

## Right up to his death in May, David Milgaard maintained the inquiry into his wrongful conviction failed to expose what he believed was a cover-up.

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Their report concluded the files disappeared due to human error, which may have happened when documents were moved to another building in 1976.

Milgaard's lawyers, however, shot back saying they had documents proving that the National Parole Board couldn't obtain some of Fisher's files from the Saskatoon Police as far back as 1974.

### Saskatoon Court break-ins

The Edmonton Journal reported that a court clerk testified at Larry Fisher's 1999 trial for the rape and murder of Gail Miller that there were at least three break-ins to the Saskatoon courthouse where evidence from Gail Miller's murder was stored.

Dennis Berezosky testified that as far as he knew, whoever broke into the exhibit room in 1984, 1992, and 1993, didn't tamper with the exhibits from the Miller case but he admitted to Brian Beresh, Fisher's defence lawyer, that there was no way to know for sure.

Fisher, 50, was arrested in 1997 for Miller's murder after DNA evidence exonerated Milgaard and pointed to Fisher as the rapist and killer.

### Witnesses coerced

Milgaard's friends and travelling companions Albert Cadrain, Ronald Wilson and Nichol John were all under 18 at the time they were questioned by police. In their book, *When Justice Fails: The David Milgaard Story*, Carl Karp and Cecil Rosner wrote: "now that police had checked out Cadrain's story, all they had were three largely similar versions of what happened from Milgaard, Wilson, and John. Nothing in their initial statements suggested that Milgaard was guilty."

All three were initially described as being surprised at the questioning and didn't seem to be familiar with Gail Miller or the circumstances of her death.

Karp and Rosner wrote that the police then pressured Wilson, questioning him repeatedly and accusing him of lying and threatening to charge him with Miller's murder along with Milgaard. Police interviewed John repeatedly and asked her the same questions over and over. By the time police were finished with Wilson and John, they had statements that were very different from the initial ones they gave police, and now Saskatoon Police had enough evidence to arrest Milgaard and secure his conviction.

### The Crown prosecutor doesn't disclose information

In 2005, former prosecutor Bobs Caldwell testified at the inquiry that he didn't know why he didn't disclose the other Saskatoon sexual assaults to Milgaard's defense. He said he didn't recognize the significance of statements from two women – including a nurse – who told Saskatoon Police that they had been groped by a stranger on a street near the scene of Miller's murder just weeks before she was killed.

Caldwell told the inquiry he didn't see any significance in the statements of a third woman who was groped just minutes after Miller was murdered and a fourth woman who was chased in the area of St. Paul's Hospital, which was in the Pleasant Hill area.

Caldwell also testified he didn't know why he didn't give Milgaard's lawyer a letter written to the RCMP by then Saskatoon Police Lieut. Joe Penkala, which described the similarities in method between the violent sexual attack on Gail Miller and the rapes of two other women months before Miller's murder. Caldwell had this letter from Lieut. Penkala in his file but didn't give it to the defence, revealed the inquiry.

Other information not disclosed were statements from Margaret and Arthur Merriman. Their living room window looked out at the alley where witnesses Nichol John and Ron Wilson said they got stuck while driving with Milgaard on the day Miller was killed. It was during that alleged time they were stuck – between 6:45 a.m. and 7:05 a.m. – that Milgaard was said to have committed the crime.

### More police records missing

Documents obtained by the Toronto Star under the Access to Information Act in September 1991 revealed that files on polygraph tests of key prosecution witness Ronald Wilson couldn't be located. Wilson's lawyer had planned to have the polygraph tapes of Wilson's cross-examination by police analyzed by a polygraph expert. This would have supported Wilson's claim that police pressured him to wrongfully give evidence against Milgaard, Watson



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told the Toronto Star.

### Doesn't matter if Milgaard innocent: Kujawa

In February 1991, former prosecutor Kujawa was outraged the Supreme Court was reviewing the Milgaard case and called Milgaard a "guilty kook," reported the Winnipeg Sun.

"It doesn't matter if Milgaard is innocent of the 1969 murder for which he's spent 22 years in prison – his case should remain closed," Kujawa, then an NDP MLA, told the Winnipeg Sun.

"The whole judicial system is at issue – it's worth more than one person," said Kujawa.

### Supreme court orders new trial for David Milgaard

Federal Justice Minister Kim Campbell made legal history when she asked Canada's highest court to re-examine David Milgaard's case. His case was reviewed by a method never before used in a criminal case. Campbell used section 53.2 of the Supreme Court of Canada Act to look into Milgaard's conviction – the same section used by the government to get the court to consider questions on the constitution.

On April 16, 1992, The Supreme Court of Canada ordered a new trial for David Milgaard.

### Former Sask. prosecutor condemns Supreme Court decision

Kujawa condemned the Supreme Court of Canada's decision saying, "the court yielded to emotionalism by ordering a new trial and recommending a conditional pardon if Milgaard was found guilty a second time," reported the Regina Leader-Post.

Canada's highest court ruled that the evidence about Fisher's sexual assaults against Saskatoon women around the time of Miller's murder could have affected Milgaard's trial but Kujawa remained defiant.

"I am totally proud of what I did because I worked at the thing carefully and did my job," Kujawa told The Canadian Press.

A few days after the Supreme Court's judgment in April 1992, the Saskatchewan Department of Justice stayed the charges against Milgaard and he was released from prison.

### Saskatchewan officials fight Milgaard Inquiry

Shortly after the Supreme Court decision, then-Saskatchewan Justice Minister Bob Mitchell announced Milgaard wouldn't get another trial as the Supreme Court had ordered citing too much time had passed as a reason. Mitchell also said Milgaard wouldn't get any compensation and there wouldn't be an inquiry into how his case was handled.

### Prosecutor prevents Milgaard from getting parole

While Milgaard was in prison, the prosecutor in his case wrote to the parole board before all of his parole hearings urging the board not to release him said Rosner in October 2021.

During a phone interview in October 2021, Milgaard verified this and told SASKTODAY.ca that at every opportunity, the prosecutor had some form of representation at all of his parole hearings giving the board the impression that he shouldn't be released.

In Joyce Milgaard's book, she said that during a parole hearing in the 1980s, a member of the board blew up at the Milgaard group.

"Looking furious enough to leap over the table in our direction, he screamed about the way that Gail Miller's body looked and the horrific pain frozen on her face," wrote Joyce.

"How could we take a chance of letting that happen again?" he shouted. "I've seen the pictures of that girl."

Then Joyce Milgaard said they wondered how the parole board saw pictures of Miller.

"We soon discovered, through our contacts in the system, that every time David was up for parole, Crown prosecutor Bobs Caldwell found out who was going to be sitting on the hearing and sent them a big brown envelope with the pictures of Miller's body. They were just absolutely gruesome photos, accompanied by a letter describing what a monster David was and why he should never be allowed to walk free."

Caldwell never did this in any of his other cases, said Joyce Milgaard.

In Caldwell's letters to the parole board, he told the board that he "came to know a great deal about the personality of the accused, Milgaard." Caldwell told them about Milgaard's loose attitude towards sex, saying, "This was only one example of the almost unbelievable lifestyle

Milgaard had before Miller's murder.

"In my view, there is not just a possibility, but rather a certainty, that he will return to crime on his release since he is unqualified for any other occupation," wrote Caldwell.

"Milgaard is an extremely dangerous and unpredictable person and I for one would not care to be in the position of allowing him to be released from custody on any terms whatsoever during his lifetime."

### DNA evidence exonerates Milgaard

Lockyer said when DNA evidence came into the court system in the late 1980s, Milgaard told him he wanted a DNA test done to prove he wasn't Miller's killer.

"It took two years for the Department of Justice to release the exhibit," said Lockyer.

Semen samples from Miller's clothing were only available because the court clerk working during Milgaard's trial was so convinced of his innocence that she ensured evidence was preserved, said Lockyer.

"She had thought David was innocent and so she made a point of ensuring that exhibits were kept and not destroyed."

Fisher had provided his DNA to the Supreme Court of Canada during Milgaard's appeal so his DNA was on file, said Lockyer. He added that Miller's nurse's uniform had enough DNA from semen to do 1,000 tests.

"It was never examined before," said Lockyer. "In the past, they [police] were always looking at the dog urine in the snow but never thought to examine the nurse's uniform."

The DNA was sent to the United Kingdom and Lockyer was provided the results.

"The result was David Milgaard was cleared and the semen came from Larry Fisher. There was no doubt whatsoever. The results showed to the billions that the DNA, the semen, came from Larry Fisher."

In July 1997, Serge Kujawa, the former head of prosecutions who handled Milgaard's appeal, and Bobs Caldwell who prosecuted Milgaard at his trial, finally apologized to Milgaard and called for a public inquiry. They wouldn't, however, admit to any wrongdoing when they prosecuted Milgaard in 1969, reported the Star-Phoenix.

### Private investigators uncover a trail leading to Fisher

In 1991, private investigator Paul Henderson and Centurion Ministry head Jim McCloskey assembled a case against Larry Fisher showing the similarities between his crimes and Gail Miller's murder. They said they also found evidence authorities hid Fisher's conviction from his victims.

The inquiry revealed that police were alerted to look for a construction worker wearing a hard hat and who usually caught the bus at Avenue 0 and 20th Street, but was not on the bus the morning of the murder. Fisher was identified in this connection as he stood waiting for his bus, wearing a yellow construction hat. When interviewed on Feb. 3, 1969, he told police he went to work on the morning of Jan. 31, 1969. He wasn't interviewed as a suspect but rather as a witness who may have observed something that morning and police never followed up to see whether Fisher had gone to work that day.

### RCMP take over Fisher file from Saskatoon Police

Despite DNA evidence exonerating Milgaard and pointing to Fisher as the real killer, the Saskatoon Police wouldn't arrest Fisher, said Lockyer.

"There were newspaper editorials in The Globe and Mail and the Toronto Star and other papers demanding that Saskatoon Police be taken off the case," said Lockyer. "They were after five days. The RCMP took on the case and immediately arrested Larry Fisher as he was driving from Calgary to B.C. They arrested him on the highway. He was fleeing, hoping he wouldn't get caught."

### Milgaard suffered inhumanity and horror

In prison for a crime he didn't commit, Milgaard was ill-prepared for Canada's toughest prisons.

Many initial psychiatrist prison reports described him favourably.

On March 9, 1970, a report said he was a "quiet, soft-spoken individual who impresses as being a person who is extremely depressed but hides the depression behind a smile... He repeatedly insists on his innocence."

On March 13, 1971, a caseworker, said, "Very difficult to believe that this boy could be guilty of this offence... A defenceless, immature, young man, incapable of facing a life sentence at this time. Deeply depressed, very emotional."

On Aug. 4, 1971, a prison psychiatrist report described Milgaard as a "frightened young inmate," adding, "He claims his innocence vehemently and does not appear to me to be the criminal type."

In March 1972, Milgaard was transferred to Dorchester in New Brunswick.

Not long after, Joyce Milgaard said she "got a letter from a doctor telling us that David had been gang raped and that the doctor was worried this would keep happening if he wasn't moved."

Milgaard was also often put in solitary and "guards would entertain themselves by throwing tear gas into the solitary confinement cells David quickly learned to place

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