

# The Case of Updated Evidence

## *R. v. Truscott* [2007]

### Teacher Resource

**Curriculum Links:** Understanding Canadian Law (CLU3E), Grade 11, Workplace Preparation

**Legal Focus:** Wrongful convictions

**Estimated Time:** 1 period

#### **Overall Expectations:**

- Describe the criminal trial process.
- Identify the sentencing options available to judges in a criminal trial or a provincial prosecution.

#### **Specific Expectations:**

- Describe the elements the crown must prove for an action to be considered a crime.

#### **Description of the Case**

1. On June 11, 1959, the body of 12-year-old Lynne Harper was found in a wooded area close to where she lived in south-western Ontario (two days after she had been reported missing). She had been sexually assaulted and strangled with her own shirt.
2. On September 30, 1959, her 14-year-old classmate, Steven Truscott, was convicted of first-degree murder and sentenced to hang. His sentence was later changed to life imprisonment. His attempts to appeal this conviction failed. Mr. Truscott had always maintained his innocence.
3. After spending ten years in prison, Mr. Truscott was released on parole in 1969. He assumed a new name and maintained a low profile for the next thirty years.
4. In 2000, he publicly proclaimed his innocence and renewed the fight to clear his name, with the assistance of lawyers from the Association in Defence of the Wrongly Convicted (AIDWYC).
5. In 2001, Mr. Truscott made a request to the Minister of Justice for a review of his conviction. The Minister of Justice referred the conviction to the Ontario Court of Appeal.

### Court of Appeal for Ontario

6. The Court of Appeal was asked to look only at the new evidence available and decide, in light of this new information (“fresh evidence”), whether the results of the trial and the first reference were a mistake and constituted a miscarriage of justice.
7. Most of the new evidence related to the time of Ms. Harper’s death. The time of death was crucial in determining whether Mr. Truscott was the murderer. In Mr. Truscott’s original trial, the coroner had determined, based on his examination of Ms. Harper’s stomach contents, that her death occurred between 7 and 7:45pm. According to the Crown’s argument, if Ms. Harper died between 7 and 8pm, Mr. Truscott was the murderer, but if she was murdered after 8pm, he was not.
8. Between 1959 and the 2007 Reference, a number of scientific developments have emerged to more accurately determine the time of death. Improvements in science also showed that stomach contents are not reliable in determining time of death.

### *The Final Judgment*

9. After reviewing nearly 250 fresh pieces of evidence, the Court of Appeal concluded that this new evidence would give a jury at least a reasonable doubt that Ms. Harper died before 8pm. If a jury had reasonable doubt about the time of death, then it would also have reasonable doubt about Mr. Truscott’s guilt.
10. The Court of Appeal unanimously decided that the conviction of Mr. Truscott was a miscarriage of justice. He could not be found innocent of the original charge because this would have necessitated a new trial, which was impossible due to the significant passage of time. Accordingly, the court acquitted Truscott of the murder.
11. On August 28, 2007, Mr. Truscott was acquitted of the charges by the Ontario Court of Appeal.
12. Following the release of the decision, former Attorney General of Ontario, Michael Bryant, offered an apology to Mr. Truscott and stated that the Crown had no plans to appeal the decision to the Supreme Court of Canada.
13. This case is significant because it allowed courts to hear new evidence based on scientific advancements which did not exist at the time of the original trial.

### *Teaching & Learning Strategies*

1. As a class, brainstorm various types of technology that aid police in gathering evidence and solving crimes (e.g. fingerprinting, DNA testing, polygraph tests, etc.). Have students estimate approximately how long these types of technology have been around.
2. Ask students to complete *The Big Question*. Poll students on if they think that recent developments in scientific investigation should result in re-trials for people convicted of crimes

in which scientific advancements might raise reasonable doubts about their convictions. Ask students to volunteer their opinions on the issue and discuss as a class.

3. Review *The Facts of the Case* and discuss *The Issue* with students.
4. Have students read aloud *The Arguments in Court* and *The Final Judgment* sections. This is a good opportunity for students to ask clarifying questions and provide personal opinions. Have a teacher-directed discussion about the judgment. Invite students to express their views on the judgment and whether they agree or disagree with the decision.
5. Have students complete the *Check for Understanding* exercise and take up the answers as class.
6. Ask students to complete the *Taking a Closer Look* exercise. Invite the class to investigate the issue of wrongful convictions by first considering the nature of this term. Create a list of reasons why cases are appealed after many years have passed and discuss why this might happen.
7. Ask students in groups of 2-3 to research a particular case catalogued on the Association in Defence of the Wrongfully Convicted website ([www.aidwyc.org/cases/](http://www.aidwyc.org/cases/)). Arrange for each group to present on the details of the case, the progression through the courts, and what resolution was reached. Invite the class to consider who (family and friends, individual lawyers, organizations like AIDWYC, forensic investigators, the media, the legal system) played a role in keeping these cases active. Have students assess the relative influence of these individuals/agencies, based on an assigned case, by ranking them from most influential to least influential.
8. In completing the *Reflecting* exercise, have students form their own Conviction Review Committee in groups of 4-5, and review a case where a miscarriage of justice is alleged. Cases can be obtained from the Association in Defence of the Wrongfully Convicted website ([www.aidwyc.org/cases/](http://www.aidwyc.org/cases/)), or you can choose a case profiled by students during their presentations. You may choose to give each group a different case or have the whole class review the same case. Instruct students to identify the key issues in the case, determining whether or not a conviction review should be granted and why. Arrange for each Committee to present their decisions to the class.

### **Assessment & Evaluation**

- Class discussions
- *Check for Understanding* worksheet
- *Taking a Closer Look* worksheet
- *Reflecting* activity

## Resources

Ontario Justice Education Network

www.ojen.ca

- The Top 5 2007 (See *R. v. Truscott*)

Ontario Court of Appeal Decisions – *R. v. Truscott* [2007]

<http://www.ontariocourts.on.ca/decisions/2007/august/2007ONCA0575.htm>

# The Case of Updated Evidence

## *R. v. Truscott* [2007]

### Student Handout

#### *The Big Question*

Should a new development in the way that evidence is tested or interpreted entitle a convicted person to a review of his or her case? What factors are important in making your decision?

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#### *The Facts of the Case*

1. On June 11, 1959, the body of 12-year-old Lynne Harper was found in a wooded area close to where she lived in south-western Ontario (two days after she had been reported missing). She had been sexually assaulted and strangled with her own shirt.
2. On September 30, 1959, her 14-year-old classmate, Steven Truscott, was convicted of first-degree murder and sentenced to hang. His sentence was later changed to life imprisonment. His attempts to appeal this conviction failed. Mr. Truscott had always maintained his innocence.
3. After spending ten years in prison, Mr. Truscott was released on parole in 1969. He assumed a new name and maintained a low profile for the next thirty years.
4. In 2000, he publicly proclaimed his innocence and renewed the fight to clear his

name, with the assistance of lawyers from the Association in Defence of the Wrongly Convicted (AIDWYC).

5. In 2001, Mr. Truscott made a request to the Minister of Justice for a review of his conviction. The Minister of Justice referred the conviction to the Ontario Court of Appeal.

### ***The Issue***

- Based on new scientific developments, and the fact that Mr. Truscott had originally been convicted based largely on scientific evidence, should he be entitled to a new trial?

### ***The Arguments in Court***

6. The Court of Appeal was asked to look only at the new evidence available and decide, in light of this new information (“fresh evidence”), whether the results of the trial and the first reference were a mistake and constituted a miscarriage of justice.
7. Most of the new evidence related to the time of Ms. Harper’s death. The time of death was crucial in determining whether Mr. Truscott was the murderer. In Mr. Truscott’s original trial, the coroner had determined, based on his examination of Ms. Harper’s stomach contents, that her death occurred between 7 and 7:45pm. According to the Crown’s argument, if Ms. Harper died between 7 and 8pm, Mr. Truscott was the murderer, but if she was murdered after 8pm, he was not.
8. Between 1959 and the 2007 Reference, a number of scientific developments have emerged to more accurately determine the time of death. Improvements in science also showed that stomach contents are not reliable in determining time of death.

### ***The Final Judgment***

9. After reviewing nearly 250 fresh pieces of evidence, the Court of Appeal concluded that this new evidence would give a jury at least a reasonable doubt that Ms. Harper died before 8pm. If a jury had reasonable doubt about the time of

death, then it would also have reasonable doubt about Mr. Truscott's guilt.

10. The Court of Appeal unanimously decided that the conviction of Mr. Truscott was a miscarriage of justice. He could not be found innocent of the original charge because this would have necessitated a new trial, which was impossible due to the significant passage of time. Accordingly, the court acquitted Truscott of the murder.
11. On August 28, 2007, Mr. Truscott was acquitted of the charges by the Ontario Court of Appeal.
12. Following the release of the decision, former Attorney General of Ontario, Michael Bryant, offered an apology to Mr. Truscott and stated that the Crown had no plans to appeal the decision to the Supreme Court of Canada.
13. This case is significant because it allowed courts to hear new evidence based on scientific advancements which did not exist at the time of the original trial.

## Check for Understanding

1. In 1959, Steven Truscott was originally sentenced to death for the murder of Lynne Harper. **TRUE/FALSE**
2. Mr. Truscott spent 18 years in prison before he was released on parole. **TRUE/FALSE**
3. Mr. Truscott fought for his innocence with the help of lawyers from the Association in Defence of the Wrongly Convicted (AIDWYC). **TRUE/FALSE**
4. In 2001, the Minister of Justice sent Mr. Truscott's case to the Court of Appeal for Ontario to be reviewed. **TRUE/FALSE**
5. The Court of Appeal looked at the all the evidence in the case, including the evidence from the original trial as well as 250 pieces of new evidence. **TRUE/FALSE**
6. A number of scientific developments occurring between 1959 and 2007 changed the way time of death is determined with relation to stomach contents. **TRUE/FALSE**
7. The Court of Appeal unanimously decided that Mr. Truscott's conviction was a miscarriage of justice. **TRUE/FALSE**
8. The Court of Appeal ordered a new trial and Mr. Truscott was found innocent of the original charge. **TRUE/FALSE**
9. Mr. Truscott was acquitted of the charges against him and was offered an apology from the Attorney General of Ontario. **TRUE/FALSE**
10. Mr. Truscott's case is an example of a wrongful conviction. **TRUE/FALSE**



11. Put the following events in chronological order by numbering them from 1 to 9, with 1 being the earliest event and 9 being the latest.

- \_\_\_\_\_ Mr. Truscott publicly proclaims his innocence and begins a fight to clear his name.
- \_\_\_\_\_ Lynne Harper's body is found.
- \_\_\_\_\_ The Court of Appeal reviews 250 pieces of new evidence related to Mr. Truscott's case.
- \_\_\_\_\_ Mr. Truscott convicted of murder and sentenced to hang.
- \_\_\_\_\_ Mr. Truscott is given a public apology by the Attorney General of Ontario.
- \_\_\_\_\_ The Minister of Justice calls for a review of the Truscott case.
- \_\_\_\_\_ Mr. Truscott is acquitted of all charges by the Court of Appeal of Ontario.
- \_\_\_\_\_ The Court of Appeal unanimously decides the Truscott case is a miscarriage of justice.
- \_\_\_\_\_ Mr. Truscott is given parole.

## Taking a Closer Look

### Wrongful Convictions

- What is a wrongful conviction?
- What are some reasons why cases are appealed after many years have passed?
- Why this might happen?

In groups of 2-3, research a particular case catalogued on the Association in Defence of the Wrongfully Convicted website ([www.aidwyc.org/cases/](http://www.aidwyc.org/cases/)). Each group will present on a case, explaining the details of the case, the progression through the courts, and what resolution was reached. Consider who (family and friends, individual lawyers, organizations like AIDWYC, forensic investigators, the media, the legal system) played a role in keeping the case active. Assess the relative influence of these individuals/agencies, based on an assigned case, and rank them from most influential to least influential. Be prepared to explain your reasons for your ranking during your presentation.

### Possible cases to consider:

- Wilfred Bealieu
- Robert Baltovich
- Christopher Bates
- Wilbert Coffin
- James Driskell
- Gordon Folland
- Peter Frumusca
- Clayton Johnson
- Kulaveerasingam Karthiresu
- Donald Marshall Jr.
- Tammy Marquardt
- Richard McArthur
- Michael McTaggart
- Felix Michaud
- Guy Paul Morin
- William Mullins-Johnson
- Wilson Nepoose
- Richard Norris
- Gregory Parsons
- Romeo Phillion
- Benoit Proulx
- Thomas Sophonow
- Gary Staples
- Kyle Unger
- Erin Walsh
- Donzel Young

Record your case information in the chart below:

<b>Case Name</b>	
<b>Description of the Case</b>	
<b>Progress through the Courts</b>	
<b>Final Outcome (if known)</b>	
<b>People involved in Case</b>	

## Reflecting

What role should governments play in preventing miscarriages of justice?

In Ontario, a committee has been established to provide expert leadership in the prevention of wrongful convictions. The mandate of the Ontario Criminal Conviction Review Committee is to:

- Review criminal convictions where a miscarriage of justice is alleged, including cases that engage reviews by the federal Minister of Justice under the *Criminal Code*
- Provide expert advice and guidance to Crowns across the province in dealing with some of the difficult issues relating to potential miscarriages of justice
- Develop educational and policy initiatives aimed at the prevention of miscarriages of justice
- Develop protocols and best practices for dealing with these cases and preventing of future miscarriages of justice

Governments across Canada, individually and as a group, are working on this important subject.

In groups of 4-5, form your own Conviction Review Committee and review a case where a miscarriage of justice is alleged. Cases can be obtained from the Association in Defence of the Wrongfully Convicted website ([www.aidwyc.org/cases/](http://www.aidwyc.org/cases/)). Identify the key issues in the case, determine whether or not a conviction review should be granted, and provide reasons to support your decision. Each Committee will present their decisions to the class.