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Thursday, August 6, 2009

They languished behind bars for years, wrongfully jailed for crimes they did not commit.

But the high-profile ordeals of Donald Marshall Jr., David Milgaard and others have put a spotlight on what has been called the fallibility of Canadian justice.

Cases

James Driskell

Anthony Hanemaayer

Donald Marshall Jr.

Simon Marshall

David Milgaard

Guy Paul Morin

William Mullins-Johnson

Romeo Phillion

Thomas Sophonow

Steven Truscott

Erin Walsh

These cases are likely not unique and certainly not isolated to Canada, although estimates of the actual number of wrongful convictions vary widely. Each miscarriage of justice, however, deals a blow to a society's confidence in the legal system, experts say.

"Wrongful convictions undermine the two prongs of the criminal justice system's legitimacy," states a 1992 report prepared by the Library of Parliament. "If someone is wrongfully convicted, that person is punished for an offence he or she did not commit and the actual perpetrator of the crime goes free."

To make it worse, advocates say many who were ultimately exonerated watched their applications stall for years in the federal review board process.

In 2000, federal Justice Minister Anne McLellan announced plans to try to prevent such cases from happening again. The changes, since enacted in the Criminal Code of Canada, enable the justice minister to use his or her discretion to respond to persons who believe they have been wrongfully convicted.

Groups such as the Association in Defence of the Wrongfully Convicted have also advocated on behalf of those they say have been jailed unfairly.

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### Cases:

James Driskell

Perry Harder of Winnipeg had been shot several times in the chest in September 1990. Driskell — his friend — was convicted and sentenced to life in prison a year later.

The RCMP said three hair samples found in Driskell's van were Harder's, and that evidence convicted him. Later test results from the U.K. found none of the hairs belonged to Harder.

Driskell was granted bail in November 2003. The federal justice minister at the time, Liberal Irwin Cotler, quashed the conviction and ordered a new trial in 2005. Despite that, the Manitoba government opted to stay the trial and end the case without exonerating Driskell. It also called for a public inquiry into the case.

The inquiry's final report, released in February 2007, said the jury in Driskell's trial was "seriously misled" on issues including the reliability of a key Crown witness. The report also said the failure of the Crown to disclose information to the defence was "careless indifference."

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Anthony Hanemaayer

In 1987, Hanemaayer was charged with assault in connection with a knifepoint attack on a 15-year-old girl. The Toronto resident pleaded guilty part way through his trial and was sentenced to two years less a day in jail.

Hanemaayer said in a later interview with CBC News that he accepted a plea bargain on the advice of his then-lawyer, who warned he could receive a long prison sentence.

In 2006, convicted murderer and rapist Paul Bernardo confessed to the crime during a jailhouse interview. The Association in Defence of the Wrongly Convicted learned of the confession and took up the case. Hanemaayer, now 40 and living in London, Ont., took his case to the Ontario Court of Appeal and was acquitted on June 25, 2008.

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Donald Marshall Jr.

In 1971, Marshall was wrongfully convicted of murdering his friend, Sandy Seale, in a Sydney, N.S., park. Marshall was just 17 years old when he received a life sentence.

He was released in 1982 after RCMP reviewed his case. He was cleared by the Nova Scotia Court of Appeal the following year. Though the Appeal Court declared him not guilty, Marshall was told he had contributed to his own conviction and that any miscarriage of justice was more apparent than real.

Marshall, a Mi'kmaq, was exonerated by a royal commission in 1990 that determined systemic racism had contributed to his wrongful imprisonment. The seven-volume report pointed the finger at police, judges, Marshall's original defence lawyers, Crown lawyers and bureaucrats.

Roy Ebsary, an eccentric who bragged about being skilled with knives, was eventually convicted of manslaughter in Seale's death and spent a year in jail.

Marshall died in a Sydney hospital in August 2009 after a lengthy illness. He was 55.

CBC Archives: Marshall exonerated of wrongful conviction

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#### Simon Marshall

Simon Marshall was imprisoned from 1997 to 2003 after he wrongly confessed to a string of sexual assaults in Ste-Foy, a Quebec City suburb. A DNA test later cleared Marshall, a mentally handicapped man. The Quebec Court of Appeal ruled he was a victim of miscarried justice and ordered his criminal record expunged.

It was later found that DNA evidence first collected in the investigation that led to Marshall's conviction was never tested. An inquiry also revealed multiple breaches in police conduct during the investigation.

In December 2006, the Quebec government awarded the 24-year-old \$2.3 million, the highest wrongful conviction compensation to date in the province. The money went to Marshall's parents, who are in charge of his care.

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David Milgaard

Milgaard was charged with the 1969 murder of Saskatoon nursing aide Gail Miller and in January 1970 was sentenced to life in prison. Appeals to the Saskatchewan Court of Appeal and Supreme Court of Canada in the two years after his conviction were unsuccessful.

Milgaard's mother, Joyce, believed from the day he was arrested that her son was innocent. She kept his case alive, talking to whoever would listen — and many who didn't — while he spent more than two decades in prison.

In 1991, Justice Minister Kim Campbell directed the Supreme Court of Canada to review the conviction. The Supreme Court of Canada set it aside in 1992, and Milgaard was subsequently cleared by DNA evidence five years later.

The Saskatchewan government awarded Milgaard \$10 million for his wrongful conviction in 1999. That same year, Larry Fisher was found guilty of the rape and stabbing death of Gail Miller.

A provincial judicial inquiry, which released a comprehensive 815-page report in September 2008, concluded that "the criminal justice system failed David Milgaard." The inquiry also found that Milgaard might have been released from jail years sooner if police had followed up on a lead they received in 1980.

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Guy Paul Morin

Christine Jessop, a nine-year-old girl, disappeared from her Queensville, Ont., home in October 1984. Her body was found in a farmer's field two months later. Guy Paul Morin, the Jessops' next-door neighbour in the community about 60 km north of Toronto, was later charged with her murder.

Morin was acquitted in 1986, but a new trial was ordered by the Ontario Court of Appeal. At this

second trial, Morin was convicted and sentenced to life in prison.

He appealed and in 1995 was exonerated by DNA testing.

A public inquiry into the case was called, and its report was tabled in 1998. It concluded that mistakes by the police, prosecutors and forensic scientists combined to send an innocent man to jail.

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William Mullins-Johnson

William Mullins-Johnson was convicted in the 1994 slaying of his four-year-old niece. He spent more than 12 years in prison for first-degree murder, partly on the now-questionable testimony of a discredited pathologist.

However, Crown prosecutors called for the Sault Ste. Marie man's acquittal, which was granted by the Ontario Court of Appeal on Oct. 15, 2007.

The Crown apologized in the Toronto courtroom for all the hardship caused.

"I wish to extend our sincere, profound and deepest apology to Mr. Mullins-Johnson and to his family for the miscarriage of justice that occurred," lawyer Michal Fairburn said.

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Romeo Phillion

Ottawa firefighter Leopold Roy was stabbed to death in August 1967. Romeo Phillion was convicted of his murder in 1972. Though Phillion confessed while in custody on a robbery charge, he immediately recanted and has maintained his innocence ever since.

In May 2003 — 30 years into Phillion's sentence — a group of law students from York University sought to secure Phillion's exoneration. One basis for their application was a police report, not shown to the defence at the original trial, that placed Phillion 200 kilometres away at the time of the crime.

Phillion was granted bail two months later while the federal justice minister investigated.

In January 2008, the Ontario Court of Appeal reopened Phillion's case. Phillion's former defence lawyer, Arthur Cogan, said that Phillion's original confession to the crime was a desperate bid to protect his gay lover from other charges.

The Court of Appeal struck down Phillion's conviction in March 2009 and ordered a new trial, although it stopped short of a full acquittal.

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Thomas Sophonow

Winnipeg police announced in June 2000 that evidence had cleared Thomas Sophonow in the killing of doughnut-shop clerk Barbara Stoppel.

Authorities said they had a new suspect in the 1981 murder for which Sophonow was tried three times and spent nearly four years behind bars. The Manitoba Court of Appeal acquitted him in 1985.

The Manitoba government released a report in 2001 by retired Supreme Court judge Peter Cory

with 43 recommendations.

Cory said Sophonow should receive \$2.6 million in government compensation (50 per cent from the City of Winnipeg, 40 per cent from the Manitoba government and 10 per cent from the federal government) for his wrongful murder conviction.

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#### Steven Truscott

In 1959, Truscott was sentenced to be hanged at age 14 for a schoolmate's murder, becoming Canada's youngest death-row inmate.

After the original conviction, Steven Truscott spent four months in the shadow of the gallows until his death sentence was commuted to life imprisonment. Paroled in 1969, Truscott disappeared into an anonymous existence in a southern Ontario city.

On Aug. 28, 2007 — 48 years later — the Ontario Court of Appeal unanimously overturned Truscott's conviction and acquitted him, declaring the case "a miscarriage of justice" that "must be quashed."

The judges went on to say, however, that "the court is not satisfied that the appellant has been able to demonstrate his factual innocence."

In July 2008, the Ontario government announced it would pay Truscott \$6.5 million in compensation for his ordeal.



Erin Walsh

It took a jury just one hour to find Walsh guilty of the 1975 second-degree murder of Melvin (Chi Chi) Peters in Saint John, N.B. The prosecution saw it as an open-and-shut case, and Walsh received a life sentence with no parole before 10 years.

Walsh's appeals to the New Brunswick Court of Appeal were dismissed in July and November 1982. In December 2006, however, his lawyers sought a review of the murder conviction from the federal government after new evidence came to light.

In February 2008, Justice Minister Rob Nicholson ordered a review of the murder conviction because of the new evidence, suggesting a miscarriage of justice likely occurred.

A month later, the New Brunswick Court of Appeal acquitted Walsh of the crime and overturned his conviction. Walsh, a native of Ontario who had maintained his innocence for more than 32 years, was dying of colon cancer and wanted his name cleared.