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I S S U E D	FEDERAL COURT COUR FÉDÉRALE September 03, 2024 03 septembre 2024
Court	File No.: Josephine Chan
TOR	1

FEDERAL COURT
(Forms 66 and 301)

BETWEEN:

CHRISTOPHER BATES

Applicant

and

**THE MINISTER OF JUSTICE AND
ATTORNEY GENERAL OF CANADA, AS REPRESENTED BY
THE CRIMINAL CONVICTION REVIEW GROUP (CCRG)**

First Respondent

and

DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS (DPCP)

Second Respondent

Notice of Application for Judicial Review
Pursuant to the *Federal Courts Act*, R.S.C. 1985, c. F-7, ss. 18 and 18.1

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The relief claimed by the Applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at the Federal Court in Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor or, if the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(Date)

Issued by: _____
(Registry Officer)

Address of local office: _____

TO: The Honourable Arif Virani
Minister of Justice and Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8

AND TO: Nigel Marshman
General Counsel
Criminal Conviction Review Group
284 Wellington Street
Ottawa, Ontario K1A 0H8

AND TO: Patrick Michel
Director
Criminal and Penal Prosecutions
Complexe Jules-Dallaire, tour 1, bureau 500
2828, boulevard Laurier
Québec (Québec) G1V 0B9

APPLICATION
(For Judicial Review)

This is an application for judicial review in respect of:

The investigation conducted by the Criminal Conviction Review Group (the Minister of Justice's delegate) pursuant to [s. 4\(1\)\(a\) of the *Regulations Respecting Applications for Ministerial Review* SOR/2002-416](#) in respect of an application made by the Applicant to the Respondent for ministerial review pursuant to [s. 696.1 of the *Criminal Code*, R.S.C. 1985, c. C-42](#).

This application is pursuant to [s. 18 \(1\) of the *Federal Courts Act*](#), proceeding as an application for judicial review pursuant to [ss. 18 \(3\) and 18.1 of the *Federal Courts Act*](#).

The Applicant makes application for:

An Order for:

- (1) A writ of prohibition pursuant to [s. 18\(1\)\(a\) of the *Federal Courts Act*](#) to prohibit the Minister of Justice's investigation from proceeding;
- (2) A writ of *mandamus* pursuant to [s. 18\(1\)\(a\) of the *Federal Courts Act*](#) to
 - (a) compel the Minister of Justice to grant a remedy for the Applicant under [s. 696.3\(3\) of the *Criminal Code*](#) either by referring the matter to the Quebec Court of Appeal for an appeal or to the Superior Court of Quebec for a new trial; or alternatively,
 - (b) order a new independent investigation of the Applicant's ministerial review application (pursuant to [s. 4\(1\)\(a\) of the *Regulations Respecting Applications for Ministerial Review*](#)); and
- (3) an interim order pursuant to [s. 18.2 of the *Federal Courts Act*](#), staying the Minister of Justice's investigation pursuant to [s. 4\(1\)\(a\) of the *Regulations*](#)

Respecting Applications for Ministerial Review until this Honourable Court rules on the within application for judicial review; and

- (4) Such further and other relief as this Honourable Court deems just.

The grounds for the application are that:

1. In conducting the investigation pursuant to the *Regulations* the Respondent, the Criminal Conviction Review Group (the Minister's delegate), breached the principles of natural justice and procedural fairness such that it gives rise to a reasonable apprehension of bias;
2. The conduct of the Respondent, the Criminal Conviction Review Group, gave rise to a reasonable apprehension of bias as demonstrated through e-mail correspondence between the Minister's delegate (the CCRG Investigator) and the key Crown witness in the Applicant's case. This tainted the integrity of the CCRG investigation;
3. These communications unequivocally demonstrate that the Respondent, the Criminal Conviction Review Group through their delegate Jean Richer, was predisposed towards a particular result, namely the dismissal of the Applicant's ministerial review application. The Respondent prejudged the matter against the Applicant without having conducted a full, fair, and objective investigation;
4. The bias demonstrated by Mr. Richer in his e-mail correspondence is prevalent throughout the CCRG's Draft Investigation Report and demonstrates that the investigation was not fair;
5. The Respondent's, the Criminal Conviction Review Group's, investigation has been irrevocably tainted and this Court should prohibit the continuation of the current investigation; and

6. The Applicant has suffered irreparable harm and prejudice.
7. The statutory provisions or rules relied on are:
 - (a) [Canadian Charter of Rights and Freedoms](#), ss. [7](#), [11\(d\)](#) and [24\(1\)](#);
 - (b) [Criminal Code, R.S.C. 1985, c. C-46](#), ss. [696.1 – 696.4](#);
 - (c) [Regulations Respecting Applications for Ministerial Review- Miscarriages of Justice, SOR/2002-416](#);
 - (d) [Federal Courts Act, R.S.C. 1985, c. F-7 as amended](#), ss. [18 and 18.1](#).; and
 - (e) [Federal Courts Rules, SOR/98-106](#).

This application will be supported by the following material:

1. The Affidavit of Innocence Canada Legal Director Pamela Zbarsky, containing the following exhibits:
 - A. Letter from Kerry Scullion to Erin Breen, dated January 8, 2008
 - B. Notice of Application, dated April 1, 2014, and accompanying Application Record filed in the Quebec Court of Appeal
 - C. Decision of the Quebec Court of Appeal dismissing leave application, dated December 12, 2014
 - D. Applicant's s. 696.1 Application, dated April 9, 2016, and accompanying Application Record
 - E. Letter from Jerome Kennedy to Kerry Scullion, dated May 26, 2017
 - F. Letter from R. Tataropoulos to Jerome Kennedy, dated June 16, 2017
 - G. Letter from Jerome Kennedy to Nigel Marshman, dated May 25, 2018
 - H. Letter from Nigel Marshman to Jerome Kennedy, dated July 30, 2018
 - I. Letter from Cynthia Champagne to Jerome Kennedy, dated November 15, 2018
 - J. Letter from Cynthia Champagne to Bhavan Sodhi, Jerome Kennedy and Julie Drolet, dated November 11, 2019
 - K. E-mail correspondence between Bhavan Sodhi and Dominique Gendron-Milot, dated October 8 to 15, 2020

- L. E-mail correspondence between Bhavan Sodhi and Nigel Marshman, dated February 3 to 4, 2021
- M. Letter from Jerome Kennedy to Nigel Marshman, dated March 22, 2021
- N. Letter from Nigel Marshman to Jerome Kennedy, dated April 22, 2021
- O. Supplementary Submissions to Applicant's s. 696.1 Application, dated July 6, 2022
- P. E-mail from Nigel Marshman to Jerome Kennedy and Pamela Zbarsky, dated February 2, 2024
- Q. E-mail from Pamela Zbarsky to Nigel Marshman, dated February 2, 2024
- R. CCRG Draft Investigation Report, dated January 30, 2024
- S. Exhibit 54 to CCRG Draft Investigation Report
- T. E-mail from Jerome Kennedy to Nigel Marshman, dated April 4, 2024
- U. E-mail from Nigel Marshman to Jerome Kennedy, dated April 4, 2024
- V. Letter from Jerome Kennedy to Nigel Marshman, dated May 9, 2024
- W. Letter from Nigel Marshman to Jerome Kennedy and Pamela Zbarsky, dated June 12, 2024
- X. Letter from Jerome Kennedy to Nigel Marshman, dated July 4, 2024
- Y. Letter from Nigel Marshman to Jerome Kennedy, dated July 16, 2024
- Z. E-mail from Jerome Kennedy to Nigel Marshman, dated July 16, 2024
- AA. E-mail from Nigel Marshman to Jerome Kennedy, dated July 16, 2024
- BB. E-mail from Nigel Marshman to Pamela Zbarsky, dated July 22, 2024
- CC. E-mail from Jerome Kennedy to Nigel Marshman, dated July 22, 2024
- DD. E-mail from Nigel Marshman to Jerome Kennedy and Pamela Zbarsky, July 22, 2024
- EE. E-mail from Nigel Marshman to Jerome Kennedy and Pamela Zbarsky, dated July 24, 2024
- FF. E-mail from Nigel Marshman to Jerome Kennedy and Pamela Zbarsky (and the DPCP), dated August 23, 2024

GG. Letter from Jerome Kennedy to Nigel Marshman, dated August 27, 2024

The Applicant requests the Respondent, the Criminal Conviction Review Group, to send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Respondent to the Applicant and to the Registry:

All material created by the Respondent or obtained by the Respondent in connection with the Applicant's application for ministerial review. For further specificity this includes but is not limited to the following:

- a. All material requested in the letter from Innocence Canada to Nigel Marshman on May 9, 2024 (list of materials on pages 11-12);
- b. All materials requested in the letter from Innocence Canada to Nigel Marshman on July 4, 2024;
- c. All material obtained or created in the course of the ministerial review;
- d. All interviews conducted by the CCRG with witnesses, counsel or other individuals; and
- e. All communications between witnesses and CCRG Counsel including Jean Richer.

DATED AT St. John's, NL THIS 3rd DAY OF September, 2024.



Jerome Kennedy, K.C.
Counsel for the Applicant on behalf of INNOCENCE CANADA

The Applicant's address for service is c/o:

INNOCENCE CANADA
106 Front Street East, Suite 301
Toronto, Ontario M5A 1E1
Tel: (416) 504-7500 x 106, Fax: (647) 724-1689