

## No Help For Injured Workers

By Alec Farquhar

After four years of controversy and struggle, the Ontario government's "reform" process for Workers' Compensation has reached a crucial phase. With the tabling of a Standing Committee report on December 16, 1983, the stage is set for the introduction of legislation in the spring session of the Legislature.

Injured workers and their supporters believe that the extent of our mobilization before the session opens in April 1984 will largely determine the content of that legislation.

Many people, including Law Union members, have been puzzled by the fierce opposition of injured workers to the reform proposals advanced in 1980 by Paul Weiler and adopted by the government in the 1981 White Paper.

After all, isn't Weiler a liberal law-reformer? And isn't his scheme a rational re-structuring of Workers' Compensation?

It is true that a number of Weiler's

proposals are progressive, although often timidly so — especially the limited right of the injured worker to return to light work; the large increase in the ceiling on covered earnings; extending coverage to domestics; the tripartite (but only partially independent) appeal tribunal; and independent medical review panels.

However, the core of Weiler's package, his scheme for compensating the permanently disabled, is where much of the problem rests.

Weiler proposes to abolish the present fixed lifetime pension and substitute an "actual wage loss" benefit which would be reviewed annually and expire at age 65. The only guaranteed payment to injured workers would be a one-time lump sum (maximum around \$40,000 for a paraplegic) for pain and suffering.

Ironically, Weiler's "actual wage loss" scheme, which forces the injured worker to prove, year after year, that his/her income loss results from the

compensable disability, was tried in the early years of Workers' Compensation and rejected. Terry Ison, the leading academic expert, has condemned "actual wage loss" as a system that subjects injured workers to permanent surveillance and control by the W.C.B.

The Association of Injured Workers' Groups has proposed as an alternative a two-part lifetime pension, compensating workers for the pain and suffering and income loss resulting from the disability. In this scheme, W.C.B. discretion, so often used against injured workers, would be minimized.

The struggle against the Weiler/White Paper proposals has been led by the Association of Injured Workers' Groups. Uniting injured worker groups, legal clinics, and some Law Union people, the A.I.W.G. has had a very substantial impact on the legislative process.

Public hearings, denied through the early phase, were finally granted in 1982 and '83. On June 1, 1983, 3,000 injured workers forced the committee to hold its hearing on the front steps of continued p. 2

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## Salvador Inquiry

By Michael Shapcott

A jury of well-known Canadians has condemned the government of El Salvador and called on Ottawa to strengthen its refugee program after hearing more than 10 hours of direct evidence from torture victims and others.

The findings came during the Tribunal on Human Rights in El Salvador, held Jan. 12 and 13 at the University of Toronto and organized by the Law Union of Ontario, in conjunction with the Committee of Solidarity with the People of El Salvador.

More than 200 people heard the six witnesses provide gruesome detail on human rights violations in El Salvador. A full transcript of the proceedings, along with the findings of the jury, will be delivered to a United Nations' committee, which will begin

hearings in the near future. The document will also be used to lobby the Canadian government to take a more active role in the country.

Law Union members Jeff House and Audrey Campbell worked closely with COSPES on the event, with law students from the University of Toronto and Osgoode Hall serving as counsel.

The judge for the tribunal was Bradford Morse, Vice-Dean of Law at the University of Ottawa. The jurors were: Canadian Council of Churches President Russell Legge, Toronto Star columnist Michelle Landsberg, Hamilton-Centre MPP Sheila Copps, Metro-Toronto YWCA President Frances Storm, OXFAM Canada Chairperson Meyer Brownstone, Canadian Committee of continued p. 2

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# Charlie's Charter Chatter

by Charles Campbell

Stompin' Paul Copeland is after the immigration boys again, this time for client Edie Fat Law. Fat Law, a landed immigrant, was appealing a deportation order based on an extortion rap when he was hit with a Security Certificate. Stompin' Paul says in his Writ that the granting of a Certificate without notice to Fat Law violated his Charter rights. *Pratta v MMI* will be up for grabs again.

Charter chasers were beathless when Chief Justice Bora Laskin ordered the government to pay top court costs for two Ontario charter chaps. The meek shall inherit the earth and their solicitors will be paid full tariff for the transfer of title! The Supreme Court will hear a crown appeal from the successful attack on the reverse onus provisions of the *Narcotics Control Act* mounted by lawyers for David Oakes whose eight one-gram vials of hash oil were presumed by the crown to be for the purposes of trafficking. And Walter Valente's attack on the independence of the provincial court judges also goes into the final round with a free trial ticket to his creative-mouth lawyer, R.N. Bates.

One hot Charter action that has treasury scrooges sweating is *Collin v. Lussier* so far unreported. Mr. Justice Decaré of the Federal Trial Division ordered damages in the amount of \$18,136 to Inmate Collins for his improper transfer to Max Pen Lavel from the Leclerc Penitentiary Hilton. Under section 24 the Judge gave Collins \$10,636 because of the improper hearing that put him in the Heavy House. Plus \$7500 punitive damages! Let's see what the Nine Reds do with that!

Would-be banker and favorite Tory-target Leonard Rosenberg loved that one! His lawyer the redoubtable China-born Ian Outerbridge is leading a charge for millions in damages for the seizure of the assets of Crown Trust.

One issue that has Charter chompers gagging is search warrants. American lawyers have long fought criminal charges by attacking the search that started the "dreadful affair". The hope is that when the warrant is quashed and the goods ordered returned that it will be the end of it. Though there's nothing in the law to require the crown to give up. The Charter provides merely that a prosecution based on illegally obtained evidence may be barred by a Judge as an abuse of process.

One of the first four cases going to the Reg Nine is an Alberta case on the search of the Edmonton Journal just a few days after the Charter was proclaimed. And lawyers for the Thompson newspaper chain will undoubtedly be going the route to stop the search of their offices in a combines raid.

Another biggie is Clay Ruby's case on behalf of the Toronto Scientologists after the Ontario Attorney General seized 250,000 documents from their mid-town church.

And not to be left out LU heavies Andy King and Bob Kellerman are trying to stop the raids and harassment of political activists with a similar action.

Ottawa County Court Judge Charles Doyle says the Charter does not invalidate Writs of Assistance. Let's hope lawyer Richard Addelman rolls that one down the street to the Big Red Nine.

Search is *the* Charter issue in the Summer of '83. Dig It! Start One!

Charter Chatter in O-town has it that Pierre nominated property rights as the first big Charter change to prove he wasn't a communist. Somebody should tell Pierre that the taxes on the rich are too low!

Optimists be warned. Hear the words of Mr. Justice Zuber in *R. v. Altseimer*:

"In view of the number of cases in Ontario trial courts in which Charter provisions are being argued, and especially in view of some of the bizarre and colourful arguments being advanced, it may be appropriate to observe that the Charter does not intend a transformation of our legal system or the paralysis of law enforcement. Extravagant interpretations can only trivialize and diminish respect for the Charter which is a part of the supreme law of this country."

Here's a prediction! It will be hands off the abortion laws right across the country in Charter challenges. Too hot to handle! Whatever the legislators want they'll get. No *Roe v. Wade* in Canada. The long arm of Justice Rehnquist! Read him and weep, Charter Champs! But no matter? Will any jury ever send Doc Morgentaler up the river? No way, says the Doc.

And my predictions for the first four charter cases up before the Red Nine? Here goes:

1. PPG Industries wants a jury trial on their combines rap. The Charter jury rights versus sec 44(3) of the Combines Investigation Act. Is PPG a "person" within the meaning of the Charter? Nine-zip for the Combines Act. Reasons — nothing unreasonable.

2. Walter Valente says provincial judges aren't independent and he can't get a fair trial. A sleeper 5-4 for Valente on narrow grounds as a warning to the provincial Attorneys General.

3. David Oakes will win 6-3 in his reverse-onus case with reasons that impugn some, but not all, the reverse-onus provisions. Not to make life too tough for Her Majesty's prosecutors.

4. The Edmonton Journal will win nine-zip in the attack on the search warrants on the grounds that search warrants can't be overly broad.

You got it, first, right here, in Charter Chatter.

## Wax forensic!

(to the tune of "Take it to the Lord in Prayer")

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