



CRIMINAL JUSTICE BRANCH

B.C. PROSECUTION SERVICE

HAIR MICROSCOPY CASE REVIEW

TERMS OF REFERENCE

In response to the recommendation of the Commission of Inquiry into Certain Aspects of the Trial and Conviction of James Driskell, the British Columbia Prosecution Service has determined to conduct a review of cases relating to hair microscopy evidence. The review will be undertaken under the supervision of Oleh S. Kuzma, QC and shall consist of all cases of culpable homicide, sexual assault, robbery and other indictable offences involving the use or attempted use of violence:

- prosecuted in British Columbia during the past twenty-five years;
- in which the Crown tendered and relied upon microscopy hair comparison evidence;
- where the accused pleaded not guilty at trial, asserting factual innocence, but was found guilty; and
- appealed the conviction to the Court of Appeal, still asserting factual innocence, and the appeal was dismissed,

to consider whether there is a reasonable basis to believe that, by virtue of this evidence, a miscarriage of justice has taken place.

PRELIMINARY METHODOLOGY

In order to properly determine the actual number of cases that fit the criteria established, a preliminary search will be conducted using the Quicklaw and British Columbia Court of Appeal judgments databases as well as a list of such cases to be

obtained from the R.C.M.P. and all municipal police agencies in the Province of British Columbia. The Assistant Deputy Attorney General shall solicit input from members of the British Columbia bar respecting any cases of which they may be aware that fit the criteria noted above.

Following the preliminary review, the trial transcripts of cases that appear to have met the criteria noted will be examined.

ADVISORY COMMITTEE

If, after such steps have been taken, there are cases that continue to meet the established criteria, the Assistant Deputy Attorney General shall establish an advisory committee, which shall consider:

- a. the nature of the evidence tendered in the context of the trial record;
- b. whether, with the benefit of current scientific expertise, the conclusions tendered by the Crown at trial were incorrect or overstated;
- c. the extent to which the Crown relied upon this evidence to prove the case;
- d. any comments made by the trial judge concerning the probative value or weight to be given to this evidence; and
- e. any other facts that may assist in assessing whether a miscarriage of justice has occurred.

The Committee, through its Chair, may arrange for DNA or other scientific taking of evidence to assist it during the review and will be required to provide a report on its findings and recommendations to the Assistant Deputy Attorney General.

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