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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.

Acknowledgement: We would like to thank Jody Berkes, Tom Engel, Brian Greenspan, Jerome Kennedy, and Gilles Lemieux for their contribution to this research. We would also like to thank Innocence Canada, Arthur Ferguson, and Aida Poostizadeh for their research support and assistance in accessing case files.

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."[1] 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)[2] 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.[3]

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

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[1] *Walsh, Re*, 2008 NBCA 33 [*Walsh*] at 28.

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

[3] 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>

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),[4] 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."[5] Roach (2013) highlighted that this landmark case was likely "the most important reform to prevent wrongful convictions."[6]

Since Marshall, the only other major disclosure development occurred when the B.C. Court of Appeal in *Roberts v. British Columbia (Attorney General)* (2021)[7] 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*.[8] 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.[9]

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 occurred.[10] 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.

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[4] *R v Stinchcombe*, 1991 CanLII 45 (SCC) [*Stinchcombe*].

[5] *Ibid* at 327.

[6] 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>

[7] *Roberts v British Columbia (Attorney General)*, 2021 BCCA 346.

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

[9] *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*].

[10] *Criminal Code* supra note 8, s. 675(1)

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.[11]

Once an individual has exhausted their rights of appeal, at least to the Court of Appeal,[12] 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*.[13] 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.[14]

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.[15]

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.[16] 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.[17]

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[11] Eg., *R v Hay*, 2013 SCC 61; *Supreme Court Act*, RSC 1985, c S-26, s.38.

[12] See *McArthur v. Ontario (Attorney General)*, 2013 ONCA 668.

[13] 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.

[14] *Royal Commission supra* note 3.

[15] *Ibid.*

[16] *Ibid.*

[17] *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.[18] 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.[19]

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)[20] and Innocence Canada (2024),[21] 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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[18] 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.

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

[20] 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].

[21] *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.[22] 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.[23] 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.[24]

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.[25] 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.[26] 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).

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[22] *Wrongful Convictions supra* note 9 at 1525.

[23] *Canadian Registry supra* note 19; *National Registry supra* note 18; *False Guilty Pleas supra* note 6.

[24] *False Guilty Pleas supra* note 6 at 26.

[25] *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.

[26] Ryan Berube et al, "Identifying Patterns Across the Six Canonical Factors Underlying Wrongful Convictions" (2023) 3:3 Wrongful Conviction L Rev 166.

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 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[27] and Saber et al[28]). However, as shown in Olney and Bonn (2015),[29] DNA was a crucial factor for only 34% of the exonerations in their sample, leaving 66% of other exonerating factors unknown.

Scherr and Dror[30] 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.[31, 32] Indeed, data from the Canadian Registry of Wrongful Convictions[33] 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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[27] *Olney & Bonn*, *supra* note 20 at 400.

[28] 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.

[29] *Olney & Bonn*, *supra* note 20 at 408.

[30] 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*].

[31] 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].

[32] *Roach 2013*, *supra* note 9 at 1465.

[33] *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.[34]

Third, Campbell's (2018) book[35] 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).[36] 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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[34] Innocence Canada, "Exonerations" (last visited 29 April 2025) online: <innocencecanada.ca> [https://www.innocencecanada.com/exonerations/].

[35] *Miscarriages of Justice*, *supra* note 2.

[36] *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").[37] 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.

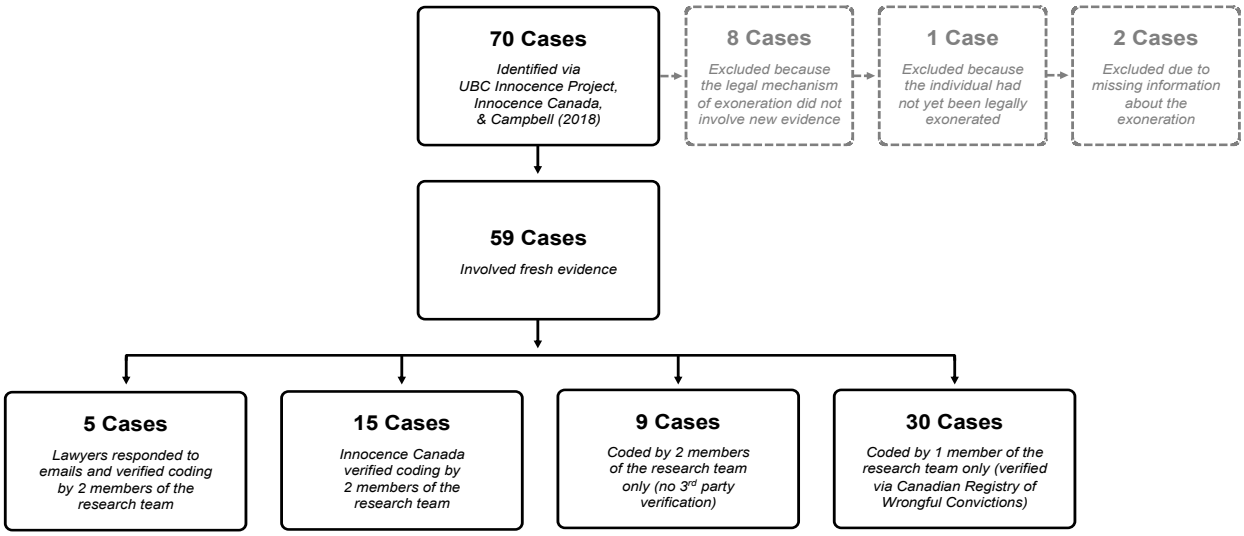
[37] *Canadian Registry*, *supra* note 19.

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.[38] 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).

[38] 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)[39] 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

[39] *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.[40] 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

[40] 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

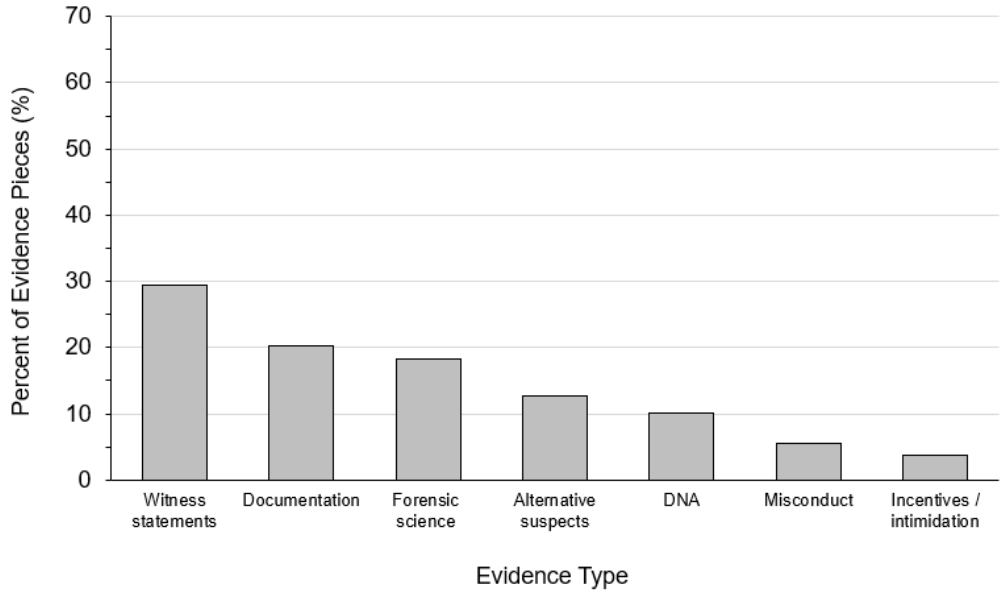
Of the 109 unique pieces of exculpatory evidence, 46% (n = 50) were unavailable at the time of the original trial (i.e., they were only discovered after conviction). Twenty-nine percent (n = 32) of the pieces of evidence were available at trial, but had not been disclosed to defence. The remaining 25% (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[41] 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.

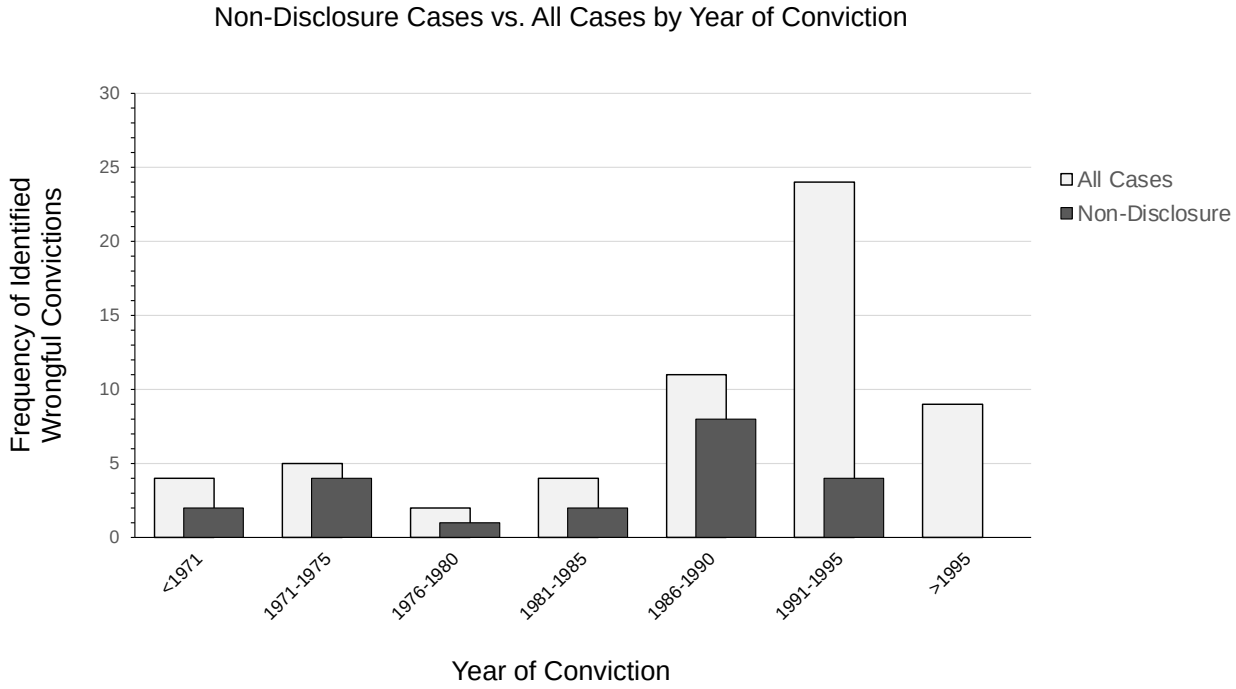
[41] Because cases could involve more than one piece of evidence, percentages do not add up to 100%.

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).

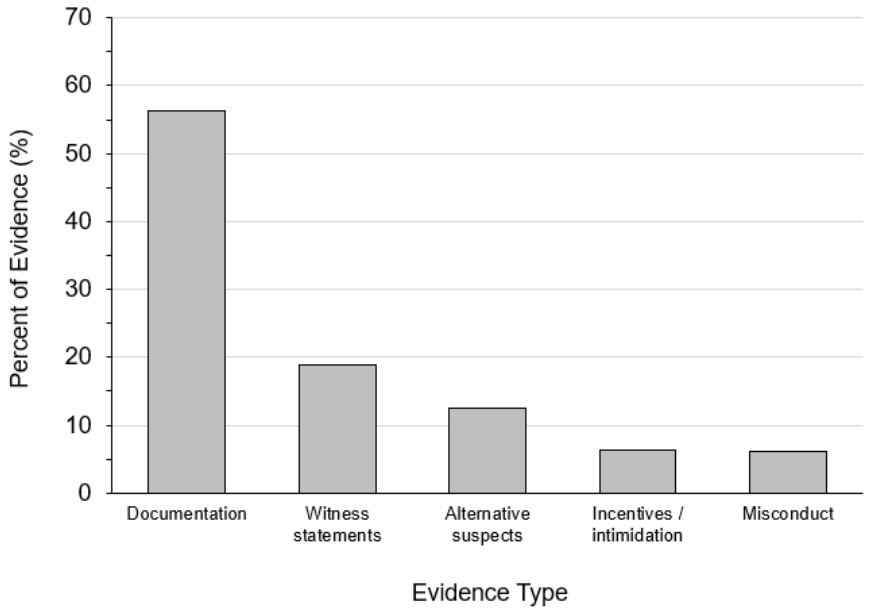
Figure 3: Frequency of Cases Involving Non-Disclosure Compared to Total Number of Cases at Year of Conviction



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.[42] 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.[43] 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.[44] 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

[42] *Miscarriages of Justice*, *supra* note 2.

[43] *Stinchcombe*, *supra* note 4.

[44] Stephen Goudge, *Inquiry into Pediatric Forensic Pathology in Ontario*, (Ontario: Province of Ontario, 2008).

not been found (i.e., it was discovered after conviction), or was found but was not shared with the 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.[45]

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.[46] 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.[47] 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).[48] 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

[45] *Royal Commission*, *supra* note 3.

[46] See e.g. *Olney & Bonn*, *supra* note 20.

[47] *Scherr & Dror*, *supra* note 30.

[48] *Miscarriages of Justice*, *supra* note 2.

the other catalysts. With more than half of reinvestigations initiated by an exoneree and/or their 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".[49] 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.

[49] Beverly McLachlin, "Wrongful Convictions 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.	• Arrests of alternative suspect / Perpetrator of related assaults pled guilty to other counts; (Henry) [1.01] • Statements from true perpetrators swearing Hinse's innocence (Hinse) [1.02] • Another investigation of night deposit thefts resulted in charges being laid against Brinks pick-up crews; (Huffman) [1.03] • Marshall learned of true perpetrator's confession while incarcerated; (D. Marshall Jr.) [1.04] • Similar local bank robberies occurred while McTaggart was incarcerated; (McTaggart) [1.05] • Identification and arrest of true perpetrator (Fisher); (Milgaard) [1.06] • Acquaintance admitted he had committed the crime; (Norris) [1.07] • Victim identified an alternative suspect as the perpetrator; (Norris) [1.08] • True perpetrator (Vezina) confessed; (Pepin) [1.09] • Federal government lawyer found the real perpetrator, who had committed suicide in 1982; (Warwick/Fox) [1.10] • True perpetrator (JD) confessed; (Waudby) [1.11] • True perpetrator (Parry) confessed; (Webber) [1.12] • Accomplice's identification of true perpetrator; (Webber) [1.13] • An eyewitness (Jensen) had identified another suspect—not Wood—whose appearance matched the composite drawing; (Wood) [1.14]

2. DNA	Forensic science evidence specifically involving DNA.	• DNA tests proved Barton did not impregnate the complainant; (Barton) [2.01] • DNA tests were conducted from bloody boots and excluded Dimitrov; (Dimitrov) [2.02] • DNA testing excluded the hairs found in Driskell's van as belonging to the victim; (Driskell) [2.03] • 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) [2.04] • New DNA test of semen taken six years earlier proved innocence; (Kaglik) [2.05] • New DNA analysis proved Marshall was innocent of charges; (S. Marshall) [2.06] • New DNA evidence eliminated McCullough as being one of the 6 unknown people involved in the crime; (McCullough) [2.07] • New testing of DNA evidence excluded Milgaard; (Milgaard) [2.08] • Improvements in DNA testing of semen found on the victim's underclothes excluded Morin as the murderer; (Morin) [2.09] • Advancements in DNA testing technology excluded Parsons as the perpetrator; (Parsons) [2.10] • No incriminatory match of hair sample re-tested years later; (Unger) [2.11]
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 whose testimony or opinion is	• 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) [3.01] • New forensic pathologists testified that no crime had occurred, and Dalton's wife had died from choking on a piece of cereal; (Dalton) [3.02]

	needed for interpretation of that evidence.	• 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) [3.03] • Forensic experts determined the type of hairs found in an electric shaver disproved the Crown's theory about Hay's post-offence conduct; (Hay) [3.04] • Evidence from new experts who reviewed all original reports and concluded that the wife's death was an accident; (Johnson) [3.05] • Goudge Inquiry discrediting evidence of pathologist (Smith); (Kumar) [3.06] • New expert testimony that cause-of-death was undetermined; (Kumar) [3.07] • Goudge Inquiry discrediting evidence of pathologist (Smith); (Marquardt) [3.08] • Goudge Inquiry discrediting evidence of pathologist (Smith); (Mullins-Johnson) [3.09] • New pathologists examined preserved tissue and concluded no assault occurred; (Mullins-Johnson) [3.10] • New expert opinion concluded cause of death was due to natural causes; (Mullins-Johnson) [3.11] • Four new forensic pathologists reviewed the evidence with different conclusions about head injury; (Salmon) [3.12] • Goudge Inquiry discrediting evidence of pathologist (Smith); (Shepherd) [3.13] • 3 new experts re-evaluated the case and concluded the cause of death had been misattributed to homicide; (Shepherd) [3.14] • Reinvestigation into cause of death suggested accidental asphyxiation; (Sherret-Robinson) [3.15]

		• 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) [3.16] • Experts in insect development provided evidence regarding time of death; (S. Truscott) [3.17] • New expert medical evidence regarding other explanations of penile lesions; (S. Truscott) [3.18] • Handwriting analyst concluded that the handwriting on the hotel register was not Fox's; (Warwick/Fox) [3.19] • New forensic pathology evidence from experts provided a new timeline for when the victim's injuries occurred; (Waudby) [3.20]
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.	• New evidence that the victim's family was threatening witnesses not to talk about how they saw Cain acting in self-defence; (Cain) [4.01] • Discovered that both witnesses were paid money for their testimony; (Driskell) [4.02] • The jailhouse informant had been an informant in two other similar cases, both in exchange for favorable treatment; (Frumusa) [4.03] • Defence was never told that informant received advantages for testimony; (Tremblay) [4.04]
5. Misconduct	Any misconduct related to the investigation (including biased, flawed, or erroneous investigative practice), overzealous prosecution, or ineffective assistance of counsel.	• Eyewitness evidence derived from hypnosis deemed inadmissible per new SCC decision (R v Trochym, 2007); (Baltovich) [5.01] • Recognition of unreliable eyewitness identification procedures using biased in-person lineup; (Henry) [5.02] • Unreliable eyewitness identification using an unfair photo lineup; (Henry) [5.03]

		• Admission that police concealed key evidence (2002); (Staples) [5.04] • Evidence that counsel at trial was ineffective in obtaining and using exculpatory evidence; (White) [5.05] • Correspondence between police called into question investigative conduct as a source for the details provided in Wood's statement (leaking holdback information); (Wood) [5.06]
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.	• The victim and her family lied about Barton being the perpetrator to cover up that she was actually abused by her older brother; (Barton) [6.01] • Recanted testimony and history of false allegations; (Beaulieu) [6.02] • Inculpatory statements from men involved in the insurance fraud scheme stating that the car was not stolen; (Bjorge) [6.03] • The man who had reported the car stolen never showed up to testify; (Bjorge) [6.04] • Two witnesses said Cain only fired gun because victim was coming at him; (Cain) [6.05] • Witness recanted his evidence shortly after conviction; (Driskell) [6.06] • Recanted witness statement by jailhouse informant; (Druken) [6.07] • Victim stated she had been mistaken that the perpetrator was Dumont; (Dumont) [6.08] • New witness testimony overhearing admissions of guilt made by other suspects; (Frumusa) [6.09] • New witness testimony that a key witness perjured himself, lying about Frumusa's admission of guilt and telling the witness that he had concocted the story in exchange for avoiding jail; (Frumusa) [6.10]

	• Kaglik's niece admitted to police she had lied and that no rape had ever occurred; (Kaglik) [6.11] • The investigating RCMP officer had a sexual relationship with the complainant and a witness, making their testimony unreliable; (Kaminski) [6.12] • 10 witnesses who testified against Karthiresu recanted their evidence; (Karthiresu) [6.13] • 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) [6.14] • 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.) [6.15] • The true perpetrator's daughter came forward after conviction and provided evidence to the police that implicated her father; (D. Marshall Jr.) [6.16] • 4 sworn statements from witnesses corroborating McArthur's exculpatory evidence; (McArthur) [6.17] • Recanted testimony of informant (McCullough's cellmate); (McCullough) [6.18] • Key Crown witness at trial (Wilson) recanted their evidence; (Milgaard) [6.19] • Jailhouse informant recanted their testimony and then recanted their recantation, "spinning a web of confusion" and discrediting the witness evidence; (Morin) [6.20] • Complainant's discredited character based on finding of guilt of public mischief for making false sexual

		assault complaints; (Nelson) [6.21] • Witness stated she was pressured by police into lying about witnessing the murder; (Nepoose) [6.22] • Evidence of witness's low IQ and inability to understand / recall complex situations, showing possibility of false testimony; (Oakes) [6.23] • Deathbed confession of true perpetrator recanting trial evidence and admitting perjury; (Plamondon) [6.24] • Recanted witness testimony exculpating Sauve & Trudel; (Sauve & Trudel) [6.25] • Witness statements to corroborate alibi (1972 trial); (Staples) [6.26] • Recanted witness evidence of informant; (Tremblay) [6.27] • Viva voce evidence and written affidavits from 26 witnesses; (S. Truscott) [6.28] • Witness statements corroborating alibi; (W. Truscott) [6.29] • Learned that the alleged victim (Truscott's ex-girlfriend) fabricated the complaint and lied at trial; (W. Truscott) [6.30] • A key Crown witness was discredited based on their delay in reporting the alleged offence and a motive to fabricate; (White) [6.31] • Investigator also obtained false confession from a now known wrongly-convicted individual (Morin), undermining the investigator's reliability; (Wood) [6.32]
7. Other exculpatory documentation	Documents, materials, and records that had been preserved from the time of investigation. For example, police or Crown notes and reports, wiretaps, and exhibits that contained potentially	• Police investigative notes contradicted police officers' testimony; (Duguay) [7.01] • Undisclosed exculpatory statements from several witnesses; (Duguay) [7.02] • True perpetrator's confession (Bernardo) to offences resulting in

	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."	Hanemaayer's convictions found in Baltovich's file disclosure; (Hanemaayer) [7.03] • Found medical, lab, and police reports relating to DNA; (Henry) [3.04] • Police notes showing inconsistencies and unreliability of witness testimony; (Johnson) [7.05] • Police files and notes about an identical case and allegations involving the same victim and different perpetrator; (Leadbeater) [7.06] • Found McArthur's original police statement that was never put into evidence at the original trial; (McArthur) [7.07] • 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) [7.08] • RCMP report stating that police had reviewed transcripts of wiretap evidence showing inconsistencies with a key witness's testimony; (Michaud) [7.09] • Tape recording of a conversation between persons of interest exculpated Michaud; (Michaud) [7.10] • Missing exhibits found in pathologist's possession (Smith's office); (Mullins-Johnson) [7.11] • Undisclosed police and investigation reports including a report confirming Phillion's alibi; (Phillion) [7.12] • Concealed police memo of witnesses identifying 3 individuals fleeing murder scene and contradicting the police's theory of a lone gunman (2002); (Staples) [7.13] • Police investigative notes that could impeach Crown witnesses, including notes from Taillefer's questioning and the information for a search warrant; (Taillefer) [7.14]

	• Oral and written witness statements gathered during the police investigation that contradicted the Crown's theory; (Taillefer) [7.15] • 2 versions of autopsy reports from the original medical examiner with inconsistent times of death; (S. Truscott) [7.16] • Jail cell recording between 2 witnesses, contradicting their original testimony and implicating themselves as the true perpetrator and exculpating Walsh; (Walsh) [7.17] • Police notes revealing the witnesses (including the true perpetrator) were concocting a story; (Walsh) [7.18] • 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) [7.19] • Store owner's statement providing alibi evidence for Walsh and identifying another individual as the purchaser of shotgun ammunition for the murder weapon; (Walsh) [7.20] • Ballistics report that supported both Crown & Defence versions of events and that could be used to challenge the Crown's expert witness; (Walsh) [7.21] • Undisclosed statements from key Crown witnesses that could have undermined their credibility and supported Walsh's exculpatory testimony at trial; (Walsh) [7.22]

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

	Case Name	Date of Conviction/ Exoneration	Charge (s)	Factors Leading to Wrongful Conviction[a]	New Exculpatory Evidence Type	Availability of the Exculpatory Evidence	Catalyst / Pathway to Exoneration
1	Robert Baltovich	1992 / 2008	Second degree murder	A. Erroneous judicial instructions B. Unreliable eyewitness identification (hypnosis)	1. Misconduct [5.01]	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 [2.01] 2. Witness statements [6.01]	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 [6.02]	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 [6.03] 2. Witness statements [6.04]	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 [3.01]	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[a]	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 4.01 2. Witness statements 6.05	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 3.02	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 2.02 2. Forensic science 3.03	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 2.03 2. Incentives or intimidation 4.02 3. Witness statements 6.06	1. New interpretation[1] 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 6.07	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[a]	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 [7.01] 2. Documentation [7.02]	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 [6.08]	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 [2.04]	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)
14	Peter Frumusa	1990 / 1998	First degree murder	A. Jailhouse informant testimony B. Problematic police investigation	1. Witness statements [6.09] 2. Witness statements [6.10] 3. Incentives or intimidation [4.03]	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)

	Case Name	Date of Conviction/ Exoneration	Charge (s)	Factors Leading to Wrongful Conviction[a]	New Exculpatory Evidence Type	Availability of the Exculpatory Evidence	Catalyst / Pathway to Exoneration
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 [7.03] / Alternative suspects	1. Discovered after conviction[2]	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 [3.04]	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 [5.02] 2. Misconduct [5.03] 3. Documentation [7.04] 4. Alternative suspects [1.01]	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)
18	Réjean Hinse	1964 / 1997	Aggravated robbery	A. Problematic police investigation B. Erroneous eyewitness identification	1. Alternative suspects [1.02]	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;

	Case Name	Date of Conviction/ Exoneration	Charge (s)	Factors Leading to Wrongful Conviction[a]	New Exculpatory Evidence Type	Availability of the Exculpatory Evidence	Catalyst / Pathway to Exoneration
							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 [1.03]	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 [3.05] 2. Documentation [7.05]	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)
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 [6.11] 2. DNA [2.05]	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 [6.12]	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)

	Case Name	Date of Conviction/ Exoneration	Charge (s)	Factors Leading to Wrongful Conviction[a]	New Exculpatory Evidence Type	Availability of the Exculpatory Evidence	Catalyst / Pathway to Exoneration
23	Kulam (Kulaveerasingam) Karthiresu	1995 / 2000	Second degree murder	A. Unreliable eyewitness identification B. Problematic witness testimony	1. Witness statements [6.13]	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 [3.06] 2. Forensic science [3.07]	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)
25	Stephen Leadbeater	1993 / 1999	Sexual assault	A. Police & crown misconduct B. Fabricated complainant testimony C. Failure to disclose evidence	1. Witness statements [6.14] 2. Documentation [7.06]	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 [3.08]	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)

	Case Name	Date of Conviction/ Exoneration	Charge (s)	Factors Leading to Wrongful Conviction[a]	New Exculpatory Evidence Type	Availability of the Exculpatory Evidence	Catalyst / Pathway to Exoneration
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 6.15 2. Witness statements 6.16 3. Alternative suspects 1.04	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)
28	Simon Marshall	1997 / 2003	Sexual assault	A. False confession B. Problematic police investigation	1. DNA 2.06	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 6.17 2. Documentation 7.07	1. Discovered after conviction 2. Discovered after conviction[3]	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	1. Witness statements 6.18 2. DNA 2.07	1. Discovered after conviction 2. New interpretation	Exoneree / Counsel (Court of Appeal ordered new trial; Crown withdrew charges)

	Case Name	Date of Conviction/ Exoneration	Charge (s)	Factors Leading to Wrongful Conviction[a]	New Exculpatory Evidence Type	Availability of the Exculpatory Evidence	Catalyst / Pathway to Exoneration
				C. Problematic expert evidence			
31	Michael McTaggart	1988 / 1990	Armed robbery (2 counts)	A. Police failure to disclose evidence B. Erroneous eyewitness identification	1. Documentation [7.08] 2. Alternative suspects [1.05]	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)
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. Documentation [7.09] 2. Documentation [7.10]	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 [6.19] 2. Alternative suspects [1.06] 3. DNA [2.08]	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	1. DNA [2.09] 2. Witness statements [6.20]	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)

	Case Name	Date of Conviction/ Exoneration	Charge (s)	Factors Leading to Wrongful Conviction[a]	New Exculpatory Evidence Type	Availability of the Exculpatory Evidence	Catalyst / Pathway to Exoneration
				D. Unreliable witness testimony			
35	William Mullins-Johnson*	1994 / 2007	First degree murder	A. Problematic expert evidence (forensic pathology) B. Racial prejudice	1. Forensic science [3.09] 2. Forensic science [3.10] 3. Forensic science [3.11] 4. Documentation [7.11]	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 [6.21]	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 [6.22]	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 [1.07] 2. Alternative suspects [1.08]	1. Discovered after conviction 2. Not disclosed	True perpetrator (true perpetrator confessed; unsuccessful application for ministerial pardon; acquitted at Court of

	Case Name	Date of Conviction/ Exoneration	Charge (s)	Factors Leading to Wrongful Conviction[a]	New Exculpatory Evidence Type	Availability of the Exculpatory Evidence	Catalyst / Pathway to Exoneration
							Appeal with Crown agreement)
39	Connie Oakes	2013 / 2016	Second degree murder	A. False testimony from co-accused B. Unreliable eyewitness identification	1. Witness statements [6.23]	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 [2.10]	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 [1.09]	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 [7.12]	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 [6.24]	1. Not disclosed	True perpetrator (unsuccessful appeals to Court of Appeal & SCC; true perpetrator recorded a deathbed confession; ministerial review; Court of Appeal ordered

	Case Name	Date of Conviction/ Exoneration	Charge (s)	Factors Leading to Wrongful Conviction[a]	New Exculpatory Evidence Type	Availability of the Exculpatory Evidence	Catalyst / Pathway to Exoneration
							new trial; Crown withdrew charges)
44	John (Jack) Salmon*	1971 / 2015	Manslaughter	A. Flawed forensic evidence B. Unreliable eyewitness identification	1. Forensic science [3.12]	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 [6.25]	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 [3.13] 2. Forensic science [3.14]	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 [3.15]	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 [6.26] 2. Documentation [7.13] 3. Misconduct [5.04]	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

	Case Name	Date of Conviction/ Exoneration	Charge (s)	Factors Leading to Wrongful Conviction[a]	New Exculpatory Evidence Type	Availability of the Exculpatory Evidence	Catalyst / Pathway to Exoneration
							Project at 2002 trial against Hamilton police)
49	Billy Taillefer	1990 / 2006	First degree murder	A. False confession B. Failure to disclose evidence C. Erroneous judicial instructions	1. Documentation [7.14] 2. Documentation [7.15]	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 [6.27] 2. Incentives or intimidation [4.04]	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 [3.16] 2. Forensic science [3.17] 3. Forensic science [3.18] 4. Documentation [7.16] 5. Witness statements [6.28]	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 [6.29] 2. Witness statements [6.30]	1. Discovered after conviction 2. Discovered after conviction	Exoneree / Counsel (counsel obtained alibi evidence and appealed to Court of Appeal; conviction overturned)

	Case Name	Date of Conviction/ Exoneration	Charge (s)	Factors Leading to Wrongful Conviction[a]	New Exculpatory Evidence Type	Availability of the Exculpatory Evidence	Catalyst / Pathway to Exoneration
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 [2.11]	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. Documentation [7.17] 2. Documentation [7.18] 3. Documentation [7.19] 4. Documentation [7.20] 5. Documentation [7.21] 6. Documentation [7.22]	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 [3.19] 2. Alternative suspects [1.10]	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 [3.20] 2. Alternative suspects [1.11]	1. New interpretation 2. Discovered after conviction	Neutral body / Police (true perpetrator confessed; Goudge Inquiry identified errors in Waudby's case; based on Inquiry, Crown

	Case Name	Date of Conviction/ Exoneration	Charge (s)	Factors Leading to Wrongful Conviction[a]	New Exculpatory Evidence Type	Availability of the Exculpatory Evidence	Catalyst / Pathway to Exoneration
				B. Crown withheld evidence			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 [1.12] 2. Alternative suspects [1.13]	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 [5.05] 2. Witness statements [6.31]	1. Discovered after conviction 2. Discovered after conviction[4]	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 [1.14] 2. Misconduct [5.06] 3. Witness statements [6.32]	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. [a] Factors leading to wrongful conviction were identified in Campbell (2018). * Cases marked with an asterisk were verified by legal counsel or staff. [1] 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. [2] 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. [3] In *McArthur*, the exculpatory "documentation" evidence was known but not used at the original trial. [4] In *White*, the exculpatory "witness" evidence was known but not used at the original trial.

Wrongfully Convicted Women: Before, During, and After Wrongful Conviction

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In the past three decades, North America has exonerated over 3,400 innocent people of crimes they did not commit—with nearly 300 of those exonerees being women. Recent years have seen a 700% increase in female incarceration, which could influence future rates of wrongful convictions among women as well. The existing literature on wrongful conviction primarily focuses on male exoneree experiences and stories, leaving female exoneree needs and experiences entirely unaccounted for. The following review identifies the relevant literature pertaining to the lived experiences of incarcerated women to address the gaps in the wrongful conviction literature and inform future research. Evidenced by this review is the fact that systematic differences are leading to the wrongful conviction of women, women experience different pains of imprisonment and may be at a greater risk of mental and physical health complications due to their wrongful conviction and incarceration. Future research must focus on the unique lived experiences of female victims of wrongful convictions to understand the mechanisms underlying their convictions, and their experiences of wrongful conviction, incarceration, re-entry, and victimization, to adequately inform policy and help in their re-entry and rehabilitation.

I Introduction

Since 1989, the United States of America has exonerated 3,325 individuals convicted of crimes they did not commit, of those, 284 are women.[1]

In Canada, there are currently 84 proven wrongful convictions, 14 of which were of women (Canadian Registry of Wrongful Convictions, n.d).[2] As most exonerees are male, inquiries into wrongful convictions have then largely been male dominated.[3] While the wrongful convictions literature has increased, discussions of wrongfully convicted women and ethnic minority groups remain underdeveloped in comparison.[4] Similarly, the implications of wrongful conviction are less well understood than their causes.[5] With the general rate of incarceration in America increasing by nearly 500% in the past four decades these inquiries have never been more critical.[6] Consequently, the rate of wrongful conviction could also be assumed to be at risk of increasing– requiring us to understand the mechanisms leading to conviction, the unique challenges exonerees face, and how to assist them in their re-entry. To address the gaps in the existing literature, this review considers the associations between one's socioeconomic status, race/ethnicity, and gender identity, and how they vary the impacts of wrongful convictions. As there is a general lack of inquiry into the interplay of race and gender influencing court decision-making, it is especially necessary for studies to approach these issues considering intersecting identities.[7]

A. Prevalence of Wrongful Convictions and Over-representation

While the true rate of wrongful convictions can never be ascertained, scholars have estimated between 0.05-1% of American criminal convictions may be wrongful.[8] With the current American prison population including 1.5 million individuals, or 2.2 million when including jails, this would result in anywhere from 15,000 to 22,000 innocent people being wrongfully

[1] "National Registry of Exonerations", online: <https://exonerationregistry.org/>.

[2] Canadian Registry of Wrongful Convictions, *All Wrongful Convictions Cases*, online: <https://www.wrongfulconvictions.ca/cases>.

[3] Andrea L Lewis & Sarah L Sommervold, "Death, but is it murder? The Role of Stereotypes and Cultural Perceptions in the Wrongful Convictions of Women" (2015) 78:3 Albany Law Rev 1035 [Lewis].

[4] See Mitch Ruesink & Marvin Free Jr, "Flawed justice: A study of wrongly convicted African American women" (2018) 16:4 Journal of Ethnicity in Criminal Justice 333 [*Ruesink & Free*]; *Ibid;* Konvisser, Zieva, "Psychological Consequences of Wrongful Conviction in Women and the Possibility of Positive Change" (2012) 5:2 DePaul Journal for Social Justice 221, online: <https://via.library.depaul.edu/jsj/vol5/iss2/3> [Konvisser].

[5] Konvisser, *ibid* note 4.

[6] Chenelle A Jones & Renita L Seabrook, "The New Jane Crow: Mass Incarceration and the Denied Maternity of Black Women" in Mathieu Deflem, ed, *Sociology of Crime, Law and Deviance* (Emerald Publishing Limited, 2017) 135 [Jones].

[7] Leiber, Michael J & Maude Beaudry-Cyr, "The Intersection of Race/Ethnicity, Gender and the Treatment of Probation Violators in Juvenile Justice Proceedings" in Mathieu Deflem, ed, *Sociology of Crime, Law and Deviance* (Emerald Publishing Limited, 2017) 269.

[8] Nicky A Jackson et al, "An Exploratory Study of "No-Crime" Homicide Cases Among Female Exonerees" (2023) 32:1–2 *Journal of Aggression, Maltreatment & Trauma* 107 at 109 [*Jackson 2023*].

incarcerated. Due to the mass incarceration of Americans, between 7 to 100 million Americans have a criminal record, or rather, 70,000-100,000 innocent people could be living with an undeserved criminal record.[9] Whatever the true number, any wrongful conviction has severe implications for those affected as it impacts their ability to obtain housing or secure employment, while also subjecting them to the pains of imprisonment resulting in ailments such as mental illness, physical illness, and traumas such as the loss of social bonds and autonomy, sexual, and/or physical abuse.[10]

There are certain populations at an increased risk, who are underrepresented in the current literature, and face unique difficulties. In particular, the female incarceration rate has increased by over 700% in the past four decades, and not all have been affected equally.[11] In America, Black women are disproportionately incarcerated, approximately six times more than White women, and three times more than Hispanic Women.[12] In Canada, we see a similar situation with the over-representation of Indigenous women, who are now the fastest-growing prison population in Canada.[13] Currently, Indigenous women represent only 4.3% of the total population but are 40% of incarcerated women.[14]

With this over-representation in the total prison population and the vast increases in female incarceration, it is expected that we will see similar trends in rates of wrongful conviction. In Canada, women only represent 6% of the Canadian federal prison population, however, fourteen out of eighty-three exonerations in Canada are women (17%).[15] In America, there are currently 284 exonerated women. While in comparison to those of male exonerees, this number is quite small, the true rate of wrongful convictions has the potential to be much higher for women. This can be attributed to the absence of DNA in women's cases, the high proportion of women accused of crimes that did not happen, economic and structural barriers that women face, that women may be more frequently accused of "lesser crimes", and that women are more likely to plead guilty or

[9] "Poverty and Opportunity Profile - Americans with Criminal Records" (2022), online: *The Sentencing Project* <https://www.sentencingproject.org/app/uploads/2022/08/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>.

[10] Casandra Pacholski & Gail S Anderson, "Convicting the innocent: An analysis of the effects of wrongful convictions and available remedies in Canada" (2023) 4:2 *Wrongful Conv L Rev* 129, online: <https://doi.org/10.29173/wclawr86>.

[11] Jones, *supra* note 6.

[12] Rose M Brewer & Nancy A Heitzeg, "The Racialization of Crime and Punishment: Criminal Justice, Color-Blind Racism, and the Political Economy of the Prison Industrial Complex" (2008) 51:5 *American Behavioral Scientist* 625.

[13] Marques, Olga, et al. "The Mass Incarceration of Indigenous Women in Canada: A Colonial Tactic of Control and Assimilation." in *Neo-Colonial Injustice and the Mass Imprisonment of Indigenous Women* (Cham: Springer International Publishing 2020) 79, online: https://doi.org/10.1007/978-3-030-44567-6_5.

[14] *Ibid.*

[15] Correctional Service Canada, "Library" (11 September 2023), online: <https://www.canada.ca/en/correctional-service/corporate/library.html>.

accept responsibility.[16] Exonerees of colour are also over-represented in comparison to their White counterparts. While Black Americans represent 13% of the population, Black people make up 53% of the exoneree population in America. In Canada, Indigenous exonerees are also over-represented, with 4.5% of the Canadian population being Indigenous people and eighteen known Indigenous exonerees (21.7%). Innocence Canada has also reported that 25% of their case applicants are Indigenous, suggesting there may be many more Indigenous individuals struggling to clear their name, and are therefore not yet reflected in our official statistics.[17]

With the rates of incarceration, and potentially wrongful conviction, growing for these populations, it is critical to understand the unique circumstances leading to these convictions, the challenges faced by these communities, and the barriers to re-entry into their communities they face. This information is integral to restoring the livelihoods of these exonerees and their communities and developing policies and practices to achieve successful reintegration.

II Before Wrongful Conviction

A. The Mechanisms of Female Wrongful Convictions

The literature concerning women's experiences of being wrongfully convicted is sparse and less is understood about the mechanisms underlying these convictions.[18] Lewis and Sommervold report that both male and female exonerees are convicted of similar types of crimes, with murder being the most common charge among both groups.[19] Following murder, female exonerees were most likely to be accused of child sex abuse, drug crimes, manslaughter, and child abuse. For men, the most common crime type following murder was sexual assault, child sex abuse, drug crimes, and robbery.[20] However, there remain pervasive differences between male and female wrongful convictions. Jackson et al., (2023) have found that out of 242 wrongfully convicted women, 70.7% were wrongly convicted in "no-crime cases", 18.7% of which were "no-crime homicides".[21] This is in stark contrast to the 23% of male exonerees who have been wrongly convicted in "no-crime cases".[22] Additionally, Lewis and Sommervold report that 45% of women were wrongly convicted of harming a "close family member, a loved one, or a child", while male exonerees were "far more likely" to be falsely accused of victimizing individuals that did not fall

[16] Jackson 2023, *supra* note 8; Lewis, *supra* note 3; Debra Parkes & Emma Cunliffe, "Women and wrongful convictions: concepts and challenges" (2015) 11:3 *International Journal of Law in Context* 219, online: <https://www.cambridge.org/core/product/identifier/S1744552315000129/type/journal_article> [Parkes & Cunliffe]; Ruesink & Free, *supra* note 4.

[17] Stephen Bindman et al., "Innocence at Stake: The Need for Continued Vigilance to Prevent Wrongful Convictions in Canada" (25 April 2019), online: <https://www.ppsc-sppc.gc.ca/eng/pub/is-ip/ch10.html#ch10_2>.

[18] Ruesink & Free, *supra* note 4.

[19] Lewis, *supra* note 3.

[20] *Ibid.*

[21] Jackson 2023, *supra* note 8 at 113.

[22] Lewis, *supra* note 3 at 1036.

into any of the aforementioned categories.[23] In her book, Atwell (2007) analyzes the role gender has historically played in the execution of women by the state through mechanisms such as social expectations of women, motherhood, sexuality, and fidelity (As cited by Lang, 2021).[24] Atwell's work can be used to explain how a large proportion of women who are exonerated were convicted of crimes that never occurred—in other words, a woman who is thought to "infringe" on these societal expectations is to be punished.

Another explanation of the differences separating men and women regarding wrongful convictions could be what the literature calls "imported characteristics", which refers to the characteristics that inmates enter prison with and serve as a fundamental difference between male and female inmates.[25] Women who are incarcerated are more likely to be socio-economically deprived, have lower levels of education, have higher levels of traumatic life experiences like sexual, psychological, and physical abuse, and are more likely to be struggling with psychiatric disorders and substance use than their male counterparts .[26] This has been documented among some female exonerees that exhibit similar imported characteristics discussed above, as well as intersecting identities as women of colour. For example, among the roll call of female exonerees in Canada, Broomfield, a Black-Canadian, was a single mother when she was wrongfully accused. Waudby, falsely accused of killing her child, had a history of using drugs. Scott was homeless, using drugs, had an IQ of 50, struggled with processing information and had poor functional memory. Oakes, an Indigenous woman, was a victim of prolonged child sexual abuse, used drugs, and had prior drug convictions. Huffman was a single mother. Robinson was a young mother suffering from postpartum depression. Marquardt is an Indigenous woman, who dropped out of high school, moving between shelters and couches. Hayman dealt with neglect and abuse from a young age, also growing up in low socioeconomic status. Thus, it appears that exonerated women and rightfully incarcerated women share similar characteristics which may serve to increase their risk of both victimization and incarceration.

While many female inmates suffer from abuse, among these, there may be many women wrongfully convicted of murder against an abusive partner.[27] In these circumstances, battered women acting in self-defence are pleading guilty to charges of manslaughter or murder—some of the offences highest in terms of wrongful convictions.[28] This may be especially true regarding Indigenous women, who are more likely to be denied "valid claims to self-defence", ultimately leading to their conviction.[29] According to a report calling for the group exoneration of 12 Indigenous-Canadian women, s.718.2(e) of the *Criminal Code*, which requires the court to pay

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[23] *Ibid* at 1039.

[24] See Connor Lang, "The Intersection of Wrongful Convictions and Gender in Cases Where Women Were Sentenced to Death or Life in Prison Without Parole" (2021) 27.2 MJGL 403, online: <https://repository.law.umich.edu/mjgl/vol27/iss2/4/>.

[25] Anouk Mertens & Freya Vander Laenen, "Pains of Imprisonment Beyond Prison Walls: Qualitative Research with Females Labelled as Not Criminally Responsible" (2020) 64:13–14 *International Journal Offender Therapy and Comparitive Criminolgy* 1343 at 1344 [Mertens].

[26] *Ibid.*

[27] Parkes & Cunliffe, *supra* note 17.

[28] *Ibid.*

[29] *Ibid* at 228.

"particular attention to the circumstances of [Indigenous Peoples]", was inadequately applied and considered in these women's trials.[30] In one Canadian study of 91 women who were tried for "killing intimate partners in circumstances where the female accused had been subjected to violence by the man she allegedly killed", 41% were Indigenous.[31] Additionally, we know Indigenous people are 10% more likely than non-Indigenous people to plead guilty and that women and Indigenous peoples are "more likely than other suspects to waive their rights to silence during police investigations[.]"[32] Which could put Indigenous women at an increased risk of experiencing wrongful convictions.

Similar issues arise in cases of mothers falsely accused of killing their children. In cases of natural death, women are pleading guilty to offences such as murder or manslaughter.[33] In Parkes and Cunliffe's review of police transcripts, a mother's feelings of responsibility for their child are used against them to elicit an admission of guilt.[34] Of course, rather than factual guilt, a mother is only taking an assumed responsibility for not being able to prevent a tragic accident. Another technique which is disproportionately utilized against these falsely accused women is the use of "suggestive interviewing techniques of children" to secure a conviction.[35]

It grows increasingly obvious that women's wrongful convictions are distinct from their male counterparts as there are "additional factors that exert more pressure on a woman to plead guilty" due to women disproportionately acting as a primary caretaker, being reluctant to testify against an abuser, acting in self-defence, or accepting blame due to feelings of guilt.[36]

III The Wrongful Conviction

While the literature on the pains of imprisonment is vast, it largely fails to distinguish differences between male and female inmates even though research has suggested these two populations experience incarceration differently.[37] Of the limited studies conducted, we know women are more affected than men by loss of contact with loved ones, by loss of autonomy and control, and are less often affected by the deprivation of heterosexual relationships.[38]

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[30] Kim Pate, *Injustices and Miscarriages of Justice Experienced by 12 Indigenous Women: A Case for Group Conviction Review and Exoneration by the Department of Justice via the Law Commission of Canada and/or the Miscarriages of Justice Commission* (Ottawa: Office of The Honourable Kim Pate, CM, 2022) at 16.

[31] Elizabeth A Sheehy, *Defending Battered Women on Trial: Lessons from the Transcripts* (Vancouver: UBC Press, 2014) at 127, as cited in Parkes & Cunliffe, *supra* note 17 at 228.

[32] New South Wales Law Reform Commission, *Report 95: The Right to Silence* (Sydney: National Library of Australia, 2000) at para 2.118, as cited in Parks & Cunliffe, *supra* note 17 at 231.

[33] Parkes & Cunliffe, *supra* note 17 at 220, 238.

[34] Parkes & Cunliffe*, ibid* at 233.

[35] Ruesink & Free, *supra* note 4 at 8.

[36] Judge Lynn Ratushny, *Self-Defence Review: Final Report* (Ottawa: Ministry of Justice, 1997), as cited in Parkes & Cunliffe, *supra* note 17 at 232.

[37] Mertens, *supra* note 26.

[38] *Ibid* at 1344.

A. Women, Mothers, and Caretakers

Historically, the development of literature concerning incarcerated women or women and crime, was far behind that of male incarceration and offending. Incarcerated women have, historically, been subjugated to "double deviance" as they have infringed on social and gender norms, as well as the law.[39] Feminist criminologists note that under patriarchal rule, "all women's mothering" is policed, which "results in the pathologizing of those who do not or cannot perform normative motherhood."[40]

A key distinction separating the experiences of incarcerated mothers from incarcerated fathers is the fact that incarcerated mothers are more likely to be "lone mothers", whereas incarcerated fathers typically have the privilege of having their children taken care of by their mother.[41] Perhaps due to the lack of another parent, visitations for mothers are also sparse, with only 30% of children visiting their mothers while they are incarcerated.[42] This likely contributes to the fact that maternal relations with children following a custodial sentence never "fully recover", with incarcerated mothers citing separation from their children as the most "difficult aspect" of being incarcerated.[43] This has severe implications for wrongfully convicted women who are disproportionately accused of harming their children, thus having any remaining children taken from their care. As stated by several female exonerees:

> Ms Waudby's eldest daughter Justine and newborn son M.W. would remain [in foster care] until her second-degree murder charge was dropped in June 1999 [44]

> Ms. Reynolds went free yesterday, she had, in her words, "lost everything" -- contact with her four other children, her reputation, all her possessions and close to four years of freedom.[45]

> Sherry told reporters after her acquittal that she had never seen Austin, her remaining son, since he was taken from her shortly before her arrest.[46]

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[39] Lucy Baldwin & Vicky Pryce, *Mothering Justice: Working with Mothers in Criminal and Social Justice Settings* (Hampshire, UK: Waterside Press, 2015) as cited in Sinead O'Malley, "Mothers in prison: matricentric feminist criminology" in Lynn O'Brien Hallstein et al, ed, *The Routledge Companion to Motherhood*, (New York: Routledge, 2020) 236 at 238 [O'Malley].

[40] Andrea O'Reilly, *Matricentric Feminism: Theory, Activism, and Practice* (Bradford, ON: Demeter Press, 2016) at 19 as cited in O'Malley, *supra* note 40 at 238 [O'Reilly].

[41] O'Reilly, *supra* note 40 at 240.

[42] O'Reilly, *ibid* at 245.

[43] O'Reilly, *ibid* at 240-242.

[44] Peterborough This Week, "Brenda Waudby makes her case", Peterborough This Week (March 8, 2012), online: https://www.thepeterboroughexaminer.com/life/brenda-waudby-makes-her-case/article_8f6ab488-4a01-52a0-b35e-cd88814af6e5.html.

[45] Timothy Appleby, "Mother cleared in killing of girl, 7", *The Globe and Mail* (26 January 2001), online: <theglobeandmail.com> [Appleby].

[46] Sarah Harland-Logan, "Exonerations: Sherry Sherrett-Robinson", online: <innocence canada.com>.

While there is not much direct research on female exonerees, this fact holds significant importance for the literature as the narratives offered by incarcerated women suggest that the most painful part of incarceration and re-entry is the "trauma and emotional factors" that accompany them, rather than "quantifiable outcomes" such as employment, housing, and re-offending—which is typically more important for incarcerated men.[47]

B. Mothers, Grief, and Declining Health

When studying the female pains of imprisonment, Jackson et al. found that "females often report the separation from their significant others and children as an additional burden to carry through incarceration".[48] For exonerees, remaining in contact with children was especially difficult as communication was dependent on caretakers.[49] To exacerbate this issue, many female exonerees are not only accused of harming their children, but have their remaining children taken from them. Louise Reynolds lost four children, Sherry Sherret-Robinson lost contact with her remaining son after he was adopted, Brenda Waudby's daughter was placed in foster care, and Joyce Hayman also lost custody of her remaining son. As can be found in Table 1, out of fourteen Canadian female exonerees, ten were wrongfully accused of harming their children.

In recent years, the literature has called attention to the public health issue that arises from parental grief.[50] A 2020 literature review found that grieving mothers were disproportionately affected by a child's death causing an increase in both natural and un-natural mortality and "overwhelming physical symptoms" that resulted in the "development of long-term physical illnesses [and] hospitalizations".[51] Three hundred reports of acute illnesses among mothers including headaches and infections, and 89 hospitalizations caused by infections, chest pain, and gastrointestinal issues occurred as a result.[52] Other studies found a positive correlation between the death of a child and epilepsy diagnoses among parents, as well as elevated risks of cancer, and hospitalizations due to Type 2 diabetes among mothers.[53] Wrongfully convicted women then, are at an elevated risk of suffering due to physical illnesses as well as early mortality due to the grief they suffer– not only from losing a child, but also of wrongful conviction and having remaining children taken from them. As said by several Canadian female exonerees:

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[47] Bree Carlton & Marie Segrave "Women's survival post-imprisonment: Connecting imprisonment with pains past and present" (2011) 13:5 *Punishment & Society* 551 at 565.

[48]Jackson 2023*, supra* note 8 at 118.

[49]Nicky Ali Jackson, Margaret Pate & Kathryn M Campbell, "Prison and Post-Release Experiences of Innocent Inmates" (2021) 30:10 *Journal of Aggression, Maltreatment & Trauma* 1347 [Jackson 2021].

[50] Amanda E Temares et al, "Parental Grief, Wrongful Incarceration, and the Continued Effects after Exoneration" (2023) 32:1-2 *Journal of Aggression, Maltreatment & Trauma* 125 [Temares].

[51] *Ibid* at 138.

[52] *Ibid.*

[53] *Ibid.*

> I have suffered psychologically and emotionally, the damage to my reputation is irreparable, my family is devastated, and I still have not been able to grieve the loss of my child. [54]
>
> [The wrongful conviction] took away a good portion of my life. It took away my life with my children. It took away my ability to grieve. It really took a big chunk of my soul.[55]

As discussed in further detail in the following section, the physical health of female exonerees has not been directly measured. However, the literature on parental grief suggests female exonerees could be particularly vulnerable to the physical effects found to accompany parental grief.

C. Health Issues

In addition to the physical health effects of parental grief, incarcerated women are far more likely to suffer from health challenges than women in the general population. Approximately 20% of female inmates deal with "hepatitis, tuberculosis, and/or HIV"; with hepatitis B/C, HIV, and STIs being anywhere from two to ten times greater among female inmates than the general population.[56] In a study of 7,000 inmates, Binswanger et al. found that female inmates had a "significantly higher prevalence" of medical conditions in comparison to male inmates.[57] Additionally, there are unique challenges the female incarcerated population faces regarding their treatment including, "unnecessary hysterectomies, inadequate and inappropriate healthcare; and having their behaviour controlled by psychiatric medication."[58] Moraes et al. report that while most women access medical care while incarcerated (90.9%), dental care is the least utilized (58.6%).[59] However, dental care is vital to incarcerated women, especially considering that 33% of incarcerated women report tooth loss after incarceration, with an average of 3.7 teeth lost.[60] Moreas et al. (2021) also found that non-white participants were more likely to experience physical pain while incarcerated. This is in line with other studies that report that non-white women had less access to oral health services and "greater impacts of physical pain on their quality of life[.]"[61] And that black inmates were less likely than white inmates to go to see a dentist (24% and 14% respectively) (Moreas et al., 2021).[62] Additionally, incarcerated and previously incarcerated

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[54] Brenda Wauby as quoted in *Peterborough this Week*, (8 March 2012), *supra* note 44 at para. 6.

[55] Canadian Registry of Wrongful Convictions, *supra* note 2 at para 10.

[56] Alison M Colbert et al, "Health Care Needs of Women Immediately Post-Incarceration: A Mixed Methods Study" (2013) 30:5 *Public Health Nursing* 409 at 410 [Colbert].

[57] Ingrid A Binswanger et al, "Gender differences in chronic medical, psychiatric, and substance-dependence disorders among jail inmates" (2010) 100:3 *American Journal of Public Health* 476 as cited in Colbert *supra* note 56.

[58] Laura R Shantz & Sylvie Frigon, "Aging, women and health: From the pains of imprisonment to the pains of reintegration" (2009) 5:1 *International Journal of Prisoner Health* 3 at 4 [Shantz & Frigon].

[59] Ludmila Roberto Moraes et al, "Self-Perceived Impact of Oral Health on the Quality of Life of Women Deprived of Their Liberty" (2021) *International Journal of Dentistry* 1 at 2.

[60] *Ibid* at 2.

[61] *Ibid* at 4.

[62] *Ibid*.

women deal with accelerated aging– with 85% of older incarcerated women dealing with "chronic health problems, diseases such as emphysema and diabetes, as well as other age-related declines in physical, sensory, and immune system functioning[.]"[63]

While the literature on wrongful convictions is steadily expanding, the discussion of physical health issues arising from incarceration for exonerees is entirely underdeveloped. Kukucka et al. (2022) reported that 37.3% of the exonerees in their study experienced life-threatening illnesses or injuries.[64] Female exonerees report both health and dental issues, with three of eight women in one study now dealing with cancer (Jackson et al., 2021). In our own research, 11 of 57 exonerees in our sample dealt with health issues due to their wrongful conviction– however, these were all male exonerees, to our knowledge (19%). When examining exonerees admitted at 30 years or older (18 total), seven men dealt with "serious health issues following release or while incarcerated".[65] Other male exonerees reported "stress-related medical issues" such as high blood pressure, migraines, arthritis, heart-attacks, and nerve pain from a physical assault they endured while incarcerated.[66] Additionally, six Canadian male exonerees have passed away at the ages of: 55, 56, 62, 67, 69, and 76 years old, from health complications. In Canada, the average age of death is 82 years old, implying that exonerees could be dying at a much earlier rate due to poor physical health in prison or re-entry.[67]. Studies reveal that exonerees do suffer health complications while incarcerated and shortly afterward, which has gone on to claim their lives. However, much more development regarding female exoneree health and whether female exonerees are subject to any inappropriate or inadequate medical care while incarcerated is warranted to enhance medical assistance and treatment once women are exonerated.

D. Mental Health Challenges

Mental health challenges can impact anyone; however, they are most prevalent in incarcerated women. Compared to men, incarcerated women had "significantly higher prevalence of [...] psychiatric conditions and drug dependency"-- even when controlling for sociodemographic factors.[68] A higher frequency of psychiatric conditions such as anxiety, depression, and post-traumatic stress disorder (PTSD) was also reported among female inmates.[69] From the literature, we know that women serving indeterminate sentences, like exonerees, experience additional "pains of imprisonment" due to the indeterminacy of their sentences.[70] This uncertainty led to many negative experiences among female prisoners and was pervasive in female prisoners' narratives.[71] Research has shown that 20% of incarcerated women self-harm, which is four times

[63] Shantz & Frigon, *supra* note 58 at 4.

[64] Jeff Kukucka, Ashley M Horodyski & Christina M Dardis, "The Exoneree Health and Life Experiences (ExHaLE) Study: Trauma Exposure and Mental Health among Wrongly Convicted Individuals" (2022) 28:3 *Psychology, Public Policy & Law* 387 at 391 [Kukucka 2022].

[65] Pacholski, *supra* note 10.

[66] *Ibid.*

[67] DataCommons (Google), "Places in Canada: Life expectancy (years)", online: <datacommons.org>.

[68] Colbert, *supra* note 56 at 410.

[69] Colbert, *ibid*.

[70] Mertens, *supra* note 26 at 1355.

[71] *Ibid* at 1355.

greater than self-harm rates among male prison populations.[72] Additionally, women enduring mental health challenges or displaying distressing symptoms are likely to be met with segregation or solitary confinement, heightening their "psychological vulnerabilities".[73]

Few studies have examined the impacts of wrongful conviction and incarceration on mental health. Notably, Grounds (2004) found that 67% of the sample met the diagnostic criteria for PTSD, 56% for depressive disorders, and 78% suffered from personality changes.[74] Wildeman et al. studied 55 exonerees and concluded that 44% suffered from depression and 27% from PTSD.[75] These studies provide conclusive evidence of mental health issues being prevalent among exonerees, however, they are limited to male-only samples. A recent study by Kukucka et al. (2022) surveyed 59 exonerees, 46 men and 13 women, finding that the majority of exonerees experienced physical assault (54.2%), sexual assault (13.6%), and nwanted sexual experiences 27.1%), with an even higher number witnessing these events while incarcerated, 62.7%, 42.4%, and 30.5% respectively.[76] Additionally, Kukucka et al. found that 51.7% of exonerees had clinically significant PTSD symptoms" and 50.8% had "clinically significant depressive symptoms".[77] Furthermore, mental health issues such as chronic sleeping issues, irritability, depression, paranoia, and drug and alcohol dependency were not mitigated for those who have served shorter wrongful sentences[78] Female exonerees, in a study done by Jackson et al. (2021), also reported PTSD as a "major problem".[79] The literature on parental grief has found that mothers are at an increased risk of both hospital admissions, first psychiatric hospitalization, and to suffering "prolonged grief, depression, and post-traumatic stress [disorder]".[80] Although the data on female exoneree mental health is sparse, the information we have appears to support the aforementioned idea.

The literature has documented the pervasive mental health challenges that accompany wrongful conviction and incarceration, but these studies contain exclusively male samples. Of studies that do contain a small sample of women, female and male exonerees are spoken about as a cohesive group rather than a group differentiated by their unique gendered experiences. Based on the literature, one can hypothesize that exonerated mothers are at an increased risk of developing mental disorders due to not only wrongful conviction, but also parental grief. This warrants necessary study on wrongfully convicted mothers, especially those accused of harming their children, to further establish the prevalence of mental disorders among this unique group. Additionally, further emphasis needs to be made on female experiences as being separate from that of males to better ascertain the assistance that women require.

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[72]O'Malley*, supra* note 40.

[73] *Ibid* at 242.

[74]Adrian Grounds, "Psychological Consequences of Wrongful Conviction and Imprisonment" (2004) 46:2 *Canadian Journal of Criminology and Criminal Justice* 165 [*Grounds*].

[75] Jennifer Wildeman, Michael Costelloe & Robert Schehr, "Experiencing Wrongful and Unlawful Conviction" (2011) 50:7 *Journal of Offender Rehabilitation* 411 [Wildeman].

[76] Kukucka 2022, *supra* note 64.

[77]*Ibid* at 14.

[78] Temares, *supra* note 50.

[79] Jackson 2021, *supra* note 49 at 1361.

[80] Temares*, supra* note 50 at 140.

IV Life After Wrongful Conviction

The pains of imprisonment are frequently acknowledged in the literature, however, the pains of re-entry are not, especially regarding female and exoneree experiences (with the exception of Durnescu, 2011; McKendy & Ricciardelli, 2020; Nugent & Schinkel, 2016; Semenza & Link, 2019).[81] Re-entry literature recognizes that issues arising in re-entry are not static or universal, acknowledging the intersections of "social-structural, institutional, and personal factors" influencing barriers to re-entry.[82] For example, Black exonerees are less likely to be perceived as innocent and deserving of re-entry assistance when compared to their White counterparts.[83] This finding is especially harmful, as Americans of colour are "disproportionately poor in the United States" and are less likely to be capable of affording assistance that they may require.[84] Furthermore, women are among the fastest growing prison populations and experience unique barriers in their re-entry. Perhaps one of the largest barriers in a woman's re-entry is associated with her motherhood. In Canada, fathers have exclusive custody over their children in only 5.3-7.9% of cases, making the barrier of regaining child custody primarily one that women endure.[85] McKendy and Ricciardelli found that female parolees frequently expressed their desires to "reconnect with their children and re-establish mothering identities".[86] However, gaining access to children is a common barrier to re-entry, leaving many mothers experiencing the stress of attempting to regain access which is commonly prevented due to non-association conditions attached to parole.[87] Additionally, many female parolees discuss the laborious, and difficult, process of "navigating the processes required to visit or regain custody", such as meeting

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[81] See Durnescu, Ioan, "Pains of Probation: Effective Practice and Human Rights" (2011) 55:4 *International Journal of Offender Therapy Comprehensive Criminolgy* 530–545, online: <https://journals.sagepub.com/doi/10.1177/0306624X10369489>; Laura McKendy & Rosemary Ricciardelli, "The pains of release: Federally-sentenced women's experiences on parole" (2021) 13:1 European Journal of Probation 1 [*McKendy*] ; Briege Nugent & Marguerite Schinkel, "The pains of desistance" (2016) 16:5 Criminology & Criminal Justice 568, online: <https://journals.sagepub.com/doi/10.1177/1748895816634812>; Daniel C Semenza & Nathan W Link, "How does reentry get under the skin? Cumulative reintegration barriers and health in a sample of recently incarcerated men" (2019) 243 Social Science & Medicine 112618, online: <https://linkinghub.elsevier.com/retrieve/pii/S0277953619306136>.

[82] McKendy, *supra* note 81 at 2.

[83] Melanie Clark Mogavero, Ko-Hsin Hsu & Philip Colin Bolger, "A conjunctive analysis of false accusations, official misconduct, and race in violent and sexual exonerations cases" (2022) 40:6 *Behavioral Science & The Law* 756.

[84] Rebecca Marcus, "Racism in Our Courts: The Underfunding of Public Defenders and Its Disproportionate Impact Upon Racial Minorities" (1994) 22:1 *UC Law Constitutional Quarterly* 219, online: <https://repository.uclawsf.edu/hastings_constitutional_law_quaterly/vol22/iss1/5> at 234 [*Marcus*].

[85] Nicole Marcil-Gratton & Céline Le Bourdais, *Custody, Access and Child Support: Findings from The National Longitudinal Survey of Children and Youth*, by Nicole Marcil-Gratton & Céline Le Bourdais (Université de Montréal / Institut national de la recherche scientifique, 1999).

[86] McKendy, *supra* note 81 at 10.

[87] *Ibid*.

requirements for housing, employment, and completing a variety of courses.[88] To compound this issue, the literature also demonstrates that women have greater difficulty re-entering their communities than their male counterparts as they are "less likely to find jobs, earn a living wage, or be supported by a partner".[89] This finding demonstrates that women may be at an increased risk of living on welfare or remaining unhoused.

A. Re-entry Issues for the Wrongfully Convicted

Much like the rightfully convicted population of women dealing with the pains of re-entry, wrongfully convicted women must also deal with regaining custody of their children, navigating relationships, and obtaining employment and housing. However, no research examines a wrongfully convicted woman's unique experience navigating these barriers. Instead, these issues will be discussed broadly for contextual purposes.

a. Housing

Very few studies considered exoneree housing, let alone the unique barriers female exonerees may face. Kukucka et al. found that exonerees, whether they described themselves as wrongfully convicted, exonerated, or innocent, were less likely to receive a reply from a landlord than individuals who did not disclose criminal history in their housing inquiries.[90] In fact, exonerees were comparable to the rightfully convicted in terms of issues obtaining housing, as they were both "equally unlikely to receive a reply".[91] These levels of discrimination against exonerees were not impacted by geographic region, local crime rates, income level, or racial demographics.[92] Of the handful of studies regarding exoneree's abilities to re-gain housing, it grows increasingly clear that exonerees face stigma due to their wrongful conviction, preventing them from securing housing. This could be especially precarious for female exonerees if they are pregnant or trying to re-gain custody of their children. These findings are corroborated by Zanella et al., who found that exonerees are less likely than individuals with a criminal record to receive a response from a landlord (a 31.6% response rate compared to a 46% response rate).[93]

b. Exoneree Employment

Many re-entry issues for exonerees stem from the inability to re-gain employment– which is well documented in the literature. This is especially concerning, as employment is connected to the ability to successfully re-integrate.[94] Kukucka et al. found that full time employment among exonerees led to decreased levels of mental illnesses such as anxiety, depressive disorders, and

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[88] *Ibid* at 11.

[89] Shantz & Frigon, *supra* note 58 at 5.

[90]Jeff Kukucka et al, "Do exonerees face housing discrimination? An email-based field experiment and content analysis." (2021) 27:4 *Psychology, Public Policy, and Law* 570 at 575.

[91] *Ibid* at 574.

[92] *Ibid.*

[93] Lesley Zannella, et al, "The effects of race and criminal history on landlords' (un)willingness to rent to exonerees." (2020) 44:4 *Law and Human Behavior* 300 at 304.

[94] Wildeman, *supra* note 75 at 416.

post-traumatic stress disorders.[95] However, most employers (47%) are not willing to hire someone with a criminal record— a major barrier for exonerees, who do not have their criminal records automatically expunged.[96] Once released from prison, the immediate needs of exoneree's are housing, employment, and financial support. Despite judicial rulings and newspaper coverage, the few studies in this area have found that exoneree's struggle to find employment. In 2020, Kukucka et al. found that hiring professionals "perceived the exoneree as less intelligent, performed more reference checks for the exoneree, and offered the exoneree a somewhat lower starting wage".[97] Additional studies have found that of 60 exonerees, one third were unable to support themselves financially, remaining financially dependent on those close to them.[98] Grounds also noted that the majority of exonerees (thirteen of eighteen) were unemployed for at least two-years following their release.[99] While there are no studies examining the unique experiences of wrongfully convicted women and their experience with re-gaining employment, there are a few accounts from these women regarding their experiences:

> Oakes hit rock bottom after she was released from federal prison following the Crown's decision to stay the second-degree murder charge. She couldn't land a job because her name was connected to the murder.[100]
>
> It takes its toll and at my age trying to get a job is not easy in any market,' the 48-year-old says. 'I'm competing against young students that just came out of school like me, but [an employer] will take a student that they have 30 years they can invest in, where I wouldn't have that. It's unfortunate, but I keep trying, keep putting my resume out there. It's all you can do.'[101]
>
> She had not been able to obtain a job because of her theft conviction and that 'it's sort of like I lost four years of my life.[102]
>
> Her conviction made it hard to find work. She continued to struggle with her addiction and survived on social assistance. She lost custody of her son. When she gave birth to another son in 2003, she lost custody of him as well. The charges and

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[95] Jeff Kukucka, Heather K Applegarth & Abby L Mello, "Do exonerees face employment discrimination similar to actual offenders?" (2020) 25:1 *Legal Criminolgy and Psycholgy* 17 at 18.

[96] Rachelle Giguere & Lauren Dundes, "Help Wanted: A Survey of Employer Concerns About Hiring Ex-Convicts" (2002) 13:4 *Criminal Justice Policy Review* 396 at 399.

[97] Kukucka 2020, *supra* note 95 at 2.

[98] Temares, *supra* note 50 at 135.

[99] Grounds, *supra* note 74.

[100]See Jorge Barrera, "Connie Oakes sues Alberta Crown, Medicine Hat police for $1M over wrongful murder conviction", *CBC News* (1 May 2018), online: <https://www.cbc.ca/news/indigenous/connie-oakes-lawsuit-wrongful-conviction-murder-1.4642379> at para 26.

[101]Liam Casey, "Brenda Waudby moves on 16 years after Charles Smith debacle" (23 September 2013), online: *Toronto Star* <https://www.thestar.com/news/gta/brenda-waudby-moves-on-16-years-after-charles-smith-debacle/article_8e48cd96-0984-5b1a-9b5e-907ff28bdb0e.html> at para 30.

[102]"Linda Huffman", online: <https://www.wrongfulconvictions.ca/cases/linda-huffman> at para 5.

> the conviction took away all my self-respect, she said in the affidavit. 'I do not think I have ever really recovered my spirit' [103]
>
> Sherry suffers from post-traumatic stress disorder due to the ordeal that she experienced surrounding Joshua's death. She also had a difficult time finding work after her conviction.[104]

c. Stigma

One primary way that formerly incarcerated males and females differ is in coping strategies. One study on "re-entry strategies" concluded that men "often attributed their positive change to a status-related goal like employment", however, "women most often attributed their positive change to a relationship in their lives".[105] This is especially problematic as exonerees suffer intense stigma, especially women wrongfully accused of harming children. For example, Louise Reynolds was harassed following her exoneration, with the public yelling things such as "you are guilty and you'll rot in hell [...] you left [your child] to die, no matter what".[106] Again, this refers to the sentiments that mothers are held to the highest scrutiny and are expected to perform their role as a mother.

V Policy Implications

As mentioned throughout this paper, research on female experiences before, during, and after being wrongfully convicted is lacking. We do not yet understand the particular mechanisms and risk factors leading to the wrongful conviction of women. Nor do we have knowledge regarding these women's experiences while being incarcerated, what risks they face while incarcerated, and their narratives. Better understanding these experiences will allow us to assist in their re-integration. The literature has also failed to differentiate female from male experiences in terms of re-entry, preventing us from understanding how women are struggling with their re-entry. Again, these questions hold great importance as they allow us to consider the needs of this population. The following section will therefore make recommendations as to what can be done for these women, with the knowledge we have from the existing literature.

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[103]Rachel Mendleson, " Woman wrongfully convicted over flawed Motherisk evidence acquitted by Ontario court", *Toronto Star* (12 April 2021), online: <https://www.thestar.com/news/investigations/woman-wrongfully-convicted-over-flawed-motherisk-evidence-acquitted-by-ontario-court/article_4a9d6e97-c25d-5f4a-aa60-7aab88a49410.html#:~:text=Joyce%20Hayman%20is%20seen%20outside,evidence%20from%20two%20Motherisk%20experts.> at para 12.

[104]Sarah Harland-Logan, "Sherry Sherrett-Robinson", online: *Innocence Canada* <https://www.innocencecanada.com/the-latest/exoneration/sherry-sherrett-robinson/> at para 19.

[105]Konvisser, *supra* note 4 at 260.

[106] Appleby, *supra* note 45.

A. Recommendations in Preventing the Wrongful Conviction of Women

> severe jeopardy due to dire underfunding. Racial minorities are disproportionately poor, disproportionately incarcerated, and now disproportionately the victims of ineffective assistance of counsel because public defenders do not have sufficient resources.[107]

The quote above pays heed to the circumstances leading to many women's wrongful convictions, many of which are dealing with being part of a minority racial group, of low socioeconomic status, or living with another label that increases their risk of wrongful conviction such as using drugs or previously engaging in crime. Women are also disproportionately the victims of ineffective counsel as they are more likely to be charged in "no-crime cases". Effective counsel should and can eliminate this.

On the other hand, we have Indigenous women, among other women from different racial groups, being held criminally responsible for defending their lives from abusers. Likewise, s. 718.2(e) is not applied properly in the cases of Indigenous people before the court. One of the greatest issues leading to wrongful conviction is inadequate legal defence, which is due in part because of one's inability to afford counsel. For many, it may become easier to plead guilty or represent themselves. Pollack et al. found that "nine women accepted responsibility and pled guilty early on as they lacked the financial resources to go to trial".[108] These circumstances are a breeding ground for the wrongful conviction of women, minorities, and those of low socio-economic status who may have inadequate representation due to their reliance on legal aid, due to biases, and/or gendered and racial stereotypes. Legal aid is then imperative in preventing wrongful convictions and strengthens legitimacy in our criminal legal systems.

Furthermore, more attention and training must be paid to criminal legal system actors to educate them on stereotypes of "how women should behave" which has a direct influence on why women are wrongfully convicted in "no-crime cases".[109] Education prevents the excuse of ignorance in future situations, allowing us to hold these actors to a higher standard of accountability. As recommended by Drummond and Mills, to increase police accountability, civilian complaint review boards for police misconduct should be established.[110] Additionally, "lowering the standard of criminal intent to convict officers for misconduct" must be made to ensure officers can be held accountable for any misconduct they participate in, as well as eliminating or limiting qualified immunity.[111] The above recommendations could alleviate wrongful convictions where official misconduct occurs, which is approximately 54% of cases.

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[107] Marcus, *supra* note 84 at 267.

[108] Pollack, Shoshana, Melanie Battaglia & Anke Allspach, *Women Charged with Domestic Violence in Toronto: The Unintended Consequences of Mandatory Charge Policies*, by Shoshana Pollack, Melanie Battaglia & Anke Allspach (The Women Abuse Council of Toronto, March 2005), online: <https://www.oaith.ca/assets/files/Publications/womenchargedfinal.pdf> at 14.

[109] Jackson 2023*, supra* note 8.

[110] Clayton B Drummond & Mai Naito Mills, "Addressing Official Misconduct: Increasing Accountability in Reducing Wrongful Convictions" (2020) 1:3 *Wrongful Conviction Law Review* 270, online: <https://wclawr.org/index.php/wclr/article/view/34> at 286.

[111] *Ibid* at 286.

[112] As recommended by Jackson et al., future research can also help address the issue of official misconduct by qualitatively examining how and why these women came under suspicion in no-crime cases.[113]

B. Assisting with female pains of imprisonment and re-entry

Above all, research needs to begin differentiating between the female and male experience and gendered differences in how people interact and respond to their surroundings. However, the experiences of being a woman are one of many identities one may align with. Further research on exonerees of colour, especially female exonerees of colour is of great importance to examine how race and gender interact. Other vulnerable populations may include those identifying as 2SLGBTQIA+, those of low-socioeconomic status, or those who use substances or have prior criminal convictions—all of which may interact with race and gender to produce different experiences and subsequent needs in one's re-integration.[114] As written by Shantz and Frigon:

> Women require easy access to comprehensive community services, which are sensitive to their age, race, gender, health status, and abilities; currently these services are often limited or non-existent. In order to do this, women's accounts need to be taken into consideration before designing and delivering programs and services which are truly linked to their realities.[115]

From the literature we do have, we see that women are at an increased risk of experiencing mental health issues due to stressors such as parental grief and are more likely to cope using self-harm. As reported by Colbert et al., a number of participants spoke about their long-term healthcare needs and how difficult it was to access treatments such as therapy or medication.[116] To combat the increased levels of mental illnesses seen among female inmates, counselling services must also be freely and widely available for use. According to Kregg, "long term functioning is correlated with the support provided during the initial stages of re-integration".[117] Counselling should also be extended to immediate family members who have dealt with the secondary victimization of wrongful conviction and to assist exonerees and their families in rebuilding their relationships with one another.

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[112] Gross et al., "Government Misconduct and Convicting the Innocent: The Role of Prosecutors, Police, and Other Law Enforcement" (2020), *The National Registry of Exonerations* online: https://exonerationregistry.org/sites/exonerationregistry.org/files/documents/Updated%20CP_Government_Misconduct_and_Convicting_the_Innocent%20(1).pdf.

[113] *Jackson 2023, supra* note 8.

[114]Jackson 2021, *supra* note 49 at 1363.

[115]Shantz & Frigon, *supra* note 58 at 12.

[116] Colbert, *supra* note 56 at 114-116.

[117]Christing Kregg, "Right To Counsel: Mental Health Approaches to Support the Exonerated | Crown Family School of Social Work, Policy, and Practice" (1 June 2016), online: *Crown Family School of Social Work, Policy and Practice.*<https://crownschool.uchicago.edu/student-life/advocates-forum/right-counsel-mental-health-approaches-support-exonerated> at 189.

Women are also at an increased risk of experiencing physical health issues due to physical manifestations of parental grief and a lack of access to adequate health services. Women re-entering society express a general desire to improve their healthcare routines, especially as it assisted many in their "ability to cope and function".[118] The literature demonstrates that the issue is not that women do not forego healthcare, rather, that it is unavailable or inaccessible. Many women face barriers to healthcare insurance and coverage, going as far as to rationing medication to "maximize" the length of use, as the medication is too expensive.[119] Overall, more funding must be allotted to post-incarceration medical interventions, services, and treatments. As demonstrated by Colbert et al., women require individualized treatment plans that consider their specific goals and take their individual struggles into consideration.[120] Nurses could be invaluable in this process as they could provide recommendations suitable to the women's needs and provide education on health-related matters.[121]

Generally, all exonerees, despite gender identity, still lack access to basic services such as mandated compensation, mandatory criminal record expungement, and specialized programming. To alleviate the pains of re-entry for exonerees, all countries must establish federally mandated compensations at a fixed rate, to ensure compensation is equal and is given within reasonable time. Exonerees cannot wait to access compensation or other resources as they face urgent issues such as unemployment, homelessness, and/or deteriorating health (Innocence Project, 2012).[122] Alongside compensation, exonerees must be provided with financial assistance training to help exonerees budget, manage finances, and build credit.[123] Finally, social workers should be utilized to address the immediate transitional needs of exonerees such as assistance in obtaining housing/shelter, food, clothing, support services, and any other specialized services the individual may require.[124]

Table 1. Known Female exonerees in Canada

Name	Time Served	Charge	Race/ethnicity
Joyce Hayman	9 months	Administering a noxious substance; Criminal Negligence causing Bodily Harm to her child	White
Tammy Marquardt	13 years	Second Degree Murder of her child	Indigenous
Maria Shepard	8 months	Manslaughter of her stepdaughter	Asian

[118] Colbert, *supra* note 56 at 414.
[119] *Ibid* at 415.
[120] *Ibid* 415.
[121] *Ibid.*
[122] (Innocence Project, 2012)
[123]Jaimie Page, "Financial Training for Exonerees Awaiting Compensation: A Case Study" (2013) 52:2 Journal of Offender Rehabilitation 98 at 104.
[124] Tina Simms, "Statutory Compensation for the Wrongly Imprisoned" (2016) 61:2 Social Work 155 at 156.

Sherry Sherrett-Robinson	1 year	First Degree Murder of her child	White
Linda Sterling	none	Sexual Abuse	White
Connie Oakes	4 years	First Degree Murder	Indigenous
Wendy Scott	6 years	First Degree Murder	White
Dawn Schoenthal	1 year	Criminal Negligence causing the death of her child	White
Louise Reynolds	2 years and 2 years in a halfway house awaiting trial	Murder of her child	White
Brenda Waudby	Unknown	Second Degree Murder of her child	Unknown
Linda Huffman	1 day	Theft	Unknown
Tamara Broomfield	4 years	Aggravated Sexual Assault; Administering a noxious substance to her child	Black
C.F	Unknown	Infanticide of her newborn	Unknown
C.M	Unknown	Second Degree Murder of her newborn	Unknown

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Coercion in the Courtroom: Unpacking the Reality of False Guilty Pleas in Canada

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Despite a significant growth of scientific knowledge on wrongful convictions and miscarriages of justice, the phenomenon of false guilty pleas remains understudied mainly in Canada. Drawing from data obtained through the responses of a questionnaire administered to 55 defendants and 11 in-depth semi-structured interviews, this article explores the profile of the individuals who enter false guilty pleas and the reasons why they do so. The context and circumstances behind false guilty pleas are ranked by their prevalence (in the survey) and described with interviewees' stories. Finally, the article discusses the perception of the person entering a false guilty plea regarding the coerciveness or voluntariness of their decision.

I Introduction

In 2018, the Federal/Provincial/ Territorial Heads of Prosecutions Subcommittee on the Prevention of Wrongful Convictions (SPWC) published a report entitled "*Innocence at Stake: The Need for Continued Vigilance to Prevent Wrongful Convictions in Canada*" in which it acknowledged that "factually innocent persons in Canada have, sometimes, for a variety of reasons, pleaded guilty to crimes they did not commit" (SPWC, 2018, p. 169). This may now seem obvious, but it certainly was not at the time. The 2018 report was the first in which the SPWC officially recognized that false guilty pleas had become "an issue of growing concern" (SPWC, 2018, p. 169) in Canada. Yet the conclusion it reached was not very encouraging: "In short, Canada's criminal justice system is not preventing false guilty pleas in all cases. It is clear they occur; we simply do not know the scope of the phenomenon" (SPWC, 2018, p. 170).

Our knowledge has since improved, particularly thanks to the creation of the Canadian Registry of Wrongful Convictions (Roach, 2023). The work of the Registry has been instrumental in shedding some light on the -so far- 16 cases in which a wrongful conviction arose from a false guilty plea[1]. And yet, despite its invaluable contribution to the redress of individual miscarriages of justice, the Registry's data falls short of providing a global portrait of the phenomenon of false guilty pleas in Canada. This article is a first step toward that goal.

Based on the questionnaire responses provided by 55 defendants and the qualitative data collected via 11 semi-directive interviews -in which participants were asked a set of predetermined open questions but were also given the opportunity to freely and fully express themselves, therefore allowing for spontaneous or new themes to be brought up by the participant- this article aims to contribute to expanding scientific knowledge on the phenomenon of false guilty pleas in the Canadian criminal justice system. First, the article draws a portrait of the defendants who enter false guilty pleas. Second, it explores the reasons leading them to enter false guilty pleas and it ranks such reasons according to their prevalence. Third, the article focuses on the defendants' perception of the coerciveness or voluntariness of their decision to enter a false guilty plea.

II False guilty pleas v. false confessions

False guilty pleas, in which an innocent defendant falsely admits to his or her guilt in exchange for something -usually a sentence reduction, or a dropped charge- offered by the prosecution, used to be considered Canada's "dirty little secret" (Makin, cited in Brockman, 2010). For years, they hid in the "underbelly of the justice system" (Makin, cited in Brockman, 2010), and only false confessions during police investigations attracted scholarly attention.

As a result, we accumulated a significant amount of knowledge on false confessions in the context of police interrogations (for a comprehensive review, see Gudjonsson, 2021). However, our understanding of false guilty pleas emerged only when authors began comparing the two phenomena. We discovered that both false confessions and false guilty pleas lead to wrongful convictions (Kennedy, 2016) and can be driven by similar underlying emotions, such as

[1] See <https://www.wrongfulconvictions.ca/data> for updated numbers.

hopelessness and fatigue (Kennedy, 2016), or the desire to end an unpleasant situation immediately (Henderson and Levett, 2018). Additionally, it is known that certain disadvantaged segments of society, such as people suffering from mental illness (Redlich et al., 2010), Indigenous peoples (Carling, 2017; Roach, 2015) or juveniles (Redlich, 2010; Zottoli et al., 2016), are more likely to falsely confess and falsely plead guilty than less disadvantaged people, and are at risk of both.

But, while both false confessions and guilty pleas are false acceptances of guilt, sharing many underlying causes, we also learned that they have some differences. Wilford and Wells (2018) notes that false confessions occur during the investigatory phase of proceedings, whereas false guilty pleas take place much later in the process. Consequently, when entering a false confession, defendants have less information about their case, and rarely have a lawyer. In contrast, when a defendant enters a false plea, they usually have significant information about the case but are also experiencing a higher level of procedural fatigue (Wilford and Wells, 2018). False guilty pleas are typically entered in exchange for something offered by the Crown, whereas false confessions lack this element of reciprocity. As Wilford and Wells (2018) note, they are usually entered simply to provide immediate relief from suffering. Finally, the implications of false confessions differ from those of false guilty pleas in that the former still allows the defendant to demand a trial, while those who plead guilty renounce that right (Wilford and Wells, 2018).

The gradual recognition of these differences led scholars to argue that studies on false guilty pleas should be seen as an independent field, one that is related to but different from studies on false confessions. Most notably, in 2010, Redlich called on the scientific community to give false guilty pleas the attention they deserved. Since then, scholarly interest in false guilty pleas as a topic separate from false confessions has grown steadily[2]. Drawing from Siegel (2005) and Brockman (2010), Webster (2022) recently noted in this journal that we have now entered "the third generation of wrongful convictions scholarship" (p. 130), which acknowledges that false guilty pleas play a significant role as a source of wrongful convictions and can occur in proceedings related to all sorts of offences. Third generation literature has, to date, focused on establishing the frequency of false guilty pleas and the reasons behind them, but has paid limited attention to the perception of the coercive or voluntary nature of the defendants' decision.

III How frequent are false guilty pleas?

Establishing how frequently false guilty pleas occur is a difficult task (Wilford and Khairalla, 2019). We can count the number of cases in which a person who pled guilty has later on been exonerated, but that is as far as we can go if we wish to remain certain about our numbers. Estimates vary considerably depending on the jurisdiction. In the US, around 25% of the National Registry of Exonerations are wrongful convictions involving a false guilty plea (Cardenas, Sanchez and Kassin, 2023; Redlich *et al.*, 2023). Webster (2022) reports that the percentage jumps to 39% in the UK. In Canada, as of June 2024, the Canadian Registry of Wrongful Convictions notes that 15 out of the 89 individuals -or 16.85%- of those who have now been exonerated had entered a guilty plea at the time of their conviction.

[2] See e.g. the Foreword by Chief Justice Beverley McLachlin (2020) in the inaugural issue of this review.

Yet those cases are only the tip of the iceberg when it comes to false guilty pleas, as most individuals who have entered one have not, and will never be, exonerated. Self-reported data becomes, under these circumstances, an extremely useful source of information. Percentages of studies relying on self-reported data are less disparate than those on exonerated people. In Canada, Ericson and Baranek (1982) reported that 15.8% of the participants in their study had entered a false guilty plea[3]. In the US, Zottoli *et al.* (2016) found that 26.5% of the minor population they interviewed and 19% of the adult population admitted to having falsely pleaded guilty.

Finally, estimates of guesses given by other court actors can also help determine how prevalent false guilty pleas are in our criminal justice systems. In this regard, Erentzen, Schuller and Clow (2021) asked a sample of criminal defense lawyers in Canada to estimate the prevalence of false pleas among their clients, and found that participants estimated that over 25% of the clients they had represented had falsely pleaded guilty. Choosing a more experimental approach, Brockman (2010) presented her class of law school students with several real case scenarios. When asked to put themselves in the shoes of the defendants, over 50% of the students declared that they would have entered a false guilty plea under those circumstances.

The prevelance of false guilty pleas is impossible to determine with certainty. As Webster (2002) notes, "any description of its frequency is, by necessity, only educated estimates".

IV Why do false guilty pleas occur?

US-based literature has divided factors leading to false guilty pleas into those inherent to the individual, and those related to the circumstances surrounding the crime and the case (see e.g. Redlich *et al.*, 2023; Wilford and Khairalla, 2019, Zottoli *et al*., 2016). They have found, for example, that individual characteristics such as belonging to an ethnic minority can increase the likelihood of pleading falsely guilty (Redlich et al., 2010). However, they have also noted that external factors, such as the pressure received by the people surrounding them, narrow decision time frames, and sentencing discounts can be crucial in entering a false guilty plea (Wilford and Khairalla, 2019; Zottoli et al., 2016).

Similarly, in Canada, the third era of scholarship on false guilty pleas has moved "away from the notion of false guilty pleas as rooted in an individual cost-benefit analysis to a consideration of wider institutional/procedural factors – and their underlying drivers" (Webster, 2022, p. 153). Yet it has done so based on what Sherrin (2011) describes as "less than ideal" sources of information.

For example, Brockman (2010) concluded that individual factors such as personal assessments of costs and benefits, and structural and organizational factors such as procedural pressures -like being denied bail and facing an uncertain amount of time in jail- can contribute to a defendant abandoning their right to trial and falsely pleading guilty. His conclusions are based

[3] Ericson and Baranek (1982) conducted 101 open-focus interviews, in which it emerged that 36 participants claimed they were innocent of the charges they had been convicted of. Despite considering themselves innocent, 16 out of the 36 had pleaded guilty as charged.

on the analysis of court documents on only three prominent Canadian cases (*Brant*, *Hanemaayer*, and *Hennessey and Cheeseman*).

Similarly, Kennedy (2016) also based his study on case law analysis and court documents, and his conclusions are mostly drawn from the cases of *Hanemaayer*, *Kumar*, and *Bates*. Kennedy's (2016) study identified ten factors that cause innocent defendants to enter a false guilty plea, including powerful sentence reductions, lack of confidence in the defendant's lawyer, overconfidence in the opinion of experts, fear of going to jail and/or spending a lengthy time on remand, cultural and/or family reasons, the financial and emotional costs of trials and the feelings of anxiety, fear and stress that result from the combination of all the previous reasons.

Finally, Sherrin's (2011) study concluded that the most common reasons defendants enter false guilty pleas include the desire to minimize the sentence, the need to avoid the costs of proceedings, factual and/or legal misunderstandings. Sherrin (2011) also observed the existence of other –less frequent- reasons, such as the will to protect others, pleading guilty to a set of charges as a whole, being charged with vague accusation[4] or pleading guilty to relieve the psychological stress of a trial. Again, however, these conclusions were based on the analysis of court documents and media reports only, and the author did not give further information or details on the specific data collection methods or used data.

Scientific knowledge on false guilty pleas is steadily growing, and "Canada's dirty little secret" (Brockman, 2010) is becoming unveiled. Yet despite the efforts of scholars to uncover the prevalence of false guilty pleas and the motivations behind them, no recent Canadian scholarship has explored false guilty pleas based on comprehensive empirical data collection methods. More than 40 years have passed since the last empirically based study on the motivations behind false guilty pleas was published (Ericson and Baranek, 1982), and the field is in need of an urgent update. As Sherrin (2011) concluded, "[c]learly, more and better research is required" (footnote 29).

This article addresses Sherrin's (2011) call for research in this area. Utilizing qualitative data obtained through semi-structured interviews and survey responses from over one hundred defendants in Canadian courts, we present a contemporary analysis of the landscape of false guilty pleas in Canada and the motivations that drive them. In the first part of the article, we contribute to a better understanding of the profile of the people who enter false guilty pleas. The second part focuses on the reasons that motivate defendants to enter a false guilty plea. We echo the conclusions of Ericson and Baranek (1982), Brockman (2010), Sherrin (2011) and Kennedy (2016), and we expand on them by ranking the motivations behind false guilty pleas in terms of prevalence and by adding several new factors to the list. In the last section of the article, we focus on the interviewees' perception of the coercive aspect of their decision. We present their vision of the pressures or incentives felt during their decision-making.

[4] Sherrin (2011, footnote 59) refers here to the case of R v Doiron (1972), 9 CCC (2d) 137 (BCSC), in which the defendant pled guilty to a breach of a probation order that was declared void on appeal for being extremely "vague, uncertain and contradictory".

V Methods

The results of this article are based on two datasets (semi-structured interviews and questionnaire) of a larger project about plea bargains, in which two of the coauthors were involved between 2012 and 2015[5].

Several participants in the first phase of that project mentioned during their semi-structured interviews that they had pleaded guilty to charges they considered themselves innocent of. Realizing that the phenomenon of false guilty pleas was far from marginal, the research team decided to diversify the sample, specifically targeting defendants who had falsely pleaded guilty. The final sample consists of 23 individuals, 11 of whom reported having entered a false guilty plea at least once in their lives.

This article draws on the contents of these 11 interviews. Defendants were asked to describe the judicial process, to explain their decision to plead guilty, and to reflect on the advantages and disadvantages of such plea bargaining. Since we were interested in their own representation and experiences, no further checks, beyond their own statements, were made as to their guilt or the actual outcome of the case. Interviews were coded by the research team using NVivo following a thematic analysis.

Drawing on these results, the team integrated a questionnaire in the second phase of the project to validate to what extent the findings of the interviews could be extended to a larger number of defendants. Recruitment was made via the mediation of the provincial prison in which defendants were detained (n=71), or through the relevant supervision agency (n=55) for those serving a sentence in the community. The only criterion for inclusion was that the defendants' most recent criminal case be concluded and sentenced. A total of 126 complete responses were received. Out of the 126 participants, 55 declared that they had pleaded guilty to charges they had not committed at least once in their lives.

The questionnaire was divided into six sections, but this article draws exclusively on the results of sections 4 and 6 of the questionnaires. Section 4 inquired about false guilty pleas. It addressed the context surrounding the false plea, enquiring about the charges faced and the main reasons for pleading guilty. Respondents were presented with a series of 12 statements (such as "I pleaded guilty to this/these charge(s) as part of a global sentencing agreement" or "I was afraid of losing the prosecutor's offer if I contested these charges"), and they were then invited to say if each of the statements applied to their situation or not. Section 6 gathered information about the defendant (i.e. socio-demographic profile and past contacts with the criminal justice system).

The results presented in this article focus on the responses of the 55 participants to the questionnaire and the 11 individuals interviewed who stated they had falsely pleaded guilty. Therefore, the findings are based on the stories of 66 people.

[5] The results and the methodology of the project have been published in Deslauriers-Varin et Leclerc (2020).

VI Results

The following sections present the profiles of people who enter false guilty pleas (1), the main reason of their plea (2) and their vision of the coercive nature of their decision (3).

A. Profiles

Of the 126 questionnaire respondents, 55 of them (43% of the sample) admitted to having pleaded falsely guilty at least once. Our results suggest that false pleas are much less frequent among women (17%) and much more frequent among people who identify as belonging to an ethnic minority (70%) than they are among the general population. However, the small numbers of these two sub-groups (24 and 17 out of the 126 participants' sample, respectively) lead us to interpret these results with caution, especially since, while the findings regarding ethnicity match previous observations (Redlich *et al.*, 2010; Roach, 2023), our results on the significance of gender do not entirely align with the findings of existing literature. Indeed, Redlich *et al*.'s (2023) study of the cases in the National Registry of Exonerations had found gender to be non-significant, and Roach's (2023) analysis of the data of the Canadian Registry indicated that false guilty pleas were more frequent amongst women. Our results should be validated with a larger sample to be able to empirically validate or contradict these previous findings.

The offences to which the 55 participants who admitted to having pleaded falsely guilty were convicted are as follows: 53% of them (6 out of 11) were offences against a person, 30% involved property crimes and 17% involved drug crimes. These results partially confirm the findings by Redlich *et al.* (2023), who reported that 50% of their sample of cases in which a false guilty plea had been issued involved an offence against a person. However, in their study, drug crimes amounted to 33% of the cases, which is far from the 17% shown by our results.

Participants were asked to specify whether they were incarcerated or not at the time of the plea, and our results show that the probability of a defendant entering a false guilty plea increases when the person is incarcerated. The prevalence of false guilty pleas is at 65% for those who pleaded guilty while in prison, but it goes down to 16% for those who were not incarcerated at the time. These numbers confirm the findings of both Kellough and Wortley's (2002) and Webster's (2022) study, which suggested that Crowns could more easily persuade the accused to plead guilty –falsely or not- when the latter was held in pre-trial custody.

Our data also included information on the participants' criminal records and previous convictions. While the overall percentage of false guilty pleas among all the questionnaire respondents was 43%, that number dropped to 29% if we only considered participants with no prior record. These findings echo the results obtained by Gudjonsson *et al.* (2006) about false confessions in police settings, which showed that increased contacts with the criminal justice system were associated with a higher probability of entering a false confession.

Interestingly, our results showed that the prevalence of false guilty pleas among those who had previously served a prison term was at 67%, whereas it was less than 30% among those who had never been to prison before the last charge. This allows us to conclude that, while having a criminal record increases the likelihood of entering a false guilty plea, having been previously

imprisoned has an even more significant impact on the probability of someone falsely pleading guilty. These findings, however, must be interpreted in the light of two elements. Firstly, the fact that past imprisonment increases the likelihood of a false pleading guilty certainly influences the high prevalence of false guilty pleas found in our sample, for many participants in our study were recruited from prison. Indeed, our prevalence (43%) is significantly higher than previous studies: in Canada, Ericson and Baranek (1982) found a prevalence rate of 23%, and in the US the results of Zottoli et al. (2016) indicated a prevalence of 27% among youth defendants and 19% among adults. Secondly, it should be remembered that this rate refers to the accused's perception of their guilt, and it cannot be ruled out that some may have considered themselves innocent of charges for which they were legally guilty[6].

Finally, most of them (53 survey respondents) said their lawyer was aware that they were pleading guilty despite considering themselves innocent of these offences. This does not come as a surprise, for the practice of lawyers pressuring their clients into pleading guilty despite being aware of their innocence because of bureaucratic and managerial concerns is well documented in the sociolegal literature (Nash et al., 2024), particularly when lawyers are representing marginalized defendants (Kohler-Haussman, 2018; Van Cleve, 2016).

B. Reasons and context of the false guilty plea

The results presented here draw from section 4 of the survey, which asked respondents a series of questions designed to capture the context in which they had entered a false guilty plea. Table 1 below shows the statements of the questionnaire and the percentage of respondents who said the statement applied to their situation (ranked by percentage, from high to low). Questionnaire results are complemented with qualitative data obtained via the interviews.

Table 1. Context of false guilty pleas.

I pleaded guilty to this or these count(s) as part of a global sentencing agreement. I was afraid of losing the prosecutor's offer if I contested the count(s).	76%
I pleaded guilty because I was tired of court proceedings and wanted to settle the case.	73%
I pleaded guilty because I was afraid of receiving a harsher sentence at trial.	58%
I pleaded guilty without knowing or understanding the issues or consequences of my plea or sentence.	38%
I pleaded guilty to protect a loved one.	33%

[6] For example, some people accused of complicity claimed to be innocent because they had no knowledge of the other person's criminal activities, or were not directly involved in them. However, under the law, they do not need to have criminal intent if it can be shown that there was recklessness or wilful blindness on their part. Thus, a person who does not perceive himself as guilty in fact may still be guilty in law. The importance of this perception should not be underestimated, since in most criminal justice systems, to be considered valid, a guilty plea must be entered in a free and informed manner, and must mean that the person acknowledges his or her guilt and "admits the essential elements of the offence in question" (section 606 (1.1) of the Canadian Criminal Code).

I pleaded guilty on the day of trial when I had originally intended to plead not guilty.	31%
I pleaded guilty because I was certain of being found guilty at trial.	29%
I pleaded guilty under pressure from my lawyer.	24%
I was presented with new facts, with very little time to make an informed decision	22%
I pleaded guilty because I couldn't afford a trial	22%
I pleaded guilty for "time served" on remand. Pleading guilty allowed me to get out of prison.	20%
I pleaded guilty thinking I could appeal the decision afterwards	2%

The vast majority (76%) of participants said they had pleaded guilty as **part of a global sentencing agreement,** and that they feared losing the Crown's offer if they contested some of the counts included in the deal. Several explained that acting this way involved a cost-benefit analysis because it often meant that they would end up receiving a much more lenient sentence.

This was particularly true for defendants with a history of previous criminal convictions. Denis, who had a lengthy criminal record with over 300 priors, explained, for instance, that he had pleaded guilty five or six times to offences he had not committed:

> It's happened to me a lot. You have several charges at once; you go to court for 30 counts. Four of them aren't you, and at the end of the day, you get a good deal. […] Some people will say, 'I can't risk losing because I need my record to be clean'. He'll fight to the bitter end [...] I've got so many accusations that it's not going to make any difference to a new employer. (Denis)

Denis' statement illustrates a clear pattern among participants with significant criminal records: because of their criminal history, defendants believe that their chances of not being convicted are extremely small. They are therefore more likely to accept a plea deal 'package', even if it means accepting that several additional counts are added to the accusation.

Almost three-quarters of the participants (73%) also linked their false guilty plea to **procedural fatigue**, that is, the fact that they were tired of the proceedings and wanted to settle the case just to bring it to an end. Didier describes this fatigue as follows:

> It's not a free decision... for me it was too heavy. I needed to take the load off my back (...) going to court all the time, to the judge, to the lawyers, you lose your job, 2-3 hours, no, no, no, it was too much (Didier)

Being threatened by judges and prosecutors with the **imposition of a harsher sentence at trial** contributed to 58% of the false guilty pleas of our questionnaire sample. Entering a guilty plea to avoid the risk of a harsher sentence was a strategy widely shared among participants:

> You start with six years, then they offer you six months. There are two charges; it's not you. You know. That's the example that struck me the most. You can't turn that down. If you plead not guilty, the judge will say: "Next time, I'll offer you three years". (Denis)

38% of the questionnaire respondents who entered a false plea reported having done so **without being properly informed** of what such a decision entailed. The interview results show that such a lack of information can relate to: 1) the plea itself, 2) the consequences of the plea and/or the sentence, and 3) the judicial proceedings. The interviewees blame their lawyers for this lack of information: they either consider them to be incompetent, say they lack investment in the case or believe they are being dishonest with them.

Theresa's case illustrates how defendants might lack information on the plea itself: not fully understanding what was going on in court, at the time of her plea, she thought she was pleading guilty only to one count of extortion. She was, however, unknowingly pleaded guilty to a robbery for which she considered herself innocent. Theresa only discovered this a few years later, when she found out that her record showed a prior robbery conviction. To date, she remains convinced that her lawyer took advantage of her lack of understanding of the judicial procedures to get her to accept a charge to which she had previously categorically refused to plead guilty.

Defendants also lack information about the consequences of a plea and the sentence that follows. As Serge noted, they often lack information about the conditions under which they will serve their sentence: following his lawyer's advice, Serge pleaded guilty to avoid prison and get a conditional sentence, only he later discovered that the conditional sentence involved living under house arrest for nine months. Serge said he would never have pleaded guilty had his lawyer told him that a conditional sentence would entail such harsh conditions.

Often, the actual duration of the sentence that will follow the plea is also unknown. Damien, for instance, pleaded guilty for the duration of the "time served" in pre-trial detention, unaware that the Crown had added two years' probation to the deal without his prior knowledge and that, as a result, he still had some time to serve. Damien said he would never have pleaded guilty, knowing that his sentence would not be fully completed.

Defendants also lack information about the collateral consequences that will be triggered by the conviction. For instance, Didier explained he entered a false guilty plea without knowing that his criminal conviction would trigger a travel ban. He would not have pleaded guilty had he been aware of this, for his job required him to travel to the United States regularly.

Finally, the lack of information can also relate to the judicial proceedings. For example, two interviewees explained that they pleaded guilty on the morning of the trial to avoid being represented by a lawyer they did not trust. Not only did they not know they had the right to change lawyers, but one of them also thought they could easily appeal the decision afterwards. Unfortunately, they soon realized that appealing their own plea was a complex, costly and uncertain process.

A third of the questionnaire respondents (33%) reported entering a false guilty plea **to protect a loved one**. Our interviews corroborate this. They show that, in some cases, false plea deals are entered to clear someone else's record. Martin was particularly open about this:

> They arrested me. The police... my wife was further away. "Look, the guy didn't recognize you, nobody recognized you, we have no proof. But between you and me,

> we know you were there. Your girlfriend's been identified. She's in trouble. She has no record. She's pregnant. We can be at your place in an hour, if you sign a statement, it's all you. You don't want your girlfriend..." I signed the declaration. I did this. I did this. I signed it, blah, blah, blah. Thank you. My girlfriend has been released. No boss, no problem, spared. I did seven and a half months for this. [...] I put it all on myself because they asked me to. (Martin)

Martin's interview allowed us to flag another potential false plea motivation: the desire to limit the amount of time spent away from loved ones. Indeed, Martin recounted having, on one other occasion, falsely pleaded guilty to an accusation of dangerous driving in exchange for 90 days of weekends to make sure he did not abandon his family during a long period of incarceration:

> I had no choice but to accept. I want to see my daughter grow up, I want to be there during the week, I can't afford... [...] I went to court and he offered me this: you stay inside, you don't see your wife, you don't see your child being born, or you take the 90 days, you shut your mouth, you plead guilty. Common sense, I took the 90 days, except that my driver's license is revoked for 10 years because of dangerous driving that I never did. (Martin)

Almost a third of the defendants who replied to the questionnaire (31%) said they falsely pleaded guilty because of a last-minute change of plans, having originally planned to plead not guilty. Simultaneously, 22% of the questionnaire respondents who entered false guilty pleas said they did so because they were presented with new facts with very little time to make an informed decision.

The interviews reviewed the existence of a clear pattern: the defendant would arrive at the courthouse on the morning of the trial thinking they would plead not guilty, but their lawyer would tell them that a new witness or fact had (or had not) appeared, which increased the risk of being convicted. The lawyer would go on to mention that they had received a very interesting offer from the Crown, which they recommended the defendant accept. Serge, accused of having assaulted and threatened his ex-partner, explained a clear example of this pattern:

> My lawyer had promised me: "don't worry, I'll get you out of this"… When we got to the trial, my lawyer told me: "I can't do anything for you because you have robberies in the past"… (Serge)

Serge told us that he had summarized his story to his lawyer during their first meeting. However, the lawyer never read his file, and they never discussed Serge's situation again before the day of the trial. Moments before the trial was due to start, the lawyer explained to Serge that his ex-spouse had filed new charges against him and that it was preferable for him to plead guilty to the initial charges. Otherwise, the prosecutor would add those new charges to the accusation. Serge told us that he was feeling forced to plead guilty, because otherwise the trial would proceed and he would be represented by this lawyer, whom he considered incompetent and did not trust anymore. The lawyer explained to him that he could ask to change lawyers, but added that judges rarely accepted such requests on the morning of the trial. Serge believed him, and ended up pleading falsely guilty to all the original charges.

Serge's story leads us to an additional reason for pleading falsely guilty. 24% of the questionnaire respondents who had entered false guilty pleas explained they had done so because they felt pressured to plead guilty by their lawyer.

The interview results showed that the persuasion levels varied from one defendant to another. In many cases, lawyers openly urged the defendants to plead guilty. Some do so in an extremely blunt manner, sometimes even threatening the defendant to withdraw from the case if they did not accept their recommended position[7]. Yves' testimonial captures how aggressive lawyers can sometimes be:

> I didn't want to plead guilty. The judge said to me "are you pleading guilty?" » Four times. My lawyer pushed me, he said to me "say guilty ostie. Get it over with." So I pleaded guilty. (Yves)

Others, as Martin recounts, are more subtle. They would pressure their clients into pleading falsely guilty by highlighting the non-rational aspect of declaring their innocence:

> My lawyer said, look, whether you did it or not, I don't care. That's not why I'm here. You've been in there for x amount of time, with time and a half, double time, you've got time done, plead guilty, you get out straight away. That was the deal in my head. Trial dates are rare. You're sick of being in prison, you're overcrowded. You get shuffled around. You don't have a cigarette. The violence, the aggression. You're fed up. And they give you a big way out, just the same, plead guilty. You go out there, there. Yes, I do. (Martin)

In some other cases, like Didier and Serge's, the lawyers seem to take advantage of the defendants' weariness to force them to plead guilty:

> I say that I was forced by my lawyer. It's as if she was tired too… She saw that I wasn't happy […] she told me, if you want this to end, you're going to have to plead guilty. (Didier)

> They want to go to court to get the pay, and when they see that you're fed up, that you say "no, I want this to be resolved, I don't want to go to class anymore", well then they... [you make an offer]. (Serge)

More than a quarter (29%) of the questionnaire participants entered a false guilty plea driven by the fear of losing the case and the certaint that they would be convicted at trial. This seemed to be a common strategy among participants whose defenses relied on what lawyers refer to as "bad witnesses", an expression usually used to refer to witnesses with a criminal record who are unlikely to be given full credit by the court:

> She said, "It's not easy because there's one person who has no record, an impeccable citizen, and you, you have quite a history. [...] If the prosecutor or the defendant is

[7] 7% of our respondents said they had been threatened by their lawyer.

> questioned, they have the right to expose my history. She said: "At that point, forget it, you'll be convicted" [....] If he [the witness] repeats the same words he said in front of the judge, it's highly likely that you'll be found guilty. (Éric)

Participants suffering from low self-confidence and/or substance abuse issues were also categorized as "bad witnesses" by their lawyers. Driven by the certainty of a future conviction, these participants also opted to plead guilty:

> Before the trial, we had a preparatory meeting, and she had me do a mock interrogation... At that point, my anxiety had increased my alcohol consumption. Which meant I wasn't a very good witness. My psychological state and my alcohol consumption worked against me. (Raymond)

> I said to him: "I'll plead not guilty, I'm not guilty of anything". He said, "Yes, but we're going to have a jury trial. [It's long, it's exhausting, they're going to ask you questions you won't know how to answer. It's because I was always bawling too, he could see I wasn't very, very solid. "He said, "You have to be well shod if you want to sue, because it's very difficult. That's what he told me. (Virginie)

22% of the participants who had entered false guilty pleas reported doing so because they could not afford to go to trial. Some of the interviewees added that, even if they did have the financial means to go to trial, they eventually got tired of paying for their defense. Given the uncertainty of the verdict or the mildness of the sentence at stake, they felt no longer sure that the investment was worth it.

Lastly, only one-fifth of the false guilty pleas (20%) were entered to "serve time" quickly. Under the current Canadian regulations, time spent in pre-trial detention is not automatically credited to the sentence imposed. As such, many defendants explained that, if the sentence they faced did not involve incarceration (or it involved a period of incarceration that was shorter or equivalent to what the person had already served in pre-trial detention), they preferred to enter a false guilty plea rather than to maintain their innocence while staying in pre-trial detention. Martin sums up the dilemma that many defendants face:

> Nobody's going to do two years in prison if they can do a month by pleading guilty. Look, I don't want to lose two years of my life. I'm going to take on the stain on my record. Every time, I want to get out faster. These are life choices I've made, and I accept them. But it's sad because that's the way it is. (Martin)

It is interesting to note that some of the reasons for falsely pleading guilty that came up in the interviews, such as the forced plea on the morning of the trial, were ultimately not so present in the entire questionnaire sample (31%). Similarly, certain reasons frequently mentioned in the questionnaire, such as the protection of a loved one (33%), were rarely discussed in the interviews.

Comparing our results to those obtained by previous scholars is tricky, for no existing studies have, to our knowledge, produced a detailed list ranking the prevalence of the reasons why defendants enter false guilty pleas. Despite that, we can still draw some important conclusions as

to what our results tell us about previous literature. For example, our findings allow us to confirm that Ericson and Baranek's (1982) study findings are still broadly applicable to the present reality. Some of the most common reasons for falsely pleading guilty, as identified by these authors in 1982 (*ie.* perceived risk of facing worse consequences if found guilty, procedural fatigue and accepting charges as part of a package) closely match the reasons featuring at the top three positions of our ranking. Others, such as feeling pressured by their lawyer, avoiding serving 'dead time' in pretrial detention, or pleading guilty due to a lack of information, are less prevalent but still present in our results as well. Interestingly, the cases reported by Ericson and Baranek (1982) in which the defendant pleaded falsely guilty because of a lack of information or a misunderstanding only concerned individuals who were not represented by a lawyer. Our results nuance that by showing that the lack of information can also apply to individuals with legal representation.

Our results also elucidate and expand on Sherrin's (2011) findings, which identified the prospect of significant relief, the possibility of avoiding costs, and the lack of information as the most commonly cited reasons for pleading falsely guilty. Additional reasons flagged by Sherrin (2011) and confirmed by our results include the desire to protect someone else and accepting charges as part of a plea package. Equally, Zottoli *et al*.'s (2016) observations on the influence that short time frames have on the defendants' decisions are also confirmed by our results.

Finally, it is worth noting that there are two reasons identified by other authors that are not featured in our results. First, Kennedy's (2016) analysis of the Canadian cases of *Hanemaayer*, *Kumar*, and *Bates* shows that the system's overreliance on Crown experts' opinions[8] and mistrust of its own defence counsel can result in an innocent defendant pleading falsely guilty. None of our participants, however, mentioned pleading falsely guilty because of the existence of an expert opinion against them. Second, scholars have also found out that false guilty pleas can arise from purely psychological reasons such as overwhelming fear, stress and anxiety (Kennedy, 2016; Sherrin, 2011). For us, these reasons are sometimes mentioned as additional motivations in the interviews, but they are never the primary source of the false plea.

C. False guilty pleas: a free or constrained choice?

Previous studies have established that the decision to enter a guilty plea -whether false or not- arises from a continuum of coercion. Leclerc and Euvrard (2019) noted that defendants at one end of the continuum describe their decision as genuinely voluntary and rational, whereas defendants at the other end report having little to no control over the situation and their decision. Most defendants place themselves somewhere in between, feeling they retain some level of control but are simultaneously coerced. Focusing specifically on false guilty pleas, existing literature also

[8] Several reported wrongful convictions in Canada arise from false guilty pleas motivated by the belief from defendants -or their defense counsel- that it would be impossible to challenge the expert opinion of a pediatric forensic pathologist. In the case of *Kumar,* for example, the defendant was advised to plead guilty despite claiming to be innocent because the defense lawyer thought that it would be impossible to discredit the testimony of the pediatric forensic pathologist. It was later on established that the so-called expert lacked the requisite training and qualifications to work as such. See Goudge (2008) for the results of the public inquiry into the matter.

acknowledges that, on some occasions, pleading guilty while innocent can have a rational or utilitarian aspect for the defendant (Daftary-Kapur and Zottoli, 2014; Zottoli *et al*., 2016). As noted by Roach (2023), in many cases they result from "sentence and charge bargains that are difficult for many accused and even the hypothetical 'reasonable person' to decline" (p. 28).

The results show that this was indeed the case for some of our participants, who claimed they entered a false plea rationally because they felt they were getting an advantage. Others, instead, said they had done it against their will because they felt forced to do so.

The majority of our interviewees who had falsely pleaded guilty (8 out of 11) mentioned that their plea was anything but a free and informed decision, as evidenced by the quote from Raymond:

> I don't think I made a very free choice because I didn't have all the useful information to make the decision, to enlighten me. Then, my conditions, personally [he was depressed and consumed a lot of alcohol at that time] or financially, and the way all of this was presented to me, did not allow me to have all the options. (Raymond)

Only 3 out of the 11 interviewees clearly expressed that entering a false guilty plea had been a rational decision which had provided them with certain advantages. They explained that, although certain factors constrained their plea, they freely chose to falsely plead guilty, with full knowledge of the facts, because this situation was advantageous to them. According to Denis, this is something that comes naturally to innocent people who falsely plead guilty:

> No one is going to plead guilty to something if it doesn't benefit them somewhere […] We no longer believe in justice. […] we try to get the greatest possible benefit from it. They're trying to incarcerate me for things I didn't do...I'll take whatever I can get the other way. It's give-and-take. […] If the deal is not interesting, for example there are three years ago, it is certain that I would have contested at least the charges which were not mine. (Denis)

Sometimes, though, the line between free and forced pleas is more subtle and difficult to draw. Denis, who claimed his false guilty plea was a rational and free decision, acknowledged that he had sometimes felt pressured to accept a plea deal:

> They always give me a choice. This morning, that's what I have to offer you, it's up to you to say yes or no. […] They say it all the time; It's a deal that won't happen again. I have good lawyers who explain to me: "well otherwise it's in two months before this judge, but he's too harsh for that…" They already tell me "plead guilty". They strongly suggest you deep down. (Denis)

Denis' statement shows that false guilty pleas may not be as voluntary as defendants wish to believe for although they freely and voluntarily agreed to plead guilty, they felt pressure having been encouraged, or sometimes even forced, to accept an offer that they found acceptable, but not optimal. These results echo the findings by Zottoli et al. (2016), who noted that, despite what the defendants may feel or believe, « deep discounts and external time pressures bring into question the true voluntariness of plea decisions » (p. 257).

VII Conclusion

The pressures leading to false guilty pleas are deeply rooted in the structural and procedural aspects of the Canadian judicial system. Extended case delays and the over-reliance on pre-trial detention create an environment where defendants may feel compelled to plead guilty, regardless of their actual guilt, simply to escape the burdens of a drawn-out legal process. To address these pressures, a more efficient case management approach is essential, where reducing delays and minimizing the use of pre-trial detention could significantly lower the instances where defendants are pushed toward making hasty, uninformed decisions.

Moreover, the current lack of transparency surrounding the actual benefits of pleading guilty adds to the uncertainty faced by defendants. Many are left with an incomplete understanding of the consequences and potential outcomes of their pleas. Enhancing transparency in plea negotiations, ensuring that defendants fully comprehend the implications of their decisions, and clarifying the advantages or disadvantages of pleading guilty could help reduce the ambiguity that often leads to coerced or uninformed pleas.

Finally, the role of defense lawyers is crucial in this context. Defendants must receive better support and more thorough guidance from their legal representatives. Ensuring that attorneys have adequate time, resources, and training to inform and counsel their clients properly is essential. This not only helps in making more informed decisions but also restores a level of trust in the legal process, allowing defendants to feel that their rights are being adequately protected. Indeed, our findings highlight a stark inequality in access to fundamental rights, such as the right to a full defense and a fair trial. It appears that the ability to pursue a trial is more of a privilege reserved for those fortunate or lucky enough to have a committed lawyer. This raises serious concerns about the fairness and equity of the justice system. Addressing these systemic pressures and providing adequate support to defendants is crucial to ensure that the justice system upholds its promise of fairness and equity for all.

While this article has primarily focused on understanding the defendants' perspectives and the pressures that lead them to falsely plead guilty, future research should delve deeper into how these perceptions align with legal definitions and whether they could be legally recognized as false pleas. Additionally, the apparent higher prevalence of false guilty pleas among certain groups, particularly ethnic minorities, warrants further investigation to explore the underlying causes and potential solutions.

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