

David Milgaard - Your long weekend long read

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raped and stabbed repeatedly in the back and chest with a small paring knife, which was found under her body.

The story of her death started small — a few paragraphs buried inside the pages of a Saskatoon newspaper — but evolved into one of Canada's most talked about justice stories after a youth was arrested and wrongfully convicted.

That youth was David Edgar Milgaard.

Milgaard arrives in Saskatoon the morning of Miller's murder

A footloose 16-year-old David Milgaard had arrived in Saskatoon from Regina the morning of Miller's murder. He was travelling in a car with Nichol John and Ron Wilson. The three teenagers went to the home of their friend Albert "Shorty" Cadrain at 334 Avenue O South.

Shortly after noon the three teens, along with Cadrain, left Saskatoon headed for Alberta. Little did they know that Larry Fisher — who was living in the basement suite below Cadrain's home — had murdered Gail Miller that morning.

Four months after the murder, on May 30, 1969, Milgaard was arrested. On Jan. 31, 1970, after a 12-day jury trial consisting of 11 men and one woman, Milgaard, then 17, was wrongfully convicted of raping and murdering Miller and sent to Canada's toughest prisons for life.

Holding power to account: Who was responsible for David Milgaard's wrongful conviction?

Saskatchewan held a public inquiry from January 2005 to December 2006 into David Milgaard's wrongful conviction for rape and murder.

The two-year inquiry consisted of 341,634 pages and 114 witnesses. It produced 40,774 pages of transcript and more than 3,000 exhibits.

More than 50 years later, however, the question "Who is responsible?" has never been answered.

"It was a dreadful public inquiry," said James Lockyer, lawyer and co-founder of Innocence Canada during an October 2021 Webinar.

"The commissioner had absolutely no sympathy for David. The fact that he served nearly 23 years in jail didn't seem to have any influence on him at all.

"He gave a clean slate to the police, a clean slate to the prosecutors," said Lockyer. "And so far as blame was placed on anyone, it was placed on David, Joyce, and the media for supposed missteps that they made in the years since Gail Miller had been murdered.

"David's case is truly as remarkable a wrongful conviction that can be imagined," added Lockyer.

In May, in response to Milgaard's assertions that the public inquiry was a whitewash, Ariane Whiting, Senior Media Relations Consultant for Saskatchewan, told SASKTODAY.ca that a commission of inquiry is established and paid for by the government, but is an independent body.

"The Public Inquiries Act guides the Commission in performing its duties without expressing conclusions about civil or criminal liability of any person or organization," she said. "A public inquiry is not a trial."

Whiting said the inquiry hears evidence by way of a public hearing and functions in much the same way as a court of law but all of the same rules don't apply.

"The Commission of Inquiry had the responsibility to seek to determine whether the investigation should have been re-opened based on information subsequently received by the police and the federal Department of Justice."

The Saskatchewan Government had appointed Alberta Justice Edward P. MacCallum as the commissioner to head the inquiry into Milgaard's wrongful conviction and Lockyer had represented David Milgaard's mother Joyce Milgaard at the inquiry.

"It was apparent to me from early on that MacCallum, who was the sole decision-maker, was going to absolve the police and prosecutors," Lockyer told SASKTODAY.ca in an email in October 2021. "That is why I left midway through [the inquiry] and never went back."

Milgaard inquiry a 'whitewash'

Right up to his death, Milgaard criticized the inquiry for not finding any fault with the police, the prosecutor, or the Saskatchewan government, and instead, only criticized his words and actions, and those of his mother Joyce Milgaard.

"What the wrongfully convicted want more than anything else — and you can understand why — they want the people held accountable for doing what they have done to them that is wrong," said Milgaard during a Webinar in October 2021.

"How do we hold power to account, try to somehow tag them for accountability where they have done wrong?" asked Milgaard.

Cecil Rosner, Adjunct Professor, former CBC investigative journalist, and co-author of *When Justice Fails: The David Milgaard Story* also slammed Saskatchewan's inquiry.

"One of the big outstanding remaining questions in this topic is who is responsible?" said Rosner in the Octo-



David Milgaard speaking at Dalhousie University, Nova Scotia, to law students. | Photo supplied by David Milgaard

ber 2021 Webinar.

"The more you learn about the facts of this particular case; what the police did and didn't do, and what the justice system did and didn't do, how can you not get outraged?"

Lockyer said those responsible for wrongful convictions are never held accountable.

"I don't know any prosecutor, police officer, or expert, or anyone for that matter who has been prosecuted for causing a wrongful conviction."

Whiting told SASKTODAY.ca that determining whether a prosecutor might be civilly liable would depend on several things, including proof the prosecution was malicious, according to the civil test.

"Establishing whether a wrongful prosecution was a crime would require specific evidence of criminal intent."

Allegations of a cover-up at the highest level

In 1992, The Canadian Press reported that new evidence suggested then-Saskatchewan Premier Roy Romanow and senior Justice Department officials knew there were doubts about Milgaard's guilt as far back as 1971.

During a news conference, Joyce Milgaard told reporters that a former Saskatchewan Justice Department employee revealed he was present when her son's file — and the file of serial rapist Larry Fisher — were taken together into department meetings in 1971.

Private investigator Paul Henderson — a former Seattle Times reporter turned private investigator with Centurion Ministries and Pulitzer prize winner for his coverage of criminal justice, verified the former Saskatchewan Justice employee's background, reported The Canadian Press.

The secret meetings allegedly included Romanow, who was Saskatchewan's justice minister at the time, and Serge Kujawa, a former Saskatchewan prosecutor who assisted with Milgaard's file and who handled Fisher's rape file. Kujawa went on to be a backbencher in Romanow's government.

Kujawa told the Regina Leader-Post: "Cover-up — well, I didn't cover up a single solitary damn thing. Therefore, you can't find anything that says I did."

Kujawa said no one connected the two files until years later. He conceded, however, that Romanow might have seen Fisher's file because Fisher's case went by direct indictment. Romanow was away at the time and then-Premier Allan Blakeney signed the order, reported The Globe and Mail.

Kujawa told the Star-Phoenix that he was proud of his role and was angry at suggestions his actions were anything less than honourable.

In November 1992, CKCK TV reported that the RCMP had been called in to determine whether the provincial Justice Department was guilty of a cover-up in the Milgaard case. The RCMP investigated the actions of Roy Romanow and Serge Kujawa dating back to 1971 when they were involved in the prosecution of the case and found no wrongdoing.

In April 1992, a week after the Supreme Court of Canada ordered a new trial for Milgaard, then Saskatchewan's Conservative Justice Critic Donald Toth called on the NDP government to conduct a full inquiry into Milgaard's wrongful conviction, reported The Globe and Mail.

Toth accused the NDP of being afraid to hold a public inquiry into Milgaard's case saying it threatened to expose a decades-old cover-up and potentially embarrass high-profile government members.

"There are many embarrassing questions left unanswered by the Supreme Court's decision in the Milgaard case," Toth told The Globe and Mail. "There are dark clouds hanging over our justice system in this province. It would appear that at one time or another someone, or something, went terribly wrong."

Milgaard's lawyers released information, which they said pointed to a possible cover-up by police and prosecutors.

"We're alleging the facts indicate there was a cover-up," Milgaard's lawyer Hersh Wolch told The Globe and

Mail.

"Mr. [Serge] Kujawa is admitting it — he had the information [concerning convicted rapist Larry Fisher in 1970] and he didn't disclose it to Milgaard's lawyer at the time."

Justice Minister Bob Mitchell had refused to call an inquiry and Wolch suggested part of the reason might be to protect Kujawa, who had become an NDP MLA, reported the Star-Phoenix. Kujawa had assisted in Milgaard's original prosecution and handled his later appeals.

In August 2006, then Premier Roy Romanow defended the conduct of the Attorney General's office on how the Fisher rape cases were handled at the time of Milgaard's appeal.

Fisher's trial quietly moved from Saskatoon to Regina

In December 1971, Kujawa prosecuted serial rapist Larry Fisher in Regina on three Saskatoon rape charges and an assault charge. The trial was moved from Saskatoon to Regina. At the time, Fisher was in jail in Prince Albert.

"There were no media when [Fisher] did his pleas in Regina," said Lockyer. "After pleading guilty to the Manitoba crimes, Larry Fisher was brought to Regina where he pleaded guilty to four rapes in Saskatoon and was sentenced to 13 years in prison.

"David knew none of this," added Lockyer. "His appeal was heard. The counsel who argued for the prosecution was the same counsel on the Larry Fisher guilty plea to rapes in Saskatoon and it was taking place in Regina. [Kujawa] had always claimed he never put two and two together."

Saskatchewan Party MLA Dan D'Autremont told Leader-Star News that it "defies explanation" that the Department of Justice would have just convicted a notorious serial rapist in 1971 and not told anyone. He also pointed out that the justice department didn't even inform any of Fisher's victims — or the Saskatoon Police — that Fisher had confessed to the crimes.

The Conservative government also said they wanted to know why the Regina Crown prosecutors dealt with Fisher's rape convictions 26 years prior by way of direct indictment — a process that allowed Fisher to quietly confess to rapes in a Regina courtroom instead of Saskatoon — without any publicity, reported Leader-Star News.

Romanow said it wasn't unusual to go by way of direct indictment, reported Leader-Star News.

Whiting told SASKTODAY.ca that while Public Prosecutions can't speak to the practices and policies that were in place in the 1960s and 1970s without conducting an in-depth historical review, they can provide general information on how these decisions are made today.

She said cases are regularly moved to other parts of the province for resolution for several reasons. Different factors determine where sentencing takes place. Depending on the case, proximity to the place in which the offender is held may or may not be one factor.

In a December 1971 memo Kujawa, then head of public prosecutions, informed then Premier Allan Blakeney — acting in Romanow's capacity as attorney general — that Fisher, while in jail for other rapes, had just confessed to the Saskatoon rapes and wanted to dispense with the charges as quickly as possible, reported Leader-Star News. The memo was written just weeks after Milgaard had exhausted his last avenue to appeal his conviction for Miller's murder.

Milgaard's lawyers had argued that someone in the Saskatchewan government didn't want too many people aware of Fisher's 1971 confession to the rapes because it would have raised questions about whether he was responsible for Miller's rape and murder. Milgaard wasn't in Saskatoon at the time of Fisher's rapes.

"The frightening question about this is, how many people were involved in it," David Asper, Milgaard's lawyer told The Globe and Mail in 1992. "Who was calling the shots? And why?"

In 1992, Kujawa told the Leader-Post that the cover-up scenario was "impossible."

Missing Saskatoon Police files

The inquiry revealed that early in the investigation, Saskatoon Police suspected that Miller's killer was the same person who had committed two rapes and an indecent assault in the three months before Miller's murder.

In August 1991, files, which may have had a crucial bearing on Milgaard's innocence, disappeared from the Saskatoon Police Department's computerized records system, reported The Globe and Mail.

"Something went on, it's very bizarre, it's something that just shouldn't happen, for every detail like that to vanish," a Saskatchewan police source told The Globe and Mail. "Somebody's tampered with the system."

Four files that involved convicted serial rapist Larry Fisher had vanished. The Globe and Mail also reported that there was a missing fifth file that involved an unsolved sexual assault of a University of Saskatchewan student who told Saskatoon Police that on the day Miller was killed, she was attacked a few blocks away.

The Saskatchewan Police Commission looked into the Saskatoon Police department's handling of missing files on Larry Fisher's rape cases.

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