ISSN 0705-8772

BIMONTHLY REPORTS

The inner workings of Canadian business deals

Number 22 Toronto, Ontario April 1982

Canadian Javelin: A Forensic Jamboree

A Bahamian resident and former right-hand man of Toronto stock-swindler Sidney Rosen reappeared in Montreal to act as an alleged front for John C. Doyle in the Canadian Javelin saga.

Lawyers for federal investigator Frederick Sparling waited until just days after Lawrence M. Wynne's surprise Montreal appearance before submitting their inquiry report to the government. The inquiry, which recommends special Parliamentary legislation to liquidate Javelin, and says Doyle looted at least $10 million, had been under way for five years; the timing gave a suitably dramatic appearance to what could be Javelin's final brush with the grim reaper.

(The report itself added little to what was reported in the November 1980 issue of Bimonthly Reports Number 15. It confirmed that Doyle and Joey Smallwood appear to have been co-swindlers on a rather ambitious scale.)

The bizarre return of "lawyer" Lawrence Wynne came about like this.

Last fall, it appeared that the Sparling investigation was bogged down. Smallwood's claim for executive privilege was before the Supreme Court of Canada, but not yet heard, and there were prospects of infinite delay.

Enter: Krislov

William Wismer, the former Javelin president and Doyle arch-enemy, moved in court before Justice Sam Hughes—of Atlantic Acceptance fame—for a receiver-manager to be appointed under the Canada Business Corporations Act. Javelin was opposed, and the proceedings brought to Toronto Moses Krislov, a Cleveland lawyer who is Javelin's coordinator of legal affairs. Krislov picked the Goodman and Goodman firm to represent Javelin before Hughes.

At a hearing in December, Goodman's Clifford Lax insisted he be allowed to call witnesses to rebut Wismer's allegation of continued looting. Among a dozen affidavits, he filed that of accountant Ralph Fisher of the firm of Laventhol and Horwath, who swore he had interviewed everyone in Javelin's Montreal office from the president to the receptionist—and even had a long telephone conversation with the Panamanian auditors of a Javelin subsidiary—etcetera, and concluded: "I am satisfied that Javelin is a functioning operation with appropriate systems in place." It doesn't read like much of an endorsement, but Lax promised Fisher would conduct the judge "behind the audits, from financial statement to financial statement," to show nothing was amiss. Justice Hughes agreed to hear evidence and set January 25 to begin.

Just as Krislov hired the Goodman firm in Ontario—Edwin Goodman being the political confidante of Premier Davis—so in Montreal he had hired Ahern Nuss Drymer and Silcoff, the firm where Pierre Trudeau articled. Joel Silcoff of that firm was in the Bahamas on January 15, and he phoned his former classmate Montreal lawyer Pierre Fournier to tell him a potential client

needed a lawyer.

Fournier flew to Nassau the next day, where he said he was met at the airport by somebody he didn't know—possibly someone called E. J. Pepper—and taken to a law office whose name he doesn't remember—possibly that of Anthony Thompson. There he met Silcoff, whom he wasn't surprised to see, Moses Krislov and John C. Doyle, whom he was a little surprised to see, and one Lawrence Wynne, whom he hadn't met.

A brief biography

Wynne was admitted to the New York bar in Brooklyn in 1958 as Lawrence M. Weinberger, and in 1968 as Wynne he resigned from the bar after "proceedings were instituted"—the Brooklyn court records don't disclose over what. After moving to Freeport, Wynne was hired by Sidney Rosen to work for Corporate Bank and Trust Company, and as one of the bank's two or three employees, Wynne was its "president." (In May 1973 his application for reinstatement to the New York bar was denied.)

In the course of multiple criminal proceedings against Rosen by the RCMP (Bimonthly Reports, Numbers 1 and 5) Wynne became a crown witness, and his evidence was the basis of the decisive charge of perjury against Rosen, who had sworn he didn't control Corporate Bank and Trust. Wynne testified he signed a bogus and backdated trust agreement, and sent phony information to the Bahamian Central Bank regulators, at Rosen's behest, to try to create the impression Rosen didn't control the bank.

Now back in the Bahamas, Wynne says he is an "associate" of lawyer Anthony Thompson, who was Central Bank director during Corporate Bank's heyday; and Wynne describes himself as an "attorney and investment advisor." He said by chance in 1981 he met some Panamanians who thought the Wismer-Doyle "problems" had gone far enough. They had a company called Inversiones Montforte SA that had bought some Javelin stock, and Wynne became Montforte's vice-president. Since, as Wynne says, Panama is a small place, Wynne also met Doyle. As it happened, Wynne's associate Thompson is also a lawyer for Doyle. There wasn't any collusion with Javelin, said Wynne, but in any event there they all were on January 16, just nine days before the Toronto proceedings were scheduled to continue before Hughes.

According to lawyer Fournier, the Montforte "philosophy" was to end the Wismer-Doyle fighting by the appointment of a receiver-manager through another Canada Business Corporations Act application—this one to be in Montreal—who would be so impartial that he would be acceptable to all as a sort of watchdog.

A gruelling cross-examination

This conciliatory gesture, taken after discussions with Doyle and Krislov, and without notice to Wismer, had the effect of naming as interim receiver-manager Montreal lawyer Michel Robert. Robert had presided over the contested 1976 Javelin shareholders' meeting that ousted Wismer and reinstated the Doyle team. In the blitz proceeding appointing him, Wynne testified for seven minutes, and was "cross-examined" by Silcoff for another five minutes. Following an adjournment, Javelin consented to the appointment. The terms of Michel Robert's appointment left the Javelin board of directors in place, and didn't affect any of Javelin's affiliates.

This was done on January 21 in Montreal. The next morning, Clifford Lax of the Javelin team wrote to Hughes with the surprising news. "It goes without saying," wrote Lax, "that we had no prior notice or knowledge of this application." Lax added, "We are informed that the (Montreal) order substantially incorporates all of the relief sought by (Wismer.)" which wasn't true, since Wismer sought the removal of the board of directors and other anti-Doyle measures.

The Hughes proceeding, scheduled for January 25, didn't take place, and we may never hear Ralph Fisher's expert analysis of the Javelin financial statements through the years. Because the next day, January 26, lawyers for federal investigator Sparling sent their report to the Restrictive Trade Practices Commission, and the report said the present Javelin board is merely a rubber stamp for Doyle's schemes of personal enrichment. The report probably had unpleasant connotations for the Javelin lawyers' self-image.

A semi-judge

The next gathering in Toronto was on February 16; Wismer changed his application from a request for receiver-manager to a request for liquidation and dissolution "upon the ground that there is good reason to doubt the probity and integrity of the directors of Javelin." And lawyer Starr cited what he called the sham Montreal proceedings involving Montforte.

Javelin lawyer Silcoff, with the Goodman team looking on, made an unsuccesful attempt to get Starr to repeat some allegation outside court. And both Lax and Silcoff reprimanded me for asking lawyer Michel Robert what he thought of the charge of collusion. Lax said such a question is out of bounds; since Robert is a court appointee, he is immune from questioning just as a judge is. Besides, said Lax, nobody said Robert was in on the scheme. (In fact, nobody said the lawyers were in on the scheme either.)

Justice Hughes said he didn't want to get into competition with the Quebec court, and he agreed the proper place to argue the collusion allegation was the Montreal court, which was the alleged dupe.

That process started on February 26 before Justice Melvin Rothman. To clear up the situation, lawyer Fournier himself testified on his dealings with Montforte via Wynne, to show there was no collusion with Javelin. Basically, Fournier said Javelin only agreed to the Montforte-style "reciever" under the threat that, otherwise, a receiver might be appointed in Ontario. And later, Javelin agreed to allow the strengthening of Robert's powers under the further threat that, otherwise, Justice Hughes might agree in Toronto to liquidate the company. In other words, the Montreal judge

was told Javelin agreed with Montforte not through collusion, but to keep a step ahead of the Ontario proceedings.

Naturally, none of this was recited to Justice Hughes. In the hearing before Hughes, Lax read a letter from Robert recommending he be given the stronger powers, and Lax told Hughes, according to my notes, "Now your Lordship is aware that this new application is the result of Robert's request," without telling the judge that the request only had Javelin's consent because of a desire to forestall action in Ontario.

Fournier, testifying in Montreal, also said he found out Wynne was a lawyer at the New York State bar, something Wynne himself swore to in his examination. But the Brooklyn court records show he resigned in 1968 "after proceedings instituted," and his application for reinstatement was rejected in 1973.

The Wismer and Montforte litigation is expected to continue until the government acts on the Sparling Report.

What was the Role of Steve Roman In the Alleged ManBar Fraud?

Toronto entrepreneur Murray Sinclair, nephew of broadcaster Gordon Sinclair, and Hugh Coulson of Vancouver public company Westmont Capital Resources Ltd, were committed to trial on a charge of looting the treasury of public company Manitou Barvue Mines Ltd.

- Among those named in preliminary inquiry evidence were Stephen Roman of Denison Mines Ltd, and his Toronto lawyer John S. Grant of the firm of Manley Grant and Camisso. Roman had an important interest in an oil company that was part of the alleged fraudulent circulation of funds. One witness said Roman and his lawyer Grant participated in deciding on what was allegedly the final step of the fraud. They were not named as co-conspirators nor were they called as witnesses in the preliminary inquiry.
- A bogus Toronto-Dominion Bank loan was used to hide the involvement of Sinclair in the transactions, according to the crown's interpretation of the evidence. A bank memorandum discloses the loan was approved at a senior level, "subject to the [Main] Branch being satisfied as to the legality of what they propose to do and [that] they are dealing with reputable people."
- The ostensible borrower, W. Bruce Hansen of New York, who now heads US company Micom Electronics Corp., said he was merely acting for whoever actually put up the collateral with the bank, and he didn't know who that was. However, he said he took instructions from Bahamian resident Richard C. Pistell. Hansen said he didn't know much about Pistell, who was a former associate of Robert Vesco in arranging Central American IOS deals. Pistell has since died.

A Canadian-type Operation

The alleged fraud is of the so-called Olan variety. The crown says funds used to buy the control-block of Manitou Barvue were later paid out of the Manitou Barvue treasury and circulated back to Murray Sinclair, who was the hidden principal. The payout by Manitou Barvue was to acquire offshore African oil and gas rights that later became worthless, and the crown alleges dishonesty was used in the process of getting Manitou Barvue to pay out the money for those rights, and in the concealment of Sinclair's role. Sinclair has been barred by the Ontario Securities Commission from trading in securities in Ontario since 1975.

The crown attorney Norman Chorney said documents seized by the RCMP in 1980 show Sinclair originally put up $750,000 for the control block, and nine months later recovered $1.15 million, which was the price of the oil and gas rights in question, for a $400,000 profit. The transactions were in 1977-78.

Holder of the oil and gas rights in question, and initial recipient of the $1.15 million from Manitou Barvue, via transactions in the Bahamas, was Seagull International Explorations Inc., as to 60%, and Isca Ltd, allegedly a company of Richard Pistell, as to 40%. Steve Roman had a financing agreement with Seagull that gave him two directors at the time in question, and later majority control of Seagull.

Seagull president Joseph Vercellino, a US resident who was given immunity from prosecution, said he eventually decided to sell out the interest in Manitou Barvue he had acquired. "There were noises coming out of Toronto I didn't like at all," said Vercellino. "I had never been involved in a Canadian-type operation, and I just wanted to get the hell out." The crown says Seagull and Pistell made a $400,000 profit on their sale of the control block to a company of Herbert Mockler, with a price of $400,000 and in effect a cost-base of zero. However, that wasn't Vercellino's interpretation, and it wasn't part of the criminal charge.

The deal arose as follows, according to preliminary inquiry evidence heard in March before Provincial Court Judge Jacie C. Horwitz.

The concept

When Manitou Barvue sold its major Quebec mining property and mill to a subsidiary of the Quebec government in 1976, it became an attractive takeover target because of its cash. Management under president Daniel Marcus fought off one takeover attempt. Soon another party was assembling stock, and it was Westmont Capital

Resources Ltd, a Vancouver public company headed by Hugh Coulson, a former stock salesman. Meanwhile in New York, W. Bruce Hansen was in the process of liquidating his public company DeJur Amsco Corporation, and he received a telephone call from Richard Pistell, with whom he had dealt before. In Toronto, Hansen told Pistell, Sinclair and Coulson that he was unable to provide the $1 million financing to buy the control block of Manitou, because the DeJur liquidation process hadn't advanced far enough. But shortly thereafter, Pistell asked him if he would act as borrower at a Canadian bank if Pistell provided him with the necessary package of collateral. Hansen said he "agreed to the concept."

The collateral was $650,000 in Canada Savings Bonds and $100,000 cash, along with Manitou Barvue stock. Hansen said he didn't know whose $750,000 he was putting up. The deal was that he would re-lend the $1 million to Westmont, and Westmont would use it to purchase the control block. The TD Bank loan, further loan to Westmont, control block purchase, and Manitou rollover directors' meeting, all took place on October 4, 1977. Coulson and his lawyer Irwin Singer of Toronto became new directors, and Coulson the president. Hansen became vice-president.

The TD Bank memorandum on the loan to "Hansen" was written by J. Dennis Laird of the bank. He wrote that there was a "side agreement" to the effect that Manitou Barvue would be committed to purchasing oil and gas rights in which Hansen had an interest, and that Hansen would be able to repay the loan from the proceeds within two to three weeks, but that the payback could be delayed on account of "legalities and appraisals." Laird testified the Main Branch knew Hansen because his company DeJur Amsco had been a client. And he said the branch satisfied itself of the legality of the proposed deal, but he didn't know how—probably by an oral opinion from house counsel.

Hansen denied he told the bank the loan would be repaid from the proceeds of company acquisition of oil and gas properties. Rather, he said he expected the loan would be repaid through a convertible debenture to be issued by Westmont. Westmont would repay Hansen from the proceeds, and Hansen would repay the bank.

Hansen said he knew nothing about a $50,000 payment out of the proceeds of the loan. The money was paid as a finder's fee to offshore company Stani Inversiones SA, which the crown says is Sinclair.

Securities watchdog Leybourne

As for the collateral, the RCMP matched serial numbers with Canada Savings Bonds purchased earlier and found these had been purchased by Murray Sinclair. The $100,000 cash, said Hansen, was provided through his Toronto lawyer in this deal, Terrence O'Neill of the firm of O'Neill Browning, who had been recommended to him by Pistell. Hansen said he didn't know the source of either the bonds or the cash.

In any event, at the same directors' meeting on the day of closing, new Manitou president Hugh Coulson recommended the purchase of oil rights off the coast of the United Republic of Cameroon, and said the company would have to act fast, according to the evidence of hold-over director Bruce B. Philip, who said he was astounded at the lack of information in a memo circulated by Coulson and the proposed speed. Following a heated discussion, said Philip, he worked out a compromise with lawyer Singer—who he said had been aware of this proposal—that in effect adjourned the decision until the next meeting.

Then the Ontario Securities Commission conducted an investigation of Manitou, froze the company's assets and ordered trading in its securities stopped. Investigator John Leybourne, now head of the enforcement division, questioned Coulson under oath on November 9, and Coulson confirmed the "financier" was Hansen. In circumstances on which no evidence was heard, the OSC orders were lifted, and the deal proceeded.

Philip didn't attend the next directors' meeting on November 16, but another hold-over director, Joseph M. Shaughnessy of brokerage firm A. E. Osler Wills Bickle, attended and testified. He said an evaluation showed that the major operator of the proposed concession had until April 1978 to drill a confirmatory well, and otherwise the rights would be extinguished. But he said based on Coulson's assurances, "there was no question" that the well would be drilled.

Meanwhile, according to Hansen, the idea was that Westmont would issue its convertible debentures—Seagull would be a major purchaser of them—to raise the $1 million to pay off Hansen to pay off the TD Bank. Hansen said the convertible debenture was "delayed," and also the bank became a little edgy over the OSC orders. Hansen said Pistell therefore told him to let the bank liquidate the bonds and the $100,000 deposit receipt t pay down the loan by $750,000.

Then, said Hansen, Pistell attanged a transfer of $250,000 from Trust Corporation of the Bahamas to pay off the rest of the loan, and Hansen said, "I had no idea where Pistell was getting that money." Hansen was shown Manitou Barvue banking records indicating a $250,000 debit plus exchange and a notation "wire to pay Trust Corporation of the Bahamas clearing account number..." Said Hansen, "I have no knowledge of this." The crown says this $250,000 amounts to the looting of Manitou Barvue to help pay for the control block acquisition.

Tainted?

The loan payoff left Hansen with the following: (1) a $1 million note of Westmont, and (2) the Manitou control block, that had been pledged to the TD Bank. Hansen, who hadn't put up a nickel, said he felt "some obligation" to collect the million dollars for whoever had put it up. He looked to Pistell to tell him what to do.

Hansen attended the January 1978 closing of the oil-rights deal in Nassau, but he said he refused to do what was proposed. He said what he thought was to happen was this: Westmont would issue its debentures and Seagull would invest, thereby giving Westmont the funds to repay Hansen, who presumed he would repay the money

as directed to whoever had put up the original TD Bank security. However, he was presented with a letter from Seagull president Vercellino to Trust Corporation of the Bahamas, indicating that of the $1.15 million proceeds to Seagull in the oil-rights sale, about $1 million was to be turned over to Hansen as a "loan," presumably for Hansen to disburse as above. Hansen said he refused to go along for two reasons. First, he said the proposal "tainted" the deal by "tying the two transactions [the control block loan and the Seagull acquisition] together." This was because it proposed using the Seagull proceeds, more or less directly, to reimburse whoever put up the control block money. Second, Hansen said he objected because this was "conceptualized" as a loan to himself, and he didn't want his name on a note for $1 million; "until then I was risk-free." Apparently the deal closed anyway, and Seagull received $1.15 that was held at Trust Corporation of the Bahamas.

Then in April, to the complete astonishment of everyone who testified about it, the main operator of the Cameroonian concession failed to drill, and the rights were legally extinguished. Vercellino said he set about to do a "resurrection" of the deal, and out of a sense of fair dealing he would see that Manitou Barvue was restored to its 8% position.

Thus Hansen was still in possession of the Westmont $1 million note with the Manitou control block as collateral. And Vercellino was confident he could pull off the "resurrection" and restore the Manitou Barvue position in so doing.

And so it came about, so the stories went, that Seagull decided to purchase from Hansen the Westmont note, thereby in effect purchasing the Manitou control position. The price: $1.15 million or exactly the amount that had been paid to Seagull for the Cameroonian property.

Hansen said that among those participating in this decision to buy the Westmont note were Steve Roman and his lawyer John S. Grant. Vercellino said, "Grant was handling most of that..."

The Seagull cheque was handed to Hansen at the Trust Corporation of the Bahamas in Nassau, and he immediately signed it over to Stani Inversiones SA, allegedly Sinclair's company.

Then, to the second complete shock of Vercellino, he was unable to do the resurrection because the concession had been granted to a French company in the meantime, and the $1.15 asset of Manitou Barvue was beyond recovery.

Sinclair, according to the crown, made $1.15 million less the $750,000 he originally put up, or $400,000. Defence counsel said Sinclair had nothing to do with any misrepresentations to the Manitou board about the asset, admitted he financed the control block acquisition, but said what Seagull did with its $1.15 million was its own corporate decision "and no concern of any court."

The CIBC and Conrad Black: Just another Routine Deal

Russel Harrison, chief executive officer of the Canadian Imperial Bank of Commerce, probably the clubbiest of Canada's chartered banks, agreed with Conrad Black, a CIBC director and major client through the Argus companies, to a joint control block sale of Crown Trust Company stock, in which the bank's role was never disclosed. Black's companies had 44%, and the CIBC 9.9% of Crown Trust stock. Big Eastern Canada investors Reuben Cohen and Leonard Ellen, who held 32%, say the value of their stock was hurt by the bank's action, when Harrison and Black agreed to a simultaneous sale of their 54% position to a subsidiary of CanWest Capital Corporation, Winnipeg, in 1979.

Cohen and Ellen, whose companies were also CIBC clients, have asserted in a lawsuit that the bank owed them a duty not to adversely affect their holding, particularly since part of it had been financed by CIBC loans, that were collateralized by the stock acquired.

One-man banking

Pre-trial examination of Harrison was conducted by lawyer Alan Lenczner of McCarthy and McCarthy on behalf of the plaintiffs; J. W. Garrow of Blakes represents Harrison and the bank. Harrison said he decided to sell the bank's stock to CanWest for $44 per share at the same time Black did, and for the same price, without seeing if he could get a better offer from the other potential buyers, Cohen and Ellen. He said he made the agreement orally with Black and the representative of the purchaser, without the involvement of any bank official except himself. And Garrow said he thought the draft sale agreement between the bank and CanWest was prepared by lawyers for Black, not the bank's lawyers.

Stifling, we may imagine, a big yawn, Harrison said, "We have some in-house lawyers that might look at something as routine as this, I don't know." In a similar vein, Harrison said he had frequent discussions with Black, but it was merely "normal banker client discussion and I can't remember anything that was particularly said, nor am I at liberty to—nothing particular, just the normal banker-client discussion which I have with numerous people every day."

The sale price was $44, a premium to the market. Such a premium is usual when control changes hands.

and similarly it is usual for a competing large block to lose value through its impossibility of reaching 50%.

The lawsuit, begun in 1979 and still in the pre-trial discovery process, is unique in its exploration of the bank's investment practices, and of the bank's possible duty when it affects the market in stock its clients hold.

Linked

Harrison could remember very little about the transaction or its background. However, he made the following answers about the relationship between the sales by Black and the CIBC:

—Were you aware that the $44 was contingent upon [CanWest acquiring] more than 50%?

—No. . . .

But later he was asked:

—Did you know that the Black deal with [CanWest chairman Israel] Asper was contingent or dependent on the bank's deal with Asper?

—I think I did. Specifically, I am not sure. Yes, we discussed the two, both sales to be together, yes, at the same price.

—When you say discussed, you discussed with Black?

—I discussed it with Black, yeah.

Harrison said the authority to decide on sale of such a stock position at the CIBC was his alone. He said sometimes he would discuss such a decision with an investment division vice-president named Cole, and sometimes not. Harrison and the bank's lawyer Garrow could come up with no written record of the decision to sell, except for the draft agreement, which Garrow said he thought was supplied to the bank by Black's lawyer Igor Kaplan. Harrison said in effect that he, Asper and Black made the agreement orally.

—I undoubtedly told [Cole] that I had agreed to sell these, and I knew Black was selling his verbally and the two are going to be tied together, and I obviously would have told Cole that verbally.

Harrison was asked whether he had given any consideration to the fact the bank's action would adversely affect the value of its other clients' Crown Trust stock.

—I just don't know. It didn't keep me awake nights. . . . No, I wouldn't say—that is a hard question. It didn't stop me from doing the deal if that is what you are asking.

Harrison said he didn't try to get a better price for the bank's stock from Cohen and Ellen. He said they could have offered to buy it, but didn't. And he knew that by simple logic, thus: "I have been chairman of the bank," he said, "since, what, 76, and if anybody made an offer or approached anybody to buy the shares, I would have known because they had to have my authority to sell them, so obviously such offer was not made."

That didn't square with information given to the plaintiff's lawyer Lenczner, who told Harrison: "My information is in fairly early 1979 Mr Cohen was having a meeting with Mr Black in the Massey-Ferguson offices and the occasion was that Mr Fullerton [CIBC president] came in to pick up Mr Black, to take him to Ottawa, to a meeting at the Chinese Embassy with the intention to try to pave the way for the sale of Massey-Ferguson tractors to China in some large quantities. Now, that is just to situate the occasion," on which, said Lenczner, Black told Cohen that on certain conditions he would offer them his Crown Trust stock, and that they would be able to buy the bank's shares as well. The bank's lawyer said he would inquire further.

Connections

On the single-handed decision of Harrison, Lenczner added, "I am astonished they didn't have some memoranda or a policy or a committee or something. I mean they are dealing with millions."

The background to the deal was this. Canadian chartered banks are barred from holding more than 10% of a trust company, so the CIBC acquired 9.9% of Crown Trust, in circumstances Harrison refused to talk about. About 25% of the stock of Crown Trust had been held by the estate of John McMartin, uncle of Argus Corp. chairman Bud McDougald, and another 15% was held by a bank nominee, either for the McMartin estate or a related interest. So control of Crown Trust was in the hands of interests related to Argus, which was closely associated with the CIBC, and McDougald was a CIBC director. He died in March 1978, and by May 1978 the 40% of Crown Trust had been sold to companies associated with Conrad Black, who was about to engineer his famous takeover of Argus Corporation. Meanwhile the Cohen and Ellen group had about 27% of Crown Trust and were acquiring more. But Cohen and Ellen didn't do their personal banking at the CIBC—so says the bank in its statement of defence—and their holding companies had only been banking at the CIBC since 1969 and 1972 respectively. So they weren't associated with the bank as closely as Black.

Not surprisingly, Lenczner asked Harrison why he wanted to sell the bank's stock at all. One answer Harrison gave was that the 10% block—co-existing with with a 44% block—might have been "controversial" from the point of view of *de facto* control, particularly since the CIBC was also the trust company's principal banker. The ten percent limit on banks' holdings in trust companies is to prevent banks from controlling them. On the other hand, Harrison also said a consideration was that if a large holder achieved 50% without the bank's stock, then the bank's stock would lose value and be hard to sell—which is in effect what Cohen and Ellen allege happened to them.

Obvious reasons

Harrison's answers developed as follows:

—This is from memory, and I may not be exactly specific and right, but as I recall it, I did not want to have

Bimonthly Reports is published by John Whitelaw in Toronto. All the articles are by John Whitelaw, unless otherwise indicated. Comments and communications are welcomed. Subscription price: $60 for six issues. Bimonthly Reports, PO Box 731, Station "A", Toronto, Ontario M5W 1G2.

somebody with 44% and us with nine point something; I wanted to get rid of it, so I asked [Black]—not to negotiate on our behalf, because he couldn't—but to be cognizant of the fact that we would like to get rid of our shares at that price if such a sale was possible. [Black] didn't make the sale [of the bank's stock] nor did he negotiate—I did—but he knew that I wanted to get rid of them.

—I am sorry, I don't quite follow sir. You said that you didn't want to be in a position where somebody owned 44% and you owned 9.9?

—That is right.

—Why was that?

—Obvious business reasons. Nine point nine would place us in a position of almost having to go along with majority as banker to the company, and all the usual reasons, which you are as aware of as I am, and if we did not sell it at that time we probably would have had difficulty selling it, and we would probably get in the middle of a political problem. I don't know. I would just as soon not have had it, that's all.

—I would like you to expand on your answer because I don't follow.... What do you mean by the fact that you would have to go along with the majority?

—I mean that we wouldn't want to be put in a position where it was controversial. If somebody had 44%, we really could not morally to some extent sell that share except to the fellow with the 44%. We had control in effect, didn't we? And that was an unenviable position for a bank to be in. I didn't want to have control, didn't want to be in that position.

Harrison was asked whether, in the year that Conrad Black and his associates held the 44%, he had offered to let Black buy out the bank for these same reasons.

—Yes, I am sure I did.... I can't be specific, but I am sure I indicated that to him.

—Was he unwilling to do that?

—It wasn't a specific offer, I wouldn't think. I just don't know.

—Well, how many occasions did you raise that with him in 1978?

—I have no idea. I have no idea if I did raise that with him. I would assume I might have. The situation is no different whether it is Mr Black or Mr Smith.

Borrower Fraud Case

Charles Orenstein, one of the major interim mortgage lenders in Canada, introduced family friend David Fieldstone, a Toronto lawyer, to the mortgage syndication business in the early 1970s, and Fieldstone referred some of his business to mortgage lawyers in the firm of Tureck Wengle and Lewis, also of Toronto. Fieldstone and members of the Tureck firm became major lenders to a Hamilton law firm, Bordonaro Vadum and Nella, who were land developers, often together with their client Frank Silvestri, a house-builder. Between them, the Bordonaro firm and Silvestri had particularly extensive land holdings around Welland, Ontario, on the Niagara peninsula, where they were the major holders of developable land.

In 1977, Tarcisio Nella of the Bordonaro firm acted for both sides in the mob-related takeover of a Hamilton meat company (Bimonthly Reports, Number 16), and following the police investigation of that case, in which Nella was a crown witness, the firm moved to Toronto. There, Metro Toronto Fraud Squad officers began investigating alleged borrower fraud by the three lawyers and Silvestri, in which the lenders were David Fieldstone in trust and Louis Tureck in trust. As a result, two Welland-area loans to the Bordonaro companies are the subject of fraud charges scheduled for trial in September. Defendants are lawyers Harold Bordonaro, Gordon Vadum and Tarcisio Nella, and builder Frank Silvestri. They are charged with documenting bogus purchase-prices for lands that were the security for the loans purporting to show they paid more than twice what the actual purchase prices were, so that the lenders, relying on those false prices in arriving at the amount they would lend, were defrauded.

A strike fund investment

The actual lenders in question were, via Fieldstone: Cedarbrae Scrap Iron Metals (1968) Ltd, owned by one Neil Brown; Lakehead Scrap Metal Co. Ltd, owned by Irving Schacter; Micard Ltd, a company of Dr Gordon Donsky; M&F Enterprises; Maurice and Fanny Orenbach; Irving and Mae Schacter; 281956 Ontario Ltd, a company of Dr Henry Singer; and the Strike Fund of Local 938 (Mississauga) of the International Brotherhood of Teamsters. Via Tureck, the investors were primarily dentists, through their various investment companies with the names Dent, Molaris, Ortho, Surgeo, Tangiers, Endodent and Cuspid. Tureck said he had discretionary authority for these companies' investments, acting as a "one-man executive committee" for most of them. He said it was only after the formation of the Tureck Wengle Lewis firm and his meeting Fieldstone, that "I was introduced to the highest spheres of finance." As for the Bordonaro firm, Tureck said, "I didn't really know too much about their abilities as solicitors, but as developers and builders I thought they were well qualified."

By 1977, Tureck and Fieldstone already had some $2 million of various investors' money out in loans to deals of the Bordonaro firm.

In early 1978, Fieldstone said he was approached for a loan of $300,000 to be secured by property to be purchased by the Bordonaro company for $800,000. The purchase was to be from Lea Silvestri, and the price—according to documents Fieldstone and Tureck said they saw and relied on—was made up of $330,000 in existing mortgages, the proceeds of the loan being applied for, and

the rest to be cash to be put up by the purchasers. Fieldstone and Tureck agreed to lend $270,000, and they testified they thought that meant the purchaser was putting up $200,000 of his own money. However, the crown alleges the true sale price was the price disclosed in the Land Transfer Tax affidavit filed in Niagara Region Registry Office, which reports the Bordonaro company bought the land for $330,000, made up entirely of existing mortgages. Said Fieldstone, "I was looking to $200,000 to be put up by the purchaser.... This would indicate nothing being paid by them and all our money going into their pockets."

The crown made a similar allegations with respect to a loan that grew to $600,000, also against lands in the City of Welland. The alleged victims said they were shown documentation with a purchase price of $2.178 million, and they said they calculated their loan, together with a prior mortgage, at around 50% of this price. Tureck said he wanted a greater degree of owner's equity in this parcel, because its potential development was more remote in time. The crown says the real price was $990,000, not $2.178 million, and the higher price documents were to defraud the lenders. Both loans went into default in March 1979, at which time comlaints were made to the police and the Law Society.

Sgt Paul Krebs testified. He said police were given a document showing a purchase price of $2.178 million, and they also had a document showing a price of $990,000. Thus they had two different prices for a single transaction; what were the police to do? They did what an ordinary person would do—they asked lawyer Nella which was the correct price. And Nella said, according to Krebs, something like this: It was in his files. Sixteen days later, the officers were telephoned by criminal lawyer Clay Powell, who turned over to them two folders "which had been left with him," from which the officers photocopied certain documents, and returned the files to Powell the next day. Four days after that, the two officers went to the Yonge St offices of the Bordonaro firm with a search warrant. They found the three lawyers sitting together at a round table, Krebs told the judge. "We advised the three," said the officer, "regarding the circumstances of the execution of a search warrant and the allegations and the details of our investigation," and they obtained a file relating to the $330,000/$800,000 transaction. Krebs quoted Nella as explaining that the difference in the reported prices was money owed by the lawyers to Silvestri. "We figure it out later when the land is developed and then we split it up and clear up what we owe. We are developers and have been working with Silvestri for a long time." One month later the officers searched the office of the law firm's accountant in Hamilton, and two months after that, the office of the client, Silvestri.

Investors

Howard Shelkie, secretary-treasurer of Teamsters Local 938 said he met David Fieldstone in about 1972-3. "We were building a building in Mississauga and he was referred to us by, I believe, one of the builders, and that was the connection. He looked after some of our legal work at the time of our building." Later, the union came to lend money via Fieldstone, including $75,000 as part of the $600,000 loan. Shelkie, one of the trustees of the Strike Assistance Fund, said the trustees gave Fieldstone discretion in choosing investments. "The original amount of money that was given to Mr Fieldstone was decided by the trustees, and he would have control beyond that. We had very little concern or very little to do, I guess, with the transactions that he performed. We relied on him to do that for us."

Howard Donsky, a doctor at the Hospital for Sick Children in Toronto, had a company called Micard Ltd, that made allergy extracts and invested funds. He started investing through Fieldstone in 1974. "We were all a group of friends at that time [he no longer speaks to Fieldstone] and some of the friends had invested in David and they were saying he's good so I gradually started investing in this group. At first I would be a little cautious, but as time went on it would be sort of automatic.... I don't think I was sophisticated enough to really understand the value of property. It was basically on trust." Donsky participated to the extent of $75,000 in the $600,000 loan, on the recommendation of Fieldstone.

Neurologist Dr Henry N. Singer developed the same kind of relationship with Fieldstone, and had $70,000 in the $600,000 loan, through his company 281956 Ontario Ltd. He said Fieldstone told him the Bordonaro firm were "old, well-established lawyers in the City of Hamilton who enjoyed a very good reputation." Singer too relied on Fieldstone's recommendation, "plus the fact," Singer added, "he said to me we're lending money to lawyers. That's supposed to signify something..."

Donsky and Singer both said they thought Fieldstone had been sloppy.