The term "recurring" is used here descriptively for the reason that, although initially rejected, the point of view mentioned appears to have persisted in one form or another, and eventually moulded the course of action the Crown followed. In the meantime, it spawned disagreement and confusion.

These thoughts of diversion were not shared with WCP. However, still in close contact with the Crown as the investigation wound down and trial preparation went forward, WCP became aware of the possibility that the Crown approach might change direction. The investigation had been undertaken and continued by the police for the purpose of gathering evidence that would be duly presented in a court of law if, in the opinion of the Crown office, it supported the laying of criminal charges. The necessary Crown opinion had been demonstrated when charges were authorized; the possibility of diversion did not find favour with WCP.

On February 19, 1988 Acting Chief of Police S.R. Scarr wrote to the Attorney-General:

> "It has come to my attention that some very serious concerns have arisen regarding possible dispositions of the charges against those persons that have been identified as having committed various criminal offences involving improper handling of traffic offence notices by persons attached to the Court services, some members of the legal profession, and other citizens.
>
> The Winnipeg Police Department is of the view that it would be improper for these charges to be dispensed with unless they are properly addressed before the courts.

In our view the integrity of the whole judicial system, the Department of the Attorney-General and that of the Police Department is at risk to do otherwise.

The potential fallout within the community is of staggering proportions if things are not handled in an open and straightforward manner."

Two days later, on February 22, Deputy Chiefs Urchenko and Johnston with Superintendent King met with the Attorney-General and expressed the police concerns that the pending proceedings might be stayed. They came away understanding that the Attorney-General did not favour the entering of stays of the pending proceedings and had no knowledge that any were contemplated. He also made it clear to them that he was relying on the advice of senior officials.

About the same date Mr. Whitley and Mr. Guy, apparently in anticipation of a guilty plea by Provincial Judge Trudel, had discussed the possibility of staying proceedings against the individuals charged on the Trudel side. On February 26 in a memorandum to Mr. Whitley, Mr. Guy wrote:

"Pursuant to our conversations on this matter, I think it is very important that should Judge Trudel plead guilty that the guilty plea encompass in a factual way all those individuals with whom he had dealings and against whom charges have been laid. I believe that list to include ...

The decision rests with you, however, upon his guilty plea if you wish to stay against any of those individuals that stay of proceedings should be entered at that time with an explanation linking the stay of proceedings to the guilty plea by Judge

> Trudel. Although I am not familiar with these files this may involve such people as ...
>
> After you have had an opportunity to review the situations, keeping in mind my comments, perhaps we may discuss the situation.
>
> I am hopeful that the result will be that when Judge Trudel pleads guilty we will dispose of six or seven of these matters, perhaps by stays of proceedings and by trial dates being set on those who must proceed to trial in their own right. My main purpose is to confine the publicity to the guilty plea rather than having press releases for a week thereafter. I look forward to your comments in this regard."

On March 14, two days before R. v. Trudel was to be heard, Mr. Whitley, in a written communication, proposed to the Attorney-General that proceedings be stayed against all persons accused on the Trudel side except the cab driver, Donald Bebbington. Two of these were civil servants; diversion to civil service discipline was proposed for them. As proposed, the charges were to be stayed on March 16 after the Trudel case had been heard and determined. The main thrust of the reasoning on which the proposal was based appears to have been that these individuals should not be singled out for prosecution when there were others who had not been charged. These "others" remained the subjects of requests for Crown opinions submitted by WCP.

Copies of this proposal were sent to the Deputy Attorney-General, to Mr. Guy, and to Mr. Dangerfield. In the result, however, no action was taken.

All of the above concerns and circumstances contributed to an atmosphere of disarray in the Crown office. It has been described to this Review as an "atmosphere that was almost unbearable, or close to it."

(f) Cases Prosecuted

The Crown chose to proceed first against Trudel, Steen and Gyles. These cases have been decided. It is not a reflection upon the decisions, however, to review the manner in which they were taken before the courts and presented.

(i) R. v. Trudel

On March 15, 1988 the Crown preferred an indictment in the Court of Queen's Bench charging one count of "unlawfully and wilfully attempt to obstruct, pervert or defeat the course of justice by interfering with the lawful disposition of informations and summonses" between September 1, 1978 and January 15, 1988 (a ten-year period of Provincial Judge Trudel's twenty-one years of service on the bench).

The accused entered a plea of guilty to this new "umbrella" charge on March 16. Following representations by counsel for the Crown (Whitley Q.C.) and for the defence (Wolch Q.C.), the presiding judge suspended the imposition of sentence for a period of two years, with unsupervised probation. Representations made to the court by counsel for the Crown opposed a custodial sentence.

These proceedings were lawful, and taken by consent. They followed a plea bargain. Had

the matter gone to trial on a plea of not guilty, the Crown's evidence against Judge Trudel was strong and no doubt one reason for the defence participating in a plea bargain. There were other apparent reasons as well: a pension for Trudel, avoidance of the possibility of a jail sentence, avoidance of discipline proceedings before the Manitoba Judicial Council.

On the Crown side the one compelling reason for a plea bargain, apart from avoiding the prospect of prolonged litigation, was an anxiety to obtain a first and early court disposition to rebut the critics and to demonstrate that there was substance to the outstanding criminal allegations and good reason for the investigation. It was hoped, too, that a strong statement from the bench condemning the nature of the conduct involved would set a tone for the cases to follow.

This did not happen. Given the vagueness of a single "umbrella" charge alleging nothing more than would satisfy the bare requirements of the law, and the over-all thrust of the Crown's submission as to sentence, it is not surprising that the hope was not realized. A foundation for a strong pronouncement by the court was not laid.

(ii) **The Trudel Plea Bargain**

The essential points of the plea bargain were:

-Trudel would retire from the office of Provincial Judge (which he did effective March 16).

-He would receive the benefit of an enhanced pension arrangement (which he did as of March 16).

-He would plead guilty to a single umbrella-type of charge (which he did on March 16).

-The Crown would urge the court that the sentence imposed should be non-custodial (which the Crown did on March 16).

Counsel for Trudel wrote to the Deputy Attorney-General on February 16 enclosing a letter of resignation of the same date, the resignation to be effective March 16, 1988.

> "It is my understanding that an offer recently made to His Honour Judge Trudel and to a number of other senior judges to resign upon certain conditions is still open for acceptance. Accordingly, his Honour Judge Trudel has instructed me to accept that offer on the terms and conditions as outlined to him.
>
> Accordingly, I enclose Judge Trudel's letter of resignation addressed to the Attorney-General. The resignation is sent in trust that it will only be accepted on the terms and conditions as previously provided."

On March 8, 1988 the Attorney-General acknowledged the resignation in the following terms:

> "I acknowledge your recent letter of resignation as Provincial Judge, effective March 16, 1988. The letter has been forwarded to the Personnel Branch and the retirement will be processed for the 16th of March 1988."

In the meantime, steps had been taken within the Manitoba Government to extend the time

within which Provincial Judges with 20 years of pensionable service could take advantage of a "window" pension benefit first made available to them on October 9, 1988. Judges who were eligible had until November 30, 1987, when the window closed, to elect to retire and receive the benefit. The final effective date for retirement, if an election was made, was March 31, 1988. The benefit consisted of a significant additional cash pay-out based upon years of service. The purpose in providing the benefit was to encourage retirements. Trudel was eligible initially, but did not take advantage of the arrangement. Two others did, but later agreed to remain in office until the Trudel and Gyles proceedings had been determined.

Between February 17 and February 25 the Cabinet approved an extension of the date for election to March 31, 1988 for all provincial judges, with one specific exception, namely Acting Chief Provincial Judge Ian Dubienski, for whom the date of election was extended to September 1, 1988. The Cabinet paper, dated February 17, prepared in the Department of the Attorney-General, does not mention Provincial Judge Trudel. He is the only provincial judge to have taken advantage of the March 31 extension.

An internal memorandum, dated March 1, 1988 from Mr. Paul Hart, Civil Service Commissioner, to the Deputy Attorney-General on the subject of "Judicial Retirement Window --Application to Judge Trudel" states:

"Further to your memo of February 25,

1988, it would be my opinion that Judge Trudel would be eligible for the retirement benefit under the extended window as would any other judges eligible for retirement during this period.

In terms of communication, however, I would try to avoid the association between extension of the window and Judge Trudel. Rather, it should be explained that originally the department had estimated how many judges would take advantage of the window but this expectation was not met. Consequently, the application period for the window was extended in order to attract further consideration and retirements. Judge Trudel happened to be one of those judges who is eligible to take advantage of the retirement window."

The materiality of a pension benefit as part of the plea bargain is disclosed in two pieces of correspondence passing between Mr. Whitley and Mr. Wolch while this Review was in progress. On June 20, 1988, Mr. Whitley wrote in part as follows to Mr. Wolch:

"RE: R. v. TRUDEL
OBSTRUCT JUSTICE

. . .

You will recall that, during our plea discussions and while you were pursuing Mr. Trudel's pension arrangements with the Manitoba Government, I was sufficiently concerned about the appearance of, in effect, buying his plea, that I called you about it. This resulted in a meeting in my office just after 5:00 p.m., during the last week of February.

In that meeting, we discussed what I considered to be an 'ethical dilemma', in that, being Director of Criminal Prosecutions, responsible for prosecuting Mr. Trudel I was also privy to some of the discussions involving the Deputy Minister, involving Mr. Trudel's pension. I was concerned that

Mr. Trudel not have the perception that I had any influence over this (which was true), and so induce his plea. You assured me 'it simply won't come up'. I know you'll recall all this, because I raised it with you again, after the disposition of the Trudel case.

In any event, the purpose of this letter is to outline the events as I recall them ... I would appreciate a note from you confirm-confirming that my recollections are accurate."

On July 11 Mr. Wolch replied:

"Re: R.E. Trudel

Further to your letter of June 20th, 1988, I would basically concur with your comments therein.

I should, however, make it very clear that the availability of pension severence, etc., was extremely material to the entering of a plea of guilty. Judge Trudel and I at no time were concerned as to who was influential or not in obtaining the benefits that he was owed, but were rather concerned with whether it was available or not. If these benefits were not available, and keeping in mind there were a number of legal defences, and that Judge Trudel was being paid, I expect the matter might very well have been contested. Whether or not you had any influence is entirely irrelevant to Judge Trudel's position. We had a number of factors to weigh in terms of determining whether a plea of guilty would be entered or not. At no time was it of any relevance in our discussion as to what influence anybody may or may not have had. All we cared about was to determine the various facts on which we could base our decision. The fact that Judge Trudel received his pension benefits, etc., was one of those facts to be considered.

I have not discussed the contents of your letter with Judge Trudel, but I am forwarding him a copy of your letter as well as a copy of my reply as he may wish to speak to you either personally or in writing."

No word was spoken by either counsel in the court proceedings on March 16 suggesting a plea bargain. "It simply [didn't] come up."

(iii) R. v. Steen

On April 18, 1988, on instructions of the Crown, a new information was laid in Provincial Court charging that Steen did "unlawfully and wilfully attempt to obstruct, pervert or defeat the course of justice by interfering with the lawful disposition of informations and summonses" between September 10, 1987 and January 8, 1988.

As in R. v. Trudel, this is an "umbrella"-type charge, but covers a much shorter period of time--approximately four months. The dates coincide with the period during which interceptions of communications were being made. The evidence in possession of the Crown involving Steen covered a wider time frame.

On April 20 this charge appeared on the Provincial Court docket. The Crown (Dangerfield Q.C.) elected to proceed by way of indictment; the accused, represented by Mr. Weinstein Q.C. elected to be tried by a Provincial Judge and entered a plea of guilty. The case was then remanded to April 22.

On April 22 counsel made their submissions as to sentence and the presiding judge suspended the imposition of sentence for one year, with unsupervised probation. A transcript of the proceedings fails to disclose reasons, and it is assumed none were given. These proceedings, too, followed a plea bargain.

(iv) **The Steen Plea Bargain**

There was a plea bargain in this case, as in R. v. Trudel: the Crown, in exchange for a guilty plea, agreed to urge the presiding judge for a non-custodial sentence. The single "umbrella" charge was agreed upon, as were the prepared submissions of both counsel. Continued employment for Steen within the civil service was also assured.

In the result the submissions made in open court were sanitized beyond reason. By way of example, completely suppressed was evidence that the accused had received and accepted free a paint job for his car, an automobile engine fan, and hockey game tickets--all from persons with whom he had been jointly charged initially. The defence representations included an expression of remorse and an apology to the Court on behalf of the accused for his actions. Nothing of that nature was said in R. v. Trudel.

The Crown's evidence against Steen was strong and, as noted above, covered a wider time frame than the charge to which he pleaded. That Steen would seek a plea bargain is understandable. That the Crown would, can only be explained by persisting anxiety to have another of the principals convicted quickly without prolonged litigation. The position as to sentence the Crown had taken previously in R. v. Trudel influenced the position it took in this case.

Steen's continued employment was a key factor in the plea bargain. His counsel discussed with Mr. Dangerfield Steen's employment prospects following conviction. Mr. Dangerfield was unable

to provide the positive assurances sought by Mr. Weinstein. The decision rested with another part of the Attorney-General's Department and the Civil Service Commission. Mr. Dangerfield did, however, request Mr. Elton to, "look into the problems and the possibilities of resolutions," following a conversation he had had with Mr. Art Proulx, Personnel Director for the Attorney-General's Department. Thereafter he provided Mr. Elton with an outline of the basis upon which an opinion could be advanced by the Attorney-General's Department to the Civil Service Commission recommending that Steen not be fired (dependent upon his plea of guilty).

The Deputy Attorney-General sought and received an opinion from the Civil Service Commission outlining the possible consequences to follow <u>dependent upon the employer's position and recommendations</u>. It was reasonably clear that, with the support and recommendation of the Attorney-General's Department and with a plea of guilty, Mr. Steen's employment would be continued, subject to a degree of demotion. Mr. Elton confirmed this in writing to Mr. Weinstein.

As we are now aware, the bargain was made, the guilty plea entered and Steen's employment secured. He had been suspended on January 18, then reinstated on January 19, without loss of pay, but assigned to a non-magisterial position within the Department of the Attorney-General. As a matter of internal discipline, after the conviction he was demoted to the first step of the position of Administrative Officer I at a reduced salary. He waived his rights to grieve.

The letter informing him of the demotion notes that the conviction was justification for dismissal, but explains the discipline imposed as being made: "In view of your previous lengthy and otherwise unblemished record of service, and your expression of remorse and regret for your actions." The letter was window dressing.

(v) **R. v. Gyles--A Conflict**

This case was heard in the Court of Queen's Bench in May 1988. It resulted in an acquittal. Presentation of the Crown's side of the case has been reviewed, and attention is drawn to a single point:

The proceedings were by way of indictment charging one count of "unlawfully and wilfully attempt to obstruct, pervert or defeat the course of justice by interfering with the lawful disposition of informations and summonses issued the twenty-first day of November A.D. 1987 to Albert J. Chartrand."

The charge was identical to the initial charge laid on January 16, 1988. The accused pleaded not guilty and the trial proceeded before Schwartz, J. by way of an agreed statement of facts and a transcript of intercepted telephone calls. Director of Criminal Prosecutions Whitley appeared for the Crown. Prosecution of the case had been assigned to him in January by Assistant Deputy Attorney-General Guy.

On February 15, when reporting to Mr. Guy on the status of the case, Mr. Whitley revealed that he would feel uncomfortable, "Because of

my long association with Judge Gyles," if the case were to proceed to trial in the ordinary way and the facts were contested. If, however, the facts could be settled between counsel and an agreed statement presented to the court, he would feel comfortable dealing with matters of law. A proposal of this nature had been discussed by him with counsel for the defence but they had not yet reached agreement. Mr. Whitley's perceived personal conflict, although made known by him to his superiors, was not seen as reason for changing this assignment. The case proceeded as noted. An agreed statement of facts was settled and filed at the trial. The main focus of the trial became a question of mixed fact and law; namely, the interpretation of the intercepted conversations, and the legal implications of that interpretation as found by the court.

(g) Proceedings Stayed--May 6, 1988

On April 22 Mr. Dangerfield attended at the Public Safety Building and met with the Chief of Police and other senior police officials. He informed them that the Crown intended to enter a stay of proceedings in all of the cases except the Bebbington case, which was to be prosecuted. The police officials expressed emphatic disapproval, pointing out that such a step would make the investigation, charges, and arrests appear unwarranted and improperly motivated.

A decision to stay proceedings was of course one to be taken by the Crown. Apart from expressing objection, the police must accept it.

At a further meeting at the Public Safety

Building on May 5, Mr. Dangerfield delivered to the Chief of Police a copy of the public announcement to be made the following morning by the Attorney-General regarding the stays of proceeding. Again the objections of the police were emphatically made known to Mr. Dangerfield.

On the afternoon of May 5 the Attorney-General telephoned the Chief of Police about the proposed stays. The Crown's decision remained unchanged.

On May 6, 1988 the Crown directed in Provincial Court that proceedings be stayed in all but one of the remaining cases. The exception was R. v. Bebbington. In that case there has been committal for trial in the Court of Queen's Bench and it remains pending.

These stays were announced by the Attorney-General on May 6 and the reasons given for directing them are set forth in a public statement made that day (see APPENDIX D).

3. THE CROWN ROLE

Prosecutors, at various stages of any prosecution, are required to exercise discretion while carefully observing proper procedures and at all times meeting the legal and professional standards normally expected of them. For the purposes of this Review these standards have been considered, and decisions made in the exercise of prosecutorial discretion have been examined. A statement and brief discussion of principles is attached as APPENDIX C.

(a) Case-management

There were apparent weaknesses in the performance of the Crown role from the beginning:

First - Prior to January 7, 1988, Mr. Dangerfield, an experienced and capable Senior Crown Attorney, already carrying a corresponding work load, remained the sole police-Crown contact. For security reasons all others within the Crown office were excluded from knowledge of the pending investigation. This was not a desirable arrangement no matter what the fears about security. If the concept was, as appears to have been the case, that there be close on-going police-Crown liaison during the investigation, there must have been a purpose.

The purpose of close on-going police-Crown liaison was to provide assistance to the investigators with prompt access to advice on legal implications of the accumulating evidence. Apart from the two occasions when interception authorizations were applied for, Crown assistance of this nature does not appear to have been

undertaken. No assessment was put in hand in the Crown office until it became a matter of real urgency after January 7, 1988, a date established more than two months previously when the interception authorization was extended.

This failure to keep abreast of the mounting results of the investigation and acceptance during the first week of January of a fixed date (January 15) to embark on the next stage of the investigation resulted in the unnecessarily compressed period of time after January 7 to properly reflect upon strategy after January 15.

The missing feature in the Crown role was a prosecuting team approach with one senior counsel in charge and responsible to the Director of Criminal Prosecutions or, if need be, to the Assistant Deputy Attorney-General (Criminal Justice). This was practical, would have permitted more time for deliberation and the period of indecision on January 14 would have been most unlikely. Thoughts about alternatives should have surfaced, received discussion and been resolved before a major course of action became fixed.

Further, the selection of January 15 by WCP during the week of January 3, in which the Crown concurred during the same week, was not a necessary or an irreversible decision. A later date could have been selected and, given the lack of Crown preparedness before January 7, a later date was most desirable.

Second - The meeting on January 13, convened by the Crown, if not unusual was undesirable. The

purpose, from the point of view of the Crown, was to inform the Attorney-General of the results of the investigation, to advise him how the Crown office proposed to have the matter proceed (as per the Whitley memorandum), and to obtain his approval of that course of action. Given the purpose, the meeting should have been confined to the Attorney-General, his senior officials, and the two prosecutors. It was in fact a policy meeting that became something else. Instructions to the police, if needed, should have come later from the prosecutor in charge. However, there was no time to waste; hence the joint meeting. The Deputy Attorney-General and the Assistant Deputy Attorney-General (Criminal Justice) were little better informed than was the Attorney-General when the meeting began. The Whitley memorandum of January 12 was distributed at the meeting or immediately prior to it, allowing no time for prior study.

The Attorney-General chaired the meeting and Mr. Whitley made the major presentation. Approvals by the Attorney-General of the actions proposed in individual cases inevitably were looked upon as decisions and when the meeting was over the police came away understanding the Attorney-General to be in control and his expressed approvals to be their instructions to proceed (a most undesirable situation). This explains the police demand for written instructions from the Attorney-General on January 14 when advised by the Crown office that the plan had been changed. The compulsion of time commented upon earlier is the reason for the composition of the meeting and for the lack of opportunity to reflect upon

the course of action proposed or the implications of it.

Within hours the Deputy Attorney-General and the Assistant Deputy Attorney-General (Criminal Justice) were having reservations. The afternoon and evening of the previous day (January 13) had been their first encounter with details. Neither was in a position to participate in a major way at the meeting, nor did they. In their own minds early on January 14 they were beginning to question the number of arrests to be made. The arrest of others apart from the three judicial figures had become for them a source of concern, a source of second thoughts. The seeds of diversion as a possible alternative had been planted. Discussion between them and with Mr. Whitley resulted in the exchange of the telephone calls with WCP already mentioned. The thoughts were uncertain thoughts and not communicated to the Attorney-General or to Mr. Dangerfield. They did not arise from conclusions as to the strength or otherwise of the available evidence.

Third - On or about January 15 Assistant Deputy Attorney-General Guy assigned the Trudel side of the matter and the Gyles prosecution to the Director of Criminal Prosecutions, and the Steen side to Mr. Dangerfield. He retained to himself over-all control. As already commented, a team approach was the appropriate arrangement for managing the prosecutions. Mr. Dangerfield was the only hands-on prosecutor of the three. The strategy had been set, it was time to move the cases towards the courtroom. To do that appropriately "line" Crown attorneys with one senior

counsel in charge were required. Another opportunity to take this approach was allowed to pass.

Fourth - Inability to cope with the exigencies that arose on and immediately after January 15 was a reflection of the lack of adequate case-management. Additional arrests, expanded numbers of police requests for Crown opinions, internal departmental friction, external public criticism from various sources including a small coterie from the criminal defence bar, influenced by self-interest for the most part, seems to have caused what has been described earlier in this report as "disarray," a term used advisedly. Underlying reasons were as already described: the lack of time taken or available earlier to look ahead past January 15, and plan, the style of case-management adopted and the fact that the evidence uncovered in the further investigative process did not disclose larger conspiracies, making re-organization for the trial stage more complex than had perhaps been anticipated. The first obvious indications of the effect of these matters was resistance to further arrests and failure to respond to police requests for Crown opinions. A second was the decision to obtain an early resolution of two cases (Trudel and Steen) to demonstrate the validity of the public purpose being served and to show that the integrity of the justice system had been restored. The Crown office became susceptible to plea bargain discussions.

(b) Cases Prosecuted

The R. v. Trudel and R. v. Steen cases

provide an extended view of the effects on the prosecutions of the disarray in the Crown office.

In R. v. Trudel a plea bargain was made in a situation where the Crown's only possible reason was to avoid prolonged litigation and show that the integrity of the justice system as it had operated at 207 Provencher Boulevard had been restored. The details of the bargain have been described earlier in Part III. The court was not informed of a plea bargain, yet it was eminently a case in which the public interest, equally as entitled as an accused to the prosecutor's honest, fair and candid approach, ought to have been better served, even though there be no statute or rule making disclosure to the court of a plea bargain mandatory. The Crown, as well as informing the court of the plea bargain, could well have proceeded on something more specific than an "umbrella" type of charge to cover a period of ten years of criminal activity, and a Crown submission that left less of an impression of judicial error than of crime. Without doubt the charge and the submission were tailored to assist the Crown's position that a sentence involving incarceration was not required. Hindsight makes it difficult to disagree that there is an outward appearance to support the suggestion that Mr. Trudel's plea was bought.

R. v. Steen, too, involved a plea bargain. The Crown approach to this case was influenced by the approach it had taken in R. v. Trudel, but need not have been. In this case, too, an "umbrella" type of charge having a watering-down effect was employed. The period

covered by the charge was narrower than the Crown's evidence justified (had it been necessary to contest the facts). The Crown's submission has been described earlier in this report (Part III) as sanitized. The Crown's independence was compromised by the exchange between counsel of their respective submissions prior to the hearing.

The Crown's representation in R. v. Trudel and R. v. Steen fell short of the standard of representation the public interest demands of the Crown office.

Between January 15 and the date of disposition in the Steen case, the initial vigour of the Crown office appears to have vanished.

The personal conflict perceived by Mr. Whitley as affecting his involvement in R. v. Gyles was a matter of some substance, but was not resolved appropriately. It is difficult to understand how he could conclude that, if the case were to be tried one way and not the other, the conflict was resolved and he could act on behalf of the Crown with the necessary spirit of independence. If precluded, as he thought, from conducting the prosecution in a trial involving contested issues of fact, he was equally precluded from settling an agreed statement of facts with defence counsel. There was no difference. Mr. Whitley ought to have recognized the ethical dilemma and to have withdrawn from the assignment; either that, or his seniors, Assistant Deputy Attorney-General Guy and Deputy Attorney-General Elton, both of whom knew of the conflict affecting him, should have seen to his replacement. In

the result Mr. Whitley's participation in the case and the agreed statement of facts become suspect. He should have been "yanked."

The above comment regarding R. v. Trudel, R. v. Steen and R. v. Gyles is confined to the Crown representation in these prosecutions. It is not to be interpreted otherwise than as comment on the standard of that representation, nor as suggesting illegality, or a different result in any of the three cases.

(c) Appropriateness of Initial Charges

The "initial charges" referred to in the letter requesting this Review are taken to be those laid following the approvals given at the meeting of January 13, eleven of them laid before Stefanson, P.J. on January 15 and one before Morse, J. on January 16. As already noted in this report, these charges were selected by Messrs. Whitley and Dangerfield and the terms were settled by Mr. Dangerfield.

Some were joint charges; others were individual. They are of two types--an offence under s.127(2) of the Criminal Code:

- wilful attempt to obstruct, pervert or defeat the course of justice

or an offence under s.423(1)(d)(and s.127(2)) of the Criminal Code:

- conspiracy to wilfully attempt to obstruct, pervert or defeat the course of justice.

office being involved with this investigation and prosecution is questionable. A conflict exists.

4. CONCLUSIONS - CROWN ROLE

(a) Failure to perceive the implications of a criminal investigation that involved activity within the Department of the Attorney-General prejudiced the role of the Crown office. No later than October 31, 1987, when the second interception authorization was granted, prudence alone should have suggested that a special prosecutor from the private bar be retained and instructed. The Criminal Justice Division of the Department of the Attorney-General (the Crown office) was not the appropriate instrument for exercising Crown prosecutorial independence when the integrity of a court system, organized and administered by that Department, is in question. In the circumstances, given the present organization of the Department, Crown office officials and prosecutors cannot be viewed as independent. This ticket-fixing affair demonstrates a point at which internal conflict arises and independence of the prosecutorial role breaks down.

(b) The above conclusion is about organizational fault and failure to understand it; it is not a reflection on motives. The role the Crown office displayed was overall well motivated and the legality of procedures followed cannot be questioned.

(c) Case-management and control within the Crown office was not appropriately organized and remained weak and inadequate throughout. A prosecuting team of "line" Crown attorneys