

The Criminal Law Quarterly

Volume 58, Number 2

February 2012

Editorial

Criminal Case Review Commissions and Ministerial Post-Conviction Review

Six commissions of inquiry have recommended that the responsibility of the Minister of Justice to decide whether convictions should be referred back to the courts after ordinary appeals have been exhausted should be transferred to an independent commission. In 2002, Parliament reformed the Ministerial Review system in ss. 696.1 to 696.6 of the *Criminal Code*. These reforms provided statutory standards and allowed the Minister to delegate broad investigative powers. Nevertheless, they stopped short of creating an independent commission.

The best known of the independent commissions is the Criminal Cases Review Commissions (CCRC) in England, but there are also independent commissions in Scotland, Norway and North Carolina. We are fortunate enough to have articles on both the existing Ministerial system and all but one of the independent commissions in this special issue.

The first article by Narissa Somji carefully compares the s. 696.1 system with the English Criminal Cases Review Commission. The article points out the most critical commentary and public inquiries in Canada have focused on the old s. 690 system that was reformed in 2002 and that the new system has some advantages over the CCRC. These advantages include broader investigative powers and an ability for the Minister to depart from judicial precedents when ordering new trials or appeals under s. 696.1. At the same time, as Narissa Somji notes, both the s. 696.1 and CCRC systems are not as transparent as they should be.

The next article is written by John Weedon who is a member of the Criminal Cases Review Commission. He provides important background about the creation and work of the Commission. He points out that since the start of operation in 1997, the CCRC has considered over 13,000 applications and referred over 480 cases back to the Court of Appeal and had convictions quashed in about 70% of the cases it has referred. He also

responds to criticisms of the CCRC by arguing that the CCRC is concerned with factual innocence, but must operate within the parameters of the appeal system.

The next article written by Michael Naughton argues that the CCRC is not achieving its intended purposes of protecting innocent people who are wrongfully convicted because of its concern with the safety of convictions. He also argues that the CCRC has deviated from the original reform proposals and raises concerns about the test for fresh evidence and safety that it and the Court of Appeal applies. He argues for a focus on factual innocence and claims that such a focus will further the cause of due process.

The next article by Lynne Weathered examines Australia's recent experience with wrongful convictions where the executive must refer convictions back to the courts after ordinary appeals have been exhausted. She argues that the creation of an independent commission in Australia would be a positive development in large part by providing investigative powers. At the same time, she cautions that an Australian commission would not be a panacea and should take into account criticisms of the CCRC.

The next article by Ulf Stridbeck and Svein Magnussen examines Norway's Criminal Cases Review Commission created in 2004. They examine how that commission has powers to require the production of evidence and commission expert evidence. They also detail how the Norwegian commission exercises its powers to appoint lawyers to assist some applicants, thus breaking down simplistic dichotomies between adversarial and inquisitorial systems.

The final article examines the operation of the North Carolina Innocence Inquiry created in 2006 and limited to claims of factual innocence. The performance of the North Carolina commission is compared with that of s. 696.1 system. This article also examines issues concerning transparency, the role of defence counsel, and tensions between error correction and systemic reform. Finally, I claim in this article that factual innocence may be difficult to establish, especially outside the DNA context, and that it may undermine due process.

There has been much interest in criminal case review commissions in Canada and indeed around the world. They are slowly emerging as new and sometimes controversial criminal justice institutions. The existence of such new institutions pose critical issues about both the reliability and purposes of the criminal justice system. It is hoped that this special issue featuring examinations of the existing criminal case review commissions throughout the world, as well as Canada's existing system of Ministerial review, will inspire both more research and policy making on these important issues both in Canada and abroad.

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