

# CHAPTER 4

## CO-CONSPIRATORS THEORY

Written by  
Michael Laliberte  
*RESEARCHER & DEVELOPMENT WRITER*  
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Generally, a conspiracy is an “agreement of two or more to do an unlawful act or to do a lawful act by unlawful means. The essential elements required, (a) an agreement (b) an intention to agree (c) a criminal purpose and (d) an intention to affect the purpose. (Wikipedia)

### **The Canadian Criminal Law Notebook| Co-Conspirators Exception to Hearsay:**

In criminal proceedings, the Crown must "prove" beyond a reasonable doubt:

1. That there was a conspiracy to commit an offense beyond a reasonable doubt
2. That the accused was “probably a participant” or member in the conspiracy (balance of probabilities), based on document material as evidence presented at trial.
3. If the crown had proved his “participant” beyond a reasonable doubt, then the exception to “Hearsay” evidence applies.
4. The utterance was in furtherance of the conspiracy.

The following story is without Prejudices towards the named characters. This is a story based on facts of material gathered over a (3) year period of, Court records, Accounting General Ledgers along with prepared spreadsheets by the writer (unaudited) and subject to adjustments that include authorizations by John Davies and Walter Thompson for wider audiences' reviews. Loan Agreements and interviews of certain emails and other material supplied to us by John Davies and based on the information and documentation provided to Toronto Lawyer David Franklin. The views and expressed opinions of the writer are inconclusive therefore, readers caution is advised. All assertions made have not been proven in Court.

Raj Singh acting on behalf of SMIs would administer Mortgage Loans from the public raises under Trustee Corporations Singh would control and loan as Mortgages to developers.

An agreement was settled that, Tier 1 would raise SMIs for the McMurray project, Harris would act on behalf of the Borrower and Elliot for the lender, only (10) of the Projects.

Part of the agreement package was there be an equity interest for Singh and Harris in Davies McMurray projects. Davies asserts, *"Harris told me this and I agreed to it, due to the lack of success in trying to raise equity financing this was the only available option I had."*

For the other Davies and Thompson's projects followed the same equity interest for Singh and Harris, Davies explains "Tier 1 represented the only option to secure the land acquisition and pre-development financing." Both Davies and Thompson reasoned to go ahead with these equity request by Harris and Singh.

In addition to these requests, Tier 1 would be paid a brokerage and referral fee, each based on a percentage of the SMI proceeds raised for any particular project. Harris + Harris LLP would be paid a fixed fee in respect of each SMI financing, plus an industry-standard hourly rate for advisory work which included liaising with tax counsel surrounding SMI investors transferring Registered Pension plans to an SMI, real estate due diligence, land acquisitions and closing third party contract negotiations.

Nancy Elliot would be paid a set amount from SMI raises acting on behalf of the Trustee Corporations (the lender) Elliot has no equity interest in any of the projects. Information from Davies was, Harris would prepare the loan agreements from the Trustee Corporations and Elliot would review them and make necessary changes in the best interest of the lender.

# The Characters

**John Davies-** from 2004 to July 2008 John Davies owned the Oshawa Generals junior ice hockey team. Davies had another passion for architectural design and commercial developments, previously he worked for a major real estate company.

During approximately 18 months from what it appears from records obtained, Davies was scouting for a development project, one day in the Municipality Muskoka Davies eyes were set on a closed down the school on McMurray Street in Huntsville Ontario owned by Trillium Lakelands District School Board. After-sale and purchase negotiations Davies Family Trust purchased the school for \$650,000 on January 15, 2010, under the incorporation name, MCMURRAY STREET INVESTMENTS INC. (the McMurray project.) This project was one of the eleven separate projects Davies was the owner and co-owner of some of **Walter Thompson's** projects, (the Textbook projects).

**Davies goes hunting for early-stage financing and or equity investors to begin developing:**

**Nancy Elliot-** (ELLIOT LAW PROFESSIONAL CORPORATION Toronto, Ontario) is a highly-skilled senior lawyer with over two decades of experience in Canadian immigration law who attempted to promote Davies McMurray's project to potential Chinese investors, eventually after investors due to diligences and other Asian Investment laws were turned down. Subsequently, Elliot's role would be to act on behalf of the lender for Davies and Thompson's (the borrowers) projects.

**Gregory Harris-** (Harris + Harris LLP Etobicoke, Ontario) is the son of the founder of Harris + Harris LLP where over two decades were Davies lawyers. Gregory Harris would be the acting lawyer for Davies and Thompson's as borrowers.

**Bhaktraj (Raj) Singh** is the operating mind of Tier 1 Advisory. Gregory Harris introduces Raj Singh to John Davies at the offices of Harris + Harris LLP sometime early in 2012. Tier 1 and or other Tier 1 companies (the "Tier 1 Group") operated by Singh were engaged in raising funds from the general public, Syndicated Mortgage Investments (SMIs,) a mortgage for which there is more than one lender or investor.

The following financial chart details the SMI raises and fees paid to Tier 1, Harris & Elliot, HST included.

Tier 1 SMI Raises from May 2012 to October 2016 for: Davies & Thompson's Projects (unaudited)					
PROJECTS	INVESTMENTS BY DAVIES/THOMPSON/ HARRIS & SINGH	TIER 1 SMI RAISES AMOUNTS:	TOTAL TIER 1 FEES PAID AMOUNTS:	TOTAL LEGAL FEES HARRIS:	TOTAL LEGAL FEES ELLIOT:
MCMURRAY	\$0	\$3,525,001	-\$795,578	-\$184,697	\$0
LEGACY LANE	\$0	\$3,478,200	-\$556,512	-\$96,286	-\$25,990
MC-OAKVILLE	\$0	\$9,062,793	-\$1,983,935	-\$401,602	-\$67,855
MC-BURLINGTON	\$0	\$8,302,600	-\$1,443,572	-\$168,383	-\$48,590
MC-KITCHENER	\$0	\$10,576,800	-\$1,872,387	-\$189,057	-\$48,590
SCOLLARD BOATHAUS	\$0	\$13,595,750	-\$2,448,379	-\$307,618	-\$32,770
ROSS PARK	\$0	\$11,617,300	-\$2,045,699	-\$274,127	-\$25,990
555 PRINCESS STREET	\$0	\$7,926,850	-\$1,385,524	-\$180,517	-\$25,990
525 PRINCESS STREET	\$0	\$6,386,800	-\$1,114,686	-\$187,844	-\$25,990
774 BRONSON AVENUE	\$0	\$10,806,344	-\$1,886,779	-\$159,838	-\$22,600
445 PRINCESS STREET	\$0	\$8,396,750	-\$1,465,585	-\$255,057	-\$29,380
<b>TOTALS</b>	<b>\$0</b>	<b>\$93,675,188</b>	<b>-\$16,998,636</b>	<b>-\$2,405,026</b>	<b>-\$353,745</b>
<b>Percentages from SMIs Raised</b>			<b>18.14%</b>	<b>2.56%</b>	<b>n/a</b>

The above chart reflects, no equity investments were made by those who held an equity interest in the (11) projects, yet, an equity interest was made to Davies, Singh, Harris and, Thompson.

From the total SMI raises of \$93,675,188 million, according to Loan Agreements, Tier 1 was paid more than the amounts specified in the agreements.

Of the total amounts paid to **Harris** \$2,405,026 million, the Loan Agreements provide a combined estimate for Harris's legal fees of \$748,060, plus disbursements and HST.

Of the total amounts paid to **Elliot** \$353,745 thousand, the Loan Agreements provide a combined estimate for Elliot's legal fees of \$287,020, plus disbursements and HST.

Davies asserts, *"it's always been characterized as Harris and Singh vs. Davies and Thompson when it came to additional fees, Singh was always threatening if he didn't get his extras, there would be no further raises from Tier 1."*

There is no evidence suggesting Elliot knew of these equity interest and additional fees.

# The Agreements

The Participation agreements require that the Trustee Corporation hold the mortgage in trust for the entire group of investors in that particular Tier 1 Project, administer it, and carry the investor's rights, powers, and duties in a responsible manner.

One of the conditions regarding the Trustee's functions is, the Bare Trustee shall not agree to or implement any Major Decisions unless it has been previously approved by investors of that particular Project if the Borrower(s) request(s) to use investors proceeds for other purposes not related to that project.

The Loans Agreements between the Trustee Corporations and the Projects borrower's, state that the loaned funds were for the project for which they were advanced.

These agreements were signed by the borrowers, so the borrowers knew of these terms as did the Trustee (the lenders) and their lawyer.

Nancy Elliot, acting on behalf of the lender, (the Trustee Corporations) specifically implemented the above clause in all the (11) Davies and Thompson's Projects Loans agreements file.

## **The Bare Trustee Director Raj Singh begins the illegal conversion(s) role with John Davies:**

**The following opinions and assertions made by Commercial Real Estate lawyer David Franklin, Toronto, Ontario are based on information and documentation provided to him. Any or indications or suggestions of thefts by conversion have not been proven in a Court of Law.**

In or around a few weeks in after May 2012, when the McMurray Project received its mortgage loan advance from the Tier 1 Mortgage Corporation; Singh who was the controlling mind acting on behalf of the SMI investors requested that Davies loan Tier 1 \$50,000 from the proceeds advanced to McMurray to cover some of Singh's Tier 1 start-up costs.

A cheque was prepared to Tier 1 that shows from a General Ledger print out of the McMurray project Davies sent to us that on, June 30, 2012, an entry was made there was a cheque payable to Tier 1 Transaction Advisory for \$50,000.

From the information supplied to Franklin he asserts, *“both Singh and Davies moved investors money from the McMurray project where those funds were to not to be used for any other purpose(s) this is a conversion criminal act of theft, also called conversions.”*

On August 27, 2013, in an email sent to us by Davies expresses, *“A year ago McMurray loaned you \$50,000 to help cover Tier 1 start-up expenses. I am hoping I can get that returned by October 14th to be used for investor's interest.”*

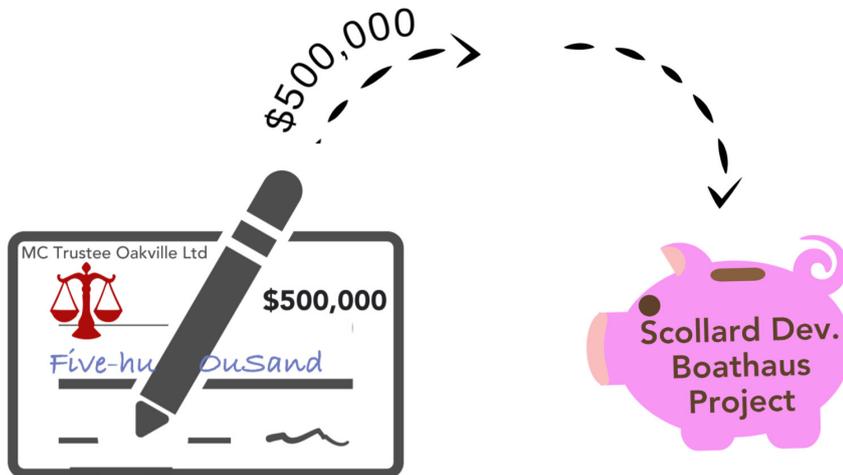
On September 29, 2013, Singh paid his loan back to McMurray according to McMurray's General Ledgers. Franklin asserts, *“it doesn't matter if Singh paid McMurray back or not, the date the money left the McMurray Bank Account to Singh, is the date a theft by conversion may have been committed.”*

On April 19, 2012, an email from John Davies to Greg Harris, the borrower's lawyer, discuss a conversation that Davies had with Raj Singh about the McMurray Project loaning an upcoming Project Memory Care (Oakville) \$2 million to help close a \$4 million necessity to close the Oakville deal.

Franklin's opinion from this document information speaks towards the general terms over a conspiracy agreement, *“ what is taking place in this email is an agreement of a theft by conversion discussed between Singh and Davies, then inviting the lawyer Harris into the mix to discuss the conversions of funds from the McMurray project, I'm utterly stunned this was done so candidly open in this email communication.”*

*Other records supplied to us by Davies are two Directions from Harris + Harris to disbursement funds held in Harris's Trust account: On April 02, 2013 Harris has Davies sign a DIRECTION TO PAY from the proceeds Harris holds in trust for project, Legacy Lane Investments Ltd., to transfer \$256,232.88 to McMurray Street Investments Ltd.*

Then in May 2014, Harris has MC Trustee (Oakville) Ltd., where Singh is the mortgage loans administrator on behalf of the SMIs sign a DIRECTION TO PAY from the proceeds Harris holds in trust for that project to transfer, \$500,000 to be utilized for the 1st deposit on the purchase of land of another project in Whitby Ontario, (The Scollard Boathaus) project.



Expressively shocked Franklin's overview of these two DIRECTIONS TO PAY from the lawyer's trust account of funds held for purpose of one project, then in part of those funds converted to another project floored Franklin, "*this is a straight-out fraud facilitated by Harris.*" Several other emails Davies sent to us discuss other conversions from other projects to pay SMI interest due to other projects.

Several other emails Davies sent to us discuss other conversions from other projects to pay SMI interest due to other projects. General Ledger records show that Davies and co-partner Walter Thompson over the Textbook projects converted \$28,314,104 million of SMIs net advance for other purposes other than that which these advances were intended for from the middle of 2012 to July 31, 2017.

Approximately 67 % of the Developer's activities were with conversions going to other projects and other entities Davies and Thompson controlled, 24 % went to Davies, Thompson's and other key people's pockets and only 9% went to actual development purposes. Franklin is of the opinion, "all parties, Singh, Harris, Davies and Thompson weren't in the commercial development business, Tier 1 was nothing more than a money grab since day one." Other reports state, several transactions made by Davies and Thompson made these developments insolvent at the time they occurred and that only a fraction of these advances went into legitimate development costs.

## **Other money grabs by Davies, Thompson, Singh, and Harris:**

Land Registry searches reveal that, On June 04, 2013, 2372519 Ontario Ltd., a company Davies Controls and, that Harris and Singh have an equity interest in this company purchased the land from A. Farber & Partners Inc., for \$1,585,000.

Those funds to purchase the land came from Davies, Harris, and Singh. Then on February 02, 2014, Memory Care Investments (Kitchener) Ltd. purchased the land from 2372519 Ontario Ltd., for \$3,950,000 from the proceeds of an SMI initial advance in \$4,918 million, grossing a profit of \$2,365 million. General Ledgers show that Davies's net profit was \$300,167.34 over this alleged "land flip."

Harris disclosed to SMI Investors that there was a profit over the MC- Kitchener Ltd., land purchase going to 2372519 Ontario Ltd and that himself, Singh and, Davies were shareholders of 2372519 Ontario Ltd. Franklin's overview of this transaction states, it's what the investors were led to believe if their investments were fully secured on the land value at the time it was purchased, who cares if there was a profit made on the sale going to 2372519 Ontario Ltd.

Allegation reports show that investors were led to believe that the advances would be fully secured against the real property, including presentations prepared by Tier 1 leaving a loan to purchase price ratio of 125% suggesting the investors secured value was next to nothing.

Investors were shown a project completed hypothetical value as though it was the current value at the time investors were considering an SMI.

# Dividends (\$4 million) paid before “Profits”:

Though the world of dividends can be complex, simply put, dividends are distributions of cash, stocks, (or property) by a company to its shareholders, FROM ITS PROFITS, or reserves made from profits. Companies paying out rising dividends tend to be financially healthy and stable.

Entities related to Davies, Thompson, Singh, and Harris received \$4 million in dividends. These are disclosed in the loan agreements. They were to be paid from the "excess proceeds after the Property has been acquired". In each instance, the dividends were paid immediately after the developers received funds from the Trustee Corporations.

Franklins overview on this transaction, *"the advances on the projects in question paying these dividends should have never been paid. Permits were not obtained by the borrowers' and the lender's lawyers and borrowers lawyers knew this was not complied with."*

As for the dividends being paid, these can only be paid when profits of an entity have been earned, other reports state. There were no profits earned from the projects at the time dividends were paid.

What were the intentions of all the parties involved in these prohibited transactions remains in the minds of those involved, Davies, Thompson, Singh, and Harris?

One of the answers to this is, what was the behavior at the time advances were made.

In some instances, according to emails, these prohibited acts were pre-planned and agreement discussions were taking place before advances were made, i.e. the (2) DIRECTIONS TO PAY had to have been discussed between Davies and Harris over the Trust funds of Legacy and with Singh and Harris over the Trust funds of Memory Care (Oakville) project.

# Franklin's Final Overview

Franklin's final overview of the material reviewed in this story regarding the key elements of Co-conspirators:

An agreement of two or more people to do an unlawful act or to do a lawful act by lawful means is **evident**, an agreement is evident, an intention to agree is **evident**, there was a criminal purpose is **evident**, an intention to affect the purpose is **evident**.

## Here are the Conspirators



Walter Thompson



John Daves



Raj Singh



Greg Harris

by  
Michael Laliberte