West Coast
PRISON JUSTICE
SOCIETY NEWSLETTER OCTOBER - DECEMBER 2000

PUBLIC PERCEPTIONS AND CORRECTIONS

Des Turner

The above is the title of an article in *Let's Talk, Vol. 25, No. 2*. Following are some pertinent quotes that have some relevance in their own right and also serve as a lead-in to analyze a couple of recent actions by the CSC:

> The electronic and print media, whether news or entertainment, provide Canadians with most of the information they receive on corrections. Often, the old newsroom adage "If it bleeds, it leads" govern what Canadians see...
>
> ...the media's various forms constitute one of the most powerful institutions in society. The constant bombardment of sensational media reports on crime and violence has clearly had an impact on Canadian opinion. Unfortunately, there is little public suspicion that media coverage exaggerates the extent of these problems.
>
> ...the criminal justice system must be prepared to invest sufficient resources to make inroads in Canadian public opinion.
>
> Every CSC employee can play a role in this effort because, in the final analysis, we are the best ambassadors of the correctional system.

In general terms, so far so good. The results of the November 27 federal election in the province of BC emphasize the power of the news media. Our most-listened-to radio station, our most-watched TV station, our two daily newspapers, and almost all our weekly newspapers, now owned by the same media conglomerate, catered to the views of the Reform/Alliance Party, whose political platform is mainly focussed on more punishment for criminals. That view resonated to the extent of electing 27 Alliance MLA's out of a possible 34 seats in the Legislature. Regardless of anyone's political leanings that's just history.

Let's look at two recent events in the light of the above article in the CSC's *Let's Talk*.

A Restorative Justice Conference was scheduled at Elbow Lake and at Ferndale Institutions for

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Perceptions & Corrections cont'd from p.../1

November, 2000. Last year there were more outside attendees at Ferndale than there were prisoners. But because Prime Minister Chretien called a snap election for November 27, those conferences were "rescheduled" to January 24 and January 25, 2001. This year's would-be attendees had their cheques returned with a letter from the Warden stating, "It is the policy of the Government of Canada that government organizations and public servants must remain impartial during federal election campaigns. As a result, many public forums, speaking engagements and consultation sessions are being postponed until after November 27, 2000."

Would you agree that some questions logically arise? For example:

Would this year's Restorative Justice Conference not have been the third one held at Ferndale? Did not Ole Ingstrup himself attend the last one and give out certificates to CSC people who had promoted Restorative Justice? (Note the word, "promoted"; the system has not converted yet to that operation). With that background, is it not fair to assume that the CSC is committed to at least carrying on the yearly conferences as already scheduled before the election was announced?

While musing over those questions, this writer noticed an item in the November 12, 2000 edition of the News Leader, "Cariboo students grill Martin." It carried a picture of the November 9 event: "Federal Finance Minister Paul Martin speaks with senior students at Cariboo Secondary during a campaign appearance for Liberal candidate Lee Rankin." Whoa! Aren't schools run by government organizations? Aren't teachers employed by those government organizations? Is a blatant political pitch to kids OK during the election campaigning just because the education system is delegated below the federal level? But a scheduled conference on Restorative Justice is not OK? Were the feds

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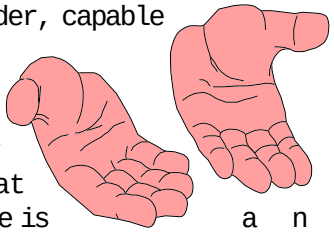
ODDS 'N ENDS

BY Eddie Rouse

A new high tech identification system was installed in September 2000 at the Pacific highway border crossing for 'fast track' visitors to the United States. It utilizes a palm print identification system that will speed up processing through the crossing.

People who are registered in the 'fast track' program will receive a card with digitally encoded information that will be matched by a computer database. As travellers pull up to the border crossing a transponder, capable of reading up to 16 cards simultaneously, will pick up the information from the card and a customs officer will be able to verify the person's identity from a flat screen display in the booth. If there is any question as to the identity of the person, their palm would be then scanned to provide further verification.



US Customs will collect biological information including the palm print scan and full/side profile photographs during the registration process. Representatives have stated that they see no reason why someone would object to giving their palm print.

This system will also be installed on a test basis in Michigan either at Detroit or Port Huron where bridges connect our two countries. While this is only on a test basis, the system could no doubt be expanded to every point of entry into the United States and every visitor could be required to supply that information which will then be entered into the US computer data bank. This information could possibly be accessed and used by other agencies within the US and overseas. Shades of J. Edgar Hoover!

Cont'd from p...2/

scared that just continuing with that conference might be a signal that the Liberals are soft on crime?" How strong is their commitment to Restorative Justice?

A second policy matter that evoked attention was the letter dated Nov. 15,2000 from Commissioner McClung (in this case to CAEFS) advising that the use of non-Correctional Service of Canada escorts during escorted temporary absences needs to be reviewed now. The letter continued, "However, until the review is completed, ETA's will be conducted by CSC staff members. This is not in any way meant to diminish the excellent work being carried out by trained citizens, or non-governmental organizations and chaplains throughout Canada."

The reassurances notwithstanding, stopping all of the "excellent work" just mentioned while the national review is conducted, raises some questions. Will ETA's be cancelled during the review? Will more CSC staff be hired? Are there, as the temporary rejection of all non-CSC escorts implies, allegations of contraband entering prisons via ETA's? The date of the Commissioner's letter being mid November, one might also speculate that this was another case where the CSC was sending a signal that they were being strict with prisoners during the election campaign.

Yes, as the Let's Talk article says, CSC's challenge is to continue to find ways to deliver information directly to the 'grassroots.' But it seems that during a federal election campaign, the direction and the information get bent in a manner designed to lure potential votes away from the Alliance Party, with a get tough-on- prisoners stance. Is that stance closer to the surface than Liberal policy would have us believe?

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!

Shaler v. District Director of Mt. Thurston, et al
An Interpretation

Most, if not all of the case law you might read about disciplinary hearings for prisoners has been concerning federal prisoners until recently when a habeas corpus proceeding brought the disciplinary process for provincial prisoners before the B.C. Supreme Court in Shaler v. District Director of Mount Thurston Correctional Centre, et al. (November 23, 2000), No. CC001537 Vancouver Registry.

The legal framework for provincial prisoners generally is less densely legislated and regulated than its federal counterpart. Prison life is for the most part regulated by the Correctional Centre Rules and Regulations, 1986, (the CCRR) a slim volume of some 56 sections. Disciplinary hearings are not conducted by an independent chairperson, but by the Senior Correctional Officer on duty at the time. The hearings must take place within 24 to 72 hours, and so it can be difficult to get counsel in there for the prisoner on short notice, especially for prisoners in the more remote camps.

First appeals go to B.C. Corrections' Investigation, Inspection & Standards, where the Inspectors are not from a legal background, but a Corrections background. On a successful appeal, the prisoner will not typically be given reasons for success, but will simply be advised that the appeal was granted. Therefore, it is not possible to collect precedents for successful appeals. Moreover, the results of successful appeals are not shared with staff at other prisons, so they do not receive guidance from successful prisoner appeals either.

If a first appeal is denied, the prisoner may file a habeas corpus proceeding in Supreme Court, but our experience is that where such an action is likely to succeed, B.C. Corrections Branch will concede before the matter gets to court.

For these reasons, B.C. Corrections staff, prisoners, and their lawyers, have had very little guidance from the courts with respect to the disciplinary process. Sometimes it seems like prisoners and their counsel have to re-invent the wheel every time they appear at a disciplinary hearing.

All of this makes the case of Shaler particularly valuable for provincial prisoners. The guidance from the court might be summarised in these salient points:

1. The CCRR does not create an offence of being a party or accessory to an assault.

2. Where an offence is stated with alternates, such as the offence of assault, attempt to assault, or threaten to assault, the hearing officer must specifically determine which of the alternate offences was made out.

3. A summary of what another correctional officer reports was said by a prisoner is not itself a statement by the prisoner.

4. It is unwise for the hearing officer to turn the tape recorder off during a hearing.

5. The hearing officer should not consider information in the prisoner's file prior to determining whether or not the prisoner committed a breach of the rules.

These are all pretty fundamental points, but until now, provincial prisoners have not had the benefit of any guidance from the court on these matters. We hope to see more.

Ann Pollak
Barrister & Solicitor
Prisoners' Legal Services

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Date: 20001123
Docket: C001537
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
Madam Justice Allan
In Chambers
November 23, 2000

BETWEEN:

SHELDON SHALER

PETITIONER

AND:

DISTRICT DIRECTOR OF MOUNT THURSTON CORRECTIONAL CENTRE,
DISTRICT DIRECTOR OF KAMLOOPS REGIONAL CORRECTIONAL CENTRE
AND THE ATTORNEY GENERAL OF BRITISH COLUMBIA

RESPONDENT

Counsel for the Petitioner **A. Pollak**
Counsel for the Respondent **M. Sharma**

(1)THE COURT: This is an application for habeas corpus based on an assertion that the continued detention of Mr. Shaler, the petitioner, who is an inmate at Kamloops Regional Correctiona1Centre, is unlawful.

(2) Specifically, he seeks the return of seven days earned remission which were removed in a disciplinary proceeding. While counsel differ as to the effect of recovering his earned remission, if he receives the remedy he seeks, it appears that he would be released November 23rd or November 25th

(3) The issue, then, is whether the prisoner is being detained unlawfully. The Crown essentially opposes the habeas corpus application on the basis that such a remedy is not available because the inmate has not exhausted his internal remedies, which are

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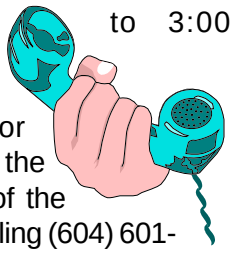
PRISONERS' LEGAL SERVICES

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**.

provided under the correctional Centre Rules and Regulations (the "Rules and Regulations").

(4) The incident that led to the disciplinary proceedings arose or April 13th, 2000 while the petitioner was incarcerated in Mount Thrust Correctional Centre. On that day, another inmate, Fletcher, was struck on the head from behind with a pipe, causing a fairly serious injury. The following day, the petitioner was the subject of a disciplinary hearing. The adjudicator was Mr. Bloxom, the local Director of the Mount Thurston Correctional Centre.

(5) Section 28.7 of the Rules and Regu1ations states: "No inmate shall assault or threaten or threaten to assault another person." No reference is made to an offence or misconduct consisting of being a party or an accessory to another person who assaults, threatens to assault, or attempts to assault another person.

(6) The evidence from a number or correctional officers was essentially that the petitioner and another inmate, Kizmann, were present and talking to Fletcher, when Fletcher turned his head and was "piped." Shaler admitted to being in the hut, but denied that he was part of the assault; he stated he was 1O to 15 feet away. When asked, he said he was not guilty of the charge of assault, or threatening or attempting to assault another person.

(7) At the end of the disciplinary proceeding, the petitioner was found guilty and sentenced to 15 days segregation at FROC and seven days loss of statutory remission.

(8) Section 33.6 of the Rules and Regulations provides that an inmate can apply to the adjudicator to reduce or suspend the disposition. At the end of the hearing, the adjudicator asked the petitioner if he wanted to exercise that right. The petitioner replied "yes" and the adjudicator immediately answered "no." The adjudicator told the petitioner that he had seven days to appeal to Inspections Standards in Victoria, and that he could get assistance at FRCC or from MTCC and the paperwork for the appeal would be forwarded to Victoria. Mr. Bloxom asked Mr. Shaler if he understood. Mr. Shaler replied "yes" and then made a comment which suggests to me that the proceedings were pretty heated and emotional, at least at that point.

(9) The petitioner was sent to segregation in Kamloops. He has deposed in an affidavit that, while he was there, he attempted to send a letter to the Director of Mount Thurston, (Mr. Bloxom), but that letter was apparently never sent by the guard to whom he gave the letter. He deposed that he did not realize at the time that he should have sent it to the director of Investigation, Inspections and Standards ("IIS").

(10) When he realized his mistake, he sent letters to IIS, but they advised him that he had missed the time period to appeal. While the Crown disputes the steps that he took, I am satisfied on the evidence that the petitioner had an immediate and bona fide intention to appeal and that he maintained that intention throughout his efforts. Accord-

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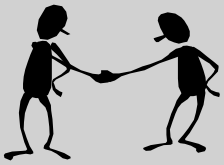
Thanks for the Support

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.



ingly, I find that he has exhausted his internal remedies.

(11) The Crown has suggested that IIS would be prepared to hold a review tomorrow under s. 34 of the Rules and Regulations. That section provides that the Director of IIS may consider the appropriate material (which in this case would be a transcript or tape recording of the hearing) . If he is of the opinion that the determination or disposition is unreasonable, he may set it aside and substitute an alternative disposition. If he is of the opinion that there is no substantial error or miscarriage of justice, he may dismiss the appeal. If he is of the opinion that there has been a substantial wrong or miscarriage of justice, he may allow the appeal or order a new hearing be held before a disciplinary panel composed of people selected by the Commissioner. In the circumstances, I do not think that the third remedy would be timely or effective.

(12) The petitioner alleges that a number of errors occurred at the hearing: (1) the determination of the petitioner's breach was not based on the evidence and was incorrect or unreasonable; (2) because of the way the hearing was conducted, there was an appearance, at least, of unfairness so as to bring the administration of justice into disrepute; and (3) the adjudicator relied on information in the prisoner's file, which was irrelevant and prejudicial, for purposes of determining his guilt.

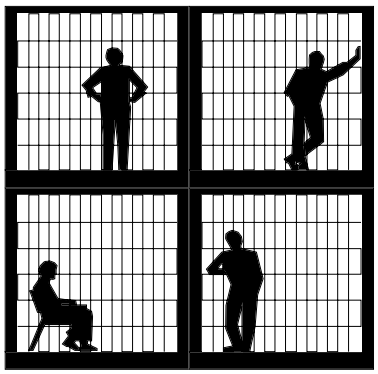
(13) I agree that the record contains a number of errors on its face. First, even if the petitioner was found to have breached s. 28. 7 of the Rules and Regulations, the adjudicator had a duty to specifically determine whether the inmate had (a) assaulted or (b) attempted to assault or (c) threatened to assault; inmate Fletcher. Instead the adjudicator simply found that the petitioner had breached s.28.7.

(14) Second, there was no reliable evidence on the record that the petitioner was invo1ved in

Shaler v. Director Mt. Thurston, et al Cont'd p.9/...

PRISONER'S JUSTICE DAY MEMORIAL RALLY

Many thanks to the Prison Justice Day Committee for their dedication and hard work in organizing the August 2000 Prisoner's Justice Day activities and rally. The Committee reported that over 150 people came out to the rally held outside the Vancouver Pretrial Center. Every year the crowds continue to grow as more people become aware of the issues and injustices faced by prisoners. Other functions are attended in Vancouver and the surrounding area that also bring awareness to the public. One of these is "Under the Volcano" celebration held at Cate's Park in North Vancouver. Through sales of raffle tickets, t-shirts, and donations, the PJDC raised $1,300.00 which was distributed to various organizations such as D.A.R.E. (Direct Action against Refugee Exploitation, The Claire Culhane Memorial Fund, The Native Sisterhood at BCCW, Splitting the Sky book fund, Books 2 Prisoners and Joint Effort.



You can contact the PJDC at Box 78005, 2606 Commercial Drive, Vancouver, BC V5N 5W1 if you wish to donate funds or volunteer in helping to organize acitivities related to addressing the injustices experienced by groups and individuals.

ICBC – THE CONTINUING SAGA

By Eddie Rouse

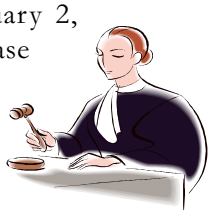
As you may recall from the last issue of the WCPJS, I wrote about the process of suing ICBC due to their refusal to satisfy a legitimate claim for loss of a vehicle. The process was extended to almost two years by the time this case came to court and it hasn't ended yet.

The court handed its decision down in August, 2000 and ICBC still has not paid the judgement. Instead, I received a notice in the mail that the judgement was being brought back to court for clarification of the award. This was filed over 90 days past the date of the judgement.

ICBC is requesting clarification on the basis that the settlement conference agreement brought the price of the vehicle – a 1987 Oldsmobile Cutlass Ciera – to $2800.00. The judgement found in my favour adding an additional 10% of the original amount of the suit. However, the judge awarded an amount of $4000.00 for the vehicle, which was the value stated in testimony during the trial. Nothing was put forward by the defence disputing this figure valuing the vehicle.

This case is of importance to those people who have been in conflict with the law or who have been accused of committing a crime by investigators of ICBC and have had their claims subsequently refused. The written judgement by Judge J. Gedye is a condemnation on the practices of ICBC and the way the corporation treats certain policy holders. This case also reinforces an earlier decision *Bevacqua v. Insurance Corporation of British Columbia,* [1999] B.J.C. No. 2178; 1999 BCCA 553 where ICBC accused a person of setting his vehicle up to be vandalized and loss by theft. Even though there was no evidence to support the allegations leveled by ICBC investigators, Bevacqua's claim was denied. Although the rules of evidence are somewhat relaxed in a civil case, the BC Court of Appeal held that where a person is being accused of a crime, the rules of evidence should be more rigorous and adhere to that of criminal law. ICBC, through its investigators, constantly ignores this ruling and continues to treat some policy holders who bring a legitimate claim forward, as someone who has committed a crime.

I cannot stress the importance of fighting unjust accusations by any official body. Anytime someone fights a case like this, it will help many others in the future. The return for clarification is scheduled for February 2, 2001. Hopefully, this case will be settled at that time. I'll keep you posted.



Shaler v. Director of Mt. Thurston, et al from p.../7

either an assault or an attempt to assault or a threat to assault. The evidence, which consists of written statements by the correctional officers, certainly implicates Kizmann. The adjudicator's reasons purport to rely on a statement of the victim Fletcher. He stated in his affidavit: "I considered the statement of the injured inmate to be significant." In fact, there was no direct evidence from Fletcher. There were simply statements from two correctional officers.

(15) Correctional Officer Frey stated:

> Fletcher told myself (Frey) that he had a disagreement with inmate Kizmann earlier over inmate Kizmann wanting to fight.

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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

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> …inmate Kizmann has been trying to pick a fight with this inmate since he arrived. Inmate Fletcher states that he repeatedly told inmate Kizmann that he would not fight due to the fact that inmate Fletcher is HIV positive. Inmate Shaler and inmate Kizmann were present and talking to this inmate when he turned his back and was piped.

(l6) A second correctional officer, whose name is illegible stated, "Fletcher states that he feels fine. Did not vomit, et cetera- Also states he did not want to return to MTFEC for reasons relating to Kizmann." That statement makes no mention of the petitioner.

(17) Thus, there was no evidence that the petitioner had anything to do with the assault, an attempt to assault or a threat to assault. When asked directly, he specifically denied such involvement.

(18) Third, the adjudicator turned the tape machine off in the process of the hearing.

(19) The petitioner alleges that, while the machine was turned off, he was threatened that he would be punished if he did not implicate Kizmann. In response to that allegation, the adjudicator, whose evidence is supported by another correctional officer who was present, deposes that:

> (6) ... While the tape machine was turned off, I said nothing. I was reviewing the petitioner's file. I was doing that in order to come to a decision about the disposition of this matter.
>
> (7) I always review an inmate's file during a disciplinary hearing. It is my practise to turn the tape off while I read the inmate's file and turn it back on before I say anything, because it may take me a little while to review the file.
>
> (8) After reviewing the trial and hearing the evidence, I decided that the petitioner was guilty of the charge laid against him.

(20) First of all, it would have been far more appropriate to take a break in the proceedings and leave the room to review the file. No dispute as to what transpired when the machine was off would have arisen. More importantly, it is obvious that the adjudicator took into account evidence that he should not have considered in determining whether or not the petitioner had committed a disciplinary breach. The petitioner's file probably contained material that was relevant to the issue of penalty should a breach be found. It would not, however, contain material that would be of assistance in determining whether or not the petitioner had committed a breach of the Rules and Regulations.

(21) The aforementioned errors are serious. In my view, while it is too late to reverse the time spent in segregation, it is appropriate to direct the authorities to recalculate the petitioner's date of release as if seven days were not forfeited. I conclude that the adjudicator erred by imposing the penalty of removing seven days of statutory remission.

(22) The Crown noted the amount of time that had passed before bringing this application and questioned its timeliness. However, as defense counsel notes, an application for habeas corpus is not appropriate until the detention is either illegal or the illegal detention is imminent.

(23) In the result, there will be an order than the petitioner's statutory remission be recalculated as if seven days were not forfeited, and he is to be released on the effective date.

The West Coast Prison Justice Society is a non-profit society 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.

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.

WEST COAST PRISON JUSTICE SOCIETY

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