The LAW UNION NEWS

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CONFERENCE TO FEATURE A.G., REPORT FROM WORLD COURT

The Law Union Annual Conference to be held November 1 and 2 is set to repeat the successes of previous years, with a wide variety of prominent and provocative panelists and speakers.

The Attorney General of Ontario, Ian Scott, is featured on a panel debating the role and future of Ontario Legal Aid. The Legal Aid Plan has long been a matter of theoretical and practical concern for members of the Law Union, and it has in the past sponsored campaigns in the profession to pressure for reform. Mr. Scott has gone on record as saying that the profession must share some of the financial burden of Legal Aid, as the price of enjoying a monopoly, rather than relying on the government for full funding. However, he has favored a toll on all lawyers, rather than the present system which extracts a contribution only from those lawyers doing Legal Aid Word.

Mr. Scott's appearance marks the second presentation by an Attorney General at the annual conference, following the speech by Manitoba AG Roland Penner several years ago.

The Keynote speaker at the Conference, Carlos Arguello, is a former Nicaraguan Minister of Justice. He is presently ambassador to the Netherlands and presented some of the arguments of the recent suit by Nicaragua against the U.S. in the International Court of Justice.

Ontario Attorney General Ian Scott will be a panelist on Legal Aid at this year's annual conference.

Charter Challenge to Compensation

The coming into operation in April of section 15 of the Charter of Rights, guaranteeing equality before and under the law, resulted in the initiation of a number of court challenges by progressive lawyers on various social issues. One such action publicly announced in April by Law Union lawyer Harry Koptyo was a broad challenge to the constitutionality of the Workers' Compensation Act, on the ground that by generally prohibiting injured workers from suing their employers in tort, and forcing them to go to the Compensation Board for relief, the Act violates their right to equality.

Some members of the progressive legal community expressed doubt that the striking down of the compensation scheme would in fact be a desirable result. In particular, Professor Harry Glasbeek of Osgoode Hall Law School defended compensation in the face of the alternative of private tort relief.

Mr. Kopyto decided to delay launching the action. He informs the News that the client and the court materials are ready to proceed, but that due to the importance and contentiousness of the issue, he is awaiting a fuller discussion of it. In furtherance of such discussion, the News is printing correspondence between Professor Glasbeek and Mr. Koyto on the topic.

Cont'd on p. 6

"Crisis, crisis," cried Chicken Little

By Charlie Campbell

Charter chappies chuckled when B.C. Free Spirit John Ince succeeded in the Federal Court of Appeal in striking down the provisions of the *Customs and Excise Act* which ban "immoral and indecent" material from Canadian shores. In short, said the judges, that's no law.

"Crisis, crisis," cried Chicken Little. "Soon this fair land will be awash with smut and hate literature, and shortly thereafter sin, corruption and genocide."

"But," said the Minister, most solemn, "never fear. If awful things come winging our way we can lay criminal charges! Surprise! We are safe after all!" And so it was written in the Globe and Mail.

Surprise, everybody. We never needed the Customs law in the first place. Is Mary Brown listening?

But within two weeks we had legislation rushed through the Commons creating a real definition for the Act. What definition? Surprise! The obscenity definition from the Criminal Code.

Next case? My bet — whether the guidelines issued to tell border snatchers what obscenity means are themselves unconstitutional.

Crown faces cross-examination

Charter chargers cheered Paul Copeland's recent victory in **R. v. Abolmolouk.** Mr. Justice Hughes bought Copeland's argument that he be allowed to cross-examine two federal crowns as to how and why they exercised their discretion to lay importing

Cont'd on p. 4

Judges' role in revolution

"The first responsibility of the judiciary within the Nicaraguan revolution is to guarantee legality", according to Vilma Nunez de Escorcia, Vice-President of the Nicaraguan Supreme Court. "Vilma", as she asked to be called, was in Toronto on May 10 to speak on "The role of the judiciary in the revolutionary process".

"Being a judge in the revolutionary process is very difficult because there are so many things to change. Although the revolution changed all the judges it did not alter all the laws. At present every organization is demanding an immediate response. But the revolution has given us the task of maintaining the force of law. That means we must apply old laws in the new context."

Vilma noted the incomprehension of this problem on the part of many in the revolution. "Sometimes when people take measures into their own hands, like taking one house away from someone who has two, we have to resolve matters in favour of the victim. Then we are called reactionary."

Vilma maintains that "the Sandinista revolution has always looked to using law to change the situation. The minute the government changed, people had to lay down their arms. On the day of the triumph, the junta promulgated the first statute on the structure of the legal system."

This law established the independence of the judiciary in Nicaragua, a concept that Vilma stresses. "Under Somoza, in political cases, judges actually received an order on how to decide a case. At present, according to the Constitution, we must just obey the law, and in fact we are completely independent." Although the President has the power to change judges at any time, this has never happened. This feature is also being reviewed as part of an intensive study of potential provisions of the new Constitution now being developed. The Supreme Court is looking at appointment and tenure systems of various countries, and Vilma recently consulted with American jurists on the U.S. experience with elected judges.

According to Vilma, political pluralism in Nicaragua is reflected in the judicial process. "Only 22% of judges are formally members of the Sandinista Front. In the Supreme Court, only 3 judges are members of the Front — two belong to the Democratic Constitution Party, one to the Independent Liberal Party, and one is non-partisan. I am often in agreement with the criteria of the conservative members and not with the other Sandinistas."

Vilma noted the mixed state of laws protecting women in Nicaragua. She herself was involved in legislation, among the first to be passed after the Revolution, prohibiting the use of womens' bodies for commercial exploitation in ads. However, "there is still a massive amount of work to do". There is still no special legislative remedy for the physical abuse of women. A "womens' legal office" has been set up to provide legal assistance, but it has only two lawyers.

One aspect of the present situation which Vilma feels uncomfortable with is the two "Anti-Somocista Peoples' Tribunals" still existing, whose function is to try contras. "The Supreme Court doesn't agree with their existence, even though the same laws and procedures are applied by them, all guarantees are in effect, and sometimes their decisions are not as harsh as our own. Creating exceptional courts projects a bad image."

Vilma had 16 years of criminal practice behind her when she was appointed to the Supreme Court. "As a lawyer, I defended people charged with political crimes, which brought me into contract with the Sandinista Front. Eventually, I principally defended Sandinistas.

"I had begun to get involved in politics when I entered university. I thought there was a way to make changes through legal action. But I worked in the 1967 election, and when Somoza 'stole' the election, I realized arms was the only route."

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Law Union of Ontario
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Canada M4W 3E2

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Canada M4K 3L2

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13

Legal education bibliography

Law students, especially those with progressive or socialist backgrounds, may find the legal education process bewildering and often oppressive.

The following articles provide a sample of background, critical, and alternative thought about the law school experience.

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Charlie's Charter Chatter

From p. 2

charges against Abolmolouk instead of mere trafficking. "Importing", as all drug groupie sknow, brings a mandatory seven. "Why me, and not him?" cries out Abolmolouk, raging at his cruel fate. "I love it, ya, ya; I love it ya, ya," croons his cool counsel. So fed heavies Gerald McCracken and Bruce Shilton are supposed to tell all under the whithering barrage of Paul's questions. . . And are they scared, or what? What do the guidelines say, tra-la? Sing, McCracken, sing!

But wait! They're appealing! They're appealing!

Go, Paul Go! Let's bring these important back-room discretions out for a little air!

Now I'm Gonna Sing

Charter challengers chattered madly over the big put down of the Law Society gag rule by the Divisional Court in **Klein and Dvorak v. L.S.U.C.** That rule said lawyers shouldn't talk to the press about their cases. See Rule 13, Commentary 18. Not to detract from the victory by Law Union regular Harry Kopyto (and others) that rule was deep shit anyhow within the Law Society. A drastically modified form of it has been proposed, but not yet approved. The would-be new rule allows such manner of reasonable press contact as may be in the best interest of the client. Now even that new rule may be too much! So feel free to blah away, in good taste, of course, to any reporter interested in your case.

The other issue in the case was the lawyer's right to advertise fees. All of us socialsits believe in free enterprise, right, so we can advertise how cheap we are, right? And undercut the big bad Bay Street boys, right? And go broke in the process! So we're not so happy that this issue is left more or less to law society control. The majority decision left the power of economic regulation, as opposed to political, alive and kicking. But the decision does suggest that Mr. Dvorak's reception area pamphlets setting out his fees were O.K. This one looks a little muddy. Who's acting for Jane Harvey, anyhow?

Pay Up Counsellor

Charter champ Tim Danson has declared war on new Rule 57.07, which allows judges to award costs against lawyers personally who do bad things with no style. He's bringing a Charter challenge to strike it dead. He says it offends fundamental justice and denies equal protection. Right on, Tim baby. But watch out. They may award costs against you personally for speaking words that connote *doubt* regarding perfect justice. Be careful not to argue too forcefully or say disagreeable things!

Bouncin Barb dunks a big one

Charter cherubs chipped hosannahs to big Red Nine and their paean to fundamental justice in striking down those sections of the **Immigration Act** that denied would-be political refugees a full hearing on their claim. The imm-grat tough guys say — sure we'll listen to your story buddy, send us a letter or tape, with a stamped self-addressed envelope, and pack your suitcase! But the Red Nine, hearing the angelic chords of sweet reason from Law Union hotshot bouncin' Barb Jackman, said — sorry. Fundamental justice means more than the right to give and receive letters with bureaucrats. Hold a real hearing, ye hearts of stone. For all 13,000. Anybody looking for work?

Watch out — the spread of this notion of "fundamental justice" through body politic until the exercise of all powers by every bureaucrat requires a tribunal hearing! And the government turns into a giant Court House! Were you late today, Mr. Smith? Call the first witness. Is this socialist heaven?