The Self-Defence Review: Overview and Next Steps

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Background

On October 4, 1995, Minister of Justice Allan Rock and Solicitor General Herb Gray acted on concerns expressed by the Canadian Association of Elizabeth Fry Societies and others who suggested that a number of women in prison could have benefited from the developing law on self-defence. Misunderstandings about the law, the real impact of past abuse, and the unique pressures these women faced at the time they were tried could have resulted in a failure to consider defences properly available to these women. Further, the law has evolved rapidly since the landmark 1990 Supreme Court of Canada *Lavallée* decision on battered woman syndrome. For these reasons, the Ministers asked a judge of the Ontario Court of Justice (Provincial Division), Lynn Ratushny, to conduct a review of the law, to make law reform recommendations, and to provide advice on which women in prison might be considered for the royal prerogative of mercy.[1]

On July 11, 1997, Minister of Justice Anne McLellan and Solicitor General Andrew Scott received the *Self Defence Review: Final Report*. The Report sets out suggestions for law reform in the areas of self-defence and sentencing. It also recommends remedial action for seven applicants.

The following Overview summarizes two aspects of the Self-Defence Review (SDR). First, it summarizes the work and recommendations of the SDR in the area of law reform, as well as the Government of Canada's plan for action. A comprehensive summary of the SDR's law reform recommendations can be found in the attached Final Report.[2] Second, this Overview summarizes the SDR's work and recommendations relating to the cases where some relief is recommended;[3] sets out the Government of Canada's decisions on these cases; and, in seven appendices, includes descriptions of the cases Judge Ratushny recommended for remedial action.

Law Reform

SDR Recommendations: The SDR's law reform recommendations were built on various law reform reviews in the area of self-defence, including work from the former Law Reform

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1 The royal prerogative of mercy is invoked in exceptional cases of undue hardship or injustice, usually in the forms of pardons or remissions of sentences. The Final Report considers the royal prerogative from pages 60 to 68. Section 690 of the *Criminal Code* authorizes the Minister of Justice to direct a new trial or appeal proceeding where the applicant establishes a reasonable basis to conclude a miscarriage of justice likely occurred.

2 Final Report, pages 21 to 25.

3 See Final Report, pages 15 to 25 for a comprehensive summary.

Commission of Canada, the Canadian Bar Association, the parliamentary Subcommittee on the General Part of the *Criminal Code*, the federal government's White Paper and consultation paper on the General Part, and feminist academic analysts.[4] The SDR proposed a reformed law of self-defence intended to be more comprehensive, simple and clear than the current law.[5] The SDR also set out a model self-defence provision based on these objectives.[6]

Finally, the SDR reviewed the sentencing scheme for homicide in Canada, as well as the pressures on women accused of murder to plead guilty to manslaughter. The SDR found that women with young children to care for and women whose lives have been marked by abuse are particularly vulnerable to these pressures. As a solution, Judge Ratushny recommended changes to police and prosecutorial practices in relation to homicide prosecutions, as well as changes to the *Criminal Code* provisions on sentencing for second degree murder.

Government response: As a first step, the Department of Justice will distribute the Final Report and consult broadly on the SDR's recommendations. The feedback from that consultation work will help the government determine how to respond to Judge Ratushny's recommendations.

With respect to the prosecutorial practices addressed by the SDR, the Department of Justice will review its *Crown Counsel Policy Manual*. In addition, since most prosecutions in Canada are conducted by provincial Attorneys General, the Department of Justice will work with provincial Attorneys General to develop guidelines that address the SDR recommendations. With respect to police practices, the Ministry of the Solicitor General will work with its provincial counterparts and the Royal Canadian Mounted Police to address Judge Ratushny's recommendations. Finally, the Department of Justice will work with provincial Attorneys General on *Criminal Code* amendments proposed by the SDR and will integrate the SDR's recommendations on sentencing into the law reform consultations it is currently conducting.

In sum, the Government of Canada will ensure that Judge Ratushny's recommendations in this area of the law will serve as the basis for future action. The Minister of Justice and the Solicitor General of Canada will be consulting with the provinces, who have responsibility for the administration of justice, and other interested parties, to decide how the SDR law reform recommendations may be implemented.

Women in Prison

First steps: The SDR staff sent out 236 application packages in an effort to reach all the women who might fit within the review's terms of reference. The SDR received 98 applications, assured applicants of the confidentiality of the process, and proceeded on what the Final Report describes as "a unique and poignant human experience for all of us involved".[7] The SDR staff gathered all the available legal files and asked each applicant to tell her story in correspondence, telephone

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4 See *A Feminist Review of Criminal Law*, cited at page 149 of the Final Report.

5 Final Report, page 153

6 Final Report, page 154

7 Final Report, page 14.

conversations and face-to-face meetings. The Final Report outlines the process followed in greater detail.

In assessing this information, the SDR relied on the evolving case law on self-defence, provocation and sentencing. Judge Ratushny reviewed the Supreme Court's decision in *Lavallée*, noting that a claim of self-defence is properly assessed by taking into account the perspective of the accused person. From this assessment of the case law, the SDR established a series of standards designed to assess which cases lacked sufficient substance and which cases were appropriate cases for relief.

SDR standards: The standards applied by the SDR to the cases it reviewed are set out in Chapter Three of the SDR's Final Report and summarized on pages 18 and 19 of the report. Essentially, the standards are designed to assess whether the applicant's claim of self-defence: (a)"has an air of reality"; (b) is supported by evidence reasonably capable of belief; (c) includes new evidence or evidence that was "not adequately appreciated" at trial (for post-*Lavallée* cases only); (d) is supported by some evidence that the applicant met each of the legal requirements for a self-defence claim; and (e) "could/would create a reasonable doubt in the mind of a reasonable trier of fact".[8]

Judge Ratushny set additional standards for cases where the self-defence evidence might affect the woman's sentence rather than her conviction. These standards were (a) whether new self-defence evidence existed or "self-defence evidence whose significance was not adequately appreciated" existed; (b) whether this evidence was "reasonably capable of belief"; and (c) whether the evidence could or would affect the nature of the woman's conviction or sentence.[9]

Issues: Judge Ratushny acknowledged that her standards were open to question.[10] Establishing appropriate standards was difficult, as much of the base evidence provided to the SDR had already been tested by a trial court and, in a number of cases, by one or two appellate courts as well. Judge Ratushny faced the challenge of setting standards that would allow her to weigh the evidence the courts had already considered along with the evidence the applicants were now providing to the SDR.

The standards originally applied by the courts were (a) whether the evidence was persuasive and (b) whether sufficient evidence existed, overall, to establish guilt beyond a reasonable doubt. Judge Ratushny, in weighing the new information she received, used as her standards (a) whether the evidence was reasonably capable of belief and (b) if so, whether the evidence could or would create a reasonable doubt in the mind of a reasonable trier of fact. The difference in these standards is both understandable and significant. In her report, Judge Ratushny seems to recognize the difficulties involved in both developing and applying her standards of review.

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8 Final Report, pages 18-19.

9 Final Report, page 19.

10 Final Report, at page 17 for example.

As an experienced trial judge, Judge Ratushny also recognized that the SDR was not a trier of fact and that she was not in a position to decide matters of credibility.[11] Yet she was in the position of having to take on the role of a "reasonable jury", assessing the credibility of the new evidence gathered by the SDR and whether a reasonable jury would convict on the basis of that information.[12] This role was particularly difficult to play as critical evidence provided to the SDR was very different from the evidence on the record in previous legal proceedings.

Finally, the SDR does suggest that "if a review of the applicant's case revealed that a shorter sentence would redress a wrongful conviction (e.g. conviction for the wrong offence)" then a commutation or a remission of sentence could be an appropriate recommendation to Ministers.[13] However, Judge Ratushny acknowledged on behalf of the SDR that Ministers of the Crown must not lightly interfere with the decisions of judges and jurors,[14] since it is a basic principle that the courts, not the Crown, determine the guilt or innocence of the accused and set sentences.

In sum, the SDR attempted to respect the courts' decisions while suggesting use of the royal prerogative of mercy to respond to new evidence that pointed to a wrongful conviction. The SDR sought a delicate balance by both respecting the courts' decisions yet acting on evidence that suggested different results.

SDR recommendations: The SDR reviewed the cases of the 98 applicants and concluded that seven of the cases passed its standards. The SDR recommended that three of the seven women who met the SDR's standards be granted free pardons. Each of these three women met the test that "no reasonable jury would convict her in the face of the evidence before me", in Judge Ratushny's view.[15] Each had suffered previous violent assaults or sexual abuse. The SDR concluded that each of the three woman believed reasonably that she needed to use force against the man she killed in self-defence. Each of these women is already out of custody, has made significant efforts to rebuild her life, and is not seen as presenting a risk to the public. Two have served their full sentences; the other is on full parole with approximately one year left to serve. (See Appendices A, B, and C to this Overview.)

The SDR found that three other women who met its standards could not benefit from the evolving law on self-defence, but had been provoked into killing. The SDR concluded that all three women had been victims of sexual or physical abuse. In two cases, the women told the SDR that they were resisting sexual advances by their respective victims when they killed them. In the other case, the SDR found that the applicant had been subject to verbal and physical abuse at the hands of her victim, and that he had sexually assaulted her on the day she killed him. All three women are serving life sentences for second degree murder. Two are presently in custody. One is on full parole after serving ten years and three months in custody. (See Appendices D, E and F.)

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11 Final Report, page 73.

12 Final Report, page 17.

13 Final Report, page 67 (see the quotation from the Fauteux Committee report).

14 Final Report, page 67.

15 Final Report, page 17.

Finally, the SDR recommended that the Ministers act on the case of a woman who provided new evidence about her involvement in the planning of the victim's death. While the SDR concluded that this evidence would not justify a claim of self-defence, it also concluded that the applicant's new evidence could raise a reasonable doubt as to the courts' original findings that the applicant had planned the murder. Judge Ratushny recommended that the Minister of Justice exercise her authority under section 690 of the *Criminal Code* by asking the Court of Appeal to review whether the applicant had indeed planned to kill the victim. (See Appendix G.)

Ministers' Decisions

Reasons for decisions: The basis for the Ministers' decisions included information provided by the applicants, the assessment by the SDR, the summaries of trial and appellate records provided by the SDR, and information from the applicants' prison and parole records. The SDR's work was invaluable in shedding new light on the circumstances of the women who applied. However, the Ministers reached different conclusions from those recommended by the SDR. The key factors in the Ministers' decision making were the following:

(1) The reversal of a judicial decision is a very significant step, although it is a step that was contemplated when the SDR was established. As the SDR itself recognized, such a step should be taken with care, out of respect for the juries and judges who considered the cases at trial and, in certain cases, through two levels of appeal.

(2) The SDR developed unique standards to apply to the unique task assigned to it. As already noted, they are understandably different from those applied by the courts at trial. They also are different from those used in reviews under section 690 of the *Criminal Code*. The Ministers felt that the uniqueness of the standards required caution in deciding how best to respond to the SDR recommendations.

(3) The difficulties associated with weighing new facts and assessing the believability of the new evidence without fully testing the facts and evidence were of concern to the Ministers.

(4) While it would have been possible to ask the courts to hear certain cases again in order to properly test the information on which the SDR relied, this approach would have placed enormous burdens on the women concerned and would have denied these women immediate remedies.

(5) Public safety concerns also needed to be taken into account in deciding on appropriate remedies. While this issue is not relevant to the correctness of the original conviction, and perhaps even to the original sentence, it would not have been in the public interest for the Ministers to ignore information on any risks to the public associated with implementing the SDR recommendations.

Decisions: The royal prerogative of mercy was invoked for four women, and the Minister of Justice exercised her authority under section 690 of the *Criminal Code* for a fifth woman. These decisions are summarized below according to whether the SDR recommended a free pardon, found the applicant was provoked, or recommended a section 690 review. Detailed summaries of these women's cases are provided in the appendices to this document.

Free pardon cases: Free pardons are granted when the innocence of a convicted person has been clearly established.[16] The Ministers decided not to use the free pardon remedy. In two of the three cases recommended by the SDR for free pardons, the Ministers will request that the royal prerogative of mercy be invoked to grant conditional pardons in advance of eligibility for a full pardon under the *Criminal Records Act*.[17] (See Appendices A and B for details.) In the other case, the Ministers will invoke the royal prerogative of mercy to grant a remission of sentence, which essentially will erase the remainder of the sentence against the third woman, who is currently on full parole.[18] The Ministers have also agreed to provide this woman with aftercare (community support) for one year. (See Appendix C.) The Ministers considered whether new trials might be requested for these three women, particularly since they are no longer in custody, public safety is not an issue in their cases, and two of the women have served their full sentences and the other is on full parole. For the reasons noted above, it was decided to grant immediate relief to the women concerned.

Provocation cases: The three cases where Judge Ratushny identified provocation as an important factor raise particular questions with respect to when there is enough new information to set aside the earlier decisions of judge and jury. The problem is particularly acute in two of these cases because provocation had been raised at trial and rejected by the court. In these two cases, the Ministers are not prepared to grant a remedy, particularly as both women are in custody and there should be a careful assessment as to whether they present a risk to society before they are released. The Ministers note that in both cases the women are eligible to apply for parole. (See Appendices D and E.) The third woman whose case involved an element of provocation did not raise a provocation defence at trial and is currently out of custody and on full parole, and public safety is not an issue in this case. She has made significant efforts to rehabilitate her life. Ministers will recommend the exercise of the royal prerogative of mercy by remission of sentence and the provision of aftercare for this woman for one year. (See Appendix F.)

Section 690 case: Finally, Ministers have decided to act on Judge Ratushny's recommendation to refer a case to the appropriate provincial Court of Appeal. The SDR found that the applicant provided information concerning the applicant's planning and deliberation of the killing. The

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16 See Final Report, page 63, quoting from the National Parole Board's guidelines.

17 A conditional pardon seals and sets apart a person's criminal record before he or she would be eligible for a pardon under the *Criminal Records Act*. The record then cannot be disclosed by federal authorities without the prior approval of the Solicitor General of Canada. A conditional pardon is given when there is evidence of good conduct *and* substantial evidence of undue hardship. Although people who receive a conditional pardon cannot deny that they were convicted, they can say that they have received a pardon. The pardon is conditional, however, in that it can be revoked if the individual commits another offence.

18 See Final Report, page 64, for a description of this remedy.

SDR also found that this information could raise a reasonable doubt as to the applicant's first degree murder conviction. After a careful review, the Ministers decided that in the unique circumstances of this case they should respect the recommendation to refer it to the provincial Court of Appeal, even though the SDR's standards for recommending the use of section 690 of the *Criminal Code* are different from the standards traditionally required to justify a section 690 review. The Ministers note, though, that they continue to regard the traditional standards as appropriate. The Court of Appeal will first be asked to consider whether the information provided to the SDR relating to the issue of planning and deliberation would be admissible as fresh evidence on appeal. If the Court agrees on this point, it will then be asked to review the applicant's case as though it were an appeal. In sum, the Court of Appeal will itself determine whether the information warrants the type of review Judge Ratushny recommends.

Conclusion

The Ministers and others who are committed to advancing Canada's system of justice owe a debt of gratitude to Judge Ratushny and the SDR staff for their groundbreaking work. The conclusions reached by the Ministers will disappoint certain applicants. Correctional Service Canada has been informed of the decisions and will be taking steps to make support available to those applicants who need it. The effect of this work will go beyond the lives of the women who decided, as one applicant described it, to open the closets of their lives to Judge Ratushny and her staff.[19] The Ministers hope the legacy of the Self-Defence Review will be to ensure that women with unique needs and circumstances are treated with fairness and understanding by Canada's system of justice in years to come.

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19 Final Report, page 14.

SUMMARY OF CASES

Appendix A

SDR - 45
Conviction: Manslaughter
Length Of Sentence: Six Years
Present Status: Sentence Expired

Background

The applicant met the victim in a bar, went to his home, and killed him with a hammer. The applicant was charged with second degree murder, convicted of manslaughter and given a six-year sentence.

SDR Evidence

The applicant told the SDR she killed the victim to save her life. She could not recall how she obtained the hammer or how she killed the victim. While the victim was a stranger to her, the applicant indicated to the SDR that she had endured a series of abusive relationships from the time she was a teenager. The SDR concluded that: (i) evidence, reasonably capable of belief, existed to support all of the elements of self-defence; and (ii) the applicant's claim of self-defence was supported by evidence proving, on a balance of probabilities, that she was acting in self-defence. The SDR recommended that the Ministers should consider granting the applicant a free pardon.

Trial Evidence

Self-defence was raised as an issue at trial. The applicant testified that, although she could not recall the details of the killing, she feared for her life and was acting in self-defence. The jury found her guilty of manslaughter.

Assessment and Conclusion

The Ministers considered requesting that this case be re-tried so the information presented to the SDR might be tested through cross-examination. This option was rejected for the following reasons: (i) it is not in the public interest to order a new trial or appeal, given the quality of the evidence and the expense and delay; (ii) the applicant is out of custody, her sentence has now expired, and public safety is not an issue in this case; and (iii) in light of the applicant's significant efforts to rehabilitate her life and the background information gathered by the SDR, an immediate remedy is available to the applicant on compassionate grounds.

The Ministers will recommend that the applicant be granted a conditional pardon in advance of her eligibility for a pardon under the *Criminal Records Act*. The pardon will have the same effect as if it were granted under the provisions of the *Criminal Records Act*. In effect, this means the applicant's criminal record will be sealed and cannot be disclosed by federal authorities without the prior approval of the Solicitor General of Canada.[20]

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20 See footnote 17, above.

Appendix B

SDR - 56
Conviction: Manslaughter
Length Of Sentence: Three Years
Present Status: Sentence Expired

Background

The agreed statement of facts indicates that the victim and the applicant had had a relationship which ended because of abuse by the victim. The applicant and victim later met at a gathering and exchanged heated words. At the gathering, a second confrontation took place, which ended with the victim being stabbed. The victim did not appear to be seriously injured and did not seek immediate attention, but died of his wound. The applicant was charged with first degree murder. She pleaded guilty to manslaughter. Based on the agreed statement of facts and a joint submission by defence counsel and the Crown prosecutor, the applicant was sentenced to a three-year term.

SDR Evidence

The applicant provided the SDR with details of abuse she had suffered at the hands of the victim and others. The applicant provided new information to the SDR that the victim had threatened to take her children away from her if she would not resume a relationship with him. The SDR concluded that the applicant was assaulted by the victim before the killing, that she reasonably believed he was going to cause her serious bodily harm or death, and that she reasonably believed she needed to use force against the victim. The SDR also concluded that the weight of the evidence supporting the applicant's claim of self-defence was not adequately appreciated at the time of the guilty plea and that she would have been acquitted if the matter had been tried in court.

Further, the SDR found that the applicant had been placed in a very difficult situation. She faced a charge of first degree murder, was in custody for several months on remand, had not yet had a preliminary inquiry, had two young children, and was potentially facing a life sentence with parole eligibility after 25 years of incarceration. She was then offered an opportunity to plead guilty to manslaughter and receive a sentence of three years.

The SDR also found that the Crown prosecutor did not turn his mind to whether there was a reasonable likelihood of conviction in the face of the self-defence evidence. Had the matter of self-defence been given greater attention, the prosecutor might have informed defence counsel of the likelihood of committal on manslaughter, or the applicant might have waived the preliminary inquiry and faced a trial at which the issue of self-defence could have been fully aired. The SDR concluded that it is also not beyond the realm of possibility, given the strength of the self-defence evidence, that the prosecutor might even have withdrawn the charges. In light of this background, the SDR recommended a free pardon.

Assessment and Conclusion

The applicant is out of custody and her sentence has expired. The Ministers were impressed by the personal difficulties that this applicant had experienced, as explained to the SDR, as well as by the significant efforts that this applicant has made to rehabilitate her life. The Ministers will recommend that the applicant be granted a conditional pardon in advance of her eligibility for a pardon under the *Criminal Records Act*. The pardon will have the same effect as if it were granted under the provisions of the *Criminal Records Act*. In effect, this means the applicant's criminal record will be sealed and cannot be disclosed by federal authorities without the prior approval of the Solicitor General of Canada.[21]

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21 See footnote 17, above.

Appendix C

SDR - 02
Conviction: Manslaughter
Length Of Sentence: Eight Years
Present Status: Approximately one year left to serve; currently on Full Parole

Background

The victim was found stabbed to death at his residence, which he had shared with the applicant for three months prior to his death. At trial, the applicant testified she did not kill the victim. She testified that when she last saw the victim, an unidentified assailant was threatening him with a knife. The applicant was charged with second degree murder, convicted of manslaughter and sentenced to an eight-year term.

SDR Evidence

The applicant explained to the SDR that she lied about her alibi at trial. She also told the SDR she did not remember the killing until she underwent psychological intervention a number of years after the trial. She now recalls stabbing the victim with a knife. The victim was choking her when she stabbed him and she was acting in self-defence to prevent her own death. The applicant also indicated that her victim had assaulted her during the time they shared his apartment. Finally, the applicant described a history of abuse at the hands of others that began at puberty and continued during her teenage years. The SDR concluded that: (i) the history of abuse helped to explain the applicant's actions; (ii) the applicant acted in self-defence; and (iii) the Ministers should consider granting the applicant a free pardon.

Trial Evidence

A medical examination of the applicant performed shortly after the incident revealed no physical evidence of choking. The medical evidence at trial also suggested that the victim was either unconscious or unable to defend himself at the time of his death. The case was tried after the Supreme Court of Canada decision in *Lavallée,* and the applicant's counsel saw the case as potentially raising the issue of self-defence. However, the applicant gave counsel written instructions not to raise the defence.

Assessment and Conclusion

In light of the clear contradiction between the applicant's new evidence and the evidence at trial, a proper assessment of the applicant's information was seen as critical before the Ministers could consider reversing the jury's finding of fact. For the same reasons as those noted in the appendices above, the Ministers have decided that a new trial is not a viable option. As public safety is not an issue in this case and the applicant is out of custody and on full parole with approximately one year left to serve on her sentence, and she has made significant efforts to rehabilitate her life, and in light of the personal difficulties this applicant brought to the attention of the SDR, the Ministers decided to exercise the royal prerogative of mercy by remission of sentence. This remedy essentially frees the applicant from the remainder of her sentence. The Ministers have also agreed to provide the applicant with aftercare (community support) for one year.

Appendix D

SDR - 20
Conviction: Second Degree Murder
Length Of Sentence: Life Sentence
Present Status: In Custody, Eligible for Parole

Background

The applicant and a co-accused killed the victim in his home by repeatedly stabbing him with a knife and fork and battering his skull with a blunt instrument. The applicant and the co-accused met the victim for the first time in a bar on the night of the death and returned with him to his home. The applicant claimed that when the victim made sexual advances towards her she became upset and began hitting him. The applicant was convicted of second degree murder, received a life sentence with parole ineligibility for 10 years, and became eligible for parole nine years ago.

SDR Evidence

The new information provided by the applicant to the SDR relates to the extensive abuse had suffered by the applicant prior to the killing at the hands of men other than the victim. The applicant had suffered sexual abuse from the age of three. The abuse continued through her childhood and adolescence. The applicant informed the SDR that the victim also attempted to sexually assault her. The SDR concluded (i) this history of abuse helped to explain the applicant's actions; and (ii) although the applicant did not act in self-defence, the applicant was provoked and would have been convicted of manslaughter if the jury had heard and properly interpreted the applicant's history of abuse. The SDR recommended that the Ministers commute, effective March 1, 1997, the applicant's life sentence to time served plus three years or grant, effective March 1, 2000, a remission of the remainder of her life sentence.

Trial Evidence

The SDR summary of the trial evidence reveals that the issue of provocation was raised at trial. While the applicant denied in a pre-trial statement that the victim had attempted to sexually assault her, the applicant testified at trial that the victim had attacked her. Medical evidence at trial indicated that the victim was grossly intoxicated at the time of his death, he died as the result of multiple stab wounds, his throat had been cut, and he was beaten with several types of bottles.

Assessment and Conclusion

The new information tendered by the applicant, which has not been tested on cross-examination, is not seen by the Ministers as sufficient to overturn the jury's findings at trial, particularly as the very issue before the jury was the provocation defence. In the Ministers' view, the nature of the attack, especially in light of the medical evidence before the court, would make a provocation defence difficult to sustain.

In reaching their decision to decline to exercise the royal prerogative of mercy, Ministers have considered the key factors summarized on page five. It was noted that, when released on an earlier occasion, the applicant committed a serious driving offence which resulted in the death of another person. The applicant is eligible to apply for parole. She may apply to be released from custody and can be granted release once the National Parole Board is satisfied that she does not pose a risk to society. In the interim, Correctional Service Canada is committed to assisting the applicant in her rehabilitation efforts.

Appendix E

SDR - 24
Conviction: Second Degree Murder
Length Of Sentence: Life Sentence
Present Status: In Custody, Eligible for Parole

Background

The applicant had stabbed the victim numerous times. The applicant was working as a prostitute on the evening of the incident and accompanied the victim to his hotel room. The applicant testified that she had been drinking, was carrying a knife for protection, and had refused the victim's demand for sex. The victim became upset. The applicant testified that she "flipped out." The applicant was convicted of second degree murder, received a life sentence without parole eligibility for 10 years, and became eligible for parole 9 1/2 years ago.

SDR Evidence

The applicant told the SDR that she stabbed the victim after he threw her against the wall of the hotel room. She had anticipated that the victim would want sex but she stated to the SDR that the demands of the victim caused her to "flip out." Taking into account her personal circumstances and background, the SDR concluded: (i) evidence reasonably capable of belief existed that the applicant feared serious bodily harm from the victim; (ii) the applicant used excessive force in the circumstances; (iii) sufficient evidence existed to establish provocation; and (iv) the murder conviction would have been reduced to manslaughter on this evidence. The SDR found that the applicant had taken significant steps to change her lifestyle before she killed the victim and that her activities on the night of the stabbing represented a relapse. For these reasons, the SDR recommended the commutation of sentence or the remission of the remainder of the applicant's life sentence with significant care upon her release.

Trial Evidence

The SDR summary of the trial evidence reveals that the physical evidence adduced at trial is inconsistent with the applicant's claim that she was provoked by the victim's assault. The room showed no signs of a struggle. There was no evidence of bruises on the applicant. Experts testified the killing had taken place on the bed as the victim was stabbed numerous times, including several times in the back, and the only blood in the room was on the bed. Although trial transcripts were unavailable, the appellate factum discloses that self-defence and provocation were raised at trial and rejected by the trial judge.

Assessment and Conclusion

The Ministers have considered the circumstances of this case and have decided not to provide the applicant with the relief recommended by the SDR. The Ministers note that the applicant is currently perceived by the National Parole Board to be a risk both to herself and to society. When the applicant has rehabilitated herself she will be in a position to apply for release according to the available parole mechanisms. In the interim, Correctional Service Canada is committed to assisting the applicant in her rehabilitation efforts.

Appendix F

SDR - 37
Conviction: Second Degree Murder
Length Of Sentence: Life Sentence
Present Status: On Full Parole

Background

The applicant shot the victim with a gun that had been stored in the attic of their home. The applicant was convicted of second degree murder and given a life sentence without parole eligibility for 10 years.

SDR Evidence

The applicant provided the SDR with new information that the victim had sexually assaulted her on the day of the killing. She told the SDR that she went to the attic, retrieved a gun, loaded it and shot her victim because of that assault. The SDR concluded that this information was reasonably capable of belief, that the victim had assaulted the applicant and that she feared she would be assaulted again. While the SDR concluded the degree of force used by the applicant was excessive in the circumstances, it also found that the victim's wrongful acts would provoke an ordinary person who shared the applicant's background and circumstances to lose self-control. The SDR concluded that the applicant's new information concerning the victim's behaviour on the day of the killing was credible and would have resulted in a finding of provocation by a reasonable trier of fact. Therefore, the SDR concluded that the applicant would have been convicted not of second degree murder, but of manslaughter. The SDR recommended commutation of the applicant's sentence, or the remission of the remainder of her life sentence, with aftercare for one year.

Trial Evidence

Self-defence was not raised at trial or on appeal. The applicant testified at trial that she and her victim had been drinking and she had no memory of the shooting. Relations between the victim and the applicant were marked by tension, but no violence, prior to the shooting. The applicant's new information is inconsistent with previous information provided by the applicant to the police or her counsel, and through her trial testimony. In earlier accounts, the applicant claimed that the killing was strictly accidental.

Assessment and Conclusion

For the reasons noted in the previous appendices, the Ministers are not prepared to order a new trial or appeal. However, the Ministers were impressed by the significant efforts that this applicant has made to rehabilitate her life. Therefore, the Ministers recommend the exercise of the royal prerogative of mercy by remission of sentence and the provision of aftercare for one year.

Appendix G

SDR - 22
Conviction: First Degree Murder
Length Of Sentence: Life Sentence
Present Status: In Custody

Background

The applicant and a male co-accused were convicted of first degree murder and received a life sentence without parole eligibility for 25 years.

SDR Conclusions

The SDR concluded that the applicant's information as to her state of mind during the preparations to kill the victim constitutes new evidence, reasonably capable of belief, that was not before the trial court. It also concluded that the information relates to the applicant's ability to plan the murder, an essential element of a finding of guilt for first degree murder. The SDR therefore recommended that the Minister of Justice order a reference to a Court of Appeal under paragraph 690(b) of the *Criminal Code* on the issue of whether the applicant planned and deliberated to kill the victim.

Assessment and Conclusion

The information presented by the applicant to the SDR regarding the issue of planning and deliberation should be reviewed by the Court of Appeal to determine whether it would be admissible as fresh evidence on appeal. If the Court determines that the information would be admissible as fresh evidence, then the Court is asked to review the applicant's case. As the Minister of Justice is referring this matter to the Court of Appeal, it would not be appropriate to comment on the facts underlying the SDR's conclusion or on the trial and appellate records.