

# UBC LAW Innocence Project

by Joe Wiebe

Click on the “Canada’s Wrongly Convicted” tab on the UBC Law Innocence Project’s website and you’ll find two columns of names, 25 in total. Some are well-known: Guy Paul Morin, Thomas Sophonow, Stephen Truscott, and David Milgaard, for whom the Tragically Hip penned the 1992 tune, “Wheat Kings.”

## Goals of the UBC Law Innocence Project:

- investigate claims of wrongful conviction
- identify potential miscarriages of justice
- assist in securing the release of individuals who have been wrongly convicted
- educate law students about the causes of wrongful conviction
- educate law students about the proper roles of professionals in the criminal justice system
- provide skills training for law students conducting post-conviction review work

Other than those famous cases, the names are notable mainly for their anonymity. And maybe that’s the point. The list asks us each to consider how those individuals have suffered, how their lives have been shattered by justice gone wrong.

Even more distressing is the certain knowledge that this list of 25 names does not represent all who have been wrongfully convicted. It is believed that there are dozens more behind prison bars in Canada, serving time for crimes they did not commit. They proclaim their innocence to anyone who will listen, but after exhausting their appeals, often there is no one to hear their claims.

That is where the UBC Law Innocence Project comes in. Founded in 2007 as a three-year pilot project, it provides post-conviction review in response to claims of wrongful conviction. It operates by connecting UBC Law students, working for course credit, with professional lawyers who volunteer their time.

Due to the Faculty’s current space restraints, the Project is based out of a cramped office with just enough room for two small desks and a filing cabinet. Bookshelves line the walls and stacks of boxed files clog the remaining space.

“You should see it in here when we have meetings,” jokes Tamara Levy, the part-time project director.

The Innocence Project revolves around the school year. Each spring, Levy interviews interested students and enrolls about a dozen in the course. In the fall, each student is assigned to one or two cases that the project is investigating, working with Levy and external counsel. From then on, the class meets weekly.

“I see it more as a group meeting,” Levy says. “It’s not a lecture. It’s a chance for them to speak to me, for me to hear updates as to where they are.” Levy also brings in guest speakers, including a forensic odontologist (bite mark expert), forensic pathologist, private investigator, DNA experts, and working lawyers who discuss everything from ethics to maintaining a work-life balance.

Levy believes it is an opportunity for students to gain skills that will serve them not just in post-conviction review work, “but also in areas that will be helpful to them as lawyers going into the system.”

Depending on the needs of the investigation, a student may visit a prison to interview the claimant, wade through boxes of papers looking for the proverbial needle in the haystack, or draft letters to various authorities seeking information that is missing from the case files. It is a long and slow process that requires patience and attention to detail.

Once the Project identifies a case that merits consideration by the Federal Minister of Justice, they seek assistance from outside counsel to prepare the application (under section 696.1 of the *Criminal Code*).



Tamara Levy and Colleen McLeod

At least that's the goal. Although the project has 23 cases under review, none have reached the application stage.

"We have a number of cases that down the road, I think the person will be exonerated," Levy contends. "Where they were convicted on entirely circumstantial evidence, with no direct evidence linking them to the crime, and they've maintained their innocence for 20 years."

She hopes to get two or three ministerial applications underway this fall, but it is a long, painstaking process to reach that stage. After that it could still be years before the Minister of Justice acts on the applications.

Levy took a roundabout route to the Innocence Project. She studied at Osgoode Hall at York University where she "realized that criminal law was the only thing I could ever practice." She moved west where she articulated with Peck & Tammen. When she had to scale back her workload for family commitments, she began teaching an evidence course part-time at UBC with Crown Counsel Mary Ainslie ('91).

"We started calling it 'Preventing Wrongful Convictions' because we were teaching areas of evidence that were problematic and difficult, which had been the identified areas of many wrongful convictions, like identification, false confessions or statements to the police, bad science, expert testimony, jailhouse informants."

Through that work she discovered other Innocence Projects, and she thought it would be a good idea to have one at UBC. Many of her students agreed, as did UBC Law lecturer Nikos Harris ('95). They worked on a proposal together which Harris then took to the curriculum committee. After receiving approval, the Leon Judah Blackmore Foundation stepped in with the necessary start-up funding.

## From "Lessons from the Sophonow Inquiry"

by Peter Wilson, QC ('82) of Wilson & Buck, Vancouver, BC for the  
Trial Lawyers Association of British Columbia.

"The lesson I took from the inquiry was somewhat more personal; it concerns the appearance of things. We must remember that wrongful convictions are seldom the product of deliberately false accusations or deliberately malicious investigation. As a rule, the authorities do not knowingly prosecute the innocent, they prosecute people they believe to be guilty. Sophonow's case was no exception since on any reasonable view the evidence marshalled against him produced a fairly compelling case. He fit the description of the assailant, he owned a cowboy hat similar to the killer's, he resembled very closely the composite drawing published of the suspect, he was identified as the assailant by at least four eyewitnesses; he made statements which suggested he had been in the Ideal Donut shop at about the time of the murder; he appeared to know things about the crime which only the killer would have known; three informants who had spent time with him in jail testified that he had admitted his guilt, and one person even testified that she had seen the same green twine in his car on one occasion. And yet despite that evidence Tom Sophonow was an innocent man. The abiding lesson for me is this: the accused in any criminal case, no matter how compelling the evidence appears, may well be innocent. We must never lose sight of that truth. It is a truth which Judges, prosecutors and defence counsel alike must always bear in mind, because when we lose sight of it, every one of us, in our own small way, prepares the case for convicting the next Tom Sophonow."

Levy's passion for the Project is obvious. And while the work is important to her, she also enjoys the connection she makes with her students.

"I really like the fact that both come together," she says. "I enjoy seeing them get turned on to criminal law."

Her student assistant (May 2008–August 2009), Colleen McLeod, is a prime example.

"The law comes alive here," McLeod enthuses. "If anyone's going to stop the train, let it be us. There just may have been a chance that something went very, very wrong."

*For more information check out [www.innocenceproject.law.ubc.ca](http://www.innocenceproject.law.ubc.ca). If you are interested in volunteering as counsel or an expert, contact Tamara Levy at (604) 827-3616 or [tlevy@law.ubc.ca](mailto:tlevy@law.ubc.ca). ●*