

Federal Court



Cour fédérale

**Date: 20180530**

**Docket: T-961-17**

**Citation: 2018 FC 559**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, May 30, 2018**

**PRESENT: The Honourable Madam Justice Gagné**

**BETWEEN:**

**JEAN-CLAUDE BOUCHARD**

**Applicant**

**and**

**MINISTER OF JUSTICE**

**Respondent**

**JUDGMENT AND REASONS**

I. Issue

[1] Jean-Claude Bouchard served a sentence of 26 years for the murder of Robert O'Brien in Montreal in 1979, an offence of which he has always claimed to be innocent. On June 19, 2015, he filed an application for review of his case with the then Minister of Justice of Canada under

subsection 696.1(1) of the *Criminal Code*, RSC 1985, c. C-46. In support of his application, he submitted two affidavits which, he claimed, confirm the miscarriage of justice in his case.

[2] His application was dismissed at the preliminary assessment stage, the Minister of Justice having been satisfied that there was no reasonable basis to conclude that a miscarriage of justice had likely occurred (subparagraph 4(1)(b)(ii) of the *Regulations Respecting Applications for Ministerial Review — Miscarriages of Justice* (SOR/2002-416) [the *Regulations*]).

[3] Mr. Bouchard seeks judicial review of this decision, and calls upon the Minister to investigate.

## II. Facts

[4] On October 11, 1979, Robert O'Brien was murdered in the alley behind Le Relais, a bar in Montreal. On June 23, 1983, following a two-day jury trial, Mr. Bouchard was convicted of the first-degree murder of Mr. O'Brien, and sentenced to life imprisonment with no possibility of parole for 25 years. He did not testify in his own defence, and submitted no evidence. His appeal was unanimously dismissed by the Quebec Court of Appeal.

[5] Mr. Bouchard has always proclaimed his innocence. His efforts to demonstrate a miscarriage of justice date from 1995, when he retained counsel in order to submit an access-to-information request for the police and investigation reports from 1979 to 1983. In 2005, his case was referred to Innocence McGill, a university law clinic that researches and investigates alleged miscarriages of justice relating to serious crimes committed in Quebec.

[6] In 2011, when he was living in a halfway house, Mr. Bouchard made the acquaintance of Gilles B nard, who was completing a sentence for drug trafficking. The two men discussed their past and the reasons for their imprisonment.

[7] Mr. B nard died of cancer on May 11, 2012, and on May 13, 2012, Innocence McGill received a package containing an affidavit sworn to by Mr. B nard on January 13, 2012, in which he asserts that Mr. Bouchard was innocent and confesses to the murder of Robert O'Brien in 1979. A copy of the affidavit was also mailed to Mr. Bouchard and to the Departments of Justice of Quebec and Canada.

[8] Innocence McGill continued its investigation with a view to using this new evidence to submit an application for review of Mr. Bouchard's case. In the course of its investigation, the representatives of Innocence McGill met with Alexandre B nard, Gilles B nard's son. On February 5, 2014, Alexandre B nard signed an affidavit claiming that at a point in time, his father told him he had once shot at someone with a firearm; he had supposedly referred to this incident on two subsequent occasions. He added that before he signed the affidavit, he had been assured by Mr. Bouchard that he would not sue him or his family for damages.

[9] On April 17, 2014, counsel for Mr. Bouchard wrote to the Departments of Justice of Quebec and Canada to ask whether they had taken any action upon receipt of Gilles B nard's affidavit.

[10] An official application for review of Mr. Bouchard's case was filed on June 19, 2015.

The application is based essentially on Gilles and Alexandre B nard's affidavits.

[11] In 2015 and 2016, the Service de police de la Ville de Montr al [SPVM] investigated this new evidence, and in January 2016, Alexandre B nard was interviewed by the SPVM. He told Detective Sergeant S bastien Chartier that it was in 1997 that his father told him for the first time that he had once shot at someone, and that he knew that the wrong person had been charged with the murder. Alexandre B nard took a lie-detector test, and passed.

[12] In April 2016, counsel for Mr. Bouchard sent a copy of the SPVM's investigation report to the group responsible for reviewing convictions at the Department of Justice.

[13] A few days later, a representative of the Minister sent an initial letter to counsel for Mr. Bouchard confirming that he had completed the preliminary assessment of the application for review and dismissed it, with reasons. Mr. Bouchard was then given one year in which to pass on any additional information.

[14] In January 2017, counsel for Mr. Bouchard replied to the Minister's representative, informing him that his report contained a few errors of fact, which he corrected. He further informed him that Mr. Bouchard had successfully taken a lie-detector test, during which he claimed that he was not involved in the murder of Robert O'Brien.

[15] On March 24, 2017, the Minister's representative finally dismissed Mr. Bouchard's application for review.

III. Contested decision

[16] In his two letters to counsel for Mr. Bouchard, the representative noted that he had no reasonable basis to conclude that a miscarriage of justice likely occurred in Mr. Bouchard's case.

[17] An application for review of a conviction must be based on "new matters of significance that were not considered by the courts" (*Criminal Code*, s. 696.4). Citing the Supreme Court of Canada's decision in *R. v. O'Brien*, [1978] 1 SCR 591, the representative noted that only admissible evidence can be considered in relation to an application for review. However, the only admissible evidence not placed before the jury at the time is Gilles B nard's affidavit, corroborated in part by Alexandre B nard's affidavit.

[18] That evidence constitutes hearsay, since the applicant is seeking to establish the truth of what is contained in the affidavit. The representative pointed out that hearsay is generally inadmissible unless it falls within (a) an exception to the hearsay rule; or (b) an exception based on the principled approach concerning hearsay statements (reliability and necessity). The representative found that the affidavit constituted hearsay that did not fall within either exception.

A. *Exceptions to the hearsay rule*

[19] The representative considered and rejected the exceptions to the hearsay rule, namely a statement contrary to penal interest, or the statement of a dying person.

[20] In *Lucier v. The Queen*, [1982] 1 SCR 28, the Court set out five principles on which the admission of a statement against penal interest should be based. The representative found that only one of those principles applied in the instant case.

[21] Moreover, the exception respecting a statement by a dying person applies only in the case of the homicide of the deceased, which is not the case here.

B. *The principled method with respect to hearsay statements (reliability and necessity)*

[22] Hearsay evidence to which none of the exceptions applies may be admissible nonetheless if it meets the criteria of reliability and necessity established by the Supreme Court of Canada in *R. v. Khelawon*, 2006 SCC 57. Since Gilles B nard is deceased, the criterion of necessity is met.

[23] However, the representative found that the information in Gilles B nard’s affidavit was not reliable, and was even “highly suspect and debatable”. Citing *Khelawon*, he explains that the second criterion is met only if (i) “the statement is made in circumstances that demonstrate its truth and accuracy”, or (ii) “the truth and accuracy of the statement can be verified”. Neither of these situations applies to Gilles B nard’s affidavit.

[24] As to reliability, the representative notes that “[TRANSLATION] there is nothing to connect Mr. Bénard to the victim; no witness mentioned anyone other than Mr. Bouchard as looking for the victim or associating with him before he died; the statement contradicts all the facts supplied by other witnesses at the trial and, finally, Mr. Bénard is totally unconnected with this case.” He is also of the view that the affidavit is very vaguely worded and does not contain enough detail about the events of 1979 to be reliable.

[25] Furthermore, the fact that Gilles Bénard knew he was dying when he made his statement adds nothing to the reliability of its content – he could not fear the consequences of his confession, nor of possible perjury.

[26] As to the randomness of the meeting between the applicant and Gilles Bénard, the representative is sceptical:

[Translation] The fact that the two individuals, one convicted of murder and the other claiming to have committed the same murder, met each other purely by coincidence in the same halfway house and talked about the murder is simply too much of a coincidence to be relied on.

[27] According to the representative, Alexandre Bénard’s affidavit and his successful completion of a lie-detector test add no credibility to Gilles Bénard’s confession, and do not eliminate the risks associated with hearsay evidence.

[28] After review of the affidavits of Gilles and Alexandre Bénard, a number of possibilities remain: Gilles Bénard may have killed Robert O’Brien, but he may have killed someone else. It

is also possible that he killed no-one, and invented this story in order to keep his son – who had an interest in firearms – on the straight and narrow.

[29] The representative also considered *Palmer v. The Queen* [1980] 1 SCR 759, which held that new evidence is admissible on appeal when:

- 1) even by due diligence, it could not reasonably have been adduced at trial;
- 2) it is relevant;
- 3) it is credible in the sense that it is reasonably capable of belief; and
- 4) if believed, it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

(See p. 775.)

[30] The representative finds that Gilles B nard’s statement does not meet the third criterion, for essentially the same reasons that led him to find that it did not fall within the exception to the hearsay rule: the statement lacks credibility and cannot be trusted.

[31] On the basis of Gilles and Alexandre B nard’s affidavits, the representative is unable to find that a miscarriage of justice likely occurred in Mr. Bouchard’s case. He justifies the dismissal of the application at the preliminary assessment stage in the following terms:

[Translation] The preliminary assessment points to the significant problem with this application, which is based solely on an affidavit that cannot be analyzed or evaluated in any way, and provides information of a general nature that completely contradicts all the testimony at trial; is suspect by reason of the relationship that developed between Mr. Bouchard and Mr. B nard when they were both in a halfway house; and is confirmed in part by another



document that seems to be an affidavit and asserts that information of a general nature was received from the same person, who signed the affidavit and whose credibility cannot be assessed.

IV. Issue and standard of review

[32] This application for judicial review raises a single question:

*Did the Minister err in finding that Gilles B nard’s statement constituted unreliable and inadmissible hearsay evidence that offered no reasonable basis to conclude that a miscarriage of justice likely occurred when the applicant was convicted of murdering Mr. O’Brien?*

[33] The answer to that question will enable us to address what the applicant calls errors of law on the part of the Minister: (1) her wrongful application of the admissibility criteria for hearsay evidence (as set out in *Khelawon*); and (2) her misinterpretation of what constitutes credible evidence that might reasonably have affected the result.

[34] The standard of reasonableness applies to the issue raised in this application (*Walchuk v. Canada (Justice)*, 2015 FCA 85 at para. 31; *Winmill v. Canada (Justice)*, 2016 FCA 250 at para. 9).

V. Analysis

[35] It is helpful to recall the legislative framework within which the Minister is to assess an application for review based on an alleged miscarriage of justice. First, “any remedy available on such an application is an extraordinary remedy” (*Criminal Code*, paragraph 696.4 (c)). In making a decision under subsection 696.3(3), the Minister is to take into account “the relevance and

reliability of information that is presented in connection with the application” (*Criminal Code*, paragraph 696.4(b)). When the preliminary assessment has been completed, the Minister dismisses the application without an investigation if “satisfied that there is no reasonable basis to conclude that a miscarriage of justice likely occurred” (subparagraph 4(1)(b)(ii) of the *Regulations*).

[36] Evidence presented with an application for review must, of course, be admissible on the same basis as evidence at trial. The applicant does not contest this, nor that Gilles B nard’s statement constitutes hearsay.

[37] The Minister is satisfied that there is no reasonable basis to conclude that a miscarriage of justice likely occurred, since the new evidence adduced by the applicant is not reliable, and does not meet the admissibility criteria for hearsay evidence set out in *Khelawon*. I am of the view that the Minister could reasonably reach that conclusion, and that her assessment of the record is among the possible and acceptable outcomes that could be justified on the basis of the facts and law.

[38] Contrary to the applicant’s argument, I do not believe that the Minister analyzed Gilles and Alexandre B nard’s affidavits separately in an effort to find guarantees of reliability in each statement considered in isolation. I believe, rather, that the Minister took all the evidence and the circumstances of the case into account, including the points on which Alexandre B nard corroborates what his father said.

[39] While the decision of the Supreme Court of Canada in *R. v. Bradshaw* 2017 SCC 35, that Court's most recent ruling on the admissibility of hearsay evidence, is subsequent to the Minister's decision in the instant case, the approach it advocates was nevertheless followed:

[47] Corroborative evidence [shows] that the material aspects of the statement are unlikely to change under cross-examination] if its combined effect, when considered in the circumstances of the case, shows that the *only likely explanation* for the hearsay statement is the declarant's truthfulness about, or the accuracy of, the material aspects of the statement. Otherwise, alternative explanations for the statement that could have been elicited or probed through cross-examination, and the hearsay dangers, persist.

[Citations omitted.]

[...]

[71] When the hearsay danger is sincerity, substantive reliability is only established when the circumstances and corroborative evidence show that the possibility that the declarant lied is substantially negated, that "even a sceptical caution would look upon [the statement] as trustworthy." Corroborative evidence or circumstances showing that the statement is inherently trustworthy are required to rebut the presumption of inadmissibility.

[Citations omitted.]

[40] The applicant has failed to persuade me that the only possible assumption is that Gilles B nard killed Robert O'Brien and honestly admitted his crime on his deathbed. It is at least as plausible that Gilles B nard fabricated this story to assist the applicant, whom he had met by chance in a halfway house, knowing that he was dying and could not suffer any consequences of that admission. The additional information provided by Alexandre B nard does not mean that only the assumption made by the applicant is plausible. It is possible Gilles B nard killed someone other than Robert O'Brien, and that it was when he and the applicant discussed the

murder that the idea was born of confessing to Robert O'Brien's murder in order to exonerate the applicant.

[41] A number of pieces of evidence presented at the trial in 1983 support an assumption other than the one advanced by the applicant. Gilles B nard played no part whatever in the evidence presented to the jury; none of the witnesses mentioned his presence or the presence of an unidentified individual at the crime scene.

[42] The Minister did exactly what the applicant argues was required of her: consider whether it was more probable than improbable that Gilles B nard told the truth in his affidavit. The Minister's answer to that question was in the negative, and that is a reasonable answer if all the facts of the case are taken into account.

[43] Considered in their entirety, the information in Gilles B nard's affidavit, all the circumstances surrounding the murder of Robert O'Brien and the chance meeting between the applicant and Gilles B nard, as well as the additional information provided by Alexandre B nard, fail to remove the risks associated with hearsay evidence.

[44] The Minister could reasonably conclude that Gilles B nard's statement, corroborated in some less than crucial respects, did not constitute a reasonable basis for concluding that a miscarriage of justice likely occurred when the applicant was convicted of the murder of Robert O'Brien.

[45] I am also of the view that the burden imposed by the Minister was not excessive and her interpretation of what constitutes “credible evidence that might reasonably have affected the result” is reasonable and consistent with the provisions of the *Criminal Code* and the *Regulations*. Contrary to what the applicant argues, the Minister did not seek to convince herself of Gilles B nard’s guilt or the applicant’s innocence. Rather, she dismissed the application for review because she found that the information in Gilles B nard’s affidavit was not reliable and the affidavit constituted inadmissible hearsay.

[46] The applicant stresses that his case should be investigated. He argues that there are a number of possibilities that the Minister and her staff could explore with the resources available.

[47] As noted above, an investigation takes place only if the Minister finds that there might be a reasonable basis to conclude that a miscarriage of justice likely occurred. With respect to this application, the Minister found the opposite.

[48] Yet that is not all. The SPVM conducted its own investigation following the receipt of Gilles B nard’s affidavit by the Minist re de la Justice du Qu bec. The investigation report was produced in support of the application for review, and the Minister took it into account in her analysis. Not only did the report in question contain no information likely to support the applicant’s case, but he failed to indicate what line or lines of inquiry not pursued by the SPVM could have been pursued by the Minister and her staff.

[49] The SPVM investigator met with Gilles B nard's spouse, who explained to him that at the time of Robert O'Brien's murder, the couple was living on the South Shore (whereas the murder took place in Montreal), that her husband worked on the South Shore and finished work at 4:30 pm, usually came home, did not go out often and spent his evenings watching television.

[50] I am therefore of the view that the applicant has not raised any material facts that could have been investigated, the only new witness having died.

## VI. Conclusion

[51] In view of the foregoing, the application for judicial review is dismissed with costs.

**JUDGMENT in case T-961-17**

**THE COURT ORDERS that:**

1. The application for judicial review is dismissed;
2. Costs in the amount of \$750, including disbursements and taxes, are awarded to the respondent.

“Jocelyne Gagné”

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Judge

## Appendix A

### Legislative provisions

#### *Criminal Code* *Code criminel*

#### **Application**

**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.

#### **Form of application**

(2) The application must be in the form, contain the information and be accompanied by any documents prescribed by the regulations.

#### **Review of applications**

**696.2 (1)** On receipt of an application under this Part, the Minister of Justice shall review it in accordance with the regulations.

#### **Powers of investigation**

#### **Demande**

**696.1(1)** Une demande de révision auprès du ministre au motif qu'une erreur judiciaire aurait été commise peut être présentée au ministre de la Justice par ou pour une personne qui a été condamnée pour une infraction à une loi fédérale ou à ses règlements ou qui a été déclarée délinquant dangereux ou délinquant à contrôler en application de la partie XXIV, si toutes les voies de recours relativement à la condamnation ou à la déclaration ont été épuisées.

#### **Forme de la demande**

(2) La demande est présentée en la forme réglementaire, comporte les renseignements réglementaires et est accompagnée des documents prévus par règlement.

#### **Instruction de la demande**

**696.2 (1)** Sur réception d'une demande présentée sous le régime de la présente partie, le ministre de la Justice l'examine conformément aux règlements.

#### **Pouvoirs d'enquête**



(2) For the purpose of any investigation in relation to an application under this Part, the Minister of Justice has and may exercise the powers of a commissioner under Part I of the *Inquiries Act* and the powers that may be conferred on a commissioner under section 11 of that Act.

(2) Dans le cadre d'une enquête relative à une demande présentée sous le régime de la présente partie, le ministre de la Justice possède tous les pouvoirs accordés à un commissaire en vertu de la partie I de la *Loi sur les enquêtes* et ceux qui peuvent lui être accordés en vertu de l'article 11 de cette loi.

### **Delegation**

(3) Despite subsection 11(3) of the *Inquiries Act*, the Minister of Justice may delegate in writing to any member in good standing of the bar of a province, retired judge or any other individual who, in the opinion of the Minister, has similar background or experience the powers of the Minister to take evidence, issue subpoenas, enforce the attendance of witnesses, compel them to give evidence and otherwise conduct an investigation under subsection (2).

### **Délégation**

(3) Malgré le paragraphe 11(3) de la *Loi sur les enquêtes*, le ministre de la Justice peut déléguer par écrit à tout membre en règle du barreau d'une province, juge à la retraite, ou tout autre individu qui, de l'avis du ministre, possède une formation ou une expérience similaires ses pouvoirs en ce qui touche le recueil de témoignages, la délivrance des assignations, la contrainte à comparution et à déposition et, de façon générale, la conduite de l'enquête visée au paragraphe (2).

### **Definition of *court of appeal***

**696.3 (1)** In this section, *the court of appeal* means the court of appeal, as defined by the definition *court of appeal* in section 2, for the province in which the person to whom an application under this Part relates was tried.

### **Définition de cour d'appel**

**696.3 (1)** Dans le présent article, *cour d'appel* s'entend de la cour d'appel, au sens de l'article 2, de la province où a été instruite l'affaire pour laquelle une demande est présentée sous le régime de la présente partie.

### **Power to refer**

### **Pouvoirs de renvoi**

**(2)** The Minister of Justice may, at any time, refer to the court of appeal, for its opinion, any question in relation to an application under this Part on which the Minister desires the assistance of that court, and the court shall furnish its opinion accordingly.

**(2)** Le ministre de la Justice peut, à tout moment, renvoyer devant la cour d'appel, pour connaître son opinion, toute question à l'égard d'une demande présentée sous le régime de la présente partie sur laquelle il désire son assistance, et la cour d'appel donne son opinion en conséquence.

### **Powers of Minister of Justice**

### **Pouvoirs du ministre de la Justice**

**(3)** On an application under this Part, the Minister of Justice may

**(3)** Le ministre de la Justice peut, à l'égard d'une demande présentée sous le régime de la présente partie:

**(a)** if the Minister is satisfied that there is a reasonable basis to conclude that a miscarriage of justice likely occurred,

**a)** s'il est convaincu qu'il y a des motifs raisonnables de conclure qu'une erreur judiciaire s'est probablement produite:

**(i)** direct, by order in writing, a new trial before any court that the Minister thinks proper or, in the case of a person found to be a dangerous offender or a long-term offender under Part XXIV, a new hearing under that Part, or

**(i)** prescrire, au moyen d'une ordonnance écrite, un nouveau procès devant tout tribunal qu'il juge approprié ou, dans le cas d'une personne déclarée délinquant dangereux ou délinquant à contrôler en vertu de la partie XXIV, une nouvelle audition en vertu de cette partie,

**(ii)** refer the matter at any time to the court of appeal for hearing and determination by that court as if it were an appeal by the convicted person or the person found to be a dangerous offender or a long-term offender under Part XXIV, as the case may be; or

**(ii)** à tout moment, renvoyer la cause devant la cour d'appel pour audition et décision comme s'il s'agissait d'un appel interjeté par la personne déclarée coupable ou par la personne déclarée délinquant dangereux ou délinquant à contrôler en vertu de la partie XXIV, selon le cas;

**(b)** dismiss the application.

**b)** rejeter la demande.

### **No appeal**

### **Dernier ressort**

**(4)** A decision of the Minister of Justice made under subsection (3) is final and is not subject to appeal.

**(4)** La décision du ministre de la Justice prise en vertu du paragraphe (3) est sans appel.

### **Considerations**

### **Facteurs**

**696.4** In making a decision under subsection 696.3(3), the Minister of Justice shall take into account all matters that the Minister considers relevant, including

**696.4** Lorsqu'il rend sa décision en vertu du paragraphe 696.3(3), le ministre de la Justice prend en compte tous les éléments qu'il estime se rapporter à la demande, notamment:

**(a)** whether the application is supported by new matters of significance that were not considered by the courts or previously considered by the Minister in an application in relation to the same conviction or finding under Part XXIV;

**a)** la question de savoir si la demande repose sur de nouvelles questions importantes qui n'ont pas été étudiées par les tribunaux ou prises en considération par le ministre dans une demande précédente concernant la même condamnation ou la déclaration en vertu de la partie XXIV;

**(b)** the relevance and reliability of information that is presented in connection with the application; and

**b)** la pertinence et la fiabilité des renseignements présentés relativement à la demande;

**(c)** the fact that an application under this Part is not intended to serve as a further appeal and any remedy available on such an application is an extraordinary remedy.

**c)** le fait que la demande présentée sous le régime de la présente partie ne doit pas tenir lieu d'appel ultérieur et les mesures de redressement prévues sont des recours extraordinaires.

### **Annual report**

### **Rapport annuel**

**696.5** The Minister of Justice shall within six months after the end of each financial year submit an annual report to Parliament in relation to applications under this Part.

**696.5** Dans les six mois suivant la fin de chaque exercice, le ministre de la Justice présente au Parlement un rapport sur les demandes présentées sous le régime de la présente partie.

### **Regulations**

### **Règlements**

**696.6** The Governor in Council may make regulations

**696.6** Le gouverneur en conseil peut prendre des règlements:

**(a)** prescribing the form of, the information required to be contained in and any documents that must accompany an application under this Part;

**a)** concernant la forme et le contenu de la demande présentée en vertu de la présente partie et les documents qui doivent l'accompagner;

**(b)** prescribing the process of review in relation to applications under this Part, which may include the following stages, namely, preliminary assessment, investigation, reporting on investigation and decision; and

**b)** décrivant le processus d'instruction d'une demande présentée sous le régime de la présente partie, notamment les étapes suivantes: l'évaluation préliminaire, l'enquête, le sommaire d'enquête et la décision;

**(c)** respecting the form and content of the annual report under section 696.5.

**c)** concernant la forme et le contenu du rapport annuel visé à l'article 696.5.

### ***Regulations Respecting Applications for Ministerial Review – Miscarriages of Justice Règlements sur les demandes de révision auprès du ministre (erreurs judiciaires)***

#### **Review of the demand**

#### **Examen de la demande**

**3** On receipt of an application completed in accordance with section 2, the Minister shall

**3** Sur réception d'une demande de révision présentée conformément à l'article 2, le ministre:

- |  |   |
|--|---|
| <p><b>(a)</b> send an acknowledgment letter to the applicant and the person acting on the applicant's behalf, if any; and</p>  | <p><b>a)</b> transmet un accusé de réception au demandeur et, le cas échéant, à la personne qui a présenté la demande en son nom;</p>   |
| <p><b>(b)</b> conduct a preliminary assessment of the application.</p>   | <p><b>b)</b> procède a une évaluation préliminaire de la demande.</p>   |
| <p><b>4 (1)</b> After the preliminary assessment has been completed, the Minister</p>  | <p><b>4 (1)</b> Une fois l'évaluation préliminaire terminée, le ministre:</p>   |
| <p><b>(a)</b> shall conduct an investigation in respect of the application if the Minister determines that there may be a reasonable basis to conclude that a miscarriage of justice likely occurred; or</p>   | <p><b>a)</b> enquête sur la demande s'il constate qu'il pourrait y avoir des motifs raisonnables de conclure qu'une erreur judiciaire s'est probablement produite;</p>  |
| <p><b>(b)</b> shall not conduct an investigation if the Minister</p>   | <p><b>b)</b> ne mène pas d'enquête dans les cas où:</p>   |
| <p><b>(i)</b> is satisfied that there is a reasonable basis to conclude that a miscarriage of justice likely occurred and that there is an urgent need for a decision to be made under paragraph 696.3(3)(a) of the Code for humanitarian reasons or to avoid a blatant continued prejudice to the applicant, or</p> | <p><b>(i)</b> il est convaincu qu'il y a des motifs raisonnables de conclure qu'une erreur judiciaire s'est probablement produite et que, pour éviter un déni de justice ou pour des raisons humanitaires, une décision doit être rendue promptement en vertu de l'alinéa 696.3(3)a) du Code,</p> |
| <p><b>(ii)</b> is satisfied that there is no reasonable basis to conclude that a miscarriage of justice likely occurred.</p>   | <p><b>(ii)</b> il est convaincu qu'il n'y a pas de motifs raisonnables de conclure qu'une erreur judiciaire s'est probablement produite.</p>  |
| <p><b>(2)</b> The Minister shall send a notice to the applicant and to the person acting on the applicant's behalf, if any, indicating whether or not an investigation will be conducted under subsection (1).</p>   | <p><b>(2)</b> Le ministre transmet au demandeur et, le cas échéant, à la personne qui présente la demande en son nom, un avis indiquant si une enquête sera ou non menée en application du paragraphe (1).</p>  |

**(3)** If the Minister does not conduct an investigation for the reason described in subparagraph (1)(b)(ii), the notice under subsection (2) shall indicate that the applicant may provide further information in support of the application within one year after the date on which the notice was sent.

**(4)** If the applicant fails, within the period prescribed in subsection (3), to provide further information, the Minister shall inform the applicant in writing that no investigation will be conducted.

**(5)** If further information in support of the application is provided after the period prescribed in subsection (3) has expired, the Minister shall conduct a new preliminary assessment of the application under section 3.

**5 (1)** After completing an investigation under paragraph 4(1)(a), the Minister shall prepare an investigation report and provide a copy of it to the applicant and to the person acting on the applicant's behalf, if any. The Minister shall indicate in writing that the applicant may provide further information in support of the application within one year after the date on which the investigation report is sent.

**(2)** If the applicant fails, within the period prescribed in

**(3)** Si le ministre ne mène pas d'enquête pour le motif visé au sous-alinéa (1)b(ii), l'avis prévu au paragraphe (2) doit mentionner que le demandeur peut transmettre au ministre des renseignements additionnels à l'appui de la demande dans un délai d'un an à compter de la date d'envoi de l'avis.

**(4)** Si le demandeur ne transmet pas les renseignements additionnels dans le délai prévu au paragraphe (3), le ministre l'avise par écrit qu'il ne mènera pas d'enquête.

**(5)** Si des renseignements additionnels sont transmis après l'expiration du délai prévu au paragraphe (3), le ministre procède à une nouvelle évaluation préliminaire de la demande en application de l'article 3.

**5 (1)** Une fois l'enquête visée à l'alinéa 4(1)a terminée, le ministre rédige un rapport d'enquête, dont il transmet copie au demandeur et, le cas échéant, à la personne qui présente la demande en son nom. Le ministre doit informer par écrit le demandeur que des renseignements additionnels peuvent lui être fournis à l'appui de la demande dans un délai d'un an à compter de la date d'envoi du rapport d'enquête.

**(2)** Si le demandeur ne transmet pas les

subsection (1), to provide any further information, or if the applicant indicates in writing that no further information will be provided in support of the application, the Minister may proceed to make a decision under subsection 696.3(3) of the Code.

**6** The Minister shall provide a copy of the Minister's decision made under subsection 696.3(3) of the Code to the applicant and to the person acting on the applicant's behalf, if any.

renseignements additionnels dans le délai prévu au paragraphe (1), ou s'il informe le ministre par écrit qu'aucun autre renseignement ne sera fourni, le ministre peut rendre une décision en vertu du paragraphe 696.3(3) du Code.

**6** Le ministre transmet au demandeur et, le cas échéant, à la personne qui présente la demande en son nom, une copie de la décision rendue en vertu du paragraphe 696.3(3) du Code.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-961-17

**STYLE OF CAUSE:** JEAN-CLAUDE BOUCHARD V. MINISTER OF JUSTICE

**PLACE OF HEARING:** MONTREAL, QUEBEC

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**DATE OF REASONS:** MAY 30, 2018

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