

West Coast

# PRISON JUSTICE

SOCIETY NEWSLETTER

JULY - OCTOBER 2001

## BC COURT FINDS AUTO-REVOKE PROVISIONS OF CCRA UNCONSTITUTIONAL

By Sasha Pawliuk

On October 19<sup>th</sup> of this year, Mr. Justice Lowry of the Supreme Court of British Columbia found a section of the Corrections and Conditional Release Act (CCRA) to be contrary to the Canadian Charter of Rights and Freedoms, and therefore unconstitutional. (See *Illes v. The Warden, Kent Institution* 2001 BCSC 1465) The section in question allows the Parole Board to revoke a person's parole or statutory release automatically, without a hearing, if (s)he receives an additional sentence for an offence "under an Act of Parliament". In full, s. 135 (9.1) reads:

*Where an offender whose parole or statutory release has not been terminated or revoked is incarcerated as a result of an additional sentence for an offence under an Act of Parliament, the parole or statutory release, as the case may be, is revoked on the day on which the offender is incarcerated as a result of the additional sentence*

Before the enactment of this section, everyone whose conditional release was suspended had the right to a hearing before the Parole Board could revoke the release. Section 135 (9.1) made revocation automatic without a hearing only for those who had an additional sentence imposed. If a person whose release had been suspended was convicted of an offence that resulted in a fine or probation for example, the automatic revocation provisions would not be triggered, and that person would get a parole hearing.



The case was argued by John Conroy, Q.C. on behalf of Mihaly Illes, a Hungarian citizen who had been deported to Hungary after being released on statutory in 2000. In June of this year, Mr. Illes was arrested while trying to re-enter Canada to see his two children who live here with his former wife. He was charged under the Immigration Act, and sentenced to seven days imprisonment by a Provincial Court Judge.

By operation of s 135 (9.1) of the CCRA, Mr. Illes' statutory release was revoked without a hearing, and he was returned to Kent. His new stat release date became 13 August 2002, although he was eligible to be reviewed by the Parole Board in June of 2002. So, as a result of s. 135(9.1) of the CCRA (the

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automatic revocation provision), the seven day sentence imposed by the judge became in reality a jail term of over one year before Mr. Illes would even get a review.

On behalf of the petitioner (Mr. Illes) Mr. Conroy argued that the auto-revoke section of the CCRA was contrary to s. 7 of the Canadian Charter of Rights and Freedoms. That section states:

*Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.*

In effect, Mr. Illes had been sentenced to at least an additional year in jail without a hearing, solely because of the auto-revoke provision. The Provincial Court Judge had sentenced him to seven days for the violation of the Immigration Act, but by operation of s. 135(9.1) of the CCRA (the auto-revoke provision) he had to stay in custody for much longer. Clearly in these circumstances, he was being deprived of his liberty for a period of over a year without a hearing. Many courts have held that in situations of deprivation of liberty, the essence of the "principles of fundamental justice" are knowing the case against you, having the opportunity to present your side of the story, and having a fair and impartial tribunal decide the case. Since Mr. Illes had his statutory release revoked without a hearing, which lead to his further incarceration for over a year, in the wording of s. 7 of the Charter he was deprived of his liberty, not in accordance with the principles of fundamental justice.

The lawyer for the government argued that Mr. Illes had his hearing in Provincial Court on the sentencing for the Immigration Act offence. It was stated that he could have made his case to the sentencing judge, and therefore that hearing was sufficient, even though there was no hearing before the Parole Board. Agreeing with the position put forward by Mr. Conroy for Mr. Illes, the Supreme Court Justice found that the job to be done by a sentencing judge and the duties of the Parole Board are two separate functions. The purpose of the Provincial Court hearing was only to decide a

suitable sentence for the Immigration Act offence. A Parole Board hearing is the appropriate place to determine if a prisoner should be released into the community to serve his or her sentence, and under what conditions. To quote Mr. Justice Lowry:

*But sentencing judges ought not to be making decisions that properly lie within the prerogative of the Parole Board. The task of the sentencing judge before whom the petitioner appeared was to sentence him for the offence to which he had pleaded guilty, not to consider whether his statutory release should continue and then to impose a sentence that would best serve his determination of that issue.*

*In my view, the revocation of the petitioner's statutory release without his being given the opportunity to be heard specifically on whether the circumstances warranted the deprivation of his liberty for at least a year clearly offended his s.7 Charter rights. It is no answer to say that he had a hearing when he was sentenced by the Provincial Court.*

However, in any Charter case, it is never the end of the story once a judge finds a Charter violation. Even if a person's rights have been breached the action can be "saved" by s. 1 of the Charter if a court finds, very generally speaking, that the government action was reasonable in order to benefit society at large. Section 1 reads:

*The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.*

Many cases since the inception of the Charter have dealt with the specifics of how to interpret s. 1. The authority relied upon by Mr. Justice Lowry in this case is *Thompson Newspapers Co. v. Canada (Attorney General)*, {1998} 1 S.C.R. 877, and the passage he refers to is:

*In order to be sufficiently important to warrant overriding a constitutionally protected right or freedom, the impugned provision must relate to concerns which are pressing and substantial in a*

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# Ready...Fire...Aim

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by Des Turner

This article is being written 12 days after the heinous acts of September 11, 2001 as an introduction to the thoughtful reaction of one American at the close of what he calls "a sick, horrible, frightening day."

On the surface, the above events may seem to have no connection to the prison system north of the 49<sup>th</sup> parallel. Understandably, whether we are inside or outside the razor wire, we tend to think in terms of local events and opinions. But in this age of "globalization" that's not a broad enough view. We already know that even one particularly horrible crime here in Canada can become the focus of the news media and generate angry demands from the public for stiffer penalties for all criminals, including the return of the death penalty. Already, at least one letter noticed in our local newspapers, condemns our Canadian justice system in the heat of anger over the deaths in New York and in the Pentagon.

Just before we introduce the letter from Michael Moore, let's be clear about a few points: for the safety of the world, the master-minds behind the barbaric terrorism of September 11 must be stopped from further action; terrorism, as one professor in his commentary last week stated, is a warped concept, a mindset based on perceptions which must be eliminated; killing more innocent civilians in all out war to get at individual perpetrators may only intensify terrorism.

Here is what Michael Moore had to say:

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Dear Friends,

I was supposed to fly today on the 4:30 PM American Airlines flight from LAX to JFK. But tonight I find myself stuck in L.A. with an incredible range of emotions over what has happened on the island where I work and live in New York City.

My wife and I spent the first hours of the day-after being awakened by phone calls from our parents at 6:40am PDT-trying to contact our daughter at school in New York and our friend JoAnn who works near the World Trade Center. I called JoAnn at her office. As someone picked up, the first tower imploded and the person answering the phone screamed and ran out, leaving me no clue as to whether or not she or JoAnn would live.

It was a sick, horrible, frightening day.

On December 27, 1985 I found myself caught in the middle of a terrorist incident at the Vienna airport - which left 30 people dead, both there and at the Rome airport. (The machine-gunning of passengers in each city was timed to occur at the same moment.) I do not feel like discussing that event tonight because it still brings up too much despair and confusion as to how and why I got to live. a fluke, a mistake, a few feet on the tarmac, and I am still here, there but for the grace of.

Safe. Secure. I'm an American, living in America. I like my illusions. I walk through a metal detector, I put my carry-ons through an x-ray machine, and I know all will be well.

Here's a short list of my experiences lately with airport security:

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*(In the interests of space in this newsletter, Michael Moore's comments about security are abbreviated)*

At the Newark Airport: the counter can't find my seat ...so I get on without a ticket!

At Detroit Metro Airport: I pass my deli lunch to the guard so it doesn't go through the x-ray machine or the metal detector. He believes my word that "It's just a sandwich." At LaGuardia in New York: I send my bag on the flight ahead of me. Nobody knows what's in it.

Back at Detroit: I take my time getting off the commuter plane and find I'm alone and free to wander on the tarmac. I or my companion could have taken aboard knives, razors, hammer and chisel. No one stopped us.

Of course, I have gotten away with all of this because the airlines consider my safety SO important they pay rent-a-cops \$5.75 an hour to make sure the bad guys don't get on my plane. That is what my life is worth - less than the cost of an oil change.

Too harsh, you say? Well, chow on this: a first-year pilot on American Eagle (the commuter arm of American Airlines) receives around \$15,000 year in annual pay.

That's right - \$15,000 for the person who has your life in his hands.

Until recently, Continental Express paid a little over \$13,000 a year. There was one guy, an American Eagle pilot who had four kids so he went down to the welfare office and applied for food stamps -and he was eligible!

Someone on welfare is flying my plane? Is this for real? Yes, it is.

So spare me the talk about all the precautions the airlines and the FAA are taking. They, like all businesses, are concerned about one thing- the bottom line and the profit margin. Four teams of 3-5 people were all able to penetrate

airport security on the same morning at 3 different airports and pull off this heinous act? My only response is-that's all?

Well, the pundits are in full diarrhea mode, gushing on about the 'terrorist threat' and today's scariest dude on planet earth- Osama bin Laden. Hey, who knows maybe he did it. But, something just doesn't add up.

Am I being asked to believe that this guy who sleeps in a tent in a desert has been training pilots to fly our most modern, sophisticated jumbo jets with such pinpoint accuracy that they are able to hit these three targets without anyone wondering why these planes were so far off path?

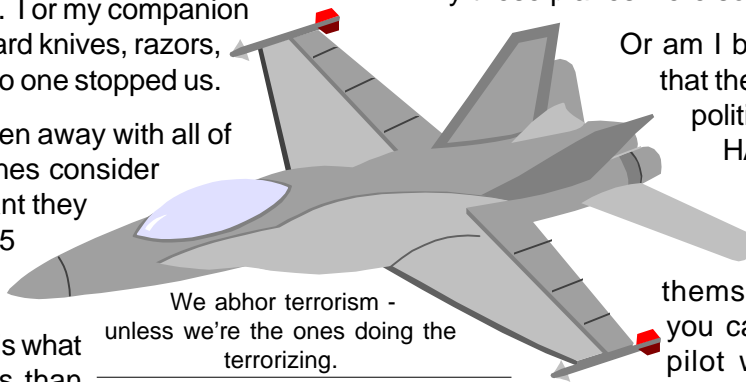
Or am I being asked to believe that there were four religious/ political fanatics who JUST HAPPENED to be skilled airline pilots who JUST HAPPENED to want to kill themselves today? Maybe you can find one jumbo jet pilot willing to die for the cause - but FOUR? Ok, maybe you can - I don't know.


What I do know is that all day long I have heard everything about this bin Laden guy except this one fact - WE created the monster known as Osama bin Laden!

Where did he go to terrorist school? At the CIA!

Don't take my word for it - I saw a piece on MSNBC last year that laid it all out. when the Soviet Union occupied Afghanistan, the CIA trained him and his buddies in how to conduct acts of terrorism

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Moore Cont'd from .../p4

against the Soviet forces. It worked! The Soviets turned and ran, Bin Laden was grateful for what we taught him and thought it might be fun to use those same techniques against us.

We abhor terrorism - unless we're the ones doing the terrorizing.

We paid, trained and armed a group of terrorists in Nicaragua in the 1980s who killed over 30,000 civilians. That was OUR work. You and me.

Thirty thousand murdered civilians and who the hell even remembers?

We fund a lot of oppressive regimes that have killed a lot of innocent people, and we never let the human suffering THAT causes to interrupt our day one single bit.

We have orphaned so many children, tens of thousands around the world, with our taxpayer-funded terrorism (in Chile, in

Vietnam, in Gaza, in Salvador) that I suppose we shouldn't be too surprised when those orphans grow up and are a little whacked in the head from the horror we have helped cause.

Yet, our recent domestic terrorism bombings have not been conducted by a guy from the desert but rather by our own citizens: a couple of ex-military guys who hated the federal government.

From the first minutes of today's events, I never heard that possibility suggested. Why is that?

Maybe it's because the A-rabs are much better foils. A key ingredient in getting Americans whipped into a frenzy against a new enemy is the all-important race card. It's much easier to get us to hate when the object of our hatred doesn't look like us.

Congressmen and Senators spent the day calling for more money for the military; one Senator on

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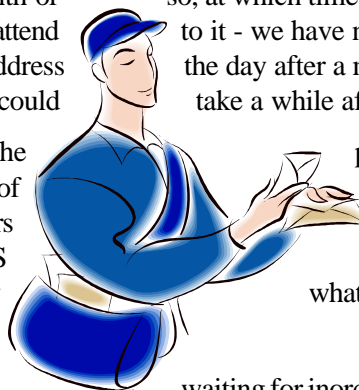
## KEEP THOSE LETTERS COMING, BUT.....

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 are required, individual board members attend means that a letter received at our address least a month, and then the response could

so, at which time the mail is opened. Where responses to it - we have no clerks or secretaries at WCPJS. This the day after a meeting won't even be opened for at take a while after that.

The objectives of the WCPJS include the penitentiaries in B.C. and the sharing of Although some individual board members their private law practices, the WCPJS mandate is to try and let prisoners know not to create those cases.



promotion of the rule of law in legal information inside the walls. are lawyers who represent prisoners in itself does not represent individuals. Our what the law says and to report on new cases,

We are concerned that people may be 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 (Only if you are in carcerated in BC. For information, see page 11).

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

Every year, the Prison Justice Day Committee organizes rallies, radio programs, public displays and concerts on behalf of prisoners and others who are, and have been, affected by the criminal justice system here in Canada. This core group of dedicated individuals are concerned and involved in issues surrounding prisoners, education of the public on prisons, and education within the system. Along with other supporters, they have been proactive in aiding women in prison who have been traditionally ignored by the system. Without their efforts, many changes relating to the treatment of women in prisons may not have taken place and many injustices that have occurred within the prisons would not have been brought to light. As prisoners, former prisoners and family and friends affected by the system, we owe them many thanks for the work they have done in the past and will continue to do in the future.

Editor

## A Letter from the Prisoners Justice Day Committee

Greetings Brothers and Sisters

Prison Justice Day was a huge success here in BC. Not all but a number of prisoners in both the Federal and Provincial prison systems observed the day. As well we heard from a good number of federal prisoners across the country and a few from the US prisons.

Here in Vancouver, the Prisoners' Justice Day Committee organized a number of events.

On August 9<sup>th</sup> there was eight hours of radio programming on the local Community Co-Operative Radio Station. The programming included pre-recorded interviews with prisoners' rights activists, the late Claire Culhane, the voice of prisoners and ex-prisoners, how to become involved in prisoner support work, and a panel discussion on abolition and alternatives to incarceration.

On the 10<sup>th</sup> we held the 25<sup>th</sup> Anniversary Memorial Rally which included 2 hours of speakers covering issues faced by First Nations people, women, youth and refugees in prison, as well as prisoner deaths, solitary confinement, health care and the medical needs of prisoners living with AIDS and Hep C. The rally was attended by about 100 people and recorded by Co-Op Radio for later broadcast. In the afternoon there were five hours of programming on Simon Fraser University radio. The evening 'Rock Against Prisons' concert was attended by 250 people and broadcast live over the internet to countries all over the world, thirty-five people watched the webcast.

On the 11<sup>th</sup> there was a film night on Political Prisoners, Leonard Peltier and Mumia Abu-Jamal. This was attended by over 100 people.

Finally on the 12<sup>th</sup>, we hosted a Prisoner Support Workshop at a youth festival of Art & Social

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change with 40 to 50 participants.

This year we received many letters from many long-term prisoners talking about the need to educate the younger population as to what the struggle is about. We on the outside are experiencing the same challenges, not only in the struggle for prisoner's rights but in any struggle for independence and liberation. As the youth of today are coming of age in their own awareness, it is up to us who know the history of what has gone before to share this knowledge and information with them. For this reason the Prisoners' Justice Day Committee, Vancouver compiled and published a 25-year history of Prison Justice Day. It is our hope to send one copy to each prison. For those who ask – for the reported year 1999 – 2000, 189 prisoners died in and out of prison.



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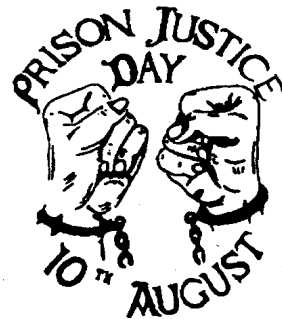
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We would like to thank everyone who took the time to write us and all of you who helped to make August 10<sup>th</sup> a day for prisoners, family and friends to remember those who are no longer with us.

In Solidarity

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Moore Cont'd from .../p5

CNN even said he didn't want to hear any more talk about more money for education or health care - we should have only one priority: our self-defense.

Will we ever get to the point that we realize we will be more secure when the rest of the world isn't living in poverty so we can have nice running shoes?

In just 8 months, Bush gets the whole world back to hating us again. He withdraws from the Kyoto agreement, walks us out of the Durban conference on racism, insists on restarting the arms race - you name it, and Baby Bush has blown it all.

The Senators and Congressmen tonight broke out in a spontaneous version of "God Bless America." They're not a bad group of singers!

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# The innocence projects

The following article was received from a group called the *Coalition for Prisoner's Rights*. Although the article is from the United States, the relevancy of it affects those here in Canadian prisons. We do not have the death penalty here in Canada since it was legislated out of existence in 1976 and reaffirmed by the Supreme Court of Canada more recently. The United States on the other hand has the death penalty in several states and some states seem to take a perverse pleasure in the number of executions they can carry out. However, as pointed out in this article, there has been a growing number of people released on new evidence or the reexamination of evidence derived from DNA testing.

Several states have legislation in the works to provide for testing after conviction (ie: someone who was convicted when DNA testing was in its infancy). A couple of states have restricted this testing to those who are facing death row. These restrictions block out those persons who are doing life sentences and who may well be innocent of the crime for which they have been convicted. How will those states address them? This article does not give any indication if there will be compensation for those individuals whose lives have been disrupted and/or stolen by the state. I suspect some form of minimal aid will be given to those cleared by this testing in the manner of a small pension and some form of school and/or training.

If you wish to find out about similar projects in Canada, please contact Prison Legal Services in Abbotsford or the list of organizations following the article which may have information and addresses for them.

Editor

## *INNOCENCE MATTERS: PART II*

In the last month or two, the national news media has begun to discover what the rest of us known all along - there are actually innocent people in prison, even on death row, doing time for someone else's crime. Some of this is the result of the more frequent use of DNA testing, which the public thinks should be available to any prisoner who thinks that a DNA test may help clear him or her. We told you in June about the Innocence Protection Act being considered by Congress. This article is about additional resources for the innocent - Innocence Projects.

The first innocence project was Centurion Ministries, established in 1983 by lay minister James McCloskey. You can write -them at: Centurion Ministries, 32 Nassau St., Third Floor, Princeton, NM 08542. Since 1983, Centurion Ministries has been able to free more than

14 innocent people. In 1991, Professor Barry Scheck and lawyer Peter Neufeld founded 'The Innocence Project' at Benjamin Cardozo School of Law, where Scheck teaches. (If the names sound familiar, it is because both lawyers were part of the O.J. Simpson "Dream Team.") The Project provides assistance to innocent prisoners who are and whose innocence can be proved through the use of DNA tests. So far, in 40% of the cases this Project has handled, the DNA test has proved that the prisoner did not commit the crime.



Cont'd ...p9/



As best we can tell, there are now projects established or being established at universities or schools for eighteen states. There should be an insert with this newsletter that provides name and addresses. If you can't find the insert, write us a letter and we'll send you one. Illinois, New York, Oklahoma and Washington state have laws that provide for DNA testing after conviction if it has not been done. (Washington's law applies only to those who are serving a life sentence or face the death penalty.) Texas is considering a similar law.

We have not been able to contact all of these projects before the deadline for the newsletter. Each has different guidelines concerning the type of case - that they will accept. From what we know, all of them are primarily interested in helping people who had absolutely nothing to do with the crime for which they were convicted

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**Prisoners/Parolees - Free**

Yes, God, please do bless us.

Many families have been devastated tonight. This just is not right. They did not deserve to die. If someone did this to get back at Bush, then they did so by killing thousands of people who DID NOT VOTE for him! Boston, New York, DC, and the planes' destination of California - these were places that voted AGAINST Bush! Why kill them? Why kill anyone? Such insanity.

Let's mourn, let's grieve, and when it's appropriate let's examine our contribution to the unsafe world we live in.

It doesn't have to be like this.

Yours, Michael Moore

*QUESTION: Locally and worldwide, how do we correct the sequence "Ready...Fire...Aim" in some of our thoughts and actions?*

*Des Turner Sept. 23/01*

## 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 in the newsletter. However, we need funds to print.

Thank you for your support in the past and your continued support in the future. Current subscription rates are listed on page 10 of this newsletter.

## PRISONERS' LEGAL SERVICES

We can help you with your prison and parole issues. We can also assist with disciplinary charges.

Federal prisoners in BC may call us toll-free 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, except for those at North Fraser who use our toll-free number above.

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

We are a small office of only eight staff, including one lawyer, serving prisoners across BC. We cannot take every case that comes our way, but can usually at least give some advice.

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**.



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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***

# PRISONER WINS CENSORSHIP CHALLENGE

by Sasha Pawliuk

Allan Arthur Crawshaw is no stranger to Federal Court applications. In 1996 the federal court confirmed his right to subscribe to the "Prison News Service" while incarcerated in Mission Medium Institution, despite the fact that the authorities claimed that the magazine was "inciteful", "subversive" and that it "advocates creating adversarial climates in the correctional setting". (Crawshaw v. Commissioner of Corrections (Can.), (1996), 125 F.T.R. 241) In July of 1999 his court application to have funds disbursed to participate in a *Reader's Digest* Sweepstakes was found to be moot - Mr. Crawshaw's request to disburse the funds had finally been approved through the grievance procedure, after the date of the sweepstakes, but before the Federal Court application. (Crawshaw v. The Attorney General of Canada (15 July 1999) Vancouver T-386-99 (F.C.T.D.))

So, when Mission refused Mr. Crawshaw's attempt to continue his subscription to *Scientific American*, he headed off to Federal Court once again. (Crawshaw v. The Attorney General of Canada (19 July 2000) Ottawa T-1838-99 (F.C.T.D.)) The application was decided without personal appearance in the court, and as luck would have it, by the same judge who granted his first victory in 1996 (I wish that this had happened to me more often when I was practicing law....)

The facts of the case are simple: Mr. Crawshaw had been subscribing to *Scientific American* magazine since 1995. For some reason, when he put in his "Inmate's Request to Encumber/Disburse Funds" form in 1999, it was refused in a terse response that said simply "Not approved. Contrary to Policy". He did not utilize the grievance procedure, but headed straight to Federal Court.

Before embarking on his legal analysis of the case, the judge who decided the case, Mr. Justice Gibson, looked at the relevant legislation. In particular, he noted section 3 and paragraph 4(e) of the Corrections and Conditional Release Act (CCRA).

*"... the publication Scientific American is an "educational publication" or, at the very least, not in any sense a periodical that could be considered "inciteful" or advocating or likely to create an adversarial climate in the correctional setting that might be counter-productive to good-order or offender rehabilitation. Nor could it be considered to be 'subversive' to the Service."*

3. *The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by*

- (a) *carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders, and*
- (b) *assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.*

4. *The principles that shall guide the Service in achieving the purpose referred to in sections 3 are*

- (e) *that offenders retain the rights and privileges of all members of society except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence.*

The Judge also looked at Commissioner's Directive 090 dated the 20<sup>th</sup> of August 1999. Sections 41 and 42 were of particular relevance.

41. *Institutions shall establish a list of businesses from which inmate purchases shall be made. The institutional*

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*head or a delegate not below the Assistant warden level shall approve purchases from any other business.*

42. Normally, purchases from other countries shall not be allowed. Such purchases may be made with the approval of the institutional head.

Since the cheque for *Scientific American* had to go to the United States, it was section 42 that the authorities at Mission were relying on.

Referring back to his earlier judgment in 1996, Mr. Justice Gibson accepted:

*“that the publication Scientific American is an “educational publication” or, at the very least, not in any sense a periodical that could be considered “inciteful” or advocating or likely to create an adversarial climate in the correctional setting that might be counter-productive to good-order or offender rehabilitation. Nor could it be considered to be “subversive” to the Service.”*

The Judge had asked Mr. Crawshaw and the lawyer for the CSC to make submissions on the issue of whether the institutional

authorities had failed to exercise the jurisdiction given to them to decide whether a subscription to *Scientific American* was an expense that could be authorized. Because it was a purchase from another country it would “normally” be disallowed by CD 090 section 42, but in section 42 the institutional head was also given the power to allow such purchases. The question that the Judge wanted answered was if the institutional head had truly considered whether to allow Mr. Crawshaw to make the purchase. Giving a real consideration of the question would be “exercising jurisdiction” on the part of the institutional head. The CSC lawyer’s position was that the question of jurisdiction did not even arise, because Mr. Crawshaw had never made a request for approval of the purchase.

Making short work of that argument, the Judge found that Mr. Crawshaw’s “Inmate’s **Request** to Encumber/ Disburse Funds” was, indeed, a request. Relying on the same language that Mr. Crawshaw had used in a letter

to the ITF Review Committee, the Judge said:

*“...the applicant wrote: ‘I have the right under Canadian law to subscribe to this magazine and have been subscribing to this educational magazine since 1995. This Committee has absolutely no jurisdiction under the law to refuse to process my ITF....’ The applicant’s view that the ITFRC had ‘absolutely no jurisdiction under the law to refuse to process his {request}’ was, I am satisfied, a position that is at least arguably consistent with section 3 and paragraph 4 (e) of the Corrections and Conditional Release Act quoted above”*

Considering s. 3 and paragraph 4 (e) of the CCRA Mr. Justice Gibson found that there was a failure of the ITF Review Committee in conjunction with the “institutional head” to exercise the jurisdiction given them by CD 090 section 42, and allowed the application for judicial review.

In a nutshell, the subscription for *Scientific American* was a purchase from another country, and “normally” would not be allowed by section 42 of CD 090. However, that section also gives the institutional head the discretion to allow those purchases. The judge noted that s. 3 of the CCRA states that the correctional system’s

**We would like to take this opportunity to thank everyone who took the time to return the Reader’s Survey in the last issue. These surveys will help us to gain funding in order to publish this newsletter in the future. As it happens, our funding grant from the Public Legal Education Program of the Legal Services Society has been cut in half. Due to the cut in our grant, we will only be publishing this newsletter three times per year instead of quarterly, as we have in the past. Again, thank you for your support and your comments. The Editor**

purpose is to assist prisoners in rehabilitation and reintegration into society. Further, paragraph 4 (e) sets out the principle that prisoners are to retain the rights and privileges of all members of society except those rights necessarily removed as a result of incarceration. In the end result, the Judge decided that the institutional authorities didn’t consider whether Mr. Crawshaw could maintain his subscription to *Scientific American*. They had the discretion to allow the purchase, but they did not exercise it.

One interesting little side-bar to the main decision is the fact that in this case, Mr. Crawshaw did not pursue the grievance procedure before he headed toward Federal Court. Increasingly over the years, courts have been reluctant to deal with the problems of prisoners who come before them if the prisoner hasn’t already run the gamut of all three levels of grievances. The judge notes that Mr. Crawshaw has used the grievance procedure extensively

*free and democratic society.*

*The means chosen to achieve the legislative objective must pass a three-part proportionality test which requires that they be (a) rationally connected to the objective, (b) impair the right or freedom as little as possible, and (c) have deleterious effects which are proportional to both their salutary effects and the importance of the objective which has been identified as being of sufficient importance.*

The lawyer for the government submitted that the auto-revoke section was enacted to deal with the “pressing and substantial” problem of offenders serving only a minimal amount of time after being convicted of an offence while out on conditional release. It was also argued that the section demonstrated society’s disapproval of people committing other offences while out on release. However, the justice said that he had nothing before him which explained why, absent s. 135 (9.1), prisoners would serve minimal time after conviction for an offence committed while on release. Referring back to the quote in the Thompson case above, the justice said that he questioned how revoking Mr. Illes’ stat release without a hearing met the tests for s.1 of the Charter set out in that case. He found that Mr. Illes’ rights under s. 7 of the Charter had not been affected as little as possible.

While in the end result Mr. Justice Lowry ordered Mr. Illes’ immediate release from prison because the automatic revocation of release under s. 135 (9.1) is not constitutionally valid, he granted the government a six month transition period during which time the judgment has no force and effect. This gives the government six months to consider changing the legislation, but does not affect Mr. Illes’ order for release. Because the case was decided by the Supreme Court of BC, it is not binding on courts in other provinces.

If your conditional release has been automatically revoked because you received an additional sentence while on conditional release, this case may apply to you, and you may be entitled to release as well. You should contact your own lawyer or Prisoners’ Legal Services (if you are incarcerated in BC) to see if you can apply for habeas corpus to the Supreme Court. See page 11 of this newsletter to find out how to contact Prisoners’ Legal Services from where you are in BC.

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since his incarceration. He refers back to the case he heard in 1996, noting that it is very similar to this one, and decides that it “would not be in the interests of justice” to refuse the application based on “the applicant’s failure to exhaust the possibility of alternative remedies within the Service”. Clearly, the judge was not too optimistic about Mr. Crawshaw’s chances of resolving this problem using the grievance process. Unfortunately for precedent value, the judge does add, “...this Court should not be taken to endorse in any way the circumvention of established channels for dispute resolution.” *In other words, keep on filing those grievances before you go to court...*

This series of Crawshaw decisions stands as a testament to patience and perseverance, and to the use of legal channels to achieve justice. For everyone else out there attempting to pursue peaceful legal remedies to resolve problems with CSC, take heart!

## Odds n Ends

Canadians are being forced to concede some of their rights following the US example. Legislation is in the works to give police extraordinary powers of arrest, detention and seizure if a person is suspected of being or supporting a terrorist or terrorist organization. We will have more on this issue in future newsletters.

Editor

**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
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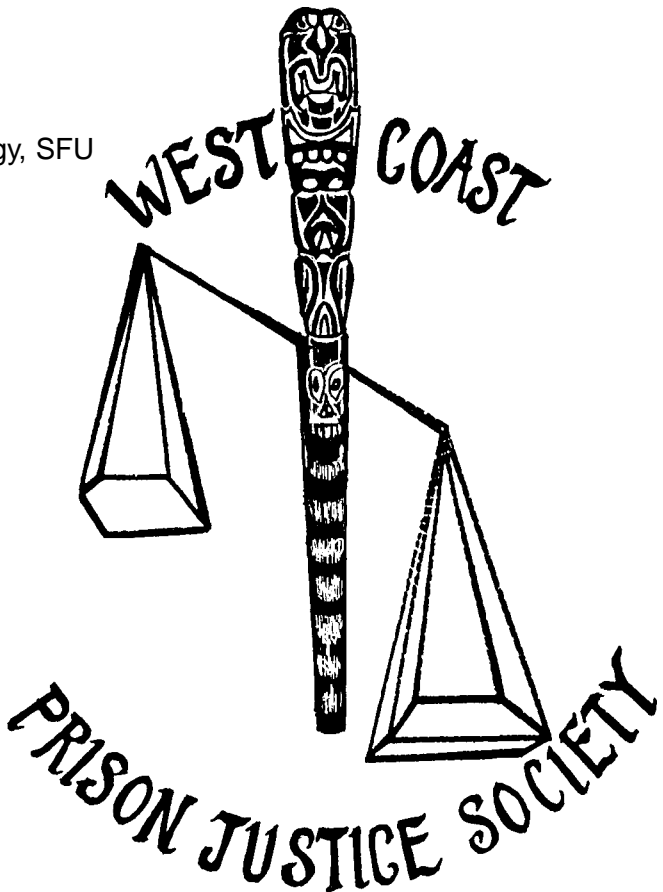
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Sasha Pawliuk	- Advocate
Gayle Horii	- Parolee
Des Turner	- Activist
Liz Elliott	- Professor of Criminology, SFU

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