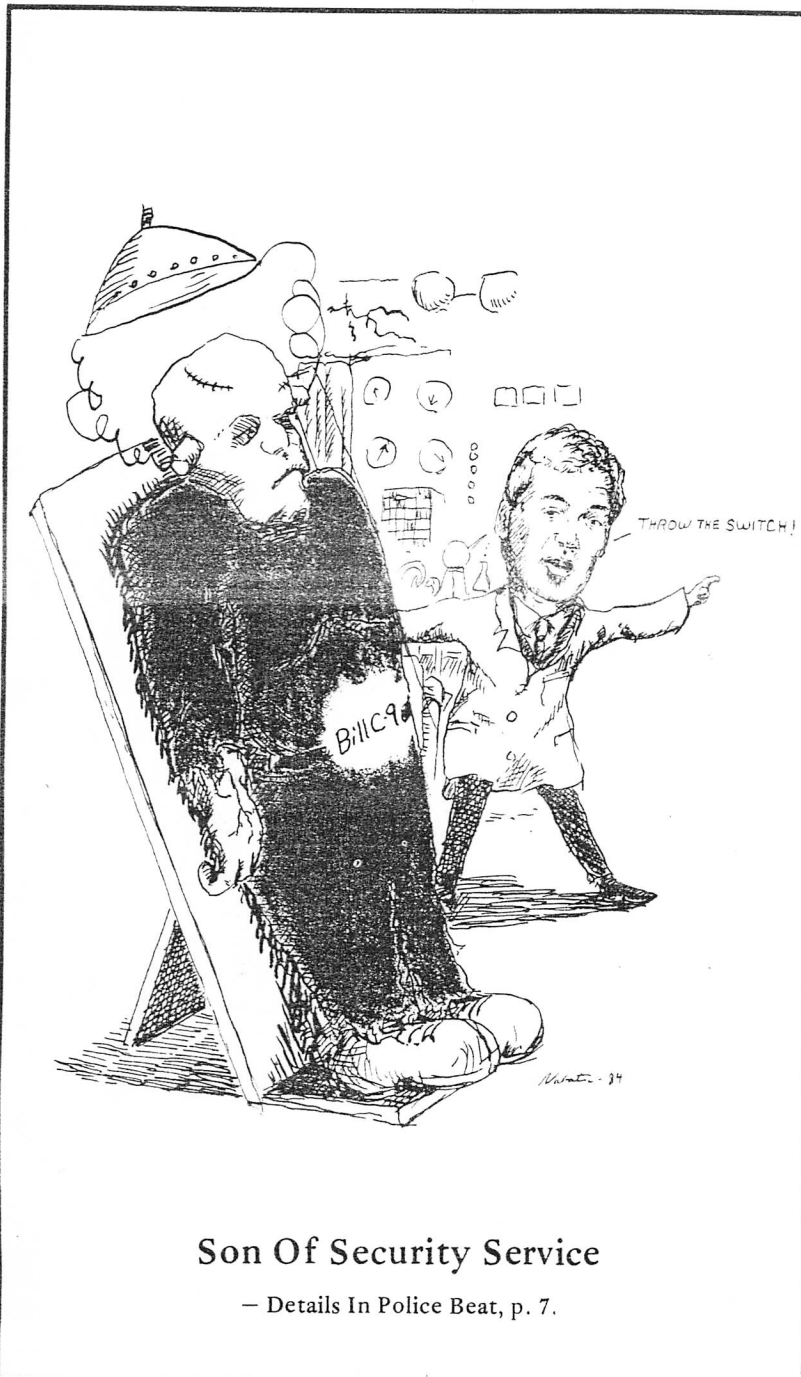


Lawyers and The Left

By Andy King

Over the past two years, a number of Law Union members have been involved directly or indirectly in the trials of the protesters at Litton Industries and the like where deliberate acts of civil disobedience by the protesters have given rise to charges of trespass and mischief. Though these are not the only demonstrations in which civil disobedience have been a planned part of the event, they are the most well known and have been subjected to the most comment by progressive political activists, both lawyers and non-lawyers.

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Son Of Security Service

— Details In Police Beat, p. 7.

CELA has launched what is possibly the first ever suit for negligence against the Environment Ministry.

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When it comes to Sunday closing laws, Charter Cherubs are being snared by their rituals.

..... p. 5

Women were virtually shut out of the Osgoode Conference on Jurisprudence, so feminist scholars organized their own.

..... p. 8

The Immigration Department is taking two steps forward and ten back, and we're supposed to be grateful.

..... p. 11

Charter Chatter

Probably the most closely watched Charter issue is the fate of illegally obtained evidence in Criminal cases. And the Charter choo-choo is already laden with freight as it steams towards he final round-house on the Rideau. As previously reported in the *Southam* case (trial judgement 2 C.R.R. 264) will probably be the first. In that one the feds raided the Edmonton offices of the local *Southam* standard bearer, *The Edmonton Journal*, and walked off with the records department on a Combines "beef". The paper brought an injunction against them part way through the raid saying it violated sec. 11(c) of the Charter on self-incrimination.

The cases are not clear but there are hopeful signs. Charter Chirpers will be happy with *R. v. Caron*, 3 C.R.R. 275 and *R. v. Carter*, 2 C.R.R. 97 where evidence obtained by trick and by means that would be actionable in a civil claim were excluded. And they'll love Judge Wren of the York County Court in *R. v. Sky*; *R. v. Crozier* (Lawyers Weekly, Nov. 18/83). He excluded evidence of knives found in a car searched by police without a warrant. The charge was wounding by, you guessed it, stabbing. Judge Wren said he took into account the "nature and degree of the conduct constituting the illegal, or more properly, unreasonable seizure, the relative importance of the offence, and the importance of the evidence". He said police conduct represented total disregard of substantive rights of sec. 8 of the Charter. Those rights have to get serious weight. They did. The forbidden fruit was excluded. And the defendants walked.

It seems that the Charter has restored the Court's discretion to exclude illegally obtained evidence that was lost in *R. v. Wray* [1971] S.C.R. 272.

But optimists should nevertheless be cautious before setting sail for that distant shore in un-Chartered waters. See *R. v. Homier*, 2 C.R.R. 239, *R. v. Uba* 42 O.R. (2d) 454 for dark shoals and riptides of despair.

The powers of the court to punish summarily for contempt were high on the hit list of Charter Chompers. I say "were", maybe they still are, but only if the big bats of the Red Nine score some big innings against the tough guys in the minor leagues. Word from the farm system is that the junior power hitters are beating the hapless Charter Chompers on contempt every time at bat. *Laurendeau* (P.Q.) 3 C.C.C. (3d) 250, and *Cohn* (Ont.) (Nov. 18/83,

Lawyers Weekly) are two examples that have made the sports pages recently. Nothing wrong with requiring the rude and the bad to "show cause" then and there on the spot.

The Charter Chompers were talking big in pre-season press raps. They thought they had some hot new plays picked up in the U.S. where judges feel some hesitancy about being witness and judge in the same case. But Canadian boys aren't so reticent and so far they're resisting any encroachment on the powers of the Court. We wonder if they'd feel so confident if they were back in the dugout, or on the road with the Chompers.

Mr. Justice Linden flirted with Charter immortality in *Re Mitchell*, 42 O.R. (2d) 481, causing Charter cherubs to flap and flutter. He grasped the golden apple at page 507 then dropped it at p. 508 and now has passed beyond to the never-never land of the Law Reform Commission. Page 507 has a brilliant analysis of cruel and unusual punishment and preventive detention laws concluding that Mr. Mitchell's twelve years for a large number of property offences was a no-no. "It surpasses all rational bounds of treatment or punishment and is so excessive as to outrage standards of decency. ... [His] right to protection against cruel and unusual punishment may have been infringed. Since no evidence has been adduced to satisfy me that such an infringement constitutes a reasonable limit demonstrably justifiable. ..." Mr. Mitchell gets relief. His relief? (at 508) to come back before Linden J. and prove he is not a danger to society under sec. 709 of the Criminal Code.

Let Charter chasers get too excited about Linden J's dicta they should read *R. v. Simon* (#3) 2 C.R.R. 115. At least one N.W.T. Justice agrees with the bad old Bill of Rights cases on the subject of preventive detention. So those inside for involuntary chronic care had best not pack their bags.

The Charter doesn't apply to Armageddon, it seems. Nor does it apply to parking tickets *Re McCutcheon*, 41 O.R. (2d) 653, *R. v. Carson* 41 O.R. (2d) 420. Pay up or three days.

When Armageddon comes (shortly) Charter Champ Larry Greenspon of Ottawa will be able to say "Don't blame me!" The anti-cruise groups sent Larry in with the lions to stop cruise testing because it violated the Charter. "Justify your madness," said Larry to lions. And the lions said to Larry, "No way, little guy. Armaged-

don doesn't threaten your civil rights and the Charter doesn't apply to Armageddon, or at least the Cabinet's power to buy it wholesale."

Well, the first Judge told the lions they had to justify themselves to Larry and the Masses. But not the appeal Judges. They said Armageddon doesn't affect "security of person". What will the Red Nine say? Who can guess? I can. They'll say the Cabinet has to prove the reasonableness of their every deal just like everybody else. But Armageddon is nevertheless a "reasonable limit".

Anyhow Larry's still in the Liberal Party. But when the bombs begin to rain we won't blame Larry.

Charter Chasers also thought they had a chance for a big win in extradition cases where U.S. police teams can exercise their options on their expatriate opponents merely by filing affidavits with the Canadian league. Unfair, say the Chasers. There should be a full hearing and cross examination. But so far the chasers have lost every case. Mess'r's *Yue* (42 O.R. (2d) 651), *Smith*, (42 O.R. (2d) 668), *Green* 42 O.R. (2d) 326, and *Schmidt* (42 O.R. (2d) 399) have all made the trip back after futile efforts to challenge the charges against them here in Cold Country.

And if you get hot flashes after Charter Chatter you'll get jungle fever after reading Judge Salhany's reasons in *R. v. Guse* where he struck down section 10 of the *Narcotics Control Act*. As every doper knows this is the well-spring of the dreaded Writs of Assistance instrument of arbitrary police power since the time of King John (or thereabouts in history). His Honour gets a Charter Badge of Honour. But let's see whether the big boys let him keep it!



"I have no further questions
for this rodent, your honor."