THE LAW UNION NEWS

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Co-operatives

WORKER OWNERSHIP IS ATTRACTIVE, BUT

ONTARIO LAWS SET VARIETY OF PUZZLES

By Murrary Klippenstein

The Big Carrot natural food market at Danforth and Chester is a somewhat special co-op. Like consumer, housing, and producer co-ops, it stresses democratic operation, but it differs in its focus, the workplace. Establishments which do so, particularly ones which emphasize worker ownership, as does The Big Carrot, are often known as "worker co-ops."

The tradition which The Big Carrot exemplifies is comparatively sparse, but growing, and it includes some outstanding success stories.

Most notable is the group of some 80 worker-owned co-operative factories in northern Spain, known as Mondragon. The

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Please help!

The Law Union News needs your help!

For the past decade, the News has been the only voice for progressive and socialist lawyers, law students, and legal workers in Ontario. It has the central role of informing, educating, and organizing on left-law issues.

The News needs money to survive.

In the May 1984 issue, the newsletter collective expanded the areas of coverage. New columns were added to reflect the variety of interests among Law Union members.

Most importantly, we made the commitment to publish five issues each year. More issues and a stronger content in each issue are the focus of the work of the collective.

The News has cut its production costs to keep its proposed publishing schedule. With this issue, the News will be produced on microcomputer and reproduced by high-speed photocopier at less than half the cost of the previous production method. The quality will remain high, and the time required to produce each issue will be cut dramatically.

The News requires money to maintain the momentum and improve the quality. Beyond the basic membership fee, which includes a subscription to the News, the newsletter collective needs cash. We need several hundred dollars to produce and mail each issue.

Our next issue, which will be published in early September, is aimed at building Law Union membership in the law schools. The newsletter collective needs money now to ensure this special issue reaches law students.

On the back page, you'll find a coupon and an address to send your contribution to The Law Union News. Make your commitment to the News today. Send your cheque today.

Charter Chatter

WHAT IS VIOLATED MORE WHEN THE COPS PLANT THEIR LITTLE CUTIES, YOUR MIND OR YOUR PROPERTY?

By CHARLIE CAMPBELL

Charter chirpers cried buckets for Big Frank Papalia, who was sent back for a new trial after beating the rap before Judge Dunlap on a fraud conspiracy beef. His Honour excluded evidence of wiretapes derived from some cute little transmitters in his car. He ruled that since the police had not made full and specific disclosure of the places where they planned to plant the little cuties at the time they got the warrant, the evidence derived therefrom was inadmissible.

But wait for it, boys and girls, wait for it! The Black Three said the trial judge could not, at trial, inquire whether the basis of the search warrant was properly laid at the earlier stage (47 O.R.(2d) 289). That would be a "collateral attack" on four big-time baddies of contemporary criminal procedures. All of Frankie's chitchat about the durability of his backseat upholstery is admissible evidence. But think of the consequences. Motions to quash search warrants to retrieve evidence will be de rigueur in all the best cases.

But that's not all. The bugboys also did a surreptitious entry to plant a little cutie in Frankie's office. Judge Dunlap approved that, based on Dass, whose majority reasons he felt bound to follow, albeit deploring them. He thought the entry was unlawful and the evidence should not be admitted. Similar cases, including Dass, had also held that such entries were unlawful but that the evidence was nevertheless admissible. But Mr. Justice Brooke says for the Court that the power to buy (given in the Criminal Code) includes the power to trespass to install the little cuties, even though not specifically mentioned.

Quoth Justice Brooke: "The serious invasion is not the entry upon a person's property, but the entry into his mind by interception communications." With this, we all agree, but this is not to agree that the property trespassed need not carefully be scrutinized, or else we are creating Writs of Assistance of the Mind.

It really was 1984.

(Editor's note: Since C.C. penned this column, the Big Red Nine have pronounced on this subject. Watch for it in the next issue of the News.)

WHEN IS A SEARCH A SEARCH? ?

Charter chasers couldn't catch the searchers and seekers in Re Belgoma Transportation, 47 O.R.(2d) 307. There, the power of the Employment Standards officers to require production of documents in aid of their investigations under the Employment Standards Act were held not to be a "search" within the meaning of the Charter.

An order to produce documents is not a search, said the Court. The Southam case, now radiating so warmly on the cuspid of the Red Nine, had not risen yet at the time of this merry little joust in the Divisional Court. Would Delgoma have triumphed in the shining light of that recent judicial glory? Or would its pearly words of wisdom have been shuffled off as applicable only to the narrower facts of an actual entry by apparatchiki of the social democratic experiment?

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"Oops! Sorry, Lieutenant, didn't mean to do that...these Uzi's sure have a hair trigger on them...

Rest assured, ye partisans, the forces of good and evil will clash again. Charlie will be there, and tell all.

COPELAND AGAIN

Charter cheeries chose Law Union veteran Paul Copeland by a six-to-five margin as this month's Living Dangerously recipient. Paul puts all on the line in a motion challenging Crown discretion under the Narcotics Control Act whether to charge for importing with its mandatory seven-year holiday, or lesser offence of trafficking.

The fed drug guys say they have got rules on picking out the folks for mandatory slammer time, but many airport arrivees, who discover to their chagrin that they are slightly overweight, say those rules are one big mystery. Arbitrary, that's it, arbitrary - thank you, Paul.

Power being what it is, the drug guys want to hold on to what they got. Besides, it's fun bashing Copeland. Rumour has it he likes it.

Old-timers remember when J.J., the Great One, took the same issue to the Red Nine for Big Boos Harold Ballard, who was charged with tax fraud for diddling the books of his College Street Emporium. J.J. said the unfettered discretion whether to proceed sumarily or by indictment with vastly different penal consequences offended the Bill of Rights. (Remember the Bill of Rights, ShaaBoom, and the Hula Hoop?)

Well, Harold did two pleasant years at the Muskoka Hilton, when that one was all over.

So, Copeland thinks the entrenched Charter will make it all different.

Got get 'em, Paul!

LERKE LUCKS OUT

Charter champs cheered Justice Rowbotham of the Alberta Supreme Court for his excellent reasons in Lerke. Mr. Lerke returned to a tavern from whence he had been recently ejected, and while being interviewed in the office of his ungracious host, a small packet of noxious wed was discovered in his jacket pocket by inquisitive tavern employees. Mr. Lerke was charged with possession of noxious weed, and convicted.

But on appeal, Justice Rowbotham struck that conviction to the ground with a mighty blow. He did indeed, praise the Eternal Oneness! And the language he used!

He said: "The Canadian Charter applies to protect citizens against any interference, whether government or private." While the tavern bouncers may have the right to arrest the trespassing Lerke, they didn't have the right to search him, even on the pretext of searching for proof of age and identity. The admission of the noxious weed, obtained thus, brings the administration of justie into disrepute, and is impermissible. Lerke's conviction is quashed.

So, the Charter applies to offending acts by private parties, does it! Stand clear of the floodgates, Mr. Registrar, here we come!

OSGOODE HOLE ON OPSEU

Charter Checkers choked when they read the OPSEU decision from the Black Five at Osgoode Hole. We all vividly recall - vividly - the immortal words of the Divisional Court striking down the provincial wage restraint legislation that was directed against provincial civil servants. The stirring words were academic ("needless to say," if that's where you're at) because the legislation was for a fixed term and died a natural death before it was killed.

Something about "freedom of association" (remember "freedom," you Sixties Sybarites), which sounded real good. The Division Court application was a straight-forward application for a declaration that the legislation was unconstitutional. There was factually no dispute, just theory. So the Court of Appeal says the Divisional Court has no jurisdiction to do that because there was no "exercise of. . . a statutory power" pursuant to s.2 of the Judicial Review Procedures Act. Never mind, says legal heavy Ian Scott, the Div. Court reasons on the now-expired legislation confirm that it is not only expired, but also dead, and there was no adverse comment on them.

This is victory, you may ask? But, as they say, get it any way you can.

Anyhow, this is really important. According to the Charles-Campbell-Theory-of-Courts-As-Political-Institutions, the presentation of pure theory arguments about the violation of rights in the abstract without worry about messy facts and injured clients is an important milestone along the path to fully operational, legitimized judicial control of social decision-making. You don't have to like it. And here's a year-end prediction for holiday fun: Within 23 and one-half years, Parliament will be dead, this O.C.A. decision will be reversed, and "democracy" will consist of "pure theory" debates attacking legislation that allegedly infringes our Charter rights.

What more could any people want?