

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Toronto Region)**

B E T W E E N:

**HER MAJESTY THE QUEEN**

Respondent

- and -

**THE NATIONAL POST, KENNETH WHYTE  
and  
ANDREW McINTOSH**

Applicants

**AFFIDAVIT OF JOHN SAWATSKY**

I, JOHN SAWATSKY, of the City of Ottawa, in the Province of Ontario, MAKE  
OATH AND SAY AS FOLLOWS:

1. I am a journalist, author and educator. I earned a Bachelor of Arts in political science from Simon Fraser University in 1974.
2. I began my career in 1970 as a reporter at the Vancouver Sun, where I worked until 1974. From 1974 to 1975 I worked as a research coordinator for the British Columbia Petroleum Corporation. In 1975 I returned to the Vancouver Sun as their Ottawa Correspondent, a position I held until 1979.

3. I am the author of five investigative books: *Men in the Shadows: The RCMP Security Service* (1980); *For Services Rendered: Leslie James Bennett and the RCMP Security Service* (1982); *Gouzenko: The Untold Story* (1984); *The Insiders: Government, Business and Lobbyists* (1987); and *Mulroney: The Politics of Ambition* (1991). I am currently writing a book on interviewing.

4. I am the recipient of several professional awards and honours which include: a Michener Award for meritorious public service in the field of journalism (1976); Best Non-Fiction Paperback of the Year award for *For Services Rendered* (1983) Outstanding Alumni Award for Professional Achievement, Simon Fraser University (1988); Ottawa Citizen Book of the Year for *The Insiders* (1988); Ottawa-Carleton Book Award for *Mulroney: The Politics of Ambition* (1992); and finalist for the Trillium Award for *Mulroney: The Politics of Ambition* (1992).

5. I have lectured at various universities for the last twenty years in the field of journalism. From 1982 to 1984 and again from 1985 to 1990, I was a sessional lecturer at the School of Journalism and Communication at Carleton University. In the 1984/1985 academic year, I was the visiting Max Bell Professor of Journalism at the University of Regina. Since 1991, I have been an adjunct professor at the School of Journalism and Communication at Carleton University. In 1991, I spent a week as the Maclean Hunter Professor in the School of Journalism at King's College at Dalhousie University in Halifax. I have also lectured at the School of Journalism, Ryerson Polytechnic University, all three journalism schools in Sweden

and at the major journalism schools in Norway and Denmark. The main interviewing course taught at the latter institution is based on my interviewing methodology.

6. Currently, I spend a great deal of time conducting regular interviewing workshops in newspaper news rooms across Canada, including the big dailies in virtually every major market in the country. Since 1994, I have conducted all the interviewing instruction for the Canadian Broadcasting Corporation (CBC), both in television and in radio for national and regional programs. I have also done extensive training of journalists in the United States. In the last four or five years, I have spent about five months in Scandinavia and Finland, where I lecture and conduct training sessions. I also make two annual visits to Singapore where I conduct a series of workshops for Singapore Press Holdings. I have lectured at the European Journalism Center in Maastricht in the Netherlands. I have also conducted training sessions in Malaysia. Attached hereto as Exhibit "A" is a true copy of my *curriculum vitae* which further details my experience and credentials.

7. In 1982, I wrote a book entitled *For Services Rendered: Leslie James Bennett and the RCMP Security Service* about the search for a suspected KGB mole in the Royal Canadian Mounted Police (RCMP) Security Service. Leslie James Bennett, an RCMP civilian member, was had been dismissed from the RCMP but has since been exonerated. In *For Services Rendered* I also examined the "Long Knife" case. Long Knife (a pseudonym) was an RCMP intelligence officer in the 1950s, whose job it was to conduct surveillance of Soviet embassy personnel in Ottawa. For a period of time, he took money from the Soviet KGB in exchange for state secrets. Eventually, Long Knife's

duplicity was discovered but no charges were laid at the time under the *Official Secrets Act* and the matter was covered up and remained unknown to the public for twenty-five years. In researching the book, I uncovered the story and confronted Long Knife with it. After promising him that I would not reveal his true identity, he confessed to me and gave me details of his actions as a double agent. From this point on, I only ever referred to him by his RCMP pseudonym, Long Knife. At the time my book was published, *the fifth estate*, a CBC television program, expressed interest in interviewing Long Knife. With Long Knife's consent, I put him in contact with *the fifth estate* and he agreed to be interviewed on air in a disguise. The program attracted a great deal of attention.

8. An investigation into the events described by Long Knife and reported in my book was undertaken by the RCMP. Former RCMP Corporal James Douglas Finlay Morrison was eventually charged under the *Official Secrets Act* with unlawfully communicating secret information to Soviet agents, unlawfully communicating secret information to unauthorized persons and unlawfully conspiring with Soviet agents to commit an indictable offence contrary to the *Criminal Code*. The authorities, relying on the detailed account of Long Knife's crimes in my book, wanted me to testify at Morrison's trial, alleging that my testimony was relevant to proving that the man on trial and Long Knife (as described in my book) were one and the same person. The RCMP raided my house and seized some material. It also raided my publisher, Doubleday Canada, as well as the CBC and the Winnipeg Free Press, both of whom had covered this story.

9. Eventually, I was served with a subpoena requiring my attendance at Morrison's preliminary inquiry. When I attended to testify, I refused to divulge Long Knife's identity. The Crown withdrew the questions so that no issue arose as to whether I was in contempt. Later, I was served with another subpoena for Morrison's highly publicized 1983 trial. At a voir dire at the beginning of the trial, I again refused to answer questions from the Crown Attorney and defence counsel about the identity of Long Knife. I was adamant that I would keep my promise of confidentiality that I had given to my source. Before the court was called upon to make a final ruling in respect of my refusal to answer the questions, Morrison pled guilty. Morrison was sentenced to 18 months in jail. However, there is no question in my mind that if ultimately faced with the choice of betraying my source or going to jail, I would have gone to jail. I always stood firm on the issue, despite pressure from the people around me, including my own lawyer, who wanted to keep me out of jail. At the time, I felt terrible that my source would be worrying about whether I would "break" and betray him. That was never even a consideration in my mind. There were no outstanding threats to national security, since the damage done by Long Knife had been done nearly three decades earlier.

10. When I was served with the subpoenas I prepared a statement for the court that outlined my reasons for refusing to divulge sources. I cannot recall if I ever presented the statement to the court or not. Today, I stand by the sentiments expressed in that statement as strongly as I did then. Attached hereto and marked as Exhibit "B" to this my affidavit is a true copy of this statement.

11. This statement also sets out my views, which I continue to hold, about the insidious consequences of journalists becoming or being seen to be agents of police and prosecutors, particularly in circumstances when they are used to identify confidential sources who provide information that serves the public interest.

12. I would describe my experience in the Long Knife case as a near miss. If I had refused to identify Long Knife in open court, I could have been charged and convicted of contempt of court. I have little doubt that a conviction would have impeded the international work that I now do by making it more difficult to travel to and work in foreign jurisdictions. The thought that a conviction could have prevented me from doing the work I do now is distressing to me as a journalist and as a Canadian citizen. In the years following the Long Knife case, I developed a comprehensive interviewing methodology which is becoming an international standard for interviewing and which is widely regarded as making a significant contribution to journalism. Had I been convicted, this methodology would not have been developed.

13. In my current work teaching interviewing principles, I have occasion to speak with numerous journalists employed in both the print and broadcast media. Not infrequently, I discuss the role that a promise of confidentiality can have in obtaining information or documents which a journalist believes are in the public interest to disclose. On these occasions, I actively promote the view, taught in journalism schools in Canada and universally accepted by journalists in the western democratic world, that when a journalist gives a considered and unqualified promise of secrecy, that promise must not be broken.

14. In my experience, this is a generally accepted and fundamental precept of ethical journalism. The ability of a journalist to give such a promise is essential for without it information of great public interest and importance would not be brought forward to the public's attention.

15. The books that I have written could never have been written without reliance on confidential sources. I expressed this fact on the acknowledgments page in *For Services Rendered*, where I wrote; "My biggest thank you must go to the many people whose interviews provided the substance for this book. Unfortunately, I cannot name them but without their help this book would have been impossible."

16. I believe that a vigorous free press is dependent upon the ability of a journalist to obtain information using such promises. The foremost responsibility of a journalist is to provide the public with as much information as possible about the public's business. Members of the public should know the sources of this information so that they can come to their own decisions about its veracity. However, this is not always possible, particularly in the context of investigative journalism, because a source can have well-founded fears of the consequences of his or her identity being disclosed. The only justification for a journalist promising the source that his or her identity will be kept secret is that the promise enables the journalist to obtain the maximum amount of information possible from the source. A journalist should agree not to disclose a source's identity only if the source's fears of disclosure are well-founded and if it maximizes the journalist's ability to inform the public. Much information would never be available and placed in the public domain without such promises. For example, when I

commenced my interview with Long Knife, we did not have any understanding about confidentiality. He talked about the nature of his duties as a surveillance agent but provided no information about how he had sold intelligence to the KGB. Nearly half-way through the interview, when I realized that I would not get any more information from him, I offered to protect his identity in return for further information and he immediately confessed his crimes.

17. The difference a promise of secrecy can make to a journalist's ability to do his or her job can also be illustrated with an example from my experience as a teacher. I first started teaching at Carleton University's School of Journalism and Communication in the fall of 1982. Professor Joe Scanlon and I jointly taught the fourth-year course on investigative journalism, which that year explored the lobby industry in Ottawa. Our students spent most of the school year conducting oral interviews with people knowledgeable about this activity. All interviews were to be performed on the basis of full attribution. It was not the way I normally would have proceeded on a difficult issue such as this, but I was under the impression that Professor Scanlon wanted it this way. From the very beginning, the results proved less than satisfactory. It was obvious that people simply were not forthcoming and that our investigation was failing to meet our primary goal, which was to penetrate the lobbying world. Fairly early on a former high-ranking civil servant stated in one of these interviews that our project would not get very far if we did not offer people the protection of anonymity. At that point I broached Professor Scanlon with the need to reassess our attribution policy, and he readily agreed. It turned out that all along he had believed that full attribution would prove to be stifling, and had supported this policy only because he thought I wanted it. We immediately changed our policy and it was like turning on a faucet; information suddenly started to flow. It confirmed for me what I had already

learned from years of experience: that people divulge more essential and sensitive information when given the assurance of anonymity. This research made an important contribution to the project that ultimately resulted in the publication of my fourth book, *The Insiders: Business, Government and the Lobbyists* (1987).

18. It is a common occurrence that a confidential source who provides information or documents to a journalist does so in breach of a duty of secrecy or fidelity the source owes to his or her employer. With respect to government sources, often the disclosure breaches a statute. For example, a substantial amount of the information Long Knife shared with me was given to me in breach of the *Official Secrets Act*. Such breaches by sources are justified when the disclosure is made in the public interest -- when, for example, the disclosure concerns a wrong that ought to be corrected and the only way to bring about this result is to bring the matter to the public's attention with a journalist's assistance. The disclosure of confidential information has been recognized to be in the public interest even if it is in breach of a statutory or other obligation imposed on the source. This has been recognized in legislation passed in the United States where protection has been extended to "whistle blowers" in certain jurisdictions.

19. It is my belief that given the centrality of a promise of secrecy to the obtaining of important information and to a free and vigorous press, the court should recognize and protect this relationship between a journalist and a source. I would put this relationship on the same footing as that between a solicitor and a client, which relationship is essential to the pursuit of justice by the courts. The legal system and a free press are both important pillars of our democratic society, and are essential to preserving democracy and freedom. From time to time,

the interests of the legal system come into conflict with the interests of the press. I accept that there may be rare cases where the compelling interests of the judicial system outweigh the competing interests of a free press. In identifying those rare cases where a promise of secrecy or confidentiality should be set aside by a court, it is my view that the approach taken by the court should reflect the same level of deference to the press as is shown to the solicitor/client relationship. Only such a protection sufficiently reflects the role of a free press as one of the pillars of our society. It is my understanding that the privilege accorded to solicitor/client communications can be set aside when innocence is at stake. I do not suggest that the privilege that should be accorded to journalists should be of a higher order than this. Currently, however, the courts have failed to define adequately the nature of the protection to be offered to journalists and sources and the conditions under which a promise of secrecy would be set aside. As a result, journalists are rarely left with any opportunity to do anything other than defy an order of the court to disclose a source and risk going to jail.

20. The setting aside of a binding promise of secrecy must be distinguished from situations in which the journalist concludes that he or she is no longer bound by the promise. One such situation is when the source deliberately lies to the journalist. When this happens, the source has betrayed the trust the journalist placed in him or her and has deliberately attempted to subvert the journalist's paramount duty to accuracy. On the other hand, the same cannot be said of a source who passed along false information genuinely believing it to be true. In such a case, the promise of secrecy still binds the journalist.

21. It is imperative that the journalist make his or her own decision about whether the information is true or false and about whether the source has deliberately attempted to mislead him or her. Obviously, this decision should be made prior to publication or broadcast.

22. Only the journalist has no vested interest in the information. His or her interest is to inform the public by giving it the maximum amount of information possible. On the other hand, not surprisingly subjects about which one writes usually have a vested interest in the matter and frequently wish to suppress or discredit uncomfortable truths. In my own experience, this is equally so with government agencies and officials. For example, when I wrote stories about illegal activities on the part of the RCMP in the 1970's, my disclosures were met initially with steadfast denials by the RCMP and by the Solicitor-General. I was accused of being a “yellow journalist” — sensationalizing the stories and misleading the public. Nevertheless, the public discussion that ensued from the publication of my stories led to the creation of the McDonald Commission, a royal commission of inquiry into RCMP wrongdoing. The McDonald Commission investigated and ultimately confirmed the events I described. Following the recommendations of the McDonald Commission, the Canadian government later created the Canadian Security and Intelligence Service, a civilian service separate and apart from the RCMP. My own work was recognized with a the Michener Award for meritorious public service in the field of journalism, one of the most prestigious awards in Canadian journalism, for one of these stories.

23. A journalist who receives information on the basis of a promise of secrecy shoulders a greater responsibility for ensuring the accuracy of the information if they intend to

publish it than if the information is received from an identifiable source. This greater burden is reflected in the need to have a higher degree of confirmation before the information is published.

24. A promise of secrecy like I have described must be distinguished from other sorts of undertakings that journalists make to sources. Journalists sometimes speak to sources on the understanding that the discussion is “off the record”. As I understand this phrase, it means that the information cannot be used. I view this undertaking as inappropriate for a journalist to make because it is inconsistent with the journalist’s duty to inform the public. The only reason a journalist should collect information is with a view to being able to report it. I should stress, however, that “off the record” is commonly understood to mean “not for attribution”, which is a condition a journalist may agree to in certain circumstances. In my own experience, sources often tell me that their comments are “off the record” but when I explore the subject further it becomes clear that what they really mean is that they do not want to be quoted. This type of understanding differs in kind and in importance from a considered promise of secrecy, which is a solemn commitment of the highest order.

25. If journalists break their promises to sources, some essential sources will never speak to journalists and investigative projects into important subjects could not be undertaken. Consequently, the public would be deprived of important information that they both need to know and are entitled to know.

SWORN BEFORE ME at the City )  
Of Ottawa , in the Province of Ontario, )  
this 10<sup>th</sup> day of October, 2002. )  
)

\_\_\_\_\_  
JOHN SAWATSKY

\_\_\_\_\_)  
Commissioner for taking affidavits, etc.

## *Reasons for Refusing to Divulge Sources*

I would like to explain my position to the court. I want to make it clear that my position in no way suggests lack of respect for the court or anybody appearing before this court. I believe the court has a vital responsibility in seeing that justice is done.

Society must assist the court in carrying out its duties and I do not seek an unqualified exemption. If, as a citizen, I witness an accident and the court issues me a subpoena I would see it as my duty to give conscientious testimony and generally do what I reasonably can to assist the legal process. I would do so even in my role as a journalist when I have been a third-party witness. In fact my cooperation goes further as it clearly has here already today. I have made a genuine effort to answer questions as fully as I can. However I cannot provide source-sensitive information when the sources have been promised anonymity.

My role as a journalist is to put information on the public record. I have specialized in areas where little documentary material has been available to the public. Consequently most of my information comes from oral sources -- who sometimes need to be convinced into talking -- and this from time to time puts me into a position of being responsible for their anonymity. Such undertakings have enabled me to reveal stories that have served the public interest and would otherwise never have been revealed. Non-attribution is the basis on which some people talk to me and my ability to serve the public interest hinges directly on this trust.

The court's probing causes me two major concerns.

First, the court wants me to breach an express undertaking of confidentiality and violate and undermine an historic ethical practice of my profession. I believe it is wrong for the court to make this demand. Some people have entrusted their careers in my hands. If I discard this commitment I break my personal word and dishonour a fundamental rule of journalism, a rule that is virtually an oath. I feel I simply have no discretion here.

That is the ethical side. There is also a practical side. In reality the court is requiring me to sacrifice my livelihood, betray sources I cannot continue to function as a journalist. This is no philosophical issue. It is a continual reality for me. I conduct several long, probing interviews a week and I am only as good as the respect and confidence I receive. If I fail this responsibility here today, people will stop trusting me and my effectiveness will evaporate. Trust is hard to earn and easy to lose and I've spent years earning the trust of others. The court is asking me not only to answer a question but to forsake a career of 15 years.

As I said earlier, I see a duty to cooperate with the court. But ethically and practically the consequences of betraying sources are worse than any penalty the court is likely to impose. I cannot comply with the court's demand. I want to make it clear I feel obligated to stand firm to the end.

I was able write *For Services Rendered* and only because people trusted me. I first leaned of the Long Knife case in October or November of 1977 while researching my first book, *Men in*

the Shadows. I tried but could not flesh out the story. So I dropped it. As far as I was concerned the Long Knife investigation was over and dead. Unexpectedly, my career changed course and I found myself writing a second RCMP book, which turned out to be *For Services Rendered*. By this time *Men in the Shadows* was published and some key people saw how carefully I protected sources. THAT was when the Long Knife investigation got back on track. I mention this to illustrate the direct correlation between the level of trust in me and my ability to reveal the Long Knife story. The Long Knife case is only one example.

This trust has carried over into my current research into lobbying. One lobbyist volunteered he was talking to me because of the way I had obviously treated sources in my RCMP books.

Let me provide a hypothetical example of how an overreaching court can harm the public interest. If an influence peddler told me he was bribing the government I think everybody agrees the practice should be exposed and halted. No influence peddler will describe his activities if he believes I will become the Crown's star witness against him. Otherwise he might as well confess to the police. I would be a de facto policeman. The press would be crippled because, not surprisingly, sources would treat us as policemen rather than journalists. Everybody would suffer, including the court. Without an effective press, criminal cases that otherwise would have been exposed would never reach the court. The court cannot act on cases it never hears. So in the end our system of justice and -- all society -- would be damaged.

My role, which I take very seriously, is to inform the public so that the public can make independent and enlightened decisions for better or for worse. I'm not so much interested in what decision the public makes so long as it has access to as many facts as possible. Once I become an agent of the court, the police, or any other institution my role is compromised.

I take this stand not only for myself. I have given this matter considerable thought recently and have discussed it with colleagues. They agree I have no alternative. One colleague said: "John, you're doing this for all of us. Otherwise we couldn't function either.

It is impossible for a free society to operate without a free press. The role of the press must be respected and allowed to flourish. I realize the court has a job to do. I hope the court acknowledges that the media also have a crucial job to do.