WRONGFUL CONVICTION
INTERNATIONAL LAW TASK FORCE

United Nations Human Rights Committee

Civil Society Submission for Canada

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I. Authors

The Wrongful Conviction International Law Task Force (WCILTF) is a global coalition of law professors, attorneys and activists working together to fill the "Innocence Gap" in international law. The WCILTF is supported by a pro bono legal team at the international law firm Proskauer Rose (www.proskauer.com/) located in New York City.

In the past twenty-five years, wrongful conviction of the innocent has emerged as a major problem in criminal justice systems around the world. Research indicates that the problem has always existed but has only come to light in recent decades due to forensic advancements allowing for post-conviction DNA testing of crime scene evidence. Wrongful convictions occur because of human limitations in investigation and evidence collection, such as memory weaknesses and malleability (leading to misidentifications by eyewitnesses), unreliable or faulty forensic evidence, false confessions, confirmation bias or tunnel vision on behalf of investigators, inadequate defense lawyering, and many other human problems. Thus, wrongful convictions exist in all legal systems around the world, as all nations use the same types of evidence and investigation techniques regardless of the precise legal procedures employed in their courtrooms.

NGOs called "Innocence Projects" have sprung up around the globe to combat this problem, and now entire networks of innocence projects exist in Asia, Europe, North America and South America. Innocence Projects are often housed at law schools and are operated by law professors and law students. In one member state, for example, more than 3,000 innocent people have been released from prison in recent years due to the work of

NGOs like Innocence Projects. Exonerations of the innocent have occurred across the globe in the past three decades.

For a brief video overview of the global problem of wrongful convictions, and the efforts of Innocence Projects to combat the problem, please view: https://youtu.be/jMATkuFaRU8?si=fO0wXGhPr-oCyhBA

As the innocence movement has developed a global presence in recent years, it has become apparent to legal scholars that an "Innocence Gap" exists in international law. The WCILTF formed to combat this problem and help fill the Innocence Gap. The WCILTF is comprised of more than twenty-five law professors and Innocence Project leaders from across Asia, Europe, North America and South America.

II. Filling the Innocence Gap

Due to the relatively recent discovery of wrongful convictions, international law covenants and treaties predate awareness of this problem and thus do not speak directly to issue. In recent years, however, the United Nations Human Rights Committee (HRC) has identified key rights to the benefit of incarcerated person claiming innocence to be derived from the right to a fair trial and other existing rights. For example, in *Abdiev v. Kazakhstan*, 2023, the HRC stated that ***the right of incarcerated persons to re-open a criminal case in order to present new evidence of innocence after conviction and appeal have concluded, in order to achieve exoneration and freedom, is essential to the right to a fair trial under Article 14(1) of the ICCPR***. Similarly, on October 3, 2023, in Concluding Observations on the Fifth Periodic Report of the Republic of Korea, the HRC observed that South Korea should "provide adequate legal and financial assistance to enable individuals sentenced to death to ***re-examine convictions on the basis of newly discovered evidence, including new DNA evidence***." Likewise, on July 25, 2024, in Concluding Observations on the Second Periodic Report of Maldives, the HRC expressed concern "about the lack of information on the existence of a procedure enabling individuals sentenced to death to seek a review of their convictions and sentences based on newly discovered evidence of their innocence, including new DNA evidence, and, if wrongfully convicted, to provide them with compensation." The HRC recommended that Maldives take all necessary measures to ensure that "death sentence can be reviewed based on ***newly discovered evidence of their innocence,*** including new DNA evidence, adequate legal and financial assistance is provided to enable this review and, ***if wrongfully convicted, individuals have access to effective remedies***, including compensation" para. 28(e). *See* Brandon Garrett, Laurence Helfer and Jayne Huckerby, *Closing International Law's Innocence Gap*, S. Cal. L. Rev. 95 (2021), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3803518#

III. Rights of Innocent Incarcerated Persons in Canada

Based on the research conducted by the WCILTF, including expert consultation with practitioners with direct experience in wrongful conviction litigation and review processes in Canada, as well as a review of publicly available legal sources, it appears that Canada's framework for addressing wrongful convictions is formally established but substantively fragmented and heavily discretionary. While statutory and judicial mechanisms exist to correct miscarriages of justice, they do not operate as a comprehensive, rights-based system and instead rely on exceptional remedies, executive discretion, and uneven provincial practices.

Canada provides a statutory mechanism for post-conviction review under section 696.1 of the Criminal Code. However, this mechanism is extraordinary in nature and does not confer a direct right of access to an independent judicial body upon the discovery of new post-conviction evidence of innocence. Claims of miscarriage of justice are initially assessed through an executive review process within the federal Department of Justice, with judicial involvement occurring only if the Minister of Justice determines that there is a reasonable basis to conclude that a miscarriage of justice may have occurred. While courts retain the authority to quash convictions or enter acquittals once a matter is referred back to them, many applications are resolved without judicial scrutiny, and the threshold for reopening a case remains high.

The availability of post-conviction DNA testing and access to new evidence is similarly constrained. **Canada does not recognize a freestanding statutory right to post-conviction DNA testing**, nor does it maintain uniform national requirements governing the long-term preservation of biological evidence. Evidence retention practices vary significantly across provinces and among police services, and there is no federally mandated minimum retention period for exhibits, even in serious cases such as homicide. As a result, the ability of incarcerated persons to establish innocence through scientific evidence may depend on chance preservation rather than legal entitlement.

Access to police files and investigative materials following conviction is also limited. While Canadian law imposes robust pre-trial disclosure obligations on the prosecution, these obligations terminate upon conviction. There is no post-conviction disclosure regime or public records framework granting incarcerated persons, defense counsel, civil society organizations, or journalists a legal right to access police files after conviction. Post-conviction access is governed by administrative discretion, privacy legislation, and law enforcement exemptions, resulting in substantial variability across jurisdictions and significant barriers to investigating potential miscarriages of justice.

Compensation for wrongful conviction in Canada remains ad hoc and inconsistent. There is no statutory right to compensation following exoneration, and historical federal-provincial-territorial guidelines appear to lack consistent contemporary application. Compensation is typically provided only where factual innocence can be clearly established, a standard that is difficult to meet in the absence of DNA evidence. As a result, only a minority of exonerated individuals receive compensation, and there is no uniform framework governing eligibility, quantum, or procedure.

Preventive safeguards against wrongful conviction rely largely on judicial guidance and non-binding best practices rather than enforceable legislation. There is no statutory requirement mandating the recording of police interrogations, despite strong judicial encouragement and widespread adoption in practice. Similarly, there is no legal requirement that police eyewitness identification procedures conform to scientifically validated standards such as double-blind administration. Although Canadian courts now treat eyewitness evidence with heightened caution, the absence of binding national standards results in uneven implementation and continued risk.

Taken together, the available evidence suggests that Canada's approach to wrongful convictions is characterized by reliance on discretion, exceptional remedies, and post hoc correction rather than by comprehensive, standardized legal protections. While the system is capable of correcting some wrongful convictions, these corrections are often delayed and contingent, raising concerns regarding effective access to justice, equality before the law, and the protection of the right not to be arbitrarily deprived of liberty.

IV. Questions to Canada

1. Does Canada have a legal procedure for post-conviction revision or re-opening of convictions based on new evidence of innocence?

Yes. Canada does provide a formal legal procedure for the post-conviction reconsideration of criminal convictions on the basis of new evidence or other indications of a wrongful conviction. This mechanism is primarily found in section 696.1 of the Criminal Code, which establishes an extraordinary remedy allowing convictions to be reviewed after all ordinary appellate rights have been exhausted. The procedure is not simply a discretionary executive pardon; rather, it is a statutory, post-conviction review process designed to address miscarriages of justice.

2. If so, what is the legal standard that the incarcerated person must meet to re-open the case.

The Canadian Criminal Code, specifically its Section 696.1 says:

> *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.*

This statutory text underscores three foundational principles:

(i) Eligibility depends on exhaustion of judicial avenues. Applicants must first pursue and exhaust all conventional appeals and judicial review rights available in the courts. Only when these have been completed may an application under section 696.1 be made to the Minister.

(ii) The remedy is extraordinary. The framework contemplates that this is not a further level of appeal but an exceptional mechanism to address potential miscarriages of justice when new and significant information emerges that was not before the courts and that could raise a reasonable basis to conclude that an injustice likely occurred.

(iii) The Minister's authority is procedural. The Minister does not itself declare a person innocent but may, if satisfied that there is a reasonable basis to conclude that a miscarriage of justice likely occurred, order a new trial or refer the matter to a court of appeal to correct the conviction.

In other words, post-conviction review process is evidence-based: applicants are normally expected to present "new matters of significance" that were not before the trial or appeal courts, such as newly discovered scientific evidence, credible alibi evidence, proof of false testimony, or previously undisclosed material that could have affected the original verdict. Simply rearguing the same evidence considered at trial or on appeal generally does not satisfy the threshold for a successful review.

3. If so, is there a deadline by which such a motion must be brought, or may an incarcerated person bring such a legal motion at any time?

There is no strict statutory time limit or fixed deadline by which an incarcerated person must bring an application under section 696.1. The legislation does not prescribe a temporal cutoff such as a fixed number of months or years after conviction. Instead, the operative requirement is exhaustion of appellate remedies, that is, all ordinary avenues of judicial appeal and review must be concluded before an application can be considered. The timing of the application therefore depends on when those judicial proceedings are fully finalized.

The absence of a formal deadline means an applicant may apply "at any time" after appeal rights are exhausted, provided that there is new and significant information bearing on the conviction. As a result, individuals, including those who have been incarcerated for many years, may bring a section 696.1 application regardless of how much time has passed since conviction, so long as they have satisfied the appellate exhaustion requirement and present new evidence or information justifying review.

4. Have any post-conviction motions presenting new evidence of innocence been successfully granted by a court in Canada, resulting in the incarcerated person's exoneration and freedom? Have any such motions been denied by courts in Canada?

Canada's post-conviction framework demonstrates that motions and review processes presenting new evidence of innocence can, in certain cases, lead to judicial remedies and full exoneration, while at the same time remaining deliberately constrained and exceptional in nature. A defining characteristic of this system is the sequencing of institutional roles, whereby the initial assessment of alleged wrongful convictions occurs outside the courts, with judicial intervention taking place only after a case has been formally reopened.

This structural feature was succinctly described in an interview conducted for this report with Jerome Kennedy, former Attorney General and Minister of Justice of Newfoundland and Labrador and a senior figure associated with Innocence Canada, who explained that, first, *a post-conviction motion goes through a process or is reviewed by an agency of the Canadian Federal Government, called "The Criminal Convictions' Review Group", in Ottawa. This group make a report to the Minister of Justice, who makes a determination whether or not there will be a remedy granted.".*

His observation reflects the statutory design of Canada's post-conviction regime, particularly under Part XXI.1 of the Criminal Code, which assigns the preliminary review of alleged miscarriages of justice to a specialized process distinct from ordinary appellate adjudication. Only where that process determines that new and significant information gives rise to a reasonable basis to conclude that a miscarriage of justice may have occurred does the matter return to the courts.

When cases do reach the judiciary following such review, Canadian courts have, in a number of instances, granted decisive remedies that resulted in exoneration and release.

The case of Robert Mailman and Walter Gillespie is illustrative. Convicted in 1984 and imprisoned for nearly forty years, both men exhausted their conventional appeal rights long before new evidence emerged. Subsequent developments, including witness recantations and serious concerns regarding the reliability of the original prosecution evidence, were

examined through post-conviction review mechanisms. Once the case was reopened and returned to the courts, the Crown conceded that the convictions were unsafe, and in January 2024 the Ontario Court of Appeal entered acquittals. Their eventual freedom and formal exoneration underscore that, although delayed, judicial intervention can meaningfully correct wrongful convictions when credible new evidence is established.

Similar dynamics are evident in other Canadian wrongful conviction cases, including those arising from historical prosecutions in Manitoba. In those cases, new evidence revealed profound deficiencies in the original investigations, including coerced or unreliable confessions and systemic failures affecting Indigenous defendants. Following post-conviction review, the courts quashed the convictions, affirming that the evidentiary foundation of the verdicts could no longer be sustained. These outcomes reinforce the principle articulated by Jerome Kennedy: courts do not conduct the initial inquiry into innocence claims, but they retain the ultimate authority to nullify convictions once the case is properly returned to the judicial sphere.

At the same time, the Canadian experience also demonstrates that many post-conviction motions and review applications are denied, either before any court becomes involved or after judicial reconsideration. A substantial number of applications fail at the preliminary review stage because the information presented does not meet the legal threshold of being new, credible, and sufficiently significant to undermine confidence in the original verdict. In such cases, no referral to the courts is made, and the conviction remains undisturbed. This outcome reflects the system's emphasis on finality and the intentionally high standard imposed for reopening completed criminal proceedings.

Even in cases where a post-conviction review results in a referral back to the courts, judicial relief is not automatic. Canadian courts have, on occasion, reviewed newly tendered evidence and nevertheless upheld the conviction, concluding that the verdict remains safe when assessed in light of the entire evidentiary record. These denials further illustrate that the reopening of a case does not predetermine its outcome; rather, it restores the court's jurisdiction to assess whether the conviction can still stand.

5. Does Canada have a law allowing incarcerated persons to petition for post-conviction DNA testing of crime scene evidence to prove innocence and seek relief?

Canada does not have a statutory provision granting all incarcerated persons an automatic right to petition for post-conviction DNA testing. Nonetheless, the legal framework provides mechanisms through which DNA testing can be requested, accessed, and utilized to challenge convictions in the context of post-conviction review, appeals, or ministerial applications under section 696.1 of the Criminal Code. While section 696.1 does

not explicitly refer to DNA testing, it empowers the reviewing authority or the Minister of Justice to facilitate the production of evidence and, where appropriate, refer the matter to a court of appeal or order a new trial.

The DNA Identification Act (1998, as amended) establishes the collection and retention of biological material for the National DNA Data Bank, which contains both crime scene profiles and convicted offender profiles. While the Act primarily serves investigative purposes, it provides a framework that enables post-conviction testing by ensuring that biological evidence is maintained in a scientifically suitable manner. Canadian courts have recognized that judicial orders can compel the testing of preserved DNA where it is relevant to establishing innocence, providing a procedural avenue for incarcerated persons to seek relief.

Historic cases illustrate the practical impact of these mechanisms. In *David Milgaard*, wrongfully convicted in 1969 of rape and murder, DNA testing conclusively excluded him as the source of key forensic material, leading to his release in 1992 after 23 years of incarceration. Similarly, *Guy Paul Morin*, convicted in 1984 of the sexual assault and murder of a child, was exonerated in 1995 following DNA analysis of retained biological evidence, which definitively excluded him as the perpetrator. These examples demonstrate that, although Canada does not provide a free-standing statutory right to post-conviction DNA testing, courts and review mechanisms facilitate the judicially supervised testing of biological evidence when it may substantively affect claims of innocence and secure legal relief.

Despite the availability of these mechanisms, DNA evidence has not played a central role in all recent exonerations. The Innocence Project Canada has recorded approximately thirty-four formally recognized exonerations, yet in roughly the last dozen cases, DNA testing was not determinative. Instead, relief was achieved through other forms of newly discovered evidence, including witness recantations, disclosure failures, and reassessment of investigative and prosecutorial conduct.

6. Does Canada have a legal procedure requiring biological evidence collected from the crime scene to be properly stored and preserved for future DNA testing?

Canada maintains a combination of statutory, regulatory, and policy-based requirements to ensure the proper storage and preservation of biological evidence collected from crime scenes, particularly where such evidence may be relevant to future judicial proceedings or post-conviction review.

Under the DNA Identification Act, biological samples submitted to the National DNA Data Bank, whether originating from convicted offenders or crime scenes, must be retained

under conditions that preserve their integrity and allow for subsequent analysis. The Act, together with provisions of the Criminal Code, also empowers courts to issue orders requiring law enforcement to preserve evidence, ensuring its availability for appeals or post-conviction applications.

The importance of evidence preservation has been reinforced by historic wrongful convictions. In both the *Milgaard* and *Morin* cases, the eventual exoneration of the accused relied on biological samples that had been retained and later subjected to DNA testing. These cases highlighted the necessity of maintaining forensic evidence even after a conviction is finalized. In response, law enforcement agencies across Canada implemented formal protocols for evidence management, emphasizing secure labeling, documented chain of custody, climate-controlled storage, and retention until all appeals or post-conviction review processes are exhausted. Such measures prevent the loss or degradation of evidence that could be critical in proving innocence.

Nonetheless, evidence preservation practices in Canada are not yet fully standardized. According to his expert account, there is currently no consistent nationwide legal requirement for the maintenance of exhibits beyond a certain point. In some cases, biological evidence has been fortuitously preserved, allowing DNA testing to occur, while in others, exhibits are simply discovered in storage and tested opportunistically.

In practice, many exhibits are not retained beyond approximately ten years, creating variability that may affect the ability of incarcerated persons to seek post-conviction DNA testing. This represents a systemic gap in Canada's approach to evidence retention, underscoring the need for clearer statutory standards and uniform practices to ensure that critical biological evidence is consistently available for post-conviction review.

Judicial oversight partially mitigates this variability, with courts occasionally ordering the preservation of material when it is demonstrably relevant to a claim of wrongful conviction. While there is no single statute mandating indefinite retention of all biological evidence, the combination of statutory powers, judicial authority, and police retention policies establishes a practical, though uneven, system for maintaining evidence, which allows DNA testing to play a corrective role in the Canadian criminal justice system.

7. If so, how long must the biological evidence be preserved?

Canada does not have a uniform, federally mandated period for the preservation of biological evidence collected from crime scenes.

In practice, the duration for which biological evidence is preserved depends on the jurisdiction, and even within a given province or territory, it may vary from one police service or forensic laboratory to another.

This lack of uniformity represents a systemic gap in the Canadian criminal justice system, underscoring the need for clearer legislative or policy standards to ensure that critical biological evidence is consistently available for post-conviction review and DNA testing.

8. Does Canada have a "sunshine law" or "public records law" granting defense attorneys, NGOs, journalists or incarcerated persons access to police files and documents of an incarcerated person's case post-conviction?

Canada does not have a formal "sunshine law" or public records statute that automatically grants defense attorneys, incarcerated persons, NGOs, or journalists access to police files or investigative documents after a conviction. While pre-trial disclosure obligations are robust and codified, the law governing access to information post-conviction is limited, fragmented, and highly discretionary, and there is no uniform national framework mandating such disclosure.

This is a very complicated issue in Canada because the access is very limited and subject to strong exemptions; no comparable statutory obligation exists post-conviction.

As an organization working across multiple provinces, Innocence Canada encounters significant variability in access: some provincial authorities voluntarily provide post-conviction records to support claims of innocence, while others maintain that the disclosure regime ends with the conviction, and there is no legal duty to produce additional files.

Consequently, unlike the structured pre-trial disclosure process, access to investigative materials, police reports, or other case files after conviction is generally governed by internal administrative policies or ad hoc judicial discretion, rather than codified law.

The practical effect of this gap is significant. Access often depends on the cooperation of local police services, prosecutors, or correctional authorities, which can vary widely between provinces and even between police forces within the same jurisdiction. In some provinces, authorities maintain well-organized records and are cooperative in facilitating post-conviction applications; in others, requests may be refused, citing privacy concerns, administrative limitations, or the conclusion of the formal disclosure regime. This unevenness presents a systemic challenge in Canada's post-conviction review landscape, particularly in cases relying on newly discovered evidence such as DNA or forensic analysis.

Moreover, even where records are requested, access is further constrained by strong legal exemptions, including federal and provincial privacy protections, investigative confidentiality rules, and limitations on third-party information or sensitive police techniques. As a result, obtaining comprehensive files for post-conviction review can be a

prolonged, uncertain process, often requiring formal legal applications or judicial intervention.

Taken together, these factors illustrate that while pre-trial disclosure in Canada is comprehensive and codified, post-conviction access remains discretionary and inconsistent, highlighting a significant structural gap. Experts have emphasized that the absence of a standardized legal framework for post-conviction disclosure hinders transparency, complicates the investigation of potential miscarriages of justice, and limits the ability of incarcerated individuals, their counsel, and advocacy organizations to seek remedies. This gap underscores the broader need for statutory reform to establish clear and uniform rules for post-conviction access to police records, thereby strengthening the integrity and fairness of Canada's criminal justice system.

11. Does Canada have a law providing compensation to the wrongfully convicted after exoneration and release from prison? If so, what do such laws provide?

Canada does not have a statutory or uniform legal framework providing compensation to individuals who have been wrongfully convicted and subsequently exonerated. While there were agreements reached in the 1990s between the federal government and provincial governments, known as the Federal-Provincial-Territorial (FPT) guidelines, these were intended to provide a mechanism for compensation in cases of wrongful conviction. However, there remains significant uncertainty regarding whether these guidelines continue to exist in practice, and whether the federal government actively participates in the compensation process today.

In practice, compensation in Canada is highly discretionary and ad hoc, typically provided only in cases where the individual can establish clear factual innocence. Establishing factual innocence is often extremely challenging, particularly in the absence of DNA evidence, as it requires demonstrating unequivocally that the individual had no involvement in the crime. This is why the availability of DNA evidence is particularly critical: it can provide a definitive basis for asserting innocence and, consequently, for eligibility for compensation.

The lack of statutory guidance and standardized procedures results in an inconsistent approach across jurisdictions. Among the approximately 34 exonerations handled by Innocence Canada, only around 10 to 15 individuals received some form of compensation.

Compensation practices are further complicated by the absence of any binding laws, regulations, or national standards governing eligibility, amounts, or processes. For example, the Gouge Inquiry, which investigated misconduct in the Charles Smith cases, made specific

recommendations regarding compensation for victims of those wrongful convictions, including entitlements of $250,000 per affected individual, but these recommendations were specific to that inquiry and did not establish a general legal framework.

Overall, the Canadian system for compensating the wrongfully convicted remains fragmented, discretionary, and *ad hoc*, similar to other aspects of post-conviction review, such as the preservation of exhibits and access to police files. The absence of uniform laws or guidelines means that eligibility for compensation, the amounts awarded, and the processes for obtaining compensation vary widely depending on the province, the level of government involved, and the particular circumstances of the exoneration. This ad hoc approach highlights a systemic gap in the Canadian criminal justice system with respect to ensuring fairness and support for individuals who have suffered the severe consequences of wrongful conviction.

12. Does Canada have laws or regulations requiring the recording of police interrogation of suspects? If so, please outline the requirements of such laws or regulations.

In Canada, there is no statutory requirement mandating the recording of police interrogations, yet over the past several decades, judicial guidance and policing practices have established a strong expectation that interrogations, particularly in serious cases, be audio and video recorded.

This issue has been highlighted in the context of "Mr. Big" operations, where police pose as members of a criminal organization to elicit confessions.

Prior to 1990, there was very little video or tape recording of statements, and no law required it. Since then, courts have consistently indicated that, especially in a police station setting, interrogations should be fully videotaped and audiotaped. The courts have emphasized that recording protects the individual suspect by ensuring there is clear evidence of what was said, while also protecting police officers from potential allegations of misconduct or coercion.

Today, it is standard practice in Canadian police stations for most interrogations involving accused persons or suspects to be both videotaped and audiotaped. There are exceptions: some interactions may only be audiotaped, and others may not be recorded at all, particularly in cases of spontaneous statements made outside the police station. Nevertheless, the general principle, reinforced by the Supreme Court of Canada in 2014, is that police should audiotape and videotape interviews, particularly when procedural contentions are anticipated or when there is a possibility of allegations that the suspect was mistreated or coerced.

Given the widespread availability of recording equipment in police stations, it would be imprudent for officers to conduct an interrogation without recording it, at a minimum through audiotape.

While these expectations are robust and widely followed in practice, it is important to note that no federal or provincial statute currently mandates recording of all interrogations, and compliance is guided by judicial precedent, police procedural policies, and best practices.

The absence of a statutory requirement means that gaps remain, and in some instances, statements may go unrecorded or only partially recorded. Nevertheless, the evolution of these practices reflects a clear judicial and administrative emphasis on protecting both the rights of the accused and the integrity of police investigations, contributing to more reliable evidence and reducing the risk of wrongful convictions.

13. Does Canada have laws or regulations ensuring that police identification procedures for eyewitnesses adhere to best practices devised by the scientific community, such as the double-blind eyewitness identification requirement? See https://www.ojp.gov/ncjrs/virtual-library/abstracts/double-blind-sequential-police-lineup-procedures-toward-integrated

Canada does not have a federal statute or uniform national regulation that legally requires police eyewitness identification procedures to conform to best practices developed by the scientific community, such as the double-blind administration requirement. Instead, the regulation of eyewitness identification in Canada is decentralized and indirect, relying primarily on judicial oversight, police service policies, and the influence of public inquiries, rather than on binding legislative standards.

In the early 2000s eyewitness identification was widely recognized as one of the primary contributing factors to wrongful convictions in Canada.

Between 1990 and 2007, Canada conducted seven commissions of inquiry examining wrongful convictions and the systemic factors that led to them. Several of these inquiries identified serious deficiencies in eyewitness identification practices. The most prominent was the Sophonow Inquiry (2001), led by Justice Peter Cory, which exposed deeply flawed and unreliable identification evidence, including the mishandling of photo books and suggestive identification procedures. The inquiry involved extensive expert testimony and led to a fundamental reassessment of how eyewitness evidence should be gathered and evaluated in Canada.

Although these inquiries prompted significant changes in police training and investigative practices, they did not result in the enactment of binding national legislation.

There remains no provision in the Criminal Code of Canada requiring specific identification protocols, such as double-blind administration, sequential presentation, or standardized witness instructions. As a result, adherence to scientifically validated best practices varies across provinces and among individual police services. Some police forces have voluntarily adopted policies reflecting modern research on memory and identification reliability, while others continue to rely on less formal or inconsistent procedures.

Canadian courts have responded to the recognized frailty of eyewitness evidence by developing a robust body of jurisprudence that treats such evidence with heightened caution. Courts routinely scrutinize the circumstances under which identifications are obtained, may issue strong cautionary instructions to juries, and, in some cases, may exclude identification evidence or significantly reduce the weight accorded to it. As Kennedy noted, eyewitness identification continues to be used in Canadian courts, but its inherent unreliability is now well acknowledged, and it is assessed very differently than it was several decades ago.

In sum, while Canada has undergone a substantial shift in understanding the dangers associated with eyewitness identification, driven largely by commissions of inquiry and judicial recognition of scientific research, there is still no legally mandated requirement that police follow specific, research-based identification procedures such as double-blind lineups. The current framework depends on post-hoc judicial evaluation and non-binding police policies rather than enforceable national standards, resulting in uneven implementation and continued risk in cases heavily reliant on eyewitness testimony.

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