

West Coast

# PRISON JUSTICE

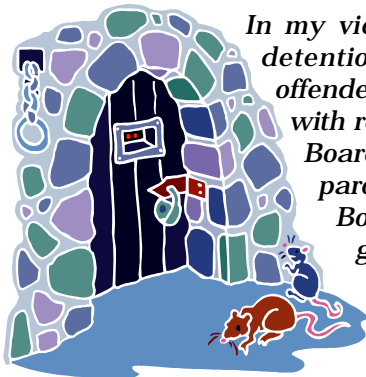
SOCIETY NEWSLETTER

JANUARY - MARCH 2001

## FEDERAL COURT RESOLVES CONFLICT BETWEEN IMMIGRATION HOLDS AND PAROLE

by Sasha Pawliuk

In two recent decisions the Federal Court of Canada was called upon to deal with the relationship between provisions of the *Immigration Act* and the *Corrections and Conditional Release Act (C.C.R.A.)* pertaining to day parole and unescorted temporary absences. Immigration “holds” are issued against prisoners who have been ordered deported, or who are waiting for an immigration hearing. For years, it had been the practice of the National Parole Board (NPB) to refuse to consider for release on day parole anyone who had an immigration hold against them. Prisoners who had been ordered deported had to wait at least until full parole before the NPB would consider allowing a “deportation parole”, regardless of any particular individual’s suitability for an earlier form of release.



*In my view, however, the section 105 detention order does not remove the offender’s right to a review and hearing with respect to day parole, where the Board does not otherwise direct day parole release... The National Parole Board erred in law in refusing to grant to the applicant a review of his case for the purpose of day parole and the decision under review must be set aside.*

Meanwhile, people who were being held in custody solely for the purposes of an immigration hold had a statutory right under the *Immigration Act* to have that detention reviewed. The flip side of the problem was that it was the practice for the immigration authorities not to bother with these immigration detention reviews for people also serving time for a criminal conviction. Immigration took the position that an immigration hold review wasn’t necessary because

convicted people were really held in custody by their criminal conviction, not by the immigration hold. So, both bureaucracies were sidestepping the issue. Prisoners with an immigration hold didn’t get day parole or unescorted temporary absences because of the immigration hold, but they also didn’t get the immigration hold reviewed because they were serving time for a criminal conviction. Perfect Catch 22.

In *Chaudhry v. Canada (Minister of Citizenship and Immigration)* first the Federal Court Trial Division ([1999] 3 F.C. 3; 50 Imm. L.R (2d) 96; 163 F.T.R. 78) and then the Federal Court of Appeal (178 D.L.R. (4<sup>th</sup>) 110; 138 C.C.C. (3d) 350) dealt with the situation of a prisoner who was unable to get a review of the reasons for his immigration hold because he was serving time for a criminal conviction. The Court of Appeal succinctly stated the facts of the case as follows:

Immigration cont’d p...3/

The following is a contribution by Ann Pollak who discovered it in a book of children's poetry. This is a prison abolitionist poem that reflects the reality that there always is an alternative to sending a person to prison. The only requirement is the courts, reflecting the values of contemporary society, must change their way of sentencing individuals and examine the underlying causes that lead them to commit crimes. There are several initiatives throughout the world which are trying to redirect individuals away from incarceration. In Canada, one example is community sentencing where a community group decides the punishment of the offender. These groups attempt to examine all causal factors related to the reasons for the offence.

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## *Hammy, the Escape Hamster*



I had a little hamster,  
And Hammy was his name,  
And every time I locked him up  
He ran away again.

I put him in a shoe-box,  
But I didn't shut the lid;  
He ran away that very day  
Behind my bed and hid.

So when I caught old  
Hammykins,  
I kept him in my shirt -  
But grinning wide, he  
snuck outside  
And woofled in the dirt.

Well then I cornered  
Hammy,  
And I stuck him in a keg.  
He took to flight that very night,  
And went to Winnipeg.

And then I tried a cupboard  
With a special lock and key.  
Hammy didn't stick around,  
He waltzed to Tennessee.

So then my bright idea was,  
To plop him in a kettle.  
The hamster hit the road again  
For Popocatepetl.

And after that I caught the brat  
And wedged him in a drawer -  
He made a ladder out of socks  
And split for Singapore.

Well, then I tried this iron cage  
We bought for our canary.  
But with a whoop he flew the  
coop  
And crossed the Kalahari.

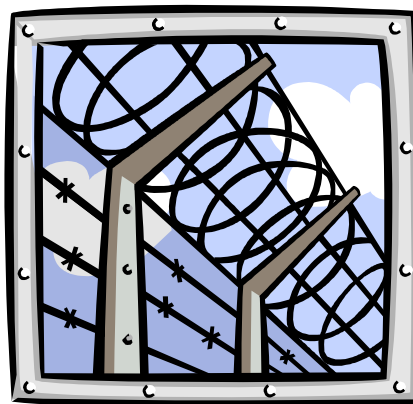
So then I put him on a raft,  
And launched it in a pool -  
The varmint did a cannonball  
And swam to Istanbul!

And next a safe, inside a  
vault,

Inside a ten-ton barrow -  
The dirty rascal steered the works  
To Rio de Janeiro!

Till finally I sealed him  
In a giant gas balloon:  
Hammy set the gas alight,  
And blasted to the moon!!

But now I've found the answer  
And I'm much more satisfied;  
Whenever Hammy runs away -  
I trot along beside.



Dennis Lee, *The Ice Cream Store* (Toronto: Harper Collins, 1991).

[2] *The facts may be briefly stated. The respondent (Mr. Chaudhry) is a citizen of Pakistan and remained in Canada after his visitor status had expired. He was incarcerated at Stony Mountain Penitentiary in Manitoba after being convicted in October 1994 on two counts of trafficking in narcotics and sentenced to 14 years imprisonment. On March 29, 1995 the Minister ordered the respondent deported. On April 19, 1995 a warrant for the respondent's arrest and detention was issued under subsection 103(1) of the Immigration Act<sup>1</sup>, (even though he was already "detained" in Stony Mountain) apparently, because the Minister was concerned that the respondent would not otherwise appear for removal.*

3] *On July 28, 1997 an order was made under subsection 105(1)<sup>2</sup> directing the person in charge of the institution where the respondent was held to continue to detain him until the expiration of his*

*sentence.*

[4] *It appears that at some point the respondent became eligible for day parole. However, he was advised by the National Parole Board that offenders subject to detention orders under section 105 of the Immigration Act issued on or after July 10, 1995 would not be reviewed by the Board for day parole. By order dated July 14, 1998 the Adjudication Division of the Immigration and Refugee Board refused to order a detention review under subsection 103(6) of the Immigration Act<sup>3</sup>.*

(The portions in the above quote that are not in italics have been added by the writer of this article for greater clarity. The following are the footnotes referred to in the above passage - they are all sections from the *Immigration Act*.)

1 103. (1) *The Deputy Minister or a senior immigration officer may issue a warrant for the*

## KEEP THOSE LETTERS COMING, BUT.....

by Sasha Pawliuk

In reviewing the correspondence that has come into the West Coast Prison Justice Society (WCPJS) over the last few months, we thought that we'd better clarify a couple of matters. We invite all of your comments and suggestions as well as articles and artwork to be considered for publication in the newsletter.

However, we cannot give individual legal advice for a couple of reasons. One of the problems is that we have no staff - the board meets once a month or so, at which time the mail is opened. Where responses are required, individual board members attend to it - we have no clerks or secretaries at WCPJS. This means that a letter received at our address the day after a meeting won't even be opened for at least a month, and then the response could take a while after that.

The objectives of the WCPJS include the promotion of the rule of law in penitentiaries in B.C. and the sharing of legal information inside the walls. Although some individual board members are lawyers who represent prisoners in their private law practices, the WCPJS itself does not represent individuals. Our mandate is to try and let prisoners know what the law says and to report on new cases, not to create those cases.



We are concerned that people may be waiting for inordinate periods of time to hear back from us in answer to a particular problem, only to be told that we can't help. If you need legal help, please contact your own lawyer or Prisoners' Legal Services.

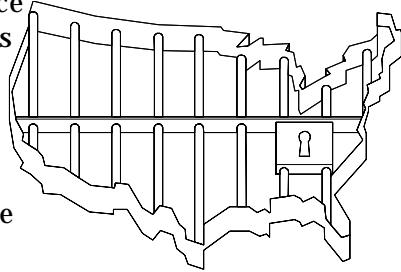
Meanwhile, keep those articles, decisions and artwork coming in!

# ODDS 'N ENDS

RobbieRouse

This is from US Department of Justice, Federal Bureau of Prisons report entitled: 'The State of the Bureau 1999'. Although these statistics apply to our neighbours to the south of us, Canada usually follows the same pattern on a smaller scale. The projections reflect the same trends that occur here in Canada in relation to the number of persons incarcerated.

This report deals with, in part, the projections for bed space needed immediately and in future years. Future projections for construction of federal prisons throughout the US include the completion of three new facilities by the end of 2000 which have the capacity of 1,182; 6 facilities, capacity of 4,989 to be completed by the end of 2001; 9 facilities with a capacity of 6,046; and a start/design in the year 2002 of 25 new facilities with a capacity of 15,360.



At the year end of 1999, the US federal system held 133,689 prisoners. The forecasted three year projections will add another 27,577 beds in the federal system only. I should clarify at this point that *these numbers do not include the number of prisoners held in the individual state prison systems*. By contrast, there were 37,541 people incarcerated in both the federal and provincial systems in Canada (CSC 'Forum on Corrections Research, Sept 1999 Volume 11, Number 3). If these numbers hold true for Canadian prisons, we should see a 21% increase in bedspace which is a direct reflection of the numbers in the US.




Immigration cont'd from /p...3

*arrest and detention of any person where*

*(a) an examination or inquiry is to be held, a decision is to be made pursuant to subsection 27(4) or a removal order or conditional removal order has been made with respect to the person; and*

*(b) in the opinion of the Deputy Minister or that officer, there are reasonable grounds to believe that the person poses a danger to the public or would not appear for the examination, inquiry or proceeding in relation to the decision or for removal from Canada.*



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2 105. (1) Notwithstanding the Corrections and Conditional Release Act, the Prisons and Reformatories Act or any Act of a provincial legislature, where a warrant has been issued or an order has been made pursuant to subsection 103(1) or (3) with respect to any person who is incarcerated in any place of confinement pursuant to the order of any court or other body, the

Deputy Minister may issue an order to the person in charge of the place directing that

(a) the person continue to be detained until the expiration of the sentence to which the person is subject or until the expiration of the sentence or term of confinement as reduced by the operation of any statute or other law or by an act of clemency; and

(b) the person be delivered, at the expiration of the sentence or term of confinement referred to in paragraph (a), to an immigration officer to be taken into custody.

<sup>3</sup> 103. (6) Where any person is detained pursuant to this Act for an examination, inquiry or removal and the examination, inquiry or removal does not take place within forty-eight hours after that person is first placed in detention, or where a decision has not been made pursuant to subsection 27(4) within that period, that person shall be brought before an adjudicator forthwith and the reasons for the continued detention shall be reviewed, and thereafter that person shall be brought before an adjudicator at least once during the seven days immediately following the expiration of the forty-eight hour period and thereafter at least once during each thirty day period following each previous review, at which times the reasons for continued detention shall be reviewed.

Both Evans J. of the Trial Division, and Rothstein J.A. writing for a unanimous Court of Appeal held that Mr. Chaudhry was indeed "detained" within the wording of the *Immigration Act*, even though he was also "detained" by virtue of his criminal conviction. The courts decided that when Mr. Chaudhry became eligible for day parole and the NPB refused to consider him because of the immigration hold, his continued detention was the result of that immigration hold. Once he was "detained" under the *Immigration Act*, he became eligible for a detention review. Mr. Justice Rothstein wrote:



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*In coming to this conclusion we do not say that the National Parole Board would necessarily have released the respondent (Mr. Chaudhry) on day parole. However, if the Board refused to even consider the respondent for day parole solely because of the subsection 105(1) order, it is that order that must be considered as the operative order causing the continued detention of the respondent.*

Although this particular case was against Citizenship and Immigration and not the National Parole Board, the Court of Appeal did point out that they were not deciding that the mere existence of an immigration hold automatically meant that a prisoner was not eligible to be considered for day parole. They said that if a prisoner subject to a subsection 105(1) immigration hold was granted day parole, then the immigration hold would kick in, and the person would not be released. At that point, the prisoner's detention would be reviewable under subsection 103(6) of the *Immigration Act*.

While that decision may not seem like it's a lot of help to anybody, it set the stage for the *Larsen* decision. (*Larsen v. Canada (National Parole Board)* (1999), 29 C.R. (5<sup>th</sup>) 121). Mr. Larsen was a foreign national who was neither a citizen of Canada nor a permanent resident. At the time of

# Justice for Whom?

Des Turner

One 73-year old grandmother can't do much to focus attention on problems in our justice system, can she? Wrong, if her name is Betty Krawczyk.

Last year, International Forest Products (Interfor) were clear-cutting in the Elabo Valley north of Squamish. Environmental protesters set up their own camp on publicly owned land near the logging operation. None of the protesters in the camp at that time had been charged with interfering with the logging. But in the emotionally charged atmosphere of the day that did not matter. Violence took over. A group of loggers, wearing masks, trashed the camp, threatened the environmentalists and beat up three of them who then required hospitalization. Five loggers were charged. Court decision: **no jail time**; the offenders were ordered to do some community service and take an anger management course.

Justice?

Enter Betty Krawczyk - again. This feisty grandmother, with others, blocked a logging road - a peaceful protest, no violence. She was hustled off to jail. Court decision: **one year in jail with no possibility of parole.**

Justice?

The B.C. Court of Appeal said that was not justice. Their ruling:

"Sentence was clearly unfit..." (Vancouver Sun, January 26, 2001). Betty Krawczyk was released after the four months she had already served. Her lawyer had pointed out that her one-year sentence with no possibility of parole was really equivalent to a three-year sentence, in that convicted persons are normally eligible for parole after serving one-third of their sentence.

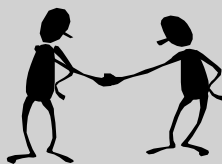
To this writer, a non-lawyer, the above dichotomy is a damning indictment of our justice system and the way politicians set up the law (such as the Forest Practices Code) to protect the powerful corporations and leave the peaceful protester vulnerable. This case is another example of how major corporations - including the news media - manipulate power into their hands. The judge who sentenced the loggers who acted like goons, constrained by the legislated rights of forest giants, could only say, "While there was no evidence Interfor organized the event (attack on the

## Thanks for the Support

The WCPJS gratefully acknowledges the financial contribution from the

*Public Legal Education Program of  
the  
Legal Services Society*

*which enables the publication of this  
newsletter.*



*environmentalists*), there was at least tacit corporate approval" (Vancouver Sun, January 5, 2001). Interfor, of course, said that "approval was absolutely untrue." As to the one-year sentence without parole given to Betty Krawczyk, one has to ask how does anyone possibly justify such blatant discrimination against a non-violent protester?

It's easy to see why, at the *International Conference On Penal Abolition*, many people recommended David C. Korten's book, 'When Corporations Rule the World.'



Immigration cont'd from /p...5

the decision he was a prisoner in Cowansville, serving a nine and a half year sentence that started in March of 1997. He became eligible for day parole on October 25, 1998, and full parole on May 26, 2000, and was to be considered under the accelerated parole provisions for "low-risk, non-violent" first-time federal prisoners. When it came time for his accelerated day parole review, he was refused a review out of hand by a community liaison officer for the NPB because he had one of those very same immigration holds against him that had bedeviled Mr. Chaudhry. The difference between these two cases is that Mr. Chaudhry attacked the decision of the immigration department (Citizenship and Immigration Canada) not to review his immigration hold, while Mr. Larsen sought judicial review of the decision of the National Parole Board not to consider him for an accelerated day parole because he had an immigration hold against him.

Introduced into evidence at the hearing was a letter written by a representative of the NPB to Mr. Larsen's lawyer stating:

For your information, offenders who are subject to a detention order under section 105 of the Immigration Act, issued on or after July 10, 1995, will not be reviewed by the Board for day parole because under section 105 of the Act those offenders can no longer be released on day parole.

In the case of Mr. Larsen, Citizenship and Immigration Canada issued a detention order under section 105 of the Immigration Act, April 14, 1997 and consequently, his case will not be reviewed by the Board for day parole.

After reviewing the statutory provisions in the *C.C.R.A.* pertaining to day parole and accelerated day

Immigration cont'd p...4

## W.C.P.J.S Newsletter Subscription Rates



|                             |                           |
|-----------------------------|---------------------------|
| <i>Individuals-</i>         | <i>\$25.00 per year</i>   |
| <i>Organizations</i>        | <i>- \$35.00 per year</i> |
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| <i>Prisoners/Parolees</i>   | <i>- Free</i>             |

parole reviews, Mr. Justice Lutfy of the Federal Court Trial Division found that Mr. Larsen should have had a true review for accelerated day parole, and not just be told that he wasn't eligible because of the immigration hold. The Judge wrote:

*[28] In my view, however, the section 105 detention order does not remove the offender's right to a review and hearing with respect to day parole, where the Board does not otherwise direct day parole release. There is nothing in the language of section 105 or of the detention order that in any way derogates from or otherwise affects Mr. Larsen's statutory right to an accelerated day parole review and, if necessary, a hearing. The National Parole Board erred in law in refusing to grant to the applicant a review of his case for the purpose of day parole and the decision under review must be set aside.*

Although the *Larsen* case dealt with an accelerated day parole, arguably prisoners who have an immigration hold against them must be considered for regular day parole and unescorted temporary absences, on application. As in *Chaudhry*, the Court observed that if a prisoner who also has an immigration hold is granted day parole, subsection 105 (1) would operate to keep him or her in. At that point, the immigration hold would be reviewable under subsection 103(6) of the *Immigration Act*.

If you have any questions about whether these decisions could help you in your situation, contact your own lawyer, or Prisoners' Legal Services (see below).

## Subscription Renewals

Have you renewed your subscription? The newsletter depends in part, on your financial support for publishing costs. We have a grant from the Public Legal Education Program of the Legal Services Society, which has enabled us to bring this newsletter to you. It is distributed free to prisoners in various prisons across Canada and to Canadians who are incarcerated internationally. We have had positive feedback from prisoners and the public on the value of the information printed.

Thank you for your support in the past and your continued support in the future. Current subscription rates are listed on Page 7 of this newsletter.

### PRISONERS' LEGAL SERVICES

We can help you with your prison and parole issues!

Federal prisoners in BC may call us at 1-888-839-8889 on Millennium, or on the administrative phones. The correctional authorities tell us that we are a "common access number", which means that you do not have to enter us on your authorized call list. If you don't have a PIN, ask to use the administrative (or non-Millennium) phones.

BC Provincial Prisoners call us collect at (604) 853-8712.

We answer the phones daily from 9:00 am to 3:00 pm Monday to Friday.

If you wish to appeal your conviction or sentence in a criminal matter, please call the Appeals Department at the head office of the Legal Services Society in Vancouver by calling (604) 601-6000 collect, and ask to speak to a person in the **Appeals Department**.





## Editors's Note

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The articles printed in this newsletter which relate to legal matters and their interpretations of decisions made in various courts, affect incarcerated individuals. Those decisions may also affect those on conditional release and others involved in the criminal justice system. The information contained in this newsletter should not be construed as legal advice. The WCPJS was created to present legal decisions and other information which may have an impact on prisoners, those on conditional release and persons who have criminal records. If you require legal advice or have questions regarding how legal decisions or articles on administrative changes affect you, please contact your own lawyer or if you are incarcerated in British Columbia, please contact Prisoners Legal Services (see page 8).

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## JOHN HOWARD SOCIETY OF THE FRASER VALLEY

*The JHS worker is available with information and assistance on the following:*

- v *Services for Families*
- v *Accommodation for Visitors*
- v *Halfway house information*
- v *Parole preparation*
- v *Street survival Tips*
- v *Community based programs and services*
- v *Social Insurance Applications*
- v *BC Medical Applications*
- v *Welfare rates and information*
- v *Substance Abuse programs and services*
- v *Counselling*

*And other concerns*



*Visitation is provided in the following institutions*

*Matsqui, RHC, Ferndale, Mission, Mountain, Kent PC, Kent GP and Elbow Lake.*

*Please refer to the institutional brochures posted in each institution for dates and times of the JHS workers schedule. Federal prisoners in BC can call us at 1-877-640-1122*

### **NOTICE TO ALL PRISON VISITORS**

Are you aware that the **JOHN HOWARD SOCIETY FAMILY HOUSE** exists to serve you. We recognize that visiting a loved one who is incarcerated often means financial strain for families. If you are visiting from out of town and are finding accommodation costs difficult, you are invited to contact

**JHSFV Family House**  
**Abbotsford, BC**  
**Telephone: (604) 852-1226**

The West Coast Prison Justice Society was started in 1993 and incorporated in February 1994. The objectives of this organization are to further the application of justice in B.C. penitentiaries, prisons, jails and reformatories. Through our newsletter, we wish to provide prisoners with an open forum for ongoing dialogue. We will try to provide legal interpretations of recent legislation and current prison case law and to bring to the forefront the major issues which concern prisoners in B.C. We will also keep you updated

with respect to current Legal Aid policies. We share the commitment to work together towards these goals.

Your responses and your suggestions are key to the success of this ongoing process. In order to be able to address the problems that you believe are most relevant to conditions inside the walls and when on parole, we rely on your questions and comments. We also wish to hear how any legal precedent and/or legislation is affecting you.

### WCPJS Board

|                 |                         |                |
|-----------------|-------------------------|----------------|
| Michael Jackson | - Professor of Law, UBC | President      |
| Peter Benning   | - Lawyer                | Vice President |
| Sylvia Griffith | - John Howard Society   | Treasurer      |
| Edward Rouse    | - jobSTART              | Secretary      |

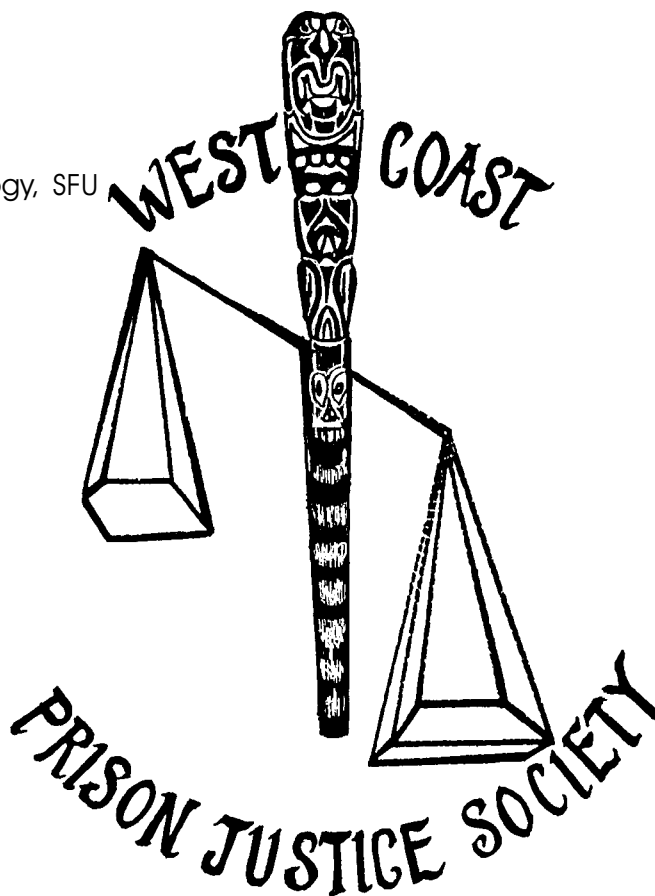
### Board Members

|               |                                 |
|---------------|---------------------------------|
| Sasha Pawliuk | - Advocate                      |
| Gayle Horii   | - Parolee                       |
| Rita Leon     | - Native Elder                  |
| Des Turner    | - Activist                      |
| Liz Elliott   | - Professor of Criminology, SFU |

WCPJS Counsel: - John W. Conroy, QC  
Conroy & Company

### PURPOSES OF THE WEST COAST PRISON JUSTICE SOCIETY

- a) To promote the provision of legal services to people who are incarcerated in the Lower Mainland and Fraser Valley of British Columbia, and who are financially unable to obtain legal services privately.
- b) To encourage the provision of legal services to prisoners whose problems arise because of their unique status as prisoners.
- c) To promote the rule of law within prisons and penitentiaries.
- d) To encourage prisoners to make use of the legal remedies at their disposal.
- e) To promote the fair and equal treatment of prisoners, by assisting prisoners who face discrimination based on such matters as sex, aboriginal origin, race, colour, religion, national ethnic origin, age or mental or physical disability.
- f) To encourage the application of the Canadian Charter of Rights and Freedoms inside prisons and penitentiaries.
- g) To promote openness and accountability in the prisons and penitentiaries of British Columbia.
- h) To promote the principle that incarcerated people must be treated with fairness and dignity.
- i) To promote the abolition of prisons through the reform of the criminal justice system.



We would be pleased to hear from you. Please write, or have someone write for you, to:  
**West Coast Prison Justice Society**  
**c/o Conroy and Company,**  
**Barristers & Solicitors**  
**2459 Pauline Street, Abbotsford, B.C. V2S 3S1**