

Professional Standards Special Task Force  
Investigation Overview / Report to Chief Fantino  
Confidential

## INTRODUCTION:

Detective Sergeant John Schertzer, over the period of time spanning at least mid 1995 to mid 1999, led a small and specific group of police officers serving under his supervision on a crime spree in the drug culture of Toronto thereby obstructing the administration of justice<sup>1</sup>. He and his co-conspirators have been charged accordingly and are now before the courts. Others of that team including the co-conspirators, will be the subject of charges pursuant to the Police Services Act. In total, 12 members of the TPS will face some sanction as a result of this activity, six of them criminally.

On January 5<sup>th</sup> and 7<sup>th</sup>, 2004, the members of the Professional Standards Special Task Force<sup>2</sup> arrested six members of the former Central Field Command Drug Squad, Team 3 and charged them with a variety of serious, criminal offences<sup>3</sup>. This marked the conclusion of a significant and detailed criminal investigation conducted by the PS STF<sup>4</sup>.

The charges that arose from this investigation represent a small number as compared to the initial allegations referred to the Crown Law Office arising from the PS STF investigation.<sup>5</sup> At the onset of the investigation I elected to seek the support of the Crown and their advice as to the reasonable prospect of conviction and whether or not it was in the public interest to prosecute. All parties to this investigation including the PS STF team investigators, the Chief and even the President of the Toronto Police Association supported this level of support being sought in light of the serious nature of the allegations being investigated. While the timeline was increased significantly awaiting the advice of the Crown Law Office, the logic was sound.

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<sup>1</sup> A review conducted by the PS STF of search warrants executed in the study period of the PS STF showed that only 2 out of 241 total were executed without the direct involvement of John Schertzer or at times when he was absent from duty for recorded reasons such as annual leave, etc.

<sup>2</sup> The Professional Standards Special Task Force was a investigative team operating within the Professional Standards umbrella of the Toronto Police Service. It was staffed jointly by Toronto Police Service and a small number of RCMP personnel. It was jointly resourced as well. Hereinafter in this report, it will be referred to by the abbreviation PS STF.

<sup>3</sup> See Appendix P which is a copy of the dope sheets utilized for the bail proceedings for the charged officers. Appendix K summarizes the charges for each subject including suspected PSA charges.

<sup>4</sup> While the focus of the majority of the PS STF investigation was on CFC Team 3, an investigation was successfully undertaken and concluded regarding Detective Constable Robert Kelly of NorthWest Field Command. This was a limited engagement of the PS STF and will be addressed only briefly in this report as it has been fully briefed to the Chief in the past under separate cover.

<sup>5</sup> The PS STF referred a total of 218 criminal allegations against 12 former CFC officers to the Crown Law Office for review in 18 major court briefs of evidence that were logically designed. The Crown ultimately gave advice indicating a reasonable prospect of conviction on 22 counts against a total of 6 former members of the CFC and recommended that 4 others be named as unindicted co-conspirators.

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This report lays out significant findings of the PS STF<sup>6</sup>. The report is supplemented by investigative commentary in the form of footnotes or references as well as a series of appendices, which are a variety of documents created during the PS STF investigation. This report is written in the context that throughout this investigation, regular briefings of S/Supt. Dicks occurred and on occasion detailed briefings were conducted with the Chief in person. None of the issues raised in this report are new. All have been previously briefed.

Throughout this report, especially at the beginning of it and throughout the discussion of the findings of the Grant Thornton forensic financial review, we will speak of other investigations that had occurred over time. These are summarized in Appendices F and G. It should be recognized by the reader that it has not been a purpose or focus of the PS STF to criticize other investigations previously conducted and concluded as there was no reason to do that. In fact, if there is ever a circumstance to comment on the clarity of hindsight, it could well be this case. No one investigative team in the past had the resources or executive commitment to be able to succeed on a coordinated review. Some investigators had a professional suspicion of what could have been going on.

Therefore, time progressed and as will be laid out, the method of investigation and focus of the PS STF was different than any of those taken by prior investigation teams. There are those who have asked that I shy away from any comment of any prior investigation but to do so would be to miss out on tactical considerations and most certainly be the subject of appropriate criticism. We have taken the position that in order to follow the truth we had to go where it was logical to do so.

Let there be no doubt in the mind of the reader that despite any suggestion to the contrary by any critic of the Toronto Police Service, this Task Force or our findings be they specific or logically implied, that there is no criminal responsibility on the part of any police supervisor except Detective Sergeant John Schertzer. No one can suggest that there is any indictment of any senior officer or supervisor of the Toronto Police Service, its structures or daily operating procedures as there are not any to be had. After all, those of us involved in policing do not build policy or set operational structure to prevent criminal organizations from operating within our midst. In the norm, we would not prescribe such approaches as standard operating concerns.

Despite the impact of the environment, those of us involved in criminal law enforcement know that crime is an individual choice and once that choice is made, those involved in this type of activity will exploit whatever structure, whatever organization and whatever opportunity they encounter to their personal gain or objective. Detective Sergeant Schertzer was just such a criminal and those who worked with him that chose to follow his criminal ways did so within the structures of the Toronto Police Service but would have regardless. That was their calling and that was their choice. And unfortunately, they did

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<sup>6</sup> I have done my best to ensure that there is a logical chronological flow but that is not always possible and I therefore apologize in advance if the topic headings or contents move around in time.

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so with relative impunity for many years. That luxury has now been removed from them and in one form or another, they must be held accountable.

**John D. Neily, C/Supt. (RCMP 0.1693 / TPS 71009)**

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## CREATION OF THE PS STF

On 2001.07.08, acting upon the recommendations of an investigative team headed by Insp. Tony Corrie, Chief Fantino approached the Commissioner of the RCMP to select and second a senior officer to oversee and command a task force to investigate allegations arising from an ongoing investigation of a select group of officers of the Central Field Command Drug Section, Team 3, of the TPS.<sup>7</sup>

The mandate of the PS STF was identified to me by Chief Fantino in correspondence dated August 3, 2001, Appendix B to this report. This mandate was later updated on August 1, 2002 to address a specific concern arising from document and record retention and control. That updating letter is attached as Appendix C. While the initial mandate letter refers solely to "the investigation" it was fully understood that this investigation was that focused on the Team 3, CFC activity. However, an investigation into the activity of NorthWest Field Command Drug Squad was conducted as a result of the proactive Detective Constable Robert Kelly investigation. Further, preliminary reviews were conducted on three specific searches executed by CFC, Team 2 under the direction of Detective Danny Ross. While the Kelly / NWFC investigation did result in charges, the Team 2, Ross investigation was inconclusive and was referred back to Internal Affairs for follow-up as appropriate.

The method of operating of the PS STF was simply to conduct an objective, intelligence led investigation that focused on the most significant criminal cases. As Chief Fantino indicated to the team in his first of two meetings with the PS STF, they should follow the truth<sup>8</sup>. Our operations and direction allowed us to conduct an objective, intelligence and evidence led investigation to confirm / isolate the most serious criminal activity. The majority of the investigation was done covertly and without public or internal comment. To do otherwise would most certainly have tipped our hand and the probable loss of the tactical advantage we enjoyed for a large portion of our duration.

Further to the above, it was our belief that we should focus on the most serious criminal allegations. It was also our belief early in the investigation that the real victim, while initially portrayed to be drug dealers who may have lost cash, was indeed the justice system and the police service because by means of the courts, affidavits, search warrants and so on were being utilized as tools for the potential gain of the suspects. In doing so it was believed that we could more fairly represent the suspicious activity as criminal as compared to putting one social group against another.

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<sup>7</sup> Attached to this report as Appendix A is the report that was written by D/Sgt Hamel and presented to the Chief and ultimately the Commissioner of the RCMP.

<sup>8</sup> At the initial operational briefing and training session of the PS STF on October 21 and 22, 2001, Chief Fantino addressed the team and advised them to follow the truth regardless of where it took them.

## THE MYRIAD OF INVESTIGATIONS OF DETECTIVE SHERTZER – et al.

As indicated before, I am not about to go into detail of prior investigations that were conducted and concluded about Det. Shertzler over a period of several years. We had no reason to do that. Indeed, a review of his personnel file and discipline records will show this man had problems from almost the time he first hit the streets of Toronto. At the time of his promotion to Detective Sergeant in 1999 he had been the subject of no less than 20 public complaints which had resulted in effectively no finding or foundation from a wide variety of investigations.

At no point up to the Franks and Greer investigation arising from the complaint of attorney Edward Sapiano had there been any attempt to coordinate the inquiries. Even their attempts were diminished due to what I would refer to as a lack of resources assigned to the matter. By the end of 1999, another Internal Affairs investigation led by D/Sgt. Hanel had concluded that there were reasonable and probable grounds to believe that Schertzler and certain members of his crew had committed several criminal acts in the manner in which they paid informants of the TPS. Their investigation focused on four informants but was based on a much larger sample of confidential informants studied in 1999 and 2000. But they did not go further than looking at the minor financial transactions and did not question what actually happened as a result of the information relayed by the informant to the handlers. That was the critical piece that had not been addressed by the variety of investigations over the prior years.

All of those investigations had similar patterns of complaint and allegations, dating back into the early 1990's. Indeed, the first attempt to review these complaints for commonality was undertaken by then Detective David Eagleson of PCTB and later of the Legal Services group of the TPS. He compared 16 complaints and found there were common traits across them from diverse complainants who had no knowledge of each other. His attempt to relay that information to then Deputy Chief Molyneaux (retired) of the Central Field Command in 1997 met with no success<sup>9</sup>. He was put in touch with Detective Sergeant Robert Spires who was Schertzler's immediate supervisor. We now know that no specific action was taken by Spires who quoted the significant success rate of this team compared to other drug sections across the city in the number of arrests. I will comment upon the potential relevance of the statistics later in this report.

Detective Sergeant Robert Spires, now retired, has confided to PS STF investigators that he did not have any use for Detective Schertzler or his method of team leadership. He indicated that he advised Deputy Molyneux of this fact but was told by the Deputy to do whatever it took to ensure they got along as the then amalgamation of district drug units in the Field Command must be achieved in a timely basis. Spires gave up his

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<sup>9</sup> Detective Eagleson has provided a statement to the PS STF as well as a 649 addressed to the Administrative Review team of Supt. Tony Corrie in which he laid out his concerns. They are held on file at the PS STF.

responsibility at that point in time as he indicated he did nothing. He allowed Schertzer to run his team as he deemed fit<sup>10</sup>.

For his part, upon taking over Central Field Command in 1998, Deputy Chief Michael Boyd (retired) indicated that this team was highly respected by the Division Commanders in the Central Field Command district and that was a means for him to measure their effectiveness. He expected that D/Sgt. Spires would keep him apprised of what issues had to be addressed at his level, but in hindsight, the structure and span of control of the Deputy Chief of the structure in place in the Service at that time made it effectively impossible to know what was going on at the unit level. He depended upon D/Sgt. Spires who, as indicated, by his own admission, gave up before he started.

It must be recognized that Detective Sergeant Schertzer's team was a unit that made a great deal of arrests, utilized the highest number of confidential informants<sup>11</sup> of any of the four CFC drug teams, executed a great number of search warrants, numbering some 241 in the PS STF period of study.

On that basis, it is therefore essential to put the reality of all of these prior investigations into the context of the times.

- 1) Most of the complaints received over the years complained of some combination of the following types of conduct<sup>12</sup>:
  - a. Excessive force
  - b. Unlawful search and seizure
  - c. Theft of cash or valuables
  
- 2) There are at least 47 complaints of the theft of valuables over the period of 1997 to mid 1999. See Appendix 1-2 of the Grant Thornton report, our Appendix M. When laid out side by side, there is a common denominator. While most complainants did not know each other, all had received a visit from Detective Sergeant Schertzer's team by search warrant or a street arrest. Their stories were remarkably similar. Albeit that Grant Thornton made findings in 2003, Detective Eagleson had made similar observations in his review in 1997 of then 16 complaints.
  
- 3) All investigators prior to Hamel investigation in late 1999 and 2000 were reluctant to put any weight to the complaints of drug traffickers, criminals of the drug culture, their associates and most particularly – confidential informants of

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<sup>10</sup> Two statements were obtained by the PS STF from retired D/Sgt. Spires and are held on file.

<sup>11</sup> The PS STF investigation reviewed the interactions of Schertzer's team with 31 confidential informants.

<sup>12</sup> The existence of patterns of behaviour known to sometimes point to criminal / conduct problems within high risk policing teams were becoming more and more common across North America and reported on not only publicly but also in internal police executive journals. The Mollen Report of 1994 and findings from the Miami River Cops case in Miami are just two. A further report on drug section misconduct prepared for the Office of the General Accountant of the President of United States in 1998 drew significant parallels to all of what were alleged here as well as would be confirmed by the PS STF investigation.

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the Toronto Police Service. Hamel attempted to corroborate the information of the CI's, a practise that was emulated in the PS STF investigation. I am convinced that no other investigators prior to his team wanted to even consider the concept of using criminals or confidential informants in the resulting police investigation.

- 4) On that note, it was doubtful that any drug dealer would freely address the amount of money or drugs that they had in their possession at the time of the visit by the police. The distrust of the police to take their complaints seriously were echoed by not only the drug traffickers themselves but their attorneys. It therefore became a no win situation and one where credibility of witnesses was difficult to confirm and agendas were abundant. The most of basic investigative steps such as proving the amount of money that had been allegedly stolen failed at the initial instance. However, the fact remained that despite all of the challenges, the stories were strikingly similar among diverse individuals with limited or no prior contact, one to the other.
- 5) While Franks and Greer did approach their OIC for permission to utilize covert investigative techniques such as an undercover operation, they were turned down as it was not deemed an appropriate investigative technique at the time, largely owing to concerns of witness protection obligations for the potential cooperating police agent(s) and the overall cost to the Service on a resource basis.
- 6) Some of the DOJ prosecutors, especially those at OCH under the guidance of Hugh O'Connell in 1999 were experiencing increasing problems of obtaining disclosure from Schertzer's team for their cases. As a result, charges were being stayed with little or no complaint from the police team. O'Connell, in an internal memorandum / note to himself that he shared with Detective Sergeant Randy Franks, noted that he observed there was an overlap between those cases in which disclosure was a challenge and those that there were rumours in the hallways or from comments by defence counsel of monies or valuables missing at the time of the searches. O'Connell cooperated with D/Sgt. Franks and his partner as best he could at that time. He did this with the blessing of his superior, Elaine Krivel.
- 7) Interestingly enough, during the Franks and Greer investigation, they met with limited interference from the suspect officers. Statements were obtained and memo books were obtained for the same periods of time that the PS STF later investigated and for which memobooks were later missing. Appendix J details those periods of time in the PS STF investigation for which memo books were not provided by the suspect officers.
- 8) As a result of the Hamel investigation in late 1999, he rightfully had concerns about the credibility of the members of Schertzer's team and the DOJ were approached by himself and Jerome Wiley to lay out their concerns. The Crown commenced a review of the cases on a case by case basis. This became a matter

of great conflict within the Service, the Drug Squads and also became the subject of public comment in the media. While Hamel was approaching the stage of having reasonable and probable grounds to believe criminal offences had taken place, Franks and Greer were still short of that threshold and indeed would not ever make it to that stage, with the exception of the Scaduto case.

- 9) Despite this, no effort was made to coordinate any police investigation responses until the spring of 2001 when S/Insp. Corrie was assigned to coordinate the investigative responses. It was not long after this investigative audit commenced that the Yeung and Morgan cases came to light.

## AGENTS, INFORMANTS AND THE TORONTO POLICE SERVICE

There are those that would suggest that the labeling of subjects as informants and / or police agents in given circumstances are challenging at the best of times. This was known across all police agencies and not just limited to the Toronto Police Service. However, this is not a reason for criminal behavior such as perjury in an attempt to obviously hide the actual role played by a cooperating sole, especially when exacerbated by those same soles being paid with drugs or not paid at all despite what the paperwork detailed.

In 1997, then S/Insp. Paul Gottschaulk was in-charge of SIS and responsible for the CDIU. He became concerned about the very issue of agents and informants, their definitions and the manner in which internal records reflected these perceived errors or challenges. He undertook a series of proactive steps to inform managers and senior officers of his concerns. On review of specific informant documentation, he would refer the material back to the originator if indeed he suspected an error had been made<sup>13</sup>

S/Insp. Gottschaulk appeared at Command meetings in the Field Commands and gave a presentation on this very issue. We obtained notes of one of these meetings wherein he pointed out the risks of mislabeling informants and agents to the Service. He also spoke at the new Inspector courses at the CO Bick College on this same issue and to other supervisors. However what is apparent was that at no time did he suspect that there was any criminal basis or motivation in some of these errors that he was detecting. That was remote in his mind and not worthy of pursuit. He was satisfied he had taken this issue to the appropriate level to warn those in control of the risks involved. He approached this like a prudent manager and senior leader in my opinion. That issue was recently addressed with Crown Counsel when they approached this subject and what was standard practise. They agreed with my position that policy aside or practise, it does not give

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<sup>13</sup> Such was the case in the PS STF investigation of Larry Vacon where documents on file show notations of S/Insp. Gottschaulk questioning the specific role of what was laid out to be an informant when indeed it appeared obvious to him that the sole had been an agent. It was not followed up but referred to the unit level, D/Sgt. Spires to resolve.

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anyone the right to lie or intentionally deceive. While oversight is a prudent risk management issue, it is not a consideration for the culpability or lack thereof of persons who intentionally trick the system to their own benefit.

As a result of a recent issue raised by the Crown in reviewing the cases for prospect of conviction, Deputy Chief Mike Boyd denied that there was a major problem with agents and informants in the TPS. Indeed he indicated that it was a significant point of concern for him, especially in his role of Detective Command as the risk involved in management of agents and acceptance of what is often times inevitable witness protection issues was outside of the fiscal regime of the Toronto Police Service and for that reason this was an issue that was monitored.

### MAJOR FINDING LEADING TO CREATION OF THE PS STF

The investigation of Kai Sum Yeung was indeed the seminal point of the PS STF. From that investigation conducted in the late spring of 2001, the Internal Affairs team became aware of the first proof that Schertzer – et al had provided perjured testimony and obstructed justice in the manner in which certain information was withheld from the Crown in disclosure. It also became evident that confidential informants of the Toronto Police Service were indeed being used as agents but identified as informants in court records including search warrant applications and disclosure to the Crown. This was the first instance in which there was reason to believe that this was criminally motivated.

When the investigators of the Young matter interviewed the confidential informant and indeed, in this instance, state agent, cooperation was received from that CI. What also became evident was that it was probable that similar situations had occurred in other cases that this CI had been involved in. Young was released from prison based upon that investigation and the investigation had migrated to a much more serious level. But, unlike prior investigations, there was an operational and tactical approach that could result in success if it could be protected and the investigation done in such a manner as to be discreet.

Based upon the initiative of the Toronto Police Service, Yeung was released from prison, his conviction was quashed and the Court of Appeal agreed to seal the results of that investigation as presented in the form of an affidavit of Detective Sergeant Randy Franks in July, 2001 for a period of six months to allow for the investigation avenues identified to be pursued in other cases.

### STRUCTURE OF THE PS STF

The team was initially set up to include twenty six TPS senior investigators, six civilian support staff supplemented by four members of the RCMP seconded to the unit with me for specific tactical considerations. The funding of the unit was from the Toronto Police Service except as it related to sensitive operational support. That funding, due to the requirement to be able to function covertly and avoid detection from internal systems,

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was supported by the RCMP "O" Division. While not limited to just mobile surveillance, this included operational support in a variety of forms including investigative travel, transport, technical equipment, high risk arrest support, technical surveillance, communication strategy, analytical, foreign liaison and undercover techniques. Further to the RCMP, assistance was sought and received from agencies including the OPP; FBI; US Customs Service; US INS; US Secret Service; Montreal Urban Police to name a few.

While we have not bothered to determine an accurate up to date cost for the PS STF, the cost at that time was approximately \$ 4 million for the Toronto Police Service and \$ 1.2 million for the RCMP. The largest portion of those costs related to salary and the initial acquisition of computer equipment. These costs were effectively sunk costs and the long term benefit of the integration of the computer equipment and soft cost of the requisite experience and training will provide payback to the Service in the long run.

The PS STF operated from an offsite location. Modern computer document management software was utilized. The first three months of the Task Force were spent in organizing the volumes of documents and case files that had been the work product of the Schertzer team from across the Service.

The investigation commenced in earnest in October 2001. Five investigative teams were established to pursue leads that were coordinated by A/Insp. Mike Hamel who acted as the 2 IC throughout the PS STF investigation. The initial focus was on those cases arising from the use of no less than 36 confidential informants of the Service utilized regularly by the Schertzer team. These CI's had been identified by Hamel during his review in the CFC fink fund investigation. However, they were approached on a different footing. Rather than being queried as to the veracity of payment records attributed to them, they were asked to identify what details were provided in specific debriefings by their handlers so as to allow for the cross reference to the search warrants of the Shertzer team members. Leads were developed on that basis. In those cases where data was corroborated and appeared to be accurate, the cases were set aside. Others were pursued.

The team was aware of the need to corroborate difficult witnesses. If this could not be accomplished, then those cases were set aside. Appendix N details what we referred to as "reduced cases", that is to say those that did not meet the initial standards of the threshold for reasonable and probable grounds. Others beyond that list that had been verified as being accurate or not worthy of further inquiry were made the subject of a detailed investigative checklist designed by A/Insp. Hamel and which will now be disclosed to the Crown. Appendix O indicates those cases that were ultimately referred to the Crown Law Office for review<sup>14</sup>.

<sup>14</sup> Appendices F, G, N and O were prepared based upon a verification of the content and overall direction of each of the referenced cases. Our cases were divided into four categories for our purposes. Appendix F refers to those previously done by PCIB; Appendix G refers to those investigated by D/Sgt Franks; Appendix N refers to those cases of the PS STF that did not proceed to referral to the Crown Law Office

As the investigation continued, there were cases set aside regularly. We often spoke of the funnel, that being all of the cases initially reviewed and then eventually weeding out those of less suitable standards to end up with the final group sent to the Crown for review.

## CASE SELECTION

These suspect officers undertook over 200 search warrants in the period of study. They laid in excess of 1000 criminal charges in the period of study. The cases to be reviewed for the investigation were focused upon those CI's identified to us by D/Sgt. Hamel's prior investigation. The results of the Yeung investigation showed an opportunity to interrogate the collected evidence at our disposal, ie. the case files and work product of this team from a totally different set of eyes. That became the investigative focus of the PS STF and bore fruit early. It remained our focus. Earlier attempts to review public complaints had been problematic. We knew that any attempt to further pursue issues of informant management, focused solely on the financial aspect of minor informant awards was problematic as being experienced with the ROPE prosecution at that time of the initial inquiries of the PS STF in the fall of 2001. However, the new tactics were fresh evidence that allowed us to proceed on a new avenue, an avenue not readily identified to our suspect officers and thereby a tactical advantage evolved. This formed one of the main reasons why we continued to address the Court of Appeal on Yeung, an argument that was met with their support each time.

## INTERACTION WITH THE CROWN LAW OFFICE - CRIMINAL

As is accepted practise on cases of significant public interest, I determined that I would send the cases to the Crown Law Office in which we believed we had reasonable and probable grounds for a variety of criminal charges. Each brief that was relayed was sent along with a letter indicating what charges we believed were made out by the evidence. We sought advice from the Crown Law Office - Criminal as to those cases they believed would have a reasonable prospect of conviction and which were in the public interest to prosecute.

It became apparent to the investigators that there was a repeating pattern of behavior. Those patterns of behavior seemed to speak of a conspiracy to obstruct justice by a variety of means. There was the repeating pattern of theft allegations. On one case identified through the PS STF investigation and not by prior, public complaint, that being Christopher Quigley, we had reason to believe that he had been beaten by the officers during his period of incarceration.

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and Appendix O is the main cases referred to the Crown. The summaries, in some cases, are not yet completed but overall they are prepared and ready to go with minor exception. I am sorry for the gaps.

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The first brief of evidence was relayed to the Crown Law Office in August 2002. The final updates and briefs were relayed to the Crown in the late fall of 2003. There was ongoing dialogue with the Crown throughout the period. It was and still is the intention of the Crown to utilize electronic disclosure versus paper. The evidence held by the PS STF and utilized by the Crown is complex as a result of the overlay of informant privilege and other public interest privileges in the data. Therefore the vetting has been and continues to be detailed and resource intensive.

In their review, the Crown, in consultation with the case investigators, utilized a series of ground rules for their study upon which they based their findings and decisions to provide positive advice. They can be summarized as:

- I. They avoided building a case on the evidence of one witness alone, where that witness would be vulnerable on cross-examination, as being a person of questionable or unsavory character;
- II. They did not rely upon the doctrine of similar fact evidence in preparing their advice although they may refer to that in trial;
- III. The evidence of deceit in the police officers records and memo-books was crucial to their decision and they feel is admissible in trial.

The Crown, in advising their support for a criminal conspiracy, did so on the basis of being convinced by the evidence of significant agreement between six of the officers and a role in that agreement by four others. They readily admit, in discussions now, that part of their decision to name the un-indicted co-conspirators is that the practise of prosecuting conspiracy cases can be limited by the logistics of too many subjects on an indictment. The rule of thumb among experienced attorneys appears to be to not prosecute any more than seven on one indictment for conspiracy. Therefore it is interesting to note that the final advice on the conspiracy not only addresses the level of evidence available but also speaks of the practical application of trial process into the future.

The aspect of the advice and the fact that we indeed laid charges in which the four un-indicted co-conspirators were named has been a hot topic of discussion and reaction across the Service. It is unfortunate that we are not able to broadcast the logic applied and accepted by the writer in that case to the wider population and can only hope that when opportunities present themselves, the Chief, his advisors and other informed senior officers take the opportunity to discuss this head-on.

The logic employed is laid out below:

- To name the un-indicted co-conspirators when they are known reflects the evidence and was done to ensure specificity in the indictment as is the accepted practise in Canadian law;
- By being specific, we are also able to identify directly yet subtly to other members of the CFC Team 3 who do not find their name on that indictment that they are not deemed by our investigation results to be co-conspirators.

Therefore our decision was based on legal practise, advice from the Crown Law Office and embraced by the PS STF personnel. It is unfortunate that it is controversial and that point is not lost on us.

The use of the particular types of activity to form the basis of the conspiracy included failing to account for evidence seized. Crown Attorney Milan Runic came on the prosecution team late and it was his belief that this could be used to fairly represent those instances where we believed that exhibit reports were inaccurate as compared to what was actually seized or reported to have been taken. While investigation may have failed to identify unique opportunity on the part of a particular officer or officers, the approach of using the conspiracy allowed us to fairly represent this particular type of repeating pattern of deceit against the service.

#### DISCUSSION OF SPECIFIC FINDINGS OF THE PS STF

The findings of the PS STF are most notably found in the criminal indictments as well as those allegations forthcoming in accordance with the Police Services Act. However there are other key areas of findings and fact that should be highlighted that may or may not directly relate to evidence being tendered in the future. Some of these represent investigative techniques utilized in an effort to be objective and isolate evidence as best could be done yet with a view to a thorough approach so that the Executive of the TPS could say that a fair and objective investigation was done and as best could be, the innuendo of the past be put away into the future.

#### CRIMINAL ACTIVITY CONFIRMED

Appendices H, K, O and P identify the criminal activity uncovered and dealt with my charge. The overarching crime identified was the ongoing conspiracy to obstruct justice by a variety of means. These included:

- Failure to account for this seized;
- Lying in court or affidavits;
- Executing search warrants without or prior to a search warrant being issued;
- Falsification of memo-books;
- Falsification of Toronto Police records

Further to that, there were suspected cases of theft of large quantities of cash and other valuables. Most of these, however, with the exception of the Quigley case, were not of sufficient standard to proceed alone. In the Quigley case was the isolated case of assault causing bodily harm and efforts to extort the location of drug monies and safety deposit box from the victim.

While isolated, Ned Maodus was found in possession of heroin and cocaine of a quantity suitable for trafficking and was charged accordingly. He was also found to be in

possession of ecstasy and marijuana at the same time. He was charged with simple possession of the ecstasy however the weight of the marijuana was 28 grams, just under the 30 gram standard threshold. These drugs were secreted in his house and found during a PS STF search of that residence while seeking TPS records and other evidence in March 2002. What is interesting is that Maodus had transferred from the Drug Section in 1999. He had been off duty sick from his post at 14 Division, for at least 200 days prior to the date of the search. There is no evidence that Maodus used illegal drugs.

## THEFT OF DRUGS, TRAFFICKING AND OTHER CRIMINAL ACTIVITY

The investigation of this team led us to many areas of evidence that could not be taken to the reasonable and probable grounds stage, largely due to challenges with the credibility of the witnesses involved. However, our investigation has indicated the following extraordinary types of criminal activity may have been perpetrated by some members of the Schertzer team.

- Payment of confidential informants by drugs, centered around the activities and source handling of Detective Constable Joe Miched. Three sources of information indicated this but were unclear on specifics. Cocaine and heroin were utilized as well as percodan and percocet on one occasion.
- Theft of cocaine. One subject indicated that cocaine was stolen during a search of his residence<sup>15</sup>. Some one pound of cocaine was supposedly stolen and not recorded by the suspects as well as a reported 10 pounds of marijuana. Over one year later, a member of NWFC Drug Section, in researching grounds for a search warrant on that same subject contacted Detective Constable Pollard who had been involved in the initial search. The records showed that 2.5 ounces of cocaine had been signed into the exhibit vault on that night. Yet in discussions with the NWFC officer, Pollard spoke of the pound that had been seized from the house. That evidence now forms part of the evidence of the conspiracy to obstruct justice by failing to account for items seized. It also is a significant indictment of this group of officer suspects. The officer from NWFC Drug Squad, to our knowledge, still has not put all the pieces together from the interviews by the PS STF and realized the significance of what he told the investigators.
- Theft of large quantities of drugs and weapons including automatic weapons were alleged. A source of confidential information, proven reliable in the past and who has acted as a witness in the past on major crimes provided detailed information. He / she indicated that in 1998 and 1999, Maodus stole cocaine, heroin and weapons which Maodus then, through the use of middlemen, was able to broker back to other criminals or dealers. The information is such that it is very difficult to corroborate however certain portions have been such as the locations and dates of specific searches, subjects identified who were present and so on. The reality of this is that these criminals are significant level criminals compared to some that were otherwise the target of the CPC Team 3. No cooperation is anticipated in

<sup>15</sup> In the attached Appendix O, see the case of Pagundo.

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this regard. When this information is viewed in consideration of the Project WALLY / reported threat against the CFC members, it causes one to pause. Two of the three confidential informants involved in supposedly providing the information to Benoit have denied this. One, in what he / she believed to be a smart comment to the PS STP investigators suggested that the threat arose when this group took something that did not belong to them, the word went out to bring it back and once it was brought back, life reverted to normal. That CI then refused to speak further and to this date has refused to speak further. Appendix Q refers.

- Public Mischief – While we cannot say definitely, it is our belief, as it was of D/Sgt. Ramer, that the death threats against CFC Team 3 were of questionable veracity. We reinvestigated Project WALLY and the result of that report, written by Detective Kathy Doughty is attached as Appendix Q. What we cannot discount is the mysterious disappearance of not only the total investigative record including draft affidavits but the actual affidavit sworn at court by D/Sgt Ramer that led to the lawful interception of telecommunications in this matter.

#### POLICE SERVICE ACT AND SECTION 69(18) PSA PROCEEDINGS

Appendix K of this report identifies the results of the preliminary review of the briefs of evidence that were submitted to the Crown Law Office by the Trials Division of the Toronto Police Service. I do not believe this review and the results are finalized as yet. However it should be noted that the suspected violations are significant in that they represent serious breaches of the code of conduct for police officers.

Due to the nature of the criminal focus of the investigation, it was always understood that the PSA would address side issues as they arose. However it was recognized early on that the 6 month statute of limitation for the Notice of Hearing provisions of the PSA would be violated due to the complex nature of this criminal investigation. In accordance with Section 69(18) of the Police Services Act, we have prepared and relayed a detailed "delay letter" to S/Insp. Cowley of the Trials Division to confirm and then commence the application of the Chief to the Police Services Board for permission to proceed on these charges against the noted officers.

The delay letter will be addressed under separate cover. It is anticipated that it will be put to the Chief soon and before the Board within the next one to two months.

#### HISTORICAL CFC FINK FUND CHARGES STAYED

At the time of the creation of the PS STP there were dozens of outstanding criminal charges before the court that arose from the Hamel investigation. Those charges had been laid based upon investigative result and based upon advice on reasonable prospect of conviction of the Crown Law Office – Criminal. However, what was not foreseen at the time those charges were laid was that this investigation would blossom and move into areas that were otherwise not recognized at the time. Due to the realities of disclosure, it

was impossible to carry on a current day or future investigation involving the same accused subjects as in the Hamel charges as any work today would trigger a disclosure obligation on the historical cases before the courts. Therefore, based upon a review of the current investigation as it involved specific witnesses also involved in the Hamel case, the Crown stayed those charges on the basis that continuation could have an impact on a more serious and ongoing criminal investigation. One year later, those charges lapsed. We have no intention of relaying any of those charges. I was satisfied that this was the logical approach to take at the time and that is the action that was taken, and briefed to the Chief accordingly at that time.

## YEUNG AFFIDAVITS AND THE COURT OF APPEAL

The creation of the affidavits for supporting the continued sealing of the affidavit of June, 2001 of Detective Sergeant Randy Franks has been controversial but none the less, was essential to the effective carrying out of this investigation. The controversy arises in specific passages of those documents which cannot be read in isolation. If one is to read those documents it has to be a complete read as issues referred to in one are later referenced in others.

At the time of my first affidavit we recognized we faced significant hurdles in the future. It was determined, in close cooperation with the Crown Law Office that in order to be successful before the Court of Appeal in getting further sealing orders, it would necessary to show the court clearly how exposure of that initial information would be detrimental to the larger investigation.

As noted in this report, the tactical approach that had proven successful in the Yeung case had proven to be successful in others yet that approach appears to have gone by unnoticed by the suspects until they were recently charged. With that belief in mind, it was decided that the only ability to be successful with the Court of Appeal was to obviously be frank and full in our exposure of the investigation ongoing. That meant that on a given date of the affidavits lapsing, certain updating information would be given. As it was a snapshot of a slice of time versus a look at the total period, when viewed in isolation it could be taken out of context. The Court of Appeal continue the sealing orders in support of the requests in the affidavits. The confidential informants involved remained safe. The investigation tactics being utilized continued to be used safely and fairly. Finally, the real focus of the investigation remained secret allowing the PS STF their rightful ability to conduct the investigation in the manner deemed appropriate, in keeping with the mandate that I had been given. It should be pointed out that at one point in this process, Bell Globe Media, an intervenor in these matters, sought leave to appeal the Court of Appeal's ruling on the sealing to the Supreme Court of Canada. The affected documents were escorted to Ottawa, made available to the full panel of the Supreme Court and ordered resealed by the Court indicating that in their view the Court of Appeal had every right to keep these documents sealed.

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It was also recognized that the Court of Appeal, based upon active applications by the media to gain access to the affidavit(s) on the basis of right of the public to know, would eventually release the lion's share of those affidavits, which they did on January 19, 2004 albeit that they were edited for normal privilege issues including confidential informant privilege.

This reality was initially briefed to the executive in early 2002 and every period of briefing thereafter. The writer is the author of those records. The gravity of the contents are not lost on me. I am accountable for those comments and fully recognize what that may entail.

For the purposes of clarification, I encourage the reader to review Appendix H, the affidavits in their entirety as well as Appendix R which is my talking points prepared for Chief Fantino last week arising from this issue of the release of the documents.

#### FINANCIAL AND NET WORTH ANALYSIS OF KEY CFC SUSPECTS

In late 2002, as a result of the growing body of evidence, an investigation was commenced to determine if there was any evidence in the financial affairs of the suspects, of proceeds of crime types of offences. In essence, we undertook to do a net worth analysis on those whose patterns of financial affairs warranted further review.

I have attached to this report a series of appendices, which deal with this issue<sup>16</sup>. The PS STF retained the services of Grant Thornton, LLP to conduct a forensic accounting review of the evidence gleaned through the execution of a series of search warrants and later general warrants at a large number of financial institutions. Their report is found in two binders which are attached as Appendix M. I will address their key findings below. In order to provide some context to this review, I have asked the financial investigation team, which was under the direction of A/D/Sgt Neal Ward and supplemented by a team leader from the Toronto Integrated Proceeds of Crime unit in Newmarket, to prepare a detailed overview of the work that arose as a result of the extensive financial reviews. That can be found as Appendix L<sup>17</sup>.

The investigation did not provide conclusive evidence to lay proceeds of crime related criminal charges. The investigation did support extensive examination of four of the CFC members, those being Schertzer, Michel, Correia and Pollard. Interestingly all four of them had significant roles in the other criminal cases that have been put before the courts and are each main conspirators of the larger case.

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<sup>16</sup> As will be explained in the accompanying documents, in order to fairly undertake this detailed analysis, the financial data regarding spouses and other affected family members had to be reviewed. This may well become a point of controversy in the future.

<sup>17</sup> The investigation report provided at Appendix L does not include the appendices listed in the body of that report as it was created for a separate purpose.

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The major findings related to Detective Sergeant Schertzer and to a lesser degree, retired Detective Constable Miched. There were no conclusive findings in relation to Correia or Pollard.

The financial analysis of both Schertzer and Miched was consistent with the financial allegations under investigation by the PS STF<sup>18</sup>. Both Schertzer and Miched were found to have significantly different spending patterns between the period when they were in CFC Team 3 and the subsequent period. Those differences are consistent with the existence of another source of funds, other than those identified in the analysis, during their tenure at CFC Team 3.

Schertzer in particular displayed a great number of events and patterns of behavior that aroused the suspicions of the forensic accounting specialists and that could not be explained from his known sources of income. I encourage the reader to review, in detail, the findings in the Grant Thornton report found at Appendix M as well as the financial investigation team investigator's accompanying comments in Appendix L.

The studies included analysis of financial information for each of the four subjects to identify potential patterns, trends or specific transactions at or near dates of the alleged thefts. This included:

- PS STF cases where the subjects on or shortly after the dates of alleged thefts, booked a trip, made large asset purchases, made cash payments towards their credit cards or loans, made cash deposits, had periods of time (greater than 7 days) when the subjects did not withdraw cash from any of their identified accounts and / or had transactions related to gambling

In this review, the forensic accountants got hits of interest on 23 of the 49 cases studied. Of those 23, 14 were relating to Schertzer where he fit the noted pattern. Those cases included matters of significance that we had referred to the Crown Law Office for review including the cases of Vacon, Duarte, Reiner, Tran, Quigley and Porto. I encourage the reader to view the portion of the Grant Thornton report, our Appendix M and more specifically in their section 3 that lists a timeline to show the overlap of the findings of interest for each of the suspect officers where warranted, by the STF cases of interest.

Further, there was significant changes in the financial affairs of Schertzer in keeping with the period of February to April 1999 as he was preparing to leave the CFC Team 3 and in which time there were no less than 12 reported thefts. In many instances, Schertzer traveled within days of reported thefts. Investigation by the PS STF confirmed that on at least two occasions, Schertzer obtained significant values in travelers cheques from unknown sources suggesting they had access to cash that is not explained by the available financial documentation.

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<sup>18</sup> The forensic accountants were provided details as to date and values of reported thefts on all cases known to the PS STF. Those cases are identified in their report, our Appendix M, at their appendix 1-2. Therefore the only allegation that they were concerned with were those relating to alleged thefts.

Excluding the fair value of their principal residence the Schertzlers owed more than the total of their financial assets at the end of each calendar year over the applicable period studied. Between 1997 to 1999 corresponding with the timing of the suspected thefts in the 49 cases and his assignment to the CFC Team 3, the Schertzlers' net excess of financial liabilities over financial assets improved. No new borrowings were identified in that period. Their financial position deteriorated starting in 2000 due to higher expenditures financed by increased credit card and other debt. The same study of Miched's financial affairs showed that he, too, became worse off financially after he departed the CFC in a similar manner to Schertzer.

When Schertzer was re-assigned from CFC Team 3 in mid 1999, up to and including 2002 his identified expenditures increased dramatically. Money flowing from unidentified sources of funds were higher in the period he was on Team 3 than after he left the squad.

The amount of and frequency of cash withdrawals in the period of 2000 to 2002, while Schertzer was not a member of CFC, were significantly higher than 1995 to mid 1999 when he was a member of CFC. In 1998 in particular, the number of withdrawals were very low. In fact for no less than 19 weeks of that year, neither he nor his wife had any cash withdrawals<sup>19</sup>. To contrast this, from the period of his departure and up to 2002, there has not been one week that they have not made at least one cash withdrawal.

As an interesting comparison statistic, during the period of 1996 to 1999 while Schertzer was on CFC Team 3, the Schertzlers spent significantly lower amounts on food and personal expenditures than the average Canadian household of the same makeup as their own. This changed when he left CFC when suddenly their averages matched those of the Canadian shopper of the same status and family makeup. This is consistent with a source of funds for those types of expenses other than that known from the review. This same finding was true for Miched.

Miched deposited in excess of \$186,000 into his accounts from unknown sources in the period 1996 to 2002.

The report of Grant Thornton at Appendix L is very detailed. It does cause me to be concerned that criminal tax evasion may have occurred and as such and in keeping with traditional police protocol and partnerships on the pursuit of criminal organizations or their members, I have referred this matter to CCRA - Taxation for their review and whatever action they deem appropriate.

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<sup>19</sup> The interview of one police constable who was assigned to CFC for just a few short months indicated that he could not keep up with the lifestyle of the team. He indicated that Schertzer controlled the cash and that they partied up to three times a week. One CI also spoke of a briefcase full of cash under the control of Schertzer on one occasion that could not be tracked further by the PS STF.

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## FORENSIC AUDIT OF CI AND 329 FUNDS

As a result of my concerns about the potential argument over cash availability from TPS sources that these officers may have had from a float due to their high number of CI's under management, I asked that a forensic accountant review the findings of D/Sgt. Hamel's investigation as it related to the day to day running and tracking of the CI funds in and out of the hands of the CFC team members. This was done to address a possible future defence.

The remarkable results of this review can be found at Tab 4 of the Grant Thornton report, Appendix L. In summary, over 60% of the CI funds distributed to CFC were not supported by property tags and / or confidential informants did not confirm receipt of the funds documented as having been paid to them. The missing property tags accounted for \$44,000 and non-confirmed payments were \$28,900. Further, \$16,600, for a total of 18.78% of the funds advanced to CFC Team 3 was not supported by Property Tags and CI's denied receiving the funds. A further \$5000 for 5.64 % of the total of \$88,000 advanced to CFC Team 3 in the period of review was not supported by any documentation at all and we have no idea to which CI, if any, those funds were paid.

While we recognize that a forensic audit is exceptional and not at all like a traditional statistically based audit, such a high risk area of operational support requires a far better tracking and management system. I did not review the audits conducted at CDIU during that period of time. Therefore, I strongly recommend that some major review be done on that system to avoid what would appear to be a huge loss and risk management issue.

To supplement this review, it should be noted that during the search of the residence of Detective Constable Ned Maodus on March 22, 2002, a ledger was found that purported to track 329 funds ("buy" money) for CFC for the first five months of 1999. We know from analysis that what it said and what it tracked are two different things. This effectively monitored a slush fund of CI monies and other funds that were paid to CI's, for personal expenses of the team members and other unknown activity<sup>20</sup>. That is the same period of time of an increased number of complaints of thefts committed during searches by the CFC Team 3; is the same period of time that the team was being disbanded and members transferred; is the same period of time of significant contribution to the personal finances of Detective Sergeant John Schertzer from unknown sources<sup>21</sup> and the same period of time in which Maodus was completing search warrant affidavits based on falsified information and swearing to those documents.

## STATISTICAL FINDINGS OF SIGNIFICANCE FOR TEAM 3

As indicated previously there was a great deal of comment made about the competency of this team as taken from the high number of charges and searches that they conducted.

<sup>20</sup> See Appendix M, Grant Thornton report, their tab 4, "Special Funds" and their appendix 4-4.

<sup>21</sup> See Appendix M, Grant Thornton report, their tab 3, Section 3.9

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There were those that suggested that when this type of activity is undertaken it is only anticipated that they would come face to face with those who would complain about the actions of the police.

The LA Audit conducted throughout early 2001 that ended with the creation of the PS STF stumbled upon an interesting set of facts that warranted further exploration. It was their belief that this team had more cases before the courts but also had a higher number of stays or withdrawals of cases prior to trial than the other units with a corresponding lower clearance rate by conviction. That, when taken against comments about problems with disclosure led us to review the statistics of the TPS as it related to the Team 3 as compared to the other teams of CFC and further compared to the other two Field Command drug squads ie. NorthWest Field Command and East Field Command.

The results of that study are attached as Appendix I. It should be noted that this report did not span the total time of the criminal investigation of the PS STF as there were problems accessing the raw data in the systems of the TPS. It is my understanding this was caused by a migration between systems that occurred in that period. However it can be said that the initial findings of the LA Audit were indeed borne out. This team had a significant number of their cases stayed or withdrawn prior to court processes. At one point a figure of over 92 % is used as compared to a much lower number of the other CFC or Field Command teams.

The report is attached and is self-explanatory. While this produces no direct evidence it does show support for the overriding conspiracy. If one's purpose in life was to not proceed with charges through a well natural conclusion, then just what was the purpose in the first instance? Further, while police agencies often discount the validity or utility of crime statistics, this very fact uncovered here could be positively monitored for the purposes of an early warning system for other like teams into the future.

#### COURT CARDS

It would flow logically from the above that if charges were going to be readily stayed or withdrawn that an abuse of the court card system may have been an underlying purpose or benefit to the suspects, depending upon your point of view. We reviewed that but not in great detail. The main reason we did not delve into this in great detail was because there appears to be a great variation in what is indeed accepted standard operating procedures in the Service for the high risk teams and others as it relates to the use of premium pay and court pay. In many instances it was determined that court pay may have been attributed to the officers but they were not physically in court. It was proven that this was common knowledge up to and including the Deputy Chief and was accepted wherein it was his wish, as can be understood, that if a person was being paid then there should be a return for that time value. Further, in the case of plain clothes officers as in the drug section, there was a potential problem of exposing their identity in court and therefore it was anticipated that they would function in another location other than the court house, on stand by as it were.

I was not prepared to go further into this area. There was too much latitude for interpretation in return for a potential minimal value of fraudulent activity. I do, however, recommend that this practise be reviewed as to an effective QA type of review for any opportunities that exist to address any concerns that may linger. It would follow logically that if one was going to know in advance that a given charge would never be proceeded with, any time for court could be fraudulent. That would require nothing short of full cooperation on the part of at least one of the co-conspirators and that, in the context of this investigation, will likely never happen. If one looks back to see the outcry and conflict that occurred as a result of the ROPE cases in which the whole issue of noble cause corruption or getting the job done arose and was accepted by the jury, then it would be foolhardy in my thinking to pursue something that would have been just as problematic and would have detracted for the larger investigation findings of serious criminal behaviour by all standards.

#### DETECTIVE CONSTABLE ROBERT KELLY

In late October 2001, a person known as a confidential informant of the TPS came forward to claim that he was supplied cocaine by Detective Constable Robert Kelly of NWFC Drug Squad on a fairly regular basis and that he had fallen into a disagreement with the said officer over a horse racing bet. He offered to work with the police as he feared for his safety. What developed was a covert, undercover operation in which Kelly provided cocaine to the source on two occasions. Kelly was arrested. He was later charged with three counts under the CDSA including trafficking cocaine, PFP and possession. At the time of his arrest a small quantity of marijuana was also found in the trunk of his car. Kelly admitted to being addicted to cocaine as a result of stresses of the job, in his opinion. That would ultimately form the basis of his defence and sentencing pleas.

Kelly's team had just taken down a major cocaine operation and there was some suspicion, due to a variance in exhibit weight in that project that this could have been the source of his cocaine. It should be noted that at the time of his arrest, Kelly admitted that he skimmed cocaine from exhibits. The investigation was inconclusive on the source of the cocaine that he trafficked to the agent.

Kelly plead guilty at court on June 23, 2003 to two reduced counts of simple possession. To the time of the writing of this report, sentencing hearings were still ongoing. A decision is expected on March 4, 2004. Kelly has attempted, through counsel, to convince the court that cocaine addiction is a hazard of the drug work and that he was improperly trained. He is also maintaining post traumatic stress disorder as a result of other life experiences and work experiences.

Evidence was uncovered but could not be developed further that three other officers of that unit used cocaine as well. Another officer from 14 Division, known to have associated with Kelly on the day of his arrest and suspected of being the source of the

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cocaine on that date, turned himself into his supervisor and claimed a medical problem with cocaine addiction for a period stretching back 10 years. This matter and the other three users were referred to IA but no action was taken to my knowledge.

Detective Kelly's name and that of a specific team of NWFC arose during the larger CFC investigation arising from the debriefing of a witness / suspected victim of a theft during the execution of a search warrant. This subject maintains that over \$ 100,000 was taken from his residence during the execution of a warrant however investigators have been unable to corroborate any specifics of that allegation.

### DETECTIVE DANNY ROSS AND CFC TEAM 2 ALLEGATIONS

Complainants have claimed that their three clients had been the subject of thefts during the execution of search warrants on financial institutions in the form of safety deposit boxes over a similar period of time as that of the Team 3 investigation. This team involved was another CFC team, known as Team 2 under the direction command of Detective Danny Ross.

The PS STF reviewed the information available however we were unable to get off the ground on these matters in 2002. The complainants would not cooperate or in the one case, gave information that was inaccurate. Therefore, we did not pursue this any further. What became unfortunate was that the DOJ became concerned over the credibility of some of those same officers for their own reasons and elected to stay significant charges against them for a period of time early in 2002. They did this without support of the PS STF findings and are accountable for those actions.

The issue of Detective Danny Ross and the case of Markovic in particular was referred to Internal Affairs for follow-up. That investigation has been proceeding and I am not privy to the results or beliefs. The attorney of record for the Markovics, in a civil action against the TPS and the Chief has expressed displeasure with my decision to sign away that investigation. What he fails to point out to the listener is that his client at that point refused to cooperate at his insistence.

### THE ROLE OF THE DEPARTMENT OF JUSTICE

There is no finding of criminal culpability on the part of any employee of the Department of Justice. The cooperative footing of the DOJ took a dramatic change in early 2002. Prior to that there was open communication between the TPS IA investigators, later the PS STF investigators and the DOJ. However that changed and to this day remains troubled.

The DOJ have indicated on many occasions that the management of police officers in court is the responsibility of the police and that they shared no responsibility in this. They have confirmed that disclosure was a problem in some instances with CFC Team 3 and that Schertzer was the person to whom they had to address their concerns.

Our attempts to obtain the return of dope sheets and investigative work product met with significant difficulty when they first claimed to have received an opinion that the TPS did not fit into the category of the investigative exemption provisions of the Federal Privacy Act and therefore the police were not entitled to receive those same records that they had created. Later, James Leising indicated that there was no such legal opinion but rather a position that had been adopted by his seniors. This put us in the untenable position of having to execute a search warrant on their offices. Further, recent attempts to interview prosecution staff have been denied indicating that these will not occur on the advice of civil counsel or to re-contact with them should charges be laid. Once again we are in a difficult position of not being able to effectively brief our presiding Crown attorney on what evidence, if any, the DOJ Crowns of record may offer.

Attempts to interview the previous Director of Public Prosecutions, Elaine Krivel as well as Mr. Hugh O'Connell, team leader at OCH have been denied citing legal advice. Both of these individuals have been named in a civil action by Schertzer - et al., something that appears to have impacted upon their ability to cooperate. Unfortunately, they were historically the two most cooperative of the DOJ.

I believe it safe to say that the stance that the DOJ has taken is both disappointing and unexplained.

#### COVERT OPERATIONS / EXTRA-ORDINARY INVESTIGATIVE TECHNIQUES

Investigators of the PS STF were working in a historical timeframe. This, combined with the fact that the group of suspects was disbanded at least two years prior to the commencement of the PS STF investigation; further combined with the fact that the suspects were police officers, many of whom stood criminally charged in late 2001; further combined with the natural paranoia of police officers under investigation made the use of proactive investigative techniques effectively impossible. Legally, it would have been a challenge to provide the grounds to undertake a proactive wiretap in this regard.

The Task Force did, on three occasions, utilize one party consent wires as it related to suspected threats against confidential informants by CFC personnel. None of those met with investigative success or resolution one way or another.

We attempted to obtain the assistance of police officers assigned to CFC in the form of cooperating and providing information and / or evidence. One officer did come forward and provided information of value. We isolated other, fringe players, who we offered a limited form of immunity to however most of those, in the presence of their attorneys, either lied or failed to answer questions. Three of the officers have been cited for breaches of the Police Services Act and this is proceeding accordingly.

As an alternative to having a cooperating police officer / suspect to interpret the timeline of this historical and suspected criminal activity, I therefore directed a group of RCMP and TPS investigators assigned to the PS STF to undertake the design and delivery of an undercover operation to have a member(s) of that team provide us holdback information about this suspected criminal activity, without their knowledge.

Appendix S summarizes the results of an undercover operation that was conducted by RCMP members assigned to assist the PS STF. There are references to this investigation contained within Appendix L as well. The purpose of the investigation was to attempt to engage Detective Constable Joe Miched in conversation about the suspected criminal activity of himself and others on CFC Team 3 in order to gain admissions, seek further evidence, potentially isolate assets or funds if any existed and to provide an inside "confession" that would otherwise not have been obtained.

This operation was conducted very well but failed when Miched became suspicious after speaking of his newfound acquaintance with Detective Sergeant Schertzer and possibly his lawyer. No further contact could be made.

What was learned, however, was that Detective Constable Miched entered into what he believed to be money laundering activity of reported proceeds of drug monies without hesitation and for personal reward. We believe, based upon a professional assessment<sup>22</sup> that he lied when he spoke of the allegations facing him. However he stopped short of admitting any personal involvement in criminal activity and would not directly implicate any of his colleagues either.

No prosecution action is being commenced based on this operational tactic. We introduced the ruse of the criminal activity to Detective Constable Miched in an effort to have him cooperate. When he retired, the ability to use the evidence gained for PSA prosecution also became a mute point.

#### CONFIDENTIAL INFORMANT MANAGEMENT AND FUTURE CHALLENGES

Beyond the recommendations made earlier in relation to the manner in which the financial management matters are monitored regarding the CI funds, it is also recommended that a review should be taken of the confidential informants that were identified in this investigation if indeed they are still active with other units or Divisions of the Toronto Police Service. The continued use of some of these subjects is of questionable return given the challenges of the past. That decision, however, rests solely with the Toronto Police Service.

A variety of members of the PS STF have insight in that regard as they dealt with some of these individuals. The maintenance team of the PS STF will be more than willing to cooperate in any review that could arise. The real expert is probably D/Sgt. Mike Hamel

<sup>22</sup> Assistance in statement analysis was obtained from the Behavioral Sciences Unit of the OPP, Orillia.

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whose historical investigation provided great insight to the PS STF as to the operation of this specialized area of the TPS.

#### FUTURE AND CONTINUING NEEDS OF THE PS STF

There is no doubt that the timeline for the final conclusion of this case will be measured in years. Therefore it is essential that a commitment be maintained to the continued support of the Crown in this matter and by extension, the value to the Service. A trial maintenance team will eventually be in place to take this case through the pending court proceedings. Prior to that, a dedicated team will remain to ensure that the disclosure obligations are carried out as is our responsibility to do so. I will remain in contact with the team on a consultative basis as time progresses and am available to brief and address specific issues as they arise.

#### CONCLUSION

There is a message that perhaps I could have said at the time of the public address of the charges to the media on January 7, 2004 but did not. That is that when assigned this task in the first instance, I did not hesitate because I have had nothing but positive experiences in my 12 years as a police manager and leader in the RCMP in the Toronto area, while working with the Toronto Police Service. No one person anywhere who does their homework can say that the Toronto Police Service is not one of the best police services in the country if indeed not the world. But, like all other institutions, they employ human beings and we need not say anymore.

John Schertzer and the suspect officers who ended up charged from the results of this fair and objective investigation were peers in that they were trained and experienced police investigators. One can only presume and rightfully, I would suggest, from the evidence, that they did not set out on their crime spree to get caught. So, do not anyone discount the challenges and obstacles placed on the road by a competent foe.

There will always be critics who will say that this investigation of the PS STF did not go far enough just as there are those who believed it could be wrapped up in three months. However given that we did not reinvestigate the historical complaints but did see the commonalities as against Schertzer arising from the financial review, we do believe that the conspiracy charge opens up sufficient flexibility for the prosecution and future to be able to address opportunity as it may arise from a further review of the evidence.

At the same time, I see no value added to anyone to do any further investigation except those issues, from time to time, that may arise in support of the prosecution now initiated. From the position of a police officer, just how many times do you have to charge another police officer with attempt to obstruct justice, perjury or deceit in order to get your point across ?

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While I am most certainly biased, I can also say that I believe that the dedication and tireless efforts of the men and women of the PS STF have spoken chapters of them as humans, professionals and of their employer. They can hold their head high that they achieved the initial challenge of the Chief of the Toronto Police Service – to follow the truth. They did this with professional style and poise. I am proud of them and only hope that their careers reflect the fact that they stood alone many times in the face of adversity, whether some on the outside of the team wish to admit that it did occur or not. The men and women of the PS STF rose to the challenges. I only hope that I can find such a professional group of police officers and employees in future roles that I am assigned in the RCMP as I found in the TPS and RCMP members assigned to the PS STF. Many across and up and down the ranks of the TPS and other Canadian agencies can take an example from these men and women. Not everyone liked what I or they had to say but the truth was evident in the results.

I believe that we achieved our mandate – we did follow the truth and that quest brought us to a small group of criminals.

John D. Neily, C/Supt. (R.C.M.P. - 0.1693)  
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