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THE ASSOCIATION IN DEFENCE OF THE WRONGLY CONVICTED

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## **FOR IMMEDIATE RELEASE**

### **Glen Assoun Released from Prison Pending Federal Review of 1999 Murder Conviction**

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A significant legal and humanitarian development has taken place today in a case where the Association in Defence of the Wrongly Convicted (AIDWYC) believes a terrible miscarriage of justice occurred.

Glen Assoun, a 59-year-old Nova Scotia man, was granted bail pending the results of a continuing investigation by a federal Department of Justice review body into serious questions surrounding his conviction.

Mr. Assoun has spent over 16 years in prison for the murder of his girlfriend, Brenda Way - a murder AIDWYC firmly believes he did not commit.

Today's bail decision was made in Halifax by the Honourable Mr. Justice James Chipman. It followed a proceeding attended by AIDWYC counsel and the Crown.

His Lordship ruled that Mr. Assoun should be released under carefully crafted conditions to reside with family members pending the outcome of the federal investigation.

While several obstacles remain before Mr. Assoun can be exonerated and his name cleared, his release on bail holds great symbolic and practical significance in the battle to restore his innocence.

It means that sufficient doubt has been raised about Mr. Assoun's conviction to warrant his conditional freedom while the court system delves back into the evidence in his case.

AIDWYC is very pleased with the decision and believes the federal review will bear out the association's rigorous assessment of the case over the course of several years.

Mr. Assoun would become the 19<sup>th</sup> person to be exonerated since AIDWYC came into existence in 1993.

Since the day he was arrested, Mr. Assoun has protested his innocence.

"I never unpacked my suitcase in prison because I knew I was innocent," Mr. Assoun said. "I am looking forward to finally seeing my grandchildren for the first time."

Sean MacDonald, the AIDWYC lawyer who represents Mr. Assoun in his quest for justice says there was never any doubt in his mind that his client is innocent.

"From the very first moment I met Glen he has passionately defended his innocence. This is a man who has been denied a quality of life, 16 years he will never get back. Today Glen is one step closer to proving he did not commit this crime, and one day closer to spending the rest of his life living as a free man."

Phil Campbell, co-counsel with Sean MacDonald, member of AIDWYC's Canadian Case Assessment Group (CCAG) and a prominent appeal lawyer, said that the prosecution was seriously marred by error.

"I believe this will someday be a case study in how justice can be derailed," Mr. Campbell said. "For today, it is an enormous relief to have Glen free and with his family, where he belongs. He has been steadfast, patient and brave. It's truly a privilege to work for him."

James Lockyer, AIDWYC's Senior Counsel and a founding Director of AIDWYC, provided guidance in the review of the case. He said that the organization does not move forward with a case unless it is convinced that a defendant is truly innocent.

"The new evidence is compelling," Mr. Lockyer said. "It shows that the prosecution's case had no credibility at all and proves Glen did not murder Brenda Way. It also raises disturbing questions about how such a serious failure of justice came to occur."

The Court imposed a publication ban on proceedings at the bail hearing and a sealing order on material that was filed based on concerns about the effect of publicity on witnesses in the continuing investigation and future court proceedings.

As a result, AIDWYC is unable to describe the basis for its application to the Minister or the reasons for the Court's order to grant bail. However, a backgrounder accompanying this release attempts to provide some basic facts without violating the court orders.

AIDWYC is hopeful that when the Minister's investigation is concluded, evidence AIDWYC believes clearly establishes Mr. Assoun's innocence will become publicly available.

***Learn More about AIDWYC:***

- Address: 111 Peter Street, Suite 408, Toronto, Ontario, M5V 2H1
- Website: [www.aidwyc.org](http://www.aidwyc.org)
- *Conviction*, the AIDWYC Blog: [www.aidwyc.org/blog](http://www.aidwyc.org/blog)
- Facebook: [www.facebook.com/aidwyc](http://www.facebook.com/aidwyc)
- Twitter: @AIDWYC
- Instagram: @AIDWYC
- Youtube: <http://www.youtube.com/watch?v=TGD2PA2HLLQ>

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*November 24, 2014*

## Backgrounder on Glen Assoun's Case and What Lies Ahead

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On September 18, 1999, local newspapers reported that immediately upon being convicted of second degree murder Glen Assoun said “it’s official that I’m wrongfully imprisoned right now. The jury made a mistake.” Fifteen years later his words are being taken seriously.

The case of *Regina v. Glen Assoun* featured a significant amount of evidence that has since come into serious question as a result of meticulous re-examination by the Association in Defence of the Wrongly Convicted (AIDWYC). Fully supporting Mr. Assoun’s claims of innocence, AIDWYC submitted an application on his behalf to the Federal Minister of Justice in April 2013.

The Federal Department of Justice has expressed that there may be a basis to conclude that a miscarriage of justice likely occurred. The Department’s investigation is ongoing.

A publication ban on proceedings at the bail hearing and a sealing order on the material that was filed prohibits any party from disseminating the vast majority of the evidence in the case. The prohibitions also cover significant, new evidence that has come to light.

Abiding by these court orders, AIDWYC can only relay a summary of the case as it exists on record:

On November 12, 1995, shortly after 7:00a.m., a passerby discovered the partially clothed body of Brenda LeAnne Way behind an apartment building in Dartmouth, Nova Scotia. Ms. Way, 28, had been beaten, stabbed and cut across the throat.

More than two years after the tragedy, Ms. Way’s boyfriend, Glen Assoun, was arrested and charged with first-degree murder. Having relocated to British Columbia, Mr. Assoun was returned to Halifax amid a great deal of publicity.

Mr. Assoun opted to represent himself at his 36-day trial despite having no legal training and a grade six education.

His trial commenced on June 2, 1999. The key question at issue: the identity of the perpetrator. Notwithstanding extensive efforts by police and forensic scientists, the Crown put forward no physical evidence to link Mr. Assoun to the murder.

Mr. Assoun supplied alibi evidence in his own defence. He also questioned the credibility of various witnesses whose testimony lay at the heart of the prosecution.

On September 17, 1999, a jury convicted Mr. Assoun of second-degree murder after two and a half days of deliberation. Mr. Assoun was ultimately sentenced to life imprisonment with no possibility of parole for eighteen and a half years.

He appealed his conviction to the Nova Scotia Court of Appeal. One of the grounds of appeal that was advanced focused on fresh evidence related to alternative suspects. However, the Court of Appeal denied Mr. Assoun's application to admit fresh evidence and upheld his conviction.

On September 4, 2006, the Supreme Court of Canada declined to hear a further appeal.

Throughout his ordeal, Mr. Assoun has consistently asserted his innocence. In keeping with this contention, he turned to AIDWYC, requesting that his conviction be adopted as a potential wrongful conviction.

Prior to adopting a case, AIDWYC conducts a rigorous review of all the evidence used at trial as well as any fresh evidence that is capable of shedding light on the reliability of the conviction. In order to succeed, the review must result in a compelling belief that the applicant is innocent.

In virtually any murder case, evidence is gruesome, complex and heart wrenching. While the facts and circumstances of each case are unique, previous wrongful conviction cases have exhibited similar themes that crop up time and again.

In legendary wrongful conviction cases ranging from Donald Marshall Jr. and David Milgaard to Clayton Johnson and Steven Truscott, assessors for AIDWYC and the federal Department of Justice carefully pored over conflicting or dubious testimony, mistakes by police or prosecutors, and erroneous eyewitness reports.

After careful consideration of this type of material, Mr. Assoun's case was adopted by AIDWYC on September 23, 2010.

On April 18, 2013, AIDWYC took the next step in the exoneration process, filing an application for Ministerial Review under s. 696.1 of the *Criminal Code*. This provision allows convicted persons to request the Federal Minister of Justice to review their conviction on the basis that it likely represents a miscarriage of justice. The AIDWYC submission included affidavits from witnesses who testified at Mr. Assoun's trial, as well as new witnesses capable of providing fresh evidence.

The initial Ministerial Review is conducted by the department's Criminal Conviction Review Group (CCRG). These reviews are intensive and, on occasion, result in a finding that sufficient evidence of a miscarriage of justice exists to warrant the Minister giving it personal attention.

In early September, 2014, the CCRG released its report and Preliminary Assessment of the case to Mr. Assoun and the Nova Scotia Public Prosecution Service in order to obtain feedback. Due to strict conditions of confidentiality, all that can be revealed is that the CCRG found there "may be a reasonable basis to conclude that a miscarriage of justice likely occurred".

The report was forwarded to the Minister of Justice by the CCRG. At some future point, the Minister will reach a final decision on whether there is a reasonable basis to conclude that a miscarriage of justice likely occurred. Should he determine this was the case; the Minister has the prerogative of either referring the case to the Nova Scotia Court of Appeal as an appeal or directing it to the Nova Scotia Supreme Court for a new trial.

Going back to today's dramatic development, based on a series of cases involving previous AIDWYC clients, the law now allows a person who has made an application to the Minister to seek bail if the Minister announces a favourable conclusion after his Preliminary Assessment.

Accordingly, AIDWYC filed an application for bail with the Nova Scotia Supreme Court last month, citing new evidence in the case as well as the CCRG's Preliminary Assessment.

AIDWYC is currently free to do little more than express its strong hope that the Minister's thorough and objective investigation to date will continue and his decision will lead to the quashing of Mr. Assoun's conviction. AIDWYC is also hopeful that the evidence it has relied upon to advocate for Mr. Assoun's innocence will become available to the public and the press after the conclusion of the Minister's investigation.

AIDWYC is committed to providing Mr. Assoun with legal and personal support throughout that process.

***Learn More about AIDWYC:***

- Address: 111 Peter Street, Suite 408, Toronto, Ontario, M5V 2H1
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- Facebook: [www.facebook.com/aidwyc](http://www.facebook.com/aidwyc)
- Twitter: @AIDWYC
- Instagram: @AIDWYC
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*November 24, 2014*

## Glen Assoun walks out of prison after 16 years!

On November 24th, 2014, after 16 years imprisoned for a crime he did not commit, Glen Assoun was granted bail and was able to leave the confines of prison and reunite with his family.

*"I never unpacked my suitcase in prison because I knew I was Innocent"* Glen Assoun



Glen Assoun meets his grandson on November 24, 2014

Mr. Assoun was convicted of murdering his girlfriend, Brenda Way - a murder AIDWYC firmly believes he did not commit. While several obstacles remain before Mr. Assoun can be exonerated and have his name cleared, his release on bail holds great symbolic and practical significance in the battle to establish his innocence. His release establishes that sufficient doubt has been raised about Mr. Assoun's conviction to warrant his conditional freedom while the court system delves back into the evidence in his case.

*"It is a good day because an innocent man has been allowed to walk out of prison"* said Sean MacDonald, one of Mr. Assoun's defence lawyers.

Another of Mr. Assoun's lawyers stated that *"I believe this will someday be a case study in how justice can be derailed"* Mr. Campbell said. *"For today, it is an enormous relief to have Glen free and with his family, where he belongs. He has been steadfast, patient, and brave. It's truly a privilege to work for him."*



Glen Assoun reuniting with his family on November 24, 2014

AIDWYC will continue to fight for Mr. Assoun's exoneration and we wish to express our gratitude to all of our supporters as we could not do this work without you. If you would like to read more about this story, please visit our website at [www.aidwyc.org](http://www.aidwyc.org)

## **Glen Eugene Assoun granted bail as murder conviction reviewed**

**Man serves 16 years for killing ex, but conviction could have been a miscarriage of justice**

CBC News Posted: Nov 24, 2014 7:28 AM AT Last Updated: Nov 25, 2014 9:58 AM AT



*Glen Assoun hugs a supporter after leaving the Supreme Court in Halifax on Monday. (CBC)*

Glen Eugene Assoun trembled on the brink of tears Monday as a judge granted him bail after serving more than 16 years behind bars for a murder he and his lawyers say he didn't commit.

The Nova Scotia man was given a life sentence for killing his former girlfriend 19 years ago, but federal government officials are now probing a possible miscarriage of justice in the case.

“I’m an innocent man,” Assoun said outside court. “I lost my freedom and my liberty in this building for something I didn’t do. I came here today and I had my liberty restored. It’s a great day for me.”

Assoun, 59, was accompanied in Nova Scotia Supreme Court in Halifax by three lawyers from the Association in Defence of the Wrongly Convicted — Philip Campbell, Sean MacDonald and James Lockyer.

*‘It’s a good day because an innocent man has been allowed to walk out of prison.’ - Sean MacDonald, defence lawyer*

Campbell told reporters outside court that the evidence for the conviction was “insubstantial and deeply flawed.”

“It is more than one thing, and a lot of different things, converging on what we view as a conclusion of Glen Assoun’s innocence,” he said.

“One of the things that the evidence establishes is a reasonable basis for concluding that there was collusion among witnesses who were thought to be independent,” MacDonald said.

“It’s a good day because an innocent man has been allowed to walk out of prison,” he said, noting that Assoun has grandchildren he's never met. "It's been a horrific time for him in jail."

Lockyer said the case always had the "odour of a wrongful conviction."

"The criminal justice [system] screws up sometimes, and it screws up more often than people would like to believe," Lockyer said.

## **Family members post surety**

Justice James Chipman ordered Assoun's release from custody while his conviction is investigated by federal officials and reviewed by the federal minister of justice.

Conditions for Assoun's release include a ban on drinking alcohol. He must abide by a curfew and live with a family member, but he won't be living in Nova Scotia. Two family members agreed to post \$200,000 as surety.

He's not allowed to own or carry any weapons and is not allowed to contact any members of the family of his ex, Brenda Way, or witnesses in the case.

Crown lawyer Marian Fortune-Stone stressed that the preliminary assessment that indicates there may have been a miscarriage of justice has not been tested in court, but she agreed that Assoun's application for release had merit.

"He has a supportive family, two of whom have invited him to live in their home," Fortune-Stone said. "Mr. Assoun is not a risk to himself or others."

## **Violent 1995 slaying of Brenda Way**

Assoun was found guilty in 1999 of second-degree murder in Way's death. The 28-year-old woman's body was discovered in November 1995 behind a Dartmouth apartment building. Her throat was slashed and she had been badly beaten.

Way, a former prostitute, was cleaning up her life and living with her father when someone killed her, according to family members.

A bail hearing for Assoun had been scheduled for five days this week, but both Crown and defence lawyers agreed he should be released.

Assoun looks considerably different from footage taken 16 years ago following his arrest. He is now clean shaven, and wore a collared shirt and plaid V-neck sweater for his court appearance Monday.

Assoun has always maintained his innocence. Recently, a federal Department of Justice lawyer took a fresh look at the case and suggested there may have been a miscarriage of justice.

A preliminary review of the case was completed by the Justice Department's criminal conviction review group in August.



*Convicted killer Glen Assoun speaks to reporters Monday after being granted bail. Justice officials are now reviewing his conviction. (CBC)*

The author of that review, lawyer Mark Green, wrote: "The report is comprised of a detailed review of the case and my preliminary findings that there may be a reasonable basis to conclude that a miscarriage of justice likely occurred."

The review was sealed and details about its contents are banned from publication.

Dartmouth lawyer Don Murray represented Assoun during his preliminary inquiry and the early stages of his 1999 trial. Assoun then fired Murray and represented himself during the jury trial.

Following his conviction, Assoun was given an automatic life sentence and was ordered to serve 18.5 years behind bars before being eligible for parole.

His sentence included a provision that he couldn't apply for parole until he served 18 1/2 years in prison, which meant he would have been eligible to do so in 2016. But Campbell said it was far from certain that he would have been granted parole, given that he has not admitted to the crime.

## **Glen Assoun gets bail as murder case investigated**

THE CANADIAN PRESS  
Published November 24, 2014

A Nova Scotia man who was serving a life sentence for stabbing his ex-girlfriend to death walked from court on bail Monday, calling his release "surreal" and his time in the criminal justice system a nightmare.

“It’s been a long, terrible journey for me,” said Glen Eugene Assoun, who was granted bail after a preliminary review of his case said he may have been wrongfully convicted.

“I am an innocent man. I’ve always been innocent and I always will be innocent.”

Assoun was greeted by applause from his supporters as he left court after 16 years in prison, thanking his lawyers and the Association in Defence of the Wrongly Convicted for pursuing his case.

Walking away from the same building where he was convicted and sentenced was a moment that Assoun reflected on.

“I went through a murder trial by myself. I have a Grade 6 education and I had to defend myself. And it was a nightmare,” he said.

“I lost my freedom and my liberty in this building for something I didn’t do. And I come here today and I had my liberty restored. It’s a great day for me and I’m really overwhelmed right now, to tell you the truth.”

Assoun was convicted by a jury of second-degree murder and sentenced to life in prison in September 1999 for the slaying of Brenda Lee Anne Way.

The federal Justice Department said recently that a preliminary assessment shows there may have been a miscarriage of justice and a more in-depth investigation has been launched into his case. The preliminary assessment has been sealed by the court.

Assoun’s lawyer began reviewing the case eight years ago and persuaded the association for the wrongfully convicted to take it on in 2010.

Judge James Chipman of the Nova Scotia Supreme Court ruled Monday that Assoun should be released on a number of conditions including one that requires him to stay with family in an undisclosed province and another that will see him electronically monitored.

Assoun, 59, also has to relinquish his passport, meet with a parole officer weekly, report any intimate relationships he has with women and not contact Way’s family.

The Crown agreed with a submission from Assoun’s lawyers that he should be released on bail.

In his decision, Chipman said it is apparent that the Crown and defence put a lot of work into crafting a release order for Assoun.

“The court takes comfort in this,” Chipman said, adding that he is confident Assoun would surrender himself to authorities if asked to because he has “a significant stake” in the outcome of his proceedings.

Way’s partly clothed body was found behind an apartment building in the Halifax area on Nov. 12, 1995. The 28-year-old woman was stabbed six times and her throat was slashed.

Assoun, who was living in British Columbia when he was arrested more than two years later, has always said he was wrongfully convicted of the crime.

“He has not deviated from his assertion of innocence by a hair,” Philip Campbell, Assoun’s lawyer, said Monday.

Outside court, Campbell said he was struck by the scene that played out in court as Assoun listened to the judge tell him he would be allowed out on bail.

“He was, as you saw, very stoical in court but actually kind of trembling a bit and on the brink of tears. And as I read it at least, extremely grateful when the judge announced that he was going to get out and he was standing there and being addressed directly,” he said. “It was quite a moment for me.”

In addressing Assoun, Chipman said: “You have steadfastly maintained your innocence in the killing of Brenda Way. I wish you every opportunity as you continue in your quest to clear your name.”

Assoun represented himself at his trial after firing his lawyer three days into the court proceedings.

His sentence included a provision that he couldn’t apply for parole until he served 18 1 / 2years in prison, which meant he would have been eligible to do so in 2016. But Campbell said it was far from certain that he would have been granted parole, given that he has not admitted to the crime.

Crown lawyer Marian Fortune-Stone stressed that the preliminary assessment that indicates there may have been a miscarriage of justice has not been tested in court, but she agreed that Assoun’s application for release had merit.

“He has a supportive family, two of whom have invited him to live in their home,” Fortune-Stone said. “Mr. Assoun is not a risk to himself or others.”

Campbell said it was important for the court to know that the investigation launched by the federal justice minister after it received the preliminary assessment of his case could take years to complete.

When it is complete, federal Justice officials will make a recommendation to the minister, who will then have the option of ordering a new trial or referring the case back to the Nova Scotia Court of Appeal if he agrees there has been a miscarriage of justice. In such cases, Kerry Scullion of the Justice Department’s Criminal Conviction Review Group has said provincial Crowns rarely go ahead with a new trial if one is ordered, which means the convictions are typically quashed and the accused is presumed innocent.

## **Glen Assoun lawyers have long history with wrongful convictions**

Association in the Defence of the Wrongly Convicted has helped exonerate more than 20 Canadians

By Richard Cuthbertson, [CBC News](#) Posted: Nov 25, 2014 6:00 PM AT Last Updated: Nov 25, 2014 6:00 PM AT

In some of his first public comments as he tasted freedom following more than 16 years behind bars for a murder he says he didn't commit, Glen Assoun offered praise.

"I'd like to thank my lawyers," he said Monday, after emerging from a courthouse elevator in Halifax. "Sean MacDonald, he worked on my case for years, eight years. And he worked diligently hard to bring me to this glorious moment."

Assoun was granted bail on Monday as a special group within the federal Department of Justice probes whether he was wrongfully convicted of second-degree murder in the 1995 death of his ex-girlfriend Brenda Way.

The woman's body was found near a Dartmouth apartment building. Her throat was slashed and she was badly beaten.

Assoun, 59, is represented by lawyers from the Association in the Defence of the Wrongfully Convicted or AIDWIC, a non-profit organization founded in 1993 that has helped exonerate nearly two dozen Canadians imprisoned for crimes they did not commit.

The group is well-known for its successful track record of representing the wrongfully convicted, including David Milgaard, Steven Truscott, Guy Paul Morin and Clayton Johnson, the Shelburne, N.S., man found guilty of killing his wife in 1989.

The group's latest success came Tuesday when Justice Minister Peter MacKay referred the 1987 murder conviction of Frank Ostrowski to the Manitoba Court of Appeal after an investigation revealed new evidence pointing to a likely miscarriage of justice.

Threshold is factual innocence

AIDWIC receives plenty of requests for help from inmates across the country who have exhausted all appeals but claim they are innocent. However, with limited resources — lawyers are not paid and donations cover expenses — only a few cases are ever taken on by the group.



*Glen Assoun is represented by lawyers from the Association in the Defence of the Wrongfully Convicted. From left to right are Sean MacDonald, James Lockyer and Philip Campbell. (CBC)*

Lawyer Sean MacDonald has worked on Assoun's case for eight years, speaking to the incarcerated man almost every day by telephone.

"I can tell you that in close to eight years he's never held anything back and never said anything other than, 'I'm innocent,'" MacDonald said in an interview.

AIDWIC has a rigorous vetting process and it can be years before they decide to represent someone. Not only are trial and appeal records reviewed, AIDWIC hires private investigators to revisit the case and unearth new evidence.

All this is then brought to the board of directors at AIDWIC in Toronto. They discuss the details and decide if the association should take on the case.

"The threshold is whether, as an organization, we believe that the applicant is factually innocent," MacDonald said.

## **New evidence**

But there's another important component, said AIDWIC lawyer Philip Campbell. There must be compelling new evidence that can push the case forward.

"Sometimes we turn down applicants very regretfully," he said. "We just say, 'I'm sorry, we sympathize, we can see why you could easily be a victim of a miscarriage of justice. But we don't have any raw material to work with.'"

New evidence is important because it's a key trigger for the next stage: an application to the Criminal Conviction Review Group, a unit of the federal Department of Justice. Applications are rare — last year there were 13.

The Justice Department said applications under Section 696.1 of the Criminal Code "should ordinarily be based on new matters of significance that either were not considered by the courts or occurred or arose after the conventional avenues of appeal had been exhausted."

In Assoun's case, lawyers submitted boxes of evidence for consideration. The details remain secret as all new evidence is currently sealed and banned from publication.

But the review group's preliminary findings in the Assoun case concluded there is a possible miscarriage of justice in the case and a full investigation has been launched.

The case will ultimately be reviewed by the minister of justice, who has a handful of avenues: dismiss it, order a new trial, or send it to the court of appeal.



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THE ASSOCIATION IN DEFENCE OF THE WRONGLY CONVICTED

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***FOR RELEASE AT 9:00 A.M. EASTERN STANDARD TIME (EST)***

***TUESDAY, NOVEMBER 25, 2014***

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**AFTER 28 YEARS FRANK OSTROWSKI GETS THE CHANCE TO PROVE HE WAS WRONGLY CONVICTED**

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The Association in Defence of the Wrongly Convicted (AIDWYC) announces the referral of Frank Ostrowski's murder case back to the Manitoba Court of Appeal, 28 years after his conviction for the first degree murder of Robert Nieman.

Today the Minister of Justice, the Honourable Peter MacKay, announced that he was sending Frank Ostrowski's murder conviction back to the Manitoba Court of Appeal for it to be re-considered by the Court.

AIDWYC lawyers James Lockyer and Alan Libman will be appearing today before the Manitoba Court of Appeal at 10:00 a.m. to ask that Mr. Ostrowski be allowed to remain on bail until the Court of Appeal hears his appeal.

**A History of Mr. Ostrowski's Prosecution**

On September 24, 1986 two men broke into Mr. Nieman's residence in Winnipeg, laid in wait for him, and shot him several times when he came home. He died of his wounds a month later.

Mr. Ostrowski was accused of having hired the two men who committed the murder based on the evidence of a highly questionable witness named Matthew Lovelace. Ostrowski was convicted in May, 1987 after a trial before Mr. Justice Darichuk and a jury in the Court of Queen's Bench in Winnipeg.

In February, 1989, the Manitoba Court of Appeal dismissed his appeal and in June, 1990, the Supreme Court of Canada dismissed his further appeal.

Since then, Mr. Ostrowski has tried every avenue possible to challenge his conviction. He managed to convince the Winnipeg Police Department to review his case in 1994 but to no avail. He went to private investigators and lawyers for help.

Then, in 2002, he came to AIDWYC and asked us to help him with his case.

In 2005, we discovered that the Crown had made a deal with the witness Lovelace-in exchange for his testimony against Ostrowski, Lovelace's outstanding cocaine case would be dropped. In his trial testimony, Lovelace and the Crown prosecuting Mr. Ostrowski, George Dangerfield, flatly denied such an arrangement had been made.

AIDWYC also discovered that a highly significant police report, which helped show that Mr. Ostrowski was not involved in the crime, was withheld from the defence.

In May, 2009, AIDWYC filed an application with the Minister of Justice, referring to the prosecution of Mr. Ostrowski as a '**charade**'. In December, 2009, Mr. Ostrowski was released on bail while he awaited the Minister's decision. He had spent 23 years in prison since his arrest on the charge.

Mr. Ostrowski has remained on bail for the last 5 years.

### **The Minister's Decision**

The Minister has today ordered that Mr. Ostrowski's case go back to the Manitoba Court of Appeal for re-consideration. The Minister has this power under the Criminal Code.

This is a significant advance in Mr. Ostrowski's quest to secure justice in his case. This morning he will appear before a Judge of the Manitoba Court of Appeal to have his bail continued until his appeal is heard.

At his appeal, AIDWYC will present the evidence that it discovered in 2005 to the Court of Appeal.

Frank Ostrowski said today:

*“It is a big relief that my case is getting to be heard again in the appeal court. I think they will get it right this time.”*

James Lockyer, Senior AIDWYC Counsel, said:

*“It has been a long wait and the saga still has a way to go. The Minister has made the correct decision and it will be our task to convince the Manitoba Court of Appeal that Frank Ostrowski is the victim of a terrible miscarriage of justice.”*

Alan Libman, AIDWYC co-counsel, said:

*“There have been several wrongful convictions exposed in Manitoba in recent years and we believe that Frank Ostrowki’s should be added to the list. AIDWYC will carry on with his case for however long it takes.”*

After the court appearance this morning before the Court of Appeal, Mr. Ostrowski and his counsel will be at the courthouse to speak to the media. This will likely occur between 10:30 and 11:00 a.m.

***Learn More about AIDWYC:***

- Address: 111 Peter Street, Suite 408, Toronto, Ontario, M5V 2H1
- Website: [www.aidwyc.org](http://www.aidwyc.org)
- *Conviction*, the AIDWYC Blog: [www.aidwyc.org/blog](http://www.aidwyc.org/blog)
- Facebook: [www.facebook.com/aidwyc](http://www.facebook.com/aidwyc)
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November 25, 2014



*Frank Ostrowski seen in this file photo from 2009, speaks to reporters outside court after being granted bail. (CBC)*

## **Ottawa orders review of Frank Ostrowski murder conviction**

CBC News Posted: Nov 25, 2014 9:30 AM CT Last Updated: Nov 25, 2014 10:06 AM CT

Frank Ostrowski, who spent 23 years in jail before getting bail in 2009, is getting his murder conviction reviewed.

"I am satisfied there is a reasonable basis to conclude that a miscarriage of justice likely occurred in Mr. Ostrowski's 1987 conviction," federal Justice Minister and Attorney General of Canada Peter MacKay stated in a release from the government.

The Manitoba Court of Appeal will review the case but a date has not been given.

"It is a big relief that my case is getting to be heard again in the appeal court," Ostrowski, 65, said Tuesday in a statement issued by the Toronto-based Association in Defence of the Wrongly Convicted. "I think they will get it right this time."

Ostrowski, a former hairstylist who became a cocaine dealer, was convicted of ordering the 1986 murder of informant Robert Nieman, another drug dealer.

The Crown at the time said Nieman was killed out of fear he was set to tell police about Ostrowski's cocaine operation.

Ostrowski has always maintained his innocence but was convicted largely because of the testimony of Matthew Lovelace, a drug dealer who had cocaine charges against him dropped in exchange for his testimony.

Ostrowski's lawyers and the jury were never told about that arrangement and the witness told the trial he did not receive any favours in exchange for his testimony.

Ostrowski made appeals to the Manitoba Court of Appeal and sought leave to appeal to the Supreme Court of Canada. Both were rejected.

However, after the discovery of new information in the case, Ostrowski's lawyers submitted an application to the federal justice department for a review of the murder conviction.

In December 2009, a judge of the Manitoba Court of Queen's Bench granted Ostrowski bail pending a decision from MacKay.

"It has been a long wait and the saga still has a way to go," James Lockyer, senior lawyer with the Association in Defence of the Wrongly Convicted said in a statement on Tuesday.

"It will be our task to convince the Manitoba Court of Appeal that Frank Ostrowski is the victim of a terrible miscarriage of justice."

Ostrowski is the fourth Manitoba man convicted of murder to have his guilt thrown into doubt.

- James Driskell was convicted of killing a friend in Winnipeg in 1990 based partly on testimony from a witness who has given tens of thousands of dollars in expense payments as well as immunity on an arson charge. Driskell's conviction was quashed in 2006.
- Kyle Unger was convicted of killing a teenage girl at a rock festival in 1990, based partly on hair samples found at the scene. DNA tests years later showed the hairs did not belong to him.
- Thomas Sophonow was found guilty of killing a waitress in 1981 based largely on the testimony of a witness who contradicted in court what she had told police. The defence was not told about the contradiction at the time, and Sophonow spent four years in prison before he was freed.

## **Manitoba Appeal Court to review 1987 murder conviction of Frank Ostrowski**



**Frank Ostrowski talks to reporters in Winnipeg on Friday, December 18, 2009.  
(Steve Lambert/The Canadian Press)**

By Steve Lambert, The Canadian Press

WINNIPEG -- A former hair stylist turned drug dealer who spent 23 years in prison for murder has moved one step closer to possibly clearing his name.

Federal Justice Minister Peter MacKay has referred Frank Ostrowski's case to the Manitoba Court of Appeal for a conviction review.

MacKay said in a written statement Tuesday that he was "satisfied there is a reasonable basis to conclude that a miscarriage of justice likely occurred in Mr. Ostrowski's 1987 conviction."

Ostrowski, 65, said he is anxious for the ordeal to be over.

"It doesn't take long to put somebody in (prison), but it takes them a long time to change things," he said after a brief court appearance in which his bail was continued.

"Now I have the evidence that proves I'm innocent ... and it'll all be settled shortly, I hope."

The move comes five years after a Court of Queen's Bench judge released Ostrowski on bail pending a federal review of his case. The judge cited serious concerns about the conviction.

Ostrowski was found guilty of ordering the shooting death of Robert Nieman over a drug debt. He was convicted largely on the testimony of a key witness -- Matthew Lovelace -- who had separate charges of cocaine possession stayed.

Ostrowski's lawyers and the jury were never told about that arrangement and Lovelace told the trial he did not receive any favours in exchange for his testimony. Ostrowski has always maintained his innocence.

James Lockyer, senior counsel with the Toronto-based Association in Defence of the Wrongly Convicted, said Tuesday that Lovelace was a key part of the Crown's case.

"It seems to me that the case was Lovelace-dependent, and Lovelace's evidence, as I say, has proven to be a fraud."

No date has been set for the Appeal Court hearing.

Ostrowski is the fourth Manitoba man convicted of murder to have his guilt thrown into doubt.

James Driskell was convicted of killing a friend in Winnipeg in 1990. The verdict was based partly on testimony from a witness who was given tens of thousands of dollars in expense payments as well as immunity on an arson charge. Driskell's conviction was quashed in 2006.

Kyle Unger was convicted of killing a teenage girl at a rock festival in 1990, based partly on hair samples found at the scene. DNA tests years later showed the hairs did not belong to him.

Thomas Sophonow was found guilty of killing a waitress in 1981. That was based largely on the testimony of a witness who contradicted in court what she had told police. The defence was not told about the contradiction at the time, and Sophonow spent four years in prison before he was freed.

## **Manitoba Court ordered to review conviction of man who spent 23 years in prison**

The move comes five years after a Court of Queens' Bench judge released Frank Ostrowski on bail pending a federal review of his case.

Adrian Wyld / THE CANADIAN PRESS

Justice Minister Peter MacKay has referred the case of Frank Ostrowski to the Manitoba Court of Appeal for a conviction review. "I am satisfied there is a reasonable basis to conclude that a miscarriage of justice likely occurred in Mr. Ostrowski's 1987 conviction," MacKay said Tuesday.

**By: Peter Edwards** Star Reporter, Published on Tue Nov 25 2014

Justice Minister Peter MacKay has directed Manitoba's top court to take a fresh look at the murder conviction of a Winnipeg man who spent 23 years in prison while insisting he was innocent.

The move came Tuesday morning after the Toronto-based Association in Defence of the Wrongly Convicted argued that former cocaine dealer Frank Ostrowski, 65, is the victim of a miscarriage of justice.

“I am satisfied there is a reasonable basis to conclude that a miscarriage of justice likely occurred in Mr. Ostrowski’s 1987 conviction,” MacKay said in a written statement.

AIDWYC had raised the spectre of a secret deal between the prosecutors and a star Crown witness, who had separate charges of cocaine possession stayed.

Ostrowski’s lawyers and the jury were never told that the witness’s cocaine charges were dropped, and the witness testified he did not receive any favours in exchange for his testimony.

“It has been a long wait and the saga still has a way to go,” James Lockyer, senior AIDWYC counsel, said in a statement. “The minister has made the correct decision and it will be our task to convince the Manitoba Court of Appeal that Frank Ostrowski is the victim of a terrible miscarriage of justice.”

Ostrowski, who has worked as a belt maker and hair stylist, sounded optimistic about the news.

“It’s a big relief that my case is getting to be heard again in the appeal court,” Ostrowski said in a statement. “I think they will get it right this time.”

Mackay’s move makes two victories in two days for AIDWYC.

On Monday in Halifax, a judge ordered that Glen Eugene Assoun, 59, should be freed immediately, while awaiting results of the final Justice Department report on his second-degree murder conviction.

Assoun spent almost 17 years in prison after he was convicted of murdering his ex-girlfriend, Brenda Leanne Way, 28, of Dartmouth in November 1995.

Ostrowski was convicted of ordering the execution of Robert Nieman, 23, of Winnipeg.

The Crown had argued that Nieman was slain in revenge for tipping off police that Ostrowski had 308 grams and \$50,000 in cash hidden in a basement floor safe.

Ostrowski’s appeal to the Manitoba Court of Appeal was turned down and he was denied a leave to appeal to the Supreme Court of Canada.

The justice minister has the power to send the case to the province’s Court of Appeal under the conviction review provisions of the Criminal Code.

MacKay made his decision after studying the Investigation Report prepared by an agent, advice from his Special Advisor on Miscarriages of Justice and submissions from lawyers representing Ostrowski and the Attorney General of Manitoba, according to a statement released by his office.

Ostrowski has been free on bail for the past five years. He was freed when a Court of Queens' Bench judge cited serious concerns about his 1987 conviction.

Ostrowski is the fourth Manitoba man convicted of murder to have his guilt thrown into doubt in recent years.

### **James Driskell**

□ James Driskell's murder conviction was quashed in 2006. He was convicted of killing a friend in Winnipeg in 1990 based partly on testimony from a witness who was given tens of thousands of dollars in expense payments as well as immunity on an arson charge.

### **Kyle Unger**

□ Kyle Unger was convicted of killing a teenage girl at a rock festival in 1990, based partly on hair samples found at the scene. DNA tests years later showed the hairs did not belong to him.

### **Thomas Sophonow**

□ Thomas Sophonow was found guilty of killing a waitress in 1981 based largely on the testimony of a witness who contradicted in court what she had told police. The defence was not told about the contradiction, and Sophonow spent four years in prison before he was freed.

## Supreme Court orders new trial for murder convict Leighton Hay

Judges say new evidence supports the innocence claims of Hay, serving life for the 2002 murder of Colin Moore at a Guyanese community event.



Peter Edwards / TORONTO STAR Order this photo

*Lawyer James Lockyer, left, and Lascelles Hay, right, react joyfully to news that the Supreme Court voted 7-0 to grant Lascelle's son Leighton, 30, a new trial after he was convicted of 2002 GTA murder. Leighton Hay is serving a life term in Millhaven Penitentiary.*

**By:** Peter Edwards Star Reporter, Published on Fri Nov 08 2013

Canada's top court has ordered a new trial for a Toronto man convicted in the 2002 execution-style murder of a beloved member of the local Guyanese community.

In a 7-0 decision released Friday, the Supreme Court of Canada ruled that there was fresh evidence to support Leighton Hay's claims of innocence.

Hay's defence team of James Lockyer, Philip Campbell and Joanne McLean successfully argued that recent forensic testing on hairs found in his apartment point to his innocence.

The Crown had argued that Hay shaved his head to hinder his being identified immediately after the execution-style slaying of Colin Moore, 51, at a Guyanese community fundraising dance.

However, recent testing of the hairs indicated they were from his face and not his head.

Hay sounded stunned when he was told by Lockyer on speaker phone on Friday that he had won a new trial.

He was recently transferred from now-closed Kingston Penitentiary in Kingston to nearby Millhaven, also a maximum-security facility.

“We won! We won the case!” Lockyer told him.

Hay had no immediate response and Lockyer asked, “Did you hear that?”

“Yeah,” Hay said, in a barely audible voice from prison.

Brendan Crawley, a spokesperson for the Ministry of the Attorney General, said it would be inappropriate to comment on the case as it is before the courts.

The Crown had no immediate comment on the top court’s decision.

Moore was shot dead at a Guyanese charity dance at the HHMS Bar on Victoria Park Ave., just south of Eglinton Ave. E., in a dispute over a \$10 cover charge at a community event.

The clippings were not tested before Hay’s trial.

After his conviction, Hay’s defence team sent the clippings off for forensic testing and were told there is a roughly 90 per cent certainty the clippings were from Hay’s face, not his head.

The seven Supreme Court judges had the power to set Hay free, order a new trial or uphold his conviction for first-degree murder.

Hay, 30, was 19 at the time of the murder, and is serving a life term.

He receives anti-depressant drugs to help him cope with schizophrenia. His father, Lascelles Hay, said his condition has worsened throughout his prison stay.

“He don’t want to be with anybody,” Lascelles Hay said. “He don’t trust anybody. He don’t want to eat.”

Lascelles Hay said his son was in rough shape during a recent visit.

“He started to scream out, scream out,” he said. “That’s not the way he would normally be.”

The Crown opposed the appeal application, saying it had a strong case, even with the forensic testing.

During Hay’s trial, defence lawyer Jeff House argued that Hay was at home asleep when Moore was slain and that the case against him was based on the unconfirmed evidence of an eyewitness.

In one of the most notorious crimes in the GTA in a decade, Moore was shot point-blank when two men crashed through the door and opened fire.

Court was told the killers had been ejected from the event in a dispute over a cover charge 15 minutes earlier.

Also convicted of first-degree murder was Gary Eunick, then 27, a Toronto hairstylist who was the boyfriend of Hay’s sister and Hay’s roommate at the time.

“This was a slender case against the applicant,” the defence team argued in their successful bid to reopen the case. “He had the misfortune to be a young black man living in the same house as Gary Eunick, who was one of the gunmen.”

In her submission to the Supreme Court, Crown lawyer Susan Reid argued that the hair clipping evidence was irrelevant because it cannot help determine when Hay’s hair was cut.



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THE ASSOCIATION IN DEFENCE OF THE WRONGLY CONVICTED

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**\*\*\*FOR RELEASE AT 10:00 a.m., FRIDAY, NOVEMBER 28, 2014\*\*\***

## **LEIGHTON HAY TO BE RELEASED FROM COURT AFTER 12 ½ YEARS IN JAIL FOR A MURDER HE DIDN'T COMMIT**

**On Friday, November 28, 2014, Leighton Hay** is hoping that he will be released after **12 ½ years in prison**. He is scheduled to appear in **the Superior Court of Justice at 361 University Avenue, Toronto** before the Honourable Justice J. McMahon at **9:30 this morning (Friday)** at which time it is anticipated that the Crown will announce the termination of his prosecution for **first degree murder**.

**Mr. Hay was adopted by the Association in Defence of the Wrongly Convicted (AIDWYC) on August 16, 2011 as a case of factual innocence.**

### **The Homicide**

On the night of Saturday, July 6, 2002, Collin Moore and his brother, Roger Moore, were hosting an event at a nightclub in Etobicoke. At 1:13 a.m., two men armed with handguns stormed into the nightclub. They shot Collin who died of his injuries; Roger was grazed on the forehead by one of the shots.

One of the gunmen, Gary Eunick, was recognized by some of those at the party. As Eunick fled, a witness got the licence plate of his car. He had borrowed Leighton Hay’s mother’s car. The police quickly traced the car and by 1:46 a.m. police were at the Hay home where the mother’s car was already back in the driveway.

After watching the house all night, the police entered the Hay home at 11:58 a.m. and arrested Gary Eunick who was inside for first degree murder. Leighton Hay was also there and was arrested too.

### **The Prosecution Case**

The Crown's case against Leighton Hay depended on witnesses from the nightclub who described the second gunman as having "two inch picky dreads". One witness was shown a photo line-up which included Leighton and pointed to his photograph saying that he looked more like the gunman than the other 11 photos and that "on a percentage scale I would probably say 80%". She was shown a second line-up three weeks later and did **not** select Leighton Hay's photo. At court at the preliminary hearing, she identified **Gary Eunick** as the second gunman.

The problem for the police was that Mr. Hay had extremely short hair when arrested, hair that could not be remotely described as "two inch picky dreads". This meant there had to be a theory that Leighton, after the shooting, had immediately returned to his home and had a haircut in the period between the crime and his arrest. If the Crown could not prove a haircut had taken place, the description of the gunman provided by the eyewitness proved Leighton's **innocence**. Further, if the Crown **could** prove a haircut, then it would not only explain the eyewitness's description but prove that Leighton tried to disguise his appearance after the shooting.

The police scoured the Hay home for evidence of a haircut. They found some very short hairs in a newspaper in a garbage bin, and on an electric razor in his bedroom. At his trial in 2004, the Crown told the jury that this must be the residue left behind by Leighton after he had cut his dread locks and flushed the longer hairs down the toilet.

### **The Jury's Verdict**

The jury convicted Leighton of first degree murder. (They also convicted Gary Eunick.)

### **Leighton's First Appeal**

On May 12, 2009, Leighton's appeal was dismissed by the Ontario Court of Appeal. The Court laid particular emphasis on the supposed haircut which "tipped the scales" in support of the jury's verdict. (Eunick's appeal was also dismissed.)

### **AIDWYC's Involvement**

After he lost this appeal, AIDWYC became involved for Leighton.

### **The Appeal to the Supreme Court of Canada**

AIDWYC lawyers decided to seek scientific testing of the hairs found in the home to see whether they really came from the supposed haircut. They asked Mr. Tony Tessarolo, the

Director of the Centre of Forensic Sciences (the Centre) whether microscopic examination of the hairs could determine if they were hairs from a haircut or hairs from the shave of a beard. Mr. Tessarolo agreed to have the Centre conduct an examination of the hairs. The Crown opposed this testing and refused to allow the Centre to examine the hairs. AIDWYC then brought a motion before the Supreme Court of Canada for an order that the exhibits be released to the Centre. The Supreme Court of Canada made this order on November 18, 2010.

The examination was conducted by the Centre's scientist Ms. Joanne Almer, and was monitored by two outside experts, one retained by the defence and the other by the Crown. The scientists found that the hairs were from a facial shave "to a reasonable degree of scientific certainty" and were **not** from a haircut. The prosecution theory that Leighton had shaved his head to disguise his appearance evaporated. He could not have been the gunman with the two inch picky dreads described by the Crown witness.

Following this scientific consensus, AIDWYC resolved that Mr. Hay was innocent and had been wrongly convicted. Armed with this new scientific evidence, counsel for AIDWYC presented Leighton's case to the Supreme Court of Canada in April, 2013.

In a lengthy and incisive judgment, delivered on November 8, 2013, the Supreme Court of Canada admitted the scientific evidence, quashed Leighton's conviction and ordered a new trial for him. After outlining the new scientific findings, Mr. Justice Rothstein said:

*"Given the significance of the haircut to the Crown's case, Mr. Hay's fresh evidence indicating that the hair clippings did not come from a scalp shave could reasonably be expected to have affected the result".*

Justice Rothstein further said:

*"However, [the new evidence] is not so decisive as to allow an immediate disposition in the form of an acquittal. The Crown, in its submissions on the motion to adduce fresh evidence, has raised the possibility of certain limitations or gaps in the expert evidence adduced in this appeal. The interests of justice require that the Court remit the matter for a new trial, in which the Crown would have the opportunity to adduce evidence challenging the reliability of the fresh evidence."*

### **The Proceedings Since the Supreme Court of Canada Judgment**

The Crown has examined the case in the year since the Supreme Court of Canada's judgment. They have not produced any new evidence to challenge the findings of the Centre of Forensic Sciences.

It is expected that the Crown will withdraw the first degree murder charge against Leighton and he will become a free man for the first time since July 6, 2002.

James Lockyer, AIDWYC's senior counsel, who represented Mr. Hay in the Supreme Court of Canada, said today:

*"Leighton has been through a nightmare for all these years. His walk into freedom today will be momentous for him and for us at AIDWYC. His family will be at court and he will need all their support and AIDWYC's support in the months to come.*

*This was a miscarriage of justice of the highest order."*

Philip Campbell, an AIDWYC lawyer who acted for Mr. Hay in the Court of Appeal and the Supreme Court of Canada, said:

*"I will never forget how crushed I was on the day Leighton's conviction was upheld after his first appeal; it was the bleakest day of my career. Today is a better, brighter day. Leighton has faced many challenges during his years in penitentiary and more lie ahead. The consequences of his wrongful conviction will linger long after the courts and lawyers close their files. But for today, his freedom, and the righting of a wrong, are worth celebrating."*

### **Postscript**

This has been quite a week for AIDWYC.

- On Monday, in Halifax, AIDWYC counsel secured the release of **Glen Assoun**, an AIDWYC adoptee, after he had spent 17 years in jail for a murder he did not commit. Mr. Assoun has filed an application with the Minister of Justice to quash his 1999 conviction for second degree murder.
- On Tuesday, in Winnipeg, AIDWYC counsel secured a ministerial reference to the Manitoba Court of Appeal for **Frank Ostrowski**, an AIDWYC adoptee, wrongly convicted in 1986 of first degree murder. We secured Mr. Ostrowski's release on bail during the ministerial review in 2009 after he had spent 23 years in prison.
- Today is AIDWYC adoptee **Leighton Hay's** day after he has spent 12 ½ years in prison.

Please come to the Courthouse tomorrow to see this happen.

### **For further information please contact:**

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### ***Learn More about AIDWYC:***

- Address: 111 Peter Street, Suite 408, Toronto, Ontario, M5V 2H1

- Website: [www.aidwyc.org](http://www.aidwyc.org)
- *Conviction*, the AIDWYC Blog: [www.aidwyc.org/blog](http://www.aidwyc.org/blog)
- Facebook: [www.facebook.com/aidwyc](http://www.facebook.com/aidwyc)
- Twitter: @AIDWYC
- Instagram: @AIDWYC
- Youtube: <http://www.youtube.com/watch?v=TGD2PA2HLLQ>

## **Leighton Hay, wrongfully convicted of murder in 2002, walks free**

### **Toronto man asks judge to apologize on behalf of justice system**

CBC News Posted: Nov 28, 2014 11:00 AM ET Last Updated: Nov 28, 2014 10:58 PM ET



**Leighton Hay**

The charges against Leighton Hay, a Toronto man convicted of an execution-style murder in 2002, were withdrawn this morning and he walked out of court a free man after more than 12 years in prison.

The Crown said it is no longer in the public interest to pursue the case.

Hay, 19 at the time, was found guilty of first-degree murder in the July 2002 killing of 51-year-old Colin Moore. But he appealed based on forensic testing on hairs found in his apartment.

Hay's case was taken on by the Association in Defence of the Wrongly Convicted in 2011, which called it "factual innocence."



*Leighton Hay was 19-years-old when he was convicted of a murder he did not commit. (CBC)*

“Leighton has been through a nightmare for all these years,” said James Lockyer, the association's senior counsel, who said before Hay was released that his "walk into freedom today" would be "momentous for him."

"This was a miscarriage of justice of the highest order," Lockyer added.

Hay's lawyers have asked Justice John McMahon to apologize on behalf of the justice system.

### **Hair evidence key to case**

On July 6, 2002, Moore was hosting an event at a nightclub in the Toronto suburb of Etobicoke. At 1:13 a.m. ET, two men armed with handguns stormed into the nightclub, and shot and killed Moore.

Police identified one of the gunmen as Gary Eunick.

Eunick had borrowed the car of Hay's mother and was driving it the night in question, according to police.

When police found the car at Hay's home, they arrested both Eunick and Hay.

Witnesses from the nightclub described the second gunman as having “two inch picky dreads” — longer hair than what Hay had at the time.



Leighton Hay and his father Lasalle walk from the Superior Court on Friday morning. (Michelle Cheung/CBC)

The Crown argued at his original trial in 2004 that Hay returned home after the shooting and had a haircut.

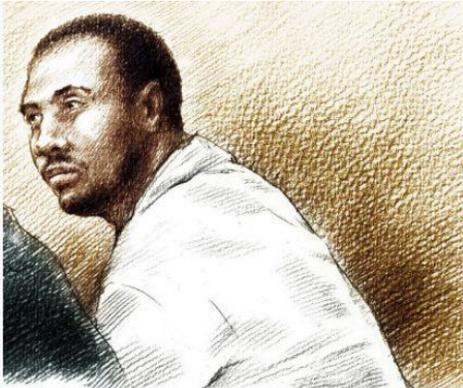
The police searched for evidence of a haircut at Hay's home, and found some very short hairs in a newspaper in a garbage bin and on an electric razor in his bedroom.

Hay's lawyers presented evidence at the appeal — the second appeal on the crime — that questioned whether Hay indeed got a haircut.

Hay's lawyers also highlighted one witness who identified Hay with “80 per cent” certainty as the gunman at the nightclub. Two weeks later, the same witness did not select Hay's photo in a lineup.

### **Wrongful conviction: Key dates in the legal nightmare of Leighton Hay of Mississauga**

**Leighton Hay of Mississauga spent the past 12½ years in prison for murder. On Friday, the crown dropped all charges against him. His case is one of three victories this week for the Toronto-based Association in Defence of the Wrongly Convicted**



*Leighton Hay in court on May 27, 2004 sketch by Alex Tavshunsky*

**By:** Peter Edwards Star Reporter, Published on Fri Nov 28 2014

Leighton Hay, 31, of Mississauga has been living a nightmare for the past 12-and-a-half years, since he was sent to maximum-security prison for a murder that forensic testing suggests he did not commit.

Much of Hay's time since 2002 has been spent in a prison psychiatric unit in Kingston, where he's treated with anti-depressant medication.

"Leighton has been through a nightmare for all these years," his lawyer, James Lockyer of the Association in Defence of the Wrongly Convicted (AIDWYC) said.

"His walk into freedom today will be momentous for him and for us at AIDWYC," Lockyer said.

Here are key dates in Hay's legal odyssey:

### **July 6, 2002**

Early that Saturday morning, three men balk at paying a \$10 cover charge at a community charity dance at the HHMS Restaurant and Nightclub on Victoria Park Ave., just south of Eglinton Ave.

The monthly dances are usually calm events, appealing to the middle-aged Guyanese community, organized by Martin Colin Moore, 51, a father-of-two and a beloved member of the Guyanese-Canadian community.

The three men clash with Moore, and his brother Roger, and are ejected.

Minutes later, at 1:13 a.m., two men with handguns burst into the restaurant and the unarmed Moore brothers are cornered in the kitchen.

Martin Colin Moore is shot eight times, including a bullet to his aorta. He's rushed to Sunnybrook Health Sciences Centre and is pronounced dead within hours.

Roger Moore is grazed in the head with a bullet and survives.

### **July 6, 2002**

A witness notes the license plate of a car carrying the killers.

It leads police to a home on Chigwell Court in Mississauga that's shared by 19-year-old Leighton Hay and 27-year-old Gary Eunick.

Eunick matches the description of one of the killers.

He's the boyfriend of Hay's sister Lisa. He works as a hair stylist and has a criminal record for firearms offences and cocaine possession and was sentenced to 14 months and two weeks of jail time.

In a clothes hamper, police find a sock with six different types of ammunition inside.

They also find strands of hair inside a crumpled piece of newspaper in a bathroom and observe that Hay's hair is short.

Witnesses say the second gunman had “two inch picky dreads.”

Eunick and Hay are arrested for first-degree murder.

### **May 10, 2004**

The Crown presents powerful evidence against Eunick at their jury trial.

Court hears that gunpowder residue and blood matching that of Eunick were found on an orange vest similar to that worn by a gunman at the restaurant.

Blood matching Eunick’s DNA was also discovered inside a Honda Civic that matched the description of one seen speeding away from the restaurant after the shooting.

The jury hears that Eunick’s DNA was also found on broken glass in the restaurant’s parking lot and on the building’s front door and that there were 72 gunshot residue patches on a pair of Eunick’s jeans.

Hay’s lawyer Jeff House argues that his client was at home asleep at the time of the shooting.

The Crown suggests that Hay shaved his head immediately after the murder to alter his appearance and confuse witnesses.

DNA testing is not done on the hair clippings at the time of the trial to determine if its head hair or hair from a facial shave.

### **June 8, 2004**

Eunick and Leighton Hay are each sentenced to life in prison with no possibility of parole for 25 years.

Hay spends much of his time heavily medicated in a psychiatric unit.

### **May 17, 2010**

Hay’s legal team from the AIDWYC — James Lockyer, Philip Campbell and Joanne McLean — ask the Supreme Court of Canada to allow them to send the hairs from the newspaper for forensic testing.

If the clippings are found to be facial hair, they argue, this would undercut the Crown theory that Hay shaved his head to alter his appearance after the shooting.

### **Nov. 18, 2010**

The Supreme Court of Canada orders the release of key exhibits from the trial for forensic testing. It’s the first time a Canadian court has ordered court exhibits released for forensic testing when a case is over, after a convicted person has exhausted all appeals.

### **Nov. 8, 2013**

Scientists find the hairs found wrapped in the newspaper were from a facial shave “to a reasonable degree of scientific certainty.”

After hearing this, the Supreme Court of Canada votes 7-0 in favour of granting a new trial for Hay, who's now 30.

Hay sounds stunned on speaker phone from Millhaven maximum-security prison as he was told the news by Lockyer.

**Nov. 28, 2014**

Judge at University Ave. courthouse approves Crown withdrawal of prosecution against Hay.

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