

FALCONER CHARNEY LLP

BARRISTERS AT LAW

JULIAN N FALCONER, B.A., LL.B.
THEODORE P. CHARNEY, B.A., LL.B.
ELISABETH WIDNER, M.A., LL.B.
JULIAN K. ROY, B.A., LL.B.
H. JACK PARSEKHIAN, B.A., LL.B.
RACHEL HEPBURN CRAIG, LL.B.
SUNIL S. MAIHAJ, B.A., LL.B.
CHARLENA CLAXTON, B.A., LL.B.
JACKIE ESMONDE, B.A., LL.B., M.A.

8 PRINCE ARTHUR AVENUE
TORONTO, ONTARIO
CANADA
M5R 1A9
TELEPHONE: (416) 964-3408
FACSIMILE: (416) 929-8179

falconercharney@fcbarristers.com

BY ELECTRONIC MAIL

July 13, 2007

The Commissioner, the Honourable Stephen Goudge
Inquiry Into Pediatric Forensic Pathology in Ontario

contact@goudgeinquiry.ca

Dear Mr. Commissioner:

**Re: Application for standing and funding on behalf of The Association in
Defence of the Wrongly Convicted (AIDWYC)**


Please find attached a Notice of Motion with accompanying Affidavit of Paul Copeland filed in support of AIDWYC's motion for standing and funding before the Inquiry.

I am also pleased to advise that AIDWYC Director Louis Sokolov will be appearing as AIDWYC's counsel at the Inquiry. Mr. Sokolov can be contacted at:

Sack Goldblatt Mitchell LLP
Suite 1100, Box 180
20 Dundas Street West
Toronto, Ontario, M5G 2G8

Tel: (416) 979-6439
Fax: (416) 591-7333

Yours very truly,



Elisabeth Widner
Co-President, AIDWYC

EW/ac
Encls

c.c. Louis Sokolov LouisSokolov@sgmlaw.com
Paul Copeland paulcope9@yahoo.com

**IN THE MATTER OF AN APPLICATION BY THE ASSOCIATION
IN DEFENCE OF THE WRONGLY CONVICTED (AIDWYC) FOR
STANDING AND FUNDING AT THE INQUIRY INTO PEDIATRIC
FORENSIC PATHOLOGY IN ONTARIO**

NOTICE OF MOTION

**MOTION FOR STANDING AND FUNDING ON BEHALF OF THE
ASSOCIATION IN DEFENCE OF THE WRONGLY CONVICTED**

**Elisabeth Widner
Co-President, AIDWYC**

Falconer Charney LLP
Barristers at Law
8 Prince Arthur Avenue
Toronto, Ontario
M5R 1A9

Ph: (416) 964-3408
Fax: (416) 929-8179
Email: ewidner@fcbarristers.com

Solicitors for AIDWYC

The Association of Defence of the Wrongly Convicted (AIDWYC) will make a motion to the Commissioner on August 8, 2007 at 10 am, or so soon after that time as the motion can be heard, at the Metropolitan Hotel, 108 Chestnut Street, Toronto.

AIDWYC respectfully requests an opportunity to make oral submissions with respect to standing and funding in support of the within motion.

THE MOTION IS FOR:

1. An Order granting standing to AIDWYC throughout the Inquiry;
2. An Order granting funding to AIDWYC to permit two senior counsel to represent AIDWYC at the Inquiry and such other and additional funding as AIDWYC may request at the oral hearing of this motion on August 8, 2007;
3. Such further and other Order as AIDWYC may request and the Commissioner permit.

THE GROUNDS FOR THE MOTION ARE:

1. AIDWYC has a direct, substantial and long-standing interest in the subject matter of this Inquiry and has experience and special knowledge and expertise with matters directly within the Commissioner's Terms of Reference;
2. AIDWYC has a long-standing and well-demonstrated interest and expertise in identifying systemic causes of wrongful convictions and in proposing solutions and remedies;
3. Since its inception, AIDWYC has participated in all public Inquiries into wrongful convictions in Canada and has been recognized at these Inquiries, as well as by appellate courts including the Supreme Court of Canada, as having

specialized knowledge and experience in the systemic causes of wrongful convictions;

4. As a volunteer, non-profit organization with limited funding, AIDWYC will be unable to retain counsel and participate in this Inquiry absent an Order for funding;
5. Such further and other grounds as are set out in the attached affidavit of Paul Copeland and as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. Affidavit of Paul Copeland, sworn July 13, 2007;
2. Such further and other documents as counsel may advise and the Commissioner permit

DATED: July 13, 2007

Elisabeth Widner
Co-President, AIDWYC

Falconer Charney LLP
Barristers at Law
8 Prince Arthur Avenue
Toronto, Ontario, M5R 1A9

Ph: (416) 964-3408
Fax: (416) 929-8179
Email: ewidner@fcbarristers.com
Solicitor for AIDWYC

TO: THE COMMISSIONER, THE HONOURABLE STEPHEN T. GOUDGE
THE INQUIRY INTO PEDIATRIC FORENSIC PATHOLOGY

**IN THE MATTER OF AN APPLICATION BY THE ASSOCIATION IN
DEFENCE OF THE WRONGLY CONVICTED (AIDWYC) FOR STANDING
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AFFIDAVIT OF PAUL COPELAND

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I, **Paul Copeland**, Barrister and Solicitor, of the City of Toronto in the Province of Ontario, **MAKE OATH AND SAY:**

1. I have been a member in good standing of the Law Society of Upper Canada for the past 40 years, since my call to the bar in 1967. I was co-founder of the Law Union of Ontario in 1974. I have served as a Bencher of the Law Society of Upper Canada for 15 years and am now, since the 2007 Bencher elections, a life Bencher. I also served as Vice-Chair of the Legal Aid Committee from 1991 to 1996. Since 1999, I have been a partner in the law firm of Copeland, Duncan. My practice is primarily criminal law, civil litigation and immigration. I was honoured in March 2006 with the Sidney B. Linden Award from Legal Aid Ontario for my commitment to helping low-income people in Ontario. I was recently notified that I will be awarded the G. Arthur Martin Medal by the Criminal Lawyers Association in October of this year.

2. I am the Co-President of the Association in Defence of the Wrongly Convicted (hereafter "AIDWYC"), which since 2000 has been incorporated as a non-profit corporation. Prior to

AIDWYC's incorporation, I was a member of the Board of Directors since 1994. I regularly chair Board meetings, serve as a co-chair of AIDWYC's Executive Committee, and maintain supervision of AIDWYC's administrative staff. I have assisted in the drafting of policy papers and have reviewed facta and legal submissions generated by AIDWYC. As such, I have knowledge of the matters set out below.

The Association in Defence of the Wrongly Convicted (AIDWYC)

3. AIDWYC is a national public interest organization dedicated to preventing and rectifying wrongful convictions. AIDWYC has two broad objectives, first, eradicating the conditions that give rise to miscarriages of justice and second, participating in the review and, where warranted, correction of wrongful convictions. AIDWYC is an entirely voluntary, non-profit association dedicated to assisting factually innocent persons who have been wrongly convicted.
4. AIDWYC was founded in 1993. It is the direct successor of the Justice for Guy Paul Morin Committee, a grass-roots organization that came into existence in support of Guy Paul Morin, immediately following his wrongful conviction for first-degree murder in the summer of 1992. When Guy Paul Morin was released on bail in February 1993, pending his appeal, this Committee reconstituted itself as AIDWYC. The committee consciously decided to broaden its perspective and to act in defence of all persons who had been wrongly convicted.
5. AIDWYC's Honourary President is the Honourable Gregory T. Evans, the former Chief Justice of the Supreme Court of the Province of Ontario and one of the three Commissioners who presided over the "Royal Commission on the Donald Marshall Jr. Prosecution". The directors of AIDWYC include lawyers, academics and other interested member of the public. Several of

the directors have been instrumental in the exoneration of Canadians convicted of homicides of which they were factually innocent.

6. AIDWYC has sponsored a number of international conferences including the 1994 conference, “Innocents Behind Bars”, (co-sponsors of which included the Canadian Bar Association – Ontario, the Church Council on Justice and Corrections, the Quaker Committee on Jails and Justice, the John Howard Society and the Mennonite Central Committee Canada), the 1996 conference, “Justice on Trial: The Wrongful Conviction of Guy Paul Morin”, the 1996 conference “Coffin’s Legacy: Keeping the Death Penalty at Bay”, the November 2002 conference “Innocents Behind Bars 2002” and the June 2005 conference in St. John’s Newfoundland, “Between a Rock and a Hard Place”. AIDWYC was also a co-sponsor of the 1998 conference in Chicago, Illinois, “The National Conference on Wrongful Convictions and the Death Penalty”. AIDWYC sponsored in March 2005 “An Evening with Death Row Survivor: Juan Roberta Melendez Colon.”

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

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

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

10. In March 2003, the Government of Newfoundland and Labrador convened a public inquiry into various issues arising from the wrongful conviction of three persons within a decade in that province: Gregory Parsons, Ronald Dalton and Randy Druken. AIDWYC was invited to participate in a special hearing concerned with the interpretation and scope of the Commission’s mandate and the resolution of constitutional questions raised by its terms of reference. AIDWYC’s position on these issues was largely adopted by the Commissioner.

AIDWYC was not granted standing at the systemic phase of the inquiry. However, only two witnesses were heard during that phase, one of them was one of our Directors, James Lockyer.

11. On December 1, 2003, the Government of Saskatchewan convened a public inquiry into the wrongful conviction of David Milgaard. AIDWYC was granted full standing by the Commissioner at the Inquiry. AIDWYC's final submissions to the Inquiry dealt primarily with systemic issues surrounding the s 696 process in the Criminal Code. The Commissioner is currently preparing his final report.
12. AIDWYC was granted full standing at the Commission of Inquiry convened in Manitoba into the wrongful conviction of James Driskell. The final Report of Commissioner Patrick Lesage was released in January 2007. One of our directors, James Lockyer, appeared as counsel for Mr. Driskell. Another of our directors from Newfoundland, Jerome Kennedy, appeared as counsel for AIDWYC.
13. As a result of issues that arose during the Driskell Inquiry, the Government of Manitoba has appointed the Honourable Roger Salhany, former Justice of the Ontario Superior Court, to conduct an external review of cases prosecuted to conviction by George Dangerfield, in which the convicted person claims that he/she was wrongly convicted. Mr. Dangerfield was the prosecutor involved in the cases of James Driskell and Thomas Sophonow. AIDWYC has been asked to assist the Honourable Roger Salhany in his work by providing information, making submissions and such other support as may be requested. To date, we have identified nine cases that fit into his mandate.

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

15. In 1998, representatives of AIDWYC met with then federal Minister of Justice, the Honourable Anne McLellan, to discuss AIDWYC’s proposals for amendments to the Criminal Code by which wrongful convictions may be more effectively addressed and remedied. The discussions focused primarily on reforms to s.686 (the scope of the review powers of Provincial Courts of Appeal in criminal cases) and s.690 of the *Criminal Code of Canada*.

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

17. On February 10, 1999 four directors of AIDWYC met with then Attorney General of Ontario, the Honourable Charles Harnick, and several of his senior advisers, to discuss the legislative

reforms mooted in the section 690 consultation paper issued by the federal Department of Justice. Parallel approaches were made to the Attorneys General of several other provinces.

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

19. AIDWYC has also intervened in a number of cases involving miscarriages of justice. In the spring of 1999, AIDWYC applied for and was granted leave to intervene, in writing and by way of oral submissions, before the Supreme Court of Canada in the case *R. v. Biniaris*, *R v Molodowic* and *R. v G.(A)*. All three cases dealt with the scope of "unreasonable verdict" as a ground of appeal as set out in s. 686 (1) (a)(i) of the *Criminal Code*, and related jurisdictional issues affecting rights of appeal. The substantive and jurisdictional positions advanced by AIDWYC are reflected in the Court's reasons as reported in *R. v. Biniaris*, [2001] 1 S.C.R. 381. In 2002, AIDWYC was granted leave to intervene in the Supreme Court of Canada in *Odhayji v. Woodhouse*[2003] 3 S.C.R. 263, a case dealing with the tort of abuse of public office.

20. AIDWYC was granted intervenor status to make written and oral argument at the Court of Appeal for Ontario in the case of *Reynolds v. City of Kingston Police Services et al.* The Court's decision, released March 14, 2007, upheld the right of Louise Reynolds to pursue civil

action against Dr. Charles Smith with respect to his role as a public official investigating the death of Ms. Reynold's child.

21. AIDWYC was also granted leave to intervene and make written and oral submissions to the Supreme Court of Canada in the case of *Hill v. Hamilton Wentworth Regional Police Services et al.* The judgment is pending in that case which concerns this existence of the tort of negligent investigation.
22. AIDWYC has also played an important role in advocating for persons who have been wrongly convicted. AIDWYC receives applications for assistance from wrongful convictions claimants on a routine basis from across Canada. Many of these are assigned to volunteer counsel across the country to review and assess. AIDWYC actively prosecutes the claims of those who it accepts as having been wrongly convicted, including the following:
 - (a) David Milgaard (Saskatchewan), whose ultimate vindication, through DNA testing in England, was assisted by AIDWYC's crucial negotiations with representatives of the federal Department of Justice. AIDWYC has been associated with David Milgaard's pursuit of justice since its inception. Joyce Milgaard, David Milgaard's mother, was one of AIDWYC's founding members.
 - (b) Gregory Parsons (Newfoundland), who had been wrongly convicted of the second degree murder of his mother. After a successful appeal and Mr. Parson's subsequent vindication as a result of DNA evidence, and, over the objection of the defence (who sought an acquittal), the Crown entered a stay of prosecution at Mr. Parson's retrial.

Following an application brought by AIDWYC and Mr. Parsons' counsel, the Newfoundland Supreme Court set aside the stay and substituted an acquittal. A third party later pleaded guilty to the murder.

- (c) Clayton Johnson (Nova Scotia), whose s. 690 application, prepared by AIDWYC counsel, led to him being granted an appeal of his murder conviction. Based on the fresh evidence collected by AIDWYC and on representations by AIDWYC counsel, Mr. Johnson was granted bail pending the determination of that appeal. Subsequently, on February 18, 2002, Mr. Johnson was granted a new trial by the Court of Appeal. That same day, he appeared before the Chief Justice of Nova Scotia where Mr. Johnson was finally acquitted.
- (d) James Driskell (Manitoba) was represented by AIDWYC counsel in securing his release on bail after 15 years of imprisonment, pending ministerial determination of his AIDWYC- prepared s 696.1 application. The Minister of Justice concluded that a miscarriage of justice likely occurred and directed a new trial, which trial was immediately stayed by the Attorney General. The Inquiry into Mr. Driskell's wrongful conviction has since been completed.
- (e) Steven Truscott (Ontario) AIDWYC prepared and filed a 700 page section 690 application on behalf of Steven Truscott. As a result, Mr. Truscott's case was referred by the then Minister of Justice to the Court of Appeal of Ontario. The appeal has been argued and judgment is reserved. Mr. Truscott's lawyers include two AIDWYC

directors, James Lockyer and Marlys Edwardh, and two AIDWYC members, Hersh Wolch and Phil Campbell.

23. AIDWYC is currently engaged in remedying the wrongful convictions for homicide of a number of other Canadians including Kyle Unger (Manitoba), Roméo Phillion (Ontario), and most notably Williams Mullins-Johnson (Ontario), and Sherry Robinson (Ontario), both of whom are included in cases falling under this Inquiry's mandate.
24. Since its inception, AIDWYC has maintained ongoing association with a number of similar bodies in other jurisdictions; in particular, in the United States, with Centurion Ministries in New Jersey, with the Southern Centre for Human Rights in Atlanta, Georgia, with the Alliance for Prison Justice in Boston, Massachusetts and the Center for Wrongful Convictions and the Death Penalty in Chicago, Illinois and the Innocence Project at Cardozo School of Law in New York.
25. AIDWYC also co-operates on a routine basis with the Innocence Project (Canada), a student-resourced organization with similar goals that is based at Osgoode Hall Law School at York University in Toronto and with which AIDWYC participated in the s. 696.1 application filed on behalf of Romeo Phillion. AIDWYC has also developed professional relationships with several individual counsel and academics in the United States and in the United Kingdom who have worked on cases of notorious miscarriages of justice.
26. AIDWYC has hosted visiting judges, lawyers and academics from a number of foreign jurisdictions, including several European countries, Australia and China. As well, the

Department of External Affairs has consulted with AIDWYC in cases involving suspect convictions of Canadians in foreign jails.

27. On May 28, 2003, AIDWYC was awarded the Distinguished Service Award by Pro Bono Ontario

AIDWYC's Interest In The Inquiry Into Pediatric Forensic Pathology In Ontario

28. AIDWYC's interest in participating in this Inquiry is to identify and address systemic issues that have arisen in respect of pediatric forensic pathology in this province, with a view to making positive recommendations to the Inquiry. The unique experience and expertise of AIDWYC, in addressing systemic causes of wrongful convictions and corrective measures to avoid wrongful convictions, we believe will permit it to make a valuable contribution to the disposition of the questions before this Inquiry. AIDWYC will address the issues from a policy-based perspective that is distinct from the submissions which are likely to be advanced on behalf of other institutional players and individuals.

29. I have reviewed the Order in Council establishing this Inquiry and it is my opinion that AIDWYC can materially contribute to this Inquiry due to AIDWYC's long-standing involvement with the issues addressed in the Order. In particular, AIDWYC has advocated and continues to advocate on behalf of a number of individuals whose cases were based on Dr. Smith's evidence. In addition, AIDWYC has participated in the review conducted by the Chief Coroner for Ontario and has unique knowledge of the subject matter of this Inquiry, both as regards to individual cases and the systemic issues that are likely to be raised in the Inquiry.

AIDWYC's Position On Funding

30. AIDWYC, since its inception, has been a non-profit organization dependent on voluntarism and charity to achieve its objects. Until late-2003, AIDWYC received no grants or provincial or federal funding. Our annual budget was exclusively the product of direct donations and the income generated by benefit concerts and talks, auctions and the sale of tickets to our conferences. In some cases, provincial authorities have granted legal aid to wrongful conviction claimants "adopted" by AIDWYC; however, this funding goes to the counsel retained by the individual claimant and never to AIDWYC. All of AIDWYC's review work is conducted by counsel on a *pro bono* basis.
31. As of July 2003, AIDWYC was awarded a grant by the Law Foundation of Ontario to assist us in expanding our *pro bono* activities and generating long-term support from other sponsors. The grant was based on a line-by-line proposal, for which we are accountable on a quarterly basis to the Law Foundation. Thanks to this grant renewed from time to time, we now have two paid employees; an Executive Director and a Director of Client Services, both of whom fulfill administrative functions. Apart from these two administrators, the only persons paid by AIDWYC were and remain persons such as private investigators and forensic experts essential to the investigation and prosecution of wrongful conviction claims. None of the Law Foundation grant is dedicated to the payment of counsel or for representation of AIDWYC's interests at public inquiries, nor would the Law Foundation authorize such expenditures.
32. In the past, AIDWYC's participation at the Public Inquiries into wrongful convictions has been funded by the province which convened the inquiry. AIDWYC will fully comply with any accounting protocol established by the Commission.

33. AIDWYC is not able to contribute its own funds to retaining counsel for the Inquiry. Absent counsel funding from the Commission, AIDWYC will not be able to participate in the conduct of this important Public Inquiry.

34. I make this affidavit in support of AIDWYC's application for standing and funding before this Inquiry and for no other or improper purpose.

SWORN before me in the City of)
Toronto, in the Province of)
Ontario, this 13th day of July, 2007.)
E. Under)
A Commissioner, etc.)

Paul Copeland

Paul Copeland

**IN THE MATTER OF AN APPLICATION BY THE
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AFFIDAVIT OF PAUL COPELAND

**MOTION FOR STANDING AND FUNDING ON
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**Elisabeth Widner
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