THE LAW UNION NEWS

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Resales: Rent Review Rip-offs

By Richard A. Fink

At hearings before the Residential Tenancy Commission, it is not uncommon for landlords to try to extract $250,000 or more in additional rent from tenants. This is more money than in all but the largest civil cases, yet the media virtually ignored the issue until the recent "Cadillac Fairview Deal." The sale of 11,000 Cadillac units to Greymac (who then sold to Kinderkin, who then sold to other wheeler-dealers ...) attracted attention because of its very size: 16,000 people faced immediate rent increases of 40 percent.

But there is nothing original in the Cadillac caper. For the last two years Canadian landlords have been selling their buildings to foreign investors and themselves for 50 to 100 percent more than what the buildings were worth at the last sale or at the time of construction. Besides providing highly profitable capital gains, these sales help landlords bypass rent controls. The Residential Tenancies Act has allowed landlords to pass on the new financing cost to their tenants over the course of three years. Thus if an apartment sale resulted in a 100 percent increase in financing charges, the tenants would face rent increases of more than 30 percent annually in addition to all other increases resulting from higher operating and capital costs that the landlord incurred.

The three-year amortization rule ignores the fact that many landlords hold properties as long-term investments, and do not expect to break even on them for up to ten years. The Residential Tenancy Commission does not distinguish between speculators, whether foreign or domestic, and bona fide purchasers who obtain the buildings not to "flip" them over for immediate profits but as a long term investment. Section 93 of the Residential Tenancies Act requires the Commission to "ascertain the real substance of all transactions and activities relating to the residential complex" when "determining the real merits and justice of the case." In practice, the Commission will accept that a transaction is arms-length on the strength of representations by the landlord's consultant and his lawyer's reporting letter — and usually that ends the investigation.

The Commission thus becomes a rubber stamp for landlords bent on increasing rents by as much as the market will bear. Even before the Cadillac affair, one building in Toronto was sold five times in six years; the last sale, for a $700,000 profit, occurred one day after a landlord's consultant assured the Commission that the building was not held for speculation. Another building was sold twice within a few months, effectively doubling its market value. One of these sales was to a person in Hong Kong, but in many such cases the non-resident buyer (whether Chinese, Arab, Swiss, or whatever) is simply acting as an agent of the Canadian landlord.

In Metropolitan Toronto, it is not difficult to find a two-bedroom apartment unit renting in excess of $600. The goal of all landlords is to reach this rent level immediately.

Placed on the defensive by the furor over the Cadillac deal, Consumer and Commercial Relations Minister Robert Elgie announced November 16 that rent hikes based on financing costs of buildings purchased after November 1 would be held to a 5% annual ceiling. This will still mean that the former Cadillac tenants face increases of more than 25 percent — 8% for increased operating costs; 8-9% for capital costs; and 5% allowed for financing — on the basis of current average allowances by the Commission. Many other tenants, unaffected by this change in the legislation since it is not retroactive, face increases of 35 percent or more. Yet their wages (for those still employed) are rising by only 6 percent per annum.

Dr. Elgie told the Legislature that the Government's policy was to give landlords a reasonable return on their investment and ensure they are treated fairly. Yet landlords are unhappy with any system that does not allow them to charge market rents — which would easily be the equivalent of $750 to $1,000 without rent review.

Fundamentally, the situation is similar to that in countries where agricultural land reform is the dominant issue. Who should have the land — the tenants who work the fields (or who live in the buildings) or the landlords who own them? Modest reforms that tinker with the market while failing to come to grips with the underlying questions of ownership and control are doomed to failure. In Russia and China, the struggles of the tenant-peasants led to revolution. In southern Ontario, too, the battle is an explosive one, because it is over the right to one's home.

Since rent review was instituted six years ago, tenants in Metro Toronto have organized primarily on a defensive basis. Tenants in individual buildings band together in tenants associations to fight rent increases before the Residential Tenancy Commission. When the hearings are complete the association usually falls dormant. On a city-wide basis, the Federation of Metro Tenants, an umbrella group of tenants associations, has been invaluable in helping to organize associations in various buildings, lobbying the Government for changes in the legislation, and spawning Metro Tenants Legal Services, a legal aid clinic. A major shortcoming has been the Federation's inability to link local associations in a neighborhood together into a stronger community tenants' organization. Part of the problem is that rent increases usually only affect a minority of tenants in a given community at any particular time. Another factor is a personnel shortage at the Federation, and an overemphasis on case work by paralegal workers employed by Metro Tenants Legal Services.

Recently the Federation, assisted by a City-funded organizer, has worked with the Cadillac tenants to help link together the various complexes throughout the Metropolitan area. The task ahead is to create community tenants' associations with sufficient force of numbers to pressure politicians into enacting greater protection for tenants against escalating rents.

The Bathurst-Eglinton (Ward 11) Tenants Association is a community organization of 75 buildings. To date it has been successful in lobbying to save

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Charter Cherubs Snared By Rituals

By Charlie Campbell

Charter cherubs are troubled by the Sunday closing debate. The Christian Sunday is the statutory day of rest. Jews and other religions for whom Saturday is the Holy Day are thus compelled to honour someone else's religious rituals. More to the point, if they close their businesses Saturday for their own religious observances they are prevented from opening Sunday. They lose two days, instead of one.

Should there be one day when all businesses are closed whether the reason is religion or football? Many say yes. Conlaw types say the government could rewrite the legislation so that Sunday closing is based on secular and not religious reasons. But then there are those who like to shop – all the time – and those, more important, who like to sell all the time. Sunday retailing is common in many parts of the U.S.

Charter Chatter

When the same issue came before the U.S. Supremes the Sunday closing laws were upheld. See *Braunfeld v. Brown, 366 US 599.*

The Alberta Court of Appeal in the case of *Big M* overruled the *Lord's Day Act* (Can). The Red Nine have heard and reserved on that one. And *The Retail Holidays Act* (Ont) has recently been before the Ontario Court of Appeal.

One thing is certain. Law libraries will always be open on Sunday.

GAG RULE

To Tim Danson goes the honour of First Victim of the Law Society's Gag Rule. Danson was acting on the Sunday closing case before the Court of Appeal and was invited by CITY-TV to be interviewed. But the Discipline Committee said its new rule forbid it – and Danson was silenced on the issues of the case. The new rule supposedly prohibits interviews with the press about court proceedings because they "invite the inference that it was given to publicize the lawyer and carries with it the danger of being in contempt of court."

To Larry Greenspon goes the honour of starting the current crack-down. The Red Nine were so upset with his Courtstep interviews in the dismantle case they blasted him in Court then ordered a video replay of his TV performance for their private scrutiny.

The benchers know they're full of bull on this one. Discom heavy Jim Carthy admitted they'd have to look at the "wording" of their edict. Let's see if better wording can fix it! Good luck, Jim!

Meanwhile there's panic at the G&M terminals. A good half dozen reporters will have nothing to say if their legal sources dry up.

And to whom will go the honour of being the Charter martyr on this hot topic? The game is called You Bet Your License.

LANGUAGE LITIGATION

Did any of us – except John-Boy Turner – doubt that the Manitoba French language dispute would be litigated! What was the Charter created for? John-Boy has been sleeping in those Golden Towers all these years.

TALKATHON

If Morris Manning talks 16 days in Round One of the great abortion case how old will Berta Wilson's grandchildren be when he's finished before the Red Nine?

FREE PRESS NEED NOT APPLY

Edmonton Journal and A.G. (Alta), soon to be reported is a

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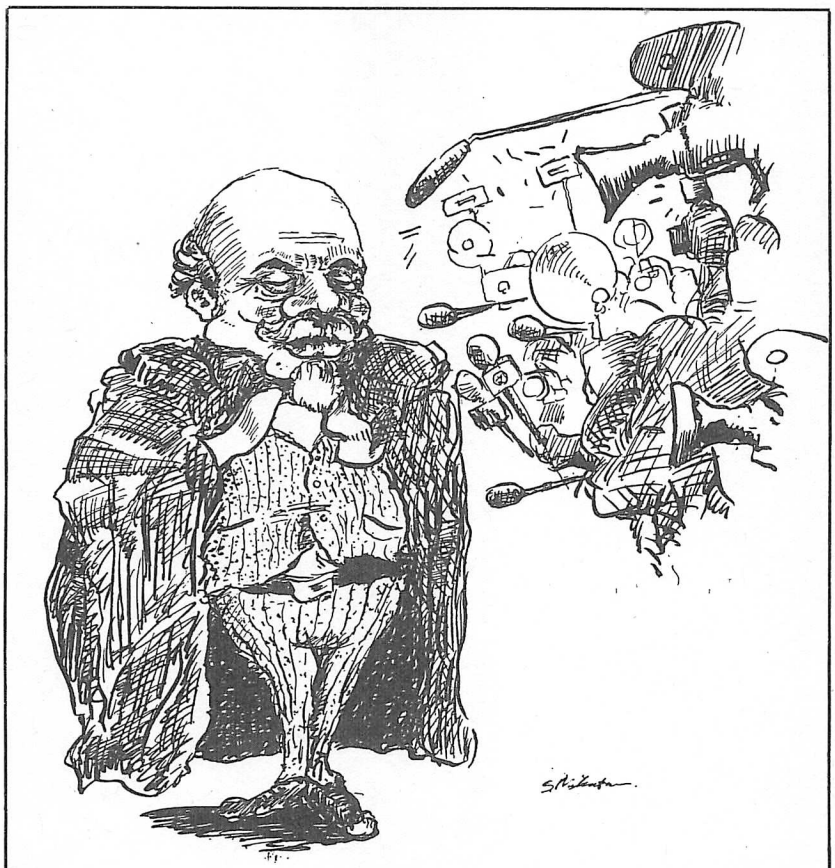

"We Benchers Will Deal Very Severely With Lawyers Who Tout Themselves and Their Cases In Front Of The Media."

Steering Committee Reports On Year

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Oct. 15th day of protest evolved in Toronto into a day long workshop at City Hall attended by 75-100 people; Security Collective is again fighting Kaplan's revised Security Bill and interested LU members can contact Paul Copeland or Jack Gemmell.

Legal Aid Panel: Paul Copeland is attempting to gain a position for a LU representative as an observer on the Legal Aid Panel of the Law Society.

Federal Committee on Taxation of Artists: Paul Sanderson of the Cultural Collective has been authorized to submit a brief on behalf of the LU and to attend before the Committee to present the LU position.

Working Collective Spring Efforts: Workers' Compensation – March 26; Legal Aid – April 9; Women at Work – April 20.

Annual General Meeting of the Law Society: LSUC changed the rules relating to the annual general meeting to try to foil the efforts of the LU, to wit: the resolutions must pertain to the business of the LSUC; the Treasurer has final say on submission of resolutions; the resolutions will not be published in advance of the meeting; work is in progress to formulate "suitable" resolutions to submit for the meeting.

Nicaraguan Tour: Audrey Campbell is organizing a tour to Nicaragua which is tentatively scheduled for the fall.

ENDORSEMENTS AND SUPPORT

FAVAC conference on pornography.

CELA's call for an initiative saving plaintiffs harmless from costs in litigation where matters of public interest are in issue.

Support for Allan Sparrow in his defence against charges of sexual assault.

Kris Potapcyk sexual harassment action against Al McBain.

DONATIONS

Canadian Dimension magazine (LU listed as resource organization).

Canadian Action Nicaragua re: Margaret Randall's Canadian tour.

Telegram in honor of the 4th anniversary of the revolution in Nicaragua.

U of T chapter of LU (special events).

Guitar strings to be sent to Nicaragua.

Peace Caravan.

Charter Chatter: Trust Those Cops!

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prophetic little case from the pen of none other than Mr. Justice (snoop-only-within-the-law) McDonald. He says an inquiry under Alberta's *Fatal Inquiries Act* is not a "proceeding" to which Charter provisions on "free press" apply. (He distinguishes *Re Southam* which held the historic tradition of open Courts applied to Juvenile proceedings.) But an inquiry is not a court proceeding – get it! He could have said the confidentiality of the mental health records that were in dispute was a "reasonable limit". Nothing modest about His Lordship's position.

So this is how free speech will die! Only formal trial proceedings have to be open to press scrutiny. And they, as we all know, are becoming so expensive to be the frolic of the rich and the last stand of the desperate. The bureaucrats will impose secrecy on their deliberations, in the public interest, of course! And Charter guarantees of free press will be held inapplicable. So much for public scrutiny. All power to the bureaucracy!

ILLEGAL EVIDENCE

It is the duty of Charter Chasers to be optimistic even in the face of all adversity. But, dear readers, it is hard to keep the torch high in light of *R v Chapin,* 43 O.R. 458. There the Ontario Court of Appeal held that evidence obtained in a search even if it was "unreasonable" within the meaning of sec. 8 of the Charter was nevertheless admissible because its admission would not "bring the administration of justice into disrepute". The onus lies on the accused to prove the "disrepute". It was a nice policeman, after all, just checking a parked truck from another town that was open anyhow. "On seeing the case on the floor of the unlocked truck, it might have been appropriate to examine it, if only to safeguard it". It wasn't a "flagrant" abuse, says Mr. Justice Martin, or an invasion of privacy that was "gross".

Trust those cops! Trust those cops! Yea cops!

CHILDREN'S CHARTER

Kiddie champ Jeff Wilson tried two Charter hardballs on the Courts recently – and got blasted out of the park. In *Re Maw,* he took on the "hard to serve" provisions of the *Education Act,* sec. 34, demanding a hearing for his clients who were trying to get better educational services. No hearing, said the Court, you're from a different district. Charter? What Charter? Jeff's Charter arguments didn't even make the headnote!

And in *Re Ferguson* 440 O.R. (2d) 78, our distinguished windmill-tilter tried to crack the secrecy provisions of the adoption laws. (Just about Jeff's favorite project in all of history!) Quoth the Court of Appeal: We are unable to see how any of these sections of the Charter have any bearing whatsoever on sec. 80(1) of the *Child Welfare Act.*

We admire your style, Jeff, even if they don't.