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April 5, 2004

By Fax No. (306)-933-8305 and Mail

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OUR FILE No. 98-196
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The Commission of Inquiry into the
Wrongful Conviction of David Milgaard
1020-606 Spadina Crescent East
Saskatoon, SK
S7K 3H1

Dear Commissioner:

**Re: Standing and Funding Application
on behalf of the Association in Defence of the Wrongly
Convicted (AIDWYC)**

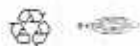
I am one of the directors of AIDWYC, the Association in Defence of the Wrongly Convicted.

Further to the Commission's Guidelines, I here make application on behalf of AIDWYC for standing to participate in the Inquiry proceedings. AIDWYC also applies for funding and, in this regard, a supporting Affidavit from AIDWYC's President, Mr. Peter Meier, accompanies this letter.

In brief summary, AIDWYC has a direct, substantial and long-standing interest in the subject matter of this inquiry. It has an abiding and demonstrated interest in the detection, correction and prevention of wrongful convictions; it has been granted standing to pursue these interests at other Canadian wrongful conviction inquiries and, as an intervenor, in the Supreme Court of Canada; and it has vast experience and accumulated special knowledge and expertise with respect to matters directly within the Commission's terms of reference. As a volunteer-resourced, non-profit organization, AIDWYC is in no position to retain counsel to enable it to participate in the important work of this Inquiry. Accordingly, it applies for that funding necessary to render a grant of standing more than illusory.

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A more detailed description of AIDWYC, and its satisfaction of the standing and funding criteria, follow.

The Association in Defence of the Wrongly Convicted (AIDWYC)

AIDWYC is a national public interest organization dedicated to preventing and rectifying factually wrongful convictions. We are a voluntary, non-profit association with two broad objectives: first, eradicating the conditions that give rise to miscarriages of justice; and second, participating in the review and, where warranted, correction of specific wrongful convictions.

AIDWYC was founded in 1993. It is the direct successor to the Justice for Guy Paul Morin Committee, a grass-roots organization that came into existence in support of Guy Paul Morin immediately following his wrongful conviction. AIDWYC's Honourary President is the Honourable Gregory T. Evans, the former Chief Justice of the Supreme Court of the Province of Ontario and one of the three Commissioners who presided over the "Royal Commission on the Donald Marshall, Jr., Prosecution". The directors of AIDWYC include lawyers (such as myself), journalists, academics and other members of the public.

Much of AIDWYC's efforts have been devoted to assisting factually innocent persons who have been victims of uncorrected miscarriages of justice. Those persons wrongly convicted of *homicide* whose claims we have helped prosecute include:

- (a) Gregory Parsons (Newfoundland), who AIDWYC assisted by participating in his successful application to substitute an acquittal for a Crown stay of prosecution following both the Court of Appeal's order directing a re-trial and the exculpatory results of a DNA analysis;
- (b) Clayton Johnson (Nova Scotia), whose AIDWYC-prepared s. 690 application resulted in an appeal of his murder conviction. Based on the fresh evidence collected by AIDWYC and the legal representation afforded by a member of AIDWYC's Board of Directors, Johnson was granted bail pending the determination of that appeal. Subsequently, on February 18, 2002, Johnson was granted a new trial by the Court of Appeal. That same day he appeared before the Chief Justice of Nova Scotia where, following arraignment, the Crown tendered no evidence and Johnson was finally acquitted;

- (c) Steven Truscott (Ontario), on whose behalf AIDWYC has filed a 700-page application. The federal Department of Justice subsequently appointed the Honourable Fred Kaufman as independent counsel to review the application and to advise the Minister as to the application's merits and appropriate remedial action. The results of that review are expected to be released this month;
- (d) Romeo Phillion (Ontario), who AIDWYC assisted by working with the Innocence Project at the Osgoode Hall Law School to file a several hundred page s.696.1 brief with the federal Minister of Justice in 2003. AIDWYC counsel then secured Mr. Phillion's release on bail – after nearly 30 years of incarceration – pending the ministerial review of the s.696.1 application. This was the first time in Canadian history bail had been granted pending completion of a s. 690 or s. 696 review;
- (e) James Driskell (Manitoba), whose AIDWYC-prepared s.696.1 application is now before the federal Minister of Justice. Building on the precedent of Phillion, AIDWYC counsel secured Mr. Driskell's release pending the determination of his s.696.1 application.

Most importantly for this Commission, AIDWYC has a long association with **David Milgaard**. Mr. Milgaard's mother, Mrs. Joyce Milgaard, was a founding member of AIDWYC, and our Association long supported Mr. Milgaard's efforts to right the terrible wrong he suffered. Indeed, AIDWYC directly participated in the final steps of David Milgaard's long ordeal by pressing for and, in the end, negotiating the terms of the DNA protocol in England that ultimately vindicated Mr. Milgaard.

AIDWYC's concern to eliminate the root causes of factually wrongful convictions has led to our participation in several public inquiries and, as intervenors, in appeals before the Supreme Court of Canada. I served as senior AIDWYC counsel at these public inquiries, and as counsel to AIDWYC in the Supreme Court in *Biniaris* and two related appeals.

In June 1996, the Government of Ontario convened a public inquiry into the wrongful conviction of Guy Paul Morin (the "Morin Inquiry"). The Honourable Fred Kaufman was appointed Commissioner. In his written reasons for according AIDWYC standing, Commissioner Kaufman noted AIDWYC's demonstrated "continuing interest and involvement in issues relating to the wrongful conviction of innocent persons" and its "substantial and direct interest in addressing, in a systemic way, how innocent persons

come to be charged and convicted, and this with a view to preventing such miscarriages of justice in the future."

AIDWYC participated throughout the Morin Inquiry. During its final phase, AIDWYC helped organize and called much of the evidence devoted to "systemic issues", including a number of expert witnesses, the results of two research studies pertaining to systemic factors and a panel of wrongly convicted persons from Canada and the United States. Much of the evidence called by AIDWYC's counsel is summarized in detail in the Morin Inquiry report (released on April 9, 1998) and there relied upon in reaching conclusions and recommendations with respect to systemic issues. Further, many of the Commission's recommendations reflect those advanced by AIDWYC in its final submissions.

In June 2000, the Government of Manitoba convened a public inquiry, headed by the Honourable Peter deC. Cory, into the wrongful murder conviction of Thomas Sophonow (the "Sophonow Inquiry"). AIDWYC was the only public interest organization granted standing at the Inquiry and participated throughout the hearings, including calling expert evidence on the crucial areas of identification evidence and compensation. AIDWYC made extensive written and oral submissions at the conclusion of both the "compensation" and "what went wrong?" phases of the Inquiry. Many of AIDWYC's recommendations are echoed in the Inquiry's final report, released in November 2001.

In March 2003, the Government of Newfoundland and Labrador struck a public inquiry into various grave issues arising from three wrongful convictions in that province, those of Gregory Parsons, Ronald Dalton and Randy Druken. The Honourable Antonio Lamer, the former Chief Justice of Canada, was appointed Commissioner. AIDWYC ultimately applied for standing to participate only in that phase of the proceedings devoted to systemic or institutional concerns. The Commissioner has deferred that application until such time as a systemic phase of the inquiry is scheduled. However, AIDWYC was invited to, and did, participate in special proceedings devoted to the proper interpretation and scope of the Commission's mandate and the determination of several questions arising from the division of powers between the provinces and the federal government. The positions advanced by AIDWYC were largely adopted by the Commissioner in his subsequent ruling.

AIDWYC, as noted earlier, has also intervened on a number of cases involving miscarriages of justice. In the spring of 1999, AIDWYC was granted leave to intervene, in writing and by way of oral submissions, before the Supreme Court of Canada in the cases of *R. v. Biniaris*, *R. v. Molodowic* and *R. v. G.(A.)*. All three cases dealt with the

scope of "unreasonable verdict" as a ground of appeal and related jurisdictional issues affecting rights of appeal. The substantive and jurisdictional positions advanced by AIDWYC are positively reflected in the Court's judgement, as reported in *R. v. Biniaris*, [2000] 1 S.C.R. 381. More recently, in 2002, AIDWYC was granted leave to intervene (in writing only) in the Supreme Court in *Odhavji Estate v. Metropolitan Toronto Police Force*, a case dealing with the tort of abuse of public office. Again, the position advanced by AIDWYC found favour with the Court, as reported at *Odhavji Estate v. Woodhouse*, [2003] 3 S.C.R. 263.

Since its inception, AIDWYC has maintained ongoing association with a number of like-interested bodies in other jurisdictions: in particular, in the United States, with the Centurion Ministries in New Jersey, the Southern Center for Human Rights in Atlanta, Georgia, the Center on Wrongful Convictions in Chicago, Illinois, the Alliance for Prison Justice in Boston, Massachusetts and the Innocence Project at Cardozo School of Law in New York City. AIDWYC also co-operates on a routine basis with the Innocence Project [Canada], a student-resourced organization based at Osgoode Hall Law School at York University in Toronto. AIDWYC has also developed professional relationships with individual counsel, academics and police and forensic experts involved in cases of miscarriage of justice in the United States, across Canada and in the United Kingdom. It has also hosted visiting delegations from countries in Europe, Asia and the Americas and, at the request of the Department of External Affairs, has worked to secure the freedom of wrongly convicted Canadians abroad.

AIDWYC has sponsored a number of international conferences since 1994, most recently in November 2002 in Toronto. It has also been recognized as a source of knowledge and expertise. At their invitation, representatives of AIDWYC testified in 2001 before both the Legal Affairs Committee of the House of Commons and the Legal and Constitutional Affairs Committee of the Senate with respect to the proposed amendments to the s. 690 regime (the so-called "royal prerogative of mercy") introduced by the Federal Department of Justice. AIDWYC representatives have been invited to participate as speakers and panelists at numerous conferences devoted to wrongful convictions in Canada and the United States. AIDWYC was also a participant "stakeholder" in the (Ontario) Criminal Justice Review Committee, an *ad hoc* committee established by the Attorney General of Ontario, the Ontario Court of Justice, and the Ontario Criminal Lawyers' Association and which tabled its report in February 1999.

On May 28, 2003, AIDWYC was awarded the Distinguished Service Award by Pro Bono Law Ontario. The presentation was made by the Chief Justice of Ontario, the Honourable Justice Roy McMurtry.

Systemic Issues Generally

Public Inquiries into wrongful convictions afford the exonerated and the families of victims an understanding of their interwoven tragedies. They also afford a broader appreciation of the systemic and structural factors that contribute to such miscarriages of justice. It is these systemic issues that are of direct and substantial interest to AIDWYC as exposure and understanding of the causes of wrongful convictions will inevitably reduce the risk of their recurrence and thus serve both AIDWYC's objectives and a larger and a laudable public interest.

Each case of wrongful conviction is unique. Nonetheless, the re-emergence of now-familiar causal themes is hardly surprising. Tunnel vision, for example, is a near-universal diagnosis in post mortems of wrongful convictions. The use of jailhouse informants is another far too common element. Justice Kaufman, for example, made strong recommendations respecting the use of jailhouse informants in the Morin Inquiry. Justice Cory built on Justice Kaufman's insights when confronted with similar issues in the Sophonow Inquiry. Their combined recommendations in this and other areas of forensic vulnerability have begun to permeate the evolving jurisprudence and influence Crown practice in several provinces. Indeed, their impact extends beyond Canadian borders, as evidenced by the reliance placed on the Morin and Sophonow reports by the Governor Ryan Commission in Illinois and the subsequent moratorium on the death penalty in that state in 2002. However, the lessons learned by these two inquiries are far from universally accepted. And no government – provincial or federal – has yet introduced laws designed to implement the many legislative recommendations of public inquiries into wrongful convictions. The Donald Marshall Inquiry, for one example, recommended extensive legislation requiring complete Crown disclosure in 1989. No legislation followed. But for the Supreme Court's judgement in *R. v. Stinchcombe*, it is, frankly, frightening to contemplate the number of miscarriages of justice that may have occurred.

The process of judicial reform is incremental. So too is that of public education. Public inquiries are particularly well suited to both endeavours. Unlike courts – particularly appellate tribunals – public inquiries have the mandate and means to both research the causes of wrongful convictions and formulate remedies. The continuing exposure of

wrongful convictions in Canada makes clear that the identification of systemic frailties remains an important challenge for any public inquiry.

AIDWYC, through its international contacts, can gather the necessary expertise to assist the Commission with this task. It can also draw on its experience in earlier public inquiries to examine narrative witnesses about matters bearing on systemic and institutional issues. Counsel for AIDWYC attended throughout the Morin and Soponow Inquiries, and were given leave to examine witnesses at every phase so long as their questions were relevant to systemic considerations and, of course, not duplicative of Commission counsel's explorations. Relevance, of course, cannot be determined in a vacuum or at a remote advance: the Commissioner must make the call when the issue arises.

The protracted history of David Milgaard's quest for justice commands attention to the review mechanism by which the claims of the wrongly convicted are reviewed once their appeals are exhausted. The delays attending Mr. Milgaard's s. 690 Application are now a matter of public notoriety. Regrettably, these delays are not unique to Mr. Milgaard's case. Their source rests in institutional defects inherent in the Canadian review process. While s. 690 has since been replaced by the ss. 696.1-.6 regime, many of the institutional problems remain. This Inquiry affords a unique opportunity to assess the review process, particularly in view of the strong preference expressed by Commissioners Kaufman and Cory, in their respective Reports, for an *independent* review mechanism such as that in place in England, Scotland and Wales.

Funding

AIDWYC seeks funding to participate in the Inquiry. As set out in substantially more detail in the accompanying affidavit of Peter Meier (AIDWYC's President), AIDWYC will not be able to participate in this Inquiry unless there is funding for counsel fees and necessary disbursements. AIDWYC has neither assets or income of substance. It survived (barely) its first ten years through private donations, the receipts of occasional benefit performances and conferences and, most importantly, the volunteer efforts of dozens of Canadians. While AIDWYC now enjoys a first-time, one-year grant from the Law Foundation of Ontario (possibly renewable for two more years), every penny of this funding is dedicated to expanding our *pro bono* activities and generating long-term support from other sponsors. We have no discretion in this regard.

In ensuring AIDWYC's participation in their respective Inquiries, I believe that both Commissioner Kaufman and Commissioner Cory recognized that the task of pursuing the role of systemic factors could not be fairly left to the initiative of counsel for the wrongly convicted. Their clients' focus is inevitably on the perceived improprieties of those seen as responsible for their flawed prosecution and conviction. The uncovering of institutional failings may well detract from and, indeed, conflict with such instructions.


Nor can this task be left solely to Commission counsel. No matter how fearless, the imperative to retain a posture of perceived as well as actual impartiality effects an inevitable restraint. Commission counsel's need to always maintain a careful balance does not fetter counsel for a party.

Further, to the degree that institutional forces (the police, Crown Attorneys, the Attorney General) may have standing at the Inquiry, there will be well-funded voices intent on minimizing systemic failings or, absent critical dissent, persuasively arguing that they have now got their respective houses in order. In *Canada (AG) v. Canada (Commission of Inquiry on the Blood System)*, [1997] 3 S.C.R. 440, the Supreme Court observed that public inquiries perform the critical function of providing "the means for Canadians to be apprised of the conditions pertaining to a worrisome community problem and to be a part of the recommendations that are aimed at resolving the problem." An adequately funded public interest group – with no special interests to advance or protect – can help the Inquiry fulfill this important goal.

It is AIDWYC's understanding that Mr. James Lockyer, one of the most active members of AIDWYC's Board of Directors, is applying for standing on behalf of Joyce Milgaard. I can see no conflict between Mrs. Milgaard's interests and those of AIDWYC. Accordingly, and assuming both AIDWYC and Mrs. Milgaard are granted standing, it may well be that Mr. Lockyer can protect and pursue AIDWYC's interests in the subject matter of the Inquiry while acting for Mrs. Milgaard. AIDWYC has no objection to being granted standing on this basis for the narrative phases of the Inquiry. AIDWYC, however, requests independent standing (and, in that case, individual funding) for any portions of the Inquiry dedicated to systemic and institutional concerns. It is in these areas that AIDWYC is especially well positioned to make its own, helpful contribution to the quality and legacy of the Inquiry's Report.

Thank you in advance for your attention to this letter. I can be reached at your and your counsel's convenience should any questions or need for clarification arise.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melvyn Green', with a stylized, flowing script.

Melvyn Green

MG/gw

Enclosure - 1 (Affidavit of Peter Meier, President of AIDWYC)

c.c. - James Lockyer

By Fax No. 416-847-2564

**IN THE MATTER OF an Application by the Association in Defence of the Wrongly
Convicted for Standing and Funding at The Commission of Inquiry into the
Wrongful Conviction of David Milgaard**

AFFIDAVIT OF PETER MEIER

I, Peter Meier, retired Barrister and Solicitor, of the City of Toronto in the Province of Ontario, MAKE OATH AND SWEAR AS FOLLOWS:

1. I have been a member in good standing of the Law Society of Upper Canada for the past 27 years, since my call to the bar in Ontario in 1977. Before that, in 1966, I was admitted as a solicitor of the Supreme Court of England, where I practiced until 1973. I retired from the practice of law in September 2002. I am one of several founders and the President of the Association in Defence of the Wrongly Convicted (hereafter "AIDWYC") and, as such, have knowledge of the matters to which I here depose.
2. I have been actively involved with AIDWYC since its founding in 1993. I routinely chair Board meetings, serve on several Board subcommittees, and maintain daily contact with AIDWYC's administrative staff. I have participated in the drafting of policy papers and review all facta and legal submissions generated by AIDWYC since its inception. In addition, on behalf of AIDWYC I have met formally with the former federal Minister of Justice and have consulted with members of the judiciary and departments of justice about matters pertinent to the occasion and correction of wrongful convictions.

THE ASSOCIATION IN DEFENCE OF THE WRONGLY CONVICTED (AIDWYC)

3. AIDWYC is a national public interest organization dedicated to preventing and rectifying wrongful convictions. AIDWYC has two broad objectives: first, eradicating the conditions that give rise to miscarriages of justice; and second, participating in the review and, where warranted, correction of wrongful convictions. AIDWYC is an entirely voluntary, non-profit association dedicated to assisting factually innocent persons who have been wrongfully convicted.

4. AIDWYC was founded in 1993. It is the direct successor to the Justice for Guy Paul Morin Committee, a grass-roots organization that came into existence in support of Guy Paul Morin immediately following his wrongful conviction in the summer of 1992. When Guy Paul Morin was released on bail in February 1993, pending his appeal, this Committee reconstituted itself as AIDWYC having consciously decided to broaden its perspective and to act in defence of all persons who had been wrongly convicted.

5. AIDWYC's Honourary President is the Honourable Gregory T. Evans, the former Chief Justice of the Supreme Court of the Province of Ontario and one of the three Commissioners who presided over the "Royal Commission on the Donald Marshall, Jr., Prosecution". The directors of AIDWYC include lawyers, journalists, academics and other members of the public. Several of the directors have been instrumental in the exoneration of Canadians convicted of homicides of which they were factually innocent.

6. AIDWYC has sponsored a number of international conferences including the 1994 conference, "Innocents Behind Bars" (co-sponsors of which included the Canadian Bar Association - Ontario, the Church Council on Justice and Corrections, the Quaker Committee on Jails and Justice, the John Howard Society and the Mennonite Central

Committee Canada), the 1995 conference "Justice on Trial: The Wrongful Conviction of Guy Paul Morin", the 1996 conference "Coffin's Legacy: Keeping the Death Penalty at Bay" and, most recently, the November 2002 conference "Innocents Behind Bars 2002". AIDWYC was also a co-sponsor of the 1998 conference in Chicago, Illinois, "The National Conference on Wrongful Convictions and the Death Penalty".

7. In June 1996, the Government of Ontario convened a public inquiry into the wrongful conviction of Guy Paul Morin (the "Morin Inquiry"). The Honourable Fred Kaufman was appointed Commissioner. In his written reasons for according AIDWYC standing (which appear in Appendix D to the Commission's Report), Commissioner Kaufman noted AIDWYC's demonstrated "continuing interest and involvement in issues relating to the wrongful conviction of innocent persons " and its "substantial and direct interest in addressing, in a systemic way, how innocent persons come to be charged and convicted, and this with a view to preventing such miscarriages of justice in the future."

8. AIDWYC participated extensively at the Morin Inquiry. In particular, during the final phase of the inquiry devoted to "systemic issues", AIDWYC helped organize and called much of the evidence, including a number of expert witnesses. This role included submitting the results of two research studies pertaining to systemic factors and convening a panel of wrongfully convicted persons from Canada and the United States.

9. In the Morin Inquiry report, released on April 9, 1998, much of the evidence called by AIDWYC's counsel is summarized in detail and relied upon in reaching conclusions and recommendations with respect to systemic issues. Furthermore many of the recommendations reflect those advanced by AIDWYC in its final submissions; indeed, some are adopted verbatim from AIDWYC's proposals for reform.

10. In June 2000, the Government of Manitoba convened a public inquiry, headed by the Honourable Peter deC. Cory, into the wrongful murder conviction of Thomas Sophonow (the "Sophonow Inquiry"). AIDWYC was the only public interest organization granted standing at the Inquiry and participated throughout the hearings, including calling expert evidence on the crucial areas of identification evidence and compensation. AIDWYC made written and oral submissions at the conclusion of the "compensation" phase of the Inquiry and, at the end of the hearings, tendered a 50-page written brief as part of its final submissions. Many of the recommendations made by AIDWYC in its two briefs are echoed in the Inquiry's final report. That report, entitled "The Inquiry Regarding Thomas Sophonow: The Investigation, Prosecution and Consideration of Entitlement to Compensation," was released in November 2001.

11. In March 2003 the Government of Newfoundland and Labrador convened a public inquiry into various grave issues arising from the wrongful conviction of three persons within a decade in that province: Gregory Parsons, Ronald Dalton and Randy Druken. AIDWYC's application for standing to participate in that phase of the inquiry dedicated to systemic and institutional issues bearing on wrongful convictions was deferred by the Commissioner, the Honourable Antonio Lamer (the former Chief Justice of Canada), until such time as a systemic phase was scheduled. In the interim, AIDWYC was invited to participate in a special hearing concerned with the interpretation and scope of the Commission's mandate and the resolution of constitutional questions raised by its terms of reference. AIDWYC's position on these issues was largely adopted by the Commissioner.

12. AIDWYC has also been actively engaged in criminal law reform. For example, in 1998, AIDWYC, as a "stakeholder" in the reform of the criminal justice system, was invited to tender submissions to the (Ontario) Criminal Justice Review Committee, an *ad hoc* committee established by the Attorney General of Ontario, the Ontario Court of Justice, and Ontario Criminal Lawyers' Association. The Committee tabled its report in February 1999.

13. In 1998, representatives of AIDWYC, including myself, met with then federal Minister of Justice, the Honourable Anne McLellan, to discuss AIDWYC's proposals for amendments to the *Criminal Code* by which wrongful convictions may be more readily addressed and remedied. The discussions focused primarily on reforms to Criminal Code sections 686 (the scope of the review powers of provincial courts of appeal in criminal cases) and 690 (the so-called "royal prerogative of mercy").

14. Subsequently, on October 26, 1998, the Minister of Justice released a consultation paper entitled "*Addressing Miscarriages of Justice: Reform Possibilities for Section 690 of the Criminal Code.*" The consultation paper, and the enumerated questions to which the Minister sought answers, extended beyond section 690 reform to include other measures intended to reduce the risk of factual miscarriages of justice such as expanding the jurisdiction of courts of appeal and relaxing the rules governing the introduction of fresh evidence on appeals. On February 12, 1999, AIDWYC tendered its response to the consultation paper to the Minister by way of a 49-page brief signed by AIDWYC members in all ten provinces.

15. On February 10, 1999, AIDWYC met with then Attorney General of Ontario, the Honourable Charles Harnick, and several of his senior advisers to discuss the legislative reforms mooted in the section 690 consultation paper issued by the federal Department of Justice. Parallel approaches were made to the Attorneys General of several other provinces.

16. AIDWYC appeared by invitation before the Legal Affairs Committee of the House of Commons and the Legal and Constitutional Affairs Committee of the Senate in 2001 to make submissions and answer questions regarding proposed amendments to section 690, as contained in Bill C-15A. In each case, AIDWYC's oral submissions were supplemented by separate written briefs. In 2002, section 690 was repealed and replaced by sections 696.1 to 696.6 of the *Criminal Code*.

17. AIDWYC has also intervened in a number of cases involving miscarriages of justice. In the spring of 1999, AIDWYC applied for and was granted leave to intervene, in writing and by way of oral submissions, before the Supreme Court of Canada in the cases of *R. v. Biniaris*, *R. v. Molodowic* and *R. v. G.(A.)*. All three cases dealt with the scope of "unreasonable verdict" as a ground of appeal as set out in s. 686(1)(a)(I) of the Criminal Code, and related jurisdictional issues affecting rights of appeal. The substantive and jurisdictional positions advanced by AIDWYC are reflected in the Court's reasons as reported in *R. v. Biniaris*, [2000] 1 S.C.R. 381. In 2002, AIDWYC and the was granted leave to intervene in the Supreme Court of Canada in *Odhavji Estate v. Metropolitan Toronto Police Force*, a case dealing with the tort of abuse of public office. Again, the

position advanced by AIDWYC found favour in the Court's disposition of the appeal: *Odhavji v. Woodhouse*, [2003] 3 S.C.R. 263.

18. AIDWYC has also played an important role advocating for persons who have been wrongfully convicted. AIDWYC receives applications for assistance from wrongful conviction claimants on a routine basis; many of these are assigned to volunteer counsel across the country to review and assess. AIDWYC actively prosecutes the claims of those who it accepts as having been wrongfully convicted, including the following:

- (a) David Milgaard (Saskatchewan), whose ultimate vindication, through DNA testing in the England, was assisted through AIDWYC's negotiations with representatives of the federal Department of Justice. AIDWYC has been associated with David Milgaard's pursuit of justice since its conception as Joyce Milgaard, David Milgaard's mother, was one of AIDWYC's founding members.
- (b) Gregory Parsons (Newfoundland), who had been wrongfully convicted of the second degree murder of his mother. After a successful appeal and Mr. Parson's subsequent vindication as a result of DNA evidence, and over the objection of the defence (who sought an acquittal), the Crown entered a stay of prosecution at Mr. Parson's retrial. Following an application brought by AIDWYC and Mr. Parson's counsel, the Newfoundland Supreme Court set aside the stay and substituted an acquittal. A third party later plead guilty to the murder.
- ©) Clayton Johnson (Nova Scotia), whose section 690 application, prepared by AIDWYC counsel, was granted, leading to an appeal of his murder

conviction. Based on the evidence collected by AIDWYC and on representations by AIDWYC counsel, Mr. Johnson was granted bail pending the determination of that appeal. Subsequently, on February 18, 2002, Mr. Johnson was granted a new trial by the Nova Scotia Court of Appeal. That same day, he appeared before the Chief Justice of Nova Scotia where, following arraignment, the Crown tendered no evidence and Mr. Johnson was finally acquitted.

AIDWYC is currently deeply engaged in remedying the wrongful convictions for homicide of a number of other Canadians, most notably Stephen Truscott (Ontario), James Driskell (Manitoba), Romeo Phillion (Ontario) and Robert Baltovitch (Ontario). Multi-hundred page section 690 or 696.1 applications have already been filed on behalf of the first three of these four men, and the Minister's decision is soon expected in several of them.

19. Since its inception, AIDWYC has maintained ongoing association with a number of like-interested bodies in other jurisdictions: in particular, in the United States, with the Centurion Ministries in New Jersey, with the Southern Center for Human Rights in Atlanta, Georgia, with the Center on Wrongful Convictions in Chicago, Illinois, and with the Alliance for Prison Justice in Boston, Massachusetts and the Innocence Project at Cardozo School of Law in New York. AIDWYC also co-operates on a routine basis with the Innocence Project [Canada], a student-resourced organization based at Osgoode Hall Law School at York University in Toronto and with which AIDWYC participated in the s.696.1 application filed on behalf of Romeo Phillion. AIDWYC has also developed professional relationships with individual counsel and academics in the United States and in the United Kingdom who have worked on cases of notorious miscarriages of justice.

20. AIDWYC has hosted visiting judges, lawyers and academics from a number of foreign jurisdictions, including several European countries, Australia and, most recently, China. As well, the Department of External Affairs frequently consults with AIDWYC in cases involving suspect convictions of Canadians in foreign jails.

21. On May 28, 2003, AIDWYC was awarded the Distinguished Service Award by Pro Bono Law Ontario. The award was presented by the Honourable Roy McMurty, Chief Justice of the Province of Ontario.

AIDWYC'S FINANCIAL CIRCUMSTANCES

22. AIDWYC, since its inception, has been a non-profit organization dependent on voluntarism and charity to achieve its objects. Until late-2003, AIDWYC received no grants or provincial or federal funding. Our annual budget was exclusively the product of direct donations and the income generated by benefit concerts and talks, auctions and the sale of tickets to our conferences. Until recently, our offices were "loaned" to the organization and we had only one paid employee, an executive secretary, who worked on an unpaid basis until 2000. The rest of the work necessary to the conduct of AIDWYC's mandate was and is performed entirely on a volunteer basis. In some cases, provincial authorities have granted legal aid to wrongful conviction claimants "adopted" by AIDWYC; however, this funding goes to the counsel retained by the individual claimant and never to AIDWYC.

23. In July 2003, AIDWYC was awarded a grant by the Law Foundation of Ontario to assist us in expanding our *pro bono* activities and generating long-term support from other sponsors. The grant was based on a line-by-line proposal, for which we are accountable on a quarterly basis to the Law Foundation. Thanks to this grant, we now have two paid

employees (a director of client services and, on a half-time basis, a manager of operations), both of whom fulfill administrative functions. Apart from these two administrators, the only persons paid by AIDWYC were and remain persons such as private investigators and forensic experts essential to the investigation and prosecution of wrongful conviction claims. There is a possibility that the Law Foundation grant may be renewed for up to two more years. However, none of the grant is dedicated to the payment of counsel or for representation of AIDWYC's interests at public inquiries, nor would the Law Foundation authorize such expenditures.


24. In the past, AIDWYC's participation at public inquiries into wrongful convictions has been funded by the province which convened the inquiry. AIDWYC counsel participated throughout the Morin and Sophonow Inquiries, with counsels' fees and disbursement accounts being submitted to the appropriate authorities on a monthly basis. (I personally administered these accounts during the course of the Morin Inquiry.) In the case of the most recent public inquiry, in St. John's, Newfoundland, AIDWYC preparation and attendance fees were paid by the provincial Department of Justice according to an experience-based, department-authorized fee schedule; for example, counsel who had been called to the bar for 15 or more years were authorized to charge \$150 an hour for appearances and \$120 an hour for preparation. Repayment of expenses incurred by counsel, including travel, meals and accommodations, were governed by Treasury Board Travel Expense Rules. AIDWYC will fully comply with any accounting protocol established by the Commission. To this end, Vivian Jacob, AIDWYC's Treasurer, will be responsible for administering and accounting for any funds provided by the Commission. Vivian Jacob

can be reached through the AIDWYC offices at 85 King Street East, Toronto, Ontario M5C 1G3. The office phone number is 416-504-7500.

25. Regrettably, AIDWYC is in no position to contribute its own funds to retaining counsel for the Inquiry. Absent counsel funding from the Commission, AIDWYC will not be able to participate in the conduct of this important public inquiry.

26. I make this affidavit in support of the application by AIDWYC for standing and funding at The Commission of Inquiry into the Wrongful Conviction of David Milgaard and for no other or improper purpose.

SWORN before me in the City
of Toronto, in the Province of
Ontario, this 5th day of April
2004.


A Commissioner, etc.


Peter Meier

Gwendolyn Mary Catherine Williams,
a Commissioner, etc., City of Toronto,
for Sack Goldblatt Mitchell, Barristers
and Solicitors.
Expires June 15, 2005.

IN THE MATTER OF an Application by the
Association in Defence of the Wrongly
Convicted for Standing and Funding at
The Commission of Inquiry into the
Wrongful Conviction of David Milgaard

AFFIDAVIT OF PETER MEIER

Association in Defence of the Wrongly
Convicted ("AIDWYC")
