

Appendix S
Criminal Code
Provisions and
Regulations
Regarding
Applications for
Ministerial Review

Criminal Code provisions respecting Applications for Ministerial Review:

Part XXI.1 Application for Ministerial Review – Miscarriage of Justice

- “696.1** (1) An application for ministerial review on the grounds of miscarriage of justice may be made to the Minister of Justice by or on behalf of a person who has been convicted of an offence under an Act of Parliament or a regulation made under an Act of Parliament or has been found to be a dangerous offender or a long-term offender under Part XXIV and whose rights of judicial review or appeal with respect to the conviction or finding have been exhausted.
- (2) The application must be in the form, contain the information and be accompanied by any documents prescribed by the regulations.
- 696.2** (1) On receipt of an application under this Part, the Minister of Justice shall review it in accordance with the regulations.
- (2) For the purpose of any investigation in relation to an application under this Part, the Minister of Justice has and may exercise the powers of a commissioner under Part I of the Inquiries Act and the powers that may be conferred on a commissioner under section 11 of that Act.

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(3) Despite subsection 11(3) of the Inquiries Act, the Minister of Justice may delegate in writing to any member in good standing of the bar of a province, retired judge or any other individual who, in the opinion of the Minister, has similar background or experience the powers of the Minister to take evidence, issue subpoenas, enforce the attendance of witnesses, compel them to give evidence and otherwise conduct an investigation under subsection (2).

696.3 (1) In this section, “the court of appeal” means the court of appeal, as defined by the definition “court of appeal” in section 2, for the province in which the person to whom an application under this Part relates was tried.

(2) The Minister of Justice may, at any time, refer to the court of appeal, for its opinion, any question in relation to an application under this Part on which the Minister desires the assistance of that court, and the court shall furnish its opinion accordingly.

(3) On an application under this Part, the Minister of Justice may

(a) if the Minister is satisfied that there is a reasonable basis to conclude that a miscarriage of justice likely occurred,

(i) direct, by order in writing, a new trial before any court that the Minister thinks proper or, in the case of a person found to be a dangerous offender or a long-term offender under Part XXIV, a new hearing under that Part, or

(ii) refer the matter at any time to the court of appeal for hearing and determination by that court as if it were an appeal by the convicted person or the person found to be a dangerous offender or a long-term offender under Part XXIV, as the case may be; or

(b) dismiss the application.

(4) A decision of the Minister of Justice made under subsection (3) is final and is not subject to appeal.

696.4 In making a decision under subsection 696.3(3), the Minister of Justice shall take into account all matters that the Minister considers relevant, including

(a) whether the application is supported by new matters of significance that were not considered by the courts or previously considered by the Minister in an application in relation to the same conviction or finding under Part XXIV;

(b) the relevance and reliability of information that is presented in connection with the application; and

(c) the fact that an application under this Part is not intended to serve as a further appeal and any remedy available on such an application is an extraordinary remedy.

696.5 The Minister of Justice shall within six months after the end of each financial year submit an annual report to Parliament in relation to applications under this Part.

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696.6 The Governor in Council may make regulations

- (a) prescribing the form of, the information required to be contained in and any documents that must accompany an application under this Part;
- (b) prescribing the process of review in relation to applications under this Part, which may include the following stages, namely, preliminary assessment, investigation, reporting on investigation and decision; and
- (c) respecting the form and content of the annual report under section 696.5.”

Regulations Respecting Applications for Ministerial Review – Miscarriages of Justice

“1. The following definitions apply in these Regulations.

“Code” means the *Criminal Code*. (Code)

“Minister” means the Minister of Justice. (*ministre*)

2. (1) For the purposes of subsection 696.1(2) of the Code, an application for ministerial review under Part XXI.1 of the Code shall be in the form set out in the schedule and contain the following information:

- (a) with respect to the applicant,
 - (i) the applicant’s name, including any alias or former name,
 - (ii) the applicant’s address, date of birth and, if any, the number assigned to the applicant under the Royal Canadian Mounted Police Automated Fingerprint Identification System,
 - (iii) the name, address and telephone number of the person making the application on the applicant’s behalf, if any,
 - (iv) whether the alleged miscarriage of justice relates to a conviction on an offence punishable on summary conviction or on an indictable offence, or, in the case of a finding of dangerous offender or long-term offender under Part XXIV of the Code, particulars of the finding, and
 - (v) whether the applicant is in custody;
- (b) with respect to any pre-trial hearings,
 - (i) the date of the preliminary inquiry, if any,
 - (ii) the court and its address, and
 - (iii) the number, type and date of any pre-trial motions, as well as the court decision on those motions;
- (c) with respect to the trial,
 - (i) the date on which it started,
 - (ii) the court and its address, the plea entered at trial, the mode of trial and the date of the conviction and that of sentencing,
 - (iii) the names and addresses of all counsel involved in the trial, and
 - (iv) the number, type and date of any motions made, as well as the date of the court decision on those motions;
- (d) particulars regarding any subsequent appeals to the court of appeal or the Supreme Court of Canada;

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- (e) the grounds for the application; and
 - (f) a description of the new matters of significance that support the application.
- (2) The application must be accompanied by the following documents:
- (a) the applicant's signed consent authorizing the Minister
 - (i) to have access to the applicant's personal information that is required for reviewing the application, and
 - (ii) to disclose to any person or body the applicant's personal information obtained in the course of reviewing the application in order for the Minister to obtain from that person or body any information that is required for reviewing the application;
 - (b) a true copy of the information or indictment;
 - (c) a true copy of the trial transcript, including any preliminary hearings;
 - (d) a true copy of all material filed by the defence counsel and Crown counsel in support of any pre-trial and trial motions;
 - (e) a true copy of all factums filed on appeal;
 - (f) a true copy of all court decisions; and
 - (g) any other documents necessary for the review of the application.
- 3.** On receipt of an application completed in accordance with section 2, the Minister shall
- (a) send an acknowledgment letter to the applicant and the person acting on the applicant's behalf, if any; and
 - (b) conduct a preliminary assessment of the application.
- 4.** (1) After the preliminary assessment has been completed, the Minister
- (a) shall conduct an investigation in respect of the application if the Minister determines that there may be a reasonable basis to conclude that a miscarriage of justice likely occurred; or
 - (b) shall not conduct an investigation if the Minister
 - (i) is satisfied that there is a reasonable basis to conclude that a miscarriage of justice likely occurred and that there is an urgent need for a decision to be made under paragraph 696.3(3)(a) of the Code for humanitarian reasons or to avoid a blatant continued prejudice to the applicant, or
 - (ii) is satisfied that there is no reasonable basis to conclude that a miscarriage of justice likely occurred.
- (2) The Minister shall send a notice to the applicant and to the person acting on the applicant's behalf, if any, indicating whether or not an investigation will be conducted under subsection (1).

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- (3) If the Minister does not conduct an investigation for the reason described in subparagraph (1)(b)(ii), the notice under subsection (2) shall indicate that the applicant may provide further information in support of the application within one year after the date on which the notice was sent.
 - (4) If the applicant fails, within the period prescribed in subsection (3), to provide further information, the Minister shall inform the applicant in writing that no investigation will be conducted.
 - (5) If further information in support of the application is provided after the period prescribed in subsection (3) has expired, the Minister shall conduct a new preliminary assessment of the application under section 3.
- 5.** (1) After completing an investigation under paragraph 4(1)(a), the Minister shall prepare an investigation report and provide a copy of it to the applicant and to the person acting on the applicant's behalf, if any. The Minister shall indicate in writing that the applicant may provide further information in support of the application within one year after the date on which the investigation report is sent.
- (2) If the applicant fails, within the period prescribed in subsection (1), to provide any further information, or if the applicant indicates in writing that no further information will be provided in support of the application, the Minister may proceed to make a decision under subsection 696.3(3) of the Code.
- 6.** The Minister shall provide a copy of the Minister's decision made under subsection 696.3(3) of the Code to the applicant and to the person acting on the applicant's behalf, if any.
- 7.** An annual report submitted under section 696.5 of the Code shall contain the following information in respect of the financial year under review in the report:
- (a) the number of applications made to the Minister;
 - (b) the number of applications that have been abandoned or that are incomplete;
 - (c) the number of applications that are at the preliminary assessment stage;
 - (d) the number of applications that are at the investigation stage;
 - (e) the number of decisions that the Minister has made under subsection 696.3(3) of the Code.

