "these types of purchases." He gave no indication why his own name was purportedly among those proscribed.

So Charles said he contacted, for permission to use his name, an old friend Ben Daidone, a Philadelphia resident who has been in the silver mining and electronics business, and is now retired. Daidone's explanation was that he thought he was being honored by being asked to be on the board of directors of some company. He said he had been a director of other Canadian companies at Charles' request, in unimpeachable circumstances, and he mentioned companies connected with Joseph Tannenbaum, and a "Mr Samuels."

Charles said Daidone's name was suitable because it was not known to Ontarians generally and so couldn't be tied in with anyone, and it wasn't known generally in Sudbury either. But Charles indicated it was a name that would tell certain people that the deal was indeed connected with the Fabbro interests. That was important, Charles said, because there was an "underlying current" that Fabbro was always "in the picture," with "influence on basic situations." If Fabbro was involved, said Charles, then it was known the land would in fact be successfully subdivided.

Although Daidone said he knew nothing about, and had no interest in, the land in question, he did recall meeting Mayor Fabbro.

**A double flip**

And so it came about that the Nickledale option was from the Sudbury consortium to Ben Daidone in trust for $475,000. The prosecution said profit on subsequent resales—via assignments of the option—was profit to McGregor, and that McGregor was the beneficial owner of a bank account called "Ben Daidone in trust" at the Royal Bank of Canada, Freeport, Bahamas.

Charles said he saw McGregor put the signature "Ben Daidone" on the option, but defence lawyer Louis Silver said it was Charles himself who was in the habit of making documents that weren't true.

In any event, by the time the option was executed, Charles had come up with a deal to sell the option to what he said he thought was "the largest German builder," for a mark-up of about $140,000, and both agreements were dated the same day. According to the real estate agent who acted for the assignee, it wasn't a German builder, but a group consisting of Canadian Peter Rotenberg (since died), Bruno Arnold, one G. D. McKnight, Louis Charles, and the real estate agent herself, Heinke A. Martens. Charles negotiated the deal with Martens. He had a 10% interest in the group, along with an agreement with Martens to get one-half of her real estate commission as a consulting fee, which he said he paid to McGregor.

Charles said Toronto mortgage broker Alan Feldman advanced him $5000 to finance his part in this "investment."

Charles said the intention was to build houses, but

Martens said the group's intention was to resell or assign the option before closing.

Which was done. The final purchaser in the simultaneous closings was a DelZotto real estate company. Charles said he had been approached by Angelo DelZotto to find out about "situations where he could deal with the Ontario Housing Corporation." He said the DelZottos made him nominee president of Brave Construction Ltd, and on behalf of Brave Construction, Charles in trust took an option assignment from "Ben Daidone in trust." However, the Daidone option had already been assigned to the Martens group. So Charles said he arranged to buy back, in trust, a re-assignment of the option from the Martens group. This was for more than the price to the Martens group, but less than the resale price to the DelZottos.

The respective land-prices were these: (1) To Ben Daidone in trust $475,000; (2) to Martens group $609,000; (3) to DelZotto company $904,000; (4) from Martens group to Lou Charles in trust $744,000. Extensively cross-examined on this unorthodox series of assignments, Charles said he made full disclosure both to Martens and to the DelZottos; defence lawyer Silver accused him of being selective in what he disclosed. Martens said she wasn't told the price to the DelZotto company, and the DelZottos were not witnesses.

For the closing, said Charles, he and the DelZottos, along with their lawyer Herbert Noble, flew to Sudbury where they were met at the airport by the inevitable Mayor Fabbro. The closing, done through the Sudbury law firm of Demarais Keenan Beaudry and Cull, generated among other things cheques of $108,000 to "Ben Daidone in trust," and a $169,000 mortgage to Daidone. The prosecution says McGregor deposited the $108,000 in the Freeport "Daidone" bank account, and likewise concealed the proceeds of some $190,000 when the mortgage was paid out.

Possible evidence by former Freeport bank manager Robert Spencer was to be the subject of a Supreme Court of Ontario motion, the most important such case since Frischke (Bimonthly Reports, Number 1), which involved the Royal Bank, Panama.

# Two Examples of Fast Banking at the B of M: It isn't Unusual

The Bank of Montreal's senior vice-president, credit, said "daylight overdraft facilities" are not unusual services for his bank to offer in corporate take-over situations, and in other situations as well. A daylight overdraft is a circular exchange of cheques in the form bank-to-borrower-to-bank, simultaneously or at least on the same day. Investigators, on the other hand, view such transactions as likely indicators of fraud.

The bank official, Donald Clark McLean, was testifying in the preliminary inquiry into fraud charges in the Bank of Montreal-financed takeover of Imperial General Properties Ltd by Abacus Cities Ltd in June 1978 (Bimonthly Reports, Number 18). Although the RCMP originally targeted bank officials as well, the only person finally charged was Abacus chairman Kenneth Rogers. But the financial aspects of the deal were determined by the bank, not by Rogers, including the key "daylight" aspect. And there was nothing unusual about it, according to senior bank credit officer McLean.

**The Fraser Beatty role**

Abacus originally applied to the Bank of Montreal for a conventional loan of $23 million to be secured by the IGP stock that Abacus would acquire with the $23 million. But in the deal the bank finally approved, only $11 million was loaned in other than daylight form, and it was to IGP, not Abacus. With $12 million IGP already had, it meant IGP had $23 million in its treasury in cash, which was the purchase price Abacus had to pay for the IGP control block.

The takeover mechanics then were: (1) The first half of the "daylight" maneuver—$23 million daylight loan from the bank to Abacus—was paid by Abacus to the vendor of the IGP block so Abacus acquired control of IGP. (2) IGP's $23 million cash went to Abacus in exchange for dubious Abacus assets. (3) In the second half of the daylight maneuver, Abacus repaid the $23 million to the bank. The $11 million conventional loan to IGP remained outstanding, and it was secured by good IGP assets.

The fraud charges relate to the second step, the exchange of IGP cash for Abacus assets on the day of closing. Bank officer McLean said he was aware of corporate legislation that makes it an offence for a company (in this case IGP) to give financial assistance in its own takeover (section 17 of the Canada Business Corporations Act) with certain exceptions. He said the matter was raised with the bank's lawyer, one J. W. deC. O'Grady of the law firm of Fraser Beatty, who said the provision didn't apply as long as the assets obtained in exchange for the IGP cash were reasonable value for the money. McLean gave the bank's approval on that basis.

However, earlier evidence indicates that McLean had no way of knowing how good those assets were, since it hadn't yet been determined what assets they would be. The chronology was this: (1) The terms of the bank's approval became known on Saturday, June 17. (2) Since, under the terms of the bank's approval, $23 million in Abacus assets were required for the day of clos-

ing, the Abacus assistant treasurer was assigned on Sunday, June 18, to look for enough unencumbered assets in balance sheets and working papers. (3) At the closing on Monday, June 19, the assets weren't produced.

**Judicial notice**

McLean wasn't pressed by crown attorney Ross Lundy to explain how he could approve as to legality on the basis of good assets without knowing what those assets were to be. However, Judge Joseph Addison insisted McLean be asked what steps the bank took to see that the assets were good, and he replied that the bank took no such steps.

Judge Addison pointed out—on the basis of bank documents placed in evidence to which I was denied access—that had the bank been required to satisfy itself as to the quality of the Abacus assets exchanged for IGP cash, this would have automatically acted as a protection to the IGP minority shareholders, who are the alleged victims. Addison indicated the terms of the original Abacus proposal would have created such a safeguard.

"If you have any more deals like this," Addison said to the witness McLean, "please let me know."

Abacus official Ross Amos said in earlier testimony that he was present at a meeting with bank lawyer O'Grady just before approval was obtained, and he said O'Grady indicated he "would have to discuss this on high," whatever that means.

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Another "daylight" arrangement—completely unrelated as to borrowers—was done by the Bank of Montreal for lawyer Gerald R. Kluwak. Kluwak frequently acted as the lawyer for the Bank of Montreal branch at 400 University Avenue; (but he is more famous as the lawyer for Astra Trust Company president Carlo Montemurro.)

Two clients of Kluwak, in 1980, agreed to purchase two Beaches area duplexes for $320,000. They had a further agreement to flip the properties to a subsequent purchaser for $460,000. However, the flip agreement collapsed. The clients, who had anticipated using the resale proceeds to finance their original purchase, were in difficulty.

**A client-to-lawyer flip**

What then happened between Kluwak and the clients was the subject of litigation over Kluwak's fees; explanations given by the lawyer and by the clients aren't consistent. However, the role of the Bank of Montreal is easily understood, and it represented the granting of a daylight facility to Kluwak. It worked like this:

The clients were to purchase the properties for $320,000 together with what was documented as an immediate re-sale to their lawyer Kluwak for $460,000. The difference, $140,000, flowed in a circle on the day of closing. The bank paid $140,000 to Kluwak, who paid it to his client, supposedly as part of the purchase price; and the client, in turn, directed that this $140,000 be paid (back) to the bank.

As it happened, the actual, $320,000 purchase—the original purchase—was financed by a $300,000 first mortgage loan from Sterling Trust Company, and an additional $20,000 second mortgage from the Bank of Montreal (also the 400 University Avenue branch). That represented 100% of the purchase price; but calculated as a percentage of the price as marked up by the daylight portion, the financing appeared to be for a conservative 69%.

Kluwak, in the fee litigation, was asked why the money was circulated in that way, and in particular whether the Sterling Trust Company was led to believe the real price was $460,000, as the basis of their $300,000 loan. Kluwak said he didn't know.

Kluwak—I don't know whose idea it was. I was just informed that it had to be done that way.

—Who were you informed of that by?

—I don't know. Even my bank manager said—well, when I went and told my bank manager that I needed the money, he said, "Oh yes, I understand. That's not unusual." I asked him why and I forget what he said.

The clients in question were John David Alderton and Jennifer Jackson, who figured in the recent exaggerated rumors about the supposed legal difficulties of the McMillan Binch law firm.

# How a bogus Cheque, not Greenshields, Exposed Securities Violations

In a matter of days last summer, Canadian junior oil company stock went from the Toronto company president to an anonymous client of Liechtenstein Landesbank and was being resold by broker Greenshields Inc. in Toronto for the Liechtenstein Bank. The stock got to Europe via a sale or sales that didn't comply with Ontario securities law. But the situation only came to light because one of the sales was paid for with a forged Chase Manhattan Bank manager's cheque. Greenshields then wrote to the Toronto Stock Exchange—even though the stock in question, and two other stocks involved, weren't listed there—"in case these circumstances should be brought to the attention of the New York Police Department."

**Not a mere conduit**

The stock in question is Ameracrude International Ltd, whose president is Toronto lawyer James T. Riley. The

two other stocks involved in the same set of transactions were Ameracrude Resources Ltd and Western Allenbee Oil and Gas Ltd.

The company director through whom the stock passed on its way to Europe was Alan M. Abernethy, 70, a director of many junior oil companies. Riley says he sold the Ameracrude International stock to Abernethy at a bargain price to induce him to stay on as a company director, and didn't know that Abernethy was immediately reselling it. However, Abernethy sold it at the same price as his "purchase" from Riley, and Riley was to be paid out of the cheque to Abernethy. Riley said he actually sold the stock to Abernethy, and wasn't merely using Abernethy as a conduit.

Depending upon whether Abernethy is or isn't considered part of the "control" position of Ameracrude International, either Riley or Abernethy was required to file a prior public notice giving details of the "proposed method of distribution," and an undertaking that there will be no unusual selling efforts.

Riley was Abernethy's lawyer.

Abernethy says he took a package of three company stocks—the two Ameracrudes and Western Allenbee—and turned it over to his friend Nicholas Magissano for sale to an unidentified European group, whose representatives were to be in Houston, Texas on June 22. Abernethy says Magissano did the transaction for him in Texas and returned to Toronto with a manager's cheque drawn on a New York City branch of the Chase Manhattan Bank, which Riley said turned out to be part of a ring of forgeries. The relationship between the alleged writer of the bogus cheque, one "G. Wiens", and the Liechtenstein Landesbank's client isn't clear. Riley said he thinks the bank's client is a Toronto individual.

In any event, on June 22, the same day as the Texas sale, Greenshields received sell orders from its Zurich branch to dispose of these stocks in Toronto, and the brokerage firm began to sell them. The sales were probably to retail clients, but the brokerage firm's director of compliance, Owen Sims, refused to discuss the matter with me.

However, when Greenshields in due course tried to transfer registered ownership of the Ameracrude International stock into its client's name, the process came to a halt, because Riley had served transfer agent Guaranty Trust Company with a stop-transfer notice, when he found the bank wouldn't honor the "Wiens" cheque. And then the same thing happened with the British Columbia transfer agent of Ameracrude Resources. In both jurisdictions, Abernethy sued Wiens, Magissano (still his friend, however), and the Liechtenstein bank for the return of his stock. The bank said Abernethy was the plaintiff merely as a front for Riley, which Riley denied.

**"Problems"**

But Abernethy didn't sue for the return of his Western Allenbee stock. (Four months after the event, Abernethy said he "certainly intended" to do so.) Western Allenbee is an obscure public company thought by stock regulators to be linked to Montreal financier Irving Kott. A block of its stock was part of a series of transactions several years ago involving the apparent sale of Kott companies to interests connected with Toronto real estate developer Frank Anthony. But securities regulators were unable to unravel the deal.

In this case, although it was Magissano who was the recipient of the "Wiens" cheque, and Abernethy the payee of the cheque, Abernethy seemed to feel it was Magissano who was in difficulty.

Abernethy [cross-examined in the Ontario court action]—I said, "If it will help you, Nick, I would be willing, if you are being blamed for this, I would be willing to help you to the extent of putting up some shares of Catalina [Energy and Resources Ltd, a public company of which Abernethy was president] if it will help you, but I stand to lose, believe me, not anybody else." ... And I have not heard from him anything since.

—How were you intending to help him?

—I don't know. I don't know what his problems were.

The Ontario court action concerned only Ameracrude International Ltd, an over-the-counter Ontario stock, whose president, Riley, was also Abernethy's lawyer. Riley's law partner, Glen Erikson, acting for Abernethy in his cross-examination, wouldn't let Abernethy answer questions on how he acquired the Ameracrude International stock for resale.

As well, Abernethy was asked:

—Could you tell me, sir, then whether you had any discussion with your lawyer, James T. Riley

Erikson—Don't answer.

—About that deal

—Don't answer.

—Prior to suggesting the shares to Mr Magissano and his investors?

—Don't answer.

Erikson said the connection with Riley was "irrelevant."

A few days later, Riley himself filed an exculpatory affidavit even though he wasn't a party to the action. He said he sold 20,000 shares of Ameracrude International to Abernethy for $2.50 per share in June, and wasn't aware that Abernethy had arrangements to immediately resell them through Magissano. Riley said his sale to Abernethy was at a price below the quoted market value of $2.75. Riley said he made the sale to induce Abernethy to stay on as an Ameracrude director, in spite of the pressure of his other business.

**And "difficulties"**

The bank's lawyer filed in court a copy of a letter from Greenshields to the Toronto Stock Exchange, some of

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which is rather obscure. Greenshields compliance chief Owen Sims—who wouldn't talk to me about the letter—wrote that "It appears that Mr Riley is president of Ameracrude International and Ameracrude Resources and had some difficulty with respect to the Ameracrude International and perhaps other securities, but this is not clear at this time." Sims didn't say what type of "difficulties" he was referring to. He closed his letter as follows: "However, we understand that the New York Police Department has been investigating an occurrence we understand may be the same or a similar one involving the Chase Manhattan Bank and I, therefore, decided it should be brought to your attention in case these circumstances should be brought to the attention of the New York Police Department."

The lawsuit was settled last month. The Liechtenstein Landesbank was to be paid $91,000—the settlement document doesn't specify by whom—and the stocks returned to Abernethy. No one ever appeared on behalf of "Wiens."

# How to get around Prospectus Disclosure: The Latest Method

Seven million shares of a speculative Kentucky coal-mining venture will be available for sale to the public without prospectus disclosure, in part because of an Ontario Securities Commission exemption. The deal represents the return to the Ontario public market of D. James McGorman, formerly an associate of ex cabinet minister Robert W. Macaulay.

Promoter McGorman used a penny-mining company, Jamestown Resources Ltd, as the corporate vehicle for the new venture, something that in itself isn't a novelty. But the usual use of such technically "public" shells has been to get beefed-up insider advantages in connection with a new venture—but with the new venture being qualified by a prospectus. (See Bimonthly Reports, Number 5, "A Regulatory Failure," and Number 13, "Promotions from the Beyond"). However, in this case, McGorman created seven million new shares, all of which will be resaleable without a prospectus, and where the securities law wasn't adequate to do that, he obtained an OSC exemption.

**Not available**

In denying the basic prospectus exemption to eventual Ontario purchasers, the OSC showed more confidence in the deal that either its own staff, or the consultants hired by the company.

The consultants, Watts Griffis and McOuat Ltd, noted in a report that the coal venture is a combination of four small operating mines and other leases in Kentucky that have been "generally inefficient." They say the company produced figures that indicated a favorable operating prospect in the future, because of better management and better marketing, and new financing. But the consultants couldn't comment on the figures. They wrote: "The details of costs and sales arrangements which have been used for these projections have not been made available to, nor confirmed by Watts Griffis and McOuat, except that the increased revenue is consistent with the improvements planned by management." They also note that the employment agreements of the crucial new management are for one- and two-year terms only.

OSC staff said the deal "has all the earmarks of a 'back-door underwriting,' and that such an increase in capital required the protection to secondary market participants [public purchasers] of a prospectus," particularly since "there is nothing approaching a valuation of the [coal company] shares Jamestown is acquiring." The staff lawyer noted as well, as a caution, that one of the inter-company agreements says one of the coal companies gives no warranty "as to the existence or amount of coal minerals or any other minerals" on its property.

As well, the OSC staff lawyer asked: "What was the background to the flurry of promissory notes issued by [one of the coal companies] in favor of [insiders] in the midst of the 'negotiations' with Jamestown?"

**How to**

The coal companies' reorganization and refinancing was done via the issuance of the seven million shares of new stock. The stock was issued in two big blocks, 4.4 million shares to a consortium of investors, and 2.65 million shares to the coal-company owners.

The first block worked like this. McGorman set up a numbered Ontario company, called 459862 Ontario Ltd. This company issued 4.4 million shares to a group of individuals and companies represented by Walwyn Stodgell Ltd, in exchange for the investment of $4.4 million. Next, the numbered company loaned this money to the Kentucky coal-companies, among whose shareholders was McGorman himself. Finally, the public company, Jamestown Resources Ltd, made a share-exchange "takeover bid" for all the shares of the numbered company. And thus the lenders, instead of holding numbered-company shares, held Jamestown shares, and Jamestown held all the shares of the numbered company.

Now as it happens, stock issued by a public company (in this case Jamestown) for stock it acquires in a take-over bid, can be resold to the public without a prospec-

tus, provided the public company is what the Ontario Securities Commission calls a "reporting issuer." Jamestown was a reporting issuer to this extent: it had reported for each of the last four years that it spent some $10,000 per year on administration expenses and nothing else. On this legal basis, the takeover bid freed up the stock for resale.

(However, the Montreal Stock Exchange, where Jamestown is listed, required that portions of the 4.4 million shares be escrowed for periods of up to 18 months, so it is not all saleable immediately.)

**Satisfied**

As for the second block of stock, there was a potential fly in the ointment. The second half of the plan was for Jamestown to set up US subsidiaries, which would merge with the Kentucky coal-companies, and in the result the coal-company owners, too, would end up holding Jamestown stock. But the stock issued in this manner—stockies call it a "triangular merger"—unfortunately did not fall within one of the prospectus exemptions. Thus, any resale by the coal-company owners would have required the issuance of a prospectus to purchasers. That is something that places significant legal responsibilities on the seller, and it was something to be avoided.

So an application was made to the Ontario Securities Commission, to exempt the issuance and eventual resale of this stock from the prospectus requirement. That is something the OSC may grant, according to the Securities Act, "where it is satisfied that to do so would not be prejudicial to the public interest."

The OSC exemption application was crucial to the final overall structure of the deal; the lenders didn't accept the "takeover bid," with respect to their numbered-company stock, until after the OSC had approved the exemption with respect to the coal-company stock.

The company's main argument in favor of the exemption was that in the OSC's proposed amendments to the Securities Act, such a triangular merger would be included in the events capable of triggering the exemption. So why not exempt this deal? The OSC agreed, requiring however that this block of stock be helf 18 months before resale.

The company Jamestown started life by raising money from the public for exploration, but unfortunately it never struck anything. So the company wrote off its mining claims, and was gradually spending the rest of its funds in "administrative expenses." In June 1980, McGorman and his associates acquired a 29% block of Jamestown from earlier insiders, including underwriter Rosmar Corporation, paying Rosmar 6 cents per share and the others 4 cents per share.

McGorman himself, in the early 1970s, was an officer of Holdex Group Ltd, a venture capital company controlled by Robert W. Macaulay. McGorman and others, not including Macaulay, were charged by the RCMP in connection with a Holdex deal called Life Investors International Ltd. The RCMP alleged stock-fraud. The other defendants were discharged after the abrupt termination of the preliminary inquiry. McGorman, who was out of the country during the inquiry, was then discharged when he returned, without a hearing (see Bimonthly Reports, Number 8).

# DiDomizio Testimony

Anthony DiDomizio said his former partner in the masonery business, Frank Durzo, now disappeared, had buyers for the two huge houses in King City he and Durzo were building (Bimonthly Reports, Number 20), but the buyers didn't materialize.

DiDomizio said Rocco Morabito suggested they burn the completed house to collect the insurance, but DiDomizio said he raised the point that it was all concrete and fireproof, and that he didn't want to go to jail. He said Morabito said all he had to do was go on vacation and return to a demolished house. As for its resistant qualities, DiDomizio said Morabito said, "We'll dynamite it." But besides, DiDomizio said he insisted, he didn't have a cent to pay the $25,000 asking fee for the job. "I said, 'Rocco, leave me alone.'"

Morabito is a garbage-collector for the City of Toronto, and he also did delivery-jobs with his truck for a grape company and a furniture company. DiDomizio, according to his own evidence, now runs DiDomizio Construction. Since he was charged by police in the beating of Union president John Meiorin, the company has been awarded several million dollars worth of concrete forming contracts, including two major jobs for Rampart Construction Ltd, a subsidiary of Meridian Building Group Ltd, general contractor for the City of Toronto Non-Profit Housing Corporation. DiDomizio said if he goes to jail, the company will go bankrupt. DiDomizio's son Paolo, who was supposedly running the company in 1979, is living in Florida running a motel there owned by DiDomizio Construction.

DiDomizio was testifying this month in sentencing proceedings. He and Morabito pleaded guilty in connection with the Meiorin beating eleven months ago, in March 1981, and the bizarre proceedings, including a second attempt by DiDomizio to take back his guilty plea, were continuing in early February.

# A Daring Raid On the Osler Hoskin Firm

In an unreported group of raids last summer, no less than 53 Department of National Revenue officers under the Special Investigations Division were authorized to seize documents from three of the most prominent Bay Street law firms: Blake Cassels and Graydon, Osler Hoskin and Harcourt, and Miller Thomson Sedgwick Lewis and Healy, as well as chartered accountants Price Waterhouse and Co. The seriousness of an investigation is sometimes measured by the prominence of the physical targets. However, in this case, some feel the scale of the alleged offence was not in keeping with the scope of the raids. It involves the alleged tax mis-reporting of a mere $100,000. A decision hasn't yet been made on whether to lay charges.

The target monies are part of a 1978 reorganization involving Toronto book publisher Ronald D. Besse, Gage Educational Publishing Ltd, Consolidated Graphics Ltd, and US company Scott Foresman and Co. The deal involved a termination package between Besse and Consolidated. As the basis of the search warrant, a tax investigator alleged the artificial allocation of monies to minimize tax.

Besse, represented by H. Purdy Crawford of Osler Hoskin, negotiated with Consolidated Graphics, represented by lawyers in Miller Thomson and Blake Cassels, about a termination package between Besse and Consolidated. Documents respecting these negotiations were later provided by Besse and various lawyers to a tax investigator, Peter Underhill, who then swore an affidavit to obtain the search warrant.

Underhill swore that documents showed the company had offered to buy 53,000 of Besse's Consolidated shares for $8 each or $424,000, along with a cash termination payment of $37,500, for a total of $461,500. But the deal was done by buying the shares for $6 each instead of $8 (or $106,000 less for the stock), and raising the termination payment by an equivalent $106,000, to $143,500.

The tax investigator quoted from and filed a memorandum by an Osler Hoskin lawyer of his telephone conversation with Clifford Lewis of Miller Thomson. The memorandum indicated Lewis had said, in effect: "This [price of $6 per share is] lower than the best option price we've given for years. Therefore [Clifford] Lewis fears that Tax dept will feel Consol is 'gimmicking.'—Therefore he wants a written counterproposal from RB [Besse] to Consol setting out above deal."

And in fact, said the tax investigator, the Osler Hoskin lawyer did submit such a revised settlement proposal on behalf of Besse, and the lower stock-price and higher termination payment were part of the deal as it was finally documented.

As a result, Underhill swore, Consolidated claimed a deduction for its $143,000 termination payment, which was non-taxable to Besse; and Besse claimed a small capital loss on the stock-sale. The investigator, on the other hand, said the "actual amount" the company "agreed to pay" to Besse for the stock was $8 per share. Therefore, the investigator said, there was a capital gain on the stock sale by Besse, and a smaller termination payment deduction for the company. He calculated a taxable benefit of about $97,000 for Besse, and challenged the company's deduction on its books of the full termination payment.

The investigator didn't say specifically how he obtained the Osler Hoskin memorandum.

All three law firms, as well as Price Waterhouse, claimed some of the documents seized were confidential by virtue of the solicitor and client privilege. But judges' orders have resulted in most of the documents in question being released to the investigators. Besse and his Osler Hoskin lawyer wouldn't explain to me what the underlying transaction was that gave rise to the deal in question. A 1978 newspaper article said this: "Gage Educational Publishing Ltd, formerly owned by Consolidated Graphics Ltd of Toronto, has been acquired by new interests. Ronald Besse, president, will hold a controlling interest, with other shares held by Scott Foresman and Co. of Glenview, Ill., W. J. Gage Ltd of Toronto, and employees and authors of the company."