

PRISONERS' STRUGGLES

A Path Forward: How Miscarriage of Justice Canada Supports the Wrongly Convicted *Myles Frederick McClellan*

INTRODUCTION

The *Journal of Prisoners on Prisons* (JPP) has long served as a rare but essential platform for incarcerated individuals to engage in scholarly discourse about the systems that confine them. Unlike traditional criminological narratives shaped by politicians, media, and academics, *JPP* amplifies the lived experience and critical insights of prisoners – those most intimately acquainted with the failures of the justice system. In that spirit, this piece is written not merely about the wrongly convicted, but for and with them.

Miscarriage of Justice Canada (MJC) is a new organization grounded in the belief that justice must be reclaimed by those it has failed most deeply. We aim to support prisoners who believe they have been wrongly convicted. This article outlines the evolution of Canada's exoneration process, the creation of MJC, and how we support the wrongly convicted in navigating the new legal terrain established by Bill C-40.

BACKGROUND: MISCARRIAGES OF JUSTICE AND THE SILENCING OF PRISONERS' VOICES

Too often, wrongful convictions are viewed through an academic or legalistic lens, abstracted from the emotional, psychological, and social harm endured by the people directly affected. Mainstream definitions of “justice” are crafted in courtrooms and classrooms—spaces where those labeled ‘criminal’ are seldom heard. As the *JPP* rightly asserts, such frameworks often omit the very voices that matter most, thereby reinforcing punitive myths and policies.

Miscarriage of Justice Canada emerged to re-centre these voices by reviewing potential wrongful conviction cases through a trauma-informed, culturally sensitive lens. Our goal is not only to secure exonerations, but to restore dignity and narrative control to those who have had it stripped away.

FROM MINISTERIAL DISCRETION TO INDEPENDENT REVIEW

For decades, prisoners seeking to challenge wrongful convictions were forced to apply under section 696.1 of the *Criminal Code of Canada*, a process handled exclusively by the Minister of Justice. This centralized system was criticized for being opaque, bureaucratic, and inaccessible to those without legal representation.

That began to change with the work of a federal review committee led by Justice Harry LaForme and Justice Juanita Westmoreland-Traoré, which recommended creating an independent review body. Their work led to the Miscarriage of Justice Review Commission Act (Bill C-40), which became law on 17 December 2024. The new Commission removes political discretion and provides a transparent, investigatory pathway for individuals claiming they were wrongly convicted. Although the legislation has come into place, the Commission has not yet been fully operationalized, pending the appointment of commissioners. In the interim, applications may still be submitted to the Department of Justice under the new legislative framework.

THE MJC MISSION AND PROCESS

At MJC, we draw inspiration from the *JPP*'s mission to elevate marginalized voices and challenge dominant narratives. When a prisoner or their loved one contacts us – whether by mail, phone, or our website – we begin a process rooted in listening and belief. We do not demand legal perfection; we require only credible grounds to conclude that a miscarriage of justice may have occurred.

Upon intake, we:

- Conduct a preliminary assessment for eligibility;
- Assign law students and legal consultants to the case;
- Collect and review legal documentation;
- Prepare and submit a formal application to the Miscarriage of Justice Review Commission (MJRC) or, if necessary, the Department of Justice;
- If successful, we engage counsel to argue a new trial or appeal as ordered by the MJRC/DOJ; and

- Stay in regular contact with applicants or their representatives.

Through a national agreement with Pro Bono Students Canada (PBSC), MJC works with law faculties across the country, ensuring rigorous, timely, and human-centred support for each case.

THE PATH TO EXONERATION UNDER BILL C-40

The Commission, under Part XXI.1 of the *Criminal Code of Canada*, may:

- Investigate suspected wrongful convictions;
- Refer cases for new trials or appeal;
- Offer support services to applicants;
- Accept applications even if all legal appeals were not exhausted; and
- Prioritize the needs of marginalized applicants, including Black and Indigenous persons, whose systemic overrepresentation in prison rarely translates into access to post-conviction remedies.

As the *JPP* underscores, these reforms will only be meaningful if the affected individuals are empowered to participate in and shape the process.

BEYOND EXONERATION: RECLAIMING TRUTH AND DIGNITY

JPP teaches us that public dialogue on incarceration must be shaped not just for but by prisoners. At MJC, we strive to embody that ethos. While our legal work is vital, we are equally committed to challenging stereotypes, exposing systemic bias, and ensuring that the wrongly convicted are not just freed, but heard.

CONCLUSION

In the age of commercialized crime media and reactionary policy making, the voices of incarcerated people are often the last to be consulted and the first to be dismissed. The *Journal of Prisoners on Prisons* stands as

a powerful counterweight to that trend and MJC is proud to be part of the same tradition of elevating the voices of the criminalized, the marginalized, and the often silenced.

In November 2025, we were granted permission from Correctional Service Canada to contact people held in Canadian federal penitentiaries. Now that we have begun communication with federally imprisoned people, we are assigning PBSC law students to assist our clients directly.

If you are a prisoner who believes you have been wrongly convicted or you are writing on behalf of someone who is, we are ready to listen and act. You are not alone.

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