

A large, grayscale background image of a pair of scales of justice. The scales are suspended by three chains, and the pans are visible at the bottom. The background is slightly blurred, focusing attention on the scales.

APPLICATIONS FOR
MINISTERIAL REVIEW –
MISCARRIAGES OF JUSTICE

ANNUAL REPORT 2003
MINISTER OF JUSTICE





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Introduction

On November 25, 2002, amendments to the provisions of the *Criminal Code* that set out the powers of the Minister of Justice to review convictions where there is reason to suspect a miscarriage of justice came into force. Among the amendments, which replaced the former section 690 with the new sections 696.1-696.6 in Part XXI.1 of the *Criminal Code*, was a requirement that the Minister “shall within six months after the end of each financial year submit an annual report to Parliament in relation to applications under this Part.” This is the first such annual report.

The Minister’s power to review convictions, a reflection of the Royal Prerogative of Mercy, has been a part of Canada’s justice system since the original *Criminal Code* of 1892. Calls for reform from legal scholars and other stakeholders have led to various changes, culminating in the 2002 amendments and the new Regulations Respecting Applications for Ministerial Review – Miscarriages of Justice.

As this is the first annual report, it begins with a brief overview of the nature of the remedy and its historical development in Canadian law. The report then describes the various steps in the current process and provides information on the numbers and status of applications. (Some current cases, of course, were commenced before the new amendments came into effect.) In addition, the Department’s Criminal Conviction Review Group has recently published a thorough new guide to the application process, and this is included as an appendix to this report, along with the relevant passages of the *Criminal Code* and the Regulations.



Addressing Possible Miscarriages of Justice

Overview

Canadians should be proud and confident that their criminal justice system is one of the best in the world. Our system includes many safeguards to ensure that an accused person receives a fair trial, from the *Canadian Charter of Rights and Freedoms* to the various appellate courts and procedures. However, excellence is not synonymous with infallibility; accused persons have at times been wrongfully convicted, and such miscarriages of justice can still occur.

Historically, at common law the only power to revisit a criminal conviction was found in the “Royal Prerogative of Mercy.” When Canada’s first *Criminal Code* was enacted in 1892, it recognized the potential for miscarriages of justice and provided a legislative remedy by codifying one aspect of the Prerogative. The original section 748 allowed the Minister of Justice to direct a new trial where the Minister entertained a doubt as to whether a person ought to have been convicted. Over the years, this remedy underwent various legislative changes, culminating in 1968 in the former section 690. This section remained in effect for more than thirty years, until it was revised and replaced in 2002. The Minister’s power to review convictions is now set out in sections 696.1 – 696.6 of the *Criminal Code*.

Reforming the Conviction-Review Process

In 1993, the Department of Justice undertook an internal study of the conviction-review process. At that time, conviction-review applications were being processed on an *ad hoc* basis by legal counsel involved in federal prosecutions. In response to this study, a separate Criminal Conviction Review Group (CCRG) was formed. The CCRG would now report to the Assistant Deputy Minister responsible for criminal law policy, as opposed to the Assistant Deputy Attorney General in charge of federal prosecutions; as a result, all responsibility for conviction reviews was removed from the Attorney General function within the Department of Justice.

Following several high-profile cases involving miscarriages of justice, the government decided to further examine the section 690 remedy. (In fact, many of the miscarriages of justice in question had been discovered and dealt with before a section 690 application was ever filed with the Minister of Justice). In October 1998, the Minister of Justice released *Addressing Miscarriages of Justice: Reform Possibilities for Section 690 of the Criminal Code*, a consultation paper that looked at the conviction-review process and discussed possible options for reform. The consultation paper was widely circulated. From the submissions received, as well as other contributions from legal experts and interest groups, it was possible to identify several options for more detailed consideration.



These options ranged from the creation of a separate agency to review cases, similar to England's Criminal Cases Review Commission (which had long been advocated by some critics of the old review process), to the elimination of section 690 altogether with a proposed broadening of the scope of appellate review.

The result of the consultation and review was the decision that the federal Minister of Justice should retain the power to review cases of alleged wrongful conviction, but that legislative changes were needed to improve the process.

These changes were embodied in what was called the "Reform Model." The Model represented a compromise between a separate review body similar to the English model and the status quo of section 690 of the *Criminal Code*. As well, this model had the full support of the provincial and territorial Attorneys General and Ministers of Justice.

Legislative Reforms

In June 2000, a number of proposed amendments designed to strengthen the process for investigating allegations of wrongful convictions were passed in Parliament. On November 25, 2002, these amendments to the *Criminal Code* (696.1-696.6), along with new Regulations Respecting Applications for Ministerial Review-Miscarriages of Justice concerning the conviction-review process, came into force.

The amendments:

- included guidelines as to when a person is eligible for a review;
- provided the criteria for when a remedy may be granted;
- expanded the category of offences for which a review is available to include summary conviction offences;
- gave those investigating applications on behalf of the Minister the authority to compel the production of documents and the appearance of witnesses; and
- included regulations that set out how to apply and govern the review process generally.

The amendments also created a legal requirement for the Minister to submit an annual report to Parliament.



Structural Changes

Equally important were a number of non-legislative changes designed to create an arm's-length relationship between the Department of Justice and the review process. These included the creation of a more separate CCRG, and a proposal to appoint a Special Advisor to the Minister of Justice from outside the Department to oversee the review process and provide advice directly to the Minister. Under this model, applications for review are assessed and investigated by lawyers within the CCRG, except in cases where the prosecution of the applicant had been undertaken by the Department of Justice itself (e.g. drug prosecutions, prosecutions in the North) or where special circumstances require the appointment of other counsel. In these cases, agents appointed from outside the Department conduct the review process.

To enhance the arm's-length relationship, the CCRG was physically moved from its office space within the Department's Headquarters to another location within the city of Ottawa.

For administrative purposes, CCRG lawyers (as Justice employees) will report to the Deputy Minister's office. However, the Special Advisor, who reports directly to the Minister, will oversee the Group's conviction review activities. The Minister of Justice retains responsibility for the ultimate decision in the criminal conviction-review process, but with the benefit of the Special Advisor's recommendations, which will increase independence in the review process.



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, or what is often called a “wrongful conviction.” If the Minister is 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.

Applying for a Review

The requirements for a completed application, as well as a description of the various steps in the application process, have been set out in a new version of the application booklet, which is forwarded to each applicant. (See Appendix 3.)

Anyone convicted of an offence under a federal law or regulation may apply for a conviction review. For example, a person who has been convicted under the *Criminal Code* or the *Controlled Drugs and Substances Act* is eligible to apply for a conviction review. 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 apply for a conviction review. Normally, though, an application for conviction review or a review of a dangerous or long-term offender finding 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. Convicted persons are therefore expected to appeal their convictions where there are suitable grounds. 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.

This last point needs to be emphasized, since it is sometimes misunderstood. A conviction review application is not meant to be another level of appeal or a mechanism that allows the Minister of Justice to second-guess a decision rendered by the courts or substitute his or her own judgment. Further, the Minister of Justice does not determine guilt or innocence; that is a question only a court can decide.



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 a conviction-review application is received, the first concern is to ensure that it is complete. A CCRG lawyer examines the application to determine whether it merits further investigation – notably, whether the application presents **new and significant** information that was not available at trial or on appeal and that could have affected the outcome of the case.

Investigation

Depending on the type of information provided by the applicant, the investigation could involve any of the following:

- Interviewing witnesses to clarify or verify the information in the application.
- Carrying out scientific tests (e.g. DNA testing).
- 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.
- 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 case and the availability of evidence.

Investigation report

Following the investigation, a report is prepared and sent to the applicant with a request for comments. When any comments have been received – and any further investigation they might merit has been completed – the investigation report and advice are forwarded to the Minister for decision.

Decision by the Minister

In the final stage, the Minister of Justice reviews the investigation report, along with the legal advice from the investigating lawyer, and the materials submitted by the applicant. A decision is then made whether to dismiss or allow 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.

Over the years, guidelines and general principles concerning the exercise of the Ministerial discretion have been established in various Ministerial decisions regarding applications for a conviction review. For example, in exercising this discretion, the Minister will not substitute a Ministerial opinion for that of a trial court or an appellate court; nor is the Minister's review meant to be a fourth level of appeal. Ordinarily, applications should be based on new information that either was not considered by the courts or arose after all appeals had been exhausted. Where new information has surfaced, the Minister will assess it and determine its reliability.

Finally, an applicant need not convince the Minister of his or her innocence or prove conclusively that a miscarriage of justice has actually occurred. The applicant is expected to demonstrate that, following an analysis of the application, there is a reasonable basis to conclude that a miscarriage of justice likely occurred.

Statistical Information

Section 696.5 of the *Criminal Code* specifies that the Minister of Justice must submit an annual report to Parliament on the various conviction-review procedures that have taken place in the previous fiscal year. The report must include the number of applications made to the Minister, the number of applications that have been abandoned or that are incomplete, the number of applications at the preliminary assessment stage and at the investigative stage, and the number of decisions the Minister has made under subsection 696.3 (3).



Application requests

The time frame covered by this report is from November 25, 2002 to March 31, 2003. However, since the criminal conviction-review process has been in place in one form or another for a number of years, the statistical analysis includes applications from before the reporting period where appropriate.

TABLE 1 – APPLICATION REQUESTS

APPLICATION REQUESTS NOVEMBER 25, 2002, TO MARCH 31, 2003		NUMBER RECEIVED
November 25, 2002, to November 30, 2002		0
December 2002		3
January 2003		3
February 2003		2
March 2003		3
TOTAL		11
SCREENED OUT	AS OF MARCH 31, 2003 INCOMPLETE	COMPLETE
2	6	3

Table 1 outlines the number of applications that the Minister received during this reporting period, and the results of the initial reviews. Of the eleven applications received, three were deemed to be complete and placed on the preliminary assessment list. Six were deemed to be incomplete, and the applicants were so advised. Of the two applications that were screened out, one involved a civil matter and the other dealt with a previous application that had been denied. In both cases, the applicant was advised accordingly.

Preliminary Assessments and Investigations

When the new amendments were enacted on November 25, 2002, a number of applications were in the various stages of the review process. The following tables outline where these applications stood at that time, as well as their progress within the reporting period.

TABLE 2 – PRELIMINARY ASSESSMENTS

AS OF NOVEMBER 25, 2002

Applications completed and awaiting preliminary assessment	18
Preliminary assessments in abeyance at applicants' request	6
Preliminary assessments under way	16

NOVEMBER 25, 2002, TO MARCH 31, 2003

Preliminary assessments abandoned by the applicant	1
Preliminary assessments newly commenced	5
Preliminary assessments completed	7
Applications determined to have no basis for further review	5
Applications determined to merit further investigation	2

AS OF MARCH 31, 2003

Preliminary assessments under way	8
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As Table 2 indicates, on November 25, 2002, there were a total of 18 applications that were complete and waiting for the preliminary assessment to commence; 6 completed applications were in abeyance at the applicants' request; and 16 preliminary assessments were under way.

Within the reporting period, five new preliminary assessments were started, one application was abandoned by the applicant, and seven preliminary assessments were completed. Of the seven that were completed, two were determined to merit investigation, while five were deemed to have no basis for further review.

TABLE 3 – INVESTIGATIONS

AS OF NOVEMBER 25, 2002

Applications awaiting investigation	3
Investigations in abeyance at applicants' request	3
Investigations under way	16

NOVEMBER 25, 2002, TO MARCH 31, 2003

Investigations abandoned by the applicant	1
Investigations newly commenced	2
Investigations completed	2

AS OF MARCH 31, 2003

Investigations under way	13
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Table 3 indicates that 16 applications were being investigated when the reporting period began. Three applications were awaiting investigation, while another three were in abeyance at the applicants' request.

During the reporting period, two investigations were completed, another two commenced, and one application was abandoned by the applicant.

Ministerial Decisions

During the reporting period of this first annual report (November 25, 2002-March 31, 2003), the Minister rendered one decision. In 1992, Mr. Steven Kaminski had been convicted of sexual assault of a woman and sentenced to seven years' imprisonment. After the original trial and subsequent appeal by Mr. Kaminski, new evidence surfaced that prompted his request for a review and subsequent investigation by the CCRG. Based on the CCRG's investigation, it was determined that the new evidence could have had an impact on the outcome of the original trial had it been known and submitted at the time. As a result, the Minister ordered a new trial.

TABLE 4 – DECISIONS

BETWEEN NOVEMBER 25, 2002 TO MARCH 31, 2003

Ministerial decisions under subsection 696.3(3) of the <i>Criminal Code</i>	1
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TABLE 5 – FINAL SUMMARY

APPLICATIONS AS OF MARCH 31, 2003	NUMBER
Pending Applications	17
Active Applications	56
TOTAL	73

Table 5 illustrates the total number of open files within the CCRG on March 31, 2003. The 17 pending applications represent incomplete applications where an applicant has requested a review but has not forwarded all the necessary documentation. The 56 active applications represent the number of preliminary assessments that are under way and completed files awaiting a preliminary assessment, as well as the number of applications that are at the investigation stage or awaiting investigation.

The Role of the Special Advisor

As discussed earlier, one of the non-legislative changes within the Reform Model of the criminal conviction-review process was the creation of a new position, Special Advisor to the Minister.

While the Special Advisor's main role will be to make recommendations to the Minister once an investigation is complete, it is equally important that he or she oversee all stages of the review process, including the preliminary assessment where applications may be screened out. The Special Advisor's involvement will ensure 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 during the preliminary assessment. The Special Advisor may insist that a particular application not be screened out but be permitted to proceed to the investigation stage.

At the investigative stage, the Special Advisor's role may include providing advice and guidance to counsel or seeking clarification of issues. Counsel from the CCRG, or the appointed agents, remain responsible for conducting the investigation, and are expected to provide their recommendations and advice to the Minister along with the Investigation Report. The Special Advisor will review the Investigation Report and any appended material, as well as the legal advice and recommendations of the investigating counsel.

Finally, given the independence of the position, the Special Advisor may or may not agree with the CCRG's views, and may therefore choose to provide his or her own recommendations and advice to the Minister.

A Special Advisor to the Minister has not yet been appointed, but it is expected that an appointment will be made soon. In view of the importance of the role, it is clearly necessary to select a person who is exceptionally well qualified and appropriate for the position.



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 11 of 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, and
 - (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
 - (f) a description of the new matters of significance that support the application.
- (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 stage;
 - (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.

Introduction

The *Criminal Code* gives the federal Minister of Justice the power to review a conviction under a federal law to determine whether there may have been a miscarriage of justice, or what is often called a “wrongful conviction.” If a miscarriage of justice likely occurred, the Minister of Justice 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.

If you want your conviction reviewed, you must submit an application to the Minister of Justice. You can prepare the application yourself, or have a representative (e.g. your lawyer) prepare the application on your behalf.

Basic Principles

The powers of the Minister of Justice to review convictions are set out in sections 696.1 to 696.6 of the *Criminal Code*. These sections of the *Criminal Code* appear at the back of this booklet (Appendix 1). The procedure that applies to conviction reviews is laid out in regulations that also appear at the back of this booklet (Appendix 2).

The Minister’s power to correct a miscarriage of justice is an “extraordinary” one which can only be exercised in those exceptional cases where a person presents new and significant information that casts doubt on the correctness of that person’s conviction.

The role of the Minister is not to second-guess the decision rendered by the courts or to substitute his or her opinion of the evidence or the arguments already considered by the courts. The Minister does not decide if a convicted person is guilty or innocent. That role is assigned to the courts.

Conviction Review

Who May Apply?

You may apply if you have been convicted of an offence under a federal law or regulation. For example, if you were convicted of an offence under the *Criminal Code* or the *Controlled Drugs and Substances Act*, you are eligible to apply for a conviction review.

You may also apply for a review if a court has found you to be a dangerous offender or a long-term offender under the *Criminal Code*.

The Minister of Justice may review convictions both for indictable offences (e.g. murder, manslaughter) and for summary conviction offences (e.g. minor theft).

When May You Apply?

You may apply for a conviction review when you have exhausted your rights of judicial review or appeal for your conviction or the court’s finding that you are a dangerous or long-term offender. You may not apply for a conviction review if a judicial review or an appeal of your conviction is still before the courts.

Judicial review and appeals to higher courts are the usual ways to correct legal errors and miscarriages of justice. Therefore, convicted persons are expected to appeal their convictions where suitable grounds exist. A conviction review by the Minister of Justice is not a substitute for or alternative to a judicial review or an appeal of your conviction.

If you have not appealed your conviction, you may still be eligible to apply for a conviction review if the time for appealing has expired and you have since become aware of new and significant information that casts doubt on the correctness of your conviction. However, you should apply to the court of appeal for an order extending the time for appealing based on new information, where it is feasible to do so.

What is New and Significant Information?

Your application for a conviction review must be based on **new and significant** information. Information will be considered **new** if the courts did not examine it during your trial or appeal or if you became aware of it after all court proceedings were over.

Information is **significant** if

- it is reasonably capable of belief;
- it is relevant to the issue of guilt; and
- it could have affected the verdict if it had been presented at trial.

The following are examples of information that might support a conviction review application if it were **both new and significant**:

- Information that establishes or confirms an alibi.
- The confession of another person to the crime.
- Information that identifies another person at the scene of the crime.
- Scientific evidence that points to another person's guilt or supports a claim of innocence.
- Proof that important evidence was not disclosed.
- Information that shows a witness gave false testimony.
- Information that substantially contradicts testimony given at trial.

A conviction review application is not meant to be another level of appeal or a mechanism that allows the Minister of Justice to substitute his or her decision for that of a court. Simply repeating the same evidence or legal arguments that were made in the trial and appeal courts does not amount to providing new and significant information.

What Can the Minister Do?

On a conviction review application, the Minister of Justice does not decide whether you are guilty or innocent. That is a question only a court can decide.

If the information in your conviction review application satisfies the Minister that there has likely been a miscarriage of justice, the Minister can correct this injustice by granting any of the following remedies:

- ordering a new trial;
- ordering a new hearing for a person who was found to be a dangerous offender or a long-term offender; or
- referring a case to the court of appeal of a province or territory to be dealt with as if it were an appeal.

If the Minister is not satisfied that there has likely been a miscarriage of justice, your conviction review application will be dismissed.

In some cases, the Minister may wish to have the assistance of a provincial or territorial court of appeal in regard to a question arising from a conviction review application. The Minister has the power, in those cases, to refer one or more specific questions to the court of appeal for its opinion.

Who Assesses the Application?

In most cases, lawyers with the Criminal Conviction Review Group (CCRG) will assess the conviction review application by conducting the preliminary assessment and the investigation, and by providing advice to the Minister on whether or not a remedy is warranted in a particular case. Most wrongful conviction applications are based on criminal matters where the prosecution was conducted by one of the provincial Attorneys General. However, if a wrongful conviction application is received as a result of a matter that was prosecuted by the Attorney General of Canada (e.g. drug cases or criminal matters prosecuted in the territories), all the various stages within the conviction review process will be conducted by lawyers from outside the CCRG.

When Does the Assessment Begin?

An assessment of a conviction review application discussed below may begin only when a fully completed application form and all required supporting documents have been received by the CCRG.

The Review Process

A conviction review application is important both to the applicant and to society. It may be the last chance to correct a wrongful conviction. Each application is assessed conscientiously and thoroughly in recognition of this fact. There are four stages in the process:

- Preliminary Assessment
- Investigation
- Investigation Report
- Decision by the Minister

Preliminary Assessment

When your conviction review application is received, it is first reviewed to ensure that it is complete. You or the person acting on your behalf (e.g. your lawyer) will be informed as to whether the application is complete or not. Once the application is complete, a CCRG lawyer will examine the information you have provided and compare it with trial and appellate court records.

If the application presents **new and significant** information that was not available at trial or on appeal and that could have affected the outcome of your case, you will be informed that the application will proceed to the next stage of the process.

In certain cases, the investigation stage may be bypassed, but only where the Minister is satisfied by the information in the application that a likely miscarriage of justice has indeed occurred and that there is an urgent need to grant you a remedy for humanitarian reasons or to prevent you from continuing to suffer from a blatant injustice.

If your application does not present **new and significant** information, you will be informed that your application will not proceed to the investigation stage. You will also be told that you may provide additional information in support of your application within one year. If you do so, the preliminary assessment will continue. If you provide additional information after the one-year period, a new preliminary assessment will be necessary.

Investigation

At the investigation stage, a CCRG or outside lawyer will closely examine the new information you provided in your application to see if it is reliable (i.e. it is reasonably capable of belief) and relevant (i.e. it relates to guilt or innocence).

Depending on the type of information you provide, the investigation could involve any of the following:

- Interviewing witnesses to clarify or verify the information in the application.
- Carrying out scientific tests (e.g. DNA testing).
- Obtaining other assessments from forensic and social science specialists (e.g. polygraph examinations).
- Consulting police agencies, prosecutors who were involved in the original prosecution, and defence lawyers who were involved in the trial and the appeals.
- Obtaining other relevant personal information and documentation (e.g. your Correctional Service Canada file).

How long this investigation will take depends on the complexity of the case and the availability of the evidence.

If the investigation raises issues that you did not cover in your application, you may be asked to provide additional information within a specified time period so that everything that needs to be considered in the application can be dealt with at the same time.

In some cases, a witness may be able to give important information, documents or other evidence but refuses to do so. To aid the investigation of a conviction review application, the Minister of Justice has the power to subpoena such a witness and force him or her to testify under oath or hand over documents or other evidence. The Minister may delegate this special power to a CCRG or outside lawyer or other qualified person.

Investigation Report

When the investigation is completed, the CCRG or outside lawyer will prepare an investigation report that summarizes the information gathered. You will be provided with a copy of this report and asked to provide comments on it within a prescribed period of time. Although you have up to one year to provide further comments, the sooner you do so, the sooner the application will proceed to the next step.

Your application will proceed to the next stage – a decision by the Minister – once your comments have been received and addressed, or the time for providing comments has expired (i.e. one year) and you have not provided any further information.

Decision by the Minister

At this final stage of the conviction review process, the CCRG or outside lawyer will forward the following to the Minister of Justice:

- All the submissions that you have made.
- The investigation report.
- A memorandum of legal advice prepared by the lawyer who investigated the application.

The Minister will then review all of this material and decide whether, on the basis of the facts and the law, your application should be dismissed or allowed.

As mentioned earlier, in some circumstances, the Minister may refer a question or questions to a provincial or territorial court of appeal.

If satisfied by the information contained in the application that there is a reasonable basis to conclude that a miscarriage of justice likely occurred, the Minister has the power to grant you a remedy (i.e., a new trial or hearing or a new appeal proceeding).

If the Minister is not convinced there has been a miscarriage of justice, the Minister will dismiss the application and inform you of the decision.

How to Apply

Preparing a conviction review application will take some time and effort from you. The following steps will tell you how to proceed.

Step 1: The Application Form (Form No. 1)

Form no. 1 is the application for a conviction review (i.e. *Application for Ministerial Review – Miscarriages of Justice*). You must use this form to apply for a conviction review. A letter or other document requesting a conviction review will not be accepted.

Fill out all parts of the application form. All of the information requested is important. If you fail to provide the information requested in the application form or provide incomplete or inaccurate information, the processing of your conviction review application will be delayed.

Make sure that your writing or typing is clear and can be easily read.

Step 2: Consent to the Release of Personal Information (Form No. 2)

You must fill out all parts of the Consent to the Release of Personal Information (Form no. 2). Sign and date the form and have someone sign and date the form as your witness.

Privacy laws protect and limit access to your personal information. This form allows CCRG to:

- have access to your personal information that is relevant to your conviction review application (e.g. personal information held by other government departments), and
- disclose your personal information to another person or body in order to obtain information that is useful in assessing your application (e.g. obtaining a forensic report from an expert).

Step 3: Waiver of Solicitor-Client Privilege (Form No. 3)

Fill out all parts of the Waiver of Solicitor-Client Privilege (Form no. 3). Sign and date the form. Have someone sign and date the form as your witness.

Solicitor-client privilege means that any lawyer who represented you at any time during the proceedings (e.g. preliminary inquiry, trial, appeal to the provincial court of appeal, appeal to the Supreme Court of Canada) must keep all information provided by you, or to you, completely confidential. Your lawyers cannot disclose any of this information without your permission.

The Waiver of Solicitor-Client Privilege gives your lawyers permission to disclose information that is relevant to your conviction review application to the CCRG.

Step 4: Supporting Documents

You must submit a number of documents with your conviction review application. Before submitting your conviction review application, obtain the following documents:

- Copies of all documents from the pre-trial proceedings, including the information or indictment, motion material filed by the defence, motion material filed by the Crown, preliminary hearing transcript, and transcripts of other pre-trial proceedings.
- Copies of all documents from the trial proceedings, including the information or indictment, material filed by the defence, material filed by the Crown, trial transcript, and trial court's decision.
- Copies of all documents from the appeal proceedings, including fresh evidence applications, leave applications, appellant's factum(s), respondent's factum(s), court of appeal decision, and Supreme Court of Canada decision.
- Copies of any other supporting documents (e.g. statements from witnesses, affidavits from witnesses, transcripts of examinations of witnesses, letters, photographs, plans, drawings, technical and scientific reports).

Your trial lawyer and/or your appeal lawyer should have these documents or be able to assist you in locating them.

You should also note that you may be asked to submit additional information in response to questions that arise during the course of the review.

Step 5: Submitting the Application

Send your application form, Consent to the Release of Personal Information, Waiver of Solicitor-Client Privilege, and all supporting documents to:

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

There is no fee for submitting a conviction review application.

Checklist

Before sealing the envelope, be sure you have completed steps 1 to 5. Use the checklist below to ensure that your conviction review application is complete.

1. **Application (Form no. 1):** Ensure that all parts of the application have been filled out clearly, completely and accurately
2. **Consent to the Release of Personal Information (Form no. 2):** Ensure that you have filled out all parts of the form clearly, completely and accurately and that both you and your witness have signed and dated the form.
3. **Waiver of Solicitor-Client Privilege (Form no. 3):** Ensure that you have filled out all parts of the form clearly, completely and accurately and that both you and your witness have signed and dated the form.
4. **Supporting Documents:** Ensure that all required documents are included and/or that arrangements have been made to forward to us all documents not in your possession.

Acknowledgement

When the Minister of Justice receives your conviction review application, you will be sent a written acknowledgement. If the application is incomplete, you will be notified as soon as possible. A preliminary assessment cannot begin until your application is complete.

Form No. 1

Application for Ministerial Review – Miscarriages of Justice



Department of Justice
Canada

Ministère de la Justice
Canada

**APPLICATIONS FOR
MINISTERIAL REVIEW
MISCARRIAGES OF JUSTICE**

**DEMANDES DE RÉVISION
AUPRÈS DU MINISTRE
ERREURS JUDICIAIRES**

SECTION A - PERSONAL INFORMATION

Name		Alias or Former Name	
Address			
Date of Birth		RCMP Automated Fingerprint Identification System No. (if any)	
Type of Conviction (Summary or Indictable or Finding of Dangerous Offender or Long-term Offender)			<input type="checkbox"/> In Custody <input type="checkbox"/> Not In Custody
Person Making Application on Applicant's Behalf (if any)		Representative's Address	
		Telephone Number	

SECTION B - SUPPORTING INFORMATION

PRE-TRIAL HEARING

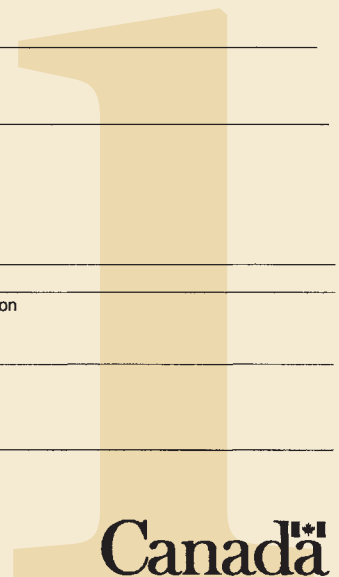
Date of Preliminary Inquiry	Court and Its Address
Date of Other Pre-Trial Motions (eg. Bail Hearing, Charter Application, etc.)	
Particulars Relating to Motion	

TRIAL

Date of Trial	Court and Its Address	Plea <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty
Names and Addresses of Counsel		Mode of Trial
Date of Conviction	Date of Sentence	
Particulars Relating to Motion		

COURT OF APPEAL

Date of Appeal Filed	Date of Hearing	Date of Decision
Address of Court		



SUPREME COURT OF CANADA

Date of Appeal Filed	Date of Hearing	Date of Decision
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Grounds for Application

Add another page if needed

Description of the New Matters of Significance that Support this Application

Add another page if needed

SECTION C - REQUIRED DOCUMENTS (Mandatory)

Applicant's Consent to the Release of Personal Information

(if unable to provide any of the following, please explain why)

PRE-TRIAL

- | | |
|--|--|
| <input type="checkbox"/> True Copy of Information or Indictment | <input type="checkbox"/> True Copy of Motion Material Filed by Defence |
| <input type="checkbox"/> True Copy of Motion Material Filed by Crown | <input type="checkbox"/> True Copy of Transcript of Proceedings |

Explanation

TRIAL

- | | |
|---|---|
| <input type="checkbox"/> True Copy of Indictment | <input type="checkbox"/> True Copy of Material Filed by Defence |
| <input type="checkbox"/> True Copy of Material Filed by Crown | <input type="checkbox"/> True Copy of Transcript of Proceedings |
| <input type="checkbox"/> True Copy of Decision | |

Explanation

APPEALS

- | | |
|---|--|
| <input type="checkbox"/> True Copy of Appellant's Factum | <input type="checkbox"/> True Copy of Respondent's Factum |
| <input type="checkbox"/> True Copy of Appeal Court Decision | <input type="checkbox"/> True Copy of Supreme Court of Canada Decision |

Explanation

SECTION D - OTHER SUPPORTING EVIDENCE (OPTIONAL)

(Affidavits, letters, photographs, plans, drawings, technical and scientific reports, etc.)

Form No. 2

Consent to the Release of Personal Information

Please Print

I, _____ [name],

of _____ [city, town, municipality],

in the Province of _____,

was convicted for _____ [name of offence]

in relation to _____ [specifics of offence]

on _____ [date of conviction].

I consent to the release of any personal information or documentation (including medical, psychological or psychiatric records) relating to me that is in the possession of or under the control of any person, body or institution, to any designated representative of the Minister of Justice to assist in assessing my application for a conviction review under sections 696.1 to 696.6 of the *Criminal Code*.

I also consent to the disclosure to any person, body or institution of my personal information obtained in the course of reviewing my application in order for the Minister to obtain from that person, body or institution any information that is required for assessing my application.

Applicant's Signature _____ Date _____

Witness's Signature _____ Date _____

Full Name of Witness _____

Province _____



Form No. 3

Waiver of Solicitor-Client Privilege

Please Print

I, _____ [name],
of _____ [city, town, municipality],
in the Province of _____,
was convicted for _____ [name of offence]
in relation to _____ [specifics of offence]
on _____ [date of conviction].

I am submitting an application under sections 696.1 to 696.6 of the *Criminal Code* for a review of this conviction.

These are the names and addresses of all counsel who represented me in court proceedings in relation to the charge and conviction:

By signing this document, I waive any solicitor-client privilege to which these counsel are subject. They may discuss any aspect of the case with any designated representative of the Minister of Justice while my application is being assessed.

I understand that waiving my solicitor-client privilege means that my counsel:

- are allowed to discuss anything about the case that is the subject of the application with any designated representative of the Minister of Justice, and
- are allowed to disclose all forms of communication between myself and them and to provide originals or copies of correspondence, documents or anything else that is related to the case that is the subject of the application to any designated representative of the Minister of Justice.

I sign this waiver voluntarily.

Applicant's Signature _____ Date _____

Witness's Signature _____ Date _____

Full Name of Witness _____

Province _____

