

West Coast

PRISON JUSTICE

SOCIETY NEWSLETTER

JANUARY - MARCH 2000

MILLENNIUM IS TOAST

by Sasha Pawliuk

The West Coast Prison Justice Society has learned that the CSC is going to scrap the Millennium telephone system! We have been advised that the inability of the current carriers to develop the long awaited debit card - (therefore avoiding the high cost of the local telephone calls to prisoners, their families and non profit prisoners assistance organizations) - did the system in. Tenders are out for another system, this time with a debit card feature.

Although the Courts had been unable to so far - the appeal of the court case had yet to be heard - this does seem to Region prisoners have been saying all just doesn't work.



figure this one out against Millennium prove what Pacific along: the system

We will keep you advised as more details become available - see the next issue of the West Coast Prison Justice Society Newsletter for the latest update.

This is some background for those not familiar with the arguments against the Millenium system in the CSC. An article was published in Vol 1, No.4 of this newsletter. Sasha Pawliuk was one of the lawyers arguing against this system since 1997. The application for an injunction stopping the CSC from implementing the current system was denied on September 23, 1997.

Prison Legal Services then appealed that decision and applied to have new evidence introduced. The BC Court of Appeal subsequently dismissed the appeal on the refusal to grant the injunction in March, 1998.

FETTERLEY INQUEST FINALLY HELD INTO MATSQUI DEATH

by Sasha Pawliuk

Inquest.

More than two years after the death of Doug Fetterley at the Matsqui Institutional hospital, a coroner's jury has recommended, amongst other things, that the nursing staff at Matsqui "be responsible for administering correct medication"....sort of makes you wonder what they were doing before....

In January of 1998, Doug Fetterley was suffering from AIDS in the Matsqui hospital. Community advocate, Susan Soper, had been assisting Mr. Fetterley with parole applications. As his health deteriorated she also helped him with advocacy, emotional support and the benefit of her expertise in AIDS treatment and palliative care. John Bodz, then of the Matsqui HIV/AIDS Awareness Group, had also befriended Mr. Fetterley in the months before his death.

Under the Coroner's Act of B.C., an inquest

who dies in custody in this province.
within 24 hours by the death of
the hospital, the Matsqui HIV/
Prisoners' Legal Services for
Fetterley had tried
so he could die in a Vancouver
hospital - the granting of such
occurrence. Considering the
contracting AIDS and Hepatitis C,
unavailability of parole for
Awareness Group was concerned
wanted a voice at the Inquest. Susan

must be held to investigate the death of anyone
When Doug Fetterley died, followed

Doug Hooey, also an AIDS patient at AIDS Awareness Group contacted representation at the Inquest. Mr. unsuccessfully to receive parole Hospice instead of Matsqui an application is all too rare an growing number of prisoners coupled with the relative compassionate reasons, the about palliative care for prisoners and Soper was also given standing at the

In late September of '98, at the first meeting of all the Coroner, her counsel, Susan Soper, the Awareness Group's counsel for CSC - it became apparent that broader issues pronouncement that Doug Fetterley had died of AIDS. The a constitutional challenge in the Supreme Court of B.C., arguing into the palliative care policies of people with AIDS in federal authority of the B.C. Coroner. The Inquest was delayed.

parties to the Inquest - the legal representative, and were at stake than a stark lawyer for CSC quickly filed that a broad investigation custody was beyond the

In December of '99, the Vancouver Sun printed a story about John Bodz' concerns that someone at Matsqui was hastening the deaths of terminally ill prisoners in Matsqui hospital ("Murders at Matsqui?" Saturday, December 4, 1999, pages A1 and A16). No autopsies had been performed on Doug Fetterley or Doug Hooey, but after the death of Joe Pitt at the Matsqui hospital on November 5, 1998 Susan Soper had contacted the Coroner's office and urged that an autopsy be conducted on his body. It revealed that he had not died of natural causes. A later article stated that his death was due to a morphine overdose (Vancouver Sun: "Police probe 28 deaths in jail hospital" March 2, 2000 pages B1 and B5).

It was against that background that the Inquest into Doug Fetterley's death was finally held on February 28th and 29th of this year. The jury heard evidence from many people, including Dr.

Montaner, a recognized expert in the care of AIDS. He stated that giving an AIDS patient the wrong drug, or an incomplete "cocktail" mix, is worse than giving him or her no drug at all. In such situations, the AIDS virus can become resistant to the effect of the drug that would otherwise have helped. In Doug Fetterley's case, Matsqui admitted that he had been administered the wrong drug at one point in the progression of his disease, and only two out of three drugs that he should have had at another time.

Evidence was also presented that Susan Soper, who tried to ensure that Doug Fetterley would not die alone, had to sleep on the floor at Matsqui hospital as she continued her death vigil. Ann Pollak, lawyer at Prisoners' Legal Services, observed the Inquest (Peter Benning represented the interests of the Matsqui HIV/AIDS Awareness Group at the hearing). At the end of two days of testimony, she states that it was clear that the process of Mr. Fetterley's death would have been more humanely managed if there had been better palliative care offered to him.

When it was all over, the jury found that Doug Fetterley had died of natural causes from AIDS related disease. They made one recommendation to the Chief Coroner of B.C. - that autopsies should be performed in all prisoner deaths. They also made five recommendations to CSC:

- 1) Police be notified immediately upon the death of all inmates in correctional facilities.
- 2) Nursing staff be responsible for administering correct medication to remove this burden from patients and inmates.
- 3) Surveillance cameras be installed in all prison hospitals
- 4) The palliative care facility at Matsqui be upgraded to house family and advocates of terminally ill patients.
- 5) Experts in palliative care field to be called in on a regular basis to provide ongoing consultation and training to nursing staff.

A Coroner's jury's recommendation is just that - a recommendation. It does not have to be acted upon. Susan Soper notes that in 1997, a Coroner's jury in Kingston Ontario made comparable but more detailed recommendations after the death of William Bell in 1995. CSC held its own investigation after Doug Fetterley's death in 1998, and also made recommendations very similar to those of the Coroner's jury in his case. None of these has been acted upon.

Apparently, Matsqui has formalized a new committee to plan for the palliative care in the new hospital that is to be built there. Susan Soper was told that she would be on the committee, but has not yet heard from them at the time of writing this article. We can only hope that the spirit of the recommendations, as far as they went, will be factored into the new facility

Thanks for the Support

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Public Legal Education Program of the Legal Services Society

which enables the publication of this newsletter.

Marıjuana Debate Continues...

Recent cases currently being heard in the courts regarding the legal use of marijuana for medicinal purposes make this a timely article to include in this issue. The following letter was written by John Conroy, QC to the Committee on Legal and Constitutional Affairs in March of 1996. This article is one of a series on issues that may affect prisoners, ex-prisoners and the public. The purpose of these articles is educate people on how legislation is changed and how long it takes.

Dear Senator Carstairs:

As the Chair of the Canadian Bar Association's Committee on Imprisonment and Release of the National Criminal Justice Section, I am pleased to have the opportunity to discuss Bill C-8, the Controlled Drugs and Substances Act, with the Senate Committee on Legal and Constitutional Affairs. The Canadian Bar Association is a national association representing over 34,000 jurists, including lawyers, notaries, law teachers, students and judges across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

In the spring of 1994, the Canadian Bar Association's National Criminal Justice Section appeared before a Committee of the House of then Bill C-7, the Controlled Drugs and expressed unequivocal opposition to the submission is appended to this letter.

In this letter, we would like to again emphasize 8. We remain convinced that, as Canada's drug policy further in a remedies. While elements of the Bill not address the Section's overriding In 1987, the government of the time would subsequently guide Canadian drug the negative consequences associated with

the concerns we have with what is now Bill Ccurrently worded, this legislation would move direction that causes more harm than it have been amended, these amendments do

Commons with a submission on what was Substances Act. In that submission, we

passage of the Bill. A copy of the Section's

concerns with the approach taken.

announced that a harm reduction approach policy. This approach seeks primarily to reduce drug use, as opposed to reduce the prevalence of drug use. The National Criminal Justice Section supports a harm reduction approach to drug control. Bill

> C-8 is inconsistent with such an approach, and would be a regressive move for Canadian drug policy. It continues to deal with drug users through criminalization and incarceration. As the Section believes this model has clearly proven itself to be ineffective and counterproductive, and is one that Canada can no longer afford, we believe this Bill should not be enacted.



Policy Underlying Bill C-8

In our earlier submission, we emphasized that the harm caused by an activity should determine if, and when, the use of the criminal law is appropriate. For drug use that causes no evident harm to others, except possibly the user, and no significant harm to society as a whole, we believe that criminalization is inappropriate.

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The current approach of prohibition, criminalization, and incarceration has been attempted for many decades without achieving the desired results of decreased drug use, reduced drug-related crime, or improved public health. In fact, the opposite results have too often been achieved.

Aside from the inherent injustice of incarcerating people who have not harmed others, the criminalization and incarceration of drug users is expensive, adding stress to an overburdened justice system and taking away from resources available to address more serious crimes. The National Criminal Justice Section believes that if Canadians were aware of the consequences of the investigation, prosecution, and punishment of drug users and traffickers, and particularly the costs of incarceration per year per prisoner, most would agree that the use of the criminal law must be reserved for people who genuinely cause harm to others or to society.

Those convicted of possessing drugs represent only about 2-3% of drug users, resulting in the fairly arbitrary prosecution of a few for conduct engaged in by many. Possession accounts for about half of all drug-related convictions, and about one third of those convicted of possessing drugs are sentenced to custody.

In our view, drug use is primarily a health and social policy issue. There is a genuine hypocrisy in deciding that the use of certain relatively harmless drugs, like marijuana, deserves criminal sanction, while others, which we know cause numerous deaths and related illnesses each year, like alcohol and tobacco, are treated as health risks and not criminalized. We ask for a cogent explanation for this discrepancy in approach. We also question the jurisdiction of the federal government under the peace, order, and good government clause, or the criminal law power, to legislate on a health issue which does not pose a significant threat to society. By treating other prohibited substances as we now deal with tobacco, tax dollars would be shifted from organized crime to the government, money would be saved on enforcement and

incarceration, drug production and distribution could be safely regulated, the spread of infectious diseases could be minimized and treatment alternatives could be offered.

The harm reduction approach to drugs has been successfully adopted by many countries. Some of the benefits achieved are a reduced rate of HIV infection, decreased drugcrime. corresponding improved public safety. In contrast, the United States' "War on Drugs" has filled American prisons with drug users at great societal cost, while not diminishing the prevalence of drug use in American society. We are convinced that it is not in the interests of Canadians to take a similar approach to that of our neighbours to the south.

One justification offered for Bill C-8 is that it will bring Canada in line with its international obligations. We urge the Canadian government to withdraw from international agreements which require a misguided approach to drug control with a proven record of failure, and to take instead a leadership role, looking to the creative strategies tried with success in several European countries. It is not necessary to continue a prohibitionist approach in order to comply with international obligations. Rather, we support international Conventions that allow for drug policy in the direction of treatment, harm reduction, prevention and care.

As far back as the 1970s, a number of prominent organizations and government bodies recommended minimizing or eliminating the penalties for possessing The LeDain mariiuana. Commission's Cannabis Report, tabled in Parliament on May 17, 1972, recommended the repeal of offences for simple possession, and the non-profit transfer and cultivation of small amounts of cannabis for personal use. Shortly thereafter, then Health Minister John Munro announced that the government had taken action to prevent certain people charged with possessing cannabis from having criminal records, and to remove the records of those already convicted.

Bill S-19, sponsored by the Trudeau government, was passed by the Senate on June 18, 1975. Twenty years ago, that Bill would have made simple possession of cannabis punishable by summary conviction only. The Senate also amended the Bill to provide that any person receiving an absolute or conditional discharge for a first offense of simple possession would be deemed to have been granted a pardon under the Criminal Records Act. In 1978, the Canadian Bar Association considered the proper approach to dealing with marijuana, adopting a resolution supporting the decriminalization of the possession and cultivation of marijuana for an individual's own use, as well as the non-profit transfer of small amounts of the drug between adults. In 1974, the Association passed a resolution stating that the controlled medical distribution of heroin to addicts should be

allowed as an alternative to existing options, and a system of heroin maintenance be undertaken to divert addicts from the criminal justice system.

Since the time of those recommendations, a significant body of research has been accumulated to support decriminalization, showing again and again that marijuana is relatively harmless. A harm-reduction approach to drugs would put the focus on health, and by repealing drug prohibition, would remove the current

significant profit incentive from trafficking in drugs. However, in spite of the evidence, myths exaggerating the "dangers" of marijuana have too often been accepted as fact. We continue to incarcerate users of the drug for conduct that, on the evidence, causes significant harm to no one, including the drug user. Even for drugs which may be more debilitating to the user, such as heroin, we believe that using a medical model is preferable to

Marijuana Cont'd p.../8

PRISONERS' LEGAL SERVICES

We can help you with your prison and parole issues!

Kent, Mountain and Elbow Lake 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.

Prisoners in the local Abbotsford calling area, please request to use the administrative phones to call us at 853-8712. As the administrative phones are non-Millennium, the number does not have to be on your authorized call list, and you do not need a PIN to call us.

Provincial Prisoners call us collect at 853-8712.

We answer the phones daily from 9:00 to 12:00 and from 1:00 to 3:00 for Tuesday and Thursday afternoons only.

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 the Appeals Department.

Cell for Submissions



The JOURNAL OF PRISONERS ON PRISONS is a venue for prisoner and former prisoner writers to publish commentary on a wide range of issues relating to crime, justice and punishment. In the first edition of the JPP, Bob Gaucher wrote of the "necessity of taking into account the sense and rationale of all actors within the analysed social situation or cultural realm" in his essay on the prisoner as ethnographer (Gaucher, JPP, Vol. 1, No. 1, Summer, 1988). The significance of ethnographic accounts of the prison experience particularly was also previously articulated by the French philosopher Michel Foucault in his studies of power. In an interview twenty-seven years ago, he remarked that "when the prisoners began to speak, they possessed an individual theory of prisons, the penal system, and justice. It is this form of discourse that ultimately matters, a discourse against power, the counterdiscourse of prisoners and those we call delinquents—and not a theory about delinquency."

The JOURNAL OF PRISONERS ON PRISONS invites prisoner and former prisoner writers to submit papers, collaborative essays, discussions transcribed from tape, book reviews, and photo or graphic essays. The JPP does not publish fiction or poetry. The JPP will publish articles in either English or French. Articles should be no longer than 20 pages typed and double spaced or legibly handwritten. Writers may elect to write anonymously or under a pseudonym. For references cited in an article, the writer should attempt to provide the necessary bibliographic information.

Submissions are reviewed by an editorial board. Selected articles are corrected for composition and returned to their authors for approval before publication. Papers not selected are returned with editor's comments. Revised papers may be resubmitted.

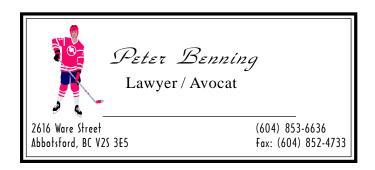
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Marijuana from p...6/

subjecting addicts to the weight of the criminal law. A medical model can also address the spread of disease through intravenous drug use, which is exacerbated by marginalizing drug users.

II. Amendments to Bill C-8

The National Criminal Justice Section was critical of the original version of Bill C-8 for the manner in which it increased the fines and penalties available for certain offences. While the Bill before the Senate now Committee has been amended in response to some criticisms made of the earlier version, it continues to provide for the criminalization of drug users, with the potential incarceration. Our position is that the approach taken in Bill C-8 moves Canada's policy on drugs further in the wrong direction. This fundamental concern has not been assuaged by the present amendments.

Section 4(4) of Bill C-8 has been amended so that the maximum penalty on indictment for possessing a Schedule II drug (cannabis) is reduced from the seven year maximum under the previous version to five years less a day. While we generally support lower sentences, this reduction appears to represent an attempt to deprive an accused of the right guaranteed under s.11 of the Charter to a jury trial if the potential period of incarceration is five years or more. In other sections, the Bill provides for harsher penalties for marijuana than it does for Schedule III and IV drugs, which include amphetamines, LSD and barbiturates. For example, on indictment, s. 4(6) provides for a maximum of less than three years for possession of a Schedule III drug (for example, amphetamines, LSD, mescaline), compared to the five years less a day maximum for possessing cannabis.

As suggested by past governments, this government has expressed an intention that the amended Bill C-8 will remove the possibility of a traceable criminal record for those convicted of possessing small amounts of cannabis. However, a summary conviction for an offence under a federal statute or regulation still gives a person a criminal record. A person has been convicted of a crime and has a criminal record even if convicted of possessing only a small amount of cannabis. While the information may not appear on the CPIC network at a border crossing, there is an ongoing exchange of information concerning drugs between Canadian and American customs authorities. Further, if asked by a judge whether an accused had a record, it is doubtful that the defence could simply reply that the accused had no "traceable" record. Therefore, to suggest that Bill C-8 would not impose a criminal record on those convicted of possessing cannabis is misleading. If the underlying assumption is that the Bill would allow a person to lie without being found out, this does not encourage respect for the law.

We appreciate the statement of the goals of sentencing which has been added to Bill C-8, especially in its recognition of the importance of treatment and rehabilitation. However, we believe that the emphasis given to "respect for the law", as the fundamental purpose of any sentencing provision under this Part, is optimistic. The arbitrary and harsh nature of the approach taken toward relatively harmless substances does not encourage respect for the law. In addition, it is our experience that judges are not imposing the kind of penalties suggested under Bill C-8 for possession of small quantities of marijuana, for example. When legislation differs so dramatically from public opinion and judicial decision-making, we believe it brings the law into disrepute, rather than enhances respect for the law.

III. Conclusion

The National Criminal Justice Section urges the government to take this opportunity to define a distinctly Canadian drug policy, rather than to follow the mistakes of American drug policy. We urge the Canadian government to show leadership based on current evidence and research, and to eliminate prohibition and its associated problems.

Amendments to the existing law to decriminalize the possession or cultivation of small amounts of drugs intended for an individual's own use, or the non-profit transfer of small amounts between adults, would be an excellent beginning. Heroin users could be treated in heroin maintenance programs according to a medical model. With those amendments, and a plan for realigning Canada's drug policy

Barry Forsyth April 8, 1943 - January 14, 2000



Barry was born in Toronto and died suddenly at Matsqui. He was a person whose life touched many people. His involvement in matters which were controversial never deterred him from following a path that helped many people along the way.

Barry will be remembered for his wry sense of humour that sometimes seemed to be filled with cynicism. Underneath that facade was a person who cared for the people around him and their well-being. He was alway there to help those who were experiencing difficulty.

Barry was a member of the Seven Steps Society, Prisoners with HIV, New Page Foundation and several other organizations. Barry was a good friend who will be sadly missed by many people. Memorial services were held on January 29, 2000 in Vancouver. Eulogy was given by Richard Schiere.

to address the health and social policy issues underlying the use of drugs and restricting the use of the criminal law to those activities that actually cause harm, we believe that Canada would have a more humane and progressive drug policy focused on harm reduction. This legislation should not precede a thorough review of these issues. It is our view that the passage of Bill C-8 would represent another step in the wrong direction for Canada's drug policy.

Yours truly,

John Conrov

Chair, Committee on Imprisonment and Release

The Committee on Drugs and the Law, "A Wiser Course: Ending Drug Prohibition" (1994) 49/5 The Record of the Association of the Bar of the City of New York 523 at 524.

See, "Government Spending on Adult Correctional Services" (March 1996) 16/3 Juristat 1, where it

states that "it costs about \$44,000 per year to keep a person in a federal penitentiary, compared with \$39,000 in a provincial facility".

See discussion in our earlier submission, Bill C-7, Controlled Drugs and Substances Act (Ottawa: Canadian Bar Association, 1994) at 4-5.

Ibid, at 7.

Ibid, at 17.

See, Summary to Bill C-8 at 1a (1996).

For example, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) states that "Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment...measures for the treatment, education, aftercare, rehabilitation or social re-integration of the offender" (s.4(d)).

Report of the Commission of Inquiry into the Non-Medical Use of Drugs, Cannabis Report (Ottawa: Information Canada, 1972) at 302-303.

C. Michael Bryan, "Cannabis in Canada - a decade of indecision" (1980) Federal Legal Publications at 173. However, in spite of the intention expressed, even an absolute or conditional discharge continued to result in a criminal record under the Criminal Records Act.

Ibid, at 176. However, the Bill later died on the House of Commons Order Paper.

For example, see an excellent recent article which considers each of the most prevalent myths about marijuana, in light of the current medical information: Lynn Zimmer and John P. Morgan, "Exposing Marijuana Myths: A Review of the Scientific Evidence" (October, 1995) (unpublished paper prepared for the Lindesmith Center, New York).

See discussion on pages 3-4.

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 <u>you</u> 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.

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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.
- 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 <u>Canadian</u> <u>Charter of Rights and Freedoms</u> 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.

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We would be pleased to hear from you. Please write, or have someone write for you, to:

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