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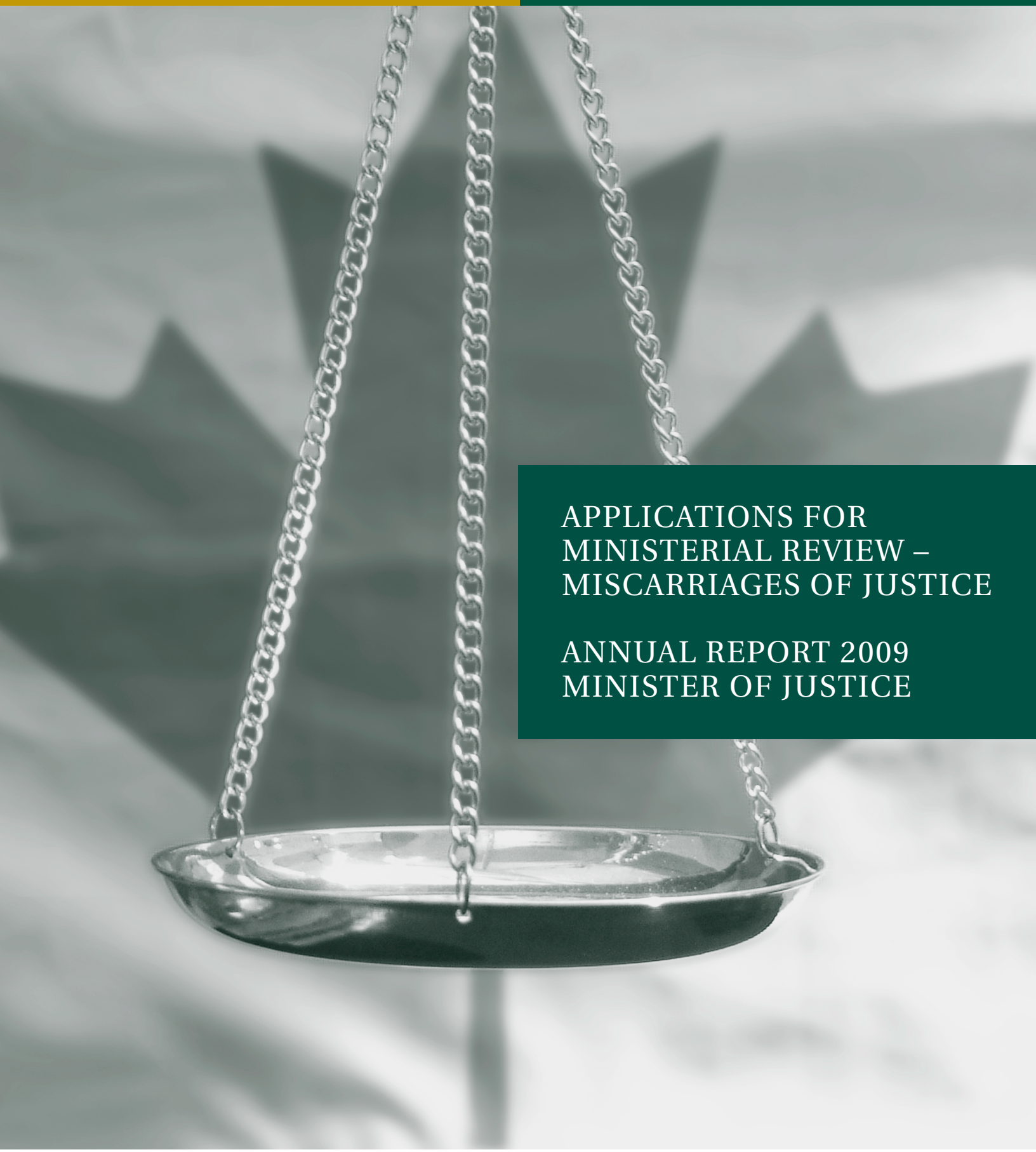

APPLICATIONS FOR MINISTERIAL REVIEW – MISCARRIAGES OF JUSTICE

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Introduction

Since 1892, the Minister of Justice has had the power, in one form or another, to review a criminal conviction under federal law to determine whether there may have been a miscarriage of justice.

Currently, the conviction review process begins 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 that was not previously considered by the courts. 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 and return the case to the courts – a referral of the case to a court of appeal to be heard as a new appeal, or a direction for a new trial.

When an innocent person is found guilty of a criminal offence, there has clearly been a miscarriage of justice. A miscarriage of justice may also be suspected where new information surfaces which casts serious doubt on whether the applicant received a fair trial – for example, where important information has not been disclosed to the defence. 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 may be determined by the courts according to law.

Under 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 seventh annual report, and it covers the period April 1, 2008, to March 31, 2009. Under the regulations, the 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 year's report also includes cumulative statistics from 2002, when the current conviction review process was implemented.

2. *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 allowed 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

In 2002, following public consultations, section 690 of the *Criminal Code* was repealed and replaced by sections 696.1 to 696.6. These provisions, together with the regulations, 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 for 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 summary-conviction 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 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 objective and independent legal advice to the Minister on the disposition of applications for ministerial review.

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.

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

Conviction Reviews by Outside Agents

In some circumstances, the Minister retains an agent from outside the Department of Justice to conduct the review of an application. Typically, a conviction review is conducted by an outside agent where a potential conflict of interest arises, such as where the prosecution had been conducted on behalf of the Attorney General of Canada by the former Federal Prosecution Service or the Public Prosecution Service of Canada (e.g. drug prosecutions, or criminal prosecutions in the Yukon, Northwest Territories and Nunavut). In such circumstances, the outside agent, rather than the CCRG, will provide advice to the Minister.

How the Conviction Review Process Works

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 booklet, *Applying for a Conviction Review*. The booklet is available on the CCRG's Web site.

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 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.

However, 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 a court of appeal 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 has surfaced since the trial and appeal and therefore has not been presented to the courts and has not been considered by the Minister on a prior application. Only after a thorough review of the new matters of significance will the Minister be 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 Wrongly Convicted (AIDWYC) or the Innocence Project.

The Special Advisor to the Minister

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.

Mr. 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.

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 at other stages of the review process where applications may be screened out. The Special Advisor's involvement ensures that the review of all applications is complete, fair, and transparent.

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. They are described in detail in the application booklet and in previous annual reports.

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

In this final stage, the Minister of Justice personally reviews the investigation report and supporting materials, the submissions from the applicant and the prosecuting agency (usually the provincial attorney general), 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 a 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 or questions 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 such as the admissibility of fresh evidence.

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.

Over the years, guidelines and general principles concerning the exercise of ministerial discretion have been established in various ministerial decisions, which are still applicable today. Some have in fact been incorporated into the current *Criminal Code* provisions:

1. The remedy contemplated by section 696.1 is extraordinary. It is intended to ensure that no miscarriage of justice occurs when all conventional avenues of appeal have been exhausted.
2. Section 696.1 does not exist simply to permit the Minister to substitute a ministerial opinion for a trial verdict or a result on appeal. Merely because the Minister might take a different view of the same evidence that was before the court does not empower the Minister to grant a remedy under section 696.1.
3. Similarly, the procedure created by section 696.1 is not intended to create a fourth level of appeal. Something more will ordinarily be required than simply a repetition of the same evidence and arguments that were put before the trial and appellate courts. Applicants under section 696.1 who rely solely on alleged weaknesses in the evidence, or on arguments of the law that were put before a court and considered, can expect to find that their applications will be refused.
4. Applications under section 696.1 should ordinarily be based on new matters of significance that either were not considered by the courts or that occurred or arose after the conventional avenues of appeal had been exhausted.

5. Where the applicant is able to identify such "new matters," the Minister will assess them to determine their reliability. For example, where fresh evidence is proffered, it will be examined to see whether it is reasonably capable of belief, having regard to all of the circumstances. Such "new matters" will also be examined to determine whether they are relevant to the issue of guilt. The Minister will also have to determine the overall effect of the "new matters" when they are taken together with the evidence adduced at trial. In this regard, one of the important questions will be "is there new evidence relevant to the issue of guilt which is reasonably capable of belief and which, taken together with the evidence adduced at trial, could reasonably have affected the verdict?"

6. Finally, an applicant under section 696.1, in order to succeed, need not convince the Minister of innocence or prove conclusively that a miscarriage of justice has actually occurred. Rather, the applicant will be expected to demonstrate, based on the above analysis, that there is a basis to conclude that a miscarriage of justice likely occurred.

3. *Emerging Issues and Developments*

Judicial Decisions

During this reporting period, the courts conducted two judicial reviews of cases dealt with by the CCRG.

In *Daoulov v. Attorney General of Canada*, the Federal Court of Appeal rejected an appeal by Anthony Daoulov.

Mr. Daoulov was convicted in 2000 of possession of heroin, and sentenced to 10 years in prison. The Quebec Court of Appeal upheld the conviction but reduced his sentence to eight years. In 2004, he filed an application for ministerial review. In 2005, the CCRG concluded there were no reasonable grounds to believe a miscarriage of justice had likely occurred and as a result, a formal investigation would not be undertaken.

Mr. Daoulov sought judicial review of that decision. In April 2008, Mr. Justice Orville Frenette of the Federal Court concluded that the CCRG's decision was not unreasonable and that many of the points raised by Mr. Daoulov in his application for ministerial review had been previously rejected by the courts.

In January 2009, the Federal Court of Appeal upheld the judgment, ruling that Justice Frenette "did not commit any error warranting the intervention of this Court."

In June 2009, the Supreme Court of Canada denied Mr. Daoulov leave to appeal that ruling.

In *Bilodeau v. Minister of Justice*, a 2-1 ruling of the Quebec Court of Appeal upheld a decision by the Quebec Superior Court that the proper forum to challenge a ministerial decision under section 696.1 was the Federal Court.

Mr. Bilodeau had been convicted of murder in 1971 in Montreal and sentenced to life imprisonment. In 2001, his lawyer filed an application for ministerial review. In November 2007, the Minister rejected the application, concluding there were not reasonable grounds to believe that a miscarriage of justice likely occurred.

Mr. Justice Jerry Zigman of the Quebec Superior Court ruled in March 2008 that the application to challenge the Minister's decision should have been brought in Federal Court, which has exclusive jurisdiction to review federal decisions.

Mr. Bilodeau has sought leave to appeal the appeal ruling to the Supreme Court of Canada.

Commission of Inquiry into the Wrongful Conviction of David Milgaard

In September 2008, the Government of Saskatchewan released the *Report of the Commission of Inquiry into the Wrongful Conviction of David Milgaard*.

In 1970, Mr. Milgaard was convicted of non-capital murder for the 1969 slaying of nurse's aide Gail Miller in a snow-covered Saskatoon alley. On December 28, 1988, Mr. Milgaard applied to the Minister of Justice for a review of his conviction pursuant to then section 690 of the *Criminal Code*. On February 27, 1991, the Minister of Justice dismissed Mr. Milgaard's first application, but after a second application, the Governor in Council referred the case to the Supreme Court of Canada on November 28, 1991.

On April 14, 1992, following the Supreme Court's opinion, the Minister of Justice directed that a new trial should be held for Mr. Milgaard. On April 16, 1992, the Attorney General of Saskatchewan entered a stay of proceedings on that indictment. DNA evidence eventually exonerated Mr. Milgaard and was used to convict Larry Fisher of the murder of Gail Miller. Mr. Milgaard was eventually compensated $10 million.

In February 2004, the Government of Saskatchewan called a commission of inquiry into Mr. Milgaard's wrongful conviction, headed by Mr. Justice Edward P. MacCallum of the Alberta Court of Queen's Bench.

The Inquiry ran from January 2005 to December 2006, sitting a total of 191 hearing days. In total, 114 witnesses were called and over 3,200 documents were introduced in evidence.

In his report, the Commissioner concluded that the Saskatoon Police and RCMP conducted a thorough and appropriate investigation of the Gail Miller murder, and that no police officer or force was guilty of misconduct or tunnel vision. Likewise, Mr. Milgaard's trial was conducted competently and fairly by both the prosecutor and defence counsel.

However, Commissioner MacCallum said the criminal justice system failed Mr. Milgaard "because his wrongful conviction was not detected and remedied as early as it should have been."

The Commissioner made 13 recommendations, dealing with issues such as the retention of trial exhibits and police and prosecution files, statements taken from young persons, compensation of the wrongfully convicted, and the secrecy of jury deliberations.

He also recommended that the investigation of claims of wrongful conviction be done by a review agency independent of government, established along the model of the English Criminal Cases Review Commission, to replace ministerial review under section 696.1 of the *Criminal Code*.

The report is available online at http://www.milgaardinquiry.ca/

Inquiry into Pediatric Forensic Pathology in Ontario

In October 2008, the Government of Ontario released the report of the *Inquiry into Pediatric Forensic Pathology in Ontario*.

The Inquiry, headed by Mr. Justice Stephen Goudge of the Ontario Court of Appeal, made 169 recommendations to improve the pediatric forensic pathology system in Ontario.

The Inquiry was appointed in April 2007 after the Office of the Chief Coroner of Ontario released the results of a review into 45 cases of suspicious child deaths between 1991 and 2002 where forensic pathologist Dr. Charles Smith either performed the autopsy or provided an opinion as a consultant.

In 20 cases, the panel of internationally respected experts in forensic pathology did not agree with the opinions given by Dr. Smith in a written report or court testimony, or both. In a number of these cases, the experts felt that Dr. Smith "had provided an opinion regarding the cause of death that was not reasonably supported by the materials available for review." Twelve of those cases had resulted in criminal convictions, and one in a finding of "not criminally responsible." One of the cases, William Mullins-Johnson, was the subject of an application for ministerial review.

The Inquiry's mandate was to conduct a systemic review and an assessment of the policies, procedures, practices, accountability and oversight mechanisms, quality-control measures, and institutional arrangements of pediatric forensic pathology in Ontario from 1981 to 2001 as they relate to its practice and use in investigations and criminal proceedings. The Commissioner was to make recommendations to address systemic failings and restore and enhance public confidence in pediatric forensic pathology in Ontario.

The Inquiry heard 47 witnesses, conducted 16 roundtable meetings, and reviewed 36,000 documents.

Commissioner Goudge concluded that there was "failed oversight" at all levels: "The oversight and accountability mechanisms that existed were not only inadequate to the task but were inadequately employed by those responsible for using them."

The Ontario Government subsequently introduced legislation to implement many of the Inquiry's recommendations. It also announced:

- the appointment of a team of medical and legal experts to review criminal convictions involving "shaken baby" death cases; and
- the appointment of a team of legal experts to advise on the viability of a potential process to compensate victims of Dr. Smith's errors.

The Ontario Court of Appeal has also agreed to hear several appeals in cases in which Dr. Smith testified.

The Inquiry's report is available online at http://www.attorneygeneral.jus.gov.on.ca/inquiries/goudge/index.html.

In the spring of 2007, the Public Prosecution Service of Canada (PPSC) undertook a review of homicide prosecution files from the North which could have involved Dr. Smith. (The PPSC is responsible for *Criminal Code* prosecutions in the three territories.)

That review concluded that none of the autopsy-related files over 27 years had resulted in charges or convictions involving Dr. Smith. The review was conducted with the assistance of the territorial coroners' offices.

4. *Remedies Granted by the Minister*

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

Kyle Wayne Unger

Kyle Wayne Unger was convicted of the first-degree murder of Brigitte Grenier at an outdoor rock concert which was held near Roseisle, Manitoba, in June 1990. His appeal to the Manitoba Court of Appeal was rejected and leave to appeal to the Supreme Court of Canada was denied.

In September 2004, the Forensic Evidence Review Committee, an advisory committee established by the Manitoba government, called into question the hair-comparison evidence used at Mr. Unger's trial.

Mr. Unger's counsel subsequently filed an application to the Minister of Justice for a review of the murder conviction. In November 2005, a judge of the Manitoba Court of Queen's Bench granted Mr. Unger bail pending the Minister's decision.

In March 2009, the Minister ordered a new trial for Mr. Unger, stating: "I am satisfied there is a reasonable basis to conclude that a miscarriage of justice likely occurred in Mr. Unger's 1992 conviction."

Update on Previous Remedies Granted

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

Since 2003, as Table A illustrates, the Minister of Justice has referred 12 cases back to the courts from five provinces – five for new trials and seven for review by courts of appeal. Three cases are still before the courts.

In one case, the applicant was retried and convicted of the lesser offence of manslaughter. In the remaining eight, the Crown stayed the charges or the appeals court entered an acquittal.

Erin Michael Walsh

In October 2008, the New Brunswick Court of Appeal released its reasons for acquitting Erin Michael Walsh.

Mr. Walsh was convicted in 1975 in Saint John, N.B., of the non-capital murder of Melvin Eugene Peters and sentenced to life imprisonment. Appeals to the New Brunswick Court of Appeal were dismissed in July 1982 and November 1982.

In December 2006, Mr. Walsh's counsel applied to the Minister of Justice for a review of the murder conviction after new evidence surfaced which he alleged had not been disclosed to him at the time of Mr. Walsh's trial.

In February 2008, the Minister referred the murder conviction to the New Brunswick Court of Appeal to be heard as a new appeal.

The Attorney General of New Brunswick agreed with Mr. Walsh's claim that he had suffered a miscarriage of justice, but asked the Court to impose a judicial stay of proceeding.

However, the Court of Appeal said an acquittal was the more appropriate remedy, since "the trial record augmented by the fresh evidence satisfies [the Court] that no reasonable jury properly instructed could convict Mr. Walsh."

TABLE A

Applicant and Charge	Date of Minister's Decision	Disposition by Minister	Final Result
Kaminski, Steven Richard (Alberta) Sexual Assault	January 27, 2003	New trial ordered	Proceedings stayed by the Crown at retrial
Cain, Rodney (Ontario) Second-Degree Murder	May 19, 2004	New trial ordered	Convicted of manslaughter at retrial in 2007
Truscott, Steven (Ontario) Capital Murder	October 28, 2004	Reference to Ontario Court of Appeal	Court of Appeal entered an acquittal on August 28, 2007
Bjorge, Darcy (Alberta) Stolen Property	February 10, 2005	New trial ordered	Charge stayed in the Alberta Provincial Court
Wood, Daniel (Alberta) First-Degree Murder	February 10, 2005	Reference to Alberta Court of Appeal	Court of Appeal ordered a new trial on November 27, 2006; charges stayed by Crown
Driskell, James (Manitoba) First-Degree Murder	March 5, 2005	New trial ordered	Proceedings stayed in the Court of Queen's Bench on the same day as the Minister's order
Tremblay, André (Quebec) First-Degree Murder	July 12, 2005	Reference to Quebec Court of Appeal	Still before the Court
Phillion, Romeo (Ontario) Non-Capital Murder	August 23, 2006	Reference to Ontario Court of Appeal	Court of Appeal ordered a new trial
Mullins-Johnson, William (Ontario) First-Degree Murder	July 17, 2007	Reference to Ontario Court of Appeal	Acquittal entered by the Court of Appeal on October 15, 2007
L.G.P. (Alberta) Sexual Assault	September 21, 2007	Reference to Alberta Court of Appeal	Court of Appeal ordered a new trial; charge stayed by the Crown
Walsh, Erin (New Brunswick) Non-Capital Murder	February 28, 2008	Reference to New Brunswick Court of Appeal	Acquittal entered by the Court of Appeal on March 14, 2008
Unger, Kyle Wayne (Manitoba) First-Degree Murder	March 11, 2009	New trial ordered	

L.G.P.

In December 1994, the applicant was convicted of sexually assaulting his ex-wife and sentenced to 20 months' imprisonment. His appeal to the Alberta Court of Appeal was dismissed in 1995. On July 26, 1999, the complainant signed a statutory declaration in which she recanted her testimony at trial that she had been sexually assaulted by the applicant. The applicant's application to the Minister, based on this statutory declaration, was completed in January 2002.

In September 2007, the Minister asked the Alberta Court of Appeal to determine whether the complainant's recantations would be admissible as fresh evidence, and if so, to hear the case as an appeal.

In December 2008, the Court of Appeal ruled that the recantations of the complainant were admissible as fresh evidence. The Court ordered a new trial and said it was up to the Crown to decide whether to proceed again.

The Crown subsequently stayed the charge.

Romeo Phillion

In March 2009, the Ontario Court of Appeal quashed the murder conviction of Romeo Phillion and ordered a new trial.

Mr. Phillion was convicted of non-capital murder in Ottawa on November 7, 1972, in the killing of Leopold Roy in August 1967. He was sentenced to life imprisonment without eligibility for parole for 10 years. Appeals to the Ontario Court of Appeal and the Supreme Court of Canada were unsuccessful.

In May 2003, Mr. Phillion's counsel completed an application for ministerial review. In July 2003, a judge of the Ontario Superior Court of Justice granted Mr. Phillion bail, pending the Minister's decision.

Mr. Phillion's application for ministerial review was based on an alleged alibi he had at the time of the killing, which he claimed had not been disclosed by the Crown, and on new expert reports related to the reliability of the confession he made to the police.

In August 2006, the Minister referred two questions about Mr. Phillion's case to the Ontario Court of Appeal.

In a 2-1 ruling, the Court of Appeal ruled that the fresh evidence was admissible on appeal and that it could reasonably have been expected to have changed the result at trial.

According to Mr. Justice Michael Moldaver, writing for the majority, had the jury had the benefit of the information, it might, "considered with the entirety of the evidence heard at trial … have left the jury in a state of reasonable doubt as to whether the appellant was the person who killed Mr. Roy."

"However, the compelling nature of his confessions – particularly the level of detail and accuracy found in them – prevents me from concluding that the admission of the fresh evidence would make it 'clearly more probable than not' that the appellant would be acquitted at a new trial."

In dissent, Mr. Justice James MacPherson said the new evidence was not sufficently probative to have affected the jury's verdict and that Mr. Phillion's confession "remains as compelling today as it was to the jury in 1972."

Mr. Phillion has filed an application in Ontario Superior Court seeking to require the Crown to arraign Mr. Phillion and have the court enter an acquittal, rather than simply withdrawing the charge.

5. *Statistical Information*

Reporting Period

The period covered by this annual report is from April 1, 2008, to March 31, 2009.

Application Requests

An application request is considered to have been made when a potential applicant or a person acting on his or her behalf inquires about submitting an application for ministerial review. The booklet *Applying for a Conviction Review* is sent to the person making the inquiry. This 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, 25 application requests were made to the Minister.

Applications Made to the Minister

Table 1 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 four completed applications during this reporting period.

An application is considered to be "partially completed" where 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 applicant's responsibility 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 25 application requests made to the Minister during the reporting period, 17 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 relates to a provincial offence, involves a civil matter, or deals with the same subject matter as a previously denied application and does not raise any new matters of significance. Four applications were screened out during this reporting period.

TABLE 1: APPLICATIONS MADE TO THE MINISTER

FROM APRIL 1, 2008, TO MARCH 31, 2009	
Applications completed	4
Applications partially completed	17
Applications screened out	4
TOTAL	**25**

Progress of Applications through the Conviction Review Process

Table 2 summarizes the work completed in the first three stages of the conviction review process. Six preliminary assessments were completed during the period covered by this report. No investigations were completed during the reporting period, and none were abandoned by applicants.

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

TABLE 2: PROGRESS OF APPLICATIONS THROUGH THE CONVICTION REVIEW PROCESS

FROM APRIL 1, 2008, TO MARCH 31, 2009	
Preliminary assessments completed	6
Investigations completed	0
Applications abandoned	0
TOTAL	**6**

Preliminary Assessments

Tables 3 and 4 provide further information about the work completed at the preliminary assessment stage of the conviction review process. Table 3 summarizes the 19 applications that were at the preliminary assessment stage during the reporting period. There were three applications awaiting preliminary assessment, ten preliminary assessments were under way, and six were completed. No preliminary assessments were abandoned and none were in abeyance. An application is considered to be "under way" if it commenced during the reporting period, or if it commenced beforehand but continued during the reporting period.

Table 4 shows that none of the six applications where preliminary assessments were completed, proceeded to the investigation stage. In these 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.

TABLE 3: SUMMARY OF APPLICATIONS AT THE PRELIMINARY ASSESSMENT STAGE

FROM APRIL 1, 2008, TO MARCH 31, 2009	
Applications awaiting preliminary assessment	3
Preliminary assessments completed	6
Preliminary assessments abandoned by the applicant	0
Preliminary assessments under way but not yet completed	10
Preliminary assessments in abeyance	0
TOTAL	**19**

TABLE 4: DISPOSITION OF APPLICATIONS FOLLOWING PRELIMINARY ASSESSMENT STAGE

FROM APRIL 1, 2008, TO MARCH 31, 2009	
Applications that did not proceed to the investigation stage following a preliminary assessment	6
Applications that did proceed to the investigation stage following a preliminary assessment	0
TOTAL	**6**

Investigations

Table 5 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 review and decision.

No investigations were completed during the reporting period; however, two had been carried over from the previous reporting period and are still under review.

TABLE 5: SUMMARY OF APPLICATIONS AT THE INVESTIGATION STAGE

FROM APRIL 1, 2008,TO MARCH 31, 2009	
Investigations completed	0
Investigations under way but not yet completed	2
TOTAL	**2**

Decisions

Table 6 summarizes the decisions made by the Minister during the reporting period. The Minister made one decision during this period, granting one application by ordering a new trial.

TABLE 6: DECISIONS MADE BY THE MINISTER

FROM APRIL 1, 2008, TO MARCH 31, 2009	
Applications dismissed	0
Applications granted	1
TOTAL	**1**

Applications Abandoned or Held in Abeyance

During the reporting period, no applications were abandoned at the preliminary assessment stage. No applications were abandoned at the decision stage. No applications were held in abeyance at the request of the applicants.

Status of Applications at the End of the Fiscal Year

Table 7 provides a snapshot of the status of all applications as of March 31, 2009.

Of the 25 new applications received, three are awaiting the commencement of preliminary assessment. No applications were being held in abeyance at the request of the applicant, and none are at the investigation stage.

Six applications from previous reporting periods were completed, ten were at the preliminary assessment stage, three are currently being investigated, and one has been decided by the Minister.

TABLE 7: SUMMARY OF THE STATUS OF ALL APPLICATIONS

AS OF MARCH 31, 2009	
Completed and awaiting preliminary assessment	3
In abeyance at request of the applicant	0
At preliminary assessment stage	10
At investigation stage	3
Decided	1

Statistics: November 2002 – March 31, 2009

Since 2002, when reforms to the conviction review process took effect, the CCRG has considered 83 completed applications. As discussed earlier in this report, Ministers of Justice referred 12 of those (14 percent) to the courts, either for a new trial or to be heard as an appeal. The CCRG closed 61 files (73 percent) following a preliminary assessment because there was no basis for a full investigation. Ten applications (12 percent) were dismissed by the Minister following a full investigation.

Total decisions	**83**	
Cases referred to court	**12**	**(14%)**
Files closed because no basis for investigation	**61**	**(73 %)**
Applications dismissed by Minister	**10**	**(12%)**

2003	
Total decisions	17
Cases referred to court	1
Files closed because no basis for investigation	10
Applications dismissed by Minister	6

2004	
Total decisions	14
Cases referred to court	2
Files closed because no basis for investigation	10
Applications dismissed by Minister	2

2005	
Total decisions	16
Cases referred to court	4
Files closed because no basis for investigation	12
Applications dismissed by Minister	0

2006	
Total decisions	5
Cases referred to court	1
Files closed because no basis for investigation	3
Applications dismissed by Minister	1

2007	
Total decisions	19
Cases referred to court	2
Files closed because no basis for investigation	16
Applications dismissed by Minister	1

2008	
Total decisions	9
Cases referred to court	1
Files closed because no basis for investigation	8

2009	
Total decisions	3
Cases referred to court	1
Files closed because no basis for investigation	2

Applicants and interested parties are encouraged to communicate with the CCRG in writing. Initial contact may also be made by e-mail.

Mail

Minister of Justice
Criminal Conviction Review Group
284 Wellington Street
Ottawa, Ontario
K1A 0H8

E-mail

Initial inquiries: **ccrg-grcc@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/eng/pi/ccr-rc/index.html