



January 30, 2003

Stephen Bindman
Special Advisor
Justice Canada, Department of Integration
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Dear Mr. Bindman,

RE: Federal/Provincial/Territorial (FPT) Deputy Ministers of Justice Working Group on Miscarriages of Justice

We are writing as Chairs of the Canadian Bar Association (CBA) National Criminal Justice Section (the Section) and Committee on Imprisonment and Release (the Committee) in response to a letter received on December 2, 2002, from Mr. Rob Finlayson, Assistant Deputy Attorney General of Manitoba. Mr. Finlayson asked for input to the F/P/T Working Group on practical changes to prosecutorial and police practices to avoid miscarriages of justice, and asked that our response be sent to your attention.

The CBA is a national association representing about 38,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice. Our Section members represent both Crown and defence counsel from each province and territory. The Section's Committee consists of academics and practitioners with years of specialized experience and knowledge in the area of prison law, sentencing and rehabilitation issues.

The Section and Committee have recently considered ways to avoid miscarriages of justice in two submissions, one in response to the 1999 Department of Justice Consultation Paper, *Addressing Miscarriages of Justice: Reform Possibilities for Section 690 of the Criminal Code*, and one in response to Bill C-15A, *Criminal Code* amendments, an omnibus bill that included changes to section 690. Both submissions are attached for your ease of reference.

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We advocated an independent body, similar to that in the United Kingdom, to best ensure that claims of wrongful convictions are impartially investigated when appropriate, and promptly remedied when discovered.

However, to avoid those miscarriages of justice at the outset is obviously the first priority for the justice system. In our 1999 submission, we pointed out that many factors can obscure the truth during a trial. These include incomplete investigations, premature investigative or prosecutorial judgments, financial limitations of the accused and inadequate legal aid, unwise strategic choices by counsel for the accused and sometimes even fabrications, official or otherwise. Mistaken or overconfident eye witnesses, “experts” who confuse or impress juries with what can most aptly be characterized as “junk science” and an over-reliance on jail-house informants motivated by self-interest are other reasons that the truth can be obscured and miscarriages of justice can occur. Coerced confessions produced through psychological techniques or elaborate sting operations have also been identified as potential sources for wrongful convictions.

We summarized these considerations in our 1999 submission by saying that “wrongful convictions arise as a result of misplaced zeal, errors in the forensic process, single-minded investigations, and misinterpretations of circumstantial evidence.” Clearly, many of these factors point to the urgent need for a cultural change with respect to some police investigative techniques and even the approach and discharge of some prosecutorial functions.

We hope that these observations will be helpful in your study, and would welcome you to contact us with any further questions or concerns.

Yours truly,

“original signed per Gaylene Schellenberg”

Kate Ker
Chair, National Criminal Justice Section

A handwritten signature in black ink, appearing to read 'A. Manson', with a long horizontal flourish extending to the right.

Professor Allan Manson
Chair, Committee on Imprisonment and Release