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Corporate Bank and Trust Co: Peat Marwick Interim Reports

Not all the shareholders have been told, but $8.4 million deposited by several Canadian public companies — mostly mining and exploration promotions — in an offshore "bank" probably won't be recovered, and many of those shareholdings are probably worthless. The depository, Corporate Bank and Trust Company Ltd., is itself in liquidation, and a series of liquidators reports has been presented to the Bahamian Supreme Court. The reports tell of:

- apparently fictitious trading to provide clients with evidence of substantial losses;
- accommodations to clients for the "washing" of their own funds;
- a $2 million investment in a Ontario company, Capital Sanitation Ltd., valued elsewhere at $1.00;
- $3.8 million of investment in public Ontario companies whose financial activities are the subject of criminal charges in Ontario;
- numbered securities-trading accounts with a list applying names to some of the numbers but not to others;
- remarkably uncommunicative Canadian lawyers and a taciturn Canadian chartered bank;

and the list goes on.

The liquidators say in their report that there was no competent accountant on the Bank's premises in Freeport, and that important bank transactions originated in Canada and were written up for the bank's records by a Toronto accountant who periodically travelled to Freeport for that purpose.

A 1974 balance sheet shows alleged bank assets of $20 million and retained earnings of $2.3 million, but the liquidators reported they are not sure whether they will recover enough to pay even the $100,000 in professional fees they had run up earlier this year.

The liquidators conclude their study of the bank's alleged assets and liabilities by saying there are only three assets in which they have any confidence "of ultimately realizing significant amounts of funds." They are the bank-building in Freeport, a loan receivable from Montreal businessman Mitchell Bronfman, and 200,000 shares of Milton Group Ltd., Toronto, pledged to the bank by Bronfman.

The liquidators note, however, that Bronfman disputes the loan. They say, "It appears that transactions recorded in Bronfman's records do not appear in those of Corporate Bank, and vice versa," concluding that the item "is a complex matter which is not capable of early resolution." Bronfman has not been charged with any wrong-doing, and he denies any wrong-doing.

The liquidators — two partners of the Bahamas branch of Peat Marwick and Co. — were first appointed provisionally by the Bahamian Supreme Court in May, 1975, on the petition of Flemdon Ltd., a publicly-owned subsidiary of Milton Group Ltd. Flemdon, then controlled through Milton Group by Mitchell Bronfman, alleged that Corporate Bank and Trust had failed to repay Flemdon its bank deposit of $434,000. That appointment was contested by the bank's management, who succeeded in having the appointment terminated by the court in February, 1976. But then in August, 1976, the court made a new order winding up the bank, and re-appointed the liquidators on a permanent basis. The winding-up order was made on the petition of the Quebec government-appointed administrator of ten Quebec companies that had funds on deposit at the bank.

The Quebec administrator, Henri Borel of Mercure Beliveau and Associates, Montreal, says after he saw the liquidators' reports he wrote to shareholders of those ten companies telling them they can write off their investment in those companies.

Documentation the liquidators had available to them on the bank's Freeport premises was apparently less than satisfactory. They attempted on several occasions to supplement their information from Canadian sources, and they frequently note a lack of cooperation from Canadian banks, Canadian lawyers, and other Canadian residents.

For example, the liquidators say that after their May, 1975 appointment, they became aware that in the previous four months the sum of $535,000 had been removed in cash from Corporate Bank and Trust bank accounts in Canada. In their droll accountants' patois, they observe that they were then faced with "a serious deficiency of information" relating to the removal.

"We wrote to the Canadian banks in question," the liquidators say, "requesting information concerning these withdrawals, and other matters. In each case those banks declined to provide us with such information. For example, the following is an extract from a reply we received from the Toronto-Dominion Bank.

"'Since the Bahamian liquidation has not been established by a court in Ontario, the information you are seeking is considered privileged between the bank and its clients.'"

Corporate Bank and Trust Co. took deposits from Canadian public companies that had management arrangements with Valutrend Management Services Ltd. of Toronto. Valutrend president Sidney Rosen was also Canadian agent for the Corporate Bank. The bank also made loans and carried on commodities and securities trading for clients and on its own behalf, as well as trust operations. Repeatedly, the liquidators say they have been given explanations for bank entries which they cannot find substantiated in the books, and which they have been unable to verify from parties in Canada, who would be in a position to do so.

The liquidators say they had a meeting with Rosen in late 1976 and "the substance of Rosen's comments appears to indicate that Corporate Bank and Trust has been insolvent for a number of years."

They report that Rosen also told them at this meeting that some of the bank's assets should be "eliminated or diminished" for various reasons. For example, the liquidators refer to two "loans receivable," which, they say, "we were informed by Rosen and by one of the individuals concerned, had resulted from fictitious gold-option trading with Corporate Bank. We were further informed that the purpose of these loans was to provide the individuals with evidence of substantial losses as they were experiencing financial matrimonial difficulties at the time, and were to be written off."

Two other loans of $25,000 each, the report goes on, "were merely accommodations, according to Rosen, for the individuals concerned, and merely represented the "washing" of their own funds. Rosen indicated that it was Corporate Bank's intention to write off these loans against the reserve fund."

In examining the bank's securities trading activities, the liquidators faced a particularly baffling situation. They say Corporate Securities Ltd., a subsidiary of the bank, traded securities for the bank, "and maintained records, apparently for the convenience of the bank, by numbered accounts representing individual customers of the bank." They say that Corporate Securities records show net $100,000 due to the bank by customers at December 31, 1974, while Corporate Bank's records show net $600,000 due to the bank at the same date. "No explanation for these differences can be found," they say.

The bank's securities trading records consist of numbered statements of account and a list that correlates numbers with names and addresses, the report goes on. "After attempting to correlate the monthly statements with the number-list, it was apparent that information regarding names and addresses was incomplete." For example, account number 2022 owed the bank $500,000 at the date of the last available statement, but the liquidators found no name or address corresponding to the number. Where they were able to demand payment of overdrawn accounts, they say, they either received no replies or the liability was denied.

Even where the liquidators have names of the bank's trading-account clients, they did not disclose them in their report. However, evidence in a Toronto stock-fraud trial last year named four individuals as having had such accounts. All four were principals in Canadian brokerage firms, and three have been convicted of brokerage-related crimes, as has Rosen himself.

Harry Eric Smith and Allen Lindzon, both of Toronto and principals in now-suspended H.E. Smith Securities Ltd., pleaded guilty last year to conspiring to defraud the public in the 1974 distribution of stock of Somed Mines Ltd. Sidney

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Joseph Burnett v. MNR Getting Quashed in Federal Court?

Acting on advice from the Ontario Attorney-General's office, the RCMP last December wound up its investigation into dealings of Toronto lawyer and mortgage-broker Joseph Burnett without laying any charges. But the federal tax department, working with federal Justice Department lawyers, is continuing an investigation into possible violations of the Income Tax Act by Burnett. So when a Federal Court judge earlier this year ruled that the tax department couldn't just seize Burnett's records from the RCMP when they were through with them, the tax department got an "authority to enter and search," under the Income Tax Act, approved by a County Court Judge. The documents in question, Burnett says, represent the bulk of his companies' records for the period 1972-1975.

According to Ian Outerbridge, Burnett's lawyer, the documents were then loaded onto a "vehicle rented by the solicitors," as if to be returned to Burnett, when the tax department produced the new search warrant and seized them back. There appears to be some disagreement as to precisely what happened in the vehicle incident, but in any event, the tax department has the files, and Burnett moved in court to have the new warrant quashed and the documents returned to him. His application is still pending, but in the process he has churned up a voluminous court record that discloses areas of investigation, as well as some of Burnett's defences.

Affidavits filed in the court action by both Burnett and the tax department disclose that the transactions under scrutiny took place in 1973 and 1974, when Burnett was associated with CNA Financial Corporation in mortgage lending ventures in Canada, the United States, and Puerto Rico through jointly-owned CNA Investors Ltd., CNA Investors Inc., and CNA Mortgage Investors Ltd.

Corner Brook Regional College in Newfoundland was built in 1974 and 1975 with a $8.7 million construction loan from CNA Investors Inc., according to the affidavits. When the general contractor, Ontario company Group Building Systems Ltd., was unable to obtain a performance bond or a material and labour payment bond, a fee of $150,000 was paid to Burnett for causing CNA Investors and its participants to advance the loan according to a voucher system, without requiring the bonds. As well, another payment of $135,000 was made to Burnett's designee, Ruthbern Holdings Ltd., in partial payment of the commission fee on the mortgage. Both amounts were then paid, at Burnett's direction, to Kentec Contractors Ltd. of Toronto, Burnett and the tax department appear to agree with that account of the fees, but the tax investigator adds, in his affidavit, that the money was then paid by Kentec to "subcontractors constructing the personal residence of Joseph Burnett at 15 High Point Road." The investigator says Burnett failed to declare these amounts as fee income in 1974.

Burnett says the amounts could not be declared income in that year because of an agreement he had with Larwin Mortgage Investors, a California real estate investment trust, which was a major participant in the loan. (Larwin, now LMI Investors, was managed by a subsidiary of CNA Financial). The agreement Burnett cites called for brokerage fees to be held in trust for Larwin until the loan was repaid, in order to indemnify Larwin against defaults in repayments, only to become Burnett's when the loan was repaid. Burnett says that pursuant to that agreement, he in fact declared the fees as income in 1975 and 1976. While the fees were to be held in trust, they were permitted to be "commingled with general funds of Burnett or Ruthbern."

Another CNA loan in which Burnett says Larwin was a major participant was for $9.8 million to Juando Ville Development Corporation, in Puerto Rico. Commission fee of $200,000 was earned by Burnett's Ruthbern Holdings Ltd., according to Burnett's figures. (The taxman's figures are $125,000 fee for a loan of $5.1 million). In any event, Burnett says this fee also was subject to his agreement with Larwin, and that Ruthbern declared it as income in 1975 when Juando Ville paid off the loan.

Three mortgage loans arranged by Federal Mortgage Corporation of Puerto Rico in late 1973 brought about a similar dispute. For the first loan, by CNA Mortgage Investors Ltd. to Florida companies Biscayne West Inc. and Outrigger Club Inc. for $3.8 million, a $215,000 brokerage fee was involved, to be deducted from the first advance. For the second loan, also by CNA to Monacillos Development Corporation, a Puerto Rico company, the fee was $203,000 or $308,000, depending on which set of figures is used. The third loan, to Metro Building Inc., also of Puerto Rico, was for $5.1 million, and it involved a fee of $488,000 or $360,000. These fees were payable to Federal Mortgage Corporation for arranging the loans.

The revenue investigator says these fees were paid out by CNA Mortgage Investors Ltd. to Federal Mortgage Corp., which however recorded the amounts not as fees earned, but as "loans payable to Goden Holdings Ltd.," a Burnett company. The money came back to Canada by telephone transfer from Bank of Nova Scotia in Puerto Rico to the bank's branch at 392 Bay St. From there the funds went around the corner to 65 Queen St. West, into Joseph Burnett's foreign exchange account at the Bank of Montreal. Then by Burnett's cheque to Ruthbern Holdings Ltd. they were deposited in that company's account at the Bank of Montreal, 50 King St. West, where the funds were recorded as a loan payable to Joseph Burnett. The taxman says the money was not reported as commission income by either Burnett or Goden Holdings Ltd. in 1973 or 1974.

Burnett says the fees in fact belong to Federal Mortgage Corp., and he cites two agreements between Federal Mortgage and CNA to the effect that Federal Mortgage indemnifies CNA against defaults on the loans, but the indemnity is not to exceed the amount of the brokerage fee. To guarantee that indemnity, the fees are to be held by an escrow agent designated by CNA, in an "unsegregated account."

All three loans are still outstanding,

The tax department does not accept the Larwin and Federal Mortgage Corp. agreements at their face value. In fact, in the language of their trade, the tax investigators say they are a sham.

Why is Burnett arguing these points in open court? Here's how it came about.

Burnett's motion to quash the latest seizure — the one from the vehicle — was based largely on the fact that the taxman's affidavit before the County Court Judge did not make any reference to the three agreements on which Burnett relies. In support of his motion, Burnett filed two affidavits of his own, and affidavits by his accountant Meyer Zeifman, and by the president of Federal Mortgage, Zoltan Roth of San Juan, as well as one by Robert Bergman, formerly associated with one of the borrower companies.

The federal Justice Department lawyer then set to work cross-examining Burnett and Zeifman on their affidavits, and was looking forward to the opportunity to cross-examine Roth. He stacked up 2400 pages of cross-examination, but before he was finished with Burnett or had started with Roth, Burnett's lawyer Outerbridge objected that continuation of the cross-examination was a "redundancy and an abuse of process." He said the failure to disclose the three agreements to the judge approving the seizure was "fatal" to the warrant, even if the tax department thinks they are a sham and a clever cover-up. Outerbridge also said the authorities were improperly using the search warrant dispute to build a case against Burnett.

Arthur Pennington, senior Justice Department lawyer in the case, said Outerbridge's argument was "most unusual." He went on, "In effect, the applicants (Burnett and his companies) are saying that their case on the merits of the main motion (to quash the warrant) is so clear-cut, so conclusive, so overwhelming that the respondent (the Minister of National Revenue) should be deprived, say, of the ordinary right to cross-examine upon an affidavit filed by the applicants."

In this case, Pennington went on, "Substantial sums of money passing through hundreds of transactions make up several unrelated grand designs, many of them crossing provincial and national boundaries, flowing through a myriad of corporations and bank accounts, and in truth the issues raised by the applicants in their affidavits are designed to try to show that these transactions are not violations of the Income Tax Act."

The Minister's intention is indeed "to attack in cross-examination of the deponent Zoltan Roth what he believes to be the sham transactions involving some $986,673.28 of income plus accrued interest," Pennington said. As for Outerbridge's argument that the cross-examination is being used for an improper purpose, Pennington replied that "their attack upon the seizure has thrown into the arena the issue whether the documents seized 'may afford evidence' of tax violation. . . . And that has nothing whatsoever to do with any criminal charges which the applicants appear to anticipate."

Outerbridge maintains that his affidavits and the cross-examination are strictly limited to the relevance of those documents the tax department didn't refer to in getting its warrant approved.

Also at issue are questions of interpretation of the search provision under the Income Tax Act.

Outerbridge has formulated his current concerns as a series of eight "preliminary objections" to the warrant. Written argument has been submitted, and Federal Court judge Patrick Mahoney has reserved judgment. □

John Pullman Tax Case: Hunting for Assets Everywhere

Swiss resident and Canadian citizen John Pullman is due back in Toronto December 12 for continuation of a judgment debtor examination by the income tax department, which is exploring ways Pullman could pay $1.2 million the revenue says he owes them from taxation years 1971 and 1972. The court papers don't disclose how the alleged tax arose, or what steps Pullman may be taking to contest it.

Meanwhile Pullman has been ordered by the Federal Court to answer questions about his present net worth, the present value of Samson International SA, a Panamanian company through which he operates, as well as facts about his financial relationship with Toronto lawyer and mortgage-broker Joseph Burnett, and other matters.

In addition to his 1971-2 problem, Pullman may have to file a tax return for the 1975-6 period, when he was in Canada awaiting trial on the Aquablast Inc. stock-fraud charges. Pullman was acquitted. A resident of both Monaco and Switzerland before his Aquablast arrest, Pullman's tax liability if any for the recent years would be based on his residence here (involuntary, because the RCMP were holding his passport), while awaiting trial. Residence, not citizenship, is the basis of Canadian income tax liability.

The judgment debtor examination is dealing with Pullman's assets from 1972 to the present time, as well as his current income, to determine his ability to pay the alleged $1.2 million 1971-2 tax. So far he has been examined in two sessions last spring. The 75-year-old Pullman told his questioner Bryan Finlay of the Toronto law firm of Weir and Foulds that he moved to Switzerland from Toronto in September, 1960. While he was in Toronto he was in mortgage investments and development, Pullman said.

When the questioning came to an Ontario company called Chillon Investments Ltd., Pullman engaged in what could pass for some subtle repartee with his questioner. The transcript reads:

— What line of business was Chillon Investments in when it was active?

— You will have to ask a man by the name of Mr. McDonald who at that time was with McCarthy and McCarthy.

— What is his first name, do you know?

— John McDonald, he formed this company for me.

— Well, did he act for you?

— At that time.

— When was it active?

— I do not remember. It was before 1960, it was around 1960. You cannot ask me things going back that far, I do not remember, but I remember his forming the company.

— All right, what was the purpose that you formed it?

— I cannot remember.

Whether Pullman or the stenographer slurred the name, the solicitor referred to was Donald Stovel MacDonald, a McCarthy and McCarthy partner in 1960 and one of the incorporators of Chillon Investments Ltd. As Minister of Revenue, he was in fact the plaintiff on whose behalf Finlay was asking the questions. The questioner pressed on:

— When you say that Mr. McDonald would have that information, would he have that information now?

— I have not been in touch with Mr. McDonald for 15 years.

— So it is Mr. Ben Yuffy who would have the information?

— That is right.

Ben Yuffy, a Windsor lawyer and a Pullman in-law, and his brother Henry Yuffy a chartered accountant, have both acted for Pullman companies.

Chillon Investments was one of the companies owning the property where the Bay-Bloor Manu-Life Centre now stands. Pullman later told Finlay he had an interest in that property, which he sold in the early 1960's.

Another company, Pullman Holdings Ltd., was involved in mortgage investments, Pullman told Finlay. But a line of questioning brought a rebuke from Pullman's lawyer John Dingle (of Stikeman, Elliott, Robarts and Bowman): "Now, Mr. Finlay, you are here to examine Mr. Pullman on whether he has any assets which will satisfy the tax assessment, not to go on a fishing expedition."

Pullman said Toronto lawyer and later mortgage broker Joseph Burnett held power of attorney for one of Pullman's Toronto bank accounts at the City Hall branch of the CIBC. Asked the purpose of that account, Pullman said, "I use (it) for a convenience sometime, because I live outside the country and I gave power of attorney to someone who could make deals in case I was not available or something, so that sometimes it would take too long between Europe and here to get, so that was the reason for that account."

Pullman was asked about investments made for him by Burnett in Ontario, Puerto Rico, and the Canary Islands — the latter through Provincial Fruits Ottawa Ltd. — but the tax department is not satisfied with its information to date, and one of the items ordered for December is "production of documents in Switzerland that relate to the question whether Mr. Burnett holds assets for the witness or any company in which he has a share interest, and the witness' information with respect thereto."

Another item sought is "production of all documentation relating to whether the witness has a share interest in any company outside of Canada which is investing money in Ontario through a solicitor." One of Burnett's complaints in his CBC libel suit is that the program made it appear, he says, that "Burnett and only Burnett" has made Canadian investments for Pullman, which Burnett says is not the case.

With the cooperation of the Swiss police, the RCMP raided Pullman's Lausanne home in connection with the Aquablast charges, and Pullman said last spring he didn't know what documentation was left. Questioned about stand-by fees he might have earned through Burnett, Pullman said, "I kept some books on it, I think. I could have had books, but the RCMP went to my home. They took a lot of documents. My wife was there. I haven't received them. I don't know what they took. I went back and told my wife — I called my wife, she was there. I said, 'Start a bonfire and just destroy everything in the house so that in case the police come again there's nothing to find.' Now, I don't know what there is. What's in banks I can get.

— Let me ask you this question. Did your wife start the bonfire?

— Yes.

— So you don't know whether the books went up in the bonfire or out the door with the police?

— I couldn't tell you, because the harassment that I got from the police, I was not going to take any more because I don't know if they were going to come back the next day or the following day. . . .

Toronto lawyer Samuel Gotfrid was senior member of a series of law partnerships, the last one being a law practice with Joseph Burnett. After that partnership was dissolved in the early 1970's, Burnett established his relationship with CNA Financial Corporation, and Gotfrid became counsel to the law firm of Rosenfeld Schwartz. Gotfrid had been closely involved as a lawyer with Pullman's Toronto mortgage and real estate investments for many years. The tax department is asking for some documentation on Gotfrid's investments for Pullman since 1971. They want: "Production of all documentation relating to the receipt by Mr. Gotfrid of money on behalf of Samson International SA; production of all documentation relating to the handling of monies or other investments by Mr. Gotfrid on behalf of Samson International since 1971; the information of the witness in respect of these two matters."

More than the Canadian tax investigators are interested in talking to Pullman. In a front page article following Pullman's 1975 Aquablast arrest in Toronto, the Wall Street Journal reported: "Senate investigators and other federal agents are convinced that he has a wealth of information about organized crime's banking practices . . . the Senate permanent subcommittee on investigations is especially interested in Pullman's activities." However, the article quotes Pullman as saying he hasn't handled any deposits for others.

In a US action heard in Florida District Court in 1975, Pullman, his Florida lawyer and business associate Gerson Blatt, and Blatt's law partner Barton Udell were permanently enjoined from violations of the anti-fraud provisions of the US securities laws. The court also ordered Pullman to disgorge $315,377.50 profit realized from the sale by him of 47,730 shares of Corporation of Americas Ltd., a US public company. Complainant was the Securities and Exchange Commission.

The judge found that Corp. of Americas stock was being acquired in 1968 by Exquisite Industries Inc. (the brassiere makers, now Summit Organization Inc.). In doing so, Exquisite paid $375,000 to Pullman for 47,730 shares that Pullman had recently acquired through Blatt for only $60,000. The judge found that the shareholders from whom Blatt and Pullman acquired the shares were not given the same information Blatt and Pullman had. As to Pullman, the judge concluded: "Based on his wrongdoing and his continuing pursuit of investment opportunities, there is a reasonable likelihood that John Pullman will again violate the securities laws. He should be enjoined from future violations."

The Blatt and Udell law firm was also counsel to Corp. of Americas, which had been used by another Blatt client, Milton Pepper, to obtain public company status for his various Florida real estate ventures, the judge said. □

Bring Hither the Pleasant ARP: Recent Action in Sheltersville

Construction of private rental housing is making a kind of comeback in the Toronto area in the second half of 1977, but in a new subsidized form that doubles as a tax shelter and will, it seems, become progressively less attractive as the years go by.

The second-half surge in loan and subsidy-approvals under the CMHC Assisted Rental Program (ARP) for the Toronto region will likely bring the number of rental units approved to over 7000 for 1977, a substantial increase over 1976.

(Such variations do not show up on the published CMHC statistics for Ontario. One statistical series lists "apartment" starts without differentiating between rental and condominium; another distinguishes only "single-detached" and "all other types," while the loan-approval series only distinguishes between CMHC direct loans and NHA-backed loans by approved lenders. The one table that lists starts financed by ARP gives a cumulative total only as a lump sum for all Canadian cities, while ARP loan-approvals themselves are not listed anywhere in the Ontario statistics.)

In any event, the ARP breakthrough in the Toronto region (including the regional municipalities of York and Peel) may involve two immediate factors: the level of subsidy granted, and a special income-tax provision called MURB.

Asked about the level of subsidies in Toronto, John Sawyer, a CMHC spokesman for the Toronto region ARP said the program was successful in 1976 in most Canadian regions except Toronto and Vancouver, where higher total costs, he said, were probably due primarily to higher land costs. Sawyer said the drop of about 1% in mortgage interest rates between 1976 and 1977 (11½% to 10½%) led CMHC to establish a subsidy ceiling of less than the federal maximum of $100 per unit per month in those areas where the program was already working. (In Ontario, ARP offers up to $100 per month per unit federal assistance as a loan, and up to $50 per month per unit provincial contribution, as a grant.)

Urban Development Institute president Larry Robbins was quoted last August as saying rental construction would be "feasible" if builders got the federal maximum and the Ontario piggy-back grants. "Unfortunately," he said, "I understand that word is coming from Ottawa to try and avoid giving the maximum loan under the ARP program. If this is so, it means no provincial money will be granted since it is tied to projects receiving maximum ARP funds."

Sawyer said the ceiling only applied to areas where the program was already working in 1976. In Toronto, he said, "We have gone to over $100, and in some cases to $150."

Another incentive is MURB (Multiple Unit Rental Building), a special income tax provision that was scheduled to end on December 31, 1977, but has been extended for a further year. It provides for the classic "tax shelter." Up until 1972, tax-losses caused by the capital cost allowance (CCA), which is the income-tax name for depreciation, could be used by a building's owner to offset income from any other source. A doctor, for example, while having a positive cash flow from his partnership interest in a rental apartment building, could deduct his share of the CCA, and use any excess "loss" created by that deduction to shelter his professional income. This provision was ended in 1972 for such investors, but it remained possible to write off the CCA loss against other *rental* income. And for a professional landlord or developer, the CCA loss could be written off against all income from his business.

MURB reinstated the CCA tax-shelter provision for non-developer investors in multiple-unit rental buildings started before December 31, 1977 — with the cut-off date now extended to 1978. It was intended as an additional incentive for rental construction.

The expected 1977 cut-off may account for some of the Toronto-area rental construction activity. But the CCA write-off privilege is something that has always existed, and will continue to exist, for owners who have *rental* income to shelter, or whose principal business is developer-owner.

One of the mysteries of the Toronto-area housing industry is what reservoirs of rental income may exist that will continue to be looking for ARP-type tax shelter. The ARP is especially attractive from an income-tax point of view, quite apart from the MURB. And unlike earlier rental subsidy programs to builders — limited dividend, non-profit, and co-operative — ARP appears fully intended to be the rule and not the exception in new rental housing. So it isn't just the huge cash subsidies that make the program worth a close look.

Government promotional material for ARP says the program is "to bridge the gap between costs (economic rent) and market rent," and it says the builder's rate of return on equity is fixed at a negotiated level between 5% and 10% for the period of the assistance. But the illustrative figures used by CMHC also indicate that the program's tax advantages, not the pre-tax rate of return, are really the predominant features of the program.

The combined cash flow and tax benefits in the CMHC example bring the indicated rate of return on equity to around 50% per year in the first year. Another illustration by one of the developers prepared for an Urban Development Institute ARP conclave places his supposed ARP project in "The Municipality of Tax Haven, Province of Ontario."

Here's how it works.

In Ontario, ARP offers up to $100 per month federal assistance as a loan not immediately repayable, and up to $50 per month provincial contribution, as an outright grant in cases where the maximum federal assistance is awarded. The CMHC literature, which deals with only the federal component of the program, offers the following "typical example.'

	Per month per unit
Debt service	$215
Operating costs	114
Return on equity	21
Total costs	350
Market rent	250
Deficit	100
Assistance first year	100

The assistance is to diminish annually over a period of 10 to 15 years. That diminution, together with rises in operating costs, will keep pushing rents up to keep the landlord's cash return at the agreed level. If in any year the owner's cash flow falls below the agreed level, the year-to-year diminution of assistance can be postponed while the landlord catches up to the agreed rate. The program is designed to keep the owner's cash flow in the black, and at a fixed figure, for the period of the assistance.

Repayment of the federal assistance begins one year after the 10 or 15 year period of the advances, and owners are given a variety of possible repayment schedules. The program provides for neither rent control by CMHC nor cost limitations on the builder. Instead, the builder's submission of annual audited financial statements to CMHC will be used to verify his rate of return, and limitations are imposed on the average size of the units, not their cost. The CMHC literature notes that an allowance for replacement reserves will be recognized as part of the operating expenses.

If, in a "bona fide, arms-length sale," the owner does not recover enough to pay off the CMHC contributions, CMHC "will normally" allow the seller to recover his equity — at the originally agreed-upon amount — before it lays claim to any of the sale proceeds to recover its ARP advances.

Still, the near-guarantees of equity and of return are probably not the decisive features of the plan.

Under the now-defunct limited-dividend program, the federal grants were conceived as reducing the rate of interest paid by the builder. Since the builder's interest payments are allowable deductions from his taxable income, the federal subsidy reduced his deductions and therefore increased his tax liability.

The federal ARP subsidies are not conceived as interest-reducing — even though they are disbursed monthly to the builder in advance of his mortgage payment date — so they do not reduce tax deductions. And they are not outright grants, so they are not themselves taxable as income. Instead, they are conceived as advances on a second mortgage loan, and loan-advances are of course not taxable. In effect, the federal component of ARP guarantees a positive cash flow for the 10 to 15 year period, but without altering the tax-loss features that would exist if there were no subsidy.

Here's how CMHC demonstrates the desirable tax effects of the ARP.

All the articles in Bimonthly Reports are by John Whitelaw, unless otherwise indicated. Comments and communications are welcomed.

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CHARACTERISTICS OF PROJECT

40 units — $25,000 per unit	$1,000,000
Land value (included)	100,000
Equity	100,000
Mortgage loan 90%	900,000
Expected return on equity pre-tax	10,000

AMOUNT OF ASSISTANCE	Per month
Mortgage amortization	
35 years 11½	$215
Operating costs	114
Return on equity 10% ($10,000 per year)	21
Economic rent	350
Market rent	250
Assistance ($48,000 per year)	100

FIRST YEAR STATEMENT OF INCOME

	Owner's	For tax Purposes
Revenue — Market rent	$120,000	$120,000
Loan to supplement rentals (ARP)	48,000	
Gross income	168,000	120,000
Operating cost	54,800	54,800
Debt service	103,200	101,000 (interest only)
	158,000	156,000
Before tax income	$ 10,000	($ 36,000) (Deficit)

TAX CALCULATION

Capital cost 5% on $90,000	$45,000
Deficit on operation	36,000
Loss available for tax shelter	81,000
Value assuming 50% tax bracket	40,500
Plus before-tax income	10,000
Overall potential cash flow	50,500

In order to analyze this handsome 50% per year return on equity, and see what happens to it, two basic features of real estate investment have to be remembered. (1) Tax deductions are large in the early years of an investment, and get smaller from year to year. (2) The relationship of the owner's pre-tax "cash flow" to "taxable income or loss" is determined by the relationship of the capital cost allowance write-off to the amount of mortgage principal repayment.

(1) The tax-loss feature of a typical real estate investment is the combined result of two deductions from taxable income — interest payments and "capital cost allowance" or CCA, the tax equivalent of depreciation. Both of these items are large initially and grow smaller from year to year. The interest component of debt service grows smaller as the loan principal is paid down, and the CCA also diminishes, being a fixed annual percentage of a declining balance — 5% of 100% in the first year, then 5% of 95% in the second year, and so on. (5% is the maximum allowable write-off for buildings of masonery construction. 20% is the figure for appliances.)

At some time between 5 and 10 years after the investment is made, the tax advantage deteriorates, and the situation becomes doubly undesirable. Income from the project is no longer sheltered from tax by interest and CCA deductions, but what is even worse, some of this "income," even though it is taxable, does not stay in the owner's hands, because it must be used to pay mortgage principal, and those repayments are not tax-deductible. So the earlier situation of real cash flow coupled with tax shelter is turned on its head as tax is paid on money that is not really income at all.

(2) The difference between pre-tax cashflow and taxable income can be illustrated like this:
Net rents, less interest, less principal repayments, equals Cash flow.
Net rents, less interest, less CCA, equals Taxable income.

So to convert the cash flow figure into taxable income or loss, one substitutes the capital cost allowance figure for the mortgage principal repayment figure. In a vague way, these corresponding figures are comparable, in that they are two ways of measuring the paid down, or "used up," capital cost of a building. Mortgage principal payments represent the amount an owner actually pays each year to acquire the equity or non-debt interest in the building — he "pays down" the mortgage and "builds up" his equity. The capital cost allowance represents a fictitious yearly amount by which the building's value is "written down" each year, on the theory that this proportion of the building's capital cost can be allowed to the owner as being that part of capital that is used up each year. Of course, the CCA writes down the building's capital cost much faster than the owner actually pays for it. This is illustrated in an extract from the developer's ARP example.

	Year 1	Year 10
Mortgage principal repayment	$ 16,000	$ 57,000
Capital Cost Allowance	265,000	152,000

What all this means is that the deductions for income tax purposes — interest and CCA — start large and get smaller, and that more particularly, the early years' excess of CCA over mortgage principal payments accounts for the difference between pre-tax cash flow and taxable income or loss.

The ARP fits right in. First, it affects cash flow without affecting taxable income or loss. Second, like the key tax-factors of interest and CCA, the ARP assistance is initially large, and gets smaller from year to year. Here's another extract from the developer's example.

	Year 1	Year 10
ARP Assistance	$233,000	$ 6,000
Loss for tax purposes	415,000	34,000

In other words, the ARP assistance will terminate at the same time that the favourable tax loss feature terminates.

ARP theory is that net annual cash flow will remain at a fixed amount each year of the assistance period, as rents are raised to offset the diminution in ARP assistance, and to offset operating costs increases. However, even if rent-rises do keep the cash flow even, the tax-loss feature is wearing off, and the actual cash return (the negotiated 5% to 10%) takes on a greater relative importance. And the investment begins to look much less attractive. In the developer's example, the first year combined cash and tax-effect return is 40% (slightly more modest than the CMHC example of 50%). But the tenth year returned has dropped to 12% of equity (10% cash and 2% tax benefits). Here are his figures.

Equity — $682,500	Year 1	Year 10
Net annual cash flow	$ 68,000	$ 68,000
Loss for tax purposes	415,000	34,000
Value of tax loss in 50% tax bracket	207,000	17,000
Combined cash and tax-effect return	275,000	85,000

And once the tax shelter is exhausted, the 10% cash return becomes taxable, while at the same time the ARP loan starts to be repayable. Interestingly, the CMHC example showed the cash flow and tax calculations for the first year, with comparable figures for the total of ten years, but without showing the year-to-year trends.

The developer's example doesn't disclose what the assumed rate of increase in operating costs is, or what the rate of rent-increases is. The CMHC literature gives only one clue, in showing rent increases of 7%, based on operating cost increases of 10%. Here's how rent increases would be determined under ARP.

If operating costs are 40% of gross rents, and they increase 10% per year, rents will have to rise 4% per year (10% of 40%) to keep up. And if $250 per month rent has to go up $10 each year to compensate for that amount of ARP diminution, that represents an additional rise of 4% per year in the first year, declining to 3% per year by the tenth year. In other words, to keep the ARP project alive would require an annual rent increase of 8% per year diminishing to 7% per year. But that's if operating costs are 40% of rents, and the initial assistance is $100 per month.

If operating costs are 60% of rents, then the 10% rise in operating costs will mean a 6% rise in rents. And if ARP assistance diminishes $15 per month each year from the combined federal-provincial maximum of $150, that will mean an additional 6% rise in the first year, diminishing to 4% per year by the tenth year. The necessary rent increases in that case would be 12% in the first year to 10% in the tenth year.

Several recently-constructed Toronto apartment projects coming before Toronto rent-review have been claiming operating costs of around 60% of rents. It's hard to see why figures would be reported any differently to CMHC.

The developer's example would seem to imply a lesser rate of rent increases, since he posits operating costs of about 40% of rents, and ARP assistance of $78 per unit per month. Both figures seem to be low compared to reported figures for Toronto.

So it appears that the ARP assumes rent increases of between 7% and 12% each year for ten years, in order to arrive in that year at a rate of return on equity of 12% (10% cash and 2% tax benefits), having in the first year offered an after-tax combined return on equity of some 40% or 50%.

The fat early-year returns are from the point of view of the developer. The MURB-oriented ARP, where the developer marks up his project and sells it to investors, naturally provides a quick in-and-out profit for the developer, a less enticing early return to the investor — and the tax fix wears off at the same rate.

After the developer who propounded the "Tax Haven" for his UDI confreres, another developer showed a set of figures for a project sold to investors. He showed a gross mark-up of 24% of the developer's costs (exclusive of selling expenses), and he indicated a combined cash and tax-benefit return to the investor of 13% in the first year diminishing to 4% in the tenth year. Headway Corp., in "An Introduction to Headway Property Investment 77-IV" offers participating units to investors based on what appears to be a gross mark-up of 21%. The units would yield an indicated combined return of 15% in the first year, declining to 5% in the tenth year.

Said one housing finance man: "What's going to happen when these paper losses start turning into real losses?" □

Corporate Bank

Continued from page 1

Rosen, along with Bouchard and Co. trader Samuel Garnett, were convicted of the same offence after a jury trial. Central to the offence was an agreement to pay secret commissions to salesmen to tout the stock to clients. The stock was being sold out of a Corporate Securities Ltd. account at Bouchard and Co. Ltd. in Montreal, and later out of a Corporate Securities Ltd. account at J.P. Cannon and Co. Ltd. in Toronto. Two principals of the Bouchard firm Jean-Charles Bouchard and Stanley Moran, had personal trading-accounts with Corporate Bank and Trust, Rosen testified.

He explained, "In fact, all they were doing was borrowing their own money. . . . As I recollect, there was a trading account in which a profit was produced for these two gentlemen. I believe it was either securities or commodities, and all they did was borrow the proceeds. That's why you see an interest-free loan."

Asked about money paid to Smith and Lindzon from his office, Rosen testified they had a commodities trading account with Corporate Bank. "I financed the account for these boys," Rosen said, adding he knew they got paid for it, but he couldn't remember when. Rosen elaborated: "As we described earlier sir, Corporate Securities had only one customer. That was the Bank. The Bank had assigned to its customers numbers. That is, it was a digital read-out on the computer. So that all of the confirmations, contracts, statements would only read Corporate Bank and Trust number so and so. . . . What would happen is I would certainly draw out of the account here (in Toronto) and a debit advice would go down there (to Freeport) referable to the account."

Rosen said about two dozen individuals had such accounts.

Jean-Charles Bouchard was convicted earlier this year in Quebec Sessions Court of making false documents in connection with an offshore loan (not from Corporate Bank) to cover a net liquid capital deficit of the Bouchard and Co. brokerage firm during the summer and fall of 1974. The charge was laid by the Quebec Securities Commission.

Smith, Lindzon, and Rosen all said that a number of H.E. Smith mining promotions from previous years had been turned over to Rosen through Valutrend, and their treasuries deposited with Corporate Bank. As well, Smith and Lindzon said they were personally indebted to Rosen, who confirmed the fact, adding in answer to questions that they were demand notes that could have been called in at any time.

The Montreal office of Bouchard and Co., the Toronto offices of Valutrend and H.E. Smith Securities were raided by the RCMP September 19, 1974 following a four or five month wiretap program on the phones of Rosen, Smith, Lindzon, and their associate Stanley Bader, the Somed jury was told. Also searched were the Montreal offices of stock promoter Irving Kott, and two Montreal brokerage firms, Dorchester Securities Ltd. and Walters Securities Ltd. Kott was also a partner in the Somed conspiracy, and he was fined $500,000 following his guilty plea. (William Walters, ex-president of Walters Securities, faces charges of false pretenses and making false documents in submissions to the Quebec Securities Commission in 1974 on the source of funds invested in his company, funds the QSC says came from Kott.)

The wiretap program was under the control of James McIlvenna of the Toronto commercial crime section of the RCMP. McIlvenna testified at the Somed trial that he ordered extracts made from about 450 hours of recordings to provide evidence of "three different situations," one of them Somed. He wouldn't say afterwards what the other two "situations" were, but he did say that no upcoming charges will involve any of the wiretap recordings.

It's possible one of the other "situations" was something called G.B. Fontaine International Mines Ltd., because McIlvenna told the Somed preliminary inquiry that a September 3, 1974 wiretap authorization named the G.B. Fontaine company as well as Somed. In conversations played in evidence in the Somed trial, the conspirators referred to the G.B. Fontaine company among others by a kind of code using initials:

G. B. = G.B. Fontaine International Mines Ltd.
M. = Magister Mining Corp. Ltd.
B. = Beaver Mining Corp. Ltd.
V. = Viking Oil Resources Inc.
P. = Protea Developments Ltd.
S. = Somed Mines Ltd.

Trading "in the G. B." was ordered halted by the Ontario Securities Commission the day after the September 19 raids. The OSC alleged: "(1) The controlling shareholder Sidney Rosen had in his possession 790,200 shares of the company in street form. (2) The aforesaid 790,200 shares represented more than 20% of the issued shares of the company. (3) The shares of the company were not qualified for sale in Ontario. (4) The shares of the company were sold in Ontario through the facilities of Davidson and Co. and H. E. Smith Securities Ltd. (5) The securities salesmen at H. E. Smith Securities Ltd. were given commission of 12½% as an inducement to sell shares of the company."

McIlvenna's third "situation" may or may not have been one of the other initials listed above. It must be remembered that the list is culled from the less than 13 hours of conversations the jury heard, out of a total of some 450 hours of conversations tapped between May and September 1974. One thing McIlvenna did say in evidence was that as early as September 1974 he was discussing with someone in the Attorney General's office with the types of conversations he was recording. He said that prior to the charges being laid in February, 1975, there "probably" were conversations he brought to the prosecutor's attention that did not wind up in the 13 hours played to the jury. As well, after the charges were laid, certain conversations were deleted upon consultation with the crown. McIlvenna said he had the final say before the charges were laid, and the crown had the final say after.

McIlvenna's contact in the provincial Attorney-General's office was Clay Powell, then head of the special prosecutions section.

One queer detail in the case indicated that Powell did have the final say. The recordings that were played were ruled to be admissible into evidence on the basis of consents by Smith, Lindzon, and Bader to such use of the recordings. This strategy came as a surprise to the defence, who had expected to contest the issues surrounding the judge's original wiretap authorization — issues that had now become irrelevant. These consents were part of the plea-bargaining process involving Smith, Lindzon, and Bader. McIlvenna was asked if Irving Kott had given a similar consent to the use of wiretap recordings to which he was a party, and McIlvenna said he didn't know. Crown prosecutor David Doherty was asked outside court whether Kott had given a consent, and he said he didn't know either. "That's Clay Powell's case," Doherty said.

The affairs of one of the other initialled companies, allegedly defrauded of money and securities by other than the Somed conspirators, during the period of time of the Somed wiretaps, is scheduled to come to trial in Toronto in February.

In any event, while McIlvenna's team was working on their three "situations," whatever they were, another arm of the Toronto commercial crime section was in Europe interviewing participants in another stock-promotion called Life Investors International Ltd. In fact, the Somed jury heard on tape the Somed conspirators discussing the RCMP Life Investors investigation. It was felt the investigation could be bad for business. Here's Kott and Bader, in McIlvenna's transcription, as played to the Somed jury:

Kott — Did Morty Tanzer ever have anything to do with RCM____, with ____

Bader — Yes, yes, yes, yes.

— If you're not going to get out of that office (Rosen's Valutrend office). If you're ever going to call me from there again I'm just going to hang the fucking phone up and say I don't know you anymore, did you hear what I just told you?

— Yeh.

— They're swarming over in Europe right now.

— Yeh, on that.

— Yeh, the horsemen.

— Yeh, that's what I heard too.

— That'll hurt I know. . . . You know, I mean I got two calls from Germany.

— That they were there, ah.

— Yes, people, they're going to see actual customers.

— You got to be kidding.

In March, 1975, about a month after the Somed charges were laid, the horsemen charged five men including Rosen with conspiracy to defraud the public in the distribution of Life Investors International stock. Tanzer, one of the European salesmen of the stock, was one of the non-indicted alleged conspiracators.

The charges were dismissed after a preliminary hearing in the fall of 1975. Among the factors that made the case controversial was the role played in the company by lawyer and ex-cabinet minister in the Ontario government, Robert Macaulay, then chairman of a company called Holdex Group Ltd., a major Life Investors International shareholder. Macaulay was not charged or named in the charges, and the key crown witnesses testified they never met him.

As things turned out, Kott was right to be nervous about getting calls from Rosen's office. Other remarks made by Kott and played to the Somed jury indicate Kott felt strongly that Rosen was hot, and he was right. Several other criminal charges involving Rosen and Corporate Bank are pending, including the two referred to by the liquidators — they involve Flemdon Ltd. and Life Investors Ltd. (predecessor to Life Investors International Ltd. and a separate set of charges) respectively. As well, the QSC last month charged Rosen with theft of $2.2 million, relating to deposits in Corporate Bank.

(Kott also faces more charges in Montreal(. □

Situations

A Quebec development company headed by a former Bouchard and Co. stock salesman has had its board of directors' powers suspended by the Quebec government on the recommendation of the Quebec Securities Commission. As well as developing land in Quebec, the company, Rock Enterprises Ltd., has raised millions of dollars through land-sales to European investors.

In its recommendation published in October, the QSC explained. "Rock is a Quebec real estate development company, whose principal activity is buying land in the region around Montreal, subdividing it into lots, selling those lots, preparing development plans and submitting them to the authorities for approval. After this is successful, and after installing services (roads, water, etc.), Rock buys back the land it previously sold, either through firm buy-back clauses or optional buy-back clauses contained in the original sales contract. Following these buy-backs, Rock can then re-sell the land, or construct buildings either directly or through subsidiaries, affiliates, or joint ventures."

The QSC decided in 1975 that these land sales, which were principally to Europeans, were really investment contracts, and hence securities within the meaning of the Quebec Securities Act, adding that the transfer of title of the land "only served to guarantee the security of the capital invested and the expected return." The QSC noted that the amount raised in Europe cannot be determined, but that "several tens of millions of dollars" have been raised in this way, without fulfilling the registration or prospectus requirements of the securities legislation.

The QSC described the optional buy-back clauses as offering investors a return of between 13% and 20% per year in the event the land is bought back.

Earlier this year Rock reportedly defaulted on firm obligations to investors, as well as on Quebec real estate taxes, and was attempting last summer to arrange the renegotiation of its European contracts. The QSC found this to constitute trading in securities, and issued renewed cease-trading orders last August.

Jean-Guy Sauve, founder of Rock Enterprises in the 1950's, resigned in May, 1977, and sold the control block of shares to Compagnie de Gestion Jeannecor Inc., a company controlled by Karl Pflanzer, formerly a stock-salesman with a subsidiary of the now-defunct Bouchard and Co. After describing the sale arrangement, the QSC found that "it is Rock Enterprises that will end up paying for the share purchase by Jeannecor, and not the latter. ... This non-arms-length transaction between Sauve, Pflanzer and Jeannecor, where the parties were in flagrant conflict of interest, appears to us of a nature to depreciate the value of the securities issued by Rock (its investment contracts.)"

This transaction and others, including an oral agreement for Rock to pay Pflanzer $600,000 in consideration of a sum of around $6 million he supposedly saved Rock in European negotiations, convinced the QSC to recommend suspension of the powers of the company's board of directors. The suspension was ordered last October by Quebec Consumers Minister Lise Payette, and the company is now under the control of chartered accountant Claude Mercure of Mercure Beliveau and Associates, Montreal.

About a month earlier, the QSC laid criminal charges against Pflanzer and another Bouchard salesman, Wallace McQuade, of making and circulating a false prospectus, and conspiracy, in connection with Kupfer Mines Ltd. (now Kupfer Corp). Also charged were former Kupfer officers Raymond Richard and Cyril Smith.

In a series of transactions registered in the Land Titles Office by the Toronto law firm of Macaulay Lipson and Joseph last April 29, four Toronto apartment buildings were sold to something called Torpit Investments Ltd. for a total declared price of $13.4 million. Sellers were Kurt and Julita Pieckenhagen and a company of theirs called Julita Investments Ltd. At that same date, a Supreme Court of Ontario trial was continuing in a civil action brought by Julita's father, Karl Frischke, a merchant of Frankfurt, West Germany. He wanted among other things an accounting of monies he said he had advanced to the Pieckenhagens to invest for him in Canada.

Also on that date, April 29, the sum of $2.9 million was transferred by Royal Bank of Canada from its new Royal Bank Plaza branch to its branch in the Republic of Panama. The judge hearing the Frischke suit eventually ruled that this money was in fact the property of the plaintiff Frischke, and the judge traced it through later bank-to-bank transfers until it wound up in two New York banks on May 20. Officials of the Royal Bank refused to produce records of their Panamanian branch, and at that point the Toronto financial press, enraptured, reported that bank officials might be cited for contempt of court. But it didn't happen, and the Pieckenhagens too were out of reach, reportedly living in Brazil.

Frischke, in his successful civil action for an accounting, said he himself lived in Canada between 1959 and 1961, and he progressively liquidated his assets in Europe and transferred the cash to Canada either directly or through Dereka Corporation, a wholly-owned Liechtenstein company. Frischke said: "In 1966 a formal verbal agreement was entered into by the plaintiff Karl Frischke and the defendants Julita Pieckenhagen and Karl Pieckenhagen, in which it was agreed that the latter would invest the plaintiff's assets in rental properties in the City of Toronto and that in return for the work involved, the defendants would receive three per cent of the gross annual rental income."

In August the Pieckenhagens returned to Canada and surrendered to Metro police, who had already charged them with theft of the $3 million amount, apparently the liquid proceeds of the sale. A preliminary hearing has been set for February 20.

Another non-resident father-in-law complained to Metro police about funds he thought his son-in-law had invested for him in Toronto real estate. Toronto developer Edward Okun was charged by police last August with theft of $150,000 following complaints by his father-in-law Percy Cohen, of Albany, Georgia, but the charges were dismissed last month when he failed to come to Toronto to testify. The money was supposed to be invested in mortgages.

Persons involved in selling houses or in the home improvement business were among the 26 charged last October in connection with allegedly fraudulent Toronto bank loans of over $300,000. The announcement of the charges was made by the RCMP, who said the investigation was carried out by "The Combined Forces Task Force on Organized Crime, MTPF, OPP, and RCMP."

Among those charged was Brian Smith of British Columbia, the former manager of the branch in question, a Mimico branch of the Bank of Montreal on Lakeshore Blvd. West.

The announcement said the charges of making false statements, forgery, and uttering related to loans made during 1975-76 for which fictitious information was supplied by the borrowers. At least two of those charged have several convictions in other Toronto commercial crime cases. Also among the accused is a Toronto lawyer.

The police announcement added: "The Police have information that other banking institutions may be the victims of similar fraudulent schemes, and requests the cooperation of the public to expose this type of criminality."

An entity described as "a combined investigation unit comprised of personnel from Metro Toronto Police Force, OPP, and the RCMP" laid charges against Paul Volpe, Frank Klein, and Leonard and Samuel Shirose, all of Toronto, for conspiring to engage in the occupation of betting, in what police said was a Metro-wide gambling ring. Volpe's brothers Albert and Joseph were among those charged with keeping a common betting house last July in the same investigation, following a raid at 39 The Bridle Path.

Albert Volpe has also been charged with conspiracy to defraud the public in a scheme advertising the resale of land parcels in Florida. Volpe's co-accused in that case, Barnet Altwerger (also known as Barney Auld) also faces a gambling charge.

The Volpe brothers were featured in last summer's CBC organized crime program "Connections."

Samuel Olan of Toronto is scheduled to be sentenced soon following his guilty plea to two counts of forgery and two counts of uttering in connection with the control of Plan Tec Ltd., a private Ontario company in which Olan forged company minutes and a lawyer's letter. They were part of a series of transactions aimed at the takeover of Joseph Yolles Antiques on Yonge St. near Bloor. The crown is asking for six months jail and a fine. Olan's wife Marie also pleaded guilty to two counts of uttering. Samuel Olan is also one of the accused in the Mimico bank loan case.

In another case, Marie Olan charged last year that Albert Volpe and Barnet Altwerger stole from her a valuable oil painting, a charge of which they were acquitted in Provincial Court. Volpe said he took the painting in question as a result of a deteriorating partnership arrangement he and Altwerger once had with Olan to open a new antique store.

Ontario crown counsel Douglas Ewart will face two of Toronto's civil litigation hot-shots, Robert Armstrong of Tory and Tory, and Dougals Laidlaw of McCarthy and McCarthy, before the Supreme Court of Canada, perhaps in January, in another Olan criminal case. Armstrong and Laidlaw represent Olan's two co-accused, both of Texas, in a fraud case arising out of the 1971 takeover of Langley's Ltd., an

Ontario public company. Olan will probably not be represented by counsel. The three were convicted of fraud by a jury in 1974, then ordered acquitted by the Ontario Appeal Court in 1975, so the crown is seeking to reinstate the conviction.

The crown contends the takeover was what is called a "daylight loan" situation, where the temporary overdraft or loan incurred by the takeover group was made good out of the treasury by the post-takeover Langley's. At issue in the case is a series of questions about the scope of criminal liability in complex commercial transactions. The legal argument in another alleged "daylight loan" takeover, the Life Investors Ltd. case — not Life Investors International Ltd — will be significantly affected by the outcome of the Langley's case.

The Ontario Securities Commission has charged David Winchell, Samuel Ciglen, and Enver Hassim, all of Toronto, and Charles Sullivan of Washington DC, and Gerald Mandel with making and circulating false statements, fraud, and theft, in connection with Chemalloy Minerals Ltd. (now International Chemalloy Corp.)

Winchell is former Chemalloy president, Hassim is a Toronto lawyer, and Ciglen, a business consultant and disbarred lawyer, has been described as a financial adviser to Chemalloy. Charles Sullivan, also a business consultant, was special assistant to US treasury secretaries Douglas Dillon and Henry Fowler. The OSC investigation has been under way since the TSE price of Chemalloy fell drastically in August, 1974.

Chemalloy was ordered into receivership in early 1975 on the petition of Toronto real estate developer Angelo DelZotto. The receivers, Clarkson Co. Ltd., along with their legal counsel, the firm of Seabrook Outerbridge (now Outerbridge Manning and Mueller), later that year reported on "potential violations" of the securities act and the criminal code by persons connected with the management of Chemalloy. The two-year delay between their report and the laying of charges by the OSC was dominated by a courtroom and public relations battle pitting the Clarkson Co., cooperating with the DelZotto forces, against the Winchell loyalists, for control of the company. The company is still in receivership.

The OSC charges center around the issuance by Chemalloy of two convertible debentures, one in 1971 and the other in 1973, for $3 million and $5 million respectively. Chemalloy announced at the time that these convertible debentures were being purchased by the Handelskredit Bank, Zurich. Among the particulars of the "false statement" charges, the OSC notes that the $5 million and $3 million amounts were included under "source of funds" for the years in question. The five men are also accused of defrauding the company of the two amounts, and of stealing $4 million-worth of the 1973 issue.

Swiss lawyer Ernst Hieber, formerly connected with the Handelskredit Bank, who gave evidence about the Aquablast Inc.-Handelskredit debenture in the Pullman trial, is expected back to testify in the Chemalloy preliminary inquiry, which will probably begin this spring. The two Americans accused have not appeared.

Toronto chartered accountant Edward D. Wright, former stockbroker Michael Roche, his wife Gail, and former stock salesman Raymond Lee face OSC criminal charges of conspiracy in 1975-6 to carry out wash-trading in the Series A 10¼% income debentures of a company called Consumers Equity Corporation (formerly Shenandoah Mining and Exploration Ltd.). Unlike what has become usual in Toronto stock-fraud charges, this one deals with the over-the-counter market, rather than securities trading on a stock exchange.

Roche was acquitted last year along with his father-in-law Edwin Lynch and two other men of charges arising out of the role of Malone Lynch Securities Ltd. in the early 1970's affairs of Buffalo Gas and Oil Corp. □

CBC Libel Suits

Joseph Burnett has sued the Canadian Broadcasting Corp. and the producers and research director of last summer's two-part program on organized crime "Connections." In his statement of claim filed in Federal Court last September by the law firm of Outerbridge Manning and Mueller, Burnett complains of the meaning he says was conveyed by the words, pictures, and sounds, as well as the context, of two references to him in the segment "The Financial Connection." One reference concerned his relationship to John Pullman, the other his participation in a Detroit financial transaction.

While denying what he says the allegations were, Burnett in his statement of claim sets out his account of the way the transactions arose.

"The plaintiff (Burnett) states that during the years 1970 to 1972 he was engaged in the business of investment of monies on mortgage of real estate. The plaintiff states that it was a practice of his business to arrange loans between borrowers and lenders, and then to sell participations in such loans to various investors. The plaintiff further states that John Pullman was one of such investors who did purchase participations in certain loans arranged by the plaintiff. The plaintiff states that at all times he knew John Pullman to be a businessman thoroughly skilled in the mortgage investment industry ...

"The plaintiff states that he was not alone in handling the investments of John Pullman during the period of their relationship, but that other persons in Canada handled such investments in the normal course of their business and affairs and, to the knowledge of the defendants, he has not handled any investments of John Pullman since 1973. ...

"The plaintiff states that while he considered John Pullman a significant investor, he at no time handled more than 3 to 5 million dollars of Pullman's funds, which were in the nature of revolving funds in that monies paid out of one investment could be reinvested in a new investment at Pullman's discretion. In other words, the same supply of funds continued to be invested and re-invested over the period of their business relationship.

"The plaintiff further states that during the period of 1970 to 1972, he handled a portfolio of mortgage investments at any time or times in excess of 75 million dollars on behalf of many investors in Canada and the United States. ...

On the Detroit affair, Burnett's claim reads in part:

"The plaintiff states that in and about the summer of 1972 he was approached by one, Fred Gordon, an attorney associated with a reputable law firm carrying on practice in the city of Detroit, Michigan, with whom he had engaged in various business transactions, and that Gordon made inquiries whether Mr. Burnett or companies associated with him would loan money on the security of anything other than real estate. Specially, Mr. Gordon requested a loan of $200,000 to Indusco Corporation, a company with which he was associated on the security of a deposit of $200,000 cash. Mr. Gordon explained that the $200,000 security was to be provided by an associated company of Indusco and under US tax law if a company receives a loan from an associated company which is not repaid within a period of one year, then it is deemed taxable income in the hands of the borrower company. Mr. Gordon further explained that if the loan were made through a third party rather than an associated corporation, then the incidence of tax would be avoided by the borrower corporation.

"The plaintiff states that he knew Gordon to be an attorney with considerable experience in taxation matters in the United States, and accordingly agreed to the transaction without checking further into the source of the money."

In the version of his suit filed in the Supreme Court of Ontario (the Federal Court action is necessary to sue a federal corporation), Burnett asks, in addition to damages and a retraction, "for a declaration that the plaintiff has never knowingly or intentionally laundered money obtained through the illicit activities of organized crime or any other person or persons."

John Pullman has discontinued a libel suit against the CBC and the producers and research director of last summer's "Connections" program. Pullman had complained of two extracts from the program dealing with him in the segment "The Financial Connection." The first said: "Moving money across borders is one of the fundamental methods of laundering it. From a bank in New York to the Caribbean, perhaps the Bahamas, and then to a secret bank account in Switzerland where for years John Pullman, Meyer Lansky's associate, has operated. John Pullman was an American who in 1954 became a Canadian citizen. Since then he has operated between Toronto and Switzerland handling money for Meyer Lansky. From Switzerland or other nations with secret bank accounts, the money is brought back to the mob, its origins disguised."

The second extract: "Recently acquitted in an international stock fraud, John Pullman has invested millions of dollars in Canadian property. The partial portfolio of his investments goes on for pages listing mortgages and investments in shopping plazas, office buildings, and apartments across Canada. The totals range from $20,000 and $30,000 to several millions on a single building ..."

Citing these and other extracts together with their context in the program, Pullman objected to what the words "clearly implied and were meant to imply." The suit asked $5 million for each of libel, malicious falsehood, invasion of privacy, a wrongful scheme to injure the plaintiff, and exemplary damages.

Filed by the Toronto law firm of Fitzpatrick O'Donnell and Poss on September 9, 1977 in the Supreme Court of Ontario, and September 12 in the Federal Court, the suit was discontinued on October 21 by Pullman's new lawyers, Feigman and Chernos. □