

## Reasons for Exoneration Among Fresh Evidence Cases in Canada

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*To help understand how to correct miscarriages of justice, we analyzed the exculpatory evidence that led to exoneration among Canadian cases of wrongful conviction. Fifty-nine fresh evidence cases were identified and data about each case was collected. We examined three main characteristics of the fresh evidence, including: 1) the availability of the evidence at the time of the original trial (i.e., whether the evidence was discovered after conviction, was not disclosed at the time of trial, or whether there was a new interpretation of the evidence after conviction); 2) the typical features of the evidence (i.e., the evidence type); and 3) who was responsible for initiating the reinvestigation based on this evidence (i.e., the catalyst who brought attention to the evidence that ultimately led to exoneration). We found that in 36% of cases, exculpatory evidence existed at the time of trial, but was not disclosed to defence counsel. In addition, we found that witnesses were the primary type of exculpatory evidence, suggesting witness interviewing may be a fruitful area for investigators to concentrate their efforts. We discuss policy implications in relation to these findings, and how investigators and legal teams might use this information to help guide their reinvestigations in order to more effectively and efficiently remedy wrongful convictions.*

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## I Introduction

On August 12, 1975, a fatal shooting occurred, killing Melvin (“Che Che”) Peters. Two months later, a jury convicted 26-year-old Erin Walsh of second-degree murder. Walsh was sentenced to life in prison. Walsh was innocent—wrongly convicted of a crime he did not commit.

Twenty-eight years after his conviction, Walsh gained access to investigative files that would exonerate him. Critically, those files contained police notes that showed the Crown's two key witnesses had fabricated a story to implicate Walsh in order to divert attention from themselves. There was also a witness statement that had never been shared with the defence that supported Walsh's version of events and implicated the true perpetrator. Finally, an undisclosed ballistics report was located that could have allowed the defence to properly challenge a key expert at trial. On the basis of this new information, the Minister of Justice referred Walsh's case back to the Court of Appeal for a rehearing. This time, the Court found that the lack of disclosure of these essential pieces of evidence led to a grave miscarriage of justice. Had this evidence been known at trial, "...no reasonable jury could convict Walsh of murder."<sup>1</sup> In 2008, Walsh was officially exonerated on the basis of evidence that should have been available to him at the time of trial. Tragically, at 61 years old—only two years after he regained his freedom—Walsh died of cancer.

At the outset of this project, we were interested in the role non-disclosure played in wrongful convictions like that of Erin Walsh. To understand how exonerating evidence could ultimately be discovered, we investigated the common pathways to exoneration in Canada. In this report, we provide an overview of disclosure obligations in Canada, followed by the courses for remedying a wrongful conviction. We review the literature on predictors of wrongful conviction and exoneration, before sharing the findings from the research reported herein. Finally, we discuss the implications of this research in terms of justice policy.

### A. Disclosure Obligations in Canada

Erin Walsh's wrongful conviction demonstrates the consequences of not disclosing potentially exonerating information. Unfortunately, Walsh's case is not an isolated incident. Campbell's (2018)<sup>2</sup> analysis of wrongful convictions in Canada estimated that 30% of cases identified to date involved evidence that was not disclosed to the defence. Among these cases was the 1971 wrongful conviction of Donald Marshall, Jr., which ultimately resulted in the first of Canada's seven public inquiries into cases of wrongful conviction.<sup>3</sup>

Marshall's case involved an altercation between Marshall and three men. During the altercation, one of the men, Roy Ebsary, stabbed and killed Sandy Seale. However, it was Marshall who was the focus of a police investigation and ultimately convicted of murder—sentenced to life in prison, largely based on the testimony of two young and unreliable witnesses. After Marshall's conviction, one of the men involved in the original altercation told police that he had seen Ebsary stab Seale. This police statement was never disclosed to Marshall's defence counsel, and consequently, was never evidence considered by any court. Additional evidence also emerged from Ebsary's daughter who had told the police that on the night of the murder, she had seen her

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<sup>1</sup> *Walsh, Re*, 2008 NBCA 33 [Walsh] at 28.

<sup>2</sup> Kathryn M Campbell, *Miscarriages of Justice in Canada: Causes, Responses, Remedies* (Toronto: University of Toronto Press, 2018) [Miscarriages of Justice].

<sup>3</sup> Royal Commission on the Donald Marshall, Jr., Prosecution, *Digest of Findings and Recommendations* (Nova Scotia: Province of Nova Scotia, 1989) [Royal Commission], online: [https://www.novascotia.ca/just/marshall\\_inquiry/docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution\\_findings.pdf](https://www.novascotia.ca/just/marshall_inquiry/docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution_findings.pdf)

father washing what appeared to be blood off his knife. This information was also never disclosed to the defence.

Based on the significant role that non-disclosure played in Marshall's case, the Commission of Inquiry into Marshall's wrongful conviction made numerous recommendations relating to disclosure policies. Most significantly, the Commission of Inquiry recommended that the Crown's disclosure obligation ought to be legislated. This recommendation has never been implemented.

Following Marshall, the Supreme Court of Canada recognized the devastating impact of non-disclosure in *R. v Stinchcombe* (1991),<sup>4</sup> finding, for the first time, that the Crown has a legal duty to disclose all relevant information to the defence. Significantly, this disclosure obligation includes information "both that which the Crown intends to introduce into evidence and that which it does not, and whether the evidence is inculpatory or exculpatory."<sup>5</sup> Roach (2013) highlighted that this landmark case was likely "the most important reform to prevent wrongful convictions."<sup>6</sup>

Since Marshall, the only other major disclosure development occurred when the B.C. Court of Appeal in *Roberts v. British Columbia (Attorney General)* (2021)<sup>7</sup> recognized the right to disclosure in the post-appeal phase of a criminal case. It held that the duty to disclose exists not only during an investigation and after conviction, but also in the post-appeal period when a convicted individual wishes to apply for conviction review to the Minister of Justice under s. 696.1 of the *Criminal Code*.<sup>8</sup> As will be discussed, this recognition was an important step for identifying miscarriages of justice given that new or "fresh" evidence is generally required for correcting wrongful convictions in Canada.<sup>9</sup>

## **B. Remedying Wrongful Convictions on the Basis of Fresh Evidence**

In Canada, there are three possible courses for remedying a wrongful conviction for an indictable offence. The first course is through the traditional appellate process. This is the route taken when there was no appeal in the first instance: In some situations, the individual may have tried to appeal but did not receive legal aid to do so; in other situations, the individual may have entered a false guilty plea and is now trying to withdraw it on the basis of fresh evidence. After conviction at trial, the individual may appeal to the provincial Court of Appeal on grounds relating to: a) a question of law, b) a question of mixed fact and law, or c) with leave (i.e., permission), any ground the court deems sufficient, including information demonstrating a miscarriage of justice

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<sup>4</sup> *R v Stinchcombe*, 1991 CanLII 45 (SCC) [*Stinchcombe*].

<sup>5</sup> *Ibid* at 327.

<sup>6</sup> Kent Roach, "Canada's False Guilty Pleas: Lessons from the Canadian Registry of Wrongful Convictions," *Wrongful Conv L Rev* 4:1 (2023) 16 [*False Guilty Pleas*], online: <https://wclawr.org/index.php/wclr/article/view/92>

<sup>7</sup> *Roberts v British Columbia (Attorney General)*, 2021 BCCA 346.

<sup>8</sup> *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*], s. 696.1 (QL)

<sup>9</sup> *The Review Process*, online: Department of Justice Canada <<https://www.justice.gc.ca/eng/cj-jp/ccr-rc/proc.html>>; Kent Roach, "Wrongful Convictions in Canada," *U. Cin. L. Rev* 80:4 (2013) 1465 [*Wrongful Convictions*], online: <https://scholarship.law.uc.edu/cgi/viewcontent.cgi?article=1150&context=uclr> [Roach 2013].

occurred.<sup>10</sup> Following a loss in the Court of Appeal, individuals can appeal as of right to the Supreme Court of Canada if the Court of Appeal decision was not unanimous on a point of law. Individuals can apply for leave to appeal to the Supreme Court of Canada after a unanimous decision, based on a question of law or mixed fact and law, or if the court deems the issue in question to be a matter of public importance, such as a miscarriage of justice.<sup>11</sup>

Once an individual has exhausted their rights of appeal, at least to the Court of Appeal,<sup>12</sup> the third opportunity for a wrongful conviction remedy is through an application to the Minister of Justice via the ministerial review process set out under s. 696.1 of the *Criminal Code*.<sup>13</sup> This route requires an individual to apply to the Department of Justice, typically with new information supporting the individual's innocence claim. The Criminal Conviction Review Group at the Department of Justice reviews and investigates applications and makes recommendations to the Minister of Justice. The Minister of Justice then decides whether there is a reasonable basis to believe a miscarriage of justice likely occurred, and refers eligible cases back to the courts for either a new trial or a new appeal.<sup>14</sup>

Although not required in order to overturn a wrongful conviction, successful fresh evidence appeals and applications for ministerial review almost always involve new exculpatory information. At minimum, new information is beneficial, but more often it is necessary to the correction of a wrongful conviction.<sup>15</sup>

Information is considered "new" if it was not before the court at trial or on appeal, and may include information that was only learned after all court proceedings were completed. "Significant" information is any information: 1) reasonably capable of belief, 2) relevant to the issue of guilt, and 3) that could have affected the verdict had it been presented at trial.<sup>16</sup> Thus, new information in a case of wrongful conviction must not have been previously examined at trial and should reliably undermine the evidence that led to the individual's conviction; it may include: (1) information establishing or verifying one's alibi; (2) information that another person has confessed to the crime; (3) information that someone else committed the crime; (4) information that was not disclosed to the defence; (5) new witnesses or experts; (6) information that a witness gave false testimony; (7) information that substantially contradicts testimony given at trial; or (8) the availability of new scientific techniques or a new scientific understanding of a given scientific area.<sup>17</sup>

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<sup>10</sup> *Criminal Code* supra note 8, s. 675(1)

<sup>11</sup> Eg., *R v Hay*, 2013 SCC 61; *Supreme Court Act*, RSC 1985, c S-26, s.38.

<sup>12</sup> See *McArthur v. Ontario (Attorney General)*, 2013 ONCA 668.

<sup>13</sup> On December 17, 2024, *The Miscarriage of Justice Review Commission Act (David and Joyce Milgaard's Law)* received Royal Assent to establish a new, independent commission to review, investigate, and decide which criminal cases should be returned to the justice system due to a potential wrongful conviction. This reform will replace the existing ministerial review process and the role served by the Criminal Conviction Review Group.

<sup>14</sup> *Royal Commission* supra note 3.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

### C. Identifying Wrongful Convictions

To understand factors related to exoneration, it is helpful to first consider how wrongful convictions come about. Much of what is known about wrongful convictions originates from research conducted in the United States, where there have been nearly 3,500 identified wrongful convictions since 1989.<sup>18</sup> Two main advocacy groups contribute to the collection, analysis, and dissemination of information about these wrongful convictions: The Innocence Project (in New York), which assists in exonerating people through scientific advancements such as post-conviction DNA testing, and the National Registry of Exonerations, which tracks and publishes information about both DNA and non-DNA exonerations. In Canada, known wrongful convictions have been most comprehensively documented through the Canadian Registry of Wrongful Convictions, which was established in 2023 and provides updated data, case information, and resources related to wrongful convictions in a Canadian context—to date, 89 cases of wrongful conviction have been identified.<sup>19</sup>

Definitions of a “wrongful conviction” can vary. The relevant literature operationalizes the term differently depending on the context under investigation, and practitioners working in the field may have pragmatic reasons for setting boundaries on their working definition of the term. Consequently, there is a spectrum of theoretical and functional definitions of a wrongful conviction that vary in terms of the breadth of the cases captured. Consistent with the definitions used in Olney and Bonn (2015)<sup>20</sup> and Innocence Canada (2024),<sup>21</sup> for the purposes of this study, we defined a wrongful conviction as when an individual is convicted of a crime they did not commit. This definition is narrower than some as it does not encompass wrongful convictions overturned on the basis of available Charter or other legal defences (e.g., illegal search and seizure; unreasonable delay). It is also narrower in that we refer to only cases where there has been a legal exoneration—meaning that the conviction was overturned by the courts on the basis of new information that retroactively excluded the person from the list of suspects and/or, had the information been presented at the original trial, would have resulted in an acquittal, stay of proceedings, or withdrawal of charges. Conversely, the definition is broader than others as it includes wrongful convictions that were remedied in the course of the initial appeal process as opposed to only those for which the original appeal process had been exhausted.

The true number of wrongful convictions is, arguably, unknowable. Part of the difficulty in identifying the population of wrongful convictions is due to challenges associated with three key areas: obtaining evidence of innocence, the prevalence of false guilty pleas, and the lengthy process of overturning a wrongful conviction.

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<sup>18</sup> 2023 Annual Report, online: The National Registry of Exonerations [*National Registry*] <<https://exonerationregistry.org/sites/exonerationregistry.org/files/documents/2023%20Annual%20Report.pdf>> at 11.

<sup>19</sup> *Wrongful Convictions Data Visualized*, online: Canadian Registry of Wrongful Convictions [*Canadian Registry*] <<https://www.wrongfulconvictions.ca/data>>

<sup>20</sup> Maeve Olney & Scott Bonn, “An Exploratory Study of the Legal and Non-Legal Factors Associated With Exoneration for Wrongful Conviction: The Power of DNA Evidence” (2014) 26:11 *Criminal Justice Policy Review*, 400-420 (QL) [Olney & Bonn].

<sup>21</sup> *Path to Exoneration*, online: Innocence Canada <<https://www.innocencecanada.com/the-legal-path-to-exoneration/>>

Typically, correcting wrongful convictions necessitates access to new and compelling exculpatory evidence, which can be challenging for individuals to locate.<sup>22</sup> For instance, obtaining exculpatory evidence may depend on chance occurrences such as witnesses or true perpetrators coming forward, or the advancement of science and technology.

Further complicating the issue of identifying wrongful convictions is the fact that an estimated 18% to 25% of known wrongful convictions in Canada and the U.S. involved a false guilty plea.<sup>23</sup> It is likely that many false guilty pleas are entered out of fear of being disadvantaged in court, in an attempt to avoid conviction for a more serious offence, or to avoid a longer sentence.<sup>24</sup>

Given that correcting a wrongful conviction is typically a lengthy process, exoneration efforts tend to focus on individuals serving long sentences for violent crimes (e.g., murder, sexual assault). Violent crimes are also more likely to involve evidence such as DNA that could possibly be retested in a wrongful conviction investigation.<sup>25</sup> Accordingly, individuals charged with certain types of crimes are more likely to apply for and be successful in their conviction review applications. For these reasons, it is highly likely that many wrongful convictions remain undiscovered.

#### **D. Predictors of Wrongful Conviction Versus Exoneration**

The literature has identified several factors that consistently contribute to known wrongful convictions, including: unreliable eyewitness evidence, tunnel vision, jailhouse informants, witness perjury, flawed forensic science, false confessions, prosecutorial and police misconduct, and inadequate disclosure. These predictors of wrongful conviction can also be considered a result of four types of failures.<sup>26</sup> First, *investigative corruption* describes cases that are compromised by authorities abusing their powers in blind pursuit of the “truth” (e.g., false confession cases resulting from coercive interrogation techniques). Second, *failures to investigate* characterize cases where greater scrutiny or more stringent practices could have changed the outcome (e.g., cases involving ineffective assistance of counsel and cases that relied upon flawed and unreliable forensic evidence). Third, *witness mistakes* commonly involve unintentional but significant errors (e.g., mistaken eyewitness identification). And fourth, *intentional errors* reflect cases in which deliberate acts contribute to wrongful convictions (e.g., perjury, false accusations, and official misconduct).

However, the factors that cause wrongful convictions are not always the same factors that contribute to overturning the wrongful conviction (i.e., the exoneration). For instance, an

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<sup>22</sup> *Wrongful Convictions* *supra* note 9 at 1525.

<sup>23</sup> *Canadian Registry* *supra* note 19; *National Registry* *supra* note 18; *False Guilty Pleas* *supra* note 6.

<sup>24</sup> *False Guilty Pleas* *supra* note 6 at 26.

<sup>25</sup> *Ibid* at 26-27; *Miscarriages of Justice* *supra* note 2; Emily West & Vanessa Meterko, “Innocence Project: Dna Exonerations, 1989-2014: Review Of Data And Findings From The First 25 Years” (2016) 79:3 Albany Law Review, 719-795, online: <<https://www.albanylawreview.org/article/70125-innocence-project-dna-exonerations-1989-2014-review-of-data-and-findings-from-the-first-25-years>> at 721.

<sup>26</sup> Ryan Berube et al, “Identifying Patterns Across the Six Canonical Factors Underlying Wrongful Convictions” (2023) 3:3 Wrongful Conviction L Rev 166.

individual wrongly convicted based on an unreliable eyewitness (the contributing factor to the wrongful conviction) may have been exonerated based on DNA evidence (the contributing factor to the exoneration). Therefore, to help correct miscarriages of justice, it is important to understand the factors related to exoneration above and beyond the predictors of wrongful conviction.

Relative to the literature on predictors of wrongful convictions, research on reasons for exoneration is sparse. Most published research has focused on the specific role of DNA evidence in exonerations (e.g., Olney & Bonn<sup>27</sup> and Saber et al<sup>28</sup>). However, as shown in Olney and Bonn (2015),<sup>29</sup> DNA was a crucial factor for only 34% of the exonerations in their sample, leaving 66% of other exonerating factors unknown.

Scherr and Dror<sup>30</sup> identified four characteristics related to reasons for exoneration that can help inform the understanding of how to correct wrongful convictions. These characteristics included: 1) confessions by the actual perpetrator, 2) new forensic evidence analysis, 3) new non-forensic evidence, and 4) advocacy by legal defence organizations. Although not an exhaustive list of exonerating factors, these identified areas offer a starting point to consider potentially relevant factors in uncovering wrongful convictions, including the common types of fresh evidence or new information that is likely to be used, and how that information comes to the attention of the courts.

### E. The Current Study

Providing fresh evidence is often essential to successfully correcting a wrongful conviction in Canada.<sup>31, 32</sup> Indeed, data from the Canadian Registry of Wrongful Convictions<sup>33</sup> shows that fresh evidence was involved in overturning 81% of wrongful convictions. Therefore, understanding how to discover and access this evidence is critically important to researchers, advocates, and policymakers who strive to uncover and prevent miscarriages of justice. To our knowledge, there has been no systematic or comprehensive review of how fresh evidence is typically discovered in known cases of wrongful conviction—to fill this gap and provide insight into how wrongful conviction cases might be prevented, identified, and corrected, we conducted an in-depth analysis of the factors related to exoneration among cases of wrongful conviction in Canada. We investigated three main characteristics of the fresh evidence involved in each case, including: 1) the availability of the evidence at the time of the original trial; 2) the typical features of the evidence; and 3) who was responsible for initiating the reinvestigation based on this evidence.

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<sup>27</sup> Olney & Bonn, *supra* note 20 at 400.

<sup>28</sup> Mark Saber et al, “Exonerating DNA Evidence in Overturned Convictions: Analysis of Data Obtained From the National Registry of Exonerations” (2022) 33:3 *Crim Justice Pol’y Rev* 256.

<sup>29</sup> Olney & Bonn, *supra* note 20 at 408.

<sup>30</sup> Kyle C Scherr & Itiel Dror, “Ingroup biases of forensic experts: Perceptions of wrongful convictions versus exonerations” (2020) 27:1 *Psychology Crime & L* 89 [Scherr & Dror].

<sup>31</sup> Department of Justice, “The Review Process” (last modified 7 July 2021), online: <justice.gc.ca> [https://www.justice.gc.ca/eng/cj-jp/ccr-rc/proc.html].

<sup>32</sup> Roach 2013, *supra* note 9 at 1465.

<sup>33</sup> Canadian Registry, *supra* note 19.



## II Method

### A. Case Identification

To locate known Canadian cases of wrongful convictions, in 2018 we were provided access to information via three main sources. First, the University of British Columbia Innocence Project provided a list from their records of Canadian exonerations. This list included 50 case names accompanied by a summary of each case.

The second source for identifying wrongful convictions was Innocence Canada, which has helped to exonerate 29 individuals since 1993. For each of these cases, Innocence Canada's website included a summary of the case.<sup>34</sup>

Third, Campbell's (2018) book<sup>35</sup> included 70 known and 13 suspected cases of wrongful conviction. The book contained case information including the primary factors that contributed to the wrongful convictions. Between these three sources, we identified 70 cases of wrongful conviction available for further analysis.

### B. Procedure

For the 70 wrongful convictions in Canada that were identified, we conducted a systematic search to obtain the most comprehensive information available about each case. This process occurred in three waves that corresponded to three general processes for ensuring reliability when coding the cases: In Wave 1, two coders reached agreement using a bank of collected information; In Wave 2, coded data were verified by a legal professional; and, in Wave 3, coded data were verified using information from the newly-available Canadian Registry of Wrongful Convictions. These three waves of data collection are described in more detail below.

#### i. Wave 1

In the first wave, we obtained case information from the UBC Innocence Project, Innocence Canada, and Campbell (2018).<sup>36</sup> In addition, we searched the Quicklaw and CanLii databases for court records and legal documents related to these cases. This included judicial decisions at the provincial, appellate, and Supreme Court of Canada levels. We also searched the Canadian Newsstream database for any publications (e.g., newspapers, magazines, etc.) across Canada that mentioned the name of the exoneree.

Members of the research team then used this bank of information to record the variables of interest. Two coders from the research team recorded data for a random selection of cases from the initial pool of 70 wrongful convictions. Once each coder completed up to five cases, they exchanged data and verified each other's coding. In total, 29 cases were coded by two members of the research team, and disagreements were discussed until all codes were agreed upon.

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<sup>34</sup> Innocence Canada, "Exonerations" (last visited 29 April 2025) online: <innocencecanada.ca> [https://www.innocencecanada.com/exonerations/].

<sup>35</sup> *Miscarriages of Justice*, *supra* note 2.

<sup>36</sup> *Ibid.*

## **ii. Wave 2**

In the second wave of data collection, we contacted individuals directly involved in the exonerations who had intimate knowledge of or access to case information in order to verify/revise the data coded by the research team in Wave 1. With the assistance of the UBC Innocence Project, we located the contact information for legal counsel involved in the post-conviction review process for 46 cases; in the remaining cases, counsel were no longer practicing, deceased without an available co-counsel, or could not be located. The Director of the UBC Innocence Project sent an introductory email to the legal counsel, requesting participation in the study. Up to two reminder emails were sent between September 2021 and March 2022.

Five lawyers responded to these emails and participated in an interview, providing verification for 5 unique cases. In addition, a staff member of Innocence Canada with access to the files of 15 additional cases provided verification of those 15 cases. Before each interview, two members of the research team agreed on the coding of the relevant case (variables of interest are described in more detail, below). This information was then listed in a table under three main headings: a brief summary of the case, factors that contributed to the wrongful conviction, and each piece of exculpatory evidence that supported the exoneration. In advance of the interview, all interviewees received a copy of the table that included a space to declare when and how each piece of exculpatory evidence was discovered. To minimize bias, when and how the research team believed the exculpatory evidence was discovered was discussed between researchers but was not entered into the table. The interview occurred either by email communication, telephone, or in a virtual meeting via Zoom. Telephone and Zoom interviews lasted approximately 20 minutes.

In total, 20 of the 29 cases coded by two members of the research team received third-party verification from legal counsel or staff. Among these cases, there were no coding errors or inconsistencies, but, in two instances, legal counsel clarified which exculpatory evidence was directly relied upon in the exoneration. For example, in a case involving fresh evidence that included both new witness testimony and an audio recording, the wrongful conviction was overturned based on the audio recording only. That is, third-party verification confirmed that coding by researchers was accurate, and offered additional precision in understanding the exonerating evidence.

## **iii. Wave 3**

In the third wave of data collection, we obtained additional information about the remaining cases from the Canadian Registry of Wrongful Convictions (the “Registry”).<sup>37</sup> Thirty cases were coded by one of the original coders of the research team using the case information from Wave 1. Then, coding of these cases was verified with information from the Registry.

Because the Registry was first launched in 2023 following the first two waves of our data collection, it contains more cases than we had access to when data collection began. Thus, our sample is a subset of what is included in the Registry.

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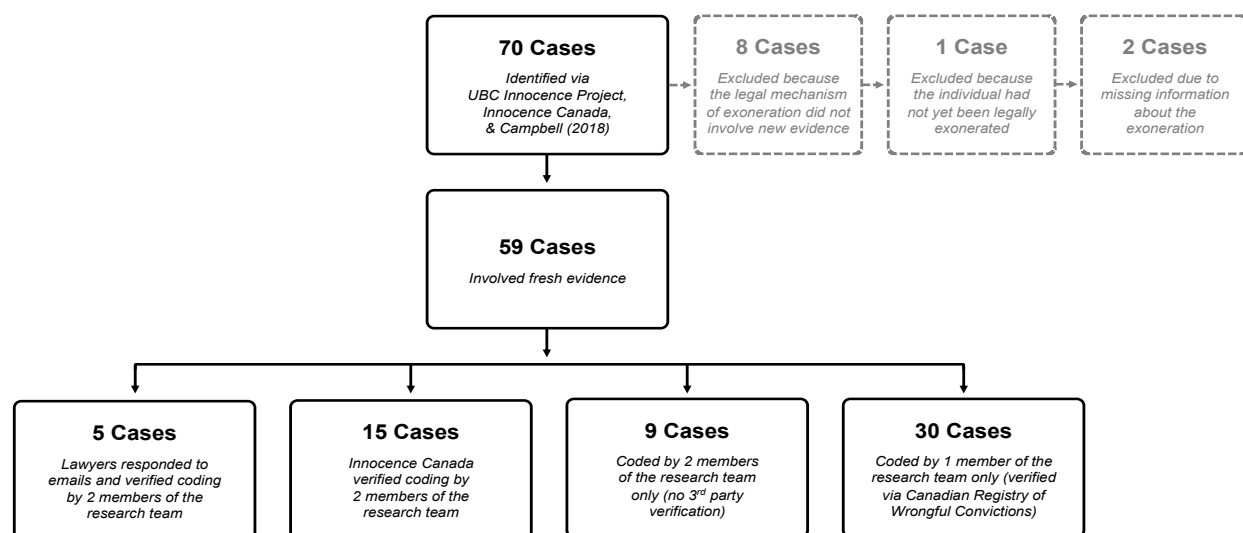
<sup>37</sup> *Canadian Registry*, *supra* note 19.

### C. Sample

To summarize, for each case, we had data that came from seven sources across three waves. In Wave 1: 1) UBC Innocence Project case summaries, 2) the Innocence Canada website of exonerations, 3) Campbell's (2018) book, 4) judicial decisions, and 5) Canadian news reports / media. In Wave 2: 6) qualitative interview data from legal professionals. And, in Wave 3: 7) case information from the Registry.

Our aim was to describe the variables of interest for all known cases of wrongful convictions in Canada that involved fresh evidence. Because we were interested in the role of fresh evidence in the exoneration, we only included cases from the initial pool of wrongful convictions: 1) that were overturned based on fresh evidence, and 2) in which the wrongly convicted individual had been exonerated at the time of data collection. Of the 70 cases that were initially identified, 8 were excluded because the legal mechanism used to overturn the wrongful conviction was not based on fresh evidence, and 3 cases were excluded because the convicted individual either had not been officially exonerated at the time of data collection or case information was unavailable, providing a final sample of 59 cases.<sup>38</sup> A diagram of the coding flow for all 70 cases is shown in Figure 1.

**Figure 1:** Case Selection and Flow



*Note.* Diagram of the case flow, showing that of the 59 cases involving fresh evidence, 20 were triple coded (2 research team members and legal counsel/staff), 9 were double coded (2 research team members), and 30 were single coded (1 research team member).

<sup>38</sup> The Jillian Anderson, Nelson Hart, Jason Hill, Steven Jones Kelly, Cody Klyne, Allan Miaponoose, Corey Robinson, and Thomas Sophonow cases were all excluded from analysis because the legal mechanism by which the wrongful convictions were overturned was not based on fresh evidence. The Walter Gillespie & Robert Mailman case (exonerated December 2023) was also excluded because, at the time of data collection, they had not been officially exonerated. The Benoit Proux, and Richard Mallory & Robert Stewart cases were excluded for lack of information about the exoneration.

## D. Variables of Interest

The following categories of information were coded for each case in our sample.

### i. Case summary information

This included a brief overview of the facts of the case, including the circumstances of the offence, the people involved, the evidence leading to conviction, and the evidentiary or procedural issue(s) contributing to the wrongful conviction. Ten classes of factors that contributed to the wrongful conviction were identified in Campbell (2018)<sup>39</sup> and included: 1) Erroneous judicial instructions; 2) Fabricated, erroneous, or unreliable eyewitness identification; 3) Failure to disclose evidence; 4) False confessions; 5) Mistaken or problematic witness or complainant testimony; 6) Overzealous or malicious prosecution; 7) Poor legal representation; 8) Problematic police investigation or police misconduct; 9) Racial prejudice; and 10) Unreliable co-accused testimony or jailhouse informant testimony.

### ii. Dates

We identified the year of the charge(s), the conviction(s), and the exoneration for each case.

### iii. Exculpatory evidence

We recorded each unique or distinct piece of evidence that supported the accused's exoneration. To be as comprehensive as possible, we included any information that was exculpatory, but recognize the possibility that not all evidence was relied upon by the exonerating judge to overturn the conviction. Exculpatory evidence could include, for example, new forensic evidence such as DNA, new or recanted witness statements, and confessions from the true perpetrator. Each piece of evidence was then coded in the following manner:

**1) Fresh evidence availability status.** For each piece of exculpatory evidence in the case, we categorized the availability of the fresh evidence. This categorization included one of three classifications based on when the evidence was discovered:

**(a) New evidence discovered after conviction.** This described evidence that was unknown at the time of conviction, meaning it came to light only after the conviction occurred. Examples of fresh evidence in this category included a confession from the true perpetrator or a recanted witness statement.

**(b) A new interpretation of evidence.** This described evidence that existed but was not fully understood at the time of conviction. Importantly, to be classified as a new interpretation, the evidence itself did not change between the trial and exoneration; rather, the opinions about the evidence changed. For instance, the evidence at trial might only have become interpretable due to a change or improvement in technology or knowledge (e.g., DNA evidence that was found at the

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<sup>39</sup> *Miscarriages of Justice*, *supra* note 2.

time of the original trial, but could not be analyzed due to the limits of the technology at the time, or where scientific understanding changed over time).

**(c) Evidence that was available but not disclosed.** Finally, this described both evidence that existed at the time of trial but that was not shared with the defence, and exculpatory evidence that became available after conviction and was not disclosed to the wrongly convicted individual.<sup>40</sup> This could include police reports and notes, original witness statements, physical evidence, etc.

**2) Fresh evidence type.** For each piece of exculpatory evidence, we classified it as one of 7 mutually exclusive types of evidence:

**(a) Alternative suspects.** When the evidence attributed commission of the crime to another person, it was coded as alternative suspect evidence. For example, another individual was arrested, charged, or convicted of the crime originally attributed to the wrongly convicted individual. It included confessions or admissions of guilt made by the true perpetrator.

**(b) DNA.** Forensic science evidence specifically involving DNA was assigned to its own category.

**(c) Forensic science.** This included any information other than DNA (which was coded separately) requiring a forensic science expert to interpret. Examples included pathology, handwriting, blood spatter, ballistics evidence, etc. that was accompanied by an expert whose testimony or opinion was needed for interpretation of that evidence.

**(d) Incentives or intimidation.** This included any form of bribery in which a witness was compensated, or promised compensation, in exchange for testimony (e.g., sentence leniency, monetary gains). It also included threats made to witnesses.

**(e) Misconduct.** This included any misconduct related to the investigation (e.g., biased, flawed, or erroneous investigative practice), overzealous prosecution, or ineffective assistance of counsel. In these cases, the misconduct contributed to the court not having the opportunity to consider reliable or exculpatory evidence.

**(f) New witness statements.** This included post-conviction information that came directly from a person with information relevant to the case, such as: new witness testimony or eyewitness identifications, changed witness statements (e.g., recantations), jailhouse informant statements, etc. However, if records of exculpatory witness evidence from the time of the original investigation were found, for example, it was coded as other exculpatory documentation.

**(g) Other exculpatory documentation.** This included documents, materials, and records that had been preserved from the time of the original investigation. For example, police or Crown notes and reports, wiretaps, and exhibits that contained potentially exculpatory information (e.g., notes from an interview with a witness, a witness's original written statement, or audio recording

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<sup>40</sup> Because disclosure obligations extend beyond trial (see *Roberts v British Columbia (Attorney General)*, 2021), this category includes evidence that became available post-conviction but was not shared with the relevant party.

of a conversation between two witnesses). If the evidence came directly from a witness in the course of a new trial or fresh evidence appeal, it was coded as new witness statements.

**3) Catalyst who initiated the reinvestigation.** For each case, we sought information related to who discovered the fresh evidence and when the fresh evidence was first discovered (e.g., through a post-conviction file review by defence counsel). To help in the coding of this variable, we considered the role of the catalyst in the subsequent chain of events or pathway to exoneration. That is, had the catalyst not been involved, would an exoneration have occurred at that point in time? With the available information, we classified the catalysts into four categories:

**(a) Exoneree / counsel:** Post-conviction advocacy efforts by, or on behalf of, the wrongly convicted led to the discovery of exculpatory evidence.

**(b) Crown or police:** The Crown or police discovered and brought forward exculpatory evidence.

**(c) Neutral body:** A third, independent party initiated a reinvestigation (e.g., an appointed task force or Commission of Inquiry) that led to the discovery of exculpatory evidence.

**(d) Witness or perpetrator:** A witness or the true perpetrator came forward on their own with exculpatory evidence.

### III Results

#### A. Analytic Approach

Three main research questions were posed: 1) When did the exculpatory evidence become available; 2) What were the features of the exculpatory evidence; and 3) Who was the catalyst that initiated the reinvestigation? Each piece of exculpatory evidence is described in Appendix A. The coded case data corresponding to each of the research questions is shown in Appendix B. We explored each of the three research questions by first analyzing all unique pieces of exculpatory evidence related to exoneration, and then by analyzing the subset of cases that involved non-disclosure of evidence.

#### B. Characteristics of All Exculpatory Evidence

Across 59 fresh-evidence cases of exonerated individuals, there were 109 unique pieces of exculpatory evidence. On average, each case contained between 1 and 2 (ranging from 1–6) pieces of exculpatory evidence.

##### i. Availability of the Exculpatory Evidence

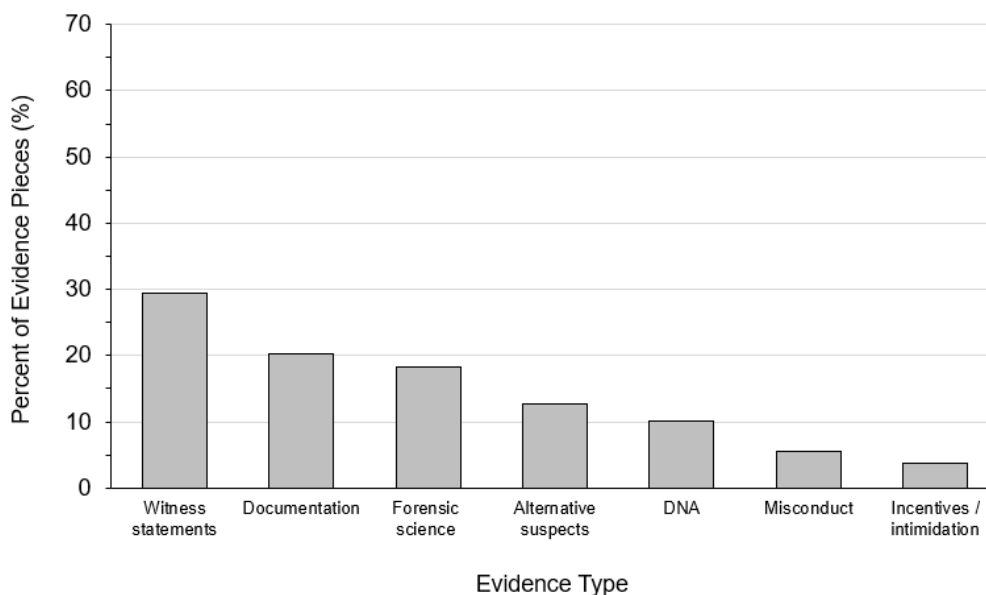
Of the 109 unique pieces of exculpatory evidence, 46% ( $n = 50$ ) were unavailable at the time of the original trial (i.e., they were only discovered after conviction). Twenty-nine percent ( $n = 32$ ) of the pieces of evidence were available at trial, but had not been disclosed to defence. The remaining 25% ( $n = 27$ ) of evidence was available at trial, but not properly understood at the time (i.e., there was a change in the interpretation of the evidence after conviction).

Next, examining the proportion of cases ( $N = 59$ ) based on the availability of at least one<sup>41</sup> piece of evidence in each case, 58% ( $n = 34$ ) of the cases contained at least one piece of evidence that was discovered after conviction. Thirty-nine percent of the cases ( $n = 23$ ) included at least one piece of evidence that had a new interpretation after conviction. Thirty-six percent ( $n = 21$ ) of the cases included at least one piece of evidence that had not been disclosed.

## ii. Features of the Exculpatory Evidence

The most common types of exculpatory evidence across the exoneration cases are illustrated in Figure 2. Just over 90% of the exculpatory evidence was accounted for by five evidence types: new witness statements (29%,  $n = 32$ ), exculpatory documentation (20%,  $n = 22$ ), forensic science (18%,  $n = 20$ ), alternative suspects (13%,  $n = 14$ ), and DNA (10%,  $n = 11$ ). Misconduct accounted for 6% ( $n = 6$ ) and incentives/intimidation accounted for 4% ( $n = 4$ ) of all evidence.

**Figure 2:** Percent of Each Evidence Type Across All Pieces



## iii. Catalyst Who Initiated the Reinvestigation

To determine how often each body initiated the reinvestigation of a case that ultimately led to exoneration, we compared the proportion of all cases initiated by each catalyst type. Post-conviction advocacy efforts initiated by the exoneree and their counsel were most common, accounting for 53% ( $n = 31$ ) of the reinvestigations. A witness or perpetrator who came forward accounted for 19% ( $n = 11$ ) of reinvestigations. A neutral body accounted for 17% ( $n = 10$ ) of reinvestigations. The remaining 12% ( $n = 7$ ) of reinvestigations were initiated by the Crown or police. Details about the catalyst for each case are available in Appendix B.

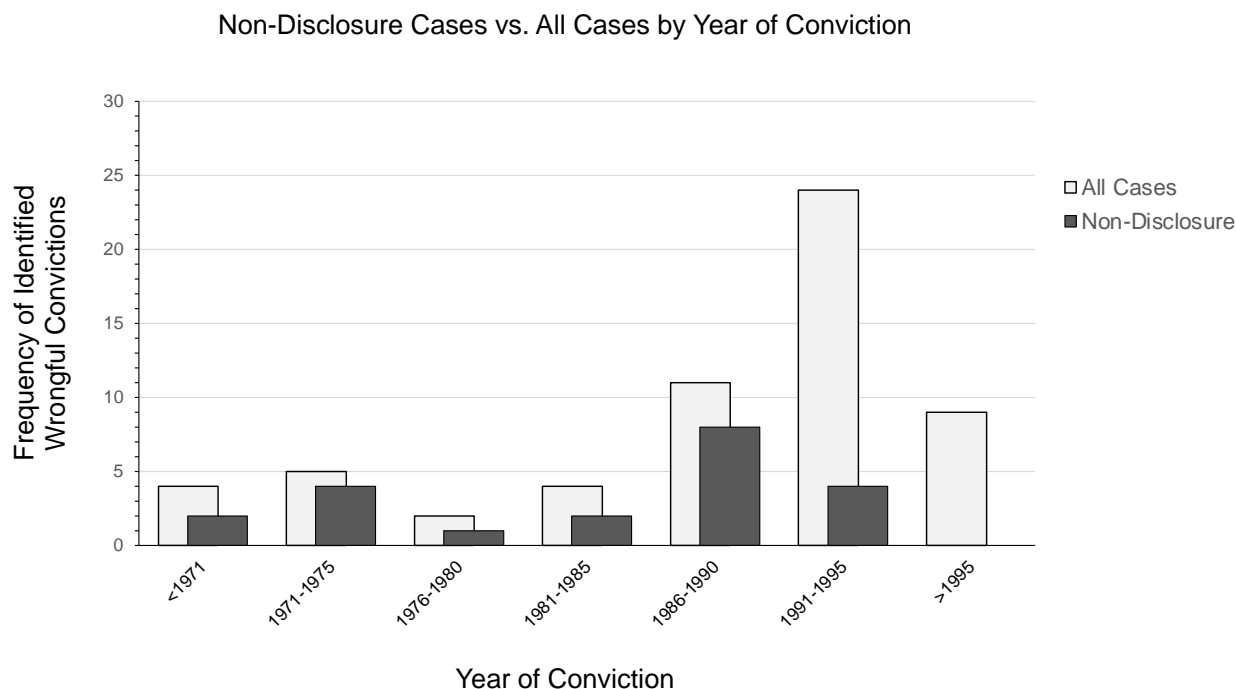
<sup>41</sup> Because cases could involve more than one piece of evidence, percentages do not add up to 100%.

## C. Characteristics of Cases Involving Non-Disclosed Evidence

### i. Availability of Evidence by Year of Conviction

Of the 59 exoneration cases, 21 cases (36%) had at least one piece of evidence that was not disclosed at trial. To visualize when these wrongful convictions occurred, the frequency of cases was plotted by year of conviction (Figure 3). To show the proportion of non-disclosure cases over time, the total number of non-disclosure cases were plotted next to the total number of cases (overall) within each time interval. The greatest proportion of non-disclosure cases occurred between 1971 and 1975 (80%,  $n = 4$ ). No non-disclosure cases occurred after 1995, with the next smallest proportion occurring between 1991 and 1995 (17%,  $n = 4$ ).

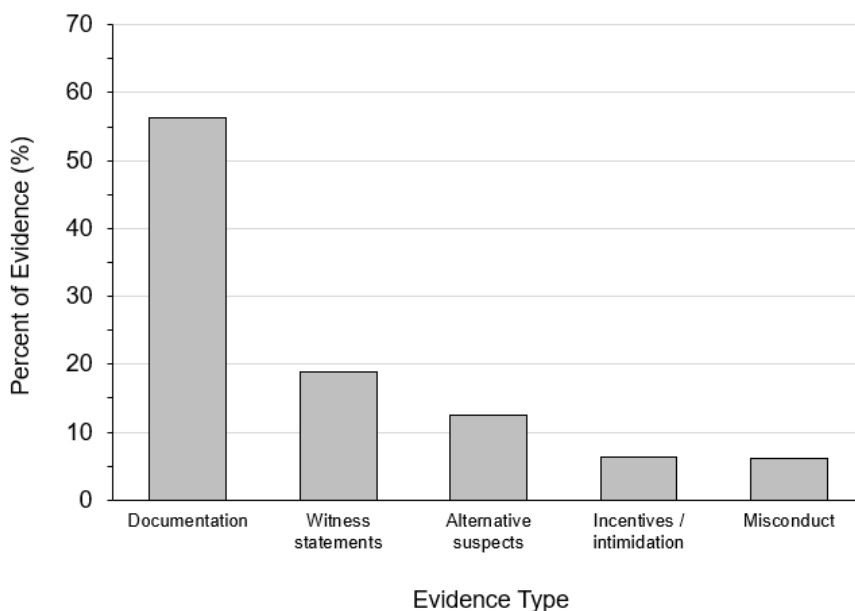
**Figure 3:** Frequency of Cases Involving Non-Disclosure Compared to Total Number of Cases at Year of Conviction



### ii. Features of Non-Disclosed Evidence

To determine the most common types of evidence that was not disclosed at trial, we depicted the relative proportion of each evidence type in Figure 4. Exculpatory documentation (56%,  $n = 19$ ), new witness statements (19%,  $n = 6$ ), and alternative suspects (13%,  $n = 4$ ) accounted for 88% of the non-disclosed evidence. Incentives/intimidation ( $n = 2$ ) and misconduct ( $n = 2$ ) each accounted for 6% of the evidence.



**Figure 4:** Percent of Each Non-Disclosed Evidence Type

### iii. Catalyst Who Initiated the Reinvestigation

We first analyzed the proportion of non-disclosure cases initiated by each body. Of the 21 non-disclosure cases, most were reinvestigated due to efforts made by the exoneree and their counsel (52%,  $n = 11$ ), or a witness or perpetrator coming forward (19%,  $n = 4$ ). The reinvestigations of the remaining cases were initiated equally by a neutral body or the Crown/police (14%,  $n = 3$  for both catalyst types).

Next, we analyzed the proportion of reinvestigations initiated by each catalyst type that were non-disclosure cases. Of the 31 reinvestigations initiated by the exoneree and their counsel, 35% ( $n = 11$ ) involved non-disclosure. Of the 11 reinvestigations initiated because a witness or perpetrator came forward, 36% ( $n = 4$ ) involved non-disclosure. Of the 10 reinvestigations initiated by a neutral body, 30% ( $n = 3$ ) involved non-disclosure. And, of the 7 reinvestigations initiated by the Crown or police, 43% ( $n = 3$ ) involved non-disclosure.

## IV Discussion

To date, much of the research on wrongful convictions has focused on the factors contributing to the wrongful conviction itself—in particular, among cases in the United States. Although this is necessary for building an understanding of how wrongful convictions occur, the present research complements those efforts by addressing a neglected area: factors related to correcting wrongful conviction cases in Canada. Specifically, our aim was to better understand the evidence that led to exoneration in a Canadian context, in order to help criminal justice advocates effectively uncover and remedy wrongful convictions. In this discussion we address each of our research questions and their implications in turn.

## **A. Understanding the Availability of Exculpatory Evidence at the Time of Trial**

### **i. Police Investigations are Essential to Locating Exculpatory Evidence**

Highlighting the importance of the initial investigative process in preventing wrongful convictions, we found that the majority of the exculpatory evidence that ultimately led to an exoneration was discovered after conviction; nearly 60% of cases involved at least one piece of evidence that existed at the time of trial but had not been located by investigators before the wrongful conviction occurred. Thus, continually improving the quality of police investigations is critical to the discovery of valuable information before a case goes to trial.

### **ii. It is Necessary to Ensure Proper Disclosure**

We found that non-disclosure accounted for 36% of wrongful conviction cases. This statistic was higher than the 30% found in Campbell (2018) but may be explained by our smaller sample size that investigated fresh evidence exonerations only.<sup>42</sup> Examining non-disclosure cases over time revealed that the proportion of non-disclosure cases dramatically decreased in the early 1990s. This could be due to several factors. First, most of the exonerations in the current data involved convictions from the late 1980s and early 1990s. Although some of the wrongful convictions that occurred after this date may not have yet been uncovered, a reduction of non-disclosure cases corresponds to the landmark Supreme Court of Canada case, *R. v. Stinchcombe* (1991), in which the Court outlined the Crown's legal obligation to provide defence with all evidence that could possibly be relevant to the case.<sup>43</sup> And although it was promising to see a reduction in non-disclosure cases post-Stinchcombe, that disclosure failures continue to occur at all demonstrates inadequate compliance with the Crown's duty to disclose.

### **iii. Experts Must Stay Informed of Advancements in Science**

Nearly 40% of cases we studied involved at least one piece of evidence classified as a new interpretation. However, further exploration showed that this percentage should be interpreted with caution. The wrongful convictions occurring between 1991 and 1995 align with an abundance of cases involving flawed expert evidence delivered by now-discredited pediatric pathologist, Charles Smith. A review of 45 forensic pathology cases involving Smith between 1991-2002 demonstrated problematic interpretations of evidence in 20 of those cases—12 of which resulted in criminal convictions.<sup>44</sup> Notwithstanding the cases involving Smith, the number of exonerations involving a new interpretation of evidence speaks to the prevalence with which scientific understanding and knowledge changes over time. These findings highlight the burden on forensic experts to remain abreast of the most up-to-date science in their discipline.

Taken together, understanding the availability of the exculpatory evidence emphasizes the need for investigators and legal teams to improve initial investigations in order to appropriately assess all of the available evidence at the time of trial. In 78% of all cases, the wrongful conviction was avoidable; that is, the exculpatory evidence existed at the time of the original trial, it had just not been found (i.e., it was discovered after conviction), or was found but was not shared with the

<sup>42</sup> *Miscarriages of Justice*, *supra* note 2.

<sup>43</sup> *Stinchcombe*, *supra* note 4.

<sup>44</sup> Stephen Goudge, *Inquiry into Pediatric Forensic Pathology in Ontario*, (Ontario: Province of Ontario, 2008).

defence team (i.e., it was not disclosed). In the public inquiry into Donald Marshall's wrongful conviction, it was likewise emphasized:

The tragedy of the failure is compounded by evidence that this miscarriage of justice could have and should have been prevented if persons involved in the criminal justice system had carried out their duties in a professional and/or competent manner.<sup>45</sup>

## **B. Understanding the Features of the Exculpatory Evidence**

### **i. Lay Witnesses are Critical to Exonerations**

Our examination of evidence types revealed that nearly 30% of all exculpatory evidence came directly from lay witnesses—the most common type of exculpatory evidence. Further, the vast majority of the evidence coded as exculpatory documentation related to undisclosed witness statements made around the time of the original investigation and trial. These findings have three important implications for effectively correcting wrongful convictions. First, (re)interviewing witnesses could be an effective use of resources when reinvestigating a case. Second, police agencies should improve investigative processes to uncover evidence during the initial investigation. Third, on post-conviction review, it is imperative that counsel have access to case files that may contain witness evidence that was not previously disclosed or not previously presented to the court.

### **ii. Exculpatory DNA Testing Is Not a Common Factor in Exonerations**

DNA accounted for 10% of the exonerations in our sample—markedly lower than some statistics reported in the United States.<sup>46</sup> This finding is also in contrast to Scherr and Dror (2020) who found that forensic experts believed forensic analysis was a greater contributor to exoneration than to wrongful conviction.<sup>47</sup> Although we did not examine predictors of wrongful conviction specifically, 27% of our sample involved factors related to forensic analysis that contributed to the wrongful conviction, as identified in Campbell (2018).<sup>48</sup> When examining the features of undisclosed evidence, we did not find undisclosed forensic science or DNA. This was not surprising as, to the extent that forensic science (including DNA) contributes to the wrongful conviction, we would expect this type of evidence to be disclosed given that it typically requires the testimony of an expert at trial.

## **C. Understanding the Catalyst Who Initiated the Reinvestigation**

### **i. Post-Conviction Advocacy Drives Exonerations**

Our study revealed that post-conviction advocacy efforts are an essential driver in remedying wrongful convictions, accounting for almost 4 times as many exonerations as any of the other catalysts. With more than half of reinvestigations initiated by an exoneree and/or their

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<sup>45</sup> *Royal Commission*, *supra* note 3.

<sup>46</sup> See e.g. *Olney & Bonn*, *supra* note 20.

<sup>47</sup> *Scherr & Dror*, *supra* note 30.

<sup>48</sup> *Miscarriages of Justice*, *supra* note 2.

counsel through post-conviction review efforts, correcting wrongful convictions is unlikely without sustained efforts made on behalf of the wrongly convicted. This finding speaks to the need to support advocates for the wrongly convicted through: 1) funding for organizations involved in wrongful conviction work, 2) compliance with and enforcement of legal obligations such as the duty to disclose, and 3) access to case information, including in the post-appeal stage of proceedings.

#### **D. Limitations and Future Research**

Although our research was comprehensive, including almost all of the known exonerations in Canada at the time the research was initiated, this analysis is not exhaustive of wrongful convictions, generally. The prevalence of wrongful convictions is perhaps impossible to quantify, and there are certainly more wrongful convictions than those that have been identified to date. Inherent to this underestimation of prevalence is a possible selection bias among known exonerations. Because the vast majority (97%) of our sample involved violent crimes (e.g., homicide, sexual assault, aggravated assault), our findings may not generalize to exonerations in other types of cases—in particular, those that do not involve violence against the person.

In addition, all cases in this report used legal mechanisms that relied on fresh evidence to overturn the conviction. It would be helpful to the field to understand factors related to exonerations among non-fresh evidence cases as well. We recommend that future research explore the qualities and characteristics related to exoneration in an array of case types that have used different legal processes to overturn wrongful convictions.

The impetus for this research was to better understand the impact of disclosure practices on wrongful conviction and exoneration, which is why we focused on the non-disclosed subset of evidence. Future research might consider investigating other subsets of exculpatory evidence and their features (e.g., the types of evidence discovered after conviction, or the types of evidence that involved a new interpretation). For instance, more closely analyzing forensic science evidence that required an updated interpretation could reveal areas of evidence requiring more stringent admissibility guidelines or greater research attention as a field in order to develop the scientific knowledgebase.

#### **E. Conclusion**

The primary contribution of this research is the discovery of factors that led to exoneration in a sample of Canadian wrongful conviction cases. Foremost, this in-depth analysis provides valuable information for remedying wrongful convictions by discovering the common characteristics of evidence that leads to exoneration. It also highlights how undisclosed evidence can contribute to miscarriages of justice, emphasizing the need for post-conviction review bodies to have access to the full range of investigative files in order to locate the fresh evidence necessary to exonerate wrongly convicted individuals. Accordingly, guidelines and recommendations for evidence preservation should also be considered in order to ensure continued access to potentially exonerating evidence.

Like all wrongful convictions, these 59 cases involve failings of the criminal justice system. The current research highlights that many of these miscarriages of justice could have been avoided had more stringent investigative procedures occurred. Former Chief Justice of the Supreme Court of Canada, Beverley McLachlin, wrote: “We no longer believe that the traditional common law and constitutional safeguards, vital as they remain, are sufficient by themselves to deal with the complex problem of wrongful convictions”.<sup>49</sup> The former Chief Justice’s insight echoes the need to understand, not only how to prevent wrongful convictions, but how to correct wrongful convictions when they occur. To this end, both preventative and remedial approaches to wrongful convictions are urgently needed.

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<sup>49</sup> Beverly McLachlin, “Wrongful Conviction Law Review” (2020) 1:1 WCLR at 1.

## V Appendix A

### Classifications of 109 Fresh Evidence Pieces

Fresh Evidence Type	Definition	Case Examples
1. Alternative suspects	When the evidence attributed commission of the crime to another person. For example, another individual was arrested, charged, or convicted of the crime originally attributed to the wrongly convicted individual. It includes confessions or admissions of guilt made by the true perpetrator.	<ul style="list-style-type: none"> <li>• Arrests of alternative suspect / Perpetrator of related assaults pled guilty to other counts; (Henry) <sup>1.01</sup></li> <li>• Statements from true perpetrators swearing Hinse's innocence (Hinse) <sup>1.02</sup></li> <li>• Another investigation of night deposit thefts resulted in charges being laid against Brinks pick-up crews; (Huffman) <sup>1.03</sup></li> <li>• Marshall learned of true perpetrator's confession while incarcerated; (D. Marshall Jr.) <sup>1.04</sup></li> <li>• Similar local bank robberies occurred while McTaggart was incarcerated; (McTaggart) <sup>1.05</sup></li> <li>• Identification and arrest of true perpetrator (Fisher); (Milgaard) <sup>1.06</sup></li> <li>• Acquaintance admitted he had committed the crime; (Norris) <sup>1.07</sup></li> <li>• Victim identified an alternative suspect as the perpetrator; (Norris) <sup>1.08</sup></li> <li>• True perpetrator (Vezina) confessed; (Pepin) <sup>1.09</sup></li> <li>• Federal government lawyer found the real perpetrator, who had committed suicide in 1982; (Warwick/Fox) <sup>1.10</sup></li> <li>• True perpetrator (JD) confessed; (Waudby) <sup>1.11</sup></li> <li>• True perpetrator (Parry) confessed; (Webber) <sup>1.12</sup></li> <li>• Accomplice's identification of true perpetrator; (Webber) <sup>1.13</sup></li> <li>• An eyewitness (Jensen) had identified another suspect—not Wood—whose appearance matched the composite drawing; (Wood) <sup>1.14</sup></li> </ul>

2. DNA	Forensic science evidence specifically involving DNA.	<ul style="list-style-type: none"> <li>• DNA tests proved Barton did not impregnate the complainant; (Barton) <sup>2.01</sup></li> <li>• DNA tests were conducted from bloody boots and excluded Dimitrov; (Dimitrov) <sup>2.02</sup></li> <li>• DNA testing excluded the hairs found in Driskell's van as belonging to the victim; (Driskell) <sup>2.03</sup></li> <li>• Two of Folland's friends convinced the true perpetrator (Harris) to provide a DNA sample that ultimately matched the DNA found in the semen of the underwear left in the complainant's bed; (Folland) <sup>2.04</sup></li> <li>• New DNA test of semen taken six years earlier proved innocence; (Kaglik) <sup>2.05</sup></li> <li>• New DNA analysis proved Marshall was innocent of charges; (S. Marshall) <sup>2.06</sup></li> <li>• New DNA evidence eliminated McCullough as being one of the 6 unknown people involved in the crime; (McCullough) <sup>2.07</sup></li> <li>• New testing of DNA evidence excluded Milgaard; (Milgaard) <sup>2.08</sup></li> <li>• Improvements in DNA testing of semen found on the victim's underclothes excluded Morin as the murderer; (Morin) <sup>2.09</sup></li> <li>• Advancements in DNA testing technology excluded Parsons as the perpetrator; (Parsons) <sup>2.10</sup></li> <li>• No incriminatory match of hair sample re-tested years later; (Unger) <sup>2.11</sup></li> </ul>
3. Forensic science	Any forensic science (other than DNA) requiring expert opinion in order to interpret the evidence. Examples include pathology, handwriting, blood spatter, ballistics evidence, etc. that is accompanied by an expert	<ul style="list-style-type: none"> <li>• Challenges to Smith's reputation and credibility led to new experts' re-examination of autopsy report with new/different conclusions about cause of death; (Brant) <sup>3.01</sup></li> <li>• New forensic pathologists testified that no crime had occurred, and</li> </ul>

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whose testimony or opinion is needed for interpretation of that evidence.

- Dalton's wife had died from choking on a piece of cereal; (Dalton) <sup>3.02</sup>
- New evidence at CoA that RCMP foot impression expert should not have been admissible testimony because the research was not developed enough to make an identification; (Dimitrov) <sup>3.03</sup>
  - Forensic experts determined the type of hairs found in an electric shaver disproved the Crown's theory about Hay's post-offence conduct; (Hay) <sup>3.04</sup>
  - Evidence from new experts who reviewed all original reports and concluded that the wife's death was an accident; (Johnson) <sup>3.05</sup>
  - Goudge Inquiry discrediting evidence of pathologist (Smith); (Kumar) <sup>3.06</sup>
  - New expert testimony that cause-of-death was undetermined; (Kumar) <sup>3.07</sup>
  - Goudge Inquiry discrediting evidence of pathologist (Smith); (Marquardt) <sup>3.08</sup>
  - Goudge Inquiry discrediting evidence of pathologist (Smith); (Mullins-Johnson) <sup>3.09</sup>
  - New pathologists examined preserved tissue and concluded no assault occurred; (Mullins-Johnson) <sup>3.10</sup>
  - New expert opinion concluded cause of death was due to natural causes; (Mullins-Johnson) <sup>3.11</sup>
  - Four new forensic pathologists reviewed the evidence with different conclusions about head injury; (Salmon) <sup>3.12</sup>
  - Goudge Inquiry discrediting evidence of pathologist (Smith); (Shepherd) <sup>3.13</sup>
  - 3 new experts re-evaluated the case and concluded the cause of death had been misattributed to homicide; (Shepherd) <sup>3.14</sup>
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		<ul style="list-style-type: none"> <li>• Reinvestigation into cause of death suggested accidental asphyxiation; (Sherret-Robinson) <sup>3.15</sup></li> <li>• New experts challenged the reliability of evidence that identified a time of death based on stomach contents, determining that the conclusions were not scientifically justified; (S. Truscott) <sup>3.16</sup></li> <li>• Experts in insect development provided evidence regarding time of death; (S. Truscott) <sup>3.17</sup></li> <li>• New expert medical evidence regarding other explanations of penile lesions; (S. Truscott) <sup>3.18</sup></li> <li>• Handwriting analyst concluded that the handwriting on the hotel register was not Fox's; (Warwick/Fox) <sup>3.19</sup></li> <li>• New forensic pathology evidence from experts provided a new timeline for when the victim's injuries occurred; (Waudby) <sup>3.20</sup></li> </ul>
4. Incentives or intimidation	Any form of bribery in which a witness was compensated, or promised compensation, in exchange for testimony (e.g., sentence leniency, monetary gains). It also includes threats made to witnesses.	<ul style="list-style-type: none"> <li>• New evidence that the victim's family was threatening witnesses not to talk about how they saw Cain acting in self-defence; (Cain) <sup>4.01</sup></li> <li>• Discovered that both witnesses were paid money for their testimony; (Driskell) <sup>4.02</sup></li> <li>• The jailhouse informant had been an informant in two other similar cases, both in exchange for favorable treatment; (Frumusa) <sup>4.03</sup></li> <li>• Defence was never told that informant received advantages for testimony; (Tremblay) <sup>4.04</sup></li> </ul>
5. Misconduct	Any misconduct related to the investigation (including biased, flawed, or erroneous investigative practice), overzealous prosecution, or ineffective assistance of counsel.	<ul style="list-style-type: none"> <li>• Eyewitness evidence derived from hypnosis deemed inadmissible per new SCC decision (R v Trochym, 2007); (Baltovich) <sup>5.01</sup></li> <li>• Recognition of unreliable eyewitness identification procedures using biased in-person lineup; (Henry) <sup>5.02</sup></li> </ul>

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		<ul style="list-style-type: none"> <li>• Unreliable eyewitness identification using an unfair photo lineup; (Henry) <sup>5.03</sup></li> <li>• Admission that police concealed key evidence (2002); (Staples) <sup>5.04</sup></li> <li>• Evidence that counsel at trial was ineffective in obtaining and using exculpatory evidence; (White) <sup>5.05</sup></li> <li>• Correspondence between police called into question investigative conduct as a source for the details provided in Wood's statement (leaking holdback information); (Wood) <sup>5.06</sup></li> </ul>
6. New witness statements	Post-conviction information that came directly from a witness. For example, new witness testimony or eyewitness identifications, changed witness statements (e.g., recantations), or jailhouse informant statements.	<ul style="list-style-type: none"> <li>• The victim and her family lied about Barton being the perpetrator to cover up that she was actually abused by her older brother; (Barton) <sup>6.01</sup></li> <li>• Recanted testimony and history of false allegations; (Beaulieu) <sup>6.02</sup></li> <li>• Inculpatory statements from men involved in the insurance fraud scheme stating that the car was not stolen; (Bjorge) <sup>6.03</sup></li> <li>• The man who had reported the car stolen never showed up to testify; (Bjorge) <sup>6.04</sup></li> <li>• Two witnesses said Cain only fired gun because victim was coming at him; (Cain) <sup>6.05</sup></li> <li>• Witness recanted his evidence shortly after conviction; (Driskell) <sup>6.06</sup></li> <li>• Recanted witness statement by jailhouse informant; (Druken) <sup>6.07</sup></li> <li>• Victim stated she had been mistaken that the perpetrator was Dumont; (Dumont) <sup>6.08</sup></li> <li>• New witness testimony overhearing admissions of guilt made by other suspects; (Frumusa) <sup>6.09</sup></li> <li>• New witness testimony that a key witness perjured himself, lying about Frumusa's admission of guilt and telling the witness that he had</li> </ul>

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- concocted the story in exchange for avoiding jail; (Frumusa) <sup>6.10</sup>
  - Kaglik's niece admitted to police she had lied and that no rape had ever occurred; (Kaglik) <sup>6.11</sup>
  - The investigating RCMP officer had a sexual relationship with the complainant and a witness, making their testimony unreliable; (Kaminski) <sup>6.12</sup>
  - 10 witnesses who testified against Karthiresu recanted their evidence; (Karthiresu) <sup>6.13</sup>
  - Affidavit about a conversation where Leadbeater learned he and another inmate had both been convicted for a nearly-identical crime involving the same victim, same timeframe, and same circumstances/details; (Leadbeater) <sup>6.14</sup>
  - Eyewitness came forward and testified that Marshall and the victim (Seale) had attempted to rob him and his friend (Ebsary), which had provoked Ebsary to stab Seale; (D. Marshall Jr.) <sup>6.15</sup>
  - The true perpetrator's daughter came forward after conviction and provided evidence to the police that implicated her father; (D. Marshall Jr.) <sup>6.16</sup>
  - 4 sworn statements from witnesses corroborating McArthur's exculpatory evidence; (McArthur) <sup>6.17</sup>
  - Recanted testimony of informant (McCullough's cellmate); (McCullough) <sup>6.18</sup>
  - Key Crown witness at trial (Wilson) recanted their evidence; (Milgaard) <sup>6.19</sup>
  - Jailhouse informant recanted their testimony and then recanted their recantation, "spinning a web of confusion" and discrediting the witness evidence; (Morin) <sup>6.20</sup>
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- Complainant's discredited character based on finding of guilt of public mischief for making false sexual assault complaints; (Nelson) <sup>6.21</sup>
  - Witness stated she was pressured by police into lying about witnessing the murder; (Nepoose) <sup>6.22</sup>
  - Evidence of witness's low IQ and inability to understand / recall complex situations, showing possibility of false testimony; (Oakes) <sup>6.23</sup>
  - Deathbed confession of true perpetrator recanting trial evidence and admitting perjury; (Plamondon) <sup>6.24</sup>
  - Recanted witness testimony exculpating Sauve & Trudel; (Sauve & Trudel) <sup>6.25</sup>
  - Witness statements to corroborate alibi (1972 trial); (Staples) <sup>6.26</sup>
  - Recanted witness evidence of informant; (Tremblay) <sup>6.27</sup>
  - Viva voce evidence and written affidavits from 26 witnesses; (S. Truscott) <sup>6.28</sup>
  - Witness statements corroborating alibi; (W. Truscott) <sup>6.29</sup>
  - Learned that the alleged victim (Truscott's ex-girlfriend) fabricated the complaint and lied at trial; (W. Truscott) <sup>6.30</sup>
  - A key Crown witness was discredited based on their delay in reporting the alleged offence and a motive to fabricate; (White) <sup>6.31</sup>
  - Investigator also obtained false confession from a now known wrongly-convicted individual (Morin), undermining the investigator's reliability; (Wood) <sup>6.32</sup>
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7. Other exculpatory documentation

Documents, materials, and records that had been preserved from the time of

- Police investigative notes contradicted police officers' testimony; (Duguay) <sup>7.01</sup>
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investigation. For example, police or Crown notes and reports, wiretaps, and exhibits that contained potentially exculpatory information (e.g., notes from an interview with a witness, a witness's original written statement, or audio recording of a conversation between two witnesses). If the evidence came directly from a witness in the course of a new trial or fresh evidence appeal, it was coded as "new witness statements."

- Undisclosed exculpatory statements from several witnesses; (Duguay) <sup>7.02</sup>
- True perpetrator's confession (Bernardo) to offences resulting in Hanemaayer's convictions found in Baltovich's file disclosure; (Hanemaayer) <sup>7.03</sup>
- Found medical, lab, and police reports relating to DNA; (Henry) <sup>3.04</sup>
- Police notes showing inconsistencies and unreliability of witness testimony; (Johnson) <sup>7.05</sup>
- Police files and notes about an identical case and allegations involving the same victim and different perpetrator; (Leadbeater) <sup>7.06</sup>
- Found McArthur's original police statement that was never put into evidence at the original trial; (McArthur) <sup>7.07</sup>
- Police notebooks revealed 2 tellers participated in photo lineups and each identified someone who was not McTaggart (McTaggart was not included in the lineup); (McTaggart) <sup>7.08</sup>
- RCMP report stating that police had reviewed transcripts of wiretap evidence showing inconsistencies with a key witness's testimony; (Michaud) <sup>7.09</sup>
- Tape recording of a conversation between persons of interest exculpated Michaud; (Michaud) <sup>7.10</sup>
- Missing exhibits found in pathologist's possession (Smith's office); (Mullins-Johnson) <sup>7.11</sup>
- Undisclosed police and investigation reports including a report confirming Phillion's alibi; (Phillion) <sup>7.12</sup>
- Concealed police memo of witnesses identifying 3 individuals fleeing murder scene and contradicting the police's theory of a lone gunman (2002); (Staples) <sup>7.13</sup>

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- Police investigative notes that could impeach Crown witnesses, including notes from Taillefer's questioning and the information for a search warrant; (Taillefer) <sup>7.14</sup>
  - Oral and written witness statements gathered during the police investigation that contradicted the Crown's theory; (Taillefer) <sup>7.15</sup>
  - 2 versions of autopsy reports from the original medical examiner with inconsistent times of death; (S. Truscott) <sup>7.16</sup>
  - Jail cell recording between 2 witnesses, contradicting their original testimony and implicating themselves as the true perpetrator and exculpating Walsh; (Walsh) <sup>7.17</sup>
  - Police notes revealing the witnesses (including the true perpetrator) were concocting a story; (Walsh) <sup>7.18</sup>
  - 7 signed statements that Walsh had run away after the attempted robbery to ask for help, contradicting the testimony of the Crown's key witnesses; (Walsh) <sup>7.19</sup>
  - Store owner's statement providing alibi evidence for Walsh and identifying another individual as the purchaser of shotgun ammunition for the murder weapon; (Walsh) <sup>7.20</sup>
  - Ballistics report that supported both Crown & Defence versions of events and that could be used to challenge the Crown's expert witness; (Walsh) <sup>7.21</sup>
  - Undisclosed statements from key Crown witnesses that could have undermined their credibility and supported Walsh's exculpatory testimony at trial; (Walsh) <sup>7.22</sup>
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**Note:** Superscripts denote the case described in Appendix B that corresponds to each piece of evidence.

## VI Appendix B

### 59 Canadian Exonerations Involving Fresh Evidence

	<b>Case Name</b>	<b>Date of Conviction/ Exoneration</b>	<b>Charge (s)</b>	<b>Factors Leading to Wrongful Conviction<sup>a</sup></b>	<b>New Exculpatory Evidence Type</b>	<b>Availability of the Exculpatory Evidence</b>	<b>Catalyst / Pathway to Exoneration</b>
1	Robert Baltovich	1992 / 2008	Second degree murder	A. Erroneous judicial instructions B. Unreliable eyewitness identification (hypnosis)	1. Misconduct <sup>5.01</sup>	1. New interpretation	Exoneree / Counsel (represented by Innocence Canada at Court of Appeal; new trial ordered; Crown withdrew charges)
2	Gerald Barton	1970 / 2011	Statutory rape	A. Fabricated complainant testimony B. Problematic police investigation C. False confession	1. DNA <sup>2.01</sup> 2. Witness statements <sup>6.01</sup>	1. Discovered after conviction 2. Discovered after conviction	Witness (complainant recanted to police; Court of Appeal quashed conviction)
3	Wilfred Beaulieu*	1992 / 1997	Sexual assault	A. Fabricated complainant testimony B. Problematic police investigation	1. Witness statements <sup>6.02</sup>	1. Discovered after conviction	Exoneree / Counsel (counsel obtained fresh evidence from witness at civil trial; ministerial review; acquitted at Court of Appeal)
4	Darcy Bjorge	1994 / 2005	Possession of a stolen vehicle; Fraud	A. Erroneous eyewitness identification	1. Witness statements <sup>6.03</sup> 2. Witness statements <sup>6.04</sup>	1. Discovered after conviction 2. Discovered after conviction	Exoneree / Counsel (unsuccessful appeals to Court of Appeal & SCC; ministerial review; new trial ordered; Crown entered stay of proceedings)
5	Richard Brant*	1995 / 2011	Aggravated assault	A. Problematic expert evidence (forensic pathology) B. Problematic police investigation	1. Forensic science <sup>3.01</sup>	1. New interpretation	Neutral body (Ontario's Chief Coroner's Review re-examined case, leading to Goudge Inquiry; acquitted at Court of Appeal)

Case Name	Date of Conviction/ Exoneration	Charge (s)	Factors Leading to Wrongful Conviction <sup>a</sup>	New Exculpatory Evidence Type	Availability of the Exculpatory Evidence	Catalyst / Pathway to Exoneration
6 Rodney Cain	1985 / 2004	Second degree murder	A. Unreliable eyewitness identification B. Recantations or perjured admissions by witnesses	1. Incentives or intimidation <sup>4.01</sup> 2. Witness statements <sup>6.05</sup>	1. Discovered after conviction 2. Discovered after conviction	Exoneree / Counsel (unsuccessful appeals to Court of Appeal & SCC; ministerial review; conviction quashed and new trial ordered; convicted and appeal dismissed at Court of Appeal)
7 Ronald Dalton	1989 / 2000	Second degree murder	A. Mistaken forensic/expert evidence	1. Forensic science <sup>3.02</sup>	1. New interpretation	Exoneree / Counsel (Court of Appeal ordered new trial and found not guilty)
8 Dimitre Dimitrov	1999 / 2005	Second degree murder	A. Problematic expert/forensic evidence and testimony (police) B. Erroneous judicial instructions	1. DNA <sup>2.02</sup> 2. Forensic science <sup>3.03</sup>	1. New interpretation 2. New interpretation	Exoneree / Counsel (Court of Appeal ordered new trial and found not guilty)
9 James Patrick Driskell*	1991 / 2003	First degree murder	A. Problematic forensic evidence (hair microscopy) B. Unreliable eyewitness identification (recanted) C. Failure to disclose evidence D. Erroneous judicial instructions	1. DNA <sup>2.03</sup> 2. Incentives or intimidation <sup>4.02</sup> 3. Witness statements <sup>6.06</sup>	1. New interpretation <sup>1</sup> 2. Not disclosed 3. Not disclosed	Exoneree / Counsel (unsuccessful appeal to Court of Appeal; ministerial review with representation from Innocence Canada; conviction quashed and new trial ordered; Crown entered stay of proceedings)
10 Randy Druken	1993 / 2000	Second degree murder	A. Jailhouse informant testimony B. Unreliable eyewitness identification C. Police misconduct	1. Witness statements <sup>6.07</sup>	1. Discovered after conviction	Neutral body (Deputy Minister of Justice received information from a lawyer that a key witness's testimony was coerced; launched independent investigation by Ontario Provincial Police; Court of Appeal ordered new trial; Crown



Case Name	Date of Conviction/ Exoneration	Charge (s)	Factors Leading to Wrongful Conviction <sup>a</sup>	New Exculpatory Evidence Type	Availability of the Exculpatory Evidence	Catalyst / Pathway to Exoneration
			D. Overzealous prosecution			entered stay of proceedings)
11 Hugues Duguay*	1990; 1995 / 1995; 2003	First degree murder; Manslaughter	A. False confession B. Failure to disclose evidence C. Erroneous judicial instructions	1. Documentation <sup>7.01</sup> 2. Documentation <sup>7.02</sup>	1. Not disclosed 2. Not disclosed	Neutral body (Poitras Commission found undisclosed evidence; unsuccessful appeal to Court of Appeal; SCC quashed conviction and ordered stay of proceedings)
12 Michel Dumont	1992 / 2001	Sexual Assault; Kidnapping; Uttering threats	A. Erroneous eyewitness identification B. Overzealous prosecution C. Failure to disclose evidence D. Erroneous judicial instructions	1. Witness statements <sup>6.08</sup>	1. Discovered after conviction	Exoneree / Counsel (unsuccessful appeal to Court of Appeal; victim publicly recanted, but Dumont was not notified; Dumont's wife discovered recantations and applied for ministerial review; Court of Appeal quashed conviction)
13 Gordon Folland	1994 / 1998	Sexual Assault	A. Problematic complainant testimony B. Jailhouse informant testimony C. Poor legal representation	1. DNA <sup>2.04</sup>	1. New Interpretation	Exoneree / Counsel (Folland's friends retrieved DNA evidence from true perpetrator; Court of Appeal quashed conviction and ordered new trial; Crown withdrew charges)

<b>Case Name</b>	<b>Date of Conviction/ Exoneration</b>	<b>Charge (s)</b>	<b>Factors Leading to Wrongful Conviction<sup>a</sup></b>	<b>New Exculpatory Evidence Type</b>	<b>Availability of the Exculpatory Evidence</b>	<b>Catalyst / Pathway to Exoneration</b>
14 Peter Frumusa	1990 / 1998	First degree murder	A. Jailhouse informant testimony B. Problematic police investigation	1. Witness statements <sup>6.09</sup> 2. Witness statements <sup>6.10</sup> 3. Incentives or intimidation <sup>4.03</sup>	1. Discovered after conviction 2. Discovered after conviction 3. Discovered after conviction	Witness (witnesses came forward to police and attempted to contact Crown; then interviewed by media and counsel; Court of Appeal quashed conviction and ordered new trial; Crown withdrew charges)
15 Anthony Hanemaayer*	1989 / 2008	Assault; Break and enter; Assault while threatening to use a weapon	A. Erroneous eyewitness identification B. Failure to disclose evidence	1. Documentation <sup>7.03</sup> / Alternative suspects	1. Discovered after conviction <sup>2</sup>	Exoneree / Counsel (Bernardo admitted to crime; lawyer emailed Toronto Police Services with information about Bernardo; Innocence Canada discovered Bernardo's confession while reviewing other case file; acquitted at Court of Appeal)
16 Leighton Hay*	2004 / 2014	First degree murder	A. Erroneous eyewitness identification B. Mistaken expert evidence	1. Forensic science <sup>3.04</sup>	1. New interpretation	Exoneree / Counsel (unsuccessful appeals at Court of Appeal & SCC; second appeal to SCC granted forensic testing of hairs; represented by Innocence Canada, SCC ordered new trial; Crown withdrew charges)
17 Ivan Henry	1983 / 2010	Sexual assault (10 counts)	A. Police misconduct B. Failure to disclose evidence	1. Misconduct <sup>5.02</sup> 2. Misconduct <sup>5.03</sup> 3. Documentation <sup>7.04</sup>	1. New interpretation 2. Not disclosed 3. Not disclosed 4. Not disclosed	Crown (unsuccessful appeals to Court of Appeal and application for ministerial review; a provincial prosecutor noticed similarities with another case; acquitted at Court of Appeal)

Case Name	Date of Conviction/ Exoneration	Charge (s)	Factors Leading to Wrongful Conviction <sup>a</sup>	New Exculpatory Evidence Type	Availability of the Exculpatory Evidence	Catalyst / Pathway to Exoneration
				4. Alternative suspects <sup>1.01</sup>		
18 Réjean Hinse	1964 / 1997	Aggravated robbery	A. Problematic police investigation B. Erroneous eyewitness identification	1. Alternative suspects <sup>1.02</sup>	1. Discovered after conviction	Exoneree / Counsel (4 unsuccessful applications for ministerial review; Court of Appeal quashed conviction and entered stay of proceedings; Hinse appealed stay to SCC, requesting acquittal; SCC refused appeal; Hinse's second request for reconsideration of stay was accepted; acquitted at SCC)
19 Linda Huffman	1993 / 1995	Theft	A. Problematic police investigation	1. Alternative suspects <sup>1.03</sup>	1. Discovered after conviction	Police (police continued investigation when thefts continued to occur; investigation revealed true perpetrators; contacted Crown who supported an acquittal at Court of Appeal)
20 Clayton Johnson*	1993 / 2002	First degree murder	A. Problematic forensic/expert evidence B. Police misconduct C. Overzealous prosecution	1. Forensic science <sup>3.05</sup> 2. Documentation <sup>7.05</sup>	1. New interpretation 2. New interpretation	Exoneree / Counsel (unsuccessful appeals at Court of Appeal & SCC; Innocence Canada applied for ministerial review; Court of Appeal ordered new trial; Crown withdrew charges)

	<b>Case Name</b>	<b>Date of Conviction/ Exoneration</b>	<b>Charge (s)</b>	<b>Factors Leading to Wrongful Conviction<sup>a</sup></b>	<b>New Exculpatory Evidence Type</b>	<b>Availability of the Exculpatory Evidence</b>	<b>Catalyst / Pathway to Exoneration</b>
21	Herman Kaglik	1992 / 1998	Sexual assault	A. Problematic complainant testimony B. Failure to disclose evidence C. Police misconduct D. Racial prejudice	1. Witness statements <sup>6.11</sup> 2. DNA <sup>2.05</sup>	1. Discovered after conviction 2. New interpretation	Witness came forward (victim recanted allegations to police; acquitted at Court of Appeal)
22	Steven Kaminski	1992 / 1999	Sexual assault	A. Problematic complainant testimony	1. Witness statements <sup>6.12</sup>	1. Discovered after conviction	Police / Crown (complainant reported relationship with investigator to the RCMP; Crown notified Kaminski; ministerial review; new trial ordered; Crown entered stay of proceedings)
23	Kulam (Kulaveerasi ngam) Karthiresu	1995 / 2000	Second degree murder	A. Unreliable eyewitness identification B. Problematic witness testimony	1. Witness statements <sup>6.13</sup>	1. Discovered after conviction	Witness (witnesses recanted testimonies; Court of Appeal ordered new trial; Crown withdrew charges)
24	Dinesh Kumar*	1992 / 2011	Criminal negligence causing death	A. Problematic expert evidence (forensic pathology)	1. Forensic science <sup>3.06</sup> 2. Forensic science <sup>3.07</sup>	1. Discovered after conviction 2. New interpretation	Neutral body (Ontario's Chief Coroner's Review re-examined case, leading to Goudge Inquiry; Crown agreed to reopen case; acquitted at Court of Appeal with representation by Innocence Canada)

	<b>Case Name</b>	<b>Date of Conviction/ Exoneration</b>	<b>Charge (s)</b>	<b>Factors Leading to Wrongful Conviction<sup>a</sup></b>	<b>New Exculpatory Evidence Type</b>	<b>Availability of the Exculpatory Evidence</b>	<b>Catalyst / Pathway to Exoneration</b>
25	Stephen Leadbeater	1993 / 1999	Sexual assault	A. Police & crown misconduct B. Fabricated complainant testimony C. Failure to disclose evidence	1. Witness statements <sup>6.14</sup> 2. Documentation <sup>7.06</sup>	1. Discovered after conviction 2. Not disclosed	Exoneree / Counsel (while incarcerated, Leadbeater learned of evidence from a man convicted of identical crime; Court of Appeal ordered new trial; trial judge dismissed case before retrial)
26	Tammy Marquardt*	1995 / 2011	Second degree murder	A. Problematic expert evidence (forensic pathology)	1. Forensic science <sup>3.08</sup>	1. New interpretation	Exoneree / Counsel (unsuccessful appeal at Court of Appeal; Smith's flawed forensic science came to light; with representation by Innocence Canada, Court of Appeal reconsidered and ordered new trial; Crown withdrew charges)
27	Donald Marshall, Jr.	1971 / 1982	Non-capital murder	A. Failure to disclose evidence B. Unreliable eyewitness testimony C. Police misconduct D. Erroneous judicial instructions E. Racial prejudice	1. Witness statements <sup>6.15</sup> 2. Witness statements <sup>6.16</sup> 3. Alternative suspects <sup>1.04</sup>	1. Discovered after conviction 2. Not disclosed 3. Discovered after conviction	Exoneree / Counsel (unsuccessful appeal to Court of Appeal; witness came forward and reported evidence to police; police did not disclose to Crown/defence; while incarcerated, Marshall discovered confession made by true perpetrator; counsel requested Minister of Justice reopen case; conviction quashed; acquitted at Nova Scotia Supreme Court)

	<b>Case Name</b>	<b>Date of Conviction/ Exoneration</b>	<b>Charge (s)</b>	<b>Factors Leading to Wrongful Conviction<sup>a</sup></b>	<b>New Exculpatory Evidence Type</b>	<b>Availability of the Exculpatory Evidence</b>	<b>Catalyst / Pathway to Exoneration</b>
28	Simon Marshall	1997 / 2003	Sexual assault	A. False confession B. Problematic police investigation	1. DNA <sup>2.06</sup>	1. New interpretation	Crown (after release, Marshall falsely confessed to other crimes, prompting Crown to reopen file; police reinvestigated; acquitted at Court of Appeal with Crown agreement)
29	Richard McArthur	1987 / 1990	Assault causing bodily harm	A. Erroneous eyewitness identification	1. Witness statements <sup>6.17</sup> 2. Documentation <sup>7.07</sup>	1. Discovered after conviction 2. Discovered after conviction <sup>3</sup>	Witness (unsuccessful appeal to Court of Appeal; witnesses came forward after meeting McArthur while incarcerated; counsel applied for ministerial review; acquitted at Court of Appeal with Crown agreement)
30	Chris McCullough *	1991 / 2000	Second degree murder	A. Unreliable co-accused testimony (jailhouse informant) B. Unreliable eyewitness testimony C. Problematic expert evidence	1. Witness statements <sup>6.18</sup> 2. DNA <sup>2.07</sup>	1. Discovered after conviction 2. New interpretation	Exoneree / Counsel (Court of Appeal ordered new trial; Crown withdrew charges)
31	Michael McTaggart	1988 / 1990	Armed robbery (2 counts)	A. Police failure to disclose evidence B. Erroneous eyewitness identification	1. Documentation <sup>7.08</sup> 2. Alternative suspects <sup>1.05</sup>	1. Not disclosed 2. Discovered after conviction	Police (police officer testified about similar crimes committed while McTaggart was incarcerated; Court of Appeal ordered new trial; Crown withdrew charges)

	<b>Case Name</b>	<b>Date of Conviction/ Exoneration</b>	<b>Charge (s)</b>	<b>Factors Leading to Wrongful Conviction<sup>a</sup></b>	<b>New Exculpatory Evidence Type</b>	<b>Availability of the Exculpatory Evidence</b>	<b>Catalyst / Pathway to Exoneration</b>
32	Felix Michaud*	1993, 1996, 2001 / 2001	First degree murder	A. Unreliable testimony from co-accused B. Failure to disclose evidence C. Jailhouse informant testimony	1. Documentati on <sup>7.09</sup> 2. Documentati on <sup>7.10</sup>	1. Not disclosed 2. Not disclosed	Exoneree / Counsel (Court of Appeal ordered new trial; Michaud was convicted again and successfully appealed the conviction; Court of Appeal ordered new [third] trial; undisclosed evidence found in investigative file; Crown stayed charges)
33	David Milgaard	1970 / 1997	First degree murder	A. Unreliable eyewitness identification B. Problematic police investigation	1. Witness statements <sup>6.19</sup> 2. Alternative suspects <sup>1.06</sup> 3. DNA <sup>2.08</sup>	1. Discovered after conviction 2. Not disclosed 3. New interpretation	Exoneree / Counsel (Court of Appeal dismissed appeal; Milgaard's mother applied for ministerial review; referred to SCC on second application with assistance from Innocence Canada; new trial ordered; Crown ordered stay of proceedings)
34	Guy Paul Morin*	1992 / 1995	First degree murder	A. Jailhouse informant testimony B. Unreliable expert/forensic evidence C. Problematic police investigation D. Unreliable witness testimony	1. DNA <sup>2.09</sup> 2. Witness statements <sup>6.20</sup>	1. Discovered after conviction 2. Discovered after conviction; Undisclosed	Exoneree / Counsel (appealed conviction with representation from Innocence Canada; acquitted at Court of Appeal following DNA testing)

	<b>Case Name</b>	<b>Date of Conviction/ Exoneration</b>	<b>Charge (s)</b>	<b>Factors Leading to Wrongful Conviction<sup>a</sup></b>	<b>New Exculpatory Evidence Type</b>	<b>Availability of the Exculpatory Evidence</b>	<b>Catalyst / Pathway to Exoneration</b>
35	William Mullins-Johnson*	1994 / 2007	First degree murder	A. Problematic expert evidence (forensic pathology) B. Racial prejudice	1. Forensic science <sup>3.09</sup> 2. Forensic science <sup>3.10</sup> 3. Forensic science <sup>3.11</sup> 4. Documentation <sup>7.11</sup>	1. Discovered after conviction 2. Discovered after conviction 3. New interpretation 4. Discovered after conviction	Exoneree / Counsel (appeals dismissed at Court of Appeal & SCC; Innocence Canada requested forensic materials, prompting discovery of forensic investigative issues; ministerial review granted based on Chief Coroner's Review of the case; acquitted at Court of Appeal with Crown agreement)
36	Jamie Nelson	1996 / 2001	Sexual assault	A. Fabricated complainant testimony	1. Witness statements <sup>6.21</sup>	1. Discovered after conviction	Police / Crown (complainant convicted of public mischief for making false complaints; police investigated; acquitted at Court of Appeal following request of Crown)
37	Wilson (Willie) Nepoose	1987 / 1992	Second degree murder	A. Unreliable eyewitness identification B. Witness perjury C. Problematic police investigation D. Failure to disclose evidence E. Racial prejudice	1. Witness statements <sup>6.22</sup>	1. Not disclosed	Neutral body (case received public attention; Minister of Justice referred case to Court of Appeal; court-appointed inquiry conducted review; Court of Appeal ordered new trial; Crown entered stay of proceedings)
38	Richard Norris	1980 / 1991	Break and enter; Indecent (sexual) assault	A. Unreliable eyewitness testimony	1. Alternative suspects <sup>1.07</sup> 2. Alternative suspects <sup>1.08</sup>	1. Discovered after conviction 2. Not disclosed	True perpetrator (true perpetrator confessed; unsuccessful application for ministerial pardon; acquitted at Court of Appeal with Crown agreement)



	<b>Case Name</b>	<b>Date of Conviction/ Exoneration</b>	<b>Charge (s)</b>	<b>Factors Leading to Wrongful Conviction<sup>a</sup></b>	<b>New Exculpatory Evidence Type</b>	<b>Availability of the Exculpatory Evidence</b>	<b>Catalyst / Pathway to Exoneration</b>
39	Connie Oakes	2013 / 2016	Second degree murder	A. False testimony from co-accused B. Unreliable eyewitness identification	1. Witness statements <sup>6.23</sup>	1. Discovered after conviction	Witness (witness recanted false confession that resulted in Oakes's conviction; Court of Appeal ordered new trial; Crown entered stay of proceedings)
40	Gregory Parsons	1994 / 1998	Second degree murder	A. Problematic police investigation B. Unreliable eyewitness identification C. Overzealous prosecution D. Trial judge's errors	1. DNA <sup>2.10</sup>	1. New interpretation	Exoneree / Counsel (Court of Appeal ordered new trial; acquitted after Crown called no evidence)
41	Rejean Pépin	1986 / 1987	Armed robbery	A. Erroneous eyewitness identification	1. Alternative suspects <sup>1.09</sup>	1. Discovered after conviction	True perpetrator (true perpetrator came forward to admit crimes; Court of Appeal ordered new trial; acquitted)
42	Romeo Phillion*	1972 / 2010	Second degree murder	A. False confession B. Failure to disclose evidence C. Police misconduct	1. Documentation <sup>7.12</sup>	1. Not disclosed	Crown / Police (unsuccessful appeals to Court of Appeal & SCC; Phillion's parole officer gave Phillion undisclosed evidence found in his correctional file; Osgoode Innocence Project & Innocence Canada applied for ministerial review; Court of Appeal ordered new trial; Crown withdrew charges)
43	Yves Plamondon	1986 / 2013	First degree murder (3 counts)	A. Jailhouse informant testimony B. Failure to disclose evidence	1. Witness statements <sup>6.24</sup>	1. Not disclosed	True perpetrator (unsuccessful appeals to Court of Appeal & SCC; true perpetrator recorded a deathbed confession; ministerial review; Court of Appeal ordered new trial; Crown withdrew charges)

	<b>Case Name</b>	<b>Date of Conviction/ Exoneration</b>	<b>Charge (s)</b>	<b>Factors Leading to Wrongful Conviction<sup>a</sup></b>	<b>New Exculpatory Evidence Type</b>	<b>Availability of the Exculpatory Evidence</b>	<b>Catalyst / Pathway to Exoneration</b>
44	John (Jack) Salmon*	1971 / 2015	Manslaughter	A. Flawed forensic evidence B. Unreliable eyewitness identification	1. Forensic science <sup>3.12</sup>	1. New interpretation	Exoneree / Counsel (unsuccessful appeal to Court of Appeal; Innocence Canada obtained new forensic experts; successful appeal to SCC; acquitted at Court of Appeal)
45	James Sauvé & Richard Trudel	1996 / 2004	First degree murder (2 counts)	A. Unreliable eyewitness testimony B. Jailhouse informant testimony C. Erroneous judicial instructions D. Police misconduct	1. Witness statements <sup>6.25</sup>	1. Discovered after conviction	Exoneree / Counsel (Court of Appeal ordered new trial; Crown stayed charges)
46	Maria Shepherd*	1992 / 2016	Manslaughter	A. Flawed forensic evidence & testimony (forensic pathology)	1. Forensic science <sup>3.13</sup> 2. Forensic science <sup>3.14</sup>	1. New interpretation 2. Discovered after conviction	Neutral body (Ontario's Chief Coroner's Review re-examined case, leading to Goudge Inquiry; acquitted at Court of Appeal with representation from Innocence Canada)
47	Sherry Sherret-Robinson*	1999 / 2009	Infanticide	A. Flawed forensic evidence (forensic pathology)	1. Forensic science <sup>3.15</sup>	1. New interpretation	Neutral body (Goudge Inquiry found forensic errors in the case; acquitted at Court of Appeal with representation from Innocence Canada)
48	Gary Staples	1971 / 1972 (2002)	Second degree murder	A. Failure to disclose evidence B. Unreliable eyewitness identification C. Unreliable complainant evidence	1. Witness statements <sup>6.26</sup> 2. Documentation <sup>7.13</sup> 3. Misconduct <sup>5.04</sup>	1. Discovered after conviction 2. Not disclosed 3. Discovered after conviction	Exoneree / Counsel (Staple's mother found alibi witnesses; Court of Appeal ordered new trial; acquitted at 1972 trial; victim's sons requested police file containing undisclosed evidence and shared with Osgoode Innocence Project at 2002 trial against Hamilton police)

	<b>Case Name</b>	<b>Date of Conviction/ Exoneration</b>	<b>Charge (s)</b>	<b>Factors Leading to Wrongful Conviction<sup>a</sup></b>	<b>New Exculpatory Evidence Type</b>	<b>Availability of the Exculpatory Evidence</b>	<b>Catalyst / Pathway to Exoneration</b>
49	Billy Tallefer	1990 / 2006	First degree murder	A. False confession B. Failure to disclose evidence C. Erroneous judicial instructions	1. Documentation <sup>7.14</sup> 2. Documentation <sup>7.15</sup>	1. Not disclosed 2. Not disclosed	Neutral body (unsuccessful appeals to Court of Appeal & SCC; Quebec appointed Poitras Commission to investigate police/Crown; Commission found undisclosed evidence and recommended ministerial review; case referred to Court of Appeal but dismissed; successful appeal to SCC; acquitted at new trial)
50	Andre Tremblay	1984 / 2010	First degree murder	A. Failure to disclose evidence B. Jailhouse informant testimony (recantation)	1. Witness statements <sup>6.27</sup> 2. Incentives or intimidation <sup>4.04</sup>	1. Discovered after conviction 2. Not disclosed	Witness (unsuccessful appeals to Court of Appeal & SCC; informant recanted; ministerial review; case referred to Court of Appeal and new trial ordered; acquitted after Crown called no evidence)
51	Steven Truscott*	1959 / 2007	First degree murder	A. Failure to disclose evidence B. Mistaken expert evidence C. Overzealous prosecution D. Problematic police investigation	1. Forensic science <sup>3.16</sup> 2. Forensic science <sup>3.17</sup> 3. Forensic science <sup>3.18</sup> 4. Documentation <sup>7.16</sup> 5. Witness statements <sup>6.28</sup>	1. New interpretation 2. New interpretation 3. New interpretation 4. Not disclosed 5. Not disclosed	Exoneree / Counsel (unsuccessful appeals to Court of Appeal & SCC; after public attention, federal government referred case to SCC but case dismissed; with new evidence, Innocence Canada applied for ministerial review; acquitted at Court of Appeal)
52	Wilfred Truscott	1984 / 1984	Break and enter; Assault	A. Fabricated complainant testimony	1. Witness statements <sup>6.29</sup> 2. Witness statements <sup>6.30</sup>	1. Discovered after conviction 2. Discovered after conviction	Exoneree / Counsel (counsel obtained alibi evidence and appealed to Court of Appeal; conviction overturned)

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53 Kyle Unger	1992 / 2009	First degree murder	A. Mr. Big operation (false confession) B. Jailhouse informant testimony C. Problematic forensic evidence (hair microscopy)	1. DNA <sup>2.11</sup>	1. New interpretation	Neutral body (unsuccessful appeals to Court of Appeal & SCC; advisory committee reviewed homicide cases involving hair microscopy and performed forensic analysis from Unger's case; Innocence Canada applied for ministerial review; new trial ordered; Crown did not proceed with trial & requested the Court enter acquittal)
54 Erin Walsh	1975 / 2008	Second degree murder	A. Failure to disclose evidence B. Jailhouse informant testimony	1. Documentati on <sup>7.17</sup> 2. Documentati on <sup>7.18</sup> 3. Documentati on <sup>7.19</sup> 4. Documentati on <sup>7.20</sup> 5. Documentati on <sup>7.21</sup> 6. Documentati on <sup>7.22</sup>	1. Not disclosed 2. Not disclosed 3. Not disclosed 4. Not disclosed 5. Not disclosed 6. Not disclosed	Exoneree / Counsel (unsuccessful appeal to Court of Appeal; Walsh received file from provincial archives containing undisclosed evidence; Innocence Canada applied for ministerial review; acquitted at Court of Appeal)
55 Kenneth Warwick (Norman Fox)	1976 / 1984	Sexual assault	A. Erroneous eyewitness identification	1. Forensic science <sup>3.19</sup> 2. Alternative suspects <sup>1.10</sup>	1. Discovered after conviction 2. Discovered after conviction	Exoneree / Counsel (unsuccessful appeals to Court of Appeal & SCC; Fox's friends continued to investigate, finding evidence; pardoned by federal cabinet)
56 Brenda Waudby	1999 / 2013	Child abuse	A. Flawed forensic evidence (forensic pathology)	1. Forensic science <sup>3.20</sup> 2. Alternative suspects <sup>1.11</sup>	1. New interpretation 2. Discovered after conviction	Neutral body / Police (true perpetrator confessed; Goudge Inquiry identified errors in Waudby's case; based

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			B. Crown withheld evidence			on Inquiry, Crown agreed to Waudby's request for extension of time to appeal; appeal allowed; conviction overturned)
57 Joseph Dean Webber*	2007 / 2010	Armed robbery; Forcible confinement; Extortion	A. Erroneous eyewitness identification	1. Alternative suspects <sup>1.12</sup> 2. Alternative suspects <sup>1.13</sup>	1. Discovered after conviction 2. Discovered after conviction	True perpetrator (true perpetrator came forward and confessed to police; acquitted at Court of Appeal with Crown agreement)
58 Jack White*	1995 / 2010	Sexual assault	A. Fabricated complainant testimony B. Ineffective assistance of counsel	1. Misconduct <sup>5.05</sup> 2. Witness statements <sup>6.31</sup>	1. Discovered after conviction 2. Discovered after conviction <sup>4</sup>	Exoneree / Counsel (unsuccessful appeal to Court of Appeal & application for ministerial review; successful appeal to SCC with representation by Innocence Canada; SCC directed case to Court of Appeal; Court of Appeal ordered new trial; Crown withdrew charges)
59 Danny Wood	1990 / 2005	First degree murder	A. Failure to disclose evidence B. Unreliable eyewitness identification	1. Alternative suspects <sup>1.14</sup> 2. Misconduct <sup>5.06</sup> 3. Witness statements <sup>6.32</sup>	1. Not disclosed 2. Not disclosed 3. Not disclosed	Exoneree / Counsel (successful appeal to Court of Appeal; convicted at second trial; unsuccessful appeals to Court of Appeal & SCC; ministerial review; referred back to Court of Appeal; Crown entered stay of proceedings)

**Note.** Superscripts under *New Exculpatory Evidence Type* denote the evidence described in Appendix A. <sup>a</sup> Factors leading to wrongful conviction were identified in Campbell (2018). \* Cases marked with an asterisk were verified by legal counsel or staff. <sup>1</sup> In *Driskell*, the DNA evidence was originally coded as discovered after conviction; however, because the DNA was available at the original trial, this code was changed to a “new interpretation” of evidence. <sup>2</sup> In *Hanemaayer*, the true perpetrator's confession was discovered after conviction, but was not disclosed to Hanemaayer until counsel for *Baltovich* came across the confession in their file review. <sup>3</sup> In *McArthur*, the exculpatory “documentation” evidence was known but not used at the original trial. <sup>4</sup> In *White*, the exculpatory “witness” evidence was known but not used at the original trial.