

West Coast

PRISON JUSTICE

SOCIETY NEWSLETTER

JULY - SEPTEMBER 2000

In the July-September 1998 edition of the WCPJS newsletter, an article was included regarding the provision in the Criminal Code of Canada which would enable authorities to get a court order to force a person to provide a DNA sample for the purposes of investigation. While the original intent was to control and keep track of repeat sex offenders, the legislation when it appeared had been expanded to include several other offences. The opinion of the author in the original article was; once there was wide acceptance by the public, the forced provision of DNA samples would be all-inclusive rather than exclusive. Since the writing of the original article, some special interest groups have proposed the taking of DNA samples from newborns which would be put into a computerized data bank. This is one example of that acceptance. The reasoning behind the baby data bank is that the samples could be used to identify children who have gone missing. There is no way of forecasting how that data bank, if instituted, would be used in the future. The following article is an overview of the legislation (CCC, Sec. 487.055) now passed into law.

Eddie Rouse

DNA IDENTIFICATION ACT

by Ann Pollack

As you know, the new DNA Identification Act has now been proclaimed (June 30, 2000), and it introduced significant amendments to the Criminal Code. Section 487.055 is concerned with collection of samples from prisoners already serving sentences at the time the provisions came into force.

487.055 (1) A provincial court judge may, on ex parte application made in Form 5.05, authorize, in Form 5.06, the taking, from a person who

- (a) before the coming into force of this subsection, had been declared a dangerous offender under Part XXIV,*
- (b) before the coming into force of this subsection, had been convicted of more than one murder committed at different times, or*
- (c) before the coming into force of this subsection, had been convicted of more than one sexual offence within the meaning of subsection (3) and, on the date of the*

DNA Continued p.5

Rouse v. Insurance Corp. of British Columbia

Eddie Rouse

It all started with a claim in July 1998 to ICBC because my car was burned while parked on a lot on Commercial Drive in Vancouver. Never did I think that this would take me on a journey through the courts lasting over two years. This case illustrates the prejudicial attitudes and discriminatory practices I have encountered in my dealings with ICBC and its investigators. The decision in this case has what I feel is a major impact on the rights of those persons who have a criminal record and the right to be treated fairly. This case is also reinforced by *Bevaqua v. Insurance Corp. of British Columbia* [1999] B.C.J. No. 2178 BCCA. If anyone feels that ICBC has treated him or her unfairly due to having a record, it might be worth their while to file a suit in small claims court. However, be prepared for a long, drawn-out court fight. I estimate ICBC has spent over \$50,000 fighting this particular claim. This is money, which we pay, that is being wasted fighting claims that are legitimate. In the case of *Bevaqua*, the claim was denied on the basis that the insured filed a fraudulent claim. The BC Court of Appeal laid out that the insurer (in this case ICBC) bears the burden of proof where there is an allegation of fraud, not the insured. ICBC and its legal department have consistently ignored this ruling by fighting claims where their investigators make these allegations and recommendations of denial without any proof or criminal charges.

The Background

I discovered my car burned when I had gone to work on a weekend to pick something up for a neighbour. Although the fire department had obviously attended the fire, I was not contacted even though the police would have been able to run up my name through the license plates.

I contacted the police who stated that they never attended the fire and was given a number to the fire department. The person at the fire department transferred me over to another station and finally I was able to speak with someone who told me that the fire appeared to be of electrical in nature. So I contacted ICBC and filed a claim giving all the relevant information available to me and made the usual appointment for a claims adjuster.

So far, so good, right? After meeting with the claims adjuster and making a statement and giving all the details of where and when, etc. I was told that investigators would be speaking with the fire department and police and I would be contacted. Normal routine for something like this. Ten days passed by and I had heard nothing so I telephoned the adjuster and left a message. I didn't receive the courtesy of a return call from the adjuster.

I was next visited by a police officer, attached to the VPD arson squad, who informed me that the fire was not caused by an electrical short but by a molotov cocktail. I gave him the same information I had given in my first interview with the ICBC adjuster. There was no additional information I could give to him.

I subsequently went through two other interviews with "Special Investigators" for ICBC. These interviews were spread out over a period of two or three months and still nothing was resolved until I received in the mail a letter denying my claim. In that letter, there was no reason for the denial nor was any forthcoming. At this time I decided to file a suit in small claims court three months after filing the original claim (Oct 7, 1998).



The Process

People filing in small claims court are required to take part in what is called a 'settlement conference' during which a judge attempts to resolve the issue(s) and get the two sides to come to a settlement

thereby saving valuable court time. During this session, the attorney representing ICBC refused to resolve the claim other than to dispute the amount of the claim. I should add at this point that the amount of the claim was only for \$4600.00 plus costs. Believing that the ICBC representatives were acting in good faith I negotiated with the amount of the claim. However, even after they were urged by Judge White to settle the case, they refused.

The first court date was December 1999 – a full eighteen months after the incident. Court time was set for one day. However, due to a carry-over case from the day before, the time was cut in half and another date was set for February 2000. That too was cut short because some of the witnesses for ICBC were not available due to illness. The third and final day was set for May 30, 2000.

Between the time of the settlement conference and the court date both sides were required to supply copies of the evidence we were going to submit. As part of that package submitted by the lawyers representing ICBC, I was quite surprised to find the final report from the Special Investigations Unit which recommended denial based on the idea I had lit the fire or created the opportunity for someone to commit the act. However, in the body of the case outline the lead investigator states,

“An exhaustive investigation by Vancouver Police and the undersigned SIU officer was unable to gather enough evidence to prove on the balance of probability that the insured lit the fire.”

Later on he cites my criminal record and “extensive knowledge of the criminal justice system.” Out of statements contained in these reports – and I have two versions of which only one was submitted to the court – I concluded that although two separate investigations did not garner any evidence as to who caused the fire, I was being accused of a crime. My contention is, if investigators feel that I caused the fire, then they should have brought charges and bring me through the criminal court process so I could defend myself. Otherwise, they should have satisfied the claim.

The last court day, May 30, 2000 held before Her Honour Judge J. Gedye was the most interesting for

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!

me. I was represented by Mr. Peter Benning. Mr. Benning prevented the defence from bringing in evidence and witnesses which would have wastefully prolonged the court's time and possibly extended it another day. During questioning of the Special Investigations officer by Mr. Benning, the witness agreed that his final report cited my criminal record but denied that it played any role in his decision to recommend denial of the claim. I found that denial to be incredible as did the trial judge. When questioned as to why the dates of the witness statements contained in the evidence for the defendant were nine months after the initial incident, the witness answered that they never expected to be taken to court. What that indicated to me is that no in-depth investigation ever took place and the claim was arbitrarily dismissed due to my background. Since starting this suit, I have spoken to several individuals who have criminal records and abandoned claims because of unfounded allegations by ICBC investigators. A few did not know they had the avenue of going through the small claims process. Those who did know, didn't pursue it because they felt the courts would not believe them and 'it was only a couple of thousand dollars.'

The Result

The main reason I filed this claim and have pursued it through its logical end is not only for the compensation but also for justice. The fact that a public corporation can ignore the rule of law and expect to get away with it is an affront to basic fairness. In the closing paragraph of her reasons for judgement in my case *Rouse v.*

Insurance Corporation of British Columbia (1 August 2000), Vancouver 98-47660, Prov. Ct BC, the Honourable Judge Gedye states,

“Apparently, a bias against a person convicted many years ago for murder is a powerful motivator, and Mr. Rouse continues to be penalized for the earlier crime. An objective analysis does not support a suspicion of fraud nor a decision to take this matter to trial and thus misuse the limited resources of our courts. I consider this litigation to be vexatious, unfortunate, and an embarrassment to the larger community which should not be sanctioned or encouraged. Therefore, I will allow penalty damages in the full 10% of the amount originally claimed against the defendant.”

In the end, I have won the battle with a little help from my friends. In closing, I would like to repeat what I have stated earlier: if you have a legitimate case, do not be intimidated by ICBC's legal wrangling or accusations of wrongdoing. Just be prepared for a long, drawn out fight. Filing only costs a minimal amount of money which you can recover as part of the suit. There are a

number of step-by-step booklets available and the court clerks in the small claims division will guide you through the filing process. It is worthwhile pursuing and I'm glad I did it.

vexatious(vek sa shes). *adj.* 1. causing vexation; troublesome; annoying; a vexatious situation. 2. Law. [of legal action] instituted without sufficient grounds and serving only to cause annoyance.

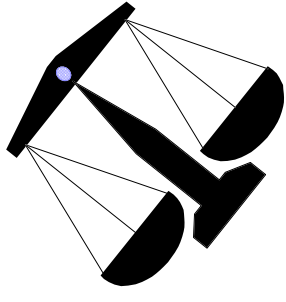
Random House Dictionary of the English Language



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application, is serving a sentence of imprisonment of at least two years for one or more of those offences,

for the purpose of forensic DNA analysis, of any number of samples of one or more bodily substances that is reasonably required for that purpose, by means of the investigative procedures described in subsection 487.06(1).

Frequently Asked Questions

Q: What consultation was done with prisoners, pursuant to s.74 of the CCRA, which states,

The Service shall provide inmates with the opportunity to contribute to decisions of the Service affecting the inmate population as a whole, or affecting a group within the inmate population, except decisions relating to security matters.

A: The new legislation is a decision of Parliament, not CSC. However, the Canada Gazette Part I (where you can see the proposed companion regulations) notes that the CSC “will seek comments on the draft [regulations] from a select group of Inmate Committees across the country.”

Q: Is it constitutional for legislation to apply retrospectively to prisoners who have already been sentenced?

A: That question is presently before the courts.

Q: What is being done to ensure the integrity of the data bank generally, and the samples specifically?

A: The regulations, provide as follows at s.2,

2.(1) In order to ensure the integrity of the convicted offenders index of the DNA Data Bank, only samples of bodily substances that were collected with a DNA Data Bank Sample Kit that meets the requirements of subsection (2) may be included in the DNA Data Bank.

(2). A DNA Data Bank Sample Kit must be consistent with the analytical procedure used for the purposes of the DNA Data Bank and must

(a) contain detailed instructions on the procedure required to reliably and validly collect and preserve samples and to prevent contamination of the samples;

(b) contain a sample collection form that provides for the identification and signature of



the person who took samples from the convicted offender and sample collection media to hold the samples so that they are preserved free from contamination and can be safely handled;

(c) contain a copy of any judicial authorization that was issued to authorise the collection of samples from the convicted offender; and

(d) be safely and securely packed, sealed, labelled and addressed for transporting the samples to the DNA Data Bank.

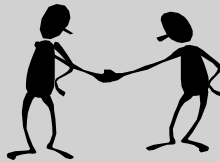
sample, as police are authorised to use as much force as necessary. If you object, you should state that you are complying under protest. If you are given any type of document to sign, you should say that you are complying with the demand under protest.

Afterward, you should make careful notes of what

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.

A practice is developing of taking fingerprints at the same time that DNA samples are collected for the purpose of verifying the identity of persons specified in the order for collection of the sample. At present, this is not required by regulation. It has been suggested that a dye marker be added to any samples taken, so that they cannot be used at a crime scene. At present, this is not being done. The Parliamentary Committee, which reviewed the proposed amendments, has stated that before further changes are made to the regulations, they would like to see what legal issues arise in practice.

Q: What can I do when I receive notice that police will attend to take a sample?

A: You can call Prisoners' Legal Services (or the lawyer of your choice) as soon as possible. Staff at PLS will be staying up to date on the law as it develops, and can give you current information. At present, there is no legal aid coverage to fight a court order pursuant to s.487.055. This policy could change, however, so call PLS for an update.

You should not physically resist the taking of the

happened. How many officers attended? Were any CSC staff present? Who was in uniform? Were any medical staff present? What sort of sample was taken and how? Sign and date your notes and keep them safe.

Q: How long can they keep my DNA sample?

A: The data bank in Ottawa will retain your sample indefinitely. There is a crime scene index and a convicted offender index. Investigators will compare the profiles (that is, the results of DNA testing on the samples) in the two indices for a match.

Q: What if my conviction is overturned on appeal?

A: There is provision for destruction of samples in this case, at s.487.09.

Warrants

Like other DNA warrants, these new warrants are obtained in an application before a provincial court

judge. The application is ex parte, which means it takes place in the absence of the prisoner. A prosecutor appears before the judge and makes a case for the warrant. The judge “may” issue a warrant, and this means the judge has the discretion not to do so. The criteria are specified in the legislation.

487.055 (3.1) In deciding whether to grant an authorization under subsection(1), the court shall consider the person’s criminal record, the nature of the offence and the circumstances surrounding its commission and the impact such an authorization would have on the privacy and security of the person and shall give reasons for its decision.

Interestingly, there is no provision for the attendance at the application by any party who might make submissions on behalf of a prisoner with respect to these criteria.

Liability

The police and their agents are not liable “for anything necessarily done with reasonable care and skill” when they are taking the sample.

Taking the sample

The easiest sample to take is using a cotton swab inside the mouth, but they can also pluck hairs or prick a finger for blood.

Rights of the subject

See s.487.07 regarding the duty to inform the subject about the process, provision for detention of the subject for the purpose of taking the sample, the right of the subject to have privacy respected.

487.07 (1) Before executing a warrant, a peace officer shall inform the person against whom it is to be executed of
(a) the contents of the warrant;
(b) the nature of the investigative procedure by means of which a bodily substance is to be obtained from that person;

(c) the purpose of obtaining a bodily substance from that person;
(d) the possibility that the results of forensic DNA analysis may be used in evidence;
(e) the authority of the peace officer and any other person under the direction of the peace officer to use as much force as is necessary for the purpose of executing the warrant; and
(f) in the case of a young person, the rights of the young person under subsection (4).

Detention of person under warrant

(2) A person against whom a warrant is executed
(a) may be detained for the purpose of executing the warrant for a period that is reasonable in the circumstances for the purpose of obtaining a bodily substance from the person; and
(b) may be required by the peace officer who executes the warrant to accompany the peace officer.

Respect of privacy

(3) A peace officer who executes a warrant against a person or a person who obtains a bodily substance from the person under the direction of the peace officer shall ensure that the privacy of that person is respected in a manner that is reasonable in the circumstances.

Generally

Staff at Prisoners’ Legal Services are interested to know what issues are arising, and exactly what practice is developing in the collection of samples for the DNA Data Bank. One way to make sure there is a watchdog in this process is to keep PLS informed when you receive notice that a sample will be collected, and also what happens during the collection process. In turn, PLS can provide information to prisoners about the current state of the law, legal aid coverage, and what prisoners in this situation might expect to happen (based upon reports received from prisoners).

Coop Radio presents a Special Day of Programming

Prisoners' Justice Day, August 10th, 2000 from 9 am to 9 pm.

August 10th is a day set aside each year when prisoners and supporters gather to honour the memory of the men and women who have died unnatural deaths inside Canadian prisons. On this day, prisoners fast, refuse to work, and remain in their cells while supporters organize community events to draw public attention to the conditions inside prisons and the urgent need for change within both the criminal justice and the prison systems. This year will mark 24 years since the first Prisoners' Justice Day Memorial Rally was held outside the gates of the old B.C. Penitentiary.

Coop Radio's Special Day of Programming and Fundraising Tune in August 10th from 9am to 9pm to hear programming you simply won't find anywhere else! Live music, insightful discussion, poetry, and an original radio play written just for today! You'll hear current and former prisoners talk about their experiences, activists talk about alternatives to the current systems, and highlights of the noon

Prisoners' Justice Day Rally 2000 from the Vancouver Pretrial Centre.

9-11am El Bus De Las 7 presents "Political Prisoners in Latin America." This Spanish language program is hosted by Ramon Flores.

11am-1pm Radio for the Revolution, an activist-oriented music show with thoughts about our current prison and justice system from former and current political prisoners. The perfect time to call in to renew or take out your membership to Coop Radio as you'll have a plethora of giveaways to choose from thanks to the generous donations of local small businesses, coops and collectives. Call us at (604) 684-8494, collect from out of town.

***Noon - 2pm - PJD rally @
Vancouver Pretrial Centre***

1pm-2pm Union Made; rebroadcast of Wednesday night's program focussing on Prisoners' Justice Day issues.

2pm-5pm "After the Rally" -Live Music, Poetry, Interviews and excerpts from the Prisoners' Justice Day 2000 Rally held at the Vancouver Pretrial Centre from noon to 2pm today.

5pm-6pm Kla How Ya FM hosted by Kelly White. A hard-hitting look at

PRISONERS' LEGAL SERVICES

We can help you with your prison and parole issues!

Federal prisoners 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.

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**.



the fastest-growing reservations in Canada (prisons) from a distinctly First Nations viewpoint.

6pm-7pm Prisoners' Justice Day Newsmagazine; late-breaking news, reviews, and updates of Canadian Political Prisoners.

7pm-8pm "From Detention to Deportation: The Plight of the Chinese Migrants" You'll hear stories and interviews about the increasing use of prisons to detain refugees arriving in Canada, as well as the debut of a radio dramatization by the Rice Girls entitled, "2000 Refugee Olympics. "Don't miss it!

8pm-9pm "Abolishing Prisons: Why and How to Get There." This panel discussion will feature local activists and academics working for prison abolition. Tune in to find out why this is necessary for a just society and what practical steps must be taken to ensure a safe and effective transition.

JOHN HOWARD SOCIETY OF THE FRASER VALLEY

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

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

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 is a group of people brought together in 1993 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

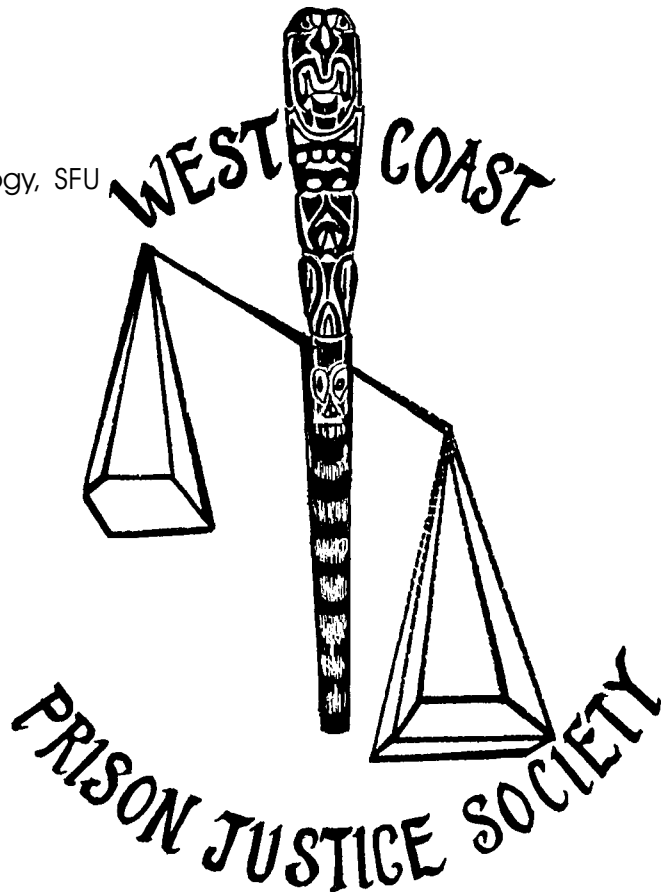
Board Members

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