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# Investigative Inadequacies or Investigative Corruption? Exploring the Role of Police Misconduct within Canadian Wrongful Conviction Cases

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**INVESTIGATIVE INADEQUACIES OR INVESTIGATIVE CORRUPTION?  
EXPLORING THE ROLE OF POLICE MISCONDUCT WITHIN CANADIAN  
WRONGFUL CONVICTION CASES.**

By

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B.A (Honours), Wilfrid Laurier University, 2014

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## ***Abstract***

The phenomenon of wrongful convictions has begun to attract the attention of the public and scholars alike within the past few decades. However, despite this recent fixation the issue of wrongful convictions is not new, as research on the subject dates back to 1932 with the work of Edwin Borchard. Most of the research on the subject of wrongful convictions has focused largely on identifying the factors that contribute to these injustices. For the most part academics are in agreement when it comes to the causes of wrongful convictions, which include, eyewitness misidentification, false confessions, police & prosecutor misconduct, use of jailhouse informants, errors in forensic science and ineffective assistance of council (Grounds, 2005).

While misconduct resulting from investigative error has been cited as a cause of wrongful convictions, the research is predominately concerned with examining eyewitness misidentification, which has been cited as the leading cause of these errors (Gould & Leo, 2010). However, this study highlights the importance of examining the role of police and prosecutors in the establishment of a wrongful conviction. It is quite clear that police officers play a pivotal role within any investigation, as they are first to arrive at the scene, they are also responsible for the collection of evidence, interviewing all parties involved, identifying suspects, as well as possible motives. This research intends to examine the issue of police misconduct, through a socio-legal analysis of six Canadian public inquiries into wrongful convictions. Filling a void within wrongful conviction research through the examination of two neglected areas, police misconduct and the experiences of the wrongly convicted from a Canadian perspective.

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## **CHAPTER ONE: An Introduction to the Study of Wrongful Convictions**

Over the past few decades there has been a growing awareness that a significant number of individuals have been wrongfully convicted, the product of systemic errors that are present within the criminal justice system. The phenomenon of wrongful convictions has begun to garner the attention of numerous academics within various disciplines including both law and criminology. Although in recent years, wrongful conviction research has gained popularity it was, however, a subject that was once severely neglected (Zalman, 2012).

Despite this recent popularity, research on the topic of wrongful convictions dates back to 1932, with professor Edwin Bouchard's groundbreaking text *Convicting the Innocent*. Although interesting this research was unsuccessful when it came to convincing the public that a systemic problem existed, ultimately leading to a gap within the research (Leo & Gould, 2009). In recent years, the public's perception has begun to change, as it was once believed that it was impossible for an innocent person to be convicted of a crime committed at the hands of someone else (Bedau & Radelet, 1987). The recognition and acceptance of the possibility and existence of these errors has certainly been a step in the right direction.

The real turning point for the acceptance of wrongful convictions can be attributed to the increasing reliability of DNA evidence. The number of individuals who have been exonerated with the help of DNA evidence is significant. As at the time of this research a total of 344 individuals within the United States have been exonerated with the assistance of DNA evidence (Innocence Project, 2015). In addition, the use of DNA

evidence has also proved to be beneficial for the recognition and exoneration of wrongful convictions in cases where DNA evidence was not available.

Prior to 1989 when DNA evidence was first used to establish innocence it was widely believed that individuals who were innocent were rarely convicted if at all (Leo & Gould, 2009). After the recognition and discovery of numerous wrongful conviction cases in the past few decades it has led to what has been coined as the innocence movement (Findley, 2011). Societies perception towards wrongful convictions shifted during the innocence movement from being skeptical that these errors ever occurred, to “knowing their names and faces and learning how their lives were destroyed” (Gross, 2008, p. 3).

The rise of the Innocence movement helped to establish a recognition that the criminal justice system is not as foolproof as it was previously felt, and errors that lead to wrongful convictions can and do occur at the hands of the criminal justice system. The Innocence movement brought together organizations along with individuals who shared a common goal to both help exonerate the innocent as well as advocating for changes in the political structure, which would prevent these injustices (Findley, 2011).

***Actual vs. Legal Innocence:***

False imprisonments, miscarriage of justice, erroneous conviction, malicious prosecution, are all terms that have been used to describe these errors known as wrongful convictions. In addition to the various terms used to describe wrongful convictions there has also been a lack of clarity in determining what falls under the category of wrongful conviction. These miscarriages of justice are most commonly associated with innocence in the simplest of terms, meaning that the individual was not involved in the crime they



were convicted of. However, within the context of the Canadian criminal justice system the term innocence can take on a number of different meanings.

The Innocence movement resulted in a deconstruction of the term innocence which when used to describe wrongful convictions can be broken down into “actual” or “factual” and “legal” innocence (Hughes, 2011). Typically, an individual’s level of innocence has been placed on spectrum, determined by the extent to which their innocence has been proven; those who received a complete exoneration are at the top of this scale.

The overall research available on wrongful convictions has primarily focused on cases that fall into the category of innocence in the factual sense. Typically, the media along with academics consider an individual to be “actually” or “factually” innocent if they’ve had no involvement with the crime in question, the crime did not occur, or facts suggest that someone else is responsible for the crime in which they have been wrongfully convicted of (Hughes, 2011). Factual innocence includes both individuals who have been proven innocent with and without DNA evidence.

Factual innocence refers to cases where sufficient evidence is present to suggest that a miscarriage of justice has occurred. A wrongful conviction or miscarriage of justice can be defined as the following,

“Where there was no unfairness at trial, but evidence was admitted on appeal that placed the reliability of the conviction in serious doubt. In these cases, the miscarriage of justice lies not in the conduct of the trial or even the conviction as entered at trial, but rather in maintaining the conviction in the face of new evidence that renders the conviction factually unreliable” (R. v. Truscott, 2007, p.110).

Regardless of the fact that DNA evidence proved to be useful in the exoneration of many wrongly convicted persons it’s not the only way that innocence can be established. Instances of actual innocence can also include individuals who truly did not

commit the crimes they were found guilty of but there is no DNA evidence available to prove their innocence (Hughes, 2011). These individuals may have been previously convicted for a number of reasons unrelated to DNA evidence including for example, faulty eyewitness testimony, the withholding of evidence, and false confessions.

Establishing innocence without the presence of DNA evidence tends to be slightly more complicated although once proven these individuals are also considered to be factually innocent. In cases without the presence of DNA evidence innocence can be proven in various ways; few examples being, witnesses recanting statements or new evidence coming forward, as these factors can work to illuminate the individual's innocence suggesting that they have in fact been wrongly convicted (Hughes, 2011). Despite the fact that factual innocence is not commonly recognized within the Canadian criminal justice system it is required in order to be granted compensation (Roach, 2012).

### ***Legal Innocence***

At the other end of the spectrum are individuals who are alternatively considered to be legally innocent which may also result in a finding of wrongful conviction. Presently the majority of research on wrongful convictions tends to focus on cases of factual rather than legal innocence leading to the belief that an individual can only be wrongfully convicted if evidence suggests that they did not commit the crime. Although, some scholars criticize the innocence movement and claim that by focusing primarily on cases of actual innocence it can overlook the possibility of a person being wrongfully convicted based upon inadequacies within the legal proceedings (Hughes, 2011).

Cases of legal innocence tend to involve errors made within the trial process, ultimately leading to a guilty verdict. In instances of legal innocence, the individual is

found to be a victim of legal error or judicial misconduct, meaning that the legal proceedings that ultimately determined their guilt had been tainted for a myriad of reasons. Examples of procedural error include, coerced confessions, misunderstanding of the charges, failure to follow criminal procedure, or a violation of an individual's legal rights (Martin, 2005). Unlike cases of actual innocence where the focus is directed on whether or not the defendant physically committed the act in question, legal innocence is focused on the fairness of the legal proceeding and if the law was justly applied.

It is certainly possible that a person exonerated based upon a finding of legal innocence is in fact guilty of the crimes for which they were convicted. However, it is also possible for an individual to be exonerated on the grounds of legal innocence but similar to actual innocence they had no involvement in the crime and judicial error was used as a means for being released. When it comes to a finding of legal innocence a person's true involvement in the crime they were wrongly convicted of is never called into question, it is not about determining guilt or innocence but rather deciding whether or not their case was handled justly or if an error of law was present.

This research focuses on Canadian wrongful conviction cases that have been addressed within public inquiries. Throughout this research the term innocence will be used to describe individuals who have been the subject matter of these inquiries as they have been declared factually rather than legally innocent of the crimes in which they were previously convicted of. Excluded from this research is cases in which, an individual was found to be wrongfully convicted resulting from errors made within the legal system. The cases included within the study involve individuals that have been found to have no

involvement in the crimes they were previously convicted of, whereas the involvement of the legally innocent is left unanswered.

### ***Determining Innocence***

Determining an individual's level of innocence may appear to be straightforward but in reality it can prove to be quite challenging, as the degree of certainty regarding an individual's level of innocence varies from case to case (Martin, 2005). An individual's level of innocence is often determined based upon the manner in which they become exonerated. The highest level of exoneration involves going through a lengthy legal process to become officially exonerated and in some cases it can take several years for an individual to receive a full exoneration.

The path to becoming exonerated is a complicated process, one that has not been fully supported by the criminal justice system, therefore in reality not all-wrongful convictions result in exonerations (Roach, 2012). Regardless of the fact that cases of legal exoneration are regarded as being the highest level of innocence, this doesn't carry much weight with respect to the individual's level of involvement, based upon the fact that the determination of innocence comes from the same judicial system, responsible for the initial error. Additionally, the criminal justice system has been extremely reluctant when it comes to admitting any wrongdoings, and avoids doing so at all costs (Martin, 2005).

### ***The Scope of the Problem***

While many attempts have been made to calculate how many innocent people have been wrongfully convicted, to date there has not been a definitive or successful answer to this question. Regardless, advocates of the innocence movement suggest that

the number of wrongful convictions is substantial enough to warrant taking action (Zalman, 2012). While this might be the case, the reality is that it would be extremely difficult if not impossible to determine the exact number of wrongful convictions.

One of the reasons is due to a lack of clarity about what constitutes a wrongful conviction, which may result in cases being left undetected. In addition, prior to the existence of DNA evidence it was extremely difficult to become exonerated. This suggests that many innocent men and women may have served entire sentences without their innocence being recognized. Another reason is the unwillingness of the criminal justice system to acknowledge these errors and to make determinations of innocence (Roach, 2012). All of these factors suggest that it can be extremely difficult to accurately calculate the number of wrongful convictions that have occurred.

The current knowledge that exists within the study of wrongful convictions has focused on the most heinous crimes; primarily cases where an individual was falsely convicted of murder and or sexual assault (Gross, 2008). Despite the fact that crimes of the more serious nature are rare and only make up a small percentage of all reported crimes, wrongful convictions involving crimes of this nature are more likely to be identified in comparison to less serious offences (Roach, 2012). The reality is that wrongful convictions can and do occur in any case no matter the severity of the crime.

Based upon the fact that the media and even organizations such as (AIDWYC) The Association in Defence of the Wrongly Convicted, that provide aid to the wrongly convicted focus primarily on homicide cases, suggests that it is quite likely that there is potentially many unrecognized and undiscovered wrongful conviction cases within Canada and elsewhere. Having said that, there have been several findings of wrongful

convictions recognized by the criminal justice system, resulting from the hard work and dedication of family, friends and advocates of the wrongly convicted. Innocence is usually proven through the use of conclusive evidence that points to an individual's innocence; recently this has primarily focused on the use of DNA analysis (McLellan, 2013).

To date (AIDWC) has listed a total of 43 cases of wrongful conviction in Canada, only twenty of which have resulted in exonerations (Roach, 2012). The number of known wrongful convictions appears to be much higher in the United States as The National Registry of Exonerations (2015), has documented 1,667 exonerations since 1989. Canada has yet to establish a similar registry suggesting the possibility that research on this topic has been more advanced within the United States. Canada's reluctance to report on these findings may also be a way for officials to avoid the shame that comes with publishing this data. Another possibility is that problem of wrongful convictions has truly been more prevalent within the United States.

Even though a definitive number of how many innocent people have been convicted is still unknown, many researchers have attempted to calculate what has been referred to as "the estimate" which theorizes the wrongful conviction rate anywhere from 0.5% to 15% of all convictions. (Clow & Leach, 2015, Zalman, 2008 ;). If the "estimate" has any accuracy it would suggest that potentially thousands of innocent individuals are falsely convicted each year. In contrast many researchers consider the number of wrongful convictions as the "dark number" arguing that we cannot estimate from what we have no knowledge of (Gross et al., 2005). This suggests that we cannot make an accurate estimate on the frequency of wrongful convictions because it cannot be

concluded with any certainty when a wrongful conviction has occurred, if this was the case than these wrongful convictions would have been avoided in the first place (Gross, 2008).

Predictions about the number of wrongful convictions that have happened in the past can be theorized about but the only way we can say with any certainty that a wrongful conviction has occurred is when it has resulted in an exoneration (Gross, et al. 2005). Estimates on the prevalence of wrongful convictions are conducted by dividing the total number of known exonerations with the total number of convictions, however this in itself can be problematic as it leaves out wrongful convictions that did not result in an exoneration (Gross, 2008).

Although throughout the research on wrongful convictions there appears to be conflicting opinions on how many wrongful convictions have taken place, as well as the appropriate way to calculate this number. One thing that can be agreed upon by all is that the wrongful conviction of an innocent person is one of the greatest injustices imaginable (Merjian, 2010). Society has often been preoccupied with the potential harms that can arise from a guilty person being released, however this gaze has shifted as more recently the research has focused more on the harms that are caused by the conviction of an innocent person. There is a common understanding amongst academics and advocates who truly understand the travesty involved in punishing an innocent person, which is known as Blackstone's formulation the idea that it is "Better that ten guilty persons escape than that one innocent suffer," (Norris et al., 2011, p. 1301).

The loss experienced by the wrongly convicted is immense and affects countless aspects of an individual's life. In the most basic sense a wrongful conviction results in an

individual's loss of freedom, self-respect and better yet their credibility making it exceedingly difficult to establish innocence (Denov & Campbell, 2005). Often times the loss experienced by those who have been wrongfully convicted is irreparable as time cannot be replaced, and broken relationships are often difficult to repair.

### ***Significance of the study***

Despite the numerous safeguards that are present within the Canadian criminal justice system including, the Charter of Rights and Freedoms police and prosecutors, Canada like many other countries has had its share of wrongful conviction horror stories. Although, the information on the frequency of wrongful conviction is rather limited, based upon the research available, the frequency of wrongful convictions appears to be significantly lower in comparison to the United States (Roach, 2012). This calculation may also be a reflection on the lack of attention towards the issue of wrongful convictions from a Canadian standpoint. However, what is important to note is that the Canadian criminal justice system has certainly not been free from these errors as the cases of Donald Marshall Jr., David Milgaard and Guy Paul Morin, signify. Although the number of wrongful convictions remains unknown in both Canada as well as the United States, it appears that more investigation into wrongful convictions has been conducted from an American standpoint.

The difference in frequency may also be attributed to the fact that more resources have been allocated to studying wrongful convictions within the United States making the research more developed in comparison to Canadian initiatives. This can be seen in the countries exoneration rates as according to AIDWYC, Canada has seen the exoneration



of 20 individuals, whereas this number is significantly higher in the United States reaching into the hundreds (AIDWYC, 2015).

By comparing the size of these countries alone it is to be expected that the United States would have ten times more wrongful convictions than Canada based upon population size alone. The fact that 20 exonerations have occurred in Canada, therefore we would expect approximately 200 cases in the United States. The reality is that this number has been significantly higher within the United States as the Innocence project has reported 344 cases that have been identified through DNA evidence, not including cases identified through other methods (Innocence Project, 2015). Due to the lack of certainty within the research it is difficult to say for certain why wrongful convictions appear to occur more frequently within the United States.

Regardless of the fact that wrongful conviction research has made significant progress within the past few decades, the current research on wrongful convictions from a Canadian standpoint remains severely underdeveloped in comparison to the progress that has been made within other countries including both the United States and the United Kingdom (Roach, 2012). Based upon what is known about wrongful convictions and the harm caused to not only the wrongly convicted but to society as well suggests it's an issue that warrants further attention (Denov & Campbell, 2005). This research is intended to narrow the gap by providing an in-depth look at wrongful convictions from a Canadian perspective, through the examination of six public inquiries.

### ***The Harms of being Wrongfully Convicted***

In addition to the lack of wrongful conviction research within Canada another rationale for examining this issue is the injustice that is caused when an individual is

wrongfully convicted. When an innocent person is convicted of a crime that someone else is guilty of it is considered to be a great tragedy and an absolute nightmare for those concerned with achieving justice (Furman, 2003). As wrongful convictions are considered to be one of the greatest injustices that an individual could possibly be subjected to (Merjian, 2010). Wrongful convictions are especially unjust, as they tend to be a reality more frequently in cases involving serious crimes. Suggesting that an individual may spend a significant portion of their lives incarcerated, struggling to establish their innocence.

Wrongful convictions are considered to be an injustice that far surpasses the individual who has been wrongfully convicted; as it has been argued that the criminal justice system fails in three ways each time an innocent person is convicted (Macfarlane, 2006). First unwarranted harm is inflicted upon the person who has been wrongly convicted as well as their family members. Secondly when an innocent person is convicted it means that the actual perpetrator is left unidentified and they have the potential to commit further crimes. Lastly, the victim's family who experienced closure as a result of the conviction is now re-victimized knowing the real perpetrator remains unknown (Macfarlane, 2006). When an individual becomes wrongfully convicted the loss that they experience as a result of their conviction is unimaginable and often beyond repair. This damage is profound, often including but not limited to the loss of family and friends, employment, finances, health and most importantly time (Denov & Campbell, 2005). Any loss that is experienced by the wrongfully convicted only heightens their sense of injustice, especially as most of the damage that is experienced cannot be repaired

In addition to these harms, the wrongly convicted often suffer from psychological hardships as a result of their incarceration as well. The reality is that all prisoners whether guilty or innocent are likely to experience psychological stress as the result of being incarcerated. Symptoms may include, post-traumatic stress disorder, depression, paranoia, anxiety as well as institutionalization (Grounds, 2005). However, these hardships tend to be exacerbated for the wrongly convicted as there is an absence of guilt heightening the negative effects of incarceration. Those who are falsely convicted are aware of their innocence, as well as the fact that they have been victimized by the criminal justice system. The psychological experiences of being wrongfully convicted often continue upon the individual's release, as they are being set free into a world that is unfamiliar (The Innocence Project, 2009).

Another rationale for the study of wrongful convictions is the fact that these injustices often have a negative effect on societies faith in the criminal justice system. As Canadians we place a great deal of faith in our criminal justice system, despite the reality that innocent people continue to be wrongly convicted (Weathered, 2003). The criminal justice system has numerous safeguards in order to prevent these injustices from occurring, but for various and perhaps even unknown reasons these errors continue to occur (Furman, 2003). It is often argued that the fundamental principle behind the criminal justice system is its ability to determine guilt or innocence, if this is the case than the criminal justice system is not operating adequately if it's unable to do so (Furman, 2003).

In the past society has placed an enormous amount of faith on both law enforcement and the criminal justice system making it exceedingly difficult for wrongful

convictions to be believed and recognized (Weathered, 2003). However, with the reliability of DNA analysis and the increasing number of high profile wrongful convictions coming forward society's faith in the criminal justice system has started to fade. Society has started to recognize that the criminal justice system is not as reliable and error free as was previously thought. The importance of studying wrongful convictions is to firstly determine what causes these injustices and secondly to prevent them from happening to others.

Although it has often been argued that it is impossible to have a legal system that is completely error free especially as it is subjected to human fallibility some academics make the claim that errors are inevitable within the criminal justice system and therefore it should be accepted that wrongful convictions are likely to result from these errors (Furman, 2003). Even if this is the case and errors in the criminal justice system are inevitable continuing research on this subject is still necessary. If society simply accepted the fact that wrongful convictions are a reality of our criminal justice system the situation would never improve damaging the lives of even more innocent people. The fact that these injustices occur at all warrants further research and attention, regardless of whether or not they can be prevented completely.

***Research Focus:***

While the Canadian legal system may operate differently when it comes to addressing wrongful convictions in comparison to other countries, Canada has unfortunately not been immune to errors that contribute to these injustices. This is evident based upon the several high profile cases involving miscarriages of justice that have been identified over the past few decades. The Canadian government has begun to recognize

the seriousness of these miscarriages of justice and as a result has made efforts to address this issue.

An example of this process is demonstrated through the use of public inquiries. Since 1989, provincial governments within Canada have called seven public inquiries to address several highly publicized wrongful convictions (Roach, 2012). Despite the fact that these public inquiries have taken place the Canadian legal system has been for the most part unsuccessful when it comes to employing a viable solution to the issue of wrongful convictions. This can be theorized based upon the fact that the Canadian government has been slow when it comes to implementing recommendations made as a result of the public inquiries, for instance it was suggested after six separate public inquiries that the Canadian government establish an independent review process for these cases similar to the Criminal Case Review Commission that exists in the United Kingdom, however this has yet to take place (Roach, 2012).

For the purpose of this research these commissions will be identified as the following: the Marshall Inquiry, the Morin Inquiry, the Sophonow Inquiry, the Driskell Inquiry, the Milgaard Inquiry, as well as the Lamer inquiry which examined the wrongful convictions of Ronald Dalton, Gregory Parsons and Randy Druken, The primary goal of public inquiries into wrongful conviction cases is not to focus on the individual causal factors of these miscarriages of justice, but rather to identify the larger systemic issues that continue to plague the Canadian criminal system and contribute to these errors.

## **CHAPTER TWO: Background of the Study**

Yale law Professor Edwin Borchard has been recognized for his innovative research *Convicting the Innocent*, dating back to 1932. Borchard's research ultimately paved the way for a more modern inquiry on the topic of wrongful convictions to take place (Gould & Leo, 2009). Borchard's research identified 65 wrongful conviction cases in addition to the factors that attributed to these miscarriages of justice. These factors or "sources of error" included false confessions, erroneous eyewitness testimony, prosecutorial misconduct as well as the misuse of evidence (Gould & Leo, 2009).

Although there have been many new discoveries since Borchard's ground breaking research, the factors identified as contributors to these miscarriages of justice still remain prominent within the current research. Borchard's research has shaped the way that wrongful convictions have been studied for the past few decades. Many academics have chosen to conduct research in a similar manner, focusing on individual wrongful conviction cases and making suggestions on how to prevent these errors from occurring in the future.

The topic of wrongful convictions started to gain attention dating back to the 1930's, however in the early stages of wrongful conviction research it was customary to focus on individual cases of wrongful convictions rather than to look at the problem in its entirety. Similar to today what is known about wrongful convictions has primarily focused on the most publicized cases dating back to the Dreyfus affair in the nineteenth century, the 1932 Lindbergh kidnapping as well as more recent cases such as the West Memphis Three (Huff & Killias, 2013). The attention received towards wrongful

convictions has become heightened after the exonerations of hundreds of innocent individuals.

The Canadian criminal justice system has established a number of safeguards in an attempt to ensure that only those who are guilty are convicted and the innocent are acquitted, this principal stems from the principle of innocent until proven guilty beyond a reasonable doubt. Overall it appears that these rules have served us well, but when it comes to the wrongfully convicted perhaps these safeguards have served us a little too well (Macfarlane, 2006). The reality is that in the majority of cases wrongful convictions are not the result of intentional errors, but rather the product of honest mistakes.

Originally it was felt that the justice system was incapable of committing such errors and that the verdict given by a jury was considered the ultimate word (Gross & O'Brien, 2008). However, the reality is that as long as the criminal justice system and the decisions about guilt and innocence are left in the hands of humans than wrongful convictions are unfortunately inevitable (Macfarlane, 2006). While wrongful convictions remain inescapable the more obtainable solution is to identify these errors in order to prevent and minimize the number of wrongful convictions that occur.

### ***The Invisibility of Wrongful Convictions:***

Wrongful convictions are accidents that occur as a result of errors made within the criminal justice system, however unlike other types of accidents for instance car accidents, wrongful convictions are rarely identifiable (Gross & O'Brien, 2008). Whereas other types of accidents are more obvious, wrongful convictions are in most instances invisible making them almost impossible to identify. If erroneous convictions were obvious and easily identifiable than the conviction would have been avoided in the first

place. This concept is based upon the knowledge that for the most part it is almost impossible to distinguish a wrongful conviction from one that is factual especially when a significant number of the prison population maintains their innocence.

The only cases that can be identified as wrongful convictions are those in which the defendant was exonerated after the fact, by either DNA evidence, a confession from a real perpetrator, or newly discovered evidence that suggests innocence (Gross, O'Brien, 2008). Ultimately these types of wrongful convictions are not representative of wrongful convictions as a whole but rather only apply to a minority of cases. It has been theorized that that the majority of wrongful convictions remain undetected, often leaving the innocent person to serve out their entire sentence. It has been suggested that those who are found innocent of the crimes in which they were previously convicted of, is based purely upon luck (Gross & O'Brien, 2008).

***Current Research:***

Despite the attention that has been afforded to the study of wrongful convictions within the past few decades some of the findings within this research have remained the same. For instance, many of the common factors thought to lead to wrongful convictions have remained the same since Edwin Borchard's study dating back to 1932 (Furman, 2003). Similar to research that focuses on the frequency of wrongful convictions there has also been a great deal of emphasis and research placed on determining the causes of these errors. Many researchers have theorized and attempted to explain this phenomenon, however the majority of research has come to a similar conclusion identifying six major factors.



As outlined by Gross (2008), the most prominent individual error deemed to contribute to wrongful convictions also commonly referred to as the “Canonical list”, includes eyewitness misidentification, flawed forensic science, false confessions, informants, police and prosecutorial misconduct and bad lawyering (Gross, 2008). The titles may vary from one author to the next but the prominent factors tend to remain the same throughout the research.

The fact that we know so little about the occurrences of wrongful convictions makes it difficult to determine the exact causes with any certainty as there might be factors that have yet to be discovered, (Gross, & O’Brien, 2008). Similar to other aspects of wrongful conviction research the contributing factors are not definitive, but rather more of a prediction based upon previous wrongful convictions or exonerations. Thus leaving much unknown as many cases remain undetected. Nonetheless, the factors typically associated with wrongful convictions should not be viewed exclusively as the causes of wrongful convictions as it is important to stay open and to continue researching other possibilities, as a result these factors should be viewed as contributors and not definitive causes (Gould & Leo, 2010).

One of the current leading researchers on wrongful convictions professor Samuel Gross has theorized that the factors contributing to wrongful convictions vary based upon the type of crime, for example the factors that result in wrongful convictions in murder cases are different from those that are present in sexual assault, robbery, or other assault cases, etc. (Covey, 2013). Some of the factors considered to contribute to wrongful convictions are not intentional errors but rather honest mistakes, for example eyewitness misidentifications where the error was unintentional. However, it is possible for some of

the other factors that contribute to wrongful conviction to result from intentional or known errors by individuals within the criminal justice system (Furman, 2003).

### ***Calculating the Frequency of Wrongful Convictions***

The primary focus within the current wrongful conviction research has been attempting to determine the frequency of these cases. Despite this focus a considerable debate exists amongst many academics within the field when it comes to determining the extent of the problem (Gould & Leo, 2010). However, due to the nature and causes of wrongful convictions it makes the frequency almost impossible to calculate (McLellan, 2013). The frequency of wrongful convictions has often been considered a dark figure based upon the fact that many scholars have attempted to calculate this number, but as of yet it cannot be concluded with any certainty that this number is accurate as the research is unable to account for unreported or undiscovered wrongful convictions (Denov, & Campbell, 2005).

Despite its incalculability many researchers have attempted to determine the prevalence of wrongful convictions with estimates ranging anywhere from 0.5% to 15% or more of all convictions (Ramsey & Frank, 2007, Smith, Zalman & Kieger, 2009, Clow & Leach, 2015). Although the accuracy of these figures is unknown these numbers are still quite shocking as it may suggest that thousands of innocent individuals are falsely convicted each year within North America alone, should these numbers be accurate.

The only way to conclude with any certainty the number of wrongful convictions that have occurred would be to investigate every conviction both past and present to determine whether or not an error could have occurred, but based upon the volume of convictions this is simply not an obtainable goal (McLellan, 2013). Regardless of the fact

that it has been theorized that the total number of wrongful convictions cannot be calculated it is likely that researchers will continue to search for an answer.

***Convicted in the Absence of a Crime:***

It has been argued that being wrongfully convicted is one of the greatest injustices that an individual could ever experience. Just as it was imagined that the fate of those who have been wrongfully convicted could not get any worse cases are identified in which it was later found that an individual has been falsely convicted and incarcerated and that no crime had occurred at all (Huff, Rattner & Sagarin, 1996). Although it may seem unimaginable like something out of a nightmare to be convicted and punished for a crime that never occurred, the truth is that this has been a reality in several wrongful conviction cases.

Although rare there have been cases in both Canada as well as the United States of individuals being convicted and it was later found that evidence once believed to point to foul play, when further examined actually suggests that no crime occurred at all. These wrongful convictions tend to be the result of the moral panic that exists among those within the criminal justice system and the mentality to “think dirty” (Findlay, 2009) as in several cases the police along with forensic experts failed to recognize signs that an individual’s death may have actually resulted from natural causes, pointing to the innocence of the wrongly convicted.

In Canada the most recognized cases of wrongful conviction in the absence of a crime involve forensic pathologist Dr. Charles Smith whose faulty evidence and testimony contributed to the wrongful conviction of several Canadians. In these cases, it was later found that not only was the defendant not responsible for the victim’s death but

that a homicide had not occurred at all (O'Hara, 2001). Examples include, Tammy Marquardt, William Mullins-Johnson, Louise Reynolds, and Susan Nelles to name a few. Similar cases have also occurred within the United States as well including the wrongful conviction of Gary Dotson who was convicted of sexual assault and received a 25 to 50 year sentence he was later released after the victim confessed that the assault never happened (Huff, Rattner & Sagarin, 1996).

### ***The Role of The Police in Wrongful Convictions:***

The existing research on wrongful convictions has concluded that the leading cause of these errors has been eyewitness misidentification, however despite the fact that researchers continue to reach this conclusion what is known about wrongful convictions is far too limited to determine with any accuracy which factor has been more problematic (Covey, 2013). Although the current research on wrongful convictions is inconclusive based upon the fact that what is known about this theory has been severely limited by our inability to identify when a wrongful conviction takes place, what is known is that errors made by individuals within the criminal justice system including police and prosecutors, have the ability to lead to wrongful convictions.

There are very few events that result in the same scrutiny of the criminal justice system as a wrongful conviction of an innocent individual. Police and prosecutors are often viewed as gatekeepers within the criminal justice system having first contact with both victims and defendants which puts these individuals into an advantageous position to conduct and ensure a proper investigation (Batts, DeLone & Stephens, 2014).

It is widely believed that the majority of individuals working within the criminal justice system have both integrity and honesty when it comes to their position, as these

individuals often share a passion for both ensuring that justice is achieved as well as protecting those who are innocent. However, despite the commitment these individuals have towards their jobs, it is evident that mistakes can and have been made by those within the criminal justice system, and in some cases these errors contribute to the wrongful conviction of an innocent person (Batts, et. al, 2014). The Innocence Project has concluded based upon the review of cases exonerated through DNA evidence that misconduct resulting from police error has and can occur during every stage of the criminal investigation (The Innocence Project, 2015).

In the simplest of terms police misconduct refers to intentional or illegal actions made by police officers during the course of an investigation. These errors can and often have devastating consequences such as, discrimination, obstructing justice as well as wrongful convictions. Investigators may also contribute to wrongful convictions without even being aware. An investigative error or mistake should be viewed separate from police misconduct, although both have the potential to lead to a wrongful conviction. Police misconduct is associated with planning and intentionality, whereas as an investigative mistake is best explained through incompetency, when an investigator makes an error in judgment, or fails to follow the guidelines or procedures prescribed by the police department.

Inconclusiveness appears to be a common theme within the research on wrongful convictions; similar to the frequency it is also impossible to determine how often any factor contributes to a wrongful conviction including both police misconduct as well other investigative errors (Covey, 2013). Regardless of what is known or unknown about how often police error contributes to a wrongful conviction there is no doubt that

mistakes whether intentional or not have the ability to cause these errors. This is based upon the fact that the police remain at the heart of any investigation, often referred to as gatekeepers within the criminal justice system. Much like other investigations police are responsible for the collection of evidence, addressing the media along with the public, investigating suspects, and interviewing witnesses, all of these factors can be tainted by errors or misconduct (Covey, 2013).

Canada follows the premise of constabulary or police independence, meaning that the police are given the sole responsibility of collecting evidence and once enough evidence has been collected to suggest an individual's guilt the police compile a case brief that is further examined by prosecutors who are required to conduct a separate examination and decide whether or not to prosecute (Martin, 2005). This process varies depending on the Country; the United States for instance has a member of the state or district attorney working alongside the investigation as well. No matter how these investigations are handled countries that engage in both practices have had their fair share of wrongful convictions resulting from police and prosecutorial misconduct.

What is known about these investigations is that some cases are more prone to these errors and therefore more likely to result in a wrongful conviction in comparison to others. What makes some cases more susceptible to wrongful conviction is based upon the available evidence and its likelihood of leading to error, for instance the presence of eyewitness testimony, false confessions, jail house snitches or junk science to name a few (Martin, 2005). The presence of these factors creates the ideal opportunity for investigative error, including errors that result from mistakes within the investigation as well as intentional misconduct. The reality is that even when the investigation was

conducted under the best of intentions, these errors can still occur (Laqueur, Rushin, Simon, 2014).

### ***Targets of Wrongful Convictions***

Although our knowledge on wrongful convictions remains limited to only exoneration cases, what we do know is that wrongful convictions tend to be more frequently associated with high profile and crimes of the more serious nature. The issue that surrounds any high profile crime, whether a wrongful conviction or not is that there is often an immediate pressure after the event to find a “viable perpetrator” (Macfarlane, 2008). For many reasons and some unknown the public tends to develop an interest to high profile criminal cases and especially those involving the most heinous details. The public’s preoccupation places increased pressure on investigators (Macfarlane, 2008). The pressure to convict can result in police and investigators developing a “convict at all costs” mentality, which can have devastating effects for innocent individuals (Martin, 2005).

The public’s pressure to find a suitable suspect after an event has taken place can lead to certain individuals becoming targeted before others; these individuals are often seen as unpopular defendants (Macfarlane, 2006). Even before a formal conviction takes place the police along with both the public and members of the jury may already view the accused in a negative light affecting the presumption of innocence and increasing the chances of a wrongful conviction (Macfarlane, 2006). The unpopularity of the accused is based on a number of factors including, myths and stereotypes about race, previous criminal involvement, the defendant’s involvement with drugs and alcohol, as well as their relationship to the community (Macfarlane, 2006). Research has concluded that a

necessary element in wrongful conviction cases is for a marginalized suspect to be identified, one who fits in with the public's image of the ideal perpetrator capable of committing the crime (Martin, 2005).

Individuals who are either well known to police and or have a prior criminal record are often more likely to become victims of a wrongful conviction. Although wrongful convictions occur on both ends of the spectrum research has concluded that there have been a significant number of individuals with criminal backgrounds wrongfully convicted (Huff, Rattner & Sagarin, 1996). The case of David Milgaard demonstrates this concept as he was wrongfully convicted of a crime in which investigators were both faced with fear and pressure from the public to secure a conviction, in the eyes of the investigators Milgaard was seen as a troubled hippy drug user, ultimately making his involvement in the crime all the more believable (Denov & Campbell, 2005). Although both those who have had an involvement with police prior to their wrongful conviction as well as those who have had no involvement are both susceptible to being wrongfully convicted, those who are already on the radar of police arguably make more suitable targets.

In addition, an individual's race can have detrimental effects as to whether or not an individual becomes a target of a wrongful conviction. This notion has been outlined in research conducted by Brandon Garrett, who argues that the majority of wrongful convictions in the United States, approximately 70% have involved visible minorities including African American's and Latinos (Garrett, 2011). Canada has experienced a similar history, as the aboriginal population tends to make an easy target within wrongful conviction cases (Roach, 2012). The wrongful convictions of both Donald Marshall Jr.



and Williams Mullins-Johnson exemplify that an individual's race can make them a more suitable target potentially increasing their chances of being wrongfully convicted. In the case of William Mulling's-Johnson he was wrongfully convicted of murdering his niece; it was later found that she had died of natural causes. Donald Marshall Jr. was convicted of the stabbing death of Sandy Seale in which he was merely just a witness; the real perpetrator turned out to be a white male (Roach, 2012). The question now becomes, whether or not police officers that exhibit racial bias within an investigation, are engaging in intentional misconduct, or whether these actions result from their incompetence and lack of training.

Although it is the factor that is least likely to contribute to a defendant's vulnerability to be convicted, how someone is perceived within the community can speak to their propensity to commit a crime. Individuals who are "from away" or not involved within the community where the crime has occurred might find themselves being viewed as a possible suspect (Macfarlane, 2006). Those who do not belong to the community are often feared as their character remains unknown and they can be seen as a threat to the local community. In addition, with crimes of the most serious nature it is often difficult for the community to imagine that someone nearby was capable of the crime in question, making it easier to place blame on an outsider.

***Public Pressure:***

It has been argued that added stress from both the media as well as the public can severely impact and distort decision making within the criminal justice system (Macfarlane, 2008). This pressure has long been recognized as a potential contributor to wrongful convictions dating all the way back to the research of Edwin Borchard, who

identified moral panic and the pressure to convict as a contributing factor. Borchard argued that in many cases societies opinion is just as responsible for these errors as the police and prosecutors are themselves, especially as public opinion can frame the investigation before it even starts (Macfarlane, 2008). Although the work of Borchard is decades old many of his theories continue to resonate within the current research, pressure from society is a good example of this as it has only increased over the years.

Presently the media along with the public can create an enormous amount of pressure on the police to secure a conviction after a crime has occurred; this stress will only heighten as the news of these events continues to become more accessible with advancements in technology. Pressure from the public was evident in the Susan Nelles investigation in 1980. Police immediately focused their attention on Nelles a nurse at the Toronto Hospital for Sick Children, after 32 children died over a nine-month period. Once suspicion was raised and the public was made aware Susan was charged with the murder of four children based primarily on circumstantial evidence. Although, Susan had cared for these four children she was not the only one to do so, she was also not the only one to have access Digoxin, a drug that was felt to have caused these deaths. In the end the judge ruled that the Crown did not present sufficient evidence to warrant a trial and the case was thrown out (Bowal, & Horvatt, 2011.).

Looking back at cases of wrongful convictions that have been later identified it is difficult to imagine how these errors could have occurred in the first place, especially cases resulting from police error as the police are generally held to a higher standard when compared to the general public. However, the reality is that despite the fact that those working within the criminal justice system are held to a higher standard than most,

their education and training is inadequate, especially when considering the responsibility placed on these individuals. When compared to the training and educational requirements within other professions for example, doctors, nurses and lawyer's the requirements for becoming a police officer are substandard. Additionally, research on police training has revealed an inconsistency between the training that police officers receive and the actual requirements of being a police officer (Bradford & Pynes, 1999). The fact that individuals working within the criminal justice system are held to a higher standard than most is irrelevant given the fact they are none the less human beings and capable of errors, the only difference is these errors are more visible, harder to correct and can lead to devastating consequences.

***Police Tunnel Vision:***

One explanation for these errors is the concept of tunnel vision, which can result from a number of different cognitive distortions ultimately affecting both what we see as well as how we interpret what we see (Findley & Scott, 2006). Although various cognitive biases are involved in tunnel vision there are two factors that appear more often, confirmatory and hindsight bias (Batts, et. al., 2014). Confirmation bias is the tendency to look for information or evidence that matches our preconceived notions or expectations. As human beings we are typically driven towards information that supports our initial hypothesis and we have a tendency to ignore any facts that may lead us to another conclusion. This confirmatory bias usually occurs without acknowledgement or recognition suggesting that tunnel vision may result from human error rather than an intentional or known mistake. This suggests that presence of tunnel vision within an

investigation is more consistent with investigative error rather than intentional or premeditated misconduct.

In addition to confirmatory bias, hindsight error is another prominent factor that contributes to tunnel vision. Hindsight bias also known as the “knew-it-all-along-effect, occurs when new knowledge and outcomes are being attributed to events within the past without realizing that by doing so it can subsequently affect the knowledge we have about the past (Findley & Scott, 2006). The problem with hindsight bias is that often individuals will have a strong sense that they knew it all along when in actuality they are just caught in a decision trap. Hindsight bias can be especially problematic in cases of wrongful conviction, as when we feel like we knew the outcome or perpetrator all along often we become satisfied with what we think we know and ignore all other possibilities.

Hindsight bias is also closely linked to what is known as the reiteration effect, which tends to be quite damaging in wrongful conviction cases. The reiteration effect is the notion that our confidence in what we believe to be the truth will continue to increase the more we hear or repeat it (Hertwig, et. al., 1997). The reiteration effect makes it extremely problematic for investigating officers to consider alternative suspects or theories, as investigators often become fixated on one suspect early on in the investigation. The reiteration effect is what causes investigators to stick to their guns when it comes to their view of who is guilty. This confidence becomes established after repeating these facts over and over either to co-workers, in court or to themselves, further strengthening the confidence in their decision (Findley, 2011).

Although police officers and prosecutors are held to a higher standard of responsibility in comparison to the average person this does not mean that they are

immune from these cognitive errors. As human beings we are all capable and susceptible to the natural errors and biases of the human mind although we know that these errors are a reality and can appear in criminal investigations they are essentially inevitable as these errors are not easily identifiable (Batts, et. al, 2014). Mistakes that result from tunnel vision are not intentional, rather these mistakes arise from the best of intentions but are unfortunately subjected to the limitations of human error which when paired with the criminal justice system can result in a wrongful conviction. Tunnel vision may result in investigators, mistakenly overlooking, misinterpreting or ignoring information that is considered beneficial to the investigation (Denov & Campbell, 2005).

It has been argued that everyone even the most skilled investigator is susceptible to the harms of tunnel vision; these effects can cause investigators within the criminal justice system to focus on a suspect or a theory and as a result filter all of the evidence in order to match this conclusion (Findley & Scott, 2006). Tunnel vision can be very troubling within the criminal justice system, and has been described by researchers as the “biasing snowball effect”, the idea that focusing on one piece of evidence has the potential to contaminate all other available evidence (Dror & Fraser-Mackenzie, 2014). Errors of tunnel vision can be especially troubling within police work as the police are generally the first point of contact in the investigation and generally all further examination within the criminal justice system steams from the evidence gathered during the initial investigation (Findley & Scott, 2006).

Although in most cases errors that occur within the criminal justice system are unintentional, these mistakes can have potentially devastating effects (Huff, Rattner, Sagarin, 1996). Even though it has been theorized that it is impossible to eliminate these

errors entirely more education and training may prove effective at reducing the number of wrongful convictions resulting from incompetency within the investigation (Huff, Rattner, Sagarin, 1996). The errors that result from mistakes made by professionals within the criminal justice system severely undermines the public's confidence of both law enforcement as well as the administration of justice. More education and training aimed at preventing these errors may lead to the reduction of wrongful convictions resulting from police error and in turn may also strengthen the public's confidence in the criminal justice system.

Arguing that tunnel vision undermines the police investigation process should not be taken as a hit or judgment against police practices but rather as an observation that cognitive biases such as tunnel vision can and do happen to everyone and have the ability to negatively influence the investigation process. Researchers have concluded that these cognitive errors are not only present within the criminal justice system but similar mistakes are also present within other professions as well (Findley, 2010).

In reality police, prosecutors and judges who fall victim to the effects of tunnel vision are not necessarily corrupt or bad people, they are simply just human (Findley & Scott, 2006). However, the fact that these cognitive biases exist and have received a significant amount of attention from researchers suggests that those within the criminal justice system should be taking every precaution to ensure that instances of tunnel vision are recognized and neutralized before they have the chance to taint the criminal investigation (Findley & Scott, 2006). However as of yet tunnel vision continues to contaminate the investigation process as the current policies and the pressure to convict

that surrounds the criminal justice system only increases the likelihood that tunnel vision will occur.

### ***The Role of Coincidence:***

Investigators often make the claim that they are not likely to fall victim to and do not believe in coincidences, however when it comes to police investigative practices involving both a significant number of crimes and suspects sometimes these errors are inevitable (Rossmo, 2008). Coincidence or by chance can play a significant role within criminal investigations. As often numerous suspects are considered, creating the potential for a suspect to be found who matches the description of the perpetrator, but in reality ends up being innocent.

Errors resulting from coincidence generally occur when investigators work backwards, for instance working from suspect to crime rather than crime to suspect (Rossmo, 2008). It has been theorized that investigators are usually able to establish some type of connection linking a suspect to a crime if they dig hard enough (Rossmo, 2008). The presence of double counting within a criminal investigation can also be problematic. The error of double counting occurs when investigators accept two or more details of the case that have been provided by the same source, and then considering these elements as being two distinct and separate pieces of information, ultimately giving this information more credibility than it deserves (Rossmo, 2008). For instance, a similar statement given by two separate individuals does not necessarily confirm this information, as it is possible that both parties received this information from a similar and potentially unreliable source (Rossmo, 2008).

### ***Misconduct resulting from Police Error:***

The pressure to secure a conviction after a crime has occurred. Specifically, crimes of the violent nature are for the most part entirely on the police force. In addition to the pressure that the police receive from the outside including, members of the community, victims, as well as the media, the police are also subjected to pressure from within the police force as well. Ultimately this pressure can result in a specific form of police misconduct known as police corruption, which may lead to wrongful convictions as well as other forms of misconduct. This police corruption may result from a police officer's motivation to achieve one of the following: career advancement, financial benefit, as well as any other personal gain (Covey, 2013).

The corruption can include an officer wrongfully pursuing, failing to pursue or being selective on who is pursued when it comes to an investigation or making an arrest. Police corruption stems from an investigation being conducted in a manner that focuses on obtaining these benefits rather than achieving justice. Often police officers want to secure a conviction as fast as possible as they experience the pressure to be the best and desire to move up within the department, believing this is one way for them to get noticed.

### ***“Noble Cause Corruption”:***

In most cases errors committed by criminal justice actors is the result of honest and unintentional errors that occur during the course of police work. However, even in cases where errors are intentional these practices are justified on the basis of “noble cause corruption”. Essentially this phenomenon suggests that it's not important how the results are obtained rather that they were achieved in the first place, regardless of whether or not



dishonest practices were involved (Martin, 2005). In the simplest of terms “noble cause corruption” ensues when police believe that it is acceptable to construct, falsify or enhance evidence in order to ensure that the individual they perceive to be guilty is convicted (MacFarlane, 2006). “Noble cause corruption” is a form of ends-based investigating in which the focus is solely on the outcome of the conviction as the police officers begin to lose sight of the means or rather how the conviction was obtained.

Although in some instances “noble cause corruption” can actually accomplish what it intended to, which is to convict the person responsible for the crime. However, it may also create an opportunity for a guilty person to be set free and an innocent person to be falsely convicted, this is typically when the corruption will be discovered.

“Noble cause corruption” may reveal itself in many different forms including: the use of excessive force, racial profiling, pressuring witnesses, falsifying or the destruction of evidence, failure to present evidence and providing dishonest testimony (Macfarlane, 2006, Martin, 2005). Essentially “noble cause corruption” can include any aspect within the investigation where the police feel that it is necessary to overlook, ignore or bend the rules on the grounds that they are looking out for public’s best interest.

Despite the fact that “noble cause corruption” is often justified as police simply doing their job, or seen as a way to get to the conclusion faster, it’s presence within an investigation can have serious consequences for those who are innocent (MacFarlane, 2006). Based on the history of wrongful conviction research, regardless of the fact that police and prosecutors are held in higher regard, they too can have an error in judgment despite their level of certainty. The combination of police tunnel vision and “noble cause corruption” can be especially troublesome potentially leading to wrongful convictions.

This is due to the fact that these two factors can reinforce one another, as once the investigator becomes fixated with a particular suspect or conclusion they may use all means possible to prove this theory, rationalizing unjust practices by chalking it up to helping move the investigation along (MacFarlane, 2006). “Noble cause corruption” can be found in cases of wrongful conviction all around the world examples include, the infamous dingo baby case in Australia, the Birmingham six in the United Kingdom, as well as the wrongful conviction of Guy Paul Morin in Canada. In these cases, police led corruption was found to be a primary contributor of these wrongful convictions (Martin, 2005).

### ***Evidence Evaluation:***

It is common within the investigative process for police officers to prematurely develop a theory for how a crime was carried out and to remain focused on this particular scenario. In some cases, maintaining this preoccupation can be harmful to the investigation as it has the potential to affect all aspects of the investigation going forward. The presence of tunnel vision can cause unfairness within the investigation including biases when it comes to the interpretation and evaluation of evidence. It has been concluded that when it comes to concerns regarding the collection and evaluation of evidence these issues typically stem from the misinterpretation of evidence rather than the physical analysis of evidence itself (Rossimo, 2008).

### ***The Substance of False Confessions***

False confessions can be extremely difficult for juries as well as the general public to understand; often questioning what would drive someone to confess and provide details to a crime they truly did not commit (Garrett, 2011). It is easy for those of us on

the outside looking in to argue that an individual who provides a confession must be guilty, this is especially true given the fact that voluntary confessions are weighed quite heavily within a criminal trial. Confessions regardless of whether or not they are true or false are considered to be extremely influential and often capable of discrediting evidence to the contrary; the weight placed on a confession can be extremely dangerous in cases where a false confession was given (Leo & Ofshe, 1998).

Attempting to understand why an individual falsely confessed can be quite challenging as the reasons are often complex and vary depending on the circumstances of the case. Although the thought of confessing to a crime that you had nothing to do with seems unfathomable, research conducted by the Innocence Project within the United States has concluded that false confessions were present in more than 25% of cases discovered through the use of DNA evidence (The Innocence Project, 2015).

To the average person a false confession seems unimaginable but psychologists have conducted research concluding that police have the ability to coerce a confession through interview and interrogation practices; there have even been instances where an innocent person provided details about the crime that only the true perpetrator could have known (Garrett, 2011). Throughout history it has been argued that police led false confessions have become a primary contributor within wrongful conviction cases (Bedau & Radelet, 1987, Borchard, 1932 & Leo, 2005). While it might be impossible to truly understand what leads someone to falsely confess, it is widely believed that in most instances the individual feels that it would be to their benefit to comply with police orders and confess to the crime rather than continuing to maintain their innocence (Innocence Project, 2015). Despite the fact that false confessions are often regarded as unimaginable

they have been present in a number of wrongful convictions, this is why it is important for researchers to focus on what might cause an individual to provide a false testimony.

***Interrogation Tactics, Fact Feeding & Contaminated Confessions:***

Regardless of the fact that the majority of individuals who are within the criminal justice system perform their duties with integrity to ensure that justice is achieved somewhere down the line mistakes are made whether intentional or not, these errors can play a major role in false confessions especially when it comes to interrogation and interview practices. Studies on false confessions have concluded that in the majority of cases the confession included specific details about the crime that were felt to only be known by the perpetrator ultimately suggesting their guilt. This raises questions about how someone is able to provide intimate details to a crime that they should have no knowledge about; this can often be explained by contamination (Garrett, 2010).

Confessions felt to be contaminated based upon poor interrogation practices are seen as unreliable and have been attributed to many wrongful conviction cases. Contamination or fact feeding occurs when important details of the case are either purposely or inadvertently disclosed to the suspect prior or during the interrogation. Fact feeding provides a good example of this as officers are directly involved in providing the suspect with important facts about the case or by asking leading questions that indirectly provide these details, such as who shot the victim in the head telling them how the victim was killed (Nirider, et. al., 2012). Inadequate police training is likely to blame for officers engaging in these practices. As previously mentioned, the training and education required for becoming a police officer is insufficient for the requirements of the job, in many cases

officers are only required to have a grade twelve education in addition to completing a basic police training course (Bradford & Pynes, 1999).

Fact feeding occurs when police provide suspects or witnesses with specific information regarding a crime either before or during an interrogation. Generally, these details are not provided to the public and are considered to be information known only to the true perpetrator. Typically, police provide this information through a method of coercion in which they influence, persuade or use force in order to entice the accused to disclose these details (Nirider, 2012). Fact feeding has the potential to contaminate testimonies as once specific details regarding the crime (such as, how and when it happened) are provided it can prevent further testing on an individual's knowledge of these events (Garrett, 2010). With fact feeding the knowledge that the suspect has about the crime including both what they actually knew about the crime and what they were told about the crime becomes clouded, taking away any opportunity to learn what the suspect legitimately knew (Garrett, 2010).

The main purpose of the interrogation is to obtain actual details of the crime particularly details that would only be known by the perpetrator (Garrett, 2010). When interrogations or interviews are conducted in this manner it makes a confession more reliable as the information was provided solely by the accused and was not the result of police fact feeding, it also allows the reliability of the confession to be further evaluated (Garrett, 2010).

***Eyewitness Suggestion:***

It is without doubt that eyewitnesses play a vital role within the investigation process, especially as these individuals tend to have more knowledge about the event than

anyone else. Statements made by an eyewitness can be very powerful, as they have the ability to identify and ultimately convict perpetrators. Jurors often weigh any information provided by an eyewitness quite heavily, based upon the fact that they have no motivation or incentive for their testimony other than to ensure justice is served (Wells et. al., 2006). The fact that eyewitness testimony is held in such high regard is unfortunate, as research has revealed that these testimonies tend to be unreliable (Clark & Godfrey, 2009). Nonetheless an eyewitness who is confident in their identification can be an extremely powerful piece of evidence (Wells et. al, 2006).

Despite the important role that eyewitnesses play within the investigation process the recognition of countless wrongful convictions has started to shed light on the fallibility of the human mind as well as the issue of false or mistaken identifications (Clark & Godfrey, 2009). Throughout the research conducted to date on wrongful convictions eyewitness misidentification has continuously been cited as the leading contributor to these injustices (Huff, Rattner, & Sagarin, 1996, The Innocence Project, 2015). Although these errors are often hard to imagine as statements made by eyewitnesses are held in high regard, these mistakes are the result of the fallibility of the human mind.

A witness might feel certain that they have identified the right suspect, however the human mind does not operate as a tape recorder simply replaying what was previously seen. In reality our memory is easily manipulated and can be impacted by numerous factors, which may cause the human mind to be susceptible to error (The Innocence Project, 2015). Even the most honest and well-intentioned witnesses have identified the wrong perpetrator; the question is what causes these false identifications.

While many factors can explain why eyewitness misidentification occurs, for the purpose of this research the focus will be on how police practices can contribute to mistakes made by witnesses.

Regardless of the fact that the majority of police officers are truly concerned with ensuring that eyewitnesses make accurate and honest identifications, these mistakes are still made often being attributed to improper procedures at the hands of the police (Schuster, 2007). For decades' psychologists have been questioning the reliability of eyewitness testimony and the phenomenon of eyewitness error, concluding that these mistakes result from the combination of errors in memory as well as social influences (Wells et al, 2006). What this research has concluded is that eyewitness errors can be avoided by making changes to the ways in which evidence is collected and handled (Wells et al, 2009). Police procedures that have been associated with eyewitness misidentification including; eyewitness interviews, lineup procedures, and show ups.

### ***Show-Up Identifications***

After a crime has been committed investigating officers generally seek out any witnesses asking them to help identify the perpetrator generally through a photo array, line up or show up. A show-up is an identification tactic used by police either immediately or shortly after a crime. If officers come into contact with an individual, they feel could be the possible perpetrator they may detain this individual either bringing them back to the scene of the crime or to the police station for the witness to view (Cicchini & Easton, 2010). Show-ups are considered a standard police practice, regardless of the fact that research has estimated the error rate at 50%, due to the fact that show-ups are one on

one, giving witnesses the limited option of only being able to respond yes or no (Huff, Rattner & Sagarin, 1996).

Similar to other identification procedures witnesses often experience pressure to identify a suspect in order to satisfy the police (Huff, Rattner & Sagarin, 1996). Additionally, when a suspect is presented to a witness during a show-up they may be presented to the witness handcuffed either in the back of a police cruiser, or in custody at the police station, further indicating their guilt. Witnesses may also identify a suspect based upon the presumption that the individual would not have been brought in if investigators did not consider the individual to be a potential suspect. Regardless of the potential errors that can be caused through the use of show-up procedures it is considered to be a legitimate identification method, beneficial for police as it saves time in comparison to other identification procedures such as arranging a photo array or lineup.

***Unreliable or Circumstantial Evidence:***

A common theme emerges within many of the wrongful conviction cases that have been brought to light. Many cases include the presence of the following, clouded judgment of law enforcement officials due to pressure from the public to secure a conviction, a marginalized accused often seen as an outsider, as well as the reliance and admission of unreliable evidence. The inclusion of evidence that is considered to be unreliable or susceptible to police error can significantly increase the likelihood of a wrongful conviction (Martin, 2005). Circumstantial or unreliable evidence generally relies on the presence of a specific situation or inference to reach the conclusion, for instance the presence of a hair or fiber at the crime scene may suggest an individual's guilt but does not guarantee it. Unreliable evidence requires some reasoning or force in



order to support the conclusion; this is where police and or prosecutors can play a vital role (Martin, 2005).

It is often felt that a case dependent upon circumstantial evidence is weak; the reality is that this evidence has the potential to wrongfully convict the innocent. Unreliable evidence may include testimonies from eyewitnesses or jailhouse informants, interrogation room confessions, as well as unfounded forensic science (Martin, 2005). Regardless of its reliability circumstantial evidence continues to make its way into courtrooms all over the world often leading juries to convict individuals who are factually innocent. Quite often unreliable evidence is manipulated and backed by two forces, the convict at all costs mentality that exists within the police force, in addition to the widely held belief that police and prosecutors only bring the guilty to trial (Martin, 2005).

***Why Study Police Misconduct:***

One of the reasons why police misconduct plays such an important role within wrongful convictions is not only because police officers are the starting point within investigations, but also due to the fact that the role police assume within the investigation has the potential to contribute to other errors that are known to cause wrongful convictions. These errors include, eyewitness misidentification, informants, false confessions, all of which have the potential to be influenced by police error.

In general police officers are held to a higher standard when compared to the general public, thus when errors or misconduct occur during police duties the best practice has been to hide these errors from the public, however identifying these mistakes are important in order to prevent future indiscretions (Champion, 2001). In addition, the public's confidence in the police department depends on honest police practices,

therefore it is necessary to recognize and learn from bad police practices to prevent future errors and restore the public's faith. Lastly, police misconduct tends to occur when certain conditions are present therefore determining and recognizing these factors can be helpful to minimize these errors especially those that may contribute to wrongful convictions (Champion, 2001).

***Human or Systemic Error:***

The question is whether or not the errors that cause wrongful convictions stem from the incompetency of humans or whether these issues represent a larger systemic problem within the criminal justice system. Although it would be devastating to find out that wrongful convictions were the result of intentional errors made by a few individuals within the criminal justice system, it would also be a relief as if this was the reality as it would be much simpler to address errors made by a few bad apples, in comparison to a systemic problem that is much more challenging to address (Garrett, 2011). It has been concluded that the majority of individuals working within the criminal justice system are well intentioned, follow the rules and guidelines and generally act in good faith. However, if an error exists within the system itself even the most honest investigators and or prosecutors can find themselves committing mistakes that may ultimately contribute to a wrongful conviction. It is difficult to imagine an error greater within our criminal justice system than a wrongful conviction; nonetheless, the typical response to this issue has been action (Garrett, 2011). This lack of attention can be attributed to both the lack of accountability and divide that is apparent within the criminal justice system (Garrett, 2011). There is a clear divide between members of the criminal justice system, for

instance in most cases the police officers and prosecutors work separately leading to a lack of cooperation.

***Research Focus:***

This research intends to move away from the normative framework that exists within wrongful conviction research, as the focus will not be directed towards the frequency of wrongful convictions, but rather the causal factors and primarily the role of police and prosecutors in Canadian wrongful convictions. Aside from researching the frequency of wrongful convictions, the factors that cause these injustices also appear frequently within wrongful conviction research. Although studying and understanding the causal factors is more beneficial than trying to calculate the error rate, as it is easier to develop and understanding on the primary causes (Furman, 2003). Based upon current research the number of wrongful convictions continues to remain unknown and it is likely that this number is unknowable (Gould & Leo, 2010). Therefore, it is important to move the focus of wrongful conviction research away from the frequency of these errors, as it might never be determined and instead focus on trying to understand why these injustices take place.

## **CHAPTER THREE: Methodology**

In this chapter I will outline the methodology chosen to guide this research study. This section will first begin with the proposed research questions, which guided this analysis. Next I will discuss both the process utilized for data collection, as well as the chosen sample. Lastly, I will provide a brief overview of the cases discussed within the six public inquiries included within the sample. An overview of these cases will provide context that will assist in understanding the findings.

### ***Research Questions:***

Prior to conducting the analysis four research questions were formulated which assisted in answering the overarching question of, what role do police and or prosecutors play in the manufacturing of a wrongful conviction? During the coding process it was discovered that the police along with prosecutors do in fact play a significant role in the establishment of wrongful convictions. Additionally, it was discovered that the police continue to have a substantial role throughout the entire process including, arrest, conviction, as well as exoneration. In some cases, investigators continue to be involved long after the individual has been released, and in some cases they continue to maintain their belief about the exonerees guilt. Moreover, this research also sought out to examine the following questions:

1. To what degree have poor or inadequate policing practices contributed to wrongful convictions, or potential wrongful convictions? What can we learn from these injustices?
2. How does police misconduct construct itself within wrongful convictions? For instance, does this misconduct appear to be the result of intentional and blatant

- police corruption, or rather the result of inadequate and irresponsible investigative practices?
3. Which police investigative procedure or tactic appears to plague the investigative process more frequently, and ultimately are more likely to contribute to wrongful convictions
  4. What are the current safeguards used within police investigative procedures designed to prevent wrongful convictions? And have these safeguards been utilized efficiently in order to prevent these injustices?

***Socio-Legal Analysis:***

This research will focus on examining the phenomenon of wrongful convictions within Canada from a socio-legal perspective. A socio-legal analysis is an interdisciplinary approach, which allows the researcher to explore various relationships that may exist between society, legal methodology, legal studies as well as the law itself (Banakar & Travers, 2005). This approach is often used as a way for academics to utilize various methods when conducting research on law and legal ideologies, this framework also acts as a tool for examining theoretical issues and debates present within the study of sociology and how these issues related to the study of law (Banakar & Travers, 2005). Within this study a socio-legal approach will be used as a method for data collection in order to gather information from legal documentation, in this case public inquiries relate this information back to the broader and systemic issue of wrongful convictions.

***Sample***

This examination will consist of a comprehensive review of six Canadian public inquiries involving wrongful convictions. In the most basic sense a public inquiry is an

official review at the request of the government for the purpose of analyzing important public events and or issues. Public inquiries only occur at the request of the provincial government. The information and recommendations that have been resulted from these commissions of inquiry are very useful in understanding wrongful convictions from a Canadian context (Roach, 2012). However, despite the growing number of wrongful convictions within Canada public inquiries on these cases have been limited, as only a handful of all wrongful convictions that have taken place resulted in an inquiry (Roach, 2012).

To date there has been six public inquiries and one royal commission involving Canada's most notorious miscarriages of justice. These inquiries are referred to as the following, The Kaufman Commission on proceedings involving Guy Paul Morin, The Inquiry into Pediatric Forensic Pathology, The Lamer Commission pertaining to the cases of Ronald Dalton, Gregory Parsons and Randy Druken, The James Driskell inquiry, The Commission of Inquiry into the Wrongful Conviction of David Milgaard, The Thomas Sophonow Inquiry Report and The Royal Commission on the Donald Marshall Jr. Prosecution (AIDWYC, 2015). What is apparent from these inquiries is that these hearings only occur when the wrongful conviction has garnered a considerable amount of attention from both the public as well as the media, ultimately putting pressure on the government to implement a formal inquiry (Roach, 2012).

This research will focus primarily on cases of wrongful conviction that have been addressed within these public inquiries, as these examinations act as a both a unique and valuable tool to gain insight into cases of wrongful convictions (Grounds, 2005). Public inquiries can be useful in cases of wrongful conviction, as they act as both a device for

addressing potential government and police misconduct, as well as making recommendations to prevent future injustices. The use of public inquiries as a tool for addressing the issue of wrongful convictions is a notable feature of the Canadian criminal justice system, which has not been utilized by other countries (Grounds, 2005). Although, public inquiries occur infrequently they still prove to be a valuable source of information helpful in understanding Canadian wrongful convictions.

In order to answer the research questions previously mentioned, I coded and analyzed six of the public inquiries in their entirety. These inquiries include; The Kaufman Commission on proceedings involving Guy Paul Morin, The Lamer Commission pertaining to the cases of Ronald Dalton, Gregory Parsons and Randy Druken, The James Driskell inquiry, The Commission of Inquiry into the Wrongful Conviction of David Milgaard, The Thomas Sophonow Inquiry Report and The Royal Commission on the Donald Marshall Jr. Prosecution. The Inquiry into Pediatric Forensic Pathology was excluded from this research, after careful review and consideration. Although this public inquiry is significant to the field of wrongful convictions, it was found that it was more focused on forensic misconduct and in particular the infamous work of Dr. Charles Smith. Seemingly as this research was focused on police misconduct this inquiry appeared to be irrelevant to the purpose of this research.

### ***Data Collection and Analysis***

For the purpose of analyzing the selected data, I choose to adopt a constructivist grounded theory approach (Charmaz, 2014). The constructivist approach to grounded theory diverges itself from other grounded theory based upon the assumption that the theory emerges by analyzing the data collected, which differs from other approaches in

which data is constructed through predetermined theories (Charmaz, 2006). Nonetheless all approaches used within grounded theory are useful when it comes to collecting, analyzing and managing data within qualitative research. As outlined by (Charmaz, 2014) grounded theory provides a method for researchers to learn about the worlds in which they study, in addition to acting as a method used for developing theories to understand these worlds (Charmaz, 2014:17). The use of grounded theory within this research project allowed me to use new ideas and discoveries to continually enhance and change the research design. The following sections will highlight the ways in which the constructivist approach was applied within this research project.

### ***Initial Coding***

As Charmaz (2014), suggests researchers who employ the grounded theory approach, begin to study their data early on within the research process, sorting and separating this data through a process of qualitative coding. Essentially coding is the process through which labels are created and attached to different segments of data. Ultimately these labels are used to describe various segments of the data (Charmaz, 2014: 4). During the primary coding stage, I started out by first examining one of the public inquiries in order to get a better understanding of the layout as well as the content. I decided at random to read through two of the six chosen inquiries. While reading these inquiries I began to sort out reoccurring themes and ideas that appeared within these documents in relation to the overarching topic of police misconduct. Reviewing these inquiries formed the basis of my analysis as I began to create an initial code sheet to assist with the coding process. The initial codes created were simple, and were based



upon my initial reaction to the content. The original codes used were loosely defined as I continued to remain open to potential changes.

### ***Incident-by-Incident Coding***

Similar to line-by-line coding, researchers often utilize the method of incident-by-incident coding essentially conducting a comparison of incidents or events. As outlined within the practice of coding incident-by-incident allows you to compare events or occurrences with other incidents, and then as your ideas take hold it allows the researcher to compare these occurrences to their conceptualization of the incidents previously coded (Charmaz, 2014:128). This process allows researchers to conduct a comparison of the themes that emerged within their research. Given the fact that my intended research project aimed to explore the roles police and prosecutors played within the construction of a wrongful conviction, through the examination of the various cases outline within Canadian public inquiries this method was the most suitable. The use of incident-by-incident coding allowed for a thorough comparison of the cases included within the sample.

### ***Focused Coding***

After the completion of the initial coding stage the next step was to engage in a narrower coding process. Focused coding allows researchers to identify and concentrate on the most significant or reoccurring codes discovered within the initial stage of coding. In the process of focused coding, these codes are used to sort through large amounts of data, researchers are required to make decisions regarding which codes provide the best representation of the overall data (Charmaz, 2014:138). The further along I became in the

research process the easier it became to decipher between the codes beneficial to the study and those that were redundant or less helpful in explaining the data.

After thoroughly coding the material included within my sample, I was left with a code sheet that included 119 codes, which included a brief description as well as the page number that coordinated with the inquiry. Of the 119 codes identified not all appeared within each of the cases examined, which made the practice of coding ongoing as new codes emerged and were updated throughout this entire process.

### ***Memo-Writing:***

Memo writing was a practice that was engaged in throughout this entire research process, from the initial review of the material included within the data set, to the creation of memos following the coding process. Although informal, memo writing is considered to be an important part of the research process. Charmaz (2014) argues “memo-writing creates an interactive space for conversing with yourself about your data, codes, ideas, and hunches” (Charmaz, 2014:162). I encountered new ideas, questions and discoveries through the memo writing process, which allowed me to go back and reassess my initial findings. Additionally, I was able to identify and establish connections between the cases examined.

I began recording brief memos early on in the research process, which highlighted the connections I found within the data, as well as the codes that appeared to have the most relevance. Although the memo-writing process was continual throughout the entire research process, the memos created after the completion of the coding process were the most important. Based upon the fact that the main research question was to identify the role the police and prosecutors played within the construction of wrongful convictions it

was important to examine several instances of wrongful conviction in order to identify reoccurring and overarching themes. Following the coding, further memo writing was conducted, it was at this stage where the final codes to be discussed within the analysis section were identified, after reviewing previous memos and reviewing code sheets.

### ***A Brief Overview of the Public Inquiries Examined***

A brief overview of the cases discussed within the public inquiries is necessary in order to fully understand the discussions included within the findings and analysis sections. This section is intended to provide insight into the cases reviewed within the public inquiries. However, it should be noted that these overviews provided are exceedingly brief in comparison to the overall length of the documents examined. These outlines can only begin to provide insight into the complex issue of police and prosecutor misconduct and its relation to wrongful convictions. The brief summaries provided only begin to explain the wrong faced by these individuals and simply do not do them justice. The information provided within these descriptions was collected either directly from within the public inquiries or through various academic publications.

### ***The Royal Commission on the Donald Marshall Jr. Prosecution, (1989).***

On May 28<sup>th</sup>, 1971 Donald Marshall, Jr. who was 17 years old at the time, met 17-year-old Sandy Seale by chance. The pair met two other men, Roy Ebsary, 59 and James Macneil, 25 while walking through Wentworth Park. Following a brief conversation where either Marshall or Seale attempted to panhandle from the two men, Ebsary stabbed Seale in the stomach yelling “this is for you Black man” (Marshall Inquiry, p 2). Ebsary then proceeded to stab Marshall, but only caused minor injuries; Seale unfortunately died

less than a day later from his injuries. Police almost immediately became suspicious of Marshall claiming that he likely stabbed Seale during an argument, despite the lack of evidence to support this theory. It has been suggested that the police failed to accept Marshall's version of the attack partly because they believed he was a troublemaker and also because he was native.

The strongest piece of evidence against Marshall came from two youths who provided statements to investigators after Seale died. During the initial interview neither boy implicated Marshall in the attack, however after subsequent interviewing both provided statements which supported the investigators theory. Marshall was subsequently charged with the murder of Sandy Seale on June 4, 1971 largely due to the statements provided by witnesses with questionable reliability. In 1981 Marshall learned that Esbary had admitted to killing Seale, and in 1982 his new lawyer asked investigators to reopen the case based upon this information. After 11 years in prison Donald Marshall, Jr. was released on parole in 1982. Esbary was eventually charged with manslaughter for the death of Sandy Seale, however only serving one year of his sentence.

The causes of this miscarriage of justice include, the use of unsavory witnesses, police misconduct, police failure to disclose, crime scene & evidence contamination, tunnel vision including the failure to consider other suspects as well as prematurely focusing on a suspect, racial bias, as well as ineffective assistance of counsel.

***The Kaufman Commission on the proceedings involving Guy Paul Morin, (1998).***

On October 3, 1984, nine-year-old Christine Jessop disappeared from her home in Queensville, Ontario. Christine's body was not found until December 31, 1984 located in a field approximately 50 km away from where she went missing. Following this

discovery, the police almost immediately began to focus their attention on Christine's 25-year-old neighbour Guy Paul Morin. This interest resulted from several statements made by Christine's mother referring to Morin as a "weird-type guy", who plays the clarinet. Despite a lack of evidence including a timeline that failed to add up, Guy Paul Morin was arrested on April 22, 1985.

After his first trial Morin was found not guilty on February 7, 1986. However, the first trial was appealed on the basis of the judge failing to properly instruct the jury regarding reasonable doubt. The second trial was much longer and resulted in Guy Paul Morin being charged with first-degree murder on July 30, 1992. Morin spent 10 years of his life, including 18 months in prison before DNA evidence concluded that the semen found on Christine Jessop's sweater could not have belonged to him. On January 23, 1995, the Ontario Court of Appeal finally entered an acquittal in the case against Guy Paul Morin. To date the real perpetrator of Christine Jessop's murder has not been found.

The public inquiry into Morin's wrongful conviction focuses on the many factors that contributed to his wrongful conviction including; unreliable witness testimony, the use of junk or unfounded science as well as tunnel vision.

***The Inquiry Regarding Thomas Sophonow, (2001).***

On December 23<sup>rd</sup>, 1981 16-year old Barbara Stoppel was working at the Ideal Donut Shop when sometime between 8:30 that evening someone entered the restaurant and strangled her using twine, she died a few days later from her injuries. The police became preoccupied with Sophonow after learning that the twine used to kill Barbara Stoppel came from British Columbia, as they were seeking a suspect who had a connection to that province. The fact that Thomas Sophonow arrived from Vancouver to

visit his daughter on the same day was reason enough to make him a suspect. A number of eyewitnesses also claimed to have seen a man who looked like Sophonow inside the donut shop at that time. On March 12<sup>th</sup>, 1982, Thomas Sophonow was arrested in Vancouver and charged with Barbara's murder.

Sophonow's first trial began on October 18<sup>th</sup>, 1982, which resulted in a mistrial when the jury was unable to reach a verdict. Sophonow was convicted after his second trial, however he appealed his conviction on the grounds that the trial judge had not adequately put forward his defence to the jury, the court of Appeal for Manitoba agreed and a third trial was held, but ended with the same results. The Manitoba Court of appeal found that Sophonow's third trial was also unfair and concluded that since he had already gone through three trials and 45 months in prison that he should be acquitted rather than subjected to another trial. As a result of this decision Sophonow was ultimately acquitted on December 12, 1985.

The causes of Thomas Sophonow's wrongful conviction include: tunnel vision, unreliable eyewitness evidence, unreliable testimonies provided by jailhouse informants, lack of disclosure as well as inadequate interview practices. To this day the real perpetrator remains unknown.

***The Lamer Commission of Inquiry Pertaining to the Cases of: Ronald Dalton, Gregory Parsons and Randy Druken (2006)***

***Ronald Dalton:***

On August 15<sup>th</sup>, 1988 shortly before midnight, Brenda Dalton began to cough uncontrollably and her husband Ronald made several attempts to keep her from choking before calling an ambulance. Brenda was pronounced dead shortly after arriving at the

hospital. Investigators immediately became suspicious of Ronald Dalton, and ultimately he was charged with murder less than 24 hours after the death of his wife. On December 15<sup>th</sup>, 1989 Dalton was found guilty of second-degree murder and sentenced to a minimum of ten years in prison. The pathologist's initial theory concluded that Ronald had strangled his wife, however after further testing it was found that she had choked to death on cereal (Katz, 2011). In December 1999, Ronald underwent a third trial, lasting a total of five months after the second resulted in a mistrial. Finally, on June 21, 2000, Dalton was found not guilty of murdering his wife (Katz, 2011).

While numerous errors contributed to the wrongful conviction of Ronald Dalton, including misconduct from all levels within the criminal justice system. The public inquiry focused primarily on the difficulties that Dalton experienced in regards to obtaining an adequate defence, as well as the difficulties he experienced with legal aid throughout his incarceration. Ultimately bad lawyering was responsible for the extensive delay in the filing of Dalton's appeal, which was not issued until 8 years after his incarceration (Katz, 2011). Dalton switches lawyers several times causing him to endure periods of time in which he was unrepresented.

### ***Gregory Parsons***

On January 2<sup>nd</sup>, 1991 after being unable to reach his mother Catherine Carroll for several days, Gregory Parsons discovered she had been murdered. Investigators began to focus their attention on Parsons shortly after the body was found. Their suspicion was based primarily upon testimonies given by several witnesses claiming that Carroll had repeatedly expressed fear towards her son and felt threatened by him. However, Catherine Carroll's unreliability was not properly taken into consideration as she had a

history of alcoholism, depression, anxiety, obsessive compulsive disorder, she also had a tendency to hoard in addition she had demonstrated a tendency to exaggerate and tell lies.

A basement window was found broken in Carroll's home, but was quickly dismissed as the entry point. Police instead theorized that Parson's had staged a break in as an attempt to cover up. On January 10<sup>th</sup>, 1991 Gregory Parsons was arrested for the murder of his mother and was convicted of second-degree murder on February 15<sup>th</sup>, 1994. Due to advances in DNA technology evidence at the crime scene proved Parsons innocence. After living with the stigma of being wrongfully convicted for his mothers murder for ten years Gregory Parsons was finally acquitted on November 5<sup>th</sup>, 1998.

Unlike most wrongful convictions the key to Parsons acquittal was the discovery of the real perpetrator, Brian Doyle a childhood friend of Parsons admitted to breaking in through the basement window and murdering Catherine Carroll. The wrongful conviction of Gregory Parsons can be attributed to a number of factors including: tunnel vision, the use of unreliable witnesses testimony, failure to conduct a thorough investigation, as well as lack of resources and technical advances.

### ***Randy Druken***

Randy Druken was convicted of second-degree murder after the body of his girlfriend Brenda Young was found on June 12<sup>th</sup>, 1993. Randy was the most obvious suspect in this case based upon his extensive criminal record, as well as his relationship with the victim, which was described as violent at times, he had previously been convicted of assaulting her. Druken's conviction was primarily due to inconsistent and contradictory statements being treated as reliable. Despite Druken's seemingly airtight



alibi, which included being dropped off by the victim at 10:30pm several hours before the murder, Druken was convicted of second-degree murder on March 18<sup>th</sup>, 1995.

Druken spent a total of six years in prison for the murder of Brenda Young, his innocence was not acknowledged until after a third police investigation was conducted. Brenda Young's true killer continues to remain unknown however; a great deal of suspicion has been placed on Randy's brother Paul who is now deceased. The causes of Randy Druken's wrongful conviction include: tunnel vision, the use of informants and unreliable witnesses, unethical interview practices, as well as making suggestions and instructing witnesses.

***The Royal Commission of Inquiry into Certain Aspects of the Trial and Conviction of James Driskell, (2007).***

On October 22, 1990 James Driskell was charged with first-degree murder in the death of Perry Harder. He was officially convicted on June 14, 1991 and was given a mandatory life sentence with no parole eligibility for 25 years. James Driskell had a connection to the victim based upon the fact that the two had operated a chop shop together until November 1989, when both men were arrested. The police theorized that Driskell has shot Harder to keep him from testifying against him in court with respect to the chop-shop charges.

The cases against Driskell focused on two main points the first being the testimonies of two unreliable witnesses Reath Zanidean and John Guminey as both gave evidence that supported the investigators theory. Additionally, evidence was presented that suggested that three hairs found in Driskell's van matched Harder. James spent a

total of 13 years in prison before more advanced DNA technology proved that the hair presented at his trial did not belong to Harder.

The causes of James Driskell's wrongful conviction include: tunnel vision, the use of testimony from unreliable witnesses and informants, lack of disclosure as well as the use of junk or unfounded science. The real perpetrator in this case continues to remain unknown.

***The Commission of Inquiry into the Wrongful Conviction of David Milgaard, (2008).***

On January 31, 1969, the body of Gail Miller was found in an alleyway just a few blocks away from her apartment. At that same time sixteen-year old David Milgaard along with his friends Ron Wilson and Nichol John had just arrived in Saskatoon picking up another friend Albert Cadrain, the group was travelling to Alberta. After returning back to Saskatoon Cadrain contacted police and implicated Milgaard in the murder of Gail Miller, claiming that Milgaard behaved suspiciously on the morning the body was discovered and had blood-stains on his clothes. Later it was found that Cadrain was a police informant and benefitted from his "evidence" collecting a \$2,000 reward. The police questioned the other friends on the trip and both Nichol John and Ron Wilson began to change their stories to match the police theory after undergoing lengthy interrogations. On May 30<sup>th</sup> 1969, David Milgaard was arrested and charged with the rape and murder of Gail Miller, ultimately he was found guilty a year after the murder on January 31, 1970.

David spent a total of 23 years in prison, while the true perpetrator Larry Fisher remained free going on to commit more crimes. Due to advances in forensic testing the

semen found on Gail Millers clothes confirmed Milgaard's innocence and Larry Fisher's guilt on July 18<sup>th</sup>, 1997. The causes of David's wrongful conviction include: improper questioning of witnesses, failure to investigate, lack of resources and technology, jailhouse informants as well as tunnel vision.

***Conclusion:***

After thoroughly outlining the chosen methodology, I will now go on to discuss the findings that emerged as a result of this approach. The overviews provided of the cases discussed within the public inquiries provide context helpful in understanding the themes that emerged within the coding process. The following chapters will include both a discussion as well as an analysis of the major findings that appeared through this process. The findings and analysis will be broken down into two sections investigation inadequacies and investigation corruption.

## **CHAPTER Four- Results –Investigation Inadequacies**

As discussed within the methodology section the subsequent chapters will include an outline of the key themes that have emerged throughout this research. The findings have been categorized to reflect the varying levels of consideration and acknowledgment likely involved when these instances of police misconduct transpired. The findings revealed that not all misconduct committed by police officers occurs with the same degree of culpability, but rather police misconduct appears to fall within a spectrum, which varies depending on the officer's level of awareness and involvement.

The factors associated with investigation inadequacies refers to mistakes that have been made throughout the course of the investigation, while officers were performing activities consistent with every day police work. Misconduct included within this category more than likely resulted from a failure to follow practices consistent with policing standards, rather than intentional or premeditated corruption.

### ***Inadequate Documentation***

After a thorough review of the public inquiries into the wrongful convictions of eight Canadian men, it became evident that the failure to ensure adequate note taking and documentation was a reoccurring investigative problem. Regardless of the fact that the majority of police departments have policies and procedures in place that stress the importance of proper documentation, many of the cases contained within this study revealed inadequacies with note taking. Although there have been many advancements with respect to policing practices since many of these wrongful convictions have occurred, ensuring proper note taking is in no way a new advancement within the field of

policing. It is imperative that all members of the police force exercise good note taking skills throughout the entire investigation, and ensure that these skills are continuously being stressed to new recruits throughout the training process (Bajer & Trepanier, 2003).

Ensuring proper note taking and keeping well organized paperwork is especially critical in homicide cases. This notion is especially true given the fact that the majority of identified wrongful convictions have involved the most heinous crimes, primarily murder and or sexual assault. This further suggests the importance of ensuring adequate documentation to prevent future errors. Police officers are required to maintain notebooks while working in the field. These notebooks essentially act as a daily journal (Bajer & Trepanier, 2003). Officers are instructed to make notations within their notebooks of any and all details or occurrences they encounter that may prove to be useful later on within the investigation.

As outlined within the commission of inquiry regarding the proceedings of Guy Paul Morin, notes act as an *aide-memoire* for investigators especially if they are asked to testify in the future (1996). Notes are the most valuable to the investigation when they are recorded immediately following the encounter. This is based upon the presumption that notations made after the fact are subjected to the possibility of memory loss or recall error.

After examining the cases discussed within the public inquiries, failure to maintain adequate notes was a reoccurring element of police misconduct appearing repeatedly within these cases. Although at the outset ensuring adequate documentation and note taking appears to be quite simple in comparison to many of the other duties

performed by police officers. It was quite alarming that this duty was being overlooked and undermined within these cases.

After the completion of this research, it remains unclear the extent to which, inadequate note taking contributed to these individual's wrongful conviction. However, it can be argued that when inadequate note taking practices are combined with other oversights within the investigation the outcome is likely damaging for the accused. Improper note taking not only hinders the investigation, but also prevents the accused from raising a solid defense. Police officers are encouraged to take notes not only for their own benefit, but rather the information they are recording is useful to the Crown as well as the accused.

The possibility of officers intentionally manipulating, destroying, failing to take notes or hiding information in separate notebooks is always a possibility. However, the cases examined within this research reflected that the inadequacies with note taking appeared to be more of a failure within the investigation rather than intentional or premeditated misconduct on behalf of those involved. These inadequacies can range from failing to ensure witnesses sign their statements, taking statements out of context, to failing to record statements at all. Although likely unintentional, failing to take notes can result in terrible consequences for the wrongly accused.

Inadequate documentation was apparent in the wrongful conviction of Guy Paul Morin; as numerous examples demonstrate the fact that investigators came up short in ensuring adequate documentation within this case. Improper note taking was demonstrated within the inquiry, when despite efforts to tape record the first interview with Guy Paul Morin, Detectives Fitzpatrick and Inspector Shephard failed to take any

hand written notes of this conversation. As discussed within the inquiry the officers first encounter with Morin resulted in an interview that lasted between 90 minutes and two hours (The Commission on Proceedings Involving Guy Paul Morin, p. 65).

Approximately 45 minutes into the interview the tape recording the interview needed to be turned over in order to make use of the entire 90-minute tape. Neither investigators realized or turned the tape over, only the first 45 minutes of the interview was recorded.

Due to the officers' belief that the conversation was being fully taped, neither officer kept an accurate record of the interview in their notes. It was later disclosed that Detective Fitzpatrick had made no notes at all during the interview. Shepard proceeded to take rough notes during the interview, later stopping to write a history of events on a separate document. Inspector Shepard claimed that both sets of notes were written throughout the course of the interview; the rough notes were in point-form and in the third person, and the history was formatted similar to a "witness statement" (Morin Inquiry, p. 787). Additionally, Guy Paul Morin was not asked to sign or comment on either set of notes made during this interview.

This example demonstrates several inadequacies with respect to ensuring proper note taking. Firstly, all point form notes should be seen as incomplete, as they are unable to provide proper insight into the interview, including the order and context in which the recorded statements were given. Additionally, point form notes do not accurately reflect what was discussed during the interview, but rather what the interviewer considered important. The fact that the accused was not asked to review or sign these notes is another troubling aspect, as it prevents the witness from protesting the information that appears within these statements.

A second example of inadequate documentation and note taking appears within the Commission of Inquiry into the Wrongful Conviction of David Milgaard. In 1969, Art Roberts an inspector with the Calgary police service also trained in polygraph interrogations was enlisted by the Saskatoon police to conduct a polygraph examination of two witnesses in the Milgaard case Ron Wilson and Nichol John. He conducted interviews of both witnesses, however only Ron Wilson was interviewed through polygraph examination. There were no notes or recordings of these interviews left behind when Roberts died on July 6, 1997. Roberts' role in the investigation was considered pivotal. Although Wilson had begun to incriminate Milgaard prior to being interviewed by Roberts, the polygraph examination and interview had produced even more evidence against Milgaard. Additionally, prior to meeting with Roberts, Nichol John had not yet provided a statement to police in which she implicated Milgaard in the death of Gail Miller. However, following the interview with Roberts, she changed her story claiming to have seen Milgaard stab a girl (Commission of Inquiry into the Wrongful Conviction of David Milgaard, p. 461).

As seen from this example proper documentation and note taking practices are imperative within police investigations. Recording interviews either through video or audio recording devices is considered best practice to avoid recall error. Proper documentation allows investigators, prosecutors as well as the defense to review what transpired during the interview, as it can be recalled verbatim (Grounds, 2005). Accurate accounts of interviews and examinations such as a polygraph tests are important as they allow us to understand the context in which the witness provided the statements given, in addition to the questions that were asked that ultimately lead to the statements provided.



### ***Inadequate Training and Experience***

Insufficient training and experience within the police force appeared to be a reoccurring theme evident within the public inquiries. In many of the cases examined the investigation was tainted by the lack of training and experience exhibited by investigators, particularly in regards to conducting homicide investigations. Although new recruits must undergo training in preparation for their duties as police officers, it has been argued that this training has been inadequate. In most cases officers enter the field unprepared for many of the situations they encounter. Investigative training is something that is learned in practice as well as through teaching. However, given what we know investigative training is inadequate, especially given the level of responsibility placed upon these individuals.

It was evident within this examination that many of the police departments responsible for conducting the initial investigation were ill equipped to do so. As many of the police departments discussed within the public inquiries demonstrated both a lack of experience as well as training. Examples include officers being unfamiliar with homicide investigations, examining evidence without proper training, as well as inexperienced officers taking a supervisory role. An officer's inexperience is not always attributed to their years of service, although this is also a possibility. In some cases, officers have a lack of experience because they have had a lack of exposure to criminal events; this is especially true in homicide cases. Generally speaking, some police officers may have either an absence of training, lack of training and/or outdated training.

The wrongful conviction of Gregory Parsons demonstrates the importance of adequate training and experience. The Royal Newfoundland and Constabulary (RNC)

was responsible for investigating the murder of Catherine Carroll. It should be noted that very few homicide cases occur within Newfoundland and Labrador (The Lamer Commission of Inquiry Pertaining to the Cases of Ronald Dalton, Gregory Parsons, Randy Druken, p.105). During this time the police department was inexperienced, especially in regards to homicide cases this being the first for many investigators. Constable Piercey was assigned to handle the exhibits, despite the fact that he was the most junior person within the identification unit and had neither training nor experience in identification or forensics during his time on the force. He acknowledged within the inquiry the shortcomings of his investigation and claims he would proceed much differently now after receiving proper training (Lamer Inquiry, p. 106).

This example provides insight into the ways in which a lack of training and experience within the police department can hinder the criminal investigation. It is evident that the RNC was well aware of their shortcomings prior to the investigation, acknowledging the fact that most of the officers involved were inexperienced when it came to homicide cases. However, they proceeded to conduct the investigation regardless of this fact, also failing to seek assistance from more advanced police agencies. Furthermore, in a case of this magnitude it is unclear why the most junior officer Constable Piercey would have been given the important task of handling exhibits, despite his lack of training in this regard. The fact that Constable Piercey claims he would have conducted the investigation in a very different manner after receiving proper training further emphasizes his lack of knowledge of handling exhibits as well as his inexperience at the time of this investigation.

Inadequate training and experience was also evident within the wrongful

conviction of Randy Druken, also conducted by the RNC. The key witness in this case was the victim's daughter Cindy Young who was in the apartment at the time of the murder, and had discovered the body. Constable Baggs was assigned the responsibility of interviewing Cindy from the beginning of the investigation. Evidence of Constable Baggs inexperience was discussed within the inquiry, as during the time of the investigation she was a new member of the Child abuse unit and had not yet been trained in interviewing children (Lamer Inquiry, p. 222). However, Constable Baggs obtained assistance from Constable Hogan who had many years of experience interviewing children, conducting hundreds of interviews over the years (Lamer Inquiry, p. 222).

Constable Hogan conducted his own interview of Cindy Young, in which she did not incriminate Randy Druken. It is uncertain as to why, but after his initial interview with Cindy Young, Constable Hogan had no further contact with her and was instead assigned to canvass the neighbourhood. Alternatively, Constable Baggs was assigned the responsibility of conducting further interviews of Cindy Young regardless of her inexperience (Lamer Inquiry, p.224). It is unclear why Constable Baggs was chosen to be responsible for interviewing Cindy Young in the first place due to her lack of experience in interviewing children, especially as a more experienced officer was consulted and then reassigned.

As illustrated within these examples lack of training and experience within police agencies can result in harmful consequences, the most extreme example being wrongful convictions. As inadequacies in training and experience can be directly associated with other forms of police misconduct including, improper interview practices, inadequate note taking as well as evidence contamination. In some cases, errors stemmed from

investigators being unfamiliar or unaware of proper procedures. Whereas, in other cases investigating agencies failed to properly utilize the training and experience available from within the agency.

### ***Failure to Disclose***

Ensuring that information is disclosed to the accused is a vital part of the investigation process. After a review of the public inquiries it was apparent that inadequate disclosure was a significant contributor to these injustices. Police officers along with prosecutors are required to provide the defense with all information relevant to the case, as it is necessary for preparing an adequate defense. In cases of wrongful conviction, the police along with prosecutors have the upper hand in terms of accessing information about the case, heightening the importance of full disclosure (Garrett, 2011). In some instances, a failure to disclose can have little to no effect on the outcome of the case. However, when the failure to disclose includes exculpatory evidence individuals who are factually innocent tend to endure the most harm (Garrett, 2011).

Although this research is primarily focused on the actions of police officers involved in the conviction process, the cases examined revealed that in some instances prosecutors played a substantive role in the failure to disclose as well. The inquiry into the wrongful conviction of Thomas Sophonow concluded that an individual's chance of wrongful conviction significantly increases when there is a lack of disclosure by either the Crown or the police (Garrett, 2011). Failure to disclose may prevent defense council from calling witnesses, attacking a witness's credibility, pursuing certain questions as well as raising an alibi. The failure to disclose may present itself in various forms including, failure to notify the defense of evidence discovered within the investigation,

withholding notes and or documentations relevant to the case such as interviews, as well as failing to disclose deals made in regards to witnesses or informants providing testimony.

The inquiry into the wrongful conviction of Guy Paul Morin emphasizes the importance of providing disclosure immediately after the event, as often information is kept within the police department before being discovered by the defense. In the case of Guy Paul Morin, the defense was not made aware of the fact that during the search for Jessop, Constable Robertson conducted an unauthorized dog-scent examination. Shortly after the disappearance of Christine Jessop Constable Robertson took it upon himself to bring his dog Ryder along on the search, where according to Robertson, his dog had made a positive identification of the Morin's Honda after smelling a sweater belonging to Christine (Morin Inquiry, p. 887). Robertson claimed that he did not mention Ryder's reaction to the Morin's car until some five years after the event. The failure to disclose in this case may have been of benefit to the defense, as had this information been raised during trial it likely would have negatively impacted the defense's case. Although, this information was not presented as evidence during trial, it was still likely used as evidence of Morin's guilt. Nonetheless, this information should not have been kept within the police department for any amount of time.

Ensuring adequate disclosure is a continuing obligation, as all evidence both new and old should be provided to the defense as soon as possible. Maintaining adequate disclosure throughout the entire investigation is essential in ensuring the accused receives a fair and just trial. Therefore, the Crown must continue to maintain disclosure with the accused even after they have been convicted. As discussed within the Morin inquiry

(1996) the Crown has an obligation to disclose information to the defense, this should continue post-conviction as well, regardless of whether or not the accused has applied for an appeal.

The wrongful conviction of Thomas Sophonow emphasizes the importance of ensuring all information is accurately disclosed to the defense. A piece of twine used to strangle Barbara Stoppel was the most significant piece of evidence linking Sophonow to the murder. The Crown argued that since the twine was manufactured in Washington and sold to B.C hydro, with plenty being available at construction sites across the province that Sophonow was the likely perpetrator due to his residing in British Columbia. It was later revealed that the twine had in fact been manufactured in Manitoba by Berkley, who originally claimed through visual inspection that the twine was not theirs. However, the Winnipeg police department was advised that for a fee of \$100.00, the twine could be tested for a trace element in order to determine for certain whether or not it was manufactured by Berkley (The Inquiry Regarding Thomas Sophonow, p. 84). For reasons that remain unknown this testing was not completed, despite the Crown's emphasis on this piece of evidence during trial.

The inquiry revealed that the police failed to disclose information regarding the possible testing of the twine to the Crown as well as the defense (Sophonow Inquiry, p. 85). The fact that the police failed to disclose this information led the defense to accept the Crown's theory that the twine originated from British Columbia and exclude the possibility that it had been manufactured elsewhere. If the information regarding the possibility of testing the twine had been disclosed to the defense it would have resulted in the twine being tested and, ultimately eliminating this harmful piece of evidence linking

Sophonow to the crime. The investigators in this case failed on two counts firstly, they failed to thoroughly examine evidence, which could have eliminated Sophonow as a suspect. Secondly, investigators failed to inform the defense of the possibility that the twine could be tested.

### ***Failure to thoroughly Examine Evidence***

Police officers are tasked with the role of examining all of the evidence available within the case. This responsibility begins during the initial stages of the investigation, such as examining the crime scene, and continues throughout the remainder of the investigation. However, despite these responsibilities investigators often come up short when it comes to thoroughly examining the available evidence. After reviewing the public inquiries, it was clear that in most cases investigators failed to adequately review and examine all of the evidence present within the case.

The failure to thoroughly examine evidence presented itself in numerous forms within these inquiries. Examples include: the failure to identify the relevance of evidence, failing to investigate and review evidence provided by witnesses, failure to check alibi statements, refusing to consider alternative suspects or possibilities, delays in the collection of evidence, as well as failing to submit evidence for testing. All of which have the tendency to negatively affect the reliability of the investigation. Ultimately an inadequate examination of evidence within a criminal investigation may contribute to a wrongful arrest and conviction of an innocent individual.

In the case of David Milgaard the failure to adequately examine evidence is reflected in the dog urine theory. Although untrue, the dog urine theory was cause for overwhelming attention to the case within the media. As discussed within the inquiry,

several media reports claimed that Milgaard had been convicted on the basis of a yellowish substance found within the snow that was thought to have been dog urine, but presented as being semen during the trial (Milgaard Inquiry, p. 190). Although misunderstood, the reasoning behind these remarks was to emphasize the inadequacies within both the collection and analysis of this evidence. As the inquiry revealed one media outlet reported a statement made by Dr. Markesteyn who after reviewing the evidence from the Milgaard trial concluded that the semen samples used to connect Milgaard to the crime were not thoroughly examined, and could just as easily have been dog urine as they could have been semen (Milgaard Inquiry, p. 190).

While dog urine did not play a role in the conviction of David Milgaard, this statement speaks to the thoroughness of the investigation or lack thereof. The evaluation of the semen evidence was tainted by the fact that it had not been collected in a timely manner. As the semen found within the snow near the victim's body had remained at the scene for four days following the murder, which is the reasoning behind the dog urine theory that was discussed in detail in the public inquiry (Milgaard Inquiry, p. 191). Although, the dog urine theory was based primarily on media reports it certainly raised questions as to how this evidence was handled. As Dr. Markensteyn claimed that tests were available in 1969 to properly analyze this yellowish substance, however these tests were never performed. In this case it is hard to distinguish between the truth and media gossip, although the fact that evidence was collected days after the initial search raises concern to the adequacy of the investigation.

The failure to accurately examine evidence can also be attributed to the larger systemic issue of tunnel vision. In the case of evidence evaluation tunnel vision may



contribute to investigators ignoring or failing to accept the relevance of evidence or facts, due to a preoccupation with certain suspects or theories of the case. This is also consistent with confirmation bias, in which the investigator is more likely to find and search for evidence that supports their theory, while at the same time ignoring or failing to pick up on evidence that contradicts their theory (Stelfox & Pease, 2005). The presence of tunnel vision within any investigation can prevent officers from adequately reviewing all of the existing evidence.

Investigators within the wrongful conviction of Randy Druken also erred in regards to the collection and examination of evidence. One exhibit specifically suggests that an adequate review of all the available evidence did not occur within this case. The piece of evidence in question was a cigarette butt, which when tested years later revealed that this item contained DNA from Randy's brother Paul Druken (Lamer Inquiry, p. 215). It is clear that this piece of evidence had not been identified or recorded within the investigators notes, as the inquiry revealed that this item was first discovered at the trial, during questioning by the defense the head of the investigative team was asked to show a doily collected at the scene (Lamer Inquiry, p. 216). When the officer took the doily out of the evidence bag a cigarette butt fell out as well. The cigarette butt contained what appeared to be a red lipstick mark, it was theorized by investigators that this lipstick mark must have come from Brenda Young.

Although this was the most logical explanation, all other possibilities were abandoned including, the possibility of another woman being involved in the murder, likely because this did not support the investigators theory at the time. As the inquiry revealed once this cigarette butt had been further examined, the red mark originally felt to

be lipstick actually came from carpet melting after a table had been overturned (Lamer Inquiry, p. 216).

The fact that this cigarette butt was first discovered during the actual trial is particularly worrisome in regards to the reliability of the investigation in this case. Had the doily been thoroughly investigated prior to the initial trial, then the cigarette butt could have been sent away for DNA testing along with other exhibits found within Brenda Young's apartment. The failure to identify the cigarette butt within the doily speaks to the thoroughness of the entire investigation and raises concern regarding the other evidence presented at trial. Although mistakes are made on the basis that investigations are subjected to human error, the fact that this piece of evidence was in the possession of the police department and yet was not detected prior to the trial emphasizes the lack of integrity and thoroughness present within this investigation.

***Premature Focus on a Suspect:***

Through the study of wrongful convictions, we have become more aware of the frailties that exist within our criminal justice system and ultimately contribute to these injustices. More recently, researchers have become fixated on a factor apparent within almost every wrongful conviction case –tunnel vision (Findley, 2011). Tunnel vision does not cause wrongful convictions alone, but rather works in conjunction and can even fuel other forms of error within the investigation. At the heart of tunnel vision lies the issue of premature focus, in which members of the criminal justice system become fixated on a particular individual early on in the criminal investigation.

The hasty attention on a suspect can surface, despite a lack of evidence to support the individual's guilt. Often police, prosecutors, judges and lawyers alike begin to

support a specific conclusion, which determines the lens or focus used to conduct any further analysis of the case. Any evidence that fails to support the individual's involvement is readily dismissed and often considered to be unreliable. Whereas, evidence that supports the accused's guilt is treated with an elevated significance, and often given more credibility than it deserves. It should be understood that the presence of tunnel vision, including premature focus is the product of human error, as well as institutional and societal pressures (Findley, 2011). Similar to other examples of investigative inadequacies, these errors are for the most part unintentional and often unrecognized by those involved.

Premature focus, fueled by tunnel vision contributed to the wrongful arrest and conviction of Donald Marshall Jr. The inquiry found that the police investigation into the death of Sandy Seale was incompetent, inadequate and unprofessional, including the premature focus of Marshall (Marshall Inquiry, p. 3). Detective John MacIntyre was responsible for the investigation, where he quickly decided that Marshall was responsible for stabbing Sandy Seale. MacIntyre theorized very quickly within the investigation that Marshall had stabbed Seale during the course of an argument; this became the lens through which the remainder of the investigation was conducted. It also interesting to note that Detective MacIntyre was not reprimanded for his role in Donald Marshall's wrongful conviction, rather he later became the Chief of police in Halifax.

Regardless of the fact that there was no evidence to suggest Marshall's involvement in the murder, MacIntyre refused to accept Marshall's version of events. This refusal can be attributed to Marshall's background as well as the tunnel vision experienced by investigators. It is also important to note the background of the victim

Sandy Seale, who was a young African Canadian male. Along with Marshall, Seale was also subjected the racial bias and discrimination that was prominent in Nova Scotia during this time. It is clear from the inquiry that investigators took the background of both the accused and the victim into consideration using it as evidence to support the theory that the stabbing occurred during the course of an argument.

The fact that Marshall, came from a native background, as suggested within the inquiry the generally view during the time of the investigation within the community was that natives were troublemakers and not “worth” as much as whites (Marshall Inquiry, p. 3). Nevertheless, the investigation set out by MacIntyre was designed to only consider the information that supported his theory and to ignore all evidence that challenged it. The lack of evidence that pointed to Marshall’s guilt lead MacIntyre to rely on the testimonies of two unreliable “eyewitnesses”, who had originally supported Marshall’s version of events. It was theorized that after subsequent interviews with MacIntyre both of these youths changed their story to match the investigators theory.

The case of Donald Marshall Jr. highlights the reality of tunnel vision within wrongful conviction cases, as well as the challenges associated with becoming immediately focused on a suspect. This case demonstrates how an investigators attempt to “find” evidence that supports their theory can often cross the boundaries of what is considered acceptable within policing standards. It is likely that MacIntyre’s continuous belief in Donald Marshall’s guilt played a significant role in his arrest and ultimately his wrongful conviction. Moreover, racial stereotypes permeated the investigative process, which may have increased the tunnel vision of the investigators.

Focusing on a particular suspect early on in the investigation causes officers to

lose sight of the ultimate goal of the investigative process, which is ensuring justice is achieved through finding the true perpetrator. Premature and overly confident views as to an individual's guilt can be harmful to the investigation. When the police become preoccupied with a particular individual they often ignore contradictory information that points away from the suspect. Additionally, when the investigative team focuses attention on a suspect who turns out to be innocent, then no one is investigating evidence, which may point to the real perpetrator. This misplaced focus may result in the conviction of an innocent person, and allows the real perpetrator to go free potentially engaging in future crimes.

The wrongful conviction of Gregory Parsons is another example, which highlights the issues stemming from focusing on a suspect prematurely within the investigation. As officers investigating the murder of Catherine Carroll, made a hasty conclusion less than 24 hours after the victim's body had been discovered. After hearing statements from Carroll's lawyer and a Psychiatrist which described a less than perfect relationship between Gregory Parson's and his mother, Sergeant Singleton, as well as two other officers involved in the investigation were satisfied that Parson's had killed his mother.

The premature focus on Gregory Parsons resulted in a number of consequences within the investigation. As no attempts were made to investigate other explanations, evidence that did not fit the theory was ultimately ignored, while evidence that supported his guilt was exaggerated along with information that was considered irrelevant. Investigative practices including the questioning of witnesses and searching for evidence was conducted in a manner that would support his guilt. The consequences that result from focusing on a suspect before considering other possibilities is not specific to the

case of Gregory Parsons, rather these consequences are a reality of all police investigations tainted by this form of tunnel vision.

### ***Conclusion***

This chapter highlighted many of the investigative failures that emerged from reviewing the public inquiries. As previously stated these examples reflect unintentional errors or mistakes that occur throughout the course of the police investigation. While these errors can result in potentially devastating consequences, which may include the wrongful conviction of an innocent individual. It should be remembered that based upon the information gathered within the public inquiries, these errors appeared to be the result of inadequacies within the investigative process. While the possibility exists that these errors were the result of intentional corruption, the information present within the inquiries does not support this conclusion.

## **CHAPTER FIVE: Results - Investigation Corruption**

The following chapter examines the remaining findings that emerged after a review of the public inquiries. As previously stated the major findings have been categorized based upon the level of blameworthiness and moral culpability involved when these incidents of police misconduct occurred. Incidents of police error are not straightforward, rather this type of misconduct ranges on a scale, which reflects the officers' recognition and responsibility for the misconduct. Examples of investigation corruption differ from the investigative inadequacies discussed within the previous section. The factors associated with investigative inadequacies include errors or mistakes that have been made throughout the course of everyday policing practices; whereas, instances of investigation corruption raise the concern that some degree of corruption or knowledge was present within the investigation. While it is likely that the true intentions of the police officers involved in these wrongful convictions may never be known, the presence of the following factors raises suspicion and suggests the presence of corruption within these investigations.

### ***Mishandled or Contaminated Evidence***

Improper handling and contamination of evidence can pose serious challenges to individuals trying to establish their innocence. It is imperative that police officers demonstrate the utmost care when handling evidence or examining a crime scene in order to avoid contamination. All evidence and especially evidence from which DNA can be extracted is extremely vulnerable to mishandling and contamination (Garrett, 2011).

The presence of a suspect's DNA at a crime scene is often considered the nail in

the coffin, regardless of the fact that it does not conclusively establish a suspect's guilt. While the presence of DNA evidence is weighed quite heavily by jurors it often goes without recognition that evidence can be both intentionally and unintentionally mishandled, contaminated, or misinterpreted (Scheck, et. al, 2003). While the cases examined do not explicitly state whether the contamination of evidence was intentional or resulted from police error, for the purpose of this research evidence and crime scene contamination falls under the category of investigative corruption

Incidents of both crime scene and evidence contamination result from misconduct on behalf of the police or laboratory personnel responsible for examining the evidence. This contamination is often the result of various reasons including, failure to secure the crime scene, allowing unnecessary personnel to enter the crime scene, damaging or misplacing evidence, reporting inaccurate forensic findings, failure to preserve evidence, leaving items at the scene, conducting examinations under inadequate conditions, in addition to failing to perform tests on evidence. The fact that DNA evidence is often relied upon to establish an individual's guilt or innocence suggests that individuals responsible for both the gathering as well as examining this evidence should be subjected to a higher degree of legal and ethical accountability (Olney & Bonn, 2014).

The harms associated through the contamination of evidence are clear within the wrongful conviction of Guy Paul Morin. Evidence raised within the inquiry revealed that a number of fibers had become contaminated while being examined at the Centre of Forensic Sciences (CFS) (Morin Inquiry, p.179). Shirley Stefak, a CFS technician originally discovered the contamination of fiber evidence, after Stefak was asked by Ms. Nyznyk to review the tapings from the Morin Honda prior to the first trial. After



examining these tapings, it became quite evident to Ms. Stefak, that the evidence had somehow become contaminated, as the error was visible to the naked eye.

The discovery of this contamination was immediately reported to Ms. Nyznyk, who explained at the inquiry, the fact that she did not believe the contamination affected her initial examination of the evidence (Morin Inquiry, p.180). Ms. Stefak later testified at the inquiry that she found the contamination to be disturbing, and that when it was discovered it became clear to her that this contamination had occurred while it was awaiting examination at the Centre of Forensic Sciences. However, as the inquiry further revealed that Ms. Nyznyk failed to investigate how this contamination occurred in the first place, and whether or not it had spread to other items (Morin Inquiry, p.186). Aside from reporting this contamination to her direct supervisor Mr. Erickson, no one outside of the CFS was made aware of this contamination. Further Ms. Nyznyk made no attempts to record the existence of this error within her files. While the CFS argued that the contamination could have resulted from the police mishandling the fibers by storing them in the same box, it was later found that this contamination more than likely occurred either entirely or mostly at the examination center.

Although not directly police misconduct, this example shows an error that resulted from the work of laboratory personnel who were responsible for examining the evidence on behalf of the police. This example demonstrates both the harms associated with evidence contamination as well as the failure to disclose evidence and information. Although, denied by both Ms. Nyznyk and Mr. Erickson it is more than likely that the failure to disclose was intentional in order to cover-up the contamination of the fiber evidence. Although, those employed at the CFS felt that this contamination did not affect

the findings Ms. Nyznyk presented to the prosecution it should have been disclosed regardless.

Several examples of crime scene contamination were also present within the wrongful conviction of Guy Paul Morin. Including, the failure to preserve evidence, as a large snowstorm was predicted the day Christine Jessop's body was found. Although, there was discussions amongst investigators about whether or not a tarp or tent should be erected to preserve the site nothing was done to protect the evidence, which became covered with snow and ice.

The inquiry also revealed that in addition to the snow covered crime scene, one of the investigators Inspector Holley had found a lighter at the body site a few days after the initial search (Morin Inquiry, p.696). There were several issues in relation to the lighter evidence firstly, Inspector Holley decided to pick up the lighter and put it into evidence, rather than photographing it where it was found. Secondly, it was later concluded that Constable Hewett had dropped a lighter at the scene a few days prior explaining why Holley had found one, this came to light only after it was concluded that Morin was a non-smoker. While the evidence relating to the lighter found at the scene is rather complicated it reflects the overall manner in which this investigation was conducted, as it was clear that the investigative team made little effort to preserve the evidence as well as the crime scene.

### ***Overreliance on Junk Science***

The use of forensic science proves to be both a blessing and a curse in terms of wrongful convictions. As many of the cases examined presented evidence of science being used in both the individual's initial conviction as well as their exoneration. The

reliability of DNA evidence has improved in recent years, playing a fundamental role in the exoneration of many innocent men and women. These exonerations also include cases in which science played a role in their original conviction as well.

The presence of junk science within a criminal investigation refers to instances in which the case against the accused relied heavily upon unreliable scientific practices. Reliability and validity are two types of problems that can arise from the use of forensic science. Junk Science is most commonly associated with scientific practices that are simply not reliable. As stated by Garrett (2011), conclusions drawn from these practices are based on a detailed yet subjective comparison of objects found at the crime scene with those from the defendant. Alternatively, these cases may also include invalid conclusions being drawn from the forensic evidence presented. When experts make invalid testimonies, whether the science is reliable or not it can reflect a stronger evidence of guilt than the evidence actually represents.

The practice of DNA analysis has played a crucial role in the identification and exoneration of the innocent beginning with the 1989 exoneration of Gary Dotson (Garrett & Neufield, 2009). While the reliability of DNA testing resulted from extensive research and examination, other forensic techniques have not been subjected to the same scientific evaluation and have led to errors (Innocence Project, 2015). Junk science can include practices such as, hair and fiber analysis, bite mark comparison, hypnosis, foot and fingerprint analysis, as well as polygraph examinations. In addition, valid forensic techniques have appeared within wrongful convictions, an example being serology or blood typing. In some cases, valid forensic practices have been conducted incorrectly, or the results have been incorrectly presented at trial.

The use of junk science was evident within the wrongful conviction of Thomas Sophonow, as investigators relied upon the unfounded practice of hypnotism. The key witness in the prosecution's case against Thomas Sophonow was John Doerksen, an eyewitness observer. Mr. Doerksen had observed the perpetrator running away from the donut shop where Barbara Stoppel's body was later found. Doerksen proceeded to run after the killer and witnessed him throwing something off the bridge into the river. In addition to the frailties associated with the use of eyewitness testimony, the investigation team also relied upon inadequate techniques to extract information from witnesses (Innocence Canada, 2015). As outlined within the inquiry sometime after the murder, Mr. Doerksen agreed to undergo hypnosis at the University of Manitoba (Sophonow Inquiry, p.58). The description of the perpetrator that Doerksen provided to investigators following the hypnosis differed from his original testimony on the night of the murder.

In addition to the use of junk science within this case, it is also evident from the inquiry that both the police as well as the prosecution failed to disclose the use of hypnosis to the defense (Sophonow Inquiry, p.123). The hypnosis of a witness should have been disclosed to the defense, as it calls into question the accuracy of the witness's testimony. The use of hypnosis should be avoided in criminal trials, as this process is highly suggestive (Roach, 2012). Those who undergo hypnosis often assume that everything recovered during hypnosis is accurate, which is not necessarily the case. It is evident from the wrongful conviction of Thomas Sophonow that using hypnosis for the purpose of enhancing a witness's memory is a risky practice, one that should not be used within a criminal trial.

The wrongful conviction of Randy Druken highlights the harms associated with

the use of junk science, in particular polygraph examinations. Not only did investigators in the case conduct a polygraph examination, but they also relied upon the testimony of a jailhouse informant. Mr. X, had an extensive record including theft as well as fraud, and disclosed to authorities that Randy Druken had confessed to the murder of Brenda Young. After providing police with these details Mr. X was subjected to a polygraph test conducted by Lieutenant Patrick Ledwell, in which he failed. At this point the investigators came to the realization that this failure would make Mr. X an unreliable witness. It was raised within the inquiry that rather than accepting Mr. X as an unreliable witness the investigators continued with further questioning conducting a KGB interview, after which the statements provided by Mr. X were viewed as reliable (Lamer Inquiry, p. 201). Investigators justified the failed polygraph, by claiming that Mr. X had lied in an attempt to cover up his homosexual relationship with the Randy Druken.

It is clear that investigators involved with the wrongful conviction of Randy Druken failed to recognize and accept the appropriate use of polygraph examinations, which to some extent contributed to his wrongful conviction. Errors with respect to polygraph examinations usually arise when interrogators have a preconceived notion or belief of the individual's guilt. It is highly advised that officers involved in the investigation avoid being part of the polygraph examination. There is no evidence to suggest this was followed in the case of Randy Druken. Although, polygraph examinations should be avoided especially in regards to criminal investigations, in this case the issue was not the use of the polygraph, but rather the failure to consider the results of the polygraph, as investigators chose to simply ignore the fact that Mr. X lying and proceed with further interviewing.

## *Unethical Interview & Interrogation Practices*

Flawed and suggestive interviewing practices can result in false allegations ultimately contributing to wrongful convictions. It is often forgotten that investigators have the same obligation to the accused as they do witnesses. This obligation includes ensuring that the investigation is conducted in an ethical manner, motivated solely on the search for the truth. However, not all officers display this mentality, which was evident within the negative interviewing practices that appeared within the public inquiries. In some instances, it is necessary for officers to resort to harsh interrogation tactics when dealing with unruly suspects, however these practices have been over utilized, which has been the case in many wrongful convictions.

Although it is perfectly legal for law enforcement agents to employ various mind games and acts of deception within the interview and interrogation process. These practices should be avoided at all costs as they have been associated with both eliciting false confessions from the accused, as well as witnesses providing information that turned out to be false. The use of aggressive interrogation tactics can be harmful in the search for the truth. Examples of these unethical interview and interrogation practices include, subjecting witnesses to repeated and lengthy interviews, failing to record statements provided during the interview, failing to inform witnesses of the nature of the interview, not allowing the accused to sign the statement attesting to its accuracy, use of unnecessary and overly invasive searches e.g. strip searches, as well as police feeding or leaking facts.

The wrongful arrest and conviction of Gregory Parsons highlights the behaviour associated with aggressive interview tactics. As the accused revealed at the inquiry, a part

from discovering his mother dead, the manner in which he was treated after his arrest was the most horrifying thing he has ever had to endure (Lamer Inquiry, p. 81). Gregory Parsons was subjected to ill treatment immediately after being picked up by police including, being subjected to mind games, and lengthy interviews in which he was stripped down to his underwear. At some point during the interview Parson's lawyer Robert Simmonds came to inform the officers that Gregory had wished to exercise his right to remain silent, in an attempt to spare his client from this mental torture and put an end to the interrogation. However, the officers refused to listen to this request under the direction of the Crown prosecutor Bernard Coffey and the interrogation continued. As the interview continued into the early morning, Gregory repeatedly expressed his right to remain silent.

Although police are entitled to use trickery and mind games such as, good cop-bad cop it is unclear why this method was utilized within the Parsons case. There was no evidence to suggest that the accused was being uncooperative with investigators, and as Parsons recalled during the inquiry this behaviour began immediately after he entered the cruiser (Lamer Inquiry, p. 81). It is also unclear why Gregory was required to remain in his underwear throughout the entire interrogation; perhaps this was a method of intimidation being utilized by police.

As a result of the conflicts that arise from police employing harsh interrogation tactics, many police departments require all interviews and interrogations within major investigations be either videotaped or audio recorded. However, these devices may not be readily available as not all interviews are necessarily planned in advance. Investigators should utilize these devices as video and audio recording is considered to be best practice

for both the accused as well as the investigating agency. Proper recording protects the police against accusations of conducting unethical interviews, in addition to protecting the accused from the harms associated with tainted interview practices. The use of video recordings can severely reduce the presence of factors that have been associated with wrongful convictions including false confessions.

The use of suggestion and fact feeding led to incriminating statements being adopted and ultimately led to the conviction of Donald Marshall Jr. As the strongest piece of evidence linking Marshall to the stabbing death of Sandy Seale were the statements provided by two teenagers claiming to be eyewitnesses. The eyewitnesses were Maynard Chant, a 14-year-old who was on probation for an unrelated minor offence, and John Pratico who was 16 years old at the time and considered mentally unstable, it was revealed at the inquiry that his psychiatrist later recalled that the boy had a tendency to make up stories in order to become the center of attention (Marshall Inquiry, p. 3).

Both of these witnesses provided statements to police shortly after the crime where, Chant supported Marshall's version of events, and Pratico claimed he saw two men fleeing the scene after the stabbing. However, upon further questioning by Sergeant MacIntryre both gave very different statements, as Pratico began to recall seeing Marshall stab Seale during an argument, which directly support the theory adopted by investigators. Additionally, Chant claimed that he too had heard the argument and witnessed the stabbing, he also claimed to have seen a male with dark hair at the scene, this individual was presumed to be Pratico, increasing the reliability of these statements.

It is evident that the details provided within these witness's second statements were the result of suggestions and oppressive interrogation tactics made throughout the



course of the interview. Sergeant MacIntyre was so consumed with building a case against Marshall, that the methods used went far beyond what is considered acceptable police behaviour. The investigators involved in this case, particularly MacIntyre, were responsible for pressuring these witnesses to provide contradictory statements by employing various tactics. These methods include bringing an unstable youth to the murder scene, providing him with details of the event that the police believed to be true and persuading the witness to accept these details as the truth. In addition, MacIntyre played on the fact that Chant was on probation and feared being sent back to jail, he used this information to his advantage not only getting Chant to accept the theory constructed by police, but also placing Pratico at the scene as well.

The methods employed by MacIntyre demonstrate the relative ease at which investigators are able to get witnesses to change their original statements and support their constructed theory. Although, several other errors were present within this case poor interviewing and interrogation practices played a substantive role in the wrongful conviction of Donald Marshall Jr. It was concluded at the inquiry that the manner in which Sergeant MacIntyre conducted interviews with both eyewitnesses Chant and Pratico was considered to be intimidating and unacceptable (Marshall Inquiry, p.20). It was apparent that MacIntyre was adamant in developing a case against Marshall and was willing to do so at all costs. Although not specifically stated within the inquiry, MacIntyre's pursuit against Marshall apparent to be intentional at times.

Unfortunately, these interrogations were not recorded, had the encounters with these witnesses been captured on either video or audio recording it would have called into question the reliability of their statements, as well as shed some light on the practices

used during the interview process, which led to these statements being made. In addition these recordings would have revealed the true actions of detective MacIntyre.

### ***Influencing or Strengthening Witness Testimonies***

During the course of the investigation officers may engage in leading or suggestive behaviours, which can result in the influencing or strengthening of a witnesses' testimony. This misconduct can be directly associated with unethical interview and interrogation practices, as the influencing of a witness typically occurs within the interview stage, however evidence of suggestive behaviour can be present at all stages of the investigation. The influencing or strengthening of a witness's testimony refers to any and all attempts to encourage a witness to change their testimony.

Typically, these suggestive practices arise from the presence of tunnel vision, as police officers often presume that a witness knows more than what they previously have disclosed. Investigators often use various tactics in an attempt to "enhance" a witness's memory. Including, pressuring witnesses to change dates and timelines, repeating the same questions, subjecting witnesses to lengthy periods of questioning, providing witnesses with post-event details, coercive questioning, telling witnesses their statements are wrong, as well as making the witness aware of the investigators theory. The use of these practices may result in the witness completely changing and reaching a different conclusion compared to what was provided within their original statement. While this might be helpful in supporting the investigators theory it can be harmful in establishing the truth.

Police providing suggestions in an attempt to influence a witness was evident in the majority of the wrongful conviction cases examined. In these cases, it was found that

investigators had relied upon heavy-handed tactics in order to get witnesses to change their statements (Lamer Inquiry, p. 79). This method is especially powerful in cases involving youths and witnesses considered to be vulnerable to suggestion, which was evident in the wrongful convictions of both Donald Marshall Jr. and Randy Druken. In these cases, the original statements provided should be considered the most reliable as they are generally taken immediately after the crime before the witness has a chance to become influenced by the police, media or other witnesses. Recanted as well as conflicting testimonies from witness should raise serious concerns, especially in regards to the reliability of these statements.

The influencing of witnesses was evident within the wrongful conviction of David Milgaard, as the statements provided by two alibi witnesses began to develop as the investigation went on. The investigators were not surprised by the changes in their testimonies as they were convinced from the outset of the investigation that both Ronald Wilson and Nichol John had not provided them with all the information they had regarding Milgaard's involvement in the murder of Gail Miller (Milgaard Inquiry, p.77). Those in support of Milgaard's innocence claimed the statements given by both witnesses were the result of coercive tactics used by police. Now that David's innocence has been proven via DNA evidence it is likely these witnesses were influenced, mistaken or simply had lied within their testimonies.

Although it was concluded at the inquiry that polygraph examiner Art Roberts did not rely upon suggestive tactics in order to obtain incriminating details from Nichol John. The fact that her statement changed dramatically as a result of her interview with Roberts is quite concerning. As originally Nichol had only been able to provide police details of

where the group had been the morning of the murder, after further questioning she not only implicated Milgaard in the crime, but also claimed to have witnessed the murder. What is also troubling about this interview is Roberts failed to provide a report, notes or list of questions with respect to this interview.

Although the Supreme Court found no wrongdoing on behalf of the police including the interviews conducted by Roberts, it is clear that suggestive practices were utilized. For example, prior to administering the polygraph Roberts showed Nichol John bloody clothing and in an attempt to appeal to her, asking her to imagine if the victim had been her sister? (Milgaard Inquiry, p.78). It is unclear whether or not Roberts provided further details or suggestions to her, or whether she reconstructed the event to appease the investigator. What is known is that had this admission not been made to Robert's, then the case against Milgaard would have been extremely weak.

It is evident within this case that Roberts was made aware of the investigators belief in Milgaard's guilt, ultimately shaping the way the interview was conducted. Rather than searching for the truth, it is more than likely that Roberts' goal was to have the witnesses implicate Milgaard in the murder of Gail Miller. Although successful in his strategy, Roberts' interview did not result in the discovery of the truth. It was evident from the statement provided by Roberts that his interview with Nichol John may have went beyond simply having the witness recall what she knew, including repeating the same questions, telling the witness they must know something, as well as having both eyewitness discuss details of the event together. These practices may cause witnesses to provide investigators with a story they think they want to hear, regardless of whether or not it's false.

The influencing of statements provided by witnesses was also apparent in the wrongful conviction of Guy Paul Morin. As one of the witnesses Leslie Chipman became convinced of Guy Paul Morin's guilt after repeated interviewing by police. Ms. Chipman had planned to meet Christine Jessop the day she disappeared, as the pair had been best friends. It wasn't until media coverage following the arrest of Morin that Leslie even mentioned encounters with the accused. After Morin had be presented as the suspect within the media Ms. Chipman recalled her and Christine encountering Guy Paul several times the week of her disappearance. The witness recalled three separate occasions where she noticed Morin going into the backyard to clip his hedges in the presence of Christine Jessop. Ms. Chipman also disclosed to investigators that Morin had gripped the hedge clippers so tightly that his knuckles began to turn white; this of course was also in the presence of Christine (Morin Inquiry, p. 957). These small details were used as both evidence of Morin's demeanor and considered to be evidence of his guilt.

Additionally, Ms. Chipman became convinced of Morin's guilt after being interviewed by investigators and Crown Prosecutors on seven different occasions. Ms. Chipman being only ten years old at the time was unable to recall in detail, but concluded at the inquiry that she gained the impression from police officers that Morin was "odd", which consequently influenced her opinion and resulted in her belief in Morin's guilt (Morin Inquiry, p. 956). A number of interviews followed after Ms. Chipman's initial interview with police, which represent an evolution in the strength of her memory after being interviewed. As Leslie statements started by recalling Guy Paul being Christine's neighbour and seeing him trim the hedges, to thinking he was clipping the hedge so much, that he must have been watching them (Morin Inquiry, p. 963). Although,

investigators in this case may not have explicitly told Leslie what to say, her statements began to evolve as the result of repeated interviewing. The details Ms. Chipman provided to investigators were so insignificant they should have never even been considered as evidence of Morin's involvement.

### ***Use of Unsavory Characters***

Arguably one of the most prevalent forms of police misconduct includes the use of testimonies from unsavory characters. These individuals are most commonly referred to as jailhouse informants, but may also include witnesses who are unreliable for various other reasons. The reliance on information and testimonies obtained from individuals with a questionable reliability was evident within the majority of cases examined. It was apparent that the use of in-custody informers continues to remain a significant contributor to these errors. The police along with prosecutors should be aware of the risks associated with the use of testimonies provided by informants and unreliable witnesses. The use of testimonies provided by these witnesses should be avoided at all costs, however, when it is necessary these testimonies should not be given the same consideration as statements made by other more reliable witnesses.

Unlike other witnesses who provide testimonies in the hopes of assisting with the achievement of justice, jailhouse informants are typically motivated to lie for their own self-interest (Raeder, 2007). Testimonies from unsavory witnesses are risky regardless of whether or not the informant obtained the information while in custody or not. The frequency at which testimonies from informants are admitted into evidence is alarming considering it has been recommended repeatedly within public inquiries that testimonies from these individuals be avoided at all costs. Jailhouse snitches have never been

regarded as reliable sources of information. However, the use of informants is often considered a necessary evil (Rossimo, 2008).

While there are some instances in which testimonies from informants have been extremely helpful in the conviction of a truly guilty individual. Alternatively, testimonies from jailhouse snitches have also contributed to the wrongful conviction of innocent individuals. This was evident within the public inquiries examined, as there was evidence that the investigating agency used testimonies from either jailhouse informants or witnesses with a questionable reliability.

While jailhouse informants tend to be the most common; witnesses who have not been incarcerated may also provide unreliable testimonies. Apart from jailhouse informant's witnesses who display evidence of questionable reliability may also provide unreliable testimony. Some factors to take into consideration when determining the reliability of a witness includes, the individuals age, alcohol and drug consumption, memory loss, mental state including their propensity to being influenced, as well as whether or not they have been subjected to trauma. It should be noted that determining the reliability of a witness is extremely difficult, as the presence of these factors does not necessarily suggest the individual's unreliability, therefore these factors should just be used as a guideline.

The major difference between jailhouse informants and witnesses deemed to be unreliable is that jailhouse snitches tend to be motivated by the possibility of being rewarded for their testimony. Witnesses who display a questionable reliability are often just mistaken or attention seeking when providing unreliable or false testimonies.

The wrongful conviction of Thomas Sophonow is a prime example of the

emphasis placed on testimonies provided by jailhouse informants. At Soponow's third trial testimony was provided by a well-known informant Douglas Martin. Hearing more confessions than most priests, Martin had provided testimonies in at least nine other cases within Canada. Despite having knowledge of Martin's past including a previous conviction of perjury Martin was successful in convincing an experienced investigator Sergeant Paulishyn that he was being truthful in his testimony (Sophonow Inquiry, p. 137). The case against Soponow relied heavily upon testimonies provided by several informants over the course of three trials.

The testimony of Mr. Cheng was presented during all three trials, despite numerous objections from the defense. Mr. Cheng testified that Soponow and Barbara Stoppel were friends, and that he committed the murder after she refused to tell him where the rest of the money was. Mr. Cheng's theory supported the investigators theory that the murder had taken place during the course of a robbery. Mr. Cheng openly admitted to investigators during his polygraph examination that his motivation for testifying was the hope of being released from prison, avoiding deportation as well as shame from his family. In addition to this statement being unreliable, investigators also failed to disclose information regarding Mr. Cheng's motivation to the defense, which prevented them from a thorough cross examination.

Another well-known informant Adrian McQuade also claimed that Soponow had confessed to the murder while the two were incarcerated. In an attempt to arrange a deal, McQuade offered to try and gain information or hopefully extract a confession from Soponow. Despite the fact that McQuade had testified at the third trial that Soponow had confessed to him, the original reports state that the two had talked a few times, but



never about the murder. The use of jailhouse snitches within the wrongful conviction of Thomas Sophonow highlights the many frailties associated with relying upon testimonies provided by these individuals. It is clear that this investigation was fueled by tunnel vision as investigators had become so fixated on establishing Sophonow's guilt; they were unable to recognize the various inconsistencies within these informant's testimonies. Even though some of the investigators in these cases had experience, they were either unable to recognize or chose to ignore the fact that these informants were only concerned with arranging a deal in exchange for their testimony.

The use of unreliable witnesses was unique in the wrongful conviction of Gregory Parsons, as the statements made by the victim played a pivotal role in his conviction. After the discovery of Catherine Carroll's body several witnesses came forward claiming that prior to her death Catherine had confided in them and had complained about the problems she had with Greg (Lamer Inquiry, p. 77). Both Carroll's lawyer and psychiatrist told police about Catherine's concerns about Greg, claiming that he had threatened her and had tried to assault her (Lamer Inquiry, p. 80). However, there was no evidence to support these claims, causing investigators to rely upon hearsay statements.

Although, Carroll's psychiatrist Dr. Kashyap told police about the victims concerns about her son Gregory, he had also described Carroll as having a tendency to exaggerate, and that she had displayed various symptoms consistent with having a personality disorder (Lamer Inquiry, p. 78). Had the psychiatrist's analysis been taken seriously than it would have raised suspicions regarding the reliability of Catherine Carroll's assertions. The false statements made by the victim unknowingly led to the conviction of her son, as less than 24 hours after the body was discovered investigators

were satisfied that Parsons had killed his mother. The statements made by Catherine Carroll should have been considered unreliable. Although, not a jailhouse informant Carroll should have been considered an unreliable witness, not only were these statements hearsay, but also before her death Carroll had displayed various personality disorders including, attention seeking, and obsessive-compulsive behaviour in addition to having a history of alcohol and prescription drug use. The investigators should have taken these factors into consideration before relying on these statements to convict Gregory Parsons.

### ***Conclusion***

As previously stated misconduct within policing appears within a scale, which ranges from unintentional errors to blatant corruptions depending on the culpability of the individuals within the criminal justice system. Highlighted within this chapter were several examples of potential corruption within the investigation. The investigators within the cases discussed went above and beyond the scope of normal police work in order to secure the conviction, even if that required them to ignore or break the rules consistent with a proper investigation. While the possibility still remains that these errors were unintended, essentially the officers in these cases should have known better and recognized the presence of these errors before proceeding with the investigation. It is likely that investigators in these cases suffered from tunnel vision, causing them to become fixated on a particular theory or suspect and likely overlooked this misconduct.

## **CHAPTER SIX: Discussion and Conclusion -Righting these Wrongs: How to prevent Injustices**

When compared to the wrongful conviction and exoneration of an innocent individual, few events contribute to the intense scrutiny experienced by the criminal justice system. As government officials, the media, as well as the public begin to question these errors and wonder how did they get it so wrong? The harms associated with convicting an innocent person are essentially endless. Firstly, when the wrong suspect is incarcerated the public remains at risk as it allows the actual perpetrator the opportunity to engage in other crimes. Wrongful convictions also place a burden on taxpayers as resources are essentially wasted on the imprisonment of an innocent person. Additionally, the public's increasing awareness of the reality of wrongful convictions has resulted in questioning the legitimacy of the entire criminal justice system as well as those who work within it (Denov & Campbell, 2005). Due to the various consequences associated with wrongful convictions, not only those experienced by the individuals wrongly convicted but the entire system as well suggests the need for further attention. Begging the question, is the criminal justice system actually capable of conducting a fair trial?

The present study sought to examine the ways in which errors made by police and prosecutors contributed to the wrongful conviction of an innocent individual. Specifically, six out of seven public inquiries involving Canadian wrongful conviction cases were examined; which focused specifically on the extent to which, police misconduct attributed to these mistakes. Due to their position within the criminal justice system, police officers often act as gatekeepers within the investigation. Based upon the fact that these individuals have the first contact with the accused, witnesses as well as

victims. Thus putting them in the most advantageous position to conduct a criminal investigation, which in some cases is rife with errors. In order to reiterate the importance of the present research study and to review the discoveries, this final chapter will focus on the major findings arising from this study, how this research contributes to the field, the limitations that resulted from the method employed, as well as recommendations for the future.

### ***Overall Findings***

Apart from the reoccurring factors associated with police misconduct as previously discussed within the analysis section, including both investigation inadequacies as well as incidents of investigation corruption. This research revealed a number of overarching themes apart from these factors, which can be used to explain the reality of police misconduct in wrongful convictions.

1. The majority of cases examined revealed that the misconduct of the criminal justice actors involved, was severely minimized when presented at the inquiry. Often incidents that raise suspicion of intentional corruption are ruled as simply just mistakes made throughout the course of police work. This was evident in the wrongful conviction of David Milgaard, as the inquiry was unsatisfied that enough evidence existed to suggest that polygraph examiner Art Roberts relied on suggestive interrogation tactics. Minimizing the fact that after speaking with Roberts, Nichol John produced a statement, which support the investigators theory and varied from her original statement (Milgaard Inquiry, p. 77). The inquiry failed to acknowledge that investigator Roberts more than likely relied on some form of suggestive interview practices.

2. In some of the cases examined the actions of the accused were found to have contributed to their wrongful conviction. Certain mistakes or behaviours displayed by the accused resulted in them being held responsible to some degree for their wrongful conviction. This is reflected within the inquiry into the wrongful conviction of Thomas Sophonow whereby, it was concluded that if the incident being examined were a negligence case then the state would be found 90% responsible, whereas, the accused would be found 10% responsible (Sophonow Inquiry, p.144). Once again, this demonstrates the minimization of responsibility on behalf of the investigators.
3. The presence of scientific evidence was considered to be the nail in the coffin regardless of the questionable practices that may have been used to obtain this evidence. In most cases evidence obtained through scientific testing was weighed quite heavily by jurors, despite the possibility of this evidence being obtained through unfounded practices. As previously mentioned junk science may include, polygraph examinations, hair and fiber analysis as well as hypnosis.
4. The incidents of police misconduct outlined within these public inquiries stemmed from the presence of tunnel vision. It was evident after conducting a review of the public inquiries that the majority of the investigations were fueled by police tunnel vision. The presence of tunnel vision from the outset of the investigation is what may have led investigators to engage in acts of police misconduct. Tunnel vision can be associated with other forms of misconduct such as, attempting to illicit a false confession, failing to consider other suspects as well as relying on testimonies provided by jailhouse informants.

5. Within the majority of wrongful convictions examined, investigators relied upon testimonies from jailhouse informants or supposed “eyewitnesses”. These testimonies were in most cases unreliable, but nevertheless used in order to support the investigators theory. Witnesses claimed to have either seen the accused at the crime scene, or heard a confession.
6. In many of the cases examined the real perpetrator was never found. This suggests that the investigators preoccupation with the wrong person may have let a truly guilty individual go free. This is illustrated in the wrongful conviction of Guy Paul Morin, as after 10 years of incarceration Morin was exonerated through the use of DNA evidence that was previously unavailable. The investigation only grows colder as each year passes, and the true perpetrator has yet to be found.
7. There was evidence within the cases examined that reflected an unwillingness to recognize the larger systemic issues surrounding police misconduct. This is associated with the concept of bad apples vs. rotten barrels. Whereby, errors such as those that contribute to wrongful convictions are considered to be the result of mistakes made by a small number of individuals within the criminal justice system, the bad apples; instead of attributing these errors to the system as a whole, the barrel. The inquiry into the wrongful conviction of James Driskell is reflective of this concept as it was found that the errors made by the RCMP forensic laboratory services resulted from mistakes made by Tod Christianson, and therefore did not sufficiently raise strong enough concerns regarding the culture present within the task force that would warrant a review of its operations (Driskell Inquiry, p. 183).

### ***Contributions to the Field***

While research into the study of wrongful convictions has grown substantially within the past few decades, research on this topic has been focused primarily on a few key themes; which in turn has comprised our knowledge on the subject. This mounting body of research has focused primarily on a few issues surrounding the area of wrongful convictions predominantly, the frequency, causes as well as developing remedies to prevent these errors. This research is unique in the fact that instead of identifying all of factors associated with wrongful conviction in these cases, it focuses on one specific factor in order to gain a better understanding of this particular contributor.

It is evident within both the major findings and analysis section that this study makes a number of contributions to the field. This section will highlight these practical contributions including, advancements made within wrongful conviction literature, as well as police and investigative research.

### ***Advancements to the field of Wrongful Convictions***

It has been suggested that there is much to be explored within the field of wrongful convictions. As research on this topic has begun to highlight a familiar plot, where the names of the accused are changed but for the most part the story remains the same. Leo (2005) has referred to this problem as an “intellectual dead end” within the study of wrongful convictions. While it is still important to focus on the lives and experiences of those who become wrongfully convicted, this reoccurring narrative does not provide us with the opportunity to make advancements within the literature resulting in this dead end.

In addition, as discussed previously research within the field of wrongful

convictions has to date been severely limited from a Canadian standpoint when compared to other countries, specifically the United States. The number of identified and exonerated individuals is significantly lower at twenty, in comparison to the United States, which is into the hundreds (AIDWYC, 2015). While this research is not concerned with the frequency of wrongful convictions, this number identifies a gap within the research from a Canadian perspective highlighting the need for further exploration. This research narrows the gap by conducting additional research on the Canadian experience of wrongful conviction, through the examination of six public inquiries.

### ***Implications for Police & criminal justice Actors***

In additions to the contributions made to the literature on wrongful convictions the present study has also made valuable advancements to police and investigative studies. While currently there has been research into the roles police and prosecutors play within the establishment of wrongful convictions. For the most part this misconduct has been examined within discussions on other contributing factors such as, tunnel vision, the use of jailhouse informants as well as false confessions.

While it is important to examine these factors as they have the ability to contribute to wrongful convictions, it is also necessary to explore the topic of police misconduct outside of these factors. This research examined the role of police misconduct in order to identify and understand where the investigation went wrong, and what police can do to help minimize the chances of a wrongful conviction. Numerous factors appeared throughout this research, which highlight the other ways in which investigative failures have be associated with wrongful convictions. Including, the failure to disclose information, inadequate preservation of evidence, as well as inadequate recording and



note taking practices.

### ***Limitations of the Present Research Study***

Despite the significant contributions arising from this research, it is without question that this research also presents a number of limitations as well; which is the case within all research. This section aims to highlight and address these limitations.

Regardless of the fact that many of the public inquiries included within the sample were relatively lengthy documents, these inquiries made up only a small sample of the total wrongful conviction population within Canada. The number of cases examined within these inquiries included the wrongful convictions of eight men divided up into a total of six inquiries. Although many similarities were found within this sample it is likely too small to make generalizations regarding police misconduct within all wrongful convictions across Canada.

The relatively similar sample included within this research may also be seen as a potential limitation. The sample consisted solely on wrongful conviction cases that resulted in a public inquiry. As stated previously the number of wrongful conviction cases that result in exonerations and public inquiries are few and far between, as there has to date only been seven within Canada. Therefore, this research is subjected to limitations as the cases examined included only individuals who had been exonerated. Suggesting that this sample may not provide an accurate reflection on the experiences of the overall population. Despite the fact that these inquiries provide an excellent sample for conducting an examination, they may also have the potential to produce similar results.

This research is limited by the fact that the inquiries examined only included the wrongful conviction of men. Although from a Canadian perspective there have been more

wrongful convictions involving men than women, this does not suggest that women are free from these errors. The sample included within this research does not include an examination on the wrongful conviction of a woman, potentially limiting the results, as they do not provide an accurate reflection of the entire population.

In addition to the size and similarities of the sample this research is also limited by the passage of time. While the public inquiries into the wrongful convictions examined occurred at various times, Canada has not issued a public inquiry in several years. The very first public inquiry dates back to 1989 with the wrongful conviction of Donald Marshall Jr., and the most recent being the inquiry into pediatric forensic pathology in Ontario, which was reported in October 2008.

The passage of time from when the majority of these public inquiries occurred pose as a potential limitation to this research, as these cases likely are unable to reflect the various advancements that have occurred within the field of policing over the past decade. Regardless of these limitations, this research was not designed with the intention of making generalizations based upon the findings. Rather, the purpose was to identify and gather rich and descriptive data regarding the role of police and prosecutors presented within the public inquiries.

### ***Recommendations for Policy Changes and the Prevention of Wrongful Convictions***

This research has identified a number of factors that have contributed to wrongful convictions, with the focus being primarily on the mistakes made within the original police investigation. Through this analysis it is evident that in most cases police error often acts as a catalyst for further error within the investigation. Therefore, identifying

and addressing incidents of police misconduct is beneficial to the prevention of these errors. It has been suggested that as long as the criminal justice system is subjected to the fallibility of human error than wrongful convictions are inevitable. Although human errors are unavoidable they should be addressed as they can be minimized (Garrett, 2011). The reality is that although devastating there is much to be learned from wrongful convictions.

### ***Rotten Apples Vs. Rotten Barrels***

While numerous policies have been recommended and some even implemented to prevent wrongful convictions that are caused by police misconduct along with other contributors, these recommendations are simply not capable of addressing the system-wide failures that lead to these injustices (Batts, et. al, 2014). Generally wrongful convictions are addressed through a single-cause, one factor review where it is felt that the adequate solution is to simply identify the bad apple (Batts, et. al, 2014).

The concept of rotten apples versus rotten barrels can be applied to the study of wrongful convictions, as the current practice has been preoccupied with identifying the individual error or actor that ultimately caused the injustice. Contrary to popular belief wrongful convictions such as the cases outline within the public inquiries are not isolated incidents, rather these mistakes stem from failures that exist within the criminal justice system.

Once the source of tunnel vision, false confession, or investigator error has been identified and addressed it is believed that the criminal justice system will once again run smoothly (Batts, et. al, 2014). However, focusing on the rotten apples instead of the rotten barrel is flawed as it overlooks the system that allowed or created the opportunity

for these injustices to occur in the first place. Rather than becoming fixated on the primary causes of these miscarriages of justice, a more beneficial approach would be to address the underlying causes within the criminal justice system as well.

### ***Eliminating the Blue Shield***

A further recommendation in preventing police error from contributing to wrongful convictions is to avoid police culture from contaminating the investigation. It is imperative that police conduct investigations in a manner that both recognizes as well as guards against errors such as tunnel vision. As recommended within the inquiry into the wrongful conviction of Guy Paul Morin, it is advisable that police agencies adhere to a culture of policing that emphasizes the conducting of honest and fair investigations, in order to protect the rights of all parties involved (Leopard & Campbell, 2007). It is also important that investigative teams develop a culture and attitude that emphasizes the importance of confirming and verifying evidence.

After reviewing the inquiries, it was apparent that the police agencies involved in the investigation were inadequate when it came to reviewing and following up with the work of others. The development of a stricter review process is advisable especially within criminal investigations and crimes of the more serious nature. Firstly, investigative agencies should establish and adhere to stricter review policies, as this would significantly reduce the transmission of tunnel vision, as well as other investigative errors. For the prevention of these injustices, it would be beneficial for officers outside of the investigation to assist with identifying any errors or inconsistencies, especially errors related to tunnel vision.

It was evident within the public inquiries that the majority of police agencies

engage in a culture of trust, commonly referred to as the code or blue shield of silence. The code of silence is an unwritten rule amongst police officers, which essentially prohibits reporting the misconduct of fellow officers (Punch, 2009). This code of silence is especially harmful in cases of wrongful conviction. Officers who discover errors within the investigation are often hesitant when it comes to breaking the code of silence and reporting the wrongdoings of a fellow investigator. As outlined within the commission involving the case of Guy Paul Morin, changing the culture of policing is an important step in the prevention of future wrongful convictions (Morin Inquiry, p. 1190). While it is important for investigators to work as a team, this should not involve turning a blind eye or covering up the misconduct of others.

### ***Narrowing the Gap***

The recommendations discussed within this section reflect only a few suggestions to aid in the prevention of wrongful convictions. Other recommendations include, avoiding the use of informant testimony, ensuring full disclosure, improving interview techniques along with countless others. It is likely that wrongful convictions will continue to plague our criminal justice system for decades to come however; this should not be a reason to lose sight of the issue at hand. Nothing can be done to make up for the loss that exonerees face, but we can work towards preventing future injustices by learning what went wrong (Garrett, 2011). Research and education is the most valuable recommendation for the prevention of wrongful convictions as there is still much to be discovered especially from a Canadian perspective.

### ***Future Research***

As the limitations previously outlined, there is still a need to fill the gap within

wrongful conviction research, as there is much that remains unknown. Future researchers may wish to examine this topic further by employing other approaches. There are certainly aspects that emerged within this study that warrant further attention. For instance, due to the limited time provided, I was only able to examine a relatively small sample of wrongful conviction cases. It would be valuable the study of wrongful convictions to conduct an additional analysis through the examination of the remaining Canadian wrongful convictions. Continuing this examination would be valuable as these cases are unique. Another possible direction for further research would be to conduct a comparative analysis, comparing the role of police misconduct within cases of wrongful conviction with real conviction cases. Examining other aspects related to this study could prove to be useful in further understanding how police misconduct contributes to wrongful convictions.

### ***Conclusion***

This research has highlighted several flawed investigative practices that resulted in the wrongful conviction of eight innocent Canadians. Examples of this misconduct include, improper interrogation tactics, mishandling of evidence, lack of disclosure, improper note taking, as well as an overreliance on junk science. This study revealed a lack of clarity regarding the degree of culpability and blameworthiness of individuals involved in the criminal investigation. Based upon this the major findings were separated into two categories, investigative inadequacies and investigative corruption. These categories were created to reflect the officers perceived level of involvement in the misconduct. While several limitations of this research have been identified, this study has also made contributions as well as recommendations that are beneficial to both the field

of policing as well as wrongful conviction research.

Despite the progress that the Canadian criminal justice system has made over the past few decades, there is still much progress that needs to be made in order to understand and assist in reducing the risk of wrongful convictions. While wrongful convictions are seemingly inevitable, the costs associated with these errors are substantial. Anyone who is concerned with the achievement of justice would argue that any rate of wrongful conviction is simply unacceptable, and all measures should be taken in order to prevent these grave injustices. Not only will the elimination of these errors prevent an innocent person from being wrongly incarcerated, it will also assist in restoring society's perception regarding the legitimacy of law enforcement as well as the criminal justice system.

***Appendix:***

**Canadian Public Inquiries and Wrongful Conviction Resources**

***The Commission on Proceedings involving Guy Paul Morin*** (The Honourable Fred Kaufman, Commissioner), 1998:

<http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/morin/>

***The Inquiry regarding Thomas Sophonow: The Investigation, Prosecution and Consideration of Entitlement to Compensation*** (The Honourable Peter Cory, Commissioner), 2001: [www.gov.mb.ca/justice/sophonow/toc.html](http://www.gov.mb.ca/justice/sophonow/toc.html)

***The Lamer Commission of Inquiry pertaining to the cases of: Ronald Dalton, Gregory Parsons, Randy Druken*** (The Honourable Antonio Lamer, Commissioner), 2006:

<http://www.justice.gov.nl.ca/just/lamer/>

***Report of the Commission of Inquiry into Certain Aspects of the Trial and Conviction of James Driskell*** (The Honourable Patrick J. LeSage, Commissioner), 2007:

<http://www.driskellinquiry.ca/index.html>

***The Commission of Inquiry into the Wrongful Conviction of David Milgaard:***

<http://www.milgaardinquiry.ca>

***The Royal Commission on the Donald Marshall, Jr. Prosecution.***

[http://www.gov.ns.ca/just/marshall\\_inquiry/default.asp](http://www.gov.ns.ca/just/marshall_inquiry/default.asp)



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