See paras. 18, 31-32, 117, 119, 150-153

Indexed as:

Chevron Standard Ltd. v. Home Oil Co.

Between
Chevron Standard Ltd., and
Home Oil Co. Ltd. and Leeson

[1980] A.J. No. 656

[1980] 5 W.W.R. 624

22 A.R. 451

11 B.L.R. 53

50 C.P.R. (2d) 182

3 A.C.W.S. (2d) 452

Alberta Court of Queen's Bench

Moore J.

June 4, 1980.

(158 paras.)

Counsel:

D.P. McLaws, Q.C., J.E. Prothroe, Q.C., and D.C. Edie, for Chevron.
J.M. Robertson, Q.C., and R.A. Coad for Home.

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1 MOORE J.:-- The plaintiff, Chevron Standard Limited (hereinafter referred to as "Chevron") is an extraprovincial company registered in Alberta and is engaged in the business of exploring for and producing oil and gas in Canada and elsewhere. Chevron reports on an irregular basis to its parent company, Standard Oil Company of California, in matters of budget, finance and exploration

plans and results.

2 The defendant, Home Oil Company (hereinafter referred to as "Home") is also an extraprovincial company registered in Alberta and is similarly engaged in the business of exploration and production of oil and gas in Canada.

3 The defendant, John I.P. Leeson (hereinafter referred to as "Leeson") is a professional geologist employed by Home and formerly employed by Chevron for a period of nearly 24 years. Leeson resides at Calgary, Alberta.

4 Chevron alleges Leeson misused confidential information acquired by him while working as a chief development geologist for Chevron between 1974 and 1977. Based on the alleged misuse of confidential information, Chevron seeks a declaration of the court that a constructive trust be declared in respect of certain oil and gas properties acquired by Home and that damages be assessed and awarded as a result of the misuse of the confidential information.

5 All employees on joining Chevron are given copies of Chevron's Policy Manual, outlining the company's position on sensitive information and in particular, the safeguarding of trade secrets. It states in part as follows:

> PROTECTION OF THE COMPANY'S SENSITIVE INFORMATION
>
> 1-a To protect Company interests it is essential that information considered sensitive be used judiciously and properly safeguarded. Each employee is responsible to recognize sensitive information (whether or not it has been so classified in writing) and to handle it in accordance with this policy.
>
> 3-a Sensitive information is the property of the company, and every employee who has in any way gained knowledge of it holds the information in trust and must safeguard it. Sensitive information discovered or developed by the employee during his employment, whether in the course of employment or as a result of information gained while with the Company, is also the property of the Company.
>
> c It must also be clearly understood the obligation to safeguard the Company's sensitive information continues even after voluntary or involuntary termination of the employment. Former employees may not at any time use such information or disclose it to anyone. At the termination of his employment, each employee will be asked to inform the Company of the name and address of his next employer or prospective employer, of such is known. The Company

> reserves the right to inform any subsequent or prospective employer of the employee's continuing obligation not to use or disclose sensitive information which is the property of this Company, and of the new employer's corresponding obligations respecting such information.

6 Leeson signed an agreement with Chevron on May 4, 1953 wherein he agreed to avoid disclosure of confidential information arising out of his employment. It is a standard procedure for all Chevron employees to sign this type of agreement.

7 Chevron, like many other large oil and gas corporations in Canada employs a large staff of highly trained geologists and geophysicists. Dr. G.G.L. Henderson, vice president and head of the company's exploration activities, directed an exploration and management team comprised of a chief geologist, a chief geophysicist, a chief development geologist, a staff evaluating geologist, and each in turn headed up a group of geologists, geophysicists, development geologists and draftsmen.

8 Chevron's exploration department is divided into three divisions, the Central Division, the Southern Division and the Northern District, each with a separate division manager in charge of exploration activities in that division and each employing several full time geologists and geophysicists.

9 In Alberta, mineral rights are all primarily owned by the province except in certain areas where they may belong to the surface owners or prior surface owners. In the area known as the West Pembina Oil Field, the rights belong to the province and the normal way of acquiring the rights is through public auction or by negotiating a "farm in" from someone controlling the rights. An interest in land (mineral rights) is therefore vital to the success of any company engaged in the hunt for oil and gas.

10 Leeson was born and educated in England. After a stint with the Royal Air Force, he enrolled in the Faculty of Geology at the University of Glasgow, graduating with a degree in Honours Geology in 1952. He obtained a Masters in Geology from McGill University in 1953 and on graduation joined Chevron as a trainee junior geologist. Leeson held various positions with Chevron between 1953 and 1977 when he resigned to join Home. He became district geologist of the Central Division in 1963 and in 1967 was made division geologist of the Central Division.

11 In 1969 John Lesson was promoted to chief geologist and northern superintendent. The promotion involved a move from Edmonton to Calgary. He was made assistant to Henderson in 1973. In 1974, Chevron named Lesson acting chief development geologist.

12 Prior to 1974 Leeson gained considerable knowledge of the geological formations in Alberta, including the Devonian formation, both as a supervisor and as a working geologist. When he was a district stratigrapher with Chevron in the early days of his employment, he had occasion to work on the Devonian formation in the Central District. During this time the geology of the Western Canadian Devonian Basin began to unfold as the drilling activity intensified. He worked on a

number of discoveries, the first of which became known as the Kaybob Oil Field, one of the early Swan Hills discoveries. The Kaybob field produces oil from the Beaverhill Lake formation of the Middle Devonian. Leeson also worked on Chevron's Mitsue discovery and others in the 1950's.

13 In 1957, while doing stratigraphic studies in Edmonton, Leeson was assigned to the "Calstan Cynthia" well during drilling of the well. It was one of four deep tests drilled by Chevron in the area. Twenty years later Chevron dubbed the same area, the "Wolf Creek" area. It contains approximately 750 square miles. For the purposes of this lawsuit, it became defined as the Prime Prospect area.

14 During these years, he gained a knowledge of Devonian reefs, as often the "drilling operations" between the Beaverhill Lake and the Winterburn, a formation in the Upper Devonian, revealed a Devonian reef. A reef is a geological occurrence created by sea animals, mainly shells such as corals, which eventually produces a rigid structure, resistant to wave as are present day coral reefs. Reef systems are mapped according to formations and each is somewhat different than the formation above or below, enabling geologists to distinguish them by the reflections which become evident through seismic shots. Reef structures are eagerly sought by oil explorationists, since because of their generally porous nature, they constitute ideal reservoirs for the accumulation of reserves of oil.

15 A chart illustrating the different geological formations of Alberta was entered as exhibit 2 at trial. It depicts several different geological areas. This action is concerned chiefly with the column headed "Central Plains". Each area is shown in columnar form which illustrates the occurrence of different geological formations from the land surface to a depth transcending different periods of time. In this lawsuit we are primarily concerned with the Upper Devonian time period, and two main periods of reefing in the Upper Devonian, which have been dubbed by geologists "the Nisku" and "the Leduc".

16 When Imperial Oil first drilled their wells at Leduc in 1947, they realized they had a three-fold division of the Devonian, and they wanted to give names to each division but they did not have enough information so they used the temporary names D1, D2, and D3 with D1 being on top of D2 and D2 being on top of D3. Geologists even now, 30 years later, sometimes still use D1 or D2 or D3 in referring to the depth of a well.

17 The D1 contains reefing known now as the Wabamun. The Nisku reefing lies in the D2 and the Leduc reef lies in the D3. The D2 is often referred to as the Nisku formation, while the D3 often is referred to as the Leduc formation.

18 The Pembina Oil Field was discovered by Mobil Oil in 1953. It resulted in a flurry of activity in the whole area embracing the prime prospect area. The Pembina discovery encountered oil much nearer the land surface in a formation known as "the Cardium" which, in that area of Alberta, is encountered at depths of 5,000 - 7,500 feet. All the beds in Alberta dip regionally towards the west and as a result the Cardium on the east side of the Pembina field would be contacted at a much

shallower depth. The regional slope of the beds is about 30 to 50 feet per mile in the area of the Pembina field.

19 During the fifties, many oil companies, including Imperial, Mobil, Texaco and Chevron explored north, south, east and west of the prime prospect area but there was relatively little deep drilling. A number of dry holes were drilled and the exploration companies were unable to extend the field. Pembina became known as Alberta's largest oil field and was developed at shallower horizons of much later cretaceous age overlying in part the Winterburn at a depth of approximately 5,000 feet. Some seismic shooting was done in the period 1958-1964 by Amoco and Imperial. Amoco, using more modern seismic shooting, carried out a seismic program in the general area west of Pembina between 1970 and 1973.

20 In 1974, Chevron decided to run a regional seismic line from the Saskatchewan border westerly across Alberta and tie it up at the west end to the "Calstan Cynthia" well it had drilled 17 years earlier. The seismic work reached the west end of the line in the early fall of 1974. After the line had been completed, the Chevron exploration team of Hank Heerema, a geophysicist, and R. Bittner, a geophysicist, interpreted the seismic and found two anomalies near the west end of the line in an area known as "Wolf Creek".

21 An anomaly can best be described as a "bump" on the seismic line, which to exploration geologists and geophysicists, may be indicative of oil bearing reefs, and in this instance, in the Upper Devonian. Seismic will not finitely pinpoint an anomaly as being in the D2 or the D3. Suffice it to say that Chevron became satisfied that the two anomalies were in either the Nisku (D2) or Leduc (D3) in the Upper Devonian. The discovery of the two anomalies and their interpretation constitute confidential information.

22 The Upper Devonian in that part of central Alberta is the only zone that has reefs.

23 Chevron decided to intensify seismic shooting in the area known as Wolf Creek. In 1975 and 1976 many seismic lines were shot in north-south and east-west lines (vertically and horizontally) and twenty additional anomalies were discovered and interpreted as potential D2 or D3 oil bearing reefs.

24 Once the shooting was completed, Chevron possessed mapping of an area referred to as the "Prime Prospect area" illustrating twenty-two anomalies situate in a north-east south-west trend within the area. The area is roughly between Townships 48 - 52 and in between Ranges 8 - 13, West of the 5th Meridian.

25 The Old Pembina Field lies to the south east of the Prime Prospect area. The Wolf Creek name was given by Chevron to the "Play" for in-house identification purposes.

Management Meetings

26 Chevron scheduled two formal management meetings each year. In the spring, a Functional Review meeting always took place to review technical work, and in the early fall a Budget Meeting would be scheduled to review planned expenditures.

27 The prospect was first displayed to Chevron's management team at the Functional Review meeting in April, 1975 for ongoing exploration approval. Invited to the meeting were Dr. Henderson, D.W. Organ (chief geologist), W. Bannister (division manager, Central District), B.K. Smith (division manager Northern Division), T.B. Howes (division manager Southern Division), D.A. Miles (chief geophysicist) and Leeson (acting chief development geologist). Dr. J.D. Weir, a long time employee of California Standard, the forerunner of Chevron, and a former vice president of exploration, was incited to attend all meetings. Weir was acting as a geological consultant to Chevron in 1975. It was customary at such meetings for geologists in each district to make presentations of prospects within their district. As a result, several geologists would be coming and going as different presentations were made. At the April 1975 meeting, Heerema made the first presentation to the management group pointing out in particular the regional seismic line and explaining how the first two anomalies had been detected. He then showed additional lines shot in February and March, 1975 revealing four additional anomalies. Heerema put forward an interpretation of what the anomalies might mean.

28 This was the first formal presentation of the Wolf Creek area to the group and there was considerable discussion among them as to whether the seismic reflections were showing Nisku (D2) or Leduc (D3) reefs. Dr. Henderson believes Leeson was at the April, 1975 Functional Review meeting. Leeson states that he was invited and was present for most of the meeting but left just before Wolf Creek was discussed. Leeson recalls speaking to Howes and asking him whether he should be staying for the Wolf Creek presentation and that Howes simply shrugged his shoulders and so he (Leeson) left the Meeting.

29 In May 1975 a special meeting was called to brief Mr. Funkhauser and Mr. Swanson, corporate vice president of exploration and corporate vice president of producing, respectively, for the parent company, on Chevron's exploration and producing plans. Dr. Henderson was not present. The meeting was convened by Bannister. A selection of the displays which were shown at the April 1975 Functional meeting were again displayed. H.E. Engman, a division geophysicist, made a presentation illuminating the Wolf Creek play. Leeson admits being in attendance at this meeting.

30 The next meeting of importance occurred in August 1975. The purpose of the August meeting was to establish a budget for the following year. Funkhauser and Swanson were again present along with some of their staff members. Dr. Henderson, along with Leeson and the four exploration managers from Calgary were present. Mr. A.B. Bristow, Jr., president of Chevron, was also present at this meeting. The Wolf Creek prospect was again presented, revealing ten anomalies described as being a completely new and unexplored trend of isolated Leduc Reefs (exhibit 21). The land report given at the meeting indicated that all the anomalies discovered thus far were under competitor lands, primarily Texaco. The action proposed was to tie up the lands on the trend by arranging

negotiations through a third party as Chevron did not wish to reveal its interests in the area.

31 The August 1975 presentation was given by Dieter Pfaff, the district geologist for the area. He discussed the anomalies and indicated that he considered them to be isolated reefs. Bristow, who possessed a production engineering background, expressed concern about the reserve estimates being used for the prospect. In effect, Bristow, was concerned about the economic viability of the prospect. In making his presentation, Pfaff used a model drawing illustrating his interpretation of the anomalies found to that date. Following the meeting he was concerned about the economic size of the reefs in light of Bristow's remarks and approached Leeson to learn if Leeson thought they would get sufficient oil out of the Wolf Creek Play to be economical.

32 Leeson suggested they have lunch with Ken Pritchard, a former chief development geologist for Chevron, who had expertise in hydrodynamics. Pritchard, a geologist and petroleum engineer, was assigned to Chevron's producing department in January, 1975. They met at the Petroleum Club. Before Pfaff arrived, Leeson told Pritchard what he knew about the "Wolf Creek Play". Pritchard was already aware that Chevron had found anomalies in the area. Pfaff had not discussed the matter with Pritchard prior to the luncheon meeting. During the discussion Pfaff had to correct Leeson on the location of the reefs. Leeson had been telling Pritchard the reefs were suspected to be rooted in the Ireton (a formation in the D3) while Pfaff understood the reefs were rooted in a lower formation in the D3 known as the Duvernay. Pfaff felt that Leeson did not have the correct understanding of the "play" and so he explained it to Pritchard.

33 It is clear at this point in time that Leeson did not fully comprehend the "play", and although he was certainly well aware of the existence of the anomalies, he had only a general knowledge of their approximate location. The purpose of this luncheon meeting was to discuss the conceptual model and nothing else. Leeson did not learn at that time the specific location of the anomalies.

34 The next company management meeting of significance was the April 1976 Functional Review meeting. Leeson was in attendance and the "Wolf Creek Play" was discussed by A.C. Clark, a geologist, who had been working on the project since June 1975. He recalls having lunch with Leeson afterward and Leeson indicating to him that his presentation on Wolf Creek had been an interesting one. Clark postulated during his presentation that the reefs might be Nisku reefs (D2) as in his view the geology did not fit Leduc reefs. His hunch turned out to be correct.

35 Heerema also displayed a map (exhibit 71) at the April 1976 meeting showing the seismic lines which had been shot and which disclosed the location of a large number of anomalies on a north-east, south-west trend. The map also showed the Nisku shelf edge which Chevron had mapped for the first time based on their seismic.

36 Leeson recalls the Wolf Creek play being discussed and reviewed at the April 1976 meeting but stated that he could not recall where the anomalies were -- except that they were somewhere in an area west of the old Pembina field.

37 The last management meeting before Leeson's resignation was the September 1976 Budget meeting. A notice of the meeting was sent by Organ to Bannister, Howes and Smith, with copies to Dr. Henderson, Miles, Weir and Leeson. Henderson said it was Leeson's job to attend all budget meetings. Leeson flatly denies having attended any part of this meeting. Leeson felt he should be invited by Henderson. The only Chevron witness with any recollection of Lesson's presence at the September 1976 meeting is Thomas Reesor, a division geophysicist.

38 Reesor was one of the people charged by Chevron with assembling documents for discovery and trial. He had discussed the matter of Leeson's attendance at the September meeting with Dr. Henderson in preparation for trial. Reesor sat in the court room for the entire trial and was called in rebuttal to refuse Leeson's evidence pertaining to the September 1976 meeting. Leeson's evidence is as follows:

> Q. Then we have heard evidence about the September 1976 budget meeting held on September 13th and 14th. Did you attend that meeting?
> A. No, I didn't.
> Q. Why not?
> A. Well, the week before the meeting, I think it might have been as late as the Thursday or Friday before the meeting, I got a telephone call from Mr. Bill Bannister, and I guess Mr. Henderson was away at that time and Bill was co-ordinating things for that meeting. At least that was my understanding, and he -- I don't recall his exact words, but he asked me, or told me that Gerry wants to keep this meeting pretty restricted and intimated that I ought to make sure I was invited to go before I went. That's the message I got.
> Q. Having got that message did you do anything?
> A. No, I waited for an invitation. I didn't get one, so I didn't go.
> Q. Did you not seek an invitation?
> A. No, I didn't.
> Q. Why not?
> A. Well, I had also got the impression that there was to be a change in the way these meetings were to be handled. We had a new organization with an officer by the name of Savage, and somehow or other I got the impression this meeting was going to be held much more restricted than normal.
> Q. Would you look, please, at Exhibit 37? That's a memorandum from Mr. Organ to Mr. Bannister and to others dated August 26th, 1976, and indicates that copies went to five individuals, including yourself. Did you receive a copy of that memorandum?
> A. I'm sure I would have.
> Q. At the bottom It says attendance at this meeting is to be limited to those involved in the presentation or as authorized by GGLH, which of course meant Mr. Henderson?
> A. Yes.

Q. Did you after you had received this telephone call from Mr. Bannister, did you consider whether you had in effect a standing invitation so that you would have been free to go to that meeting?
A. Well, I don't specifically recollect, but looking at this memo and thinking about Bannister's telephone call, I think this may have been that the combination of the two gave me the impression I was disinvited, I guess.
Q. Disinvited?
A. The only word I can think of.
Q. And you did not attend?
A. I did not attend.

39 Reesor has a memory of Leeson sitting at the back of the room at the September meeting. He said he wondered at the time what right Leeson had to be there when Parsneau, another Chevron employee, was not in the room. A portion of Henderson's discovery was read to Reesor at trial which indicated Reesor's memory concerning Leeson's attendance at the September meeting was vague. Reesor and Parsneau were in attendance at the April 1976 Functional Review meeting. I do not accept Reesor's trial evidence.

40 I accept and believe Lesson's trial evidence that he was not at the September 1976 Budget meeting.

5 Year Forecasts

41 During 1975 and 1976, at Henderson's request, Leeson became involved in preparation of five year economic forecasts. It was deemed necessary by Chevron to gather together a forecast of expenditures which involved acquiring information regarding all of the company's activities proposed for the next succeeding five year period. By August 1976, all of Chevron's other oil prospects had been disproved except for the "Wolf Creek play". Henderson says he discussed the 1976 five year forecast in detail with Leeson, including the Wolf Creek play. However, Leeson did not enlarge his knowledge of the Wolf Creek play while engaged in this work. Although the five year forecast entered as exhibit 58 at trial is almost entirely In Leeson's handwriting with the exception of a few numbers which were in Henderson's handwriting, it is simply a reproduction of information given to Leeson by others. During this period of preparation, Leeson prepared tables showing Chevron's reserves and planned expenditures.

42 The work that Leeson did in connection with the five year forecasts did not require any special or intimate knowledge of the Wolf Creek play. He simply assembled data supplied by others, and after making the necessary calculations, laid the details out in table form. This work did not require anything more than an ability to gather together figures from the different divisions and reduce them to five year forecast tables. Leeson did not acquire detailed information about the Wolf Creek play in the process of working on the forecasts nor did he ever learn any details relating to the location of anomalies.

The Nairb Discovery Well

43 In May 1976, Chevron hired Nairb Petroleum to drill the first well in LSD 11, Section 22, Township 49, Range 12, West of the 5th Meridian. Nairb had drilled an earlier well in May 1976 for Chevron. Chevron, not wishing to tip their hand, asked Nairb Petroleum to act as their undisclosed agent.

44 Nairb was licensed in November 1976 to drill to the Mississippian formation. The well was spudded in on December 1, 1976. It was abandoned at a depth just below the 2,000 foot level and skidded over 30 feet. It was respudded December 15th and subsequently re-licensed to drill to the Devonian. The well began to kick gas at 9,800 feet on January 14, 1977. After determining from core samples that they were into reef rock of Nisku age, Chevron decided to instruct Nairb to deepen the well. They struck oil on January 17th and the well finally reached a total depth of 11,000 feet on February 5th. A substantial oil deposit was found in the Nisku.

45 Henderson admitted on examination for discovery that Leeson was not one of the persons with knowledge of the Nairb well activities or its progress. Leeson was not privy to information relating to the Nairb discovery well while at Chevron. He did not see any coring or test results. The information being passed along to Chevron from Nairb was highly classified and was available to only a small group of people. Leeson was not one of them. The evidence is clear that Leeson knew nothing about the well before he left Chevron except for noticing the licensing of the well to a depth of 8,500 feet. Dr. Henderson conceded that Leeson did not see the Nairb file before leaving Chevron. Even Dr. Weir, when attending the September 1976 meeting, did not know the identity of the third party who was to drill the well.

Nairb Petroleum and Texaco

46 Nairb, while acting as an undisclosed agent for Chevron in 1976, endeavoured to obtain drilling acreage from Texaco in Townships 49 and 50, Range 10 and 11, West of the 5th Meridian.

47 Extensive correspondence took place between Nairb and Texaco between January 1977. Nairb had advised Texaco by letter dated January 16, 1976 that it was interested in acquiring a farm-out in Townships 49 and 50. Texaco advised Nairb in June and again in September 1976, that it was not interested in a farm-out of its deeper rights. Nairb wrote Texaco again on December 14, 1976, indicating its interest in earning the deeper rights in Townships 49 and 50. Texaco replied on February 1st, 1977 as follows:

> We have reviewed your proposal and must advise that the only acreage Texaco currently has available for farm-out is in Township 50, Range 10, West of the 5th Meridian. This 36 section block is almost entirely either owned by Texaco or in the form of available Crown lands. Should your exploration priority be re-directed towards this acreage, we would be pleased to entertain a serious offer.

48 Texaco was willing to deal with Nairb but never received a response to its February 1st letter.

Leeson Resigns from Chevron

49 During 1976 Leeson began to think in terms of seeking other job opportunities and answered a number of advertisements. He was not happy with his position at Chevron and felt his career opportunities with the company were limited. He had not experienced any personal differences with anyone at Chevron, and indeed, had a good relationship with Henderson. The company clearly thought highly of Leeson. Chevron's confidential employee performance appraisal forms, on file with the Personnel Department, describe Leeson as a man with great integrity, leadership ability, and as a candidate for vice president exploration.

50 In early December 1976, William Waddell, vice-president of exploration for Home, telephoned Leeson to invite him to lunch to discuss a Calgary Zoo project in which they were both involved. Waddell had known Leeson for several years and had worked with Leeson in planning a Geology Society Convention in 1971. Waddell, who joined Home in 1976, said his mandate was to get Home back onto the main stream of exploration. He placed ads in the Calgary Herald and in two technical journals, advertising for an exploration manager and he received responses from about twelve individuals. As the position had not been filled when he met with Leeson, Waddell, took the opportunity to ask Leeson if he knew of anyone who might be interested in the position. Leeson did not. A few days later Leeson phoned Waddell, and indicated that he thought he might be interested in the job and arrangements were made for an interview in January 1977. Waddell met with Leeson on January 4, 1977 and outlined the nature of the job. Leeson was hired by Home on January 11th. On January 13th he resigned from Chevron, indicating at the time, that he was taking up a position as Canadian exploration manager with Home. Henderson was surprised at Leeson's resignation although he recognized the opportunity the job offered Leeson. They had a discussion about Leeson's position with Home. Henderson expressed his concern to Leeson that, as Leeson was knowledgeable of Chevron's plans and was possessed of confidential information, he might have some difficulty carrying out his duties at Home without getting himself into a position of conflict. Henderson indicated to Leeson that he hoped Home wouldn't appear suddenly in the Wolf Creek area.

Leeson Employed by Home

51 Leeson commenced his duties with Home on January 17th which, coincidentally, is the same day Nairb (Chevron) struck oil.

52 He was introduced to Rose Phillips, president and chief executive officer of Home, and to Maurice P. Paulson, executive vice-president of Home. Phillips chatted briefly with Leeson about Leeson's educational background, pointing out that Home was a Canadian company with headquarters in Calgary and that most of its decisions were made in Calgary. He recalls advising Leeson that Home had hired him for his general geological knowledge, his 25 years' experience, and did not expect him to disclose anything that was proprietary to any previous employer. Paulson

recalls Phillips saying to Leeson that he was being hired for his general knowledge, his professional ability, and that he was not to bring any confidential information with him.

53 Waddell explained to Leeson at the commencement of his employment with Home that it was necessary to get Home's exploration program back into the vanguard of Western Canadian exploration by making use of all the tax and drilling incentive programs. Waddell suggested Home's efforts should be directed toward the Foothills and the Deep Basin and the areas fringing the Deep Basin. The Deep Basin is that portion of the Western Canadian Sedimentary Basin sitting adjacent to the Foothills and below an arbitrarily selected subsea elevation of 9,000 feet. Anything deeper than 9,000 feet on the Devonian and to the west would be within the basin. The basin, which is west of Calgary and Edmonton, runs generally in a north-south line to a point north-west of Edmonton. It would include the West Pembina Basin.

54 In 1977, the Alberta Government had in place an attractive drilling incentive program. On a $600,000.00 gross cost well, the effect of the drilling incentive credit together with the tax deduction allowable for federal and provincial tax purposes reduced the net cost of a well to around $65,000.00.

55 When Leeson commenced his employment with Home on January 17, his first function was to familiarize himself with Home's existing projects. He immediately learned Home was involved in a three way joint venture seismic program with Canadian Superior and Union, known as the Deep Basin Group. Home was also involved in the Akuinu area near Township 67, Ranges 1 - 3 West of the 5th Meridian and had some involvement in three other areas - the Mouse Creek-Wolf Creek area, the Brightbank-Eden area and the Hamlin-Owl River area.

56 Leeson first became aware of the deeper depth of the Nairb well when the license was amended to authorize drilling to the Beaverhill Lake. This information was published in the Nickle Daily Oil Bulletin of January 12, 1977 (exhibit 239). He saw it within a few days after starting at Home while going through a backlog of material. The drill stem test started on January 17th and fluid recovery from the drill pipe occurred on January 18th. On January 22nd, 7" casing was run in the well and it was then cemented. Cement trucks are often observed by oil company scouts.

57 When the Nairb well "blew in", it came in under such high pressure that nothing could be done to hide the event from curious eyes. Dr. Henderson admitted on examination for discovery, that a scout by the name of Hornberger was near the well when it "blew".

58 On or about January 26th, A.K. Mossfeldt, an oil scout employed by Home, heard a rumour that the Nairb well was a rumoured discovery and he reported it to Leeson who in turn instructed him to keep an eye on the Nairb well. Mossfeldt says he got his early information about the well being a discovery well from Amoco scout, P.G. Stalker. Stalker stated he never exchanged information with Mossfeldt. Be that as it may, clearly, Mossfeldt got his early information from oil scout sources.

59 Grant Polomark, an oil scout employed by Chevron, not being aware of Chevron's disguise (Nairb), telephoned his employer (Chevron) soon after the Nairb well was completed, reporting a D2 producer. The evidence does not reveal where Polomark got his information, however, he clearly got his information both before and while visiting the well site with Stalker on February 10th or 11th. The security measures at the discovery well site were not strict and a document with confidential well information was found by Polomark who, at the time, was still unaware the well was a Chevron well. I am satisfied the information soon became available to many oil scouts. Mossfeldt, like Polomark, also obtained the same kind of information soon after the well was completed and passed on the information to Leeson and Waddell.

60 The oil scouts meet weekly in Calgary at "Scout Check" where scouts exchange well logs and other information. There was a meeting on January 26th. Stalker concedes the Nairb well could have been a rumoured discussion at that meeting. Subsequent to the January 26th meeting, Mossfeldt reported that the well was a D2 discovery.

61 Home was in the practice of circulating wildcat well reports, gathered from various industry sources, to key employees from time to time. Home's wildcat well report of January 26th mentioned several wildcat wells, including the Nairb well, and referred to the Nairb well as circulating at a depth of 9,758 feet. The next wildcat report of February 9th, 1977 (exhibit 232) indicated the Nairb well as a rumoured Paleozoic (Upper Devonian) gas and oil discovery at 11,000 feet. The report from Mossfeldt of February 9th (exhibit 233) following Scout Check on February 9th, and circulated to key Home personnel, including Leeson and Waddell, refers to the Nairb well as follows:

> Rumoured Paleozoic oil and gas success after reaching 11000'. 7" easing was landed at 9758' and further easing was not run below that depth. Under the name Guaranty Trust, a bonus of $1.3 million or $1,015.80 per acre for 1280 acres in Sec. 3 & 4 Township 50-12-W5 was paid on the February 8th (1977) lease sale.

62 The Nickle Daily Oil Bulletin reported frequently on the progress of the Nairb well from the date it was licensed. The Nickle Bulletin of December 29, 1976 reported that Nairb was drilling a well at All-22-49-12-West of the 5th Meridian and pinpointed the location by reference to the old Cal Standard Cynthia well abandoned several years earlier. On January 12, 1977, the Bulletin reported the well was being drilled by Nairb under confidential status on acreage transferred to the operator from Pacific Pete in November 1976 and that the Energy Resources Conservation Board had authorized drilling to a depth which would bottom in the Beaverhill Zone at 11,200 feet. It is apparent that there was much public knowledge about the Nairb well in January and early February 1977.

63 Chevron, being aware of their discovery prior to a Crown sale scheduled for February 8th, decided to bid on lands in Sections 3 and 4 in Township 50 at the Crown sale through and under the guise of Nairb Petroleum for security measures.

64 At a Crown sale on February 15th, Chevron, under its own name, purchased additional lands in Sections 23 and 26 in Township 49, Range 12, comprising 1,280 acres. It is interesting to note that at the same sale, three other companies, American Eagle, Conventures and Dome Petroleum purchased parcels of land in Chevron's prime prospect area.

65 On February 17th, the Nickle publication reported as follows (exhibit 242):

> SEVERAL DEEP DRILLERS RUMORED WITH PRODUCTION CASING SET -AMOCO, GULF AND NAIRB OPERATORS ...
>
> Three separate operators, are currently reported to have set production easing for further evaluation at drilling prospects drilled below 10,000 feet in the province of Alberta. It is interesting to note, however, that none of the wells were eased below the 10,000 foot level, however, the heavy trend towards evaluation of the deeper horizons in the province, which commenced for the most part simultaneously with the introduction of drilling incentives, is expected to continue throughout the balance of 1977.
>
> NAIRB PEMBINA ALL-22-49-12(w5) - said project was drilled three-quarters of a mile west of a petroleum and natural gas lease sold to Chevron Standard Limited on February 16 for an average of $144.70 per acre. The well commenced drilling on December 27, 1976, and bottomed at a final total depth of 11,060 feet. It is understood that seven inch production easing was set to a depth of 9,758 feet, but to date no plug back total depth has been reported by the operator. Current rumours suggest that the venture did encounter significant oil shows, and is waiting on further evaluation. The Daily Oil Bulletin has also learned that the NAIRB PEMBINA 1-9-50-12(w5) test commenced drilling on February 12th, and is being operated as a 'tight hole' project.

66 On February 21, 1977 the Wolf Creek play was highlighted on the front page of the Daily Oil Bulletin (exhibit 243). Page two of the Bulletin states as follows:

> The trend to deeper drilling in the foothills and central plains region of Alberta, has appeared to hit one of the provinces older oil producing areas - PEMBINA. Today's front page map highlights a region in which both development of the prolific Cardium Sand and exploration programs to evaluate the potential of the "deeper" horizons has been underway for a number of months, but due to the highly competitive nature of the exploration game, very little information is available on the more recent completions in the area. One of the more interesting projects completed in recent weeks is the NAIRB PEMBINA ALL-22-49-12(w5) test drilled by Nairb Petroleum on rights farmed in from PACIFIC

> PETROLEUMS LTD. The Beaverhill Lake evaluation was drilled to a final total depth of 11,060 feet, however, production casing of seven inch was landed at a depth of 9,758 feet. No plug back total depth has been reported by the operator at this time but it is understood that the well did encounter significant oil success from an as yet undisclosed horizon. The Pembina All-22 venture lies within a mile of Lease parcel 118 purchased by Chevron at the February 15th land sale. It is also understood that Nairb has commenced drilling at the Nairb Pembina 1-9, scheduled 10,800 foot elevation, but operator is holding all details confidential.

67 On March 11, 1977, the Daily Oil Bulletin reported another Chevron well was licensed for a deep test to 11,000 feet in LSD 14 - Section 20, Township 50, Range 12, West of the 5th Meridian.

68 Finally, on April 4, 1977, Chevron's president, A. Bristow, removed the mask from Nairb announcing that Nairb Petroleums Ltd. had drilled and completed the Nairb discovery well as agent for Chevron.

69 In the 1960's Leeson was transferred to the geophysical staff and Henderson admits Leeson gained a great deal of experience working with reefs in the Upper Devonian in central Alberta during that part of his employment.

70 Leeson's overall recollection of Chevron's Wolf Creek play was simply that it was a concept of Leduc reefs based on anomalies interpreted from seismic which lay west of the Pembina Oil Field. He was not involved in planning or implementation of Wolf Creek. He had no maps of the area and the only time he discussed it in detail with anyone was during the discussion with Pfaff and Pritchard at the Petroleum Club with reference to the reservoir model. He heard nothing while at Chevron relating to Chevron's efforts to acquire land from Texaco. He knew nothing about Nairb in connection with the Wolf Creek play.

71 With this background of the evolvement of public knowledge of the Nairb well, it is now interesting to note the events that occurred insofar as Home and Leeson are concerned.

72 Subsequent to the February 8th Crown sale, Leeson obtained a Nickle land Map (exhibit 261) and plotted the Nairb well. He studied the acreage held by Home in the general area of the discovery well and the acreage held by other companies in the same area. In particular, he plotted the two parcels which Nairb had purchased on February 8th, at $1,015.00 per acre. The price paid at this sale was extraordinarily high and would be observed quickly by members of the industry. After sitting down and looking at the information he had gathered together on the map, he concluded there might be an opportunity for a strategic land acquisition on what he considered to be the prospective area updip from this discovery. He understood the Nisku geology or "fairway" to run north-east of the Nairb discovery. He knew from his general knowledge as a geologist with many years' experience, that the Nisku Barrier Reef edge ran through the Pembina area treading from the north-east to the south-west paralled to the Nisku Reef, and this was a good line, or to use an expression from the sport of golf, it was a favourable "fairway" for the occurrence of a D2 reef.

73 It is interesting to examine Leeson's evidence at trial:

> Q. Can you give me any idea of what you had in mind as the width of the fairway? I mean, are we talking about yards or miles or what?
>
> A. I would have said at that time in my knowledge that really the area that is covered by the lands that have been coloured on this map, both the Texaco lands and the Amoco lands, that it you had a belt of lands like that if you were able to achieve an acreage position in a belt of lands like that, you would have had a good coverage on that fairway. You would have bracketed it.

And Leeson's further evidence:

> Q. Could we get at it with reference to Exhibit 91, please? If you consider the fairway as you have referred to it as running in a southwest - northeast direction, let's consider that we are going northeast so that we can talk about the left side and the right side of the fairway. If I may use this as an analogy, we are teeing off down at the southwest end of the fairway and the green is up at the northeast end of the fairway. Now give us some idea where the left side of the fairway would be and then follow that up with telling us where the right side of the fairway might be.
>
> A. Well, I think my best answer to that is to reference it to the lands that were actually in there, the Texaco lands and the Hudson Bay Amoco lands, that is where the acreage to my mind would go right across the fairway. The fairway itself of course would continue up to the northeast until you get into the Edmonton area before it turns around in the Meekwap area.
>
> Q. So if you're at the northwest corner of Township 50, Range 11 would you be somewhere near the left edge of the fairway?
>
> A. Somewhere near, but not necessarily, and it's not a precisely defined point that one could pick out.
>
> Q. You might be nicely on the fairway or you might be just in the rough, is that the idea?
>
> A. Well, until a lot of drilling had taken place only experience would tell you precisely where the limits were.
>
> Q. And with reference to the blue coloured lands on this exhibit what would be the right edge of the fairway in terms of township and range?
>
> A. Somewhere within actually the southern part of those blue lines. I felt at the time that - my understanding, or recollection, was that if the Nisku barrier reef ran through the southeast portion of the Pembina field, so I would say that some of that blue Amoco acreage - Hudson Bay Amoco acreage was probably not very prospective for this trend because it was already on a barrier reef.
>
> Q. Well, the southeasterly portion of the blue coloured lands is in Township 46, Range 8. Would you think that would be on the fairway?

A. Well, let's say about 47-8 is beginning to push things.
Q. Mr. Robertson: Now, sir, we get into that discussion when you were telling us what was in your mind as you got out this land map which is Exhibit 261 and were marking the Texaco and Hudson Bay lands on that. Do you recall that, and you had told us that you got that map out and marked it up after you got the information which you outlined about the Nairb discovery well?
A. Yes, this was prior to me talking to Mr. Waddell.

74 On February 10, Leeson approached Waddell and told him that in view of the Nairb deep discovery that it would be prudent if they held back farming-out any acreage in the area. Certainly any company holding acreage in the area would be of like mind. He then indicated to Waddell that there might be an opportunity to capitalize on the information from the Nairb well by making what he called a strategic land approach to people with substantial holdings under the Pembina Field which he had coloured on the map (exhibit 261) that is to say, Texaco, Texaco Canada, Hudson Bay and Amoco.

75 Waddell was already aware of the Nairb discovery having received a copy of Mossfeldt's first report. He had also received a copy of the February 8th Crown sale results as a matter of course. Waddell already had a strong impression that the Nairb well was a significant discovery, as he felt the $1.3 million paid for two sections of land essentially underscored the significance of the rumoured D2 oil and gas discovery.

76 Waddell said Leeson explained the general stratigraphy of the southeastern edge of the Winterburn Basin. Waddell agreed with Leeson that Home should get a position in the area.

77 At this point Leeson felt he should advise Waddell that he suspected Nairb was a front for Chevron. His evidence at trial is as follows:

Q. Right, and then how did your discussion with Mr. Waddell go along from there?
A. Well, I pointed out that even though it was a pretty difficult endeavour to accomplish because it was under the field, but nevertheless the fact we had these deep rights expiring in 1983, somebody might listen to us and of course the rationale, or the economic rationale was the incentive program, so the rest of our discussions centred around how we might structure such a deal. Now I don't know whether it was before we got to that point or immediately after, I mentioned the fact that I thought there was an obvious play here. I felt it was incumbent upon me at that stage to tell Mr. Waddell that I thought in all probability that Nairb was acting for Chevron and posed the question would this be a conflict of interest. At that time I assured him I had no information from the well and that any action which we took with respect to these lands would not be impinging as far as I was concerned upon Chevron's play.

78 Waddell said the suspicion that Nairb was fronting for Chevron did not constitute a conflict of

interest, as the identity of the company drilling essentially had no significance, but the nature of the discovery was significant.

79 Waddell and Leeson put together two basic plans, structured essentially along the same lines, both involving a commitment to drill two tests and undertake 150 miles of seismic to earn a pre-specified interest in certain lands held by Texaco, Texaco Canada, Hudson's Bay and Amoco. One block was a nine township block controlled by Texaco, and the other, a 12 township block controlled by Hudson's Bay and Amoco.

80 On February 11th, they approached Paulson and asked his opinion as to whether the fact that Nairb might be fronting for Chevron raised any problem about a conflict of interest. Paulson's reaction was the same as Waddell's. Paulson authorized Waddell and Leeson to proceed.

81 Leeson did not mention to Waddell anything about Chevron's activities in the West Pembina Basin. Waddell had become aware in January that Chevron had a sensitive play within the Upper Devonian. He had become aware through negotiations Home had with Chevron in the Wabamun area of Township 55, Range 1 and 2, West of the 5th. Chevron had apparently taken a seismic option from Home and later came back to Home seeking a restructuring of the terms to give Chevron 90 per cent and Home 10 per cent. When Chevron requested a change in the per cent factor, Waddell felt he should discuss the matter with Leeson. During the discussion he then became aware that Chevron had a sensitive play, not by what Leeson said, but by what Leeson didn't say. When Leeson seemed loathe to approve the deal, Waddell said his (Waddell's) antenna went up, making him realize Chevron had a sensitive play. Leeson did not give Waddell any information at that time or any other time, nor did he express any opinion on Chevron's motivations for wanting to change the seismic option.

82 Home decided to obtain whatever seismic was available in the market place and to shoot a seismic line over the discovery well which is a custom followed by many companies after a discovery to establish a pattern of the geological structure in the area. Chevron admits to the same tactic.

83 Jim Hume, manager of geophysics at Home retained Mr. Corby Hart, a consulting geophysicist, to interpret trade data available in the market. Hart, with the available trade data, prepared several maps so that he might determine if there was any possibility of production underneath the Cardium production level in the Pembina field. He found certain structural anomalies in the area that he felt could possibly be D2 or D3 reefs. This was merely a regional study. Hart hired Century Geophysical, a seismic company, to shoot about 22 miles of seismic, not knowing that this was the same company that had shot seismic for Chevron. Nothing turns on this fact.

84 With the available trade data and the benefit of seismic shot in the general area, Hart was able to interpret various anomalies including the one lying over the Nairb well. By April 12th, Hart had interpreted the seismic shot in Township 50, Range 10 and had interpreted what he considered to be

a strong anomaly in Section 32, Township 50, Range 10. Hart suspected the anomaly to represent oil at the D2 level. Later he discovered further anomalies in Sections 10, 12 and 25 of Township 50, Range 10. Maps showing the anomalies discovered by Hart were tendered in evidence at trial (exhibits 287-288). It is interesting to note that he discovered or interpreted anomalies from the seismic he commissioned in Township 50, Range 10, whereas Chevron's seismic did not reveal anomalies within the township. Chevron had interpreted what amounted to "a lead", only, on the north boundary of the Township.

85 Hart said he never received any information from Leeson or Hume or anyone else in Home, as to where he might expect to encounter anomalies. In the course of his work, Hart never saw evidence of Home, or anyone working for Home, using information that had come to them from Chevron.

86 Hume also stated that Leeson never discussed any of Chevron's operations with him, nor did Leeson ever give Hume information arising out of his knowledge of Chevron's operations.

Home's Negotiations with Texaco

87 Letters were written by Home to Texaco, Hudson's Bay and Amoco on February 14th (exhibit 215-16) offering to:

> (1) undertake a seismic survey during 1977-78 to comprise 150 miles of modern CPD shooting.
> (2) Drill 2 cambrian tests ...
>
> In consideration of Home doing the foregoing program of seismic and drilling it would earn a 50 % undivided interest in a pre-selected 9 sections of lease for each well drilled with an option to earn a 50 % undivided interest to depth drilled in additional pre-selected 9 section blocks by drilling additional wells ...

88 Texaco quickly replied by letter of February 16th (exhibit 217) rejecting Home's offer for a seismic survey and farm-out of the magnitude requested, but countered with an indication that they would give serious consideration to a seismic farm-out offer on their holdings in Township 50, Range 10, West 5M. Waddell was surprised at the speed of Texaco's reply.

89 Texaco was trying to promote a farm-out of their acreage in Township 50, Range 10 as the leases covering the acreage were due to expire in November 1977. It should be remembered that Nairb had not replied to Texaco's letter of February 1st.

90 Greg Revell, land man with Texaco, said that Texaco was willing to deal with Nairb on Township 50 any time up to mid April when they received a firm offer from Home.

91 Andy Kennedy, senior geophysicist with Texaco, indicated that on March 16th four Texaco employees (geologists and geophysicists) met with Hume to encourage Home to farm-in Township 50. Texaco pinpointed certain areas for Hume and showed him older seismic maps which Texaco had in their possession and which had been prepared in the 1950's. The older maps disclosed anomalies on two lines. Texaco also had discussions with other companies in March 1977, including Union Oil and General American, while attempting to farm-out Township 50.

92 Hume, along with R.D. Jones (a Home geologist), W.G. McKay (manager of Home Land Department) and K.M. Guise (a Home land man), all became involved in the negotiations and correspondence to acquire acreage from Texaco. They each said that Leeson did not tell them anything whatsoever about the discovery well, his service with Chevron, or about Texaco.

93 Texaco received a firm offer from Home on April 22 (exhibit 220) which was subsequently approved by Texaco's head office in Denver, Colorado. A contract was concluded on June 2, 1977 wherein Texaco entered into a farm-out and option agreement with Home on all their lands in Township 50, Range 10, which required Home to spud a well at a location of its choice prior to August 1, 1977.

94 Mr. Isaac, South Division exploration manager of Home, made the decision as to where Home's first well would be drilled in Township 50. This decision was approved by Leeson. The well was spudded on July 4th and drilled to a depth of 11,000 feet in or near LSD 8, Section 32, Township 50, Range 10, W5. It was a successful oil well. Home subsequently drilled five additional wells in Township 50, resulting in two marginal wells, one good well and two dry holes. At trial, Home was drilling a seventh prospect in Township 50. Home drilled a dry hole in Township 52.

Cowper's Evidence

95 It is worthwhile to note the evidence of Norman W. Cowper, who was called to testify for Home. Cowper, a geologist who had been employed with different oil companies in the 1950's, has been acting as a consultant since 1962. Most of the subsurface work done by Cowper has been in the Upper Devonian. He has published papers on the Devonian, and, in particular, one entitled "Depositional Environments of the Ireton Formation, Central Alberta". In this paper he discussed in a broad way the shales surrounding Leduc reefs. In March 1977 Waddell phoned Cowper to inquire about his experience in western Alberta. Being satisfied he had found a man with knowledge of the area, Waddell engaged the services of Cowper. Cowper had some old mapping of geological cross sections including the Nisku formation and the Nisku shelf edge west of the Pembina field. He had prepared several maps in 1970 of the Upper Devonian in an area covering Townships 40 - 80 West of the 5th Meridian.

96 Waddell asked Cowper to update his old maps. Using the Nickle Daily Oil Bulletin as a source, Cowper prepared new maps updating the geology. He was able to make his calculations after learning the depth of the casing used on the Nairb well. Knowing the depth of the well, he was then able to draw the Nisku shelf edge as he envisioned it to be in the general area of the West

Pembina field. He did not seek nor gain any advice from Leeson.

97 Cowper's work, along with Home's seismic, Hart's seismic interpretation and Texaco's available information all contributed greatly to Home's success in the area.

Chevron Alleges Breach of Obligation by Leeson and Home

98 On or about July 5, 1977 while Home's first well was drilling, Bristow visited Phillips to discuss an alleged misuse of confidential information by Leeson. Bristow indicated subsequently in correspondence that Chevron believed that Leeson had breached its obligation to Chevron by utilizing and divulging trade secrets and confidential information properly belonging to Chevron, and that Home had participated with Leeson in the utilization of confidential information. Chevron advised Home that it was the intention of Chevron to hold Home accountable for damages and that it regarded Home as trustee for Chevron for any benefits derived from utilizing trade secrets and confidential information (exhibits 61 and 77).

99 Home denied misuse of confidential information by letter of July 15th and stated that their recent exploration activities were not based on misuse of confidential information proprietary to Chevron, and that it intended to continue to conduct its own exploration activities in a competitive manner making full use of all legitimate sources of information. Chevron commenced proceedings against Home by filing a statement of claim on December 5, 1977.

100 The issue is to firstly determine the extent of Leeson's exposure to confidential information and the extent of his mental retention of such information, and secondly, to determine whether he disclosed or used any confidential information to the detriment of Chevron and for the benefit of Home.

Confidential Information

101 The Courts of England, Canada and the United States have on many occasions considered the principles relating to the duties of persons on the question of confidential information.

102 Halsbury's Laws of England (3rd Ed.), volume 28, treats the subject peremptorily, at page 465:

> 899. Duty of servant not to disclose confidential information. The principle that a servant is under a duty not to disclose confidential information obtained in the course of his employment (x) continues to apply after he has left the employment (a). Accordingly the master is entitled to an injunction (b) or damages or both (c) if, after leaving his employment the servant uses against the interest of his late employer confidential information gained by him during that employment (d). The servant may be ordered to deliver up to his employer any document containing such confidential information to which he is not entitled (e).

...

> 901. Competition in business. A servant is entitled to set up in business in competition with his late master after quitting his service, and to use the skill and knowledge in his trade or profession, or the knowledge as to business methods, honestly acquired by him during the service (h).

103 One of the leading cases on this subject is Saltman Engineering Co. Ltd. v. Campbell Engineering Co. Ltd. 65 R.P. C. 203, 413 (Court of Appeal). In this case the drawings of tools for the manufacture of leather punches were delivered to the defendants with instructions to make certain tools. It was an implied condition of the delivery to the drawings and of the contract for the manufacture of the tools, that the defendants would treat the drawings as confidential and should not use them otherwise than to construct the tools for the manufacture of the leather punches. The defendants, contrary to their instructions, made a second set of drawings for their own use, utilizing some material from the original drawings. Lord Greene pointed out that the defendants dispensed with the trouble of compiling the drawings thereby saving themselves a great deal of labour and draftsmanship. No doubt if they had taken a finished article, namely the leather punch, which they might have brought in a shop and given it to an expert draftsman, he could have produced the necessary drawings for the manufacture of the tools required for making the finished article. They saved themselves that trouble by obtaining the necessary information either from the original drawings or from the tools made in accordance with them. Lord Greens found this to be a breach of confidence. He stated at page 415:

> The information, to be confidential, must, I apprehend, apart from contract, have the necessary quality of confidence about it, namely, it must not be something which is public property and public knowledge. On the other hand, it is perfectly possible to have a confidential document, be it a formula, a plan, a sketch, or something of that kind, which is the result of work done by the maker on materials which may be available for the use of anybody; but what makes it confidential is the fact that the maker of the document has used his brain and thus produced a result which can only be produced by somebody who goes through the same process.

104 Greene also stated at page 414 that the formula governing a breach of confidence is:

> If a defendant is proved to have used confidential information, directly or indirectly obtained from a plaintiff, without the consent, express or implied of the plaintiff, he will be guilty of an infringement of the plaintiff's rights.

105 A more recent English authority also dealing with manufacturing is Seagar v. Copydex Ltd.,

[1967] 2 All E.R. 415 (C.A.) per Lord Denning. The headnote states:

> An inventor, with whom the defendant company were negotiating for the marketing rights of a patented carper grip, which the inventor or his firm made and sold to anyone who wished to buy it, endeavoured at an interview with the defendant company's assistant general manager and with the defendant company's sales manager to interest them in his alternative device, which he called by a description such as 'Invisigrip', which device was not patented. The information was given in confidence. The defendant company were not at the time interested. Subsequently, negotiations regarding marketing the patented grip having broken down, the defendant company applied for a patent in respect of a carper grip very similar to the alternative device, the 'Invisigrip', giving the name of the assistant general manager as inventor. They maintained that this grip was their own idea.

and the court held:

> Held: the defendant company had made use, albeit honestly, of information which had been received in confidence and which was not available to the public; they were accordingly liable for breach of confidence, and the plaintiff was entitled to damages, assessed on basis of reasonable compensation for the use of the confidential information (see p. 418, letters B and G, p. 418, letter 1. to p. 419, letter A, and p. 419, letter B, post). Appeal allowed.

and Lord Denning states at 417:

> The law on this subject does not depend on any implied contract. It depends on the broad principle of equity that he who has received information in confidence shall not take unfair advantage of it. He must not make use of it to the prejudice of him who gave it without obtaining his consent. The principle is clear enough when the whole of the information is private. The difficulty arises when the information is in part public and in part private. As for instance in this case. A good deal of the information which the plaintiff gave to the defendant company was available to the public, such as the patent specification in the Patent Office, or the 'Klent' grip, which he sold to anyone who asked. But there was a good deal of other information which was private, such as, the difficulties which had to be overcome in making a satisfactory grip; the necessity for a strong, sharp tooth; the alternative forms of tooth; and the like. When the information is mixed, being partly public and partly private, then the recipient must take special care to use only the material which is in the public domain. He should go to the public source and get it: or, at any rate, not be in a better position than if he had gone to the public source. He should not get a start over others by using the information

> which he received in confidence.

and further at 417:

> Applying these principles, I think that the plaintiff should succeed. On the facts which I have stated, he told the defendant company a lot about the making of a satisfactory carpet grip which was not in the public domain. They would not have got going so quickly except for what they had learned in their discussions with him. They got to know in particular that it was possible to make an alternative grip in the form of a 'V-tang', provided the tooth was sharp enough and strong enough, and they were told about the special shape required. The judge thought that the information was not significant. But I think it was. It was the springboard which enabled them to go on to devise the 'Invisigrip' and to apply for a patent for it. They were quite innocent of any intention to take advantage of him. They thought that as long as they did not infringe his patent, they were exempt. In this they were in error. They were not aware of the law as to confidential information.
>
> I would allow the appeal and give judgment to the plaintiff for damage to be assessed.

106 Lord Salmon in his judgment states at page 418:

> Nevertheless the germ of the idea and the broad principle of the domed V-shaped prong was I am certain implanted in their minds by the plaintiff at the interview of Mar. 13, 1962, and afterward subconsciously reproduced and used, if only as a springboard, to forestall the plaintiff with 'Invisigrip'. This is no reflection on their honesty, but it infringes the plaintiff's rights.

107 One of the leading Canadian cases is the Supreme Court of Canada decision of Pre-Cam Exploration & Development Ltd. and Murtack v. McTavish et al. (1966), 56 W.W.R. (N.S.) 697. The plaintiff Murtack retained Pre-Cam to carry on certain mineral claims. Pre-Cam's instructions were to ascertain the size and location of the mineralized zone. McTavish was employed by Pre-Cam. A mineral zone can be ascertained through use of a magnetometer. McTavish was the operator of the magnetometer. While engaged in his work, McTavish discovered that the mineralized zone extended north-easterly of Murtack's stakings, and he decided to stake that ground for McTavish. He interested other co-defendants in his venture, and with a promise of financial assistance, he then resigned from his employment with Pre-Cam. The plaintiffs, Pre-Cam and Murtack, successfully sued for a declaration that the claims staked by McTavish, in his name, were held in trust for Murtack and an order was made transferring them to Murtack. Judson, J., stated at p. 700:

> Without the information acquired during the course of his employment,

> McTavish would not have staked the adjoining claims. This was highly confidential information and the purpose for which it was being sought was obvious - the acquisition of other connected claims which would be of advantage to the existing claims. Neither Pre-Cam nor McTavish, its servant, could acquire these connected claims against the interest of Murtack. Contrary to the majority opinion in the court of appeal, I think that it was a term of his employment, which McTavish, on the facts of this case, understood that he could not use this information for his own advantage. The use of the term 'fraud' by the learned chief justice at trial was fully warranted. The severance of his employment on December 27, was an empty formality which could not improve his position. I do not mean by this that a simple-minded person with his own ideas of common honesty could do this sort of thing without having to answer. The constructive trust is imposed in a case of this kind because of the mere use of confidential information for private advantage against the interest of the person who made the acquisition of the information possible.
>
> I would allow the appeal with costs, both here and in the court of appeal, and restore the judgment at trial.

108 There is no evidence in the instant case that Leeson resigned out of a wish to acquire for Home and himself an advantage in the West Pembina field. The onus of proof is on the plaintiff to establish that Leeson used confidential information.

109 In Canadian Aero Service Ltd. v. O'Malley et al. (1973), 11 C.P.R. (2d) 206, the Supreme Court of Canada per Laskin, J., (now C.J.C.) considered the matter of the fiduciary relationship of one O'Malley and one Zarzycki. Both held top management positions with Canadian Aero. While so employed, they incorporated a company and devoted their effort and planning into taking for their new company, the fruits of a corporate opportunity in which Canadian Aero had a prior and continuing interest. They subsequently resigned their positions with Aero and pursued and obtained through their company, a federal government external aid contract. Laskin, J., said at pp. 219:

> It follows that O'Malley and Zarzycki stood in a fiduciary relationship to Canaero, which in its generality betokens loyalty, good faith and avoidance of a conflict of duty and self-interest. Descending from the generality, the fiduciary relationship goes at least this far: a director or a senior officer like O'Malley or Zarzycki is precluded from obtaining for himself, either secretly or without the approval of the company (which would have to be properly manifested upon full disclosure of the facts), any property or business advantage either belonging to the company or for which it has been negotiating; and especially is this so where the director or officer is a participant in the negotiations on behalf of the company.

> An examination of the case law in this court and in the courts of other like jurisdictions on the fiduciary duties of directors and senior officers shows the pervasiveness of a strict ethic in this area of the law. In my opinion, this ethic disqualifies a director or senior officer from usurping for himself or diverting to another person or company with whom or with which he is associated a maturing business opportunity which his company is actively pursuing; he is also precluded from so acting even after his resignation where the resignation may fairly be said to have been prompted or influenced by a wish to acquire for himself the opportunity sought by the company, or where it was his position with the company rather than a fresh initiative that led him to the opportunity which he later acquired.

and at p. 228:

> In holding that on the facts found by the trial Judge, there was a breach of fiduciary duty by O'Malley and Zarzycki which survived their resignations I am not to be taken as laying down any rule of liability to be read as if it were a statute. The general standards of loyalty, good faith and avoidance of a conflict of duty and self-interest to which the conduct of a director or senior officer must conform, must be tested in each case by many factors which it would be reckless to attempt to enumerate exhaustively. Among them are the factor of position or office held, the nature of the corporate opportunity, its ripeness, its specificness and the director's or managerial officer's relation to it, the amount of knowledge possessed, the circumstances in which it was obtained and whether it was special or, indeed, even private, the factor of time in the continuation of fiduciary duty where the alleged breach occurs after termination of the relationship with the company, and the circumstances under which the relationship was terminated, that is whether by retirement or resignation or discharge.

110 Clearly in each case many factors must be examined and as pointed out in the Aero case, it would be reckless to attempt to enumerate them exhaustively. However, the nature of the information, the employees' relation to it, the amount of knowledge possessed and the circumstances in which it was obtained and when it was obtained, are some of the factors to be considered.

111 Chevron in argument pointed to the maxim of omnia praesumuntur contra spoliatorem -- all things are presumed against the wrongdoer. Home, in reply, pointed to the maxim of omnia praesumuntur rite esse acta -- all things are deemed to have been done properly.

112 In Guyer Oil Co. Ltd. et al. v. Fulton and Gladstone Petroleum Ltd. (1977), 16 N.R. 465, the Saskatchewan Court of Appeal considered alleged use of confidential information and upheld the

trial judgment holding that an engineer did not use confidential information. The judgment of the Court of Appeal was affirmed by the Supreme Court of Canada. The facts of this case appear at p. 466 of the headnote and are as follows:

> Summary:
>
> This case arose out of an application by an employer for a declaration that a former employee held an oil and gas lease in trust for the employer. The plaintiff employer was an oil and gas developer. The developer hired the defendant consulting engineer to supervise the drilling of several oil wells. The engineer was hired on a per diem basis. The engineer was free to and did work for other developers in the same area during the relevant time period. Shortly after his employment terminated the engineer successfully bid on an oil and gas lease offered by the Crown. The developer unsuccessfully bid on the same lease. The Saskatchewan's Queen's Bench Division dismissed the developer's action because the engineer did not use confidential information (acquired during his employment) in preparing the successful bid for the lease from the Crown. The judgment of the Queen's Bench Division is set out below - see paragraphs 51 to 112.
>
> On appeal to the Saskatchewan Court of Appeal the appeal was dismissed and the judgment of the Queen's Bench Division was affirmed.

113 In the Court of Appeal judgment, Hall, J.A., reviews the facts and considers the legal principles involved at p. 473:

> The acts of the respondent John M. Fulton which are complained of in this action took place during an interval when the said respondent was not employed by either Highwood or Guyer. This was an interruption in the employment which arose in a regular manner under the terms of the hiring arrangement. At that time the respondent had no obligation to return to Guyer or Highwood and Guyer and Highwood had no obligation to have him back. His inactivity at that time was part of the pattern of employment. There was no termination of employment in the sense that existed in Pre-Cam Exploration and Development Ltd. v. McTavish (1966) S.C.R. 551. In that case the employment was terminated deliberately by the employee in an attempt to regularize improper use of confidential information. At that time the only duty which the respondent Robert M. Fulton owed to Guyer or to Highwood was the obligation not to use, to the disadvantage of either Guyer or Highwood, confidential information which he had received in the course of his employment. This duty arose from what has

> been termed a general obligation of good faith on the part of the respondent.

and Hall, J.A., states at page 474:

> Generally the duties of the respondent in the employ of both Guyer and Highwood, as hereinbefore set out, establish that the relationship between them was that of master and servant and was not the principal-agent type of relationship which existed in Boardman at al. v. Phipps, [1967] 2 A.C. 46; or in Canadian Aero Service Limited v. O'Malley et al., [1974] S.C.R. 592. The respondent Fulton, therefore, does not become liable to the appellants by the mere acquisition of the lease. It must be shown that in acquiring the lease the respondent Fulton improperly made use of confidential information acquired during the term of his employment to the disadvantage of the appellants.
>
> The regulations of the Department of Mineral Resources of the Province of Saskatchewan which applied to the Dodsland field at all material times required each well owner to file with the Department all pertinent information obtained from a well after thirty days had expired from the date of the rig release. All of this information was made available by the Department to the public. I agree, therefore, with the finding of the trial Judge that any information obtained by the respondent Fulton from the wells upon which he sat with the exception of those which the respondent supervised for Guyer on LSD 16-2-31-22 W3rd and LSD 8-11-31-22 W3rd could not, at the time the respondent Fulton advised his brother Robert, be considered confidential. This information was then in the public domain. The information having become public knowledge was available to the respondent Fulton to use as it was to any other member of the public. See Mustad & Son v. Dosen (1964), 1 W.L.R. 109 and Baker v. Gibbons, (1972), 1 W.L.R. 693.

114 In Guyer the court is saying that an employee who is exposed to confidential information while employed with one company is not restricted when working with another company, so long as he does not use the confidential information to the disadvantage of his previous employer. The fact that Leeson had worked for Chevron and had been exposed to some information of a confidential kind, did not restrict his right to work for Home as long as he acted honestly in the course of his employment.

115 In Robin-Nodwell Mfg. Ltd. v. Foremost Development Ltd. and Nodwell, 38 Fox Pat. C. 43, Milvain, J., (later C.J.) considered an application for injunction for alleged wrongful disclosure of trade secrets gained by an employee during the course of his employment. In dismissing the application, Milvain, J., held at p. 48:

> Now, in approaching the decision of this case, I think I must bear in mind what is

> my rough conception of the law which applies to such a situation by stating it in this way: I am satisfied that an employee, there being no contract to the contrary, when he leaves his employer is entitled to use any knowledge or skill that he acquired during the course of his employment. He is prohibited, however, from removing from his employer and using any actual material in the shape of plans, lists of customers or things of that nature and then using them to his own advantage. I think it is clear in the law that if an employee merely carries in his memory such material that he is entitled to use his memory. In other words, we cannot blot out a person's memory of matters unless it be that the knowledge he acquired was acquired on a confidential basis. Then that confidential or secret knowledge cannot be used by him though it is carried away only in his memory.
>
> Nov, applying these principles to the case before me, I think I must be guided by the fact that where a plaintiff seeks to obtain remedy for the use or disclosure or trade secrets, that the onus rests on the plaintiff of establishing that there does, in fact, exist a trade secret which is a secret.

116 In Mobil Oil Canada v. Canadian Superior Oil and Nielsen, [1979] 4 W.W.R. 481, Kirby, J., considered the position of Nielsen, a former employee of Mobil Oil, and allegations of breach of contract against Nielsen and allegations of inducement of breach of contract against Canadian Superior. The plaintiff, Mobil, sought an injunction against Nielsen to prevent Nielsen from disclosing confidential information and against Canadian Superior preventing it from using any such information. The action was dismissed as the evidence did not establish a breach of confidentiality. Kirby, J., found that Nielsen had not divulged confidential information and further that he was not likely to do so.

117 There is an onus on a plaintiff firstly to establish that the information was confidential, and secondly, that it was used to the plaintiff's disadvantage.

118 There is nothing actionable in an employee, after termination of his employment, using in a new employment, the knowledge he acquired in his former employment, so long as he does not divulge or use secret information involving breach of confidence -- See Alberta Geophysical Products Ltd. v. Geo. E. Failing Supply Co. Ltd. et al. (1963), 44 W.W.R. (N.S.) 588.

Trade Secrets

119 The onus is on Chevron firstly, to establish that it was possessed of trade secrets, and secondly, that the secret or confidential information was used by Lesson and or Home to the disadvantage of Chevron. As I see it, these trade secrets were:

1. The fact that Chevron had disclosed through seismic, anomalies, believed to be pinnacle reefs of Upper Devonian age.

2. The location of the anomalies.
3. That Nairb was an undisclosed agent for Chevron.
4. That Guaranty Trust Company was an undisclosed agent for Chevron in the purchasing of two sections of land.
5. Generally, Chevron's exploration and seismic program over lands located in the Wolf Creek area.

120 Leeson was present at three of the five meetings of senior personnel between April 1975 and September 1976. He was not present, having left the meeting early, when Wolf Creek was discussed at the Functional Review meeting in April 1975, nor was he present at the September 1976 Budget meeting.

121 There is no doubt but that Leeson knew that Chevron had discovered anomalies through seismic in an area known as Wolf Creek which he understood to be west of the old Pembina field. He also knew that Nairb was drilling as an undisclosed agent for Chevron. He did not know the exact location of the anomalies. He did not know that Guaranty Trust was acting for Nairb and/or Chevron, but concluded that Guaranty might be acting for Nairb and/or Chevron.

122 Leeson's last exposure to the Wolf Creek play and the location of the existing anomalies was in April 1976 when details of the geology and seismic implications were explained by Clark and Heerema. Although Lesson recalls being present for the presentation, he could not recall the location of the anomalies other than that they were in an area west of the Pembina field. It should be remembered that Leeson's primary responsibility during the period of time immediately prior to his resignation was development, rather than exploration. A great deal of geology was ascertained and carried out by Chevron's geologists of which Leeson had no knowledge whatever.

123 Clearly one cannot always recall details of discussions which took place at times many months and years in the past. Dr. Henderson, by his own admission, cannot be certain as to what maps were shown at any particular meeting, and he conceded that when it is difficult to remember what maps were shown at a particular meeting, it is equally difficult to remember what was on the maps that were shown. Dr. Henderson also admitted that he could not recollect everything that was discussed with respect to land ownership in and around the prime prospect area at the April 1976 meeting, and admitted he would have more reason to remember this discussion about land than would the acting chief development geologist (Leeson). There is no suggestion that Leeson took away any maps, sketches or books from any meeting or when he resigned from Chevron.

124 Leeson has no specific recollection of a map (exhibit 22) being shown at the fall budget meeting in 1975, showing a square in the top left hand corner headed Wolf Creek with nine blue dots representing nine anomalies contained therein. He does not deny that Wolf Creek may have been discussed, however he simply does not have a recollection of the location of any anomalies. His best recollection of the meetings at which Wolf Creek was discussed, is that it was a hypothesis or a concept of the existence of Leduc reefs in an area west of the Pembina field. His best

recollection of the term "Wolf Creek" is that it was an area near the "Calstan Cynthia" well which was drilled in 1957. With respect to the Prime Prospect area, he did not have any firm idea of what the edges of the area might be.

125 Following the April 1976 Functional Review meeting, Leeson concluded that Clark's presentation did not really show any firm indication of Leduc reefs in the basin.

126 An example of how the minds of well trained people can become subject to uncertainty in recalling past events is found in the evidence of Clark and Tremblay, both Chevron geologists. Together they prepared exhibit 28, showing the regional Nisku Shelf edge and an area of possible isolated Nisku reefs. Clark states emphatically he did not use it at the April 1976 Functional Review meeting, but thought that perhaps Tremblay may have used it in his presentation. Tremblay couldn't be sure if he used the map at the April 1976 meeting, but thinks Clark may have referred to it. Indeed, Tremblay could not recall the nature of the presentation given by either Heerema or Bittner at the April 1976 meeting. Pfaff cannot recall if he used any maps or not at the April 1976 meeting. When the people associated with the presentation of a geological play at a particular meeting cannot recall exactly what tools or maps may have been used at the meeting, it is unlikely others not intimately involved in the presentation would vividly recall everything that transpired at the meeting.

127 Engman thinks Leeson stopped by his office and chatted briefly about the Wolf Creek play sometime in the latter part of 1976, however, Engman has no specific recollection of the meeting, could not quote Leeson, and agrees that no maps were examined or taken from his office. Lesson does not recall the brief conversation with Engman.

128 Knowledge of Devonian anomalies in a specific area is a privileged matter. Was there disclosure of this privileged information to Home or any members of its staff?

129 Megarry, J., in Coco v. A.N. Clark (Engineers) Ltd. [1969] R.P.C. 41, considered a breach of contract case and the following statement of law appears at p. 47:

> In my judgment, three elements are normally required if, apart from contract, a case of breach of contract is to succeed. First, the information itself, in the words of Lord Greene, M.R. in the Saltman case on page 215, must have the necessary quality of confidence about it. Secondly, that information must have been imparted in circumstances importing an obligation of confidence. Thirdly, there must be unauthorized use of that information to the detriment of the party communicating it.

130 Although Leeson was aware of anomalies believed to be pinnacle reefs of Upper Devonian age, he did not carry with him any precise knowledge as to the location of the anomalies. Any display of maps, seismic sections, models or any evidence alluding to the location of anomalies in the Wolf Creek area at the April 1975 Functional Review meeting or the September 1976 Budget

meeting is irrelevant by reason of Leeson's non attendance at these meetings.

131 I am satisfied on the evidence that Leeson did not know the location of the anomalies when he left Chevron and further that he did not divulge to Home, or any of its employees, any information he may have known about Chevron's Wolf Creek play or Chevron's exploration and seismic in the Wolf Creek area.

132 Leeson did not know that the Guaranty Trust Company was an undisclosed agent of Chevron, but guessed such to be the case.

133 Leeson advised Waddell that he suspected that Nairb was probably Chevron, and admitted this was technically a breach of confidential information. He revealed his suspicion not for the purpose of communicating any valuable confidential information to Home, but on the contrary he did not wish to create a problem if the identity of the party drilling that well had assumed any importance in the eyes of Waddell or Paulson.

134 On examination for discovery evidence read in at trial on this matter, Waddell stated:

> Q. Had Mr. Leeson told you that he thought the Nairb well was really being drilled for Chevron?
> A. He told me that he suspected that it might be.

135 At trial Waddell was asked what significance the identity of the drilling company had on him:

> Q. What significance did the identity of the company drilling that well have to you?
> A. Well, the identity of the company essentially had no significance. The ...
> Q. What was significant to you?
> A. The nature of the discovery, the fact that it was a very strongly rumoured D2 oil and gas discovery. There had been quite a number of discoveries in Alberta that had been by independent companies and smaller companies, and the fact that this discovery might have been made by an independent had no bearing on the magnitude of the discovery.

136 It was the significance of the discovery that was important. Dr. Henderson agreed on examination for discovery that in light of the knowledge that industry had of the type of company Nairb was, that industry would quite possibly surmise that Nairb was drilling for another company.

137 Home obtained a considerable amount of information about the Nairb discovery well from perfectly legitimate sources. Any exploration company, including Home, was at liberty to exploit information available in the industry market and Home was under no obligation to refrain from exploiting it merely because its then exploration manager was a person who had just previously worked for Chevron. In my view there is nothing sinister or indeed suspicious about the dealings

between Home and Texaco.

138 Texaco wanted to make a deal on Township 50 and tried by letter to interest Nairb in late January 1977, but Mr. Johns replied "Frankly we aren't very enthused about it, but appreciate you calling us". The fact is that Chevron did not instruct Nairb to nail down Township 50 even after the discovery well blew on January 17th, all of which is probably due to the fact that Chevron had not discovered any anomalies within the township. Chevron's seismic showing on the north border of the township was at best "a lead". Clearly, Chevron did not feel Township 50 was one of its priorities. Although Texaco advised Nairb that the only acreage it had available was in Township 50, nothing further was heard from Nairb.

139 Home was anxious to take advantage of the Alberta Government incentive drilling program. The credits from the provincial scheme were such that an oil company encountered little cost in its gamble for new oil discoveries. Anyone in the industry would realize on reading the Daily Oil Bulletin that the Nairb well was a significant discovery. Any company employing scouts would receive early information, as did Home, that the well was a significant discovery. The land sale of $1,015.00 per acre represented an unheard of price at the time and should have alerted the industry, as it did Home, that a major discovery had occurred. Indeed, Dr. Henderson agreed that information pertaining to the Nairb well would very quickly become known to other companies in the industry, and that Home should not have a lesser opportunity than other companies to exploit any information it might legitimately obtain about the well. A perusal of the minutes of Home's domestic weekly exploration meetings (exhibit 264) provides a reflection of what occurred at Home insofar as the West Pembina area is concerned.

140 Leeson and Waddell first discussed the possibility that Home should take some action in the West Pembina area on February 9th after considering the scouting reports and on learning of the unprecedented land sale of February 8th of $1,015.00 per acre. It is clear that the industry was aware that Chevron was vitally interested in the area at least as early as February 15, 1977. Nairb's relationship with Chevron was disclosed by Bristow's announcement on April 4, 1977. The Nickle Bulletin of April 5th proclaimed to the industry that the Guaranty Trust Company had represented Chevron in the earlier land acquisition. On April 19 the Bulletin not only highlights the Nairb well, but mentions the D2 formation and points out the fact that several operators have joined in the search of oil in the deeper formations. It was after Bristow's announcement that Home made its first firm offer to Texaco.

141 Although the identity of the drilling company was known to Home and its senior officers as a result of Leeson's admission, I cannot find that Home gained any advantage or confidential information as a result of Leeson's admission.

142 There is nothing actionable in an employee, after terminating his employment with one company, using in a new employment the knowledge he acquired in his former employment so long as he does not divulge or use confidential information.

143 Leeson is free to use the general geological knowledge acquired by him during his service with Chevron. He need only blot out of his memory knowledge of matters deemed to be of a confidential nature. He did not know the location of the anomalies and there is absolutely no evidence that he attempted to divulge where he thought the anomalies might be located. He knew from his general knowledge as a geologist that the Nisku Barrier Reef trended from north-east to south-west in the Pembina area running parallel to the Nisku Reef. The trend was also known to Mr. Cowper who mapped it in 1971 and again for Home in 1977. The direction of the trend is not a specific thing nor is the exact location of the Nisku shelf edge specific. There is no evidence that Leeson made use of any confidential information or that Home sought or endeavoured to elicit confidential information from Leeson.

144 Home was entitled to exploit all available information from legitimate sources. The fact that it was Chevron that had made the discovery, is not in itself significant. Provided that Leeson did not divulge either directly or indirectly, any confidential information relating to the discovery, then it cannot be said he is guilty of any breach of confidential information.

145 When an employee moves to a new job he can always avoid any possibility of difficulty by doing absolutely nothing. If an employee indicates to his new employer that he cannot talk about a particular area as that is an area in which his former employer was active, this in itself might be giving away confidential information.

146 There are many cases involving allegations of breach of contract and breach of confidentiality and each case embraces facts distinctive from the others.

147 On the whole of the evidence I cannot find that Leeson divulged any trade secrets to Home or any of its employees or agents. Leeson did not disclose to Home or any of its employees or agents, the fact that Chevron had found seismic anomalies believed to be pinnacle reefs of Upper Devonian age. I am satisfied that Leeson did not know the location of Chevron's anomalies and further that he did not reveal to anyone where he thought the anomalies might be located. Although Nairb was an undisclosed agent, no advantage was gained by Home through the revelation that Nairb was in fact Chevron. I am not satisfied that Leeson even knew Guaranty Trust was acting as an agent for Chevron. Leeson guessed Guaranty Trust was acting for Chevron. There is no evidence, implied or otherwise, which would indicate that Lesson divulged any details which might be considered of a confidential nature pertaining to Chevron's exploration and seismic program in the Wolf Creek or Prime Prospect areas.

Liability Arising Prom the Real Possibility of Misuse By Home

148 Authority is advanced for the proposition that in order to overcome the difficulties facing a plaintiff in trade secret cases, in the face of denials from the defendant, the courts have developed the proposition that the real possibility of misuse will fasten Home with liability.

149 In Boardman v. Phipps [1967] 2 A.C. 46 (H.L.) dist. Lord Upjohn stated at page 124:

> The whole of the law is laid down in the fundamental principle exemplified in Lord Cranworth's statement in Aberdeen Railway v. Blaikie where he said:
>
> > And it is a rule of universal application that no one, having such duties to discharge, shall be allowed to enter into engagements in which he has, or can have, a personal interest conflicting, or which possibly may conflict, with the interests of those whom he is bound to protect.

And further, Lord Upjohn states at page 124:

> The phrase 'possibly may conflict' requires consideration. In my view it means that the reasonable man looking at the relevant facts and circumstances of the particular case would think that there was a real sensible possibility of conflict; not that you could ignore some situation arising which might result in a conflict.

150 The English decision in Hivac Ltd. v. Park Royal Scientific Instruments Ltd. and Others, [1946] 1 Ch. 169 (C.A.), is relied on by Chevron in the instant case to illustrate a situation where the court acted on the probability or misuse of confidential information. In that case the court found that the employees had knowingly, deliberately and secretly set themselves to do in their spare time something which would inflict great harm on their employer's business and although there was no evidence that these employees had access to or divulged confidential information, the court granted an interlocutory injunction.

151 The proposition that the possibility of misuse of confidential information will fasten a party with liability is, insofar as a case of this kind is concerned, an astounding proposal to say the least. In my view, this doctrine cannot have application in the case at bar. The Boardman decision, supra, involves trustees and fiduciary obligations. The Hivac case deals with the obligation of fidelity by an employee to his employer, and in particular, deals with the actions of employees being carried out knowingly, deliberately and secretly.

152 To say that this doctrine should apply in this case would make it extremely difficult for employees to move from one company to another. It is essential that individuals always be entitled to improve their position by changing jobs, so long as they do not, in the process, divulge to the new employer, or his agents, information that may be considered confidential. To hold otherwise would virtually make employees prisoners of their employer. A person must have the right, if he chooses to exercise it, to improve his employment opportunities.

153 The application of the 'possibility of misuse doctrine' in cases of this kind would have resulted in Mobil oil being granted an injunction against Nielsen and Canadian Superior. There must be more than a mere possibility of misuse to settle liability on a party. Suspicion of misuse of confidential information is insufficient - there must be real evidence.

154 The duties of protection of trade secrets arising out of one's employment survives his termination of employment and carries forward with the employee until the trade secrets expire. It is clear in the instant case that most, if not all, of the trade secrets would be made public at the expiration of one year, when, by virtue of the policies of the Conservation Board, the well information would be released to the industry.

155 The revelation by Leeson to Waddell and Paulson of his suspicion that Nairb was probably Chevron, was not due to an improper motive on Leeson's part, and, if anything, is an indication of his integrity and good faith. Chevron has not satisfied its burden of proof with respect to the matters alleged in the statement of claim.

156 I do not propose to deal with the law relating to a constructive trust, as I am satisfied on the evidence that all of the allegations put forward by Chevron in the statement of claim are without foundation.

157 I find that Home Oil conducted its business in a fair manner, in a competitive industry, and did so without seeking and without the benefit of information which might have been confidential to Chevron.

158 In the result, the statement of claim is dismissed. Costs may be spoken to.

qp/s/qlabr/qlkfw