

## **An Application for Ministerial Review: Brian Anderson's Battle for Exoneration**

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Brian Anderson was only 18 years old when he became a suspect of an incident involving a brutal beating and death in Winnipeg, Manitoba. Moving into Winnipeg from Fairford Reserve just one year prior, Brian was raised as the eldest son and caretaker for his family. Brian had no previous criminal involvement. (1) On the night in question, a witness recalled observing *four men with long hair* near the suspected murder scene. And without delay the Winnipeg City Police focused their investigation on four young Indigenous men: Brian Anderson, Allan Woodhouse, Clarence Woodhouse and Russell Woodhouse. Brian Anderson's life was forever changed.

On the 17<sup>th</sup> of July 1973 in the City of Winnipeg, Manitoba, the accused stood charged of the unlawful death of Ting Fong Chan. Chan, 40 years old at the time, was left for dead after enduring a brutal beating in the downtown region of Winnipeg, Manitoba. Upon arrest, Brian Anderson recalls his original interview with police to be rather misleading. Brian was told by police officers that *they had witnesses*, that the other boys had admitted to the offence, and stated that Brian was there with them. (2) Throughout this interview Brian recalls signing an unknown document, which to his knowledge at the time addressed his possessions, on him at the time of his arrest. This document was later found to be Brian's confession- produced by officers for Brian to sign as acknowledgement of his involvement. Brian, who struggled with English and had about a grade 6 education, did not have a lawyer present when he signed this confession. (3)

This confession became largely the only evidence relied upon by the Crown- the Crown did not present any physical evidence connecting Brian to the incident, and all evidence presented by the Crown witness was directly contradicted by defence evidence.(4) However, in March of 1974 a jury found all four accused to be guilty in the unlawful death of Chan.(5) Three of the accused were ultimately convicted on a charge of murder punishable by life in prison.(6)

Brian Anderson claimed that he had an alibi for the evening of July 17<sup>th</sup>, 1973, his grandfather. But Brian's grandfather was never called to authenticate his whereabouts.

Crown Counsel in this matter, J. G. Dangerfield, has been involved in four previous wrongful convictions, and is involved in ongoing matters currently pending review.

On November 7<sup>th</sup> and 8<sup>th</sup>, 1974 counsel for Brian Anderson, Allan Woodhouse, Clarence Woodhouse and Russell Woodhouse argued before the Manitoba Court of Appeal that the preceding court failed to address the issue of voluntariness with respect to the statements relied upon by the Crown. (7) In their decision, the Court stated that the trial Judge had proficiently addressed the issue of voluntariness, and ultimately dismissed the appeal.

There was a lengthy voir dire concerning the admissibility of the confessions. Evidence was given by the Crown and by the defence. The learned trial Judge made it abundantly clear that the onus of proof of voluntariness rested upon the Crown. His ruling on the question was made only after a careful analysis of the facts. He reached the conclusion that the Crown had

satisfied the onus and that the confessions were voluntary and should be admitted in evidence. [...]

Despite this conclusion, Brian Anderson has remained adamant of his innocence. In fact, when CTV's W5 conducted their own independent investigation in 1978, named the *Brian Anderson Confession*, investigators found that Brian incessantly denied any involvement- throughout psychiatric evaluations, inmate reports, interviews with the Warden, and in conversation with Brian's direct educational aid. (8) One report authored by the Warden of the Stoney Mountain institution described Brian as being obsessed with his innocence.

Brian, without a platform to validate his word, remained in custody for about a decade. Throughout this time he was described as being a model prisoner, he enrolled in educational courses including high school certification and college courses and eventually obtained training in a commercial trade. (9) Brian is now released on parole, where he is bound to live by rigorous conditions. Brian has maintained his innocence now for nearly 40 years.

Innocence Canada is now involved in Brian Anderson's case. In their opinion, "there is no way that anyone can look at this conviction and say that Brian has had a fair trial." (10) That upon review it is their opinion that it is not only certain pieces of evidence that are cause for concern in this matter, but that systemic racism played a noteworthy role. (11) Innocent Canada argues that racism was a clear-cut influence in this case, an influence that significantly impacted and impaired the investigation by the Winnipeg City Police, and consequently informed Brian's conviction. "[This is a] classic example of police tunnel vision." (12)

In January 2019 Innocence Canada filed a section 696.1 application to the Minister of Justice for Ministerial Review. A section 696.1 application must function to ensure that a miscarriage of justice has not occurred, but not in such a way to subvert past, lawful court determinations. The Government of Canada states that any contemplation under s. 696.1 is extraordinary in nature, and may occur only when all other mechanisms for appeal have been exhausted.(13) An application will not allow the Minister to undermine a previous decision with their own personal opinion, it will not function as a supplementary avenue of appeal, and it must be based upon new, significant, and reliable matters, not considered in past decisions.(14) An application to the Minister for review does not require an accused person to demonstrate their innocence, rather, "the applicant will be expected to demonstrate, [...] that there is a reasonable basis to conclude that a miscarriage of justice likely occurred." (15)

696.1 (1) An application for ministerial review on the grounds of miscarriage of justice may be made to the Minister of Justice by or on behalf of a person who has been convicted of an offence under an Act of Parliament or a regulation made under an Act of Parliament or has been found to be a dangerous offender or a long-term offender under Part XXIV and whose rights of judicial review or appeal with respect to the conviction or finding have been exhausted.(16)

Brian Anderson's matter awaits review. The Minister advises that priority is usually allocated to applications and matters where the accused person is in custody. The Minister has advised that Brian's matter may be pending review for a number of months, or years. (17)

1. *R v Anderson*, [1973] 1 W.W.R. 764, 1973 CarswellMan 88, at 2.
2. “A convicted Manitoba murderer's 45-year fight to clear his name”, (26 January 2019), online: *CTVNews* <https://www.ctvnews.ca/w5/a-convicted-manitoba-murderer-s-45-year-fight-to-clear-his-name-1.4269043>
3. “A convicted Manitoba murderer's 45-year fight to clear his name”, (26 January 2019), online: *CTVNews* <https://www.ctvnews.ca/w5/a-convicted-manitoba-murderer-s-45-year-fight-to-clear-his-name-1.4269043>
4. “A convicted Manitoba murderer's 45-year fight to clear his name”, (26 January 2019), online: *CTVNews* <https://www.ctvnews.ca/w5/a-convicted-manitoba-murderer-s-45-year-fight-to-clear-his-name-1.4269043>
5. “A convicted Manitoba murderer's 45-year fight to clear his name”, (26 January 2019), online: *CTVNews* <https://www.ctvnews.ca/w5/a-convicted-manitoba-murderer-s-45-year-fight-to-clear-his-name-1.4269043>
6. *R v Anderson*, [1973] 1 W.W.R. 764, 1973 CarswellMan 88, at 1.
7. *R v Anderson*, [1973] 1 W.W.R. 764, 1973 CarswellMan 88, at 1.
8. “A convicted Manitoba murderer's 45-year fight to clear his name”, (26 January 2019), online: *CTVNews* <https://www.ctvnews.ca/w5/a-convicted-manitoba-murderer-s-45-year-fight-to-clear-his-name-1.4269043>
9. “A convicted Manitoba murderer's 45-year fight to clear his name”, (26 January 2019), online: *CTVNews* <https://www.ctvnews.ca/w5/a-convicted-manitoba-murderer-s-45-year-fight-to-clear-his-name-1.4269043>
10. “A convicted Manitoba murderer's 45-year fight to clear his name”, (26 January 2019), online: *CTVNews* <https://www.ctvnews.ca/w5/a-convicted-manitoba-murderer-s-45-year-fight-to-clear-his-name-1.4269043>
11. “A convicted Manitoba murderer's 45-year fight to clear his name”, (26 January 2019), online: *CTVNews* <https://www.ctvnews.ca/w5/a-convicted-manitoba-murderer-s-45-year-fight-to-clear-his-name-1.4269043>
12. “A convicted Manitoba murderer's 45-year fight to clear his name”, (26 January 2019), online: *CTVNews* <https://www.ctvnews.ca/w5/a-convicted-manitoba-murderer-s-45-year-fight-to-clear-his-name-1.4269043>
13. Department of Justice. “Applications for Ministerial Review – Miscarriages of Justice Annual Report 2013 Minister of Justice”, (13 September 2018), online: *Bill C-36, Protection of Communities and Exploited Persons Act* <https://www.justice.gc.ca/eng/rp-pr/cj-jp/ccr-rc/rep13-rap13/p1.html>
14. Department of Justice. “Applications for Ministerial Review – Miscarriages of Justice Annual Report 2013 Minister of Justice”, (13 September 2018), online: *Bill C-36, Protection of Communities and Exploited Persons Act* <https://www.justice.gc.ca/eng/rp-pr/cj-jp/ccr-rc/rep13-rap13/p1.html>
15. Department of Justice. “Applications for Ministerial Review – Miscarriages of Justice Annual Report 2013 Minister of Justice”, (13 September 2018), online: *Bill C-36, Protection of Communities and Exploited Persons Act* <https://www.justice.gc.ca/eng/rp-pr/cj-jp/ccr-rc/rep13-rap13/p1.html>
16. *Criminal Code*, RSC (1985) c. C-46 at s. 696.1.
17. “A convicted Manitoba murderer's 45-year fight to clear his name”, (26 January 2019), online: *CTVNews* <https://www.ctvnews.ca/w5/a-convicted-manitoba-murderer-s-45-year-fight-to-clear-his-name-1.4269043>