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APPLICATIONS FOR MINISTERIAL REVIEW – MISCARRIAGES OF JUSTICE

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Introduction

nder Canadian law, the Minister of Justice has the legal authority to review a criminal conviction on the basis that there may have been a miscarriage of justice. The Minister has had that power in one form or another since 1892. The conviction review process is started when a person submits an application for ministerial review (miscarriages of justice), also known as a "conviction review application."

The application for ministerial review must be supported by "new matters of significance" – usually important new information or evidence. If the Minister is satisfied that those matters provide a reasonable basis to conclude that a miscarriage of justice likely occurred, the Minister may grant the convicted person a remedy – a referral of the case to the court of appeal to be heard as a new appeal or a direction for a new trial. The Minister does not determine an applicant's guilt or innocence – he or she can merely return cases to the courts where those determinations may be made.

Pursuant to section 696.5 of the *Criminal Code*, the Minister of Justice is required to submit an annual report to Parliament regarding applications for ministerial review (miscarriages of justice) within six months of the end of the fiscal year. This is the fourth annual report and it covers the period April 1, 2005 to March 31, 2006. Under the regulations, the Minister's annual report must address the following matters:

- the number of applications for ministerial review made to the Minister;
- the number of applications that have been abandoned or that are incomplete;
- the number of applications that are at the preliminary assessment stage;
- the number of decisions that the Minister has made; and
- any other information that the Minister considers appropriate.

This report describes the role of the Department of Justice in reviewing criminal convictions, outlines how the review process works, provides the statistical information required by the regulations, considers a variety of emerging issues, reviews the cases in which remedies have been granted and updates previous ones, and describes developments expected in the coming year.

The appendices provide further information, including the governing legislation, the regulations, and information about how to contact the Criminal Conviction Review Group.





Addressing Possible Miscarriages of Justice

History of the Power to Review Criminal Convictions

Historically, at common law the only power to revisit a criminal conviction was found in the "Royal Prerogative of Mercy," a body of extraordinary powers held by the Crown that allow it to pardon offenders, reduce the severity of criminal punishments, and correct miscarriages of justice.

Over the years, the Minister's power underwent various legislative changes, culminating in 1968 in the former section 690 of the *Criminal Code*. This section remained in effect for more than thirty years.

The Current Conviction Review Process

The current conviction review process has been in place since 2002, when section 690 of the *Criminal Code* was repealed and replaced by sections 696.1 to 696.6 (Appendix 1), after a broad public consultation. These provisions, along with regulations (Appendix 2), set out the law and procedures governing applications for ministerial review (miscarriages of justice).

The current conviction review process improved transparency and addressed deficiencies in the previous process by:

- including clear guidelines as to when a person is eligible for a conviction review;
- providing a straightforward application form and clear direction on the information and documents needed to support it;
- describing the various stages in the conviction review process;
- specifying the criteria the Minister must consider in deciding whether a remedy should be granted;
- expanding the category of offences for which a conviction review is available to include not only indictable offences but also summaryconviction offences;
- giving those investigating applications on behalf of the Minister the authority to compel the production of documents as well as the appearance and testimony of witnesses; and
- requiring the Minister to submit an annual report to Parliament.

Criminal Conviction Review Group

The Criminal Conviction Review Group (CCRG) is a separate unit of the federal Department of Justice. It has five main responsibilities:

- liaising with applicants, their lawyers, agents of the provincial attorneys general, the police and various other interested parties;
- reviewing applications for ministerial review and conducting preliminary assessments;

- conducting investigations where warranted;
- compiling the findings of investigations into an investigation report; and
- providing candid, objective and independent legal advice to the Minister on the disposition of applications for ministerial review.

Throughout the reporting period, six full-time lawyers were employed at the CCRG. They have broad experience in criminal law including defence work, prosecutions and criminal law policy development. In addition, the CCRG supervised law students from the University of Ottawa under the Department's Clinical Internship Program.

Following the legislative changes in 2002, a number of structural changes were made to enhance the arm's-length relationship between the CCRG and the Department of Justice.

The CCRG office is located outside of the Department of Justice Headquarters in a downtown Ottawa office building which has both government and private sector tenants. No other Department of Justice offices are located in this building.

Rather than formally passing through another branch of the Department, advice passes from the CCRG to the Minister through the Deputy Minister's office. Administration and support services are provided to the CCRG by the Department's Corporate Services Branch.

To promote awareness and understanding of the conviction review process, the CCRG provides presentations or lectures, subject to availability, resources and operational requirements. During the reporting period, presentations were made to the executive of the National Parole Board, and classes at Carleton University and the University of Ottawa, as well as several conferences described later in this report.

The CCRG has also taken steps to develop appropriate working relationships with various interested parties including the courts, provincial attorneys general and organizations such as the Association in Defence of the Wrongly Convicted (AIDWYC).

The Special Advisor to the Minister

Bernard Grenier, a retired judge of the Court of Quebec with more than two decades of distinguished experience on the bench, has served as the Special Advisor to the Minister on applications for ministerial review since 2003.

The Special Advisor's position is an independent one. He is neither a member of the public service of Canada nor an employee of the Department of Justice. The Special Advisor is appointed by Order-in-Council from outside the Department and public service.

While the Special Advisor's main role is to make recommendations to the Minister once an investigation is complete, it is equally important that he provide independent advice during all stages of the review process, including the preliminary assessment stage where applications may be screened out. The Special Advisor's involvement ensures that all stages of the review are complete, fair and transparent.

For example, the Special Advisor may request that additional information be collected, or existing information be clarified, before an application is screened out at the preliminary assessment stage. The Special Advisor may conclude that a particular application should not be screened out and recommend to the Minister that the review process continue.

At the investigation stage, the Special Advisor's role may include providing advice and guidance to the CCRG or seeking clarification of issues. Nevertheless, the CCRG or the appointed agents remain responsible for conducting the investigation and are expected to provide candid and independent advice to the Minister along with the investigation report. The Special Advisor reviews the investigation report and any appended material and provides his own advice and recommendations to the Minister, which may or may not differ from the advice provided by the CCRG or agent.

The involvement of the Special Advisor, in concert with the arm's-length relationship between the CCRG and the Department of Justice, ensures that the conviction review process is independent.

Conviction Reviews By Outside Agents

As a practical matter, the Minister is not personally involved in the preliminary assessment, investigation and investigation stages of the conviction review process. These stages are usually carried out on his or her behalf by the CCRG. The Minister does personally decide all applications for ministerial review that proceed to the investigation stage.

In some circumstances, the Department retains an outside "agent" to conduct the review. The outside agent, rather than the CCRG, will provide advice to the Minister.

Typically, a conviction review is conducted by an outside agent where a potential conflict of interest arises, such as where the prosecution was conducted by the Attorney General of Canada (e.g., drug prosecutions, or criminal prosecutions in the Yukon, Northwest Territories and Nunavut). During this reporting period, five applications for ministerial review were referred to outside agents.

Authorizations for the Use of the Minister's Investigative Powers

Under the previous review process, there was no legal procedure to require witnesses to provide information or produce documents that might be relevant to an application. The review of an application was therefore dependent upon the voluntary cooperation of witnesses. This was seen as a weakness in the review process, since information and documents in the possession of a reluctant or uncooperative witness could not be obtained.

This weakness was corrected by the current section 696.2 of the *Criminal Code* which gives the Minister the powers of a commissioner under the *Inquiries Act.*¹ Specifically, the Minister has the investigative power to:

- subpoena a witness;
- require a witness to answer questions and give evidence, orally or in writing, under oath or solemn affirmation; and
- require a witness to produce documents or other things that may be relevant to an investigation.

Those involved in the first three stages of the conviction review process may need to use these investigative powers to evaluate an application. Therefore, a lawyer, retired judge or other qualified individual may be authorized in writing by the Minister to exercise these investigative powers. Hence, where it is necessary to do so, the CCRG lawyer or outside agent can, for example, issue a subpoena to a witness and require the witness to answer questions under oath.

The CCRG does not hesitate to seek the Minister's authority to use these powers when warranted. During this reporting period, the Minister gave five written authorizations for the use of his investigative powers.

Contacting the CCRG

Applicants and interested parties are encouraged to communicate with CCRG in writing. Correspondence and inquiries may be forwarded to the Minister of Justice, Criminal Conviction Review Group, 284 Wellington Street, (222 Queen, 11th Floor), Ottawa, Ontario, K1A 0H8. Initial contact with the CCRG may also be made by e-mail to ccrg.inquiries@justice.gc.ca. Replies to inquiries forwarded to the Minister regarding the application process or about specific applications are prepared by the CCRG.

The CCRG Web site can be accessed directly at http://canada.justice.gc.ca/en/ps/ccr/index.html or via the Department of Justice Canada Web site using the site map. The CCRG site provides access to past annual reports, news releases, legislation and other information.

To provide accurate information about the conviction review process to applicants and interested parties, the CCRG has also produced an information booklet entitled *Applying for a Conviction Review*. The booklet is a step-by-step guide to preparing and submitting an application and contains all the required forms. The CCRG will provide a copy of *Applying for a Conviction Review* to a potential applicant or interested party who requests one. It is also available on the CCRG Web site.

¹ See the Inquiries Act, R.S.C 1985, ss. 4-5.



$Emerging Issues {}^{\rm nentered\ a\ stay\ of\ proceedings\ on\ the}$

Bail Pending Ministerial Decision

During the period covered by this report, two further applicants were granted bail pending the Minister's decision regarding their applications for ministerial review. This brings to four the number of applicants who have been released on bail.

In 1994, William Mullins-Johnson was convicted by an Ontario court of the murder and sexual assault of his four-year-old niece. Mullins-Johnson's appeals to the Ontario Court of Appeal and Supreme Court of Canada were dismissed.

With the assistance of the Association in Defence of the Wrongfully Convicted, Mullins-Johnson submitted an application for ministerial review of his convictions and brought an application for bail before the Ontario Superior Court of Justice. On September 21, 2005, the Court granted an order releasing Mullins-Johnson on bail pending the Minister's decision.²

In 1992, Kyle Unger was convicted after a trial before the Manitoba Court of Queen's Bench of the murder of a young woman at a rock music festival. The Manitoba Court of Appeal dismissed his appeal in 1993, and an appeal to the Supreme Court of Canada was discontinued the following year.

After submitting an application for ministerial review, Unger sought bail in the Manitoba Court of Queen's Bench. In a decision released on November 5, 2005, Justice Holly Beard accepted that she had the jurisdiction, based on the decisions in R. v. Phillion⁴ and R. v. Driskell, to grant bail pending the Minister's decision. She summarized the principles developed in the previous cases of the governing release on bail: Takell and a return of his case to the court system.

- On Man h This hearing is not: 1 granted Driskell's application, quashed his
- an investigation of the merits of the applicant's application against Drisk for ministerial review;
- a determination of whether the conviction constitutes a mis the inquiry, he carriage of justice; or ble Patrick LeSage, former Chief Justice
- of the Ontario a consideration of whether there should be a reference of a 06. The terms of equestion to the Court of Appeal; bout the Commission of
- the only matter to be decided is whether the applicant should be released prior to a decision or reference from the Minister of Justice following an investigation;
 - where the minister orders an investigation, he does so after finding that there may be a reasonable basis to conclude that a miscarriage of justice has likely occurred;

review in a morough and timely manner. A number of applications are expected to make their way to the Minister in 2006-2007 for a decision. In August 2006, the Minister referred two legal questions regarding the 1972 murder conviction of Romeo Phillion to the Ontario Court of Appeal. Phillion was convicted of mon-capital murder in Ottawa on November 7, 1972 in the killing of Leopold

²The decision is not reported.

³ R. v. Unger, [2005] M.J. No. 396.

^{4 [2003]} O.J. No. 3422.

⁵ [2004] M.J. No. 7.

- continued detention after such a finding fails to accord with the principles of fundamental justice and therefore breaches s. 7 of the *Charter* because the detention follows from or depends entirely upon a conviction about which there are at least reasonable grounds to believe may be a miscarriage of justice the continued detention the Cis contrary to the principle of fundamental justice that we do not convict, or imprison after conviction, those who are innocent of the been crime charged; justice. If satisfied that there is a reasonable basis
- the criteria for release at this stage should be the same as those set out in s. 679(3) of the *Criminal Code*, being:
 - (i) that the applicant is not frivolous;
- When an ir (ii) that the applicant will surrender himself or herself into sclearly been a miscarr custody, according to the terms of the order; and the where new
 - (iii) that the applicant's detention is not necessary in the public interest;
- to a de these requirements are cumulative; nocent, Rather, such a decision
- leads to establish that an application is not frivolous, the applicant does issues are not have to establish actual or near certainty of success, but should innocence be able to demonstrate that there are serious concerns (or possibly "very serious concerns") about the accuracy of the verdict because Applying further information; On Review
- where the Minister has concluded, after the preliminary assessment,
 The convicthat there may be a reasonable basis to conclude that a miscarriage
 application of justice likely occurred and ordered an investigation, that is
 indicative that the application is not frivolous;
 - the public interest would normally favour the continued detention of a person convicted of a serious crime such as murder;
- where the grounds for review are strong and there is serious (or possibly very serious) concern about the accuracy of the verdict at trial, the public interest may well shift in favour of release;
- Anyon the community's tolerance for keeping the applicant in custody will an applicativary with the quality of the evidence being put forward in support convicted of the application; Code or the Controlled Drugs and Substances
- an application for release is brought by the applicant, and therefore he or she bears the burden of proof, which is proof on a balance of probabilities;
- it is arguable that the standard for release may vary depending on An applicathe stage of the application—that is, an application that has just available ripassed preliminary assessment stage has not been subjected to the the usual vintense scrutiny of an investigation, and as a result, must meet a Criminal Chigher standard of raising not just "serious concerns" about the on the groundability of the conviction, but "very serious concerns" of persons are therefore expected to appeal their convictions where there are suitable grounds to do so.

A conviction review by the Minister of Justice is not a substitute for, or afternative to, a judicial review or an appeal of a conviction. An application for ministerial review is not meant to be another level of appeal or a mechanism that allows the Minister of Justice to take the same evidence and arguments presented to the courts and substitute his or her own judgment.



- the grounds being relied on by the applicant should be considered in the context of the evaluative principles that the Minister is obligated to consider in s. 696.4 of the *Criminal Code*:
 - whether the application is supported by new matters of significance that were not considered by the courts or previously considered by the Minister in a previous application;
 - the relevance and reliability of information that is presented in connection with the application; and
 - the fact that an application is not intended as a further appeal and any remedy is an extraordinary remedy.

After reviewing the case, Justice Beard concluded there are "very serious concerns that [Unger] may have been wrongfully convicted" and that he should be released on bail.

Public Inquiries

During the reporting period, three provincial public inquiries were under way or being established.

In Saskatchewan, the Commission of Inquiry into the Wrongful Conviction of David Milgaard⁶ continued its work. Milgaard spent 23 years in prison for a murder he didn't commit. The Inquiry, headed by the Honourable Mr. Justice Edward P. MacCallum of the Alberta Court of Queen's Bench, is expected to conclude by the end of 2006. The Attorney General of Canada has standing at the Inquiry.

In Manitoba, the Commission of Inquiry into Certain Aspects of the Trial and Conviction of James Driskell⁷ was established in December 2005. Headed by the Honourable Patrick LeSage, former Chief Justice of the Ontario Superior Court of Justice, it began public hearings in July 2006 and is expected to report by December 2006.

In June 2006, the Government of Newfoundland and Labrador released the report of the Right Honourable Antonio Lamer, former Chief Justice of Canada, into the cases of Gregory Parsons, Randy Druken and Ronald Dalton.⁸ It makes more than 40 recommendations on all aspects of the criminal justice system, from legal aid to police investigations to Crown culture. In particular, Lamer notes "the conviction of innocent people has been established with increasing frequency in Canada in recent years."

In response, the Government of Newfoundland and Labrador announced⁹ it accepted all of Lamer's recommendations and appointed a retired justice of the Newfoundland Court of Appeal to conduct an independent review of its Office of the Director of Public Prosecutions.

⁶ http://www.milgaardinquiry.ca/

⁷ http://www.driskellinquiry.ca/index.html

⁸ The report is available at http://www.justice.gov.nl.ca/just/lamer/.

http://www.releases.gov.nl.ca/releases/2006/just/0621n03.html



Education on Wrongful Convictions

There have been several major conferences and educational sessions on the prevention of miscarriages of justice across Canada.

In July 2005, there were several panels on wrongful convictions at the National Criminal Law Program sponsored by the Federation of Law Societies of Canada.

In October 2005, more than 400 people attended a landmark international conference in Winnipeg entitled "Unlocking Innocence: Avoiding Wrongful Conviction." The conference brought together Crown attorneys, defence lawyers, judges, police officers, scientists, policy-makers and academics from 10 countries to discuss the causes and prevention of miscarriages of justice. The CCRG's Senior Counsel and the Department's Special Advisor on Wrongful Convictions were among the speakers. In a keynote address, the Hon. Irwin Cotler, then Minister of Justice and Attorney General of Canada, called wrongful convictions "among the greatest injustices a society can know" and delivered a plea for a "culture of prevention" among all criminal justice system participants.

In October 2005, the Canadian Criminal Justice Association held its 30th Canadian Congress on Criminal Justice in Calgary. One of the sessions was entitled "Wrongful Conviction: The Travesty of Delayed Justice." A Counsel from the CCRG discussed the causes of wrongful convictions and what can be done to prevent them from happening in the future.

In November 2005, the Attorney General of New Brunswick, in partnership with the Saint John Police Force and the New Brunswick Ministry of Public Safety, sponsored a two-day conference entitled "Understanding Wrongful Convictions." The program featured a presentation by CCRG's Senior Counsel on applications for ministerial review and a number of other speakers addressed various topics on wrongful convictions.

On November 25, 2005, the students of Humberview High School in Bolton, Ontario, hosted a one-day symposium called "The Wrongfully Convicted with a focus on the Steven Truscott Case." The students had been studying wrongful convictions and decided to organize the conference as a culmination of their work. Over 600 high school students from across Ontario attended the symposium. A Counsel from the CCRG was among the speakers.

In addition, prosecution services in Quebec, Ontario and British Columbia conducted educational sessions for their prosecutors on aspects of wrongful conviction. Each featured a presentation by Jennifer Thompson, a North Carolina woman whose mistaken eyewitness identification led to the wrongful rape conviction and imprisonment of Ronald Cotton.

Osgoode Hall Law School's Professional Development Program began a series of one-day courses for police, lawyers, judges and others involved in the criminal justice system entitled "Strategies for Avoiding Wrongful Convictions and Acquittals." In December 2005, the issue of expert evidence was examined, followed in April 2006 by eyewitness identification and testimony.

¹⁰ www.wrongfulconviction.ca.

Post Conviction Disclosure pends on the complexity of the application and the availability of evidence. It should be noted that any of

Two Ontario cases recently dealt with the issue of post-conviction disclosure. Each case is unique and the contents and nature of the application determine

In 1998, Marco Trotta was convicted of the assault and murder of his infant son. At his trial, the Crown presented evidence from Dr. Charles Smith, a forensic pathologist, who testified that the child's death was not accidental. Dr. Smith's competence and objectivity have subsequently been questioned. Prior to the hearing of his appeal in 2004, Trotta sought disclosure of material in the possession of the Crown relating to Dr. Smith's competence and objectivity in order to introduce this material as fresh evidence at the appeal. The Ontario Court of Appeal dismissed the application. In The Court acknowledged that the Crown's disclosure obligation continues during the appeal process and proposed a two-part test that must be met by an accused in order for port disclosure to be ordered during the appeal process. Trotta's appeal was subsequently dismissed. In any, have been received—and any further investiga-

On October 20, 2005, the Supreme Court of Canada granted Trotta's application for leave to appeal. The issue of post-conviction disclosure will be one of the matters argued before the Court.

In 1998, John Terceira was convicted of the murder of a six-year-old girlabmis. His conviction was affirmed by the Ontario Court of Appeal in 1998 and er. The the Supreme Court of Canada in 1999, stage of the conviction review process.

Terceira made an application to the Ontario Superior Court of Justice in 2005 seeking the release of the victim's leotards for DNA analysis. Justice Eugene Ewaschuk dismissed the application, ruling it was an impermissible collateral attack on the murder conviction and that he had no jurisdiction to make the order requested. He suggested that an application for ministerial review was the appropriate way for Terceira to pursue the matter. Justice Ewaschuk added that, even if he did have the jurisdiction to order the release of the leotards for testing, he would not exercise his discretion to do so because Terceira had not shown that the proposed testing had any prospect of showing that another person was involved in the murder.

Terceira sought leave to appeal the decision to the Supreme Court of Canada. His application for leave was dismissed without reasons on January 12, 2006. 13

- the relevance and reliability of information that is presented in the application; and
- the fact that an application for ministerial review is not intended to serve as a further appeal and any remedy available on such an application is an extraordinary remedy.

^{11 [2004]} O.J. No. 2439 (C.A.).

^{12 (2004), 190} C.C.C. (3d) 199 (Ont. C.A.).

^{13 [2005]} S.C.C.A. No. 479.



Ontario Criminal Conviction Review Committee

In May 2006, Ontario Attorney General Michael Bryant announced the establishment of a committee to provide expert leadership in the prevention of wrongful convictions. The Ontario Criminal Conviction Review Committee (OCCRC) includes six senior Crown counsel from across the province, representing the appellate, policy and trial perspectives on the issues.

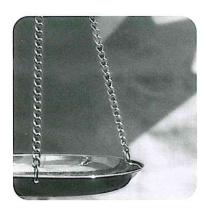
The Committee is being advised by the Honourable Michel Proulx, a former justice of the Quebec Court of Appeal, defence lawyer and co-author of a recent book on ethics and Canadian criminal law.

The Committee will review criminal convictions where a miscarriage of justice is alleged, including cases that engage the conviction review process; provide expert advice and guidance to Crown attorneys across the province in dealing with some of the difficult issues relating to potential miscarriages of justice; develop educational and policy initiatives aimed at the prevention of miscarriages of justice; and develop protocols and best practices for dealing with these cases and preventing future miscarriages of justice.

Manitoba Justice Initiatives

In April 2003, the Deputy Attorney General of Manitoba, Bruce A. MacFarlane, Q.C., established a forensic evidence review committee to examine cases where homicide convictions were secured during the previous 15 years and where the Crown tendered and relied upon microscopic hair comparison evidence, in order to assess whether any miscarriages of justice occurred. The committee submitted its report on August 19, 2004, and identified two cases warranting further scrutiny.

Late in 2004, the mandate of the review committee was expanded to consider sexual assault and robbery cases. In September 2005, the committee reported that it had reviewed 492 cases but none required further action.



Remedies Granted by the Minister

During the reporting period, the Minister granted one remedy pursuant to section 696.3 (3) (a) of the *Criminal Code*.

André Tremblay

André Tremblay was convicted in February 1984 of first-degree murder in the killing of Serge Fournier, who died on July 3, 1982. Tremblay was sentenced to life imprisonment, with no parole eligibility for 25 years. Further appeals were unsuccessful and Tremblay applied for a ministerial review.

The only ground for Tremblay's application related to the statements of a jail-house informant, who had testified that the accused had confessed to him when they were both in custody. The informant later recanted under oath his trial testimony in 1988 and 1991. As well, Tremblay and his counsel were never told that the informant had received certain advantages in exchange for his trial testimony.

On July 17, 2005, the Minister determined there was a reasonable basis to conclude that a miscarriage of justice likely occurred in this case and referred it to the Quebec Court of Appeal.

No date has been set for the hearing.

Update on Remedies Granted

This section provides an update on previous cases which the Minister has referred back to the courts.

Rodney Cain

Rodney Cain was convicted of the second-degree murder of Joel Willis on February 14, 1985, after a trial at Toronto, Ontario. He was sentenced to life imprisonment without eligibility for parole for 12 years. His appeal against conviction was dismissed by the Ontario Court of Appeal on November 3, 1987, although the Court reduced the period of imprisonment that Cain would have to serve before being eligible for parole from 12 to 10 years.

On May 19, 2004, the Minister granted Cain's application for ministerial review, quashed his murder conviction and ordered a new trial.

In June 2006, a jury convicted Cain of manslaughter, and a judge sentenced him to one day in jail in addition to the ten years he had already served on the original murder conviction.

Steven Truscott

After a jury trial, Steven Truscott, at age 14, was convicted of murder at Goderich, Ontario, on September 30, 1959. He was sentenced to death, as was then required by law. The Ontario Court of Appeal dismissed his appeal on January 20, 1960. The next day, his sentence was commuted to life imprisonment. The Supreme Court of Canada dismissed his application for leave to appeal on February 24, 1960.

Subsequently, concern arose that Truscott's conviction might have been a miscarriage of justice. On April 26, 1966, the Government of Canada referred his case to the Supreme Court of Canada. The Supreme Court was asked to determine how it would have decided an appeal by Truscott, on the basis of the existing judicial record and any other evidence it received. The Supreme Court answered that question on May 4, 1967, and ruled that it would have dismissed Truscott's appeal.

On November 29, 2001 – some 42 years after his conviction – Truscott submitted an application for ministerial review. On January 24, 2002, the Minister of Justice appointed the Honourable Fred Kaufman, a former judge of the Quebec Court of Appeal, as an agent to investigate Truscott's application.

Kaufman conducted an exhaustive investigation of Truscott's application and provided a 700-page report to the Minister in the spring of 2004. The report presented new information about the case. On the basis of this new information, the Minister decided that there was a reasonable basis to conclude that a miscarriage of justice likely occurred. Accordingly, on October 28, 2004, the Minister referred Truscott's case to the Ontario Court of Appeal to be heard as a new appeal.

The Minister announced on August 12, 2005 that he would waive solicitor-client privilege with respect to Justice Kaufman's report and that a copy of the report would be released publicly once it had been edited to protect privacy interests.

In November 2005, the Department released an edited version of the investigative report. The executive summary of the report is available at http://canada.justice.gc.ca/en/ps/ccr/.

In June 2006, a five-member panel of the Ontario Court of Appeal heard three weeks of testimony. Final arguments are scheduled for January 2007.

Darcy Bjorge

Darcy Bjorge was tried at Wetaskiwin, Alberta, on the following charges:

- (1) that he was unlawfully in possession of a car having a value of more than \$1,000, knowing that it had been obtained by the commission of a theft; and
- (2) that he unlawfully defrauded a victim of a sport utility vehicle having a value of over \$1,000.

Bjorge was convicted of both charges on March 24, 1994. He was sentenced to three years in prison on the first charge and a concurrent three-year prison sentence on the second charge.

Bjorge submitted an application for ministerial review of both convictions on June 8, 2000.

In his decision of February 10, 2005, the Minister determined that there was a reasonable basis to conclude that a miscarriage of justice likely occurred in relation to Bjorge's conviction for possession of stolen property. He ordered a new trial on this charge before the Alberta Court of Queen's Bench. The Minister dismissed the part of the application relating to Bjorge's conviction for fraud.

On February 25, 2005, the Alberta Crown entered a stay of proceedings on the possession of stolen property charge.

Danny Wood

After a trial in Calgary, Alberta, Danny Wood was convicted on June 7, 1990 of the first-degree murder of Merla Laycock, and sentenced to life imprisonment with no eligibility for parole for 25 years. The Alberta Court of Appeal dismissed his appeal against conviction on January 30, 1992.

Approximately three and a half years after his conviction, Wood submitted an application for ministerial review. The Minister announced his decision on Wood's application on February 15, 2005. The investigation of the application found that the Crown had failed to disclose significant information to Wood, which could have had an impact on the fairness of the trial and the reliability of his conviction. Therefore, the Minister found that there was a reasonable basis to conclude that a miscarriage of justice likely occurred. His case was referred to the Alberta Court of Appeal to be heard as a new appeal.

A hearing is scheduled in the matter for November 2006.

James Driskell

On June 14, 1991, James Driskell was convicted of first-degree murder at Winnipeg, Manitoba. He was sentenced to life imprisonment without eligibility for parole for 25 years. His appeal to the Manitoba Court of Appeal was dismissed on December 7, 1992.

Driskell completed his application for ministerial review in October 2003. In November 2003, he applied for bail and became only the second person in Canadian legal history to be released pending a decision regarding an application for ministerial review. The Attorney General of Manitoba supported the granting of a remedy to Driskell and a return of his case to the court system.

On March 3, 2005, the Minister granted Driskell's application, quashed his murder conviction and ordered a new trial. The same day, the murder charge against Driskell was stayed, and the Government of Manitoba announced that there would be a public inquiry into his case.

The inquiry, headed by the Honourable Patrick LeSage, former Chief Justice of the Ontario Superior Court of Justice, began hearing evidence in July 2006. The terms of reference and other information about the Commission of Inquiry into Certain Aspects of the Trial and Conviction of James Driskell is available at http://www.driskellinguiry.ca/index.html.

The Year Ahead

The CCRG continues to work hard to process applications for ministerial review in a thorough and timely manner. A number of applications are expected to make their way to the Minister in 2006-2007 for a decision. In August 2006, the Minister referred two legal questions regarding the 1972 murder conviction of Romeo Phillion to the Ontario Court of Appeal. Phillion was convicted of non-capital murder in Ottawa on November 7, 1972 in the killing of Leopold Roy in August 1967.



How the Conviction Review Process Works

The *Criminal Code* gives the Minister of Justice the power to review a conviction under a federal law to determine whether there may have been a miscarriage of justice. If satisfied that there is a reasonable basis to conclude that a miscarriage of justice likely occurred, the Minister has the authority to order a new trial or refer the matter to the court of appeal for the province or the territory in question.

When an innocent person is found guilty of a criminal offence, there has clearly been a miscarriage of justice. A miscarriage of justice can also occur where new information surfaces which casts doubt on whether the applicant received a fair trial. Thus, the Minister's decision that there is a reasonable basis to conclude that a miscarriage of justice likely occurred in a case does not amount to a declaration that the convicted person is innocent. Rather, such a decision leads to a case being returned to the judicial system, where the relevant legal issues are determined by the courts according to law. The issue of guilt or innocence, therefore, is determined by the courts, not the Minister.



Applying for a Conviction Review

The conviction review process requires an applicant to submit a formal application form and a number of supporting documents.

The requirements for a completed application, as well as a description of the various steps in the application process, are set out in detail in the information booklet, *Applying for a Conviction Review*. The booklet is available on-line at http://canada.justice.gc.ca/en/ps/ccr/index.html and, in many circumstances, from corrections authorities.

Anyone convicted of an offence under a federal law or regulation may submit an application for ministerial review. For example, a person who has been convicted under the *Criminal Code* or the *Controlled Drugs and Substances Act* is eligible to apply. Convictions for indictable and summary conviction offences are now both eligible for review. A person found to be a dangerous offender or a long-term offender under the *Criminal Code* may also submit an application for ministerial review.

An application will not be accepted until the applicant has exhausted all available rights of appeal. Judicial review and appeals to higher courts are the usual ways to correct legal errors and miscarriages of justice. Indeed, the *Criminal Code* specifically allows an appeal court to overturn a conviction on the ground that there has been a miscarriage of justice. Convicted persons are therefore expected to appeal their convictions where there are suitable grounds to do so.

A conviction review by the Minister of Justice is not a substitute for, or alternative to, a judicial review or an appeal of a conviction. An application for ministerial review is not meant to be another level of appeal or a mechanism that allows the Minister of Justice to take the same evidence and arguments presented to the courts and substitute his or her own judgment.

An application for ministerial review must be supported by "new matters of significance" – generally new information that was not presented to the courts or considered by the Minister on a prior application. Only new matters of significance will put the Minister in a position to determine whether there is a reasonable basis to conclude that a miscarriage of justice likely occurred.

Although it is not required, applicants may seek the assistance of a lawyer or organizations specializing in wrongful conviction issues such as the Association in Defence of the Wrongfully Convicted (AIDWYC) or the Innocence Project.

Guiding Principles

A number of basic principles guide the CCRG in its review of applications for ministerial review:

- Independence: The independence of the conviction review process is supported by the arm's-length relationship between the CCRG and the Department of Justice, the involvement of the Special Advisor and the ethical obligation of the CCRG to provide candid, objective and independent advice to the Minister.
- Impartiality: Where the CCRG has a conflict of interest, an application for ministerial review will be referred to an agent outside the Department for review. That outside agent, rather than the CCRG, will provide advice to the Minister. For example, cases that were prosecuted by Department of Justice lawyers (e.g., drug cases or criminal cases in the Yukon, Northwest Territories and Nunavut) are referred to outside agents. In most criminal cases, prosecutions are conducted by provincial attorneys general. Therefore, no conflict of interest exists in most of these cases. The CCRG will remain fair and impartial in its approach to an application between the applicant and the provincial attorney general.
- Thoroughness: Each application for ministerial review will receive thorough and meaningful consideration. Those that are supported by "new matters of significance" will proceed to the investigation stage. Those that are not will be screened out, and the applicants will be given reasons in writing for the decision. The CCRG conducts a thorough investigation of all applications and will, where warranted, use the substantial powers of investigation that are available (e.g. subpoena) to require the production of information or documents. At the decision stage of the process, the applicant will be provided with reasons in writing for the Minister's decision.
- Non-adversarial approach: The CCRG gathers information during its reviews in a neutral and non-adversarial fashion. The emphasis is on determining whether the information in support of an application can be verified.
- Objectivity: The CCRG provides objective advice and recommendations to the Minister based on the facts, the law and any other relevant considerations, including protecting the integrity of its review.



- Transparency: The CCRG is dedicated to an open and transparent conviction review process, subject to legitimate privacy interests and other concerns.
- Accountability: The CCRG is accountable for the performance of its responsibilities to the Minister, through the Deputy Minister's office.

All reasonable efforts are made to process and review each application as quickly as possible. However, priority is generally given to those matters where the applicant is in custody.

Stages of the Review

There are four stages in the review process: preliminary assessment; investigation; preparation of an investigation report; and the decision by the Minister.

Preliminary Assessment

When an application for ministerial review is received, the first task is to ensure that the required application form has been properly completed and the necessary supporting documents have been provided. Once the application is complete, the CCRG conducts a preliminary assessment to determine whether it merits further investigation – normally whether the application presents "new matters of significance" that were not available at trial or on appeal.

The time required for a preliminary assessment will depend upon the amount of material to review and whether any of the "new matters of significance" require preliminary decisions, such as on the credibility of new evidence raised in the application.

If the application does not present new matters of significance, it will be screened out. The Special Advisor reviews the decision to screen out an application at this stage. The Special Advisor may disagree with the decision to screen out the application and recommend to the Minister that the review process continue.

Where an application is screened out at this stage, the applicant is informed in writing that the matter will not proceed and given the reasons for that decision. The applicant has one year to provide further information.

Investigation

The investigation conducted by the CCRG or agent attempts to verify the information in support of the application. Depending on the type of information provided by the applicant, the investigation could involve:

- interviewing or examining witnesses to clarify or verify the information in the application;
- carrying out scientific tests (e.g. DNA testing paid for by CCRG);
- obtaining other assessments from forensic and social science specialists (e.g. polygraph examinations);
- consulting police agencies, prosecutors and defence lawyers who were involved in the original prosecution and/or appeals; or
- obtaining other relevant personal information and documentation (e.g. Correctional Service of Canada file).

The time required for the investigation depends on the complexity of the application and the availability of evidence. It should be noted that any of these activities could take place at the preliminary assessment phase as well. Each case is unique and the contents and nature of the application determine the process.

Investigation Report

The results and findings of the investigation are compiled in an investigation report. This report will summarize the facts gathered from the judicial record and will address whether the new information in support of the application has been verified, and if so, to what extent. The investigation report may also identify relevant issues and legal authorities. As required by law, the report is sent to the applicant with a request for comments. The attorney general for the province where the prosecution occurred is also given a copy of the report and asked for submissions.

When the submissions, if any, have been received – and any further investigation they might merit has been completed – the final version of the investigation report is prepared. The CCRG or agent then prepares written advice and recommendations to the Minister.

The Special Advisor reviews the investigation report and any additional submissions, and prepares his own advice and recommendations to the Minister. The application then proceeds to the final stage of the conviction review process – the decision of the Minister.

Decision by the Minister

In this final stage, the Minister of Justice personally reviews the investigation report and supporting materials, the materials submitted by the applicant, the advice and recommendations of the CCRG or agent, and the advice and recommendations of the Special Advisor.

The Minister then decides to dismiss or allow the application. In arriving at a decision, the Minister must take into account all relevant matters, including:

- whether the application is supported by "new matters of significance" that were not considered by the courts or by the Minister in a previous application for ministerial review;
- the relevance and reliability of information that is presented in the application; and
- the fact that an application for ministerial review is not intended to serve as a further appeal and any remedy available on such an application is an extraordinary remedy.



In some circumstances, an application may raise a question on which the Minister may wish the assistance of the court of appeal. The court's opinion on the question may help the Minister make his or her decision. Hence, the Minister has the legal authority, at any time and prior to any decision, to refer a question about an application to the court of appeal for its opinion. Typically, the court of appeal's opinion would be sought with regard to a legal issue central to the application.

If the Minister is satisfied that there is a reasonable basis to conclude that a miscarriage of justice likely occurred, pursuant to subsection 696.3 (3) of the *Criminal Code* the Minister may order a new trial, or a hearing in the case of a person found to be a dangerous or long-term offender, or refer the matter to the court of appeal as if it were an appeal by the convicted person or person found to be a dangerous or long-term offender.



Statistical Information

ection 696.5 of the *Criminal Code* requires that the Minister of Justice submit an annual report to Parliament regarding applications for ministerial review during the previous fiscal year.

The report must include the number of applications made to the Minister, the number that have been abandoned or that are incomplete, the number at the preliminary assessment stage and at the investigative stage, the number of decisions the Minister has made under subsection 696.3 (3), and any other information the Minister considers appropriate.

Reporting Period

The reporting period covered by this annual report is the one-year period between April 1, 2005, and March 31, 2006.

Application Requests

Table 1 summarizes the number of application requests made to the Minister during the reporting period. An application request is considered to have been made if a potential applicant or a person acting on their behalf inquires about submitting an application for ministerial review. The information booklet *Applying for a Conviction Review* is sent to the person making the inquiry. The booklet provides detailed information about the conviction review process, includes the required forms, and provides step-by-step instructions for submitting an application.

During the period covered by this report, 39 application requests were made to the Minister.

TABLE 1: APPLICATION REQUESTS MADE TO THE MINISTER

DURING THE PERIOD APRIL 1, 2005 TO MARCH 31, 2006

TOTAL 39



Applications Made to the Minister

Table 2 indicates the number of applications that the Minister actually received during this reporting period. An application is considered to be "completed" when a person has submitted the forms, information and supporting documents required by the regulations. The Minister received two completed applications during the reporting period.

An application is considered to be "partially completed" when a person has submitted some, but not all, of the forms, information and supporting documents required by the regulations. For example, a person may have submitted the required application form but not the supporting documents required. Although it is the responsibility of the applicant to provide the required documentation, CCRG staff frequently assist applicants. It is not unusual for an application to remain in the "partially completed" category for a period of time while the applicant gathers and submits the necessary documents and information.

Of the 39 application requests made to the Minister during the reporting period, 36 fall into the "partially completed" category.

An application is "screened out" if the person is not eligible to make an application for ministerial review. This category covers a variety of circumstances – for example, if it related to a provincial offence, involved a civil matter, or dealt with the same subject matter as a previously denied application and did not raise any new matters of significance. One application was screened out during the reporting period.

TABLE 2: APPLICATIONS MADE TO THE MINISTER	R
DURING THE PERIOD APRIL 1, 2005 TO MARCH 31, 2006	
Applications completed	2
Applications partially completed	36
Applications screened out	1
TOTAL	39

Progress of Applications Through the Conviction Review Process

Table 3 summarizes the work completed in the first three stages of the conviction review process. Twelve preliminary assessments were completed during the period covered by this report. Two investigations were completed during the reporting period.

The length of time to conduct a preliminary assessment typically ranges from a few weeks to months. An investigation usually takes a number of months to complete, although the time required to complete an investigation varies with the complexity of the case.

TABLE 3: PROGRESS OF APPLICATIONS THROUGH THE CONVICTION REVIEW PROCESS DURING THE PERIOD APRIL 1, 2005 TO MARCH 31, 2006 Preliminary assessments completed 12 Investigations completed 2 TOTAL 14

Preliminary Assessments

Tables 4 and 5 provide further information about the work completed at the preliminary assessment stage of the conviction review process. Table 4 summarizes the applications that were at the preliminary assessment stage during the reporting period. Forty-three applications were at the preliminary assessment stage. Ten applications were awaiting preliminary assessment, 20 preliminary assessments were under way and 13 preliminary assessments were completed. The number of applications awaiting preliminary assessment is down dramatically from more than 70 cases in November 2002. A preliminary assessment is considered to be "under way" if it commenced during the reporting period, or commenced prior to the reporting period but continued during the reporting period.

Table 5 shows that of the 13 applications where preliminary assessments were completed, ten did not proceed to the investigation stage. In such cases, the new matters raised by the applicant were not such that there might be a reasonable basis to conclude that a miscarriage of justice likely occurred. Three applications did proceed to the investigation stage.

TABLE 4: SUMMARY OF APPLICATIONS AT THE PRELIMINARY ASSESSMENT STAGE FOR THE PERIOD APRIL 1, 2005 TO MARCH 31, 2006 Applications awaiting preliminary assessment 10 Preliminary assessments completed 13 Preliminary assessments still under way 20 TOTAL 43

TABLE 5: DISPOSITION OF APPLICATIONS FOLLOWING PRELIMINARY ASSESSMENT STAGE	
FOR THE PERIOD APRIL 1, 2005 TO MARCH 31, 2006	
Applications that did not proceed to the investigation stage following a preliminary assessment	10
Applications that did proceed to the investigation stage following a preliminary assessment	3
TOTAL	13

Investigations

Table 6 summarizes the work done on applications at the investigation stage during the reporting period. An investigation is considered to be "complete" when an investigation report is completed and forwarded to the Minister for his review and decision.

Two investigations were completed during the reporting period and 11 investigations were under way.

TABLE 6: SUMMARY OF APPLICATIONS AT THE INVESTIGATION STAGE FOR THE PERIOD APRIL 1, 2005 TO MARCH 31, 2006 Investigations completed 2 Investigations under way but not yet completed 11 TOTAL 13

Decisions

Table 7 summarizes the decisions made by the Minister regarding applications for ministerial review during the reporting period. The Minister made one decision during the one-year period. The decision of the Minister was to grant the application and refer the application to the Court of Appeal. As of March 31, 2006, one application was under consideration by the Minister and awaiting a decision.

TABLE 7: DECISIONS MADE BY THE MINISTER	
FROM APRIL 1, 2005 TO MARCH 31, 2006	
Applications dismissed	0
Applications allowed	1
TOTAL	1

Applications Abandoned or Held in Abeyance

During the reporting period, no applications were abandoned at the preliminary assessment stage. Three applications were held in abeyance at the request of the applicant.

Status of Applications at the End of the Fiscal Year

Table 8 provides a snapshot of the status of all applications as of March 31, 2006.

Of the 44 applications as of March 31, 2006, ten were completed and awaiting preliminary assessment, three were being held in abeyance at the request of the applicant, 18 were at the preliminary assessment stage, 11 were at the investigation stage, one was awaiting a decision by the Minister and one decision had been rendered by the Minister.

TABLE 8: SUMMARY OF THE STATUS OF ALL ACTIVE APPLICATIONS	
AS OF MARCH 31, 2006	
STATUS	NUMBER
Applications completed and awaiting preliminary assessment	10
Applications in abeyance at request of the applicant	3
Preliminary assessment stage	18
Investigation stage	11
Awaiting Ministerial Decision	1
Ministerial Decisions	1
TOTAL NO. OF APPLICATIONS	44

Judicial Review

There were no applications for judicial review of decisions made by the CCRG or the Minister.

Application

696.1 (1) An application for ministerial review on the grounds of miscarriage of justice may be made to the Minister of Justice by or on behalf of a person who has been convicted of an offence under an Act of Parliament or a regulation made under an Act of Parliament or has been found to be a dangerous offender or a long-term offender under Part XXIV and whose rights of judicial review or appeal with respect to the conviction or finding have been exhausted.

Form of application

(2) The application must be in the form, contain the information and be accompanied by any documents prescribed by the regulations.

Review of applications

696.2 (1) On receipt of an application under this Part, the Minister of Justice shall review it in accordance with the regulations.

Powers of investigation

(2) For the purpose of any investigation in relation to an application under this Part, the Minister of Justice has and may exercise the powers of a commissioner under Part I of the *Inquiries Act* and the powers that may be conferred on a commissioner under section 11of that Act.

Delegation

(3) Despite subsection 11(3) of the Inquiries Act, the Minister of Justice may delegate in writing to any member in good standing of the bar of a province, retired judge or any other individual who, in the opinion of the Minister, has similar background or experience the powers of the Minister to take evidence, issue subpoenas, enforce the attendance of witnesses, compel them to give evidence and otherwise conduct an investigation under subsection (2).

Definition of "court of appeal"

696.3 (1) In this section, "the court of appeal" means the court of appeal, as defined by the definition "court of appeal" in section 2, for the province in which the person to whom an application under this Part relates was tried.

Power to refer

(2) The Minister of Justice may, at any time, refer to the court of appeal, for its opinion, any question in relation to an application under this Part on which the Minister desires the assistance of that court, and the court shall furnish its opinion accordingly.

Powers of Minister of Justice

- (3) On an application under this Part, the Minister of Justice may
 - (a) if the Minister is satisfied that there is a reasonable basis to conclude that a miscarriage of justice likely occurred,
 - (i) direct, by order in writing, a new trial before any court that the Minister thinks proper or, in the case of a person found to be a dangerous offender or a long-term offender under Part XXIV, a new hearing under that Part, or
 - (ii) refer the matter at any time to the court of appeal for hearing and determination by that court as if it were an appeal by the convicted person or the person found to be a dangerous offender or a long-term offender under Part XXIV, as the case may be; or
 - (b) dismiss the application.

No appeal

(4) A decision of the Minister of Justice made under subsection (3) is final and is not subject to appeal.

Considerations

- 696.4 In making a decision under subsection 696.3(3), the Minister of Justice shall take into account all matters that the Minister considers relevant, including
 - (a) whether the application is supported by new matters of significance that were not considered by the courts or previously considered by the Minister in an application in relation to the same conviction or finding under Part XXIV;
 - (b) the relevance and reliability of information that is presented in connection with the application; and
 - (c) the fact that an application under this Part is not intended to serve as a further appeal and any remedy available on such an application is an extraordinary remedy.

Annual report

696.5 The Minister of Justice shall within six months after the end of each financial year submit an annual report to Parliament in relation to applications under this Part.

Regulations

696.6 The Governor in Council may make regulations

- (a) prescribing the form of, the information required to be contained in and any documents that must accompany an application under this Part;
- (b) prescribing the process of review in relation to applications under this Part, which may include the following stages, namely, preliminary assessment, investigation, reporting on investigation and decision; and
- (c) respecting the form and content of the annual report under section 696.5.

Interpretation

- 1. The following definitions apply in these Regulations.
 - "Code" means the Criminal Code. (Code)
 - "Minister" means the Minister of Justice. (ministre)

Application

- 2. (1) For the purposes of subsection 696.1(2) of the Code, an application for ministerial review under Part XXI.1 of the Code shall be in the form set out in the schedule and contain the following information:
 - (a) with respect to the applicant,
 - (i) the applicant's name, including any alias or former name,
 - (ii) the applicant's address, date of birth and, if any, the number assigned to the applicant under the Royal Canadian Mounted Police Automated Fingerprint Identification System.
 - (iii) the name, address and telephone number of the person making the application on the applicant's behalf, if any,
 - (iv) whether the alleged miscarriage of justice relates to a conviction on an offence punishable on summary conviction or on an indictable offence, or, in the case of a finding of dangerous offender or long-term offender under Part XXIV of the Code, particulars of the finding, and
 - (v) whether the applicant is in custody;
 - (b) with respect to any pre-trial hearings,
 - (i) the date of the preliminary inquiry, if any, (ii) the court and its address, and

 - (iii) the number, type and date of any pre-trial motions, as well as the court decision on those motions;
 - (c) with respect to the trial,
 - (i) the date on which it started,
 - (ii) the court and its address, the plea entered at trial, the mode of trial and the date of the conviction and that of sentencing,
 - (iii) the names and addresses of all counsel involved in the trial,
 - (iv) the number, type and date of any motions made, as well as the date of the court decision on those motions;
 - (d) particulars regarding any subsequent appeals to the court of appeal or the Supreme Court of Canada;
 - (e) the grounds for the application; and
 - a description of the new matters of significance that support the
 - (2) The application must be accompanied by the following documents:
 - (a) the applicant's signed consent authorizing the Minister
 - (i) to have access to the applicant's personal information that is required for reviewing the application, and
 - (ii) to disclose to any person or body the applicant's personal information obtained in the course of reviewing the application in order for the Minister to obtain from that person or body any information that is required for reviewing the application;
 - (b) a true copy of the information or indictment;
 - (c) a true copy of the trial transcript, including any preliminary hearings
 - (d) a true copy of all material filed by the defence counsel and Crown counsel in support of any pre-trial and trial motions;
 - (e) a true copy of all factums filed on appeal;
 - (f) a true copy of all court decisions; and
 - (g) any other documents necessary for the review of the application.

Review of the Application

- 3. On receipt of an application completed in accordance with section 2, the Minister shall
 - (a) send an acknowledgment letter to the applicant and the person acting on the applicant's behalf, if any; and
 - (b) conduct a preliminary assessment of the application.
- 4. (1) After the preliminary assessment has been completed, the Minister
 - (a) shall conduct an investigation in respect of the application if the Minister determines that there may be a reasonable basis to conclude that a miscarriage of justice likely occurred; or
 - (b) shall not conduct an investigation if the Minister
 - (i) is satisfied that there is a reasonable basis to conclude that a miscarriage of justice likely occurred and that there is an urgent need for a decision to be made under paragraph 696.3(3)(a) of the Code for humanitarian reasons or to avoid a blatant continued prejudice to the applicant, or
 - (ii) is satisfied that there is no reasonable basis to conclude that a miscarriage of justice likely occurred.
 - (2) The Minister shall send a notice to the applicant and to the person acting on the applicant's behalf, if any, indicating whether or not an investigation will be conducted under subsection (1).
 - (3) If the Minister does not conduct an investigation for the reason described in subparagraph (1)(b)(ii), the notice under subsection (2) shall indicate that the applicant may provide further information in support of the application within one year after the date on which the notice was sent.
 - (4) If the applicant fails, within the period prescribed in subsection (3), to provide further information, the Minister shall inform the applicant in writing that no investigation will be conducted.
 - (5) If further information in support of the application is provided after the period prescribed in subsection (3) has expired, the Minister shall conduct a new preliminary assessment of the application under section 3.
- 5. (1) After completing an investigation under paragraph 4(1)(a), the Minister shall prepare an investigation report and provide a copy of it to the applicant and to the person acting on the applicant's behalf, if any. The Minister shall indicate in writing that the applicant may provide further information in support of the application within one year after the date on which the investigation report is sent.
 - (2) If the applicant fails, within the period prescribed in subsection (1), to provide any further information, or if the applicant indicates in writing that no further information will be provided in support of the application, the Minister may proceed to make a decision under subsection 696.3(3) of the Code.
- 6. The Minister shall provide a copy of the Minister's decision made under subsection 696.3(3) of the Code to the applicant and to the person acting on the applicant's behalf, if any.

Annual Report

- 7. An annual report submitted under section 696.5 of the Code shall contain the following information in respect of the financial year under review in the report:
 - (a) the number of applications made to the Minister;
 - (b) the number of applications that have been abandoned or that are incomplete
 - (c) the number of applications that are at the preliminary assessment
 - (d) the number of applications that are at the investigation stage;
 - (e) the number of decisions that the Minister has made under subsection 696.3(3) of the Code; and
 - (f) any other information that the Minister considers appropriate.

Coming into Force

8. These Regulations come into force on the day on which section 71 of the Criminal Law Amendment Act, 2001, chapter 13 of the Statutes of Canada, 2002, comes into force.

Mail

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Criminal Conviction Review Group
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Ottawa, Ontario
K1A 0H8

E-mail

Initial Inquiries: ccrg.inquiries@justice.gc.ca

Telephone

Information for contact by telephone will be provided following the initial contact by mail or e-mail.

CCRG Web Site

http://canada.justice.gc.ca/en/ps/ccr/index.html