

Chapter 1

Introduction



18 February 2004

TO THE HONOURABLE

THE LIEUTENANT GOVERNOR IN COUNCIL

The undersigned has the honour to report that:

1. Sections 2 and 5 of *The Public Inquiries Act* provide as follows:

“2 The Lieutenant Governor in Council, when he deems it expedient to cause inquiry to be made into and concerning a matter within the jurisdiction of the Legislature and connected with the good government of Saskatchewan or the conduct of the public business thereof, or that is in his opinion of sufficient public importance, may appoint one or more commissioners to make such inquiry and to report thereon.

5(1)The commissioners, if thereunto authorized by the Lieutenant Governor in Council, may engage the services of such accountants, engineers, technical advisors or other experts, clerks, reporters and assistants as they deem necessary or advisable, and also the services of counsel to aid and assist the commissioners in the inquiry.”

2. It is deemed advisable and in the public interest that an inquiry be made into any and all aspects of the conduct of the investigation into the death of Gail Miller and the subsequent criminal proceedings resulting in the wrongful conviction of David Edgar Milgaard on the charge that he murdered Gail Miller, for the purpose of making findings and recommendations with respect to the administration of criminal justice in the Province of Saskatchewan.

The undersigned has the honour, therefore, to recommend that Your Honour's Order do issue pursuant to sections 2 and 5 of *The Public Inquiries Act*:

- (a) appointing The Honourable Mr. Justice Edward P. MacCallum, Edmonton, as a Commissioner of a Commission of Inquiry into any and all aspects of the conduct of the investigation into the death of Gail Miller and the subsequent criminal proceedings resulting in the wrongful conviction of David Edgar Milgaard on the charge that he murdered Gail Miller;

- 2 -

- (b) establishing the terms of reference of the Commission of Inquiry as set out in Schedule A, attached hereto;
- (c) directing the said Commission to make its report to the Minister of Justice and Attorney General in accordance with those terms of reference;
- (d) authorizing the Commission to engage:
 - (i) the services of such accountants, engineers, technical advisors or other experts, clerks, reporters and assistants as they deem necessary or advisable; and,
 - (i) the services of counsel to aid and assist the Commission; to be paid by the Department of Justice as approved by the Minister of Justice and Attorney General;
- (e) authorizing reimbursement to the commissioner by the Department of Justice for reasonable travelling and sustenance expenses incurred by him in the performance of his duties; and
- (f) Authorizing payment by the Department of Justice of expenses incurred in the administration of the Commission of Inquiry.

RECOMMENDED BY:



Minister of Justice and Attorney General

APPROVED BY:



President of the Executive Council

ORDERED BY:



Lieutenant Governor
Regina, Saskatchewan



Commission of Inquiry Into the Wrongful Conviction of David Milgaard

Honourable Mr. Justice Edward P. MacCallum, Commissioner

1020 - 606 Spadina Crescent East | Saskatoon, Saskatchewan S7K 3H1 | Phone: (306) 933-8306 | Fax: (306) 933-8305

The Commissioner	Commission Staff	Terms of Reference	Legal Information
Media Information	Schedule	Contact	Search
Rulings	Parties to the Commission	Transcripts	

TERMS OF REFERENCE

1. The Commission of Inquiry appointed pursuant to this Order will have the responsibility to inquire into and report on any and all aspects of the conduct of the investigation into the death of Gail Miller and the subsequent criminal proceedings resulting in the wrongful conviction of David Edgar Milgaard on the charge that he murdered Gail Miller. The Commission of Inquiry will also have the responsibility to seek to determine whether the investigation should have been re-opened based on information subsequently received by the police and the Department of Justice. The Commission shall report its findings and make such recommendations as it considers advisable relating to the administration of criminal justice in the province of Saskatchewan.
2. The Commission shall perform its duties without expressing any conclusion or recommendation regarding the criminal or civil responsibility of any person or organization, and without interfering in any ongoing criminal or civil proceeding.
3. The Commission shall complete its inquiry and deliver its final report containing its comments, findings, conclusions and recommendations to the Attorney General. The report must be in a form appropriate for release to the public, in accordance with *The Freedom of Information and Protection of Privacy Act* and other laws.
4. To the extent the Commission considers it advisable, it may rely on any transcript or record of any proceedings from any court in relation to the proceedings referred to above and on such other related material it considers relevant to its duties.
5. The Commission shall have the power to hold public hearings but may, at the discretion of the Commissioner, hold some proceedings *in camera*.
6. The Commission shall, as an aspect of its duties, determine applications by those parties, if any, or those witnesses, if any, to the public inquiry that apply to the Commission to have their legal counsel paid for by the Commission, and further, determine at what rate such Counsel shall be paid for their services.

[The Commissioner](#) | [The Commission Staff](#) | [Terms of Reference](#) | [Legal Information](#) | [Media Information](#)
[Rulings](#) | [Parties to the Commission](#) | [Transcripts](#) | [Schedule](#) | [Contact](#) | [Search](#) | [Home](#)

© 2004 Commission of Inquiry Into the Wrongful Conviction of David Milgaard

Commission Personnel

Commissioner

The Commissioner is a Judge of the Court of Queen's Bench of Alberta, appointed to that position in 1983. He also serves as a Deputy Judge of the Supreme Court of the Yukon, the Supreme Court of the Northwest Territories, and the Nunavut Court of Justice.

Commission Counsel and Staff

Mr. Douglas Hodson, Q.C. was appointed Commission Counsel in 2004. He is a partner with the law firm of MacPherson Leslie & Tyerman LLP. Mr. Hodson has been recognized on many occasions for his extensive volunteer work in his community of Saskatoon. In 2002 he received the Canadian Bar Association Community Service Award and in 2005 he received the Saskatchewan Centennial Medal. In 2007, Mr. Hodson received his Queen's Counsel designation and was inducted as a Fellow of the American College of Trial Lawyers.

Jordan Hardy, Vanessa Monar Enweani and John Agioritis served as Assistant Commission Counsel. Mr. Hardy is a partner with the law firm of MacPherson Leslie & Tyerman LLP in Regina. He served as President of the Regina Bar Association in 2003. Ms. Monar Enweani and Mr. Agioritis are associates in the Saskatoon office of MacPherson Leslie & Tyerman LLP.

Ms. Sandra Boswell served as the Commission's Document Manager. She is a paralegal with the law firm of MacPherson Leslie & Tyerman LLP in Saskatoon. Ms. Boswell was assisted by Kara Isabelle.

The Commission's office staff included Mel Thoen, Jodie Kendry, Cheryl Ellerman, Hilary Boswell and Tara Hiebert. Irene Beitel served as Clerk to the Commission and Ed Beitel as Taxing Officer. Karen Hinz and Don Meyer provided court reporting services. Don Christal acted as the Commission's investigator and Hugh Esson and Jerry Wilde as security officers. Kevin Short provided advice to the Commission on matters related to document management and Larry Prehodchenko served as the Commission's audio technician.

Executive Director

Ms. Candace Cook graduated from the University of Saskatchewan (B.A. Honours) in 1995. She joined the Commission from the Communications and Public Education branch of Saskatchewan Justice and Saskatchewan Corrections and Public Safety. Ms. Cook has served as Executive Director to the Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild and has held previous positions with private and non-profit agencies.

Parties and Procedures

The majority of witnesses who appeared at the Inquiry had previously testified in judicial proceedings related to the case, or had given statements to investigators over the course of some 37 years since the trial of David Milgaard.

Our public hearing was in no sense a retrial, but it was important for us in evaluating the investigation and the subsequent criminal proceedings, to determine whether witnesses’ present recall of events was consistent with what they said at trial, or between the time of trial and the Inquiry. Even during the reopening phase of the Inquiry, witnesses gave evidence about events which they had previously described to investigators or before tribunals, but also much that was new, enabling us to deal with the vexing question of whether the investigation into the death of Gail Miller should have been reopened sooner, based upon information which came to the attention of the police or the Department of Justice.

Over the years, great tension developed between the Milgaard group on the one hand and police and Crown authorities, both provincial and federal, on the other. Public confidence in the administration of justice was seriously weakened.

The Inquiry was less than ideal in terms of the adversarial approach taken by some parties – perhaps unavoidably so, given all that has transpired.

The Commission concluded that the wide Terms of Reference had to be dealt with comprehensively, and long-standing accusations of official wrongdoing needed to be addressed in detail. The Inquiry heard from 114 witnesses and examined 3,200 documents, some of them hundreds of pages in length. These documents, together with 40,774 pages of hearing transcript, are now available as a permanent electronic record on the Commission web site at www.milgaardinquiry.ca.

Parties given standing at the Inquiry, together with counsel representing them, are:

PARTY	COUNSEL	STATUS
The Association in Defence of the Wrongly Convicted (AIDWYC)	Mr. Julian Roy	Standing and Funding
Mr. David Asper	Mr. Donald Sorochan, Q.C.	Standing and Funding
Mr. T.D.R. Caldwell	Ms. Catherine Knox Mr. Silas Halyk, Q.C. (2nd) Mr. Bob Kennedy, Q.C. (2nd)	Standing and Funding
Mr. Larry Fisher	Mr. Brian A. Beresh, Q.C. Mr. Eamon O’Keefe (2nd)	Standing and Funding
Government of Saskatchewan	Ms. Lana Krogan-Stevely	Standing
Mr. Eddie Karst	Mr. Aaron Fox, Q.C. Mr. Chris Boychuk (2nd)	Standing and Funding
Mr. Serge Kujawa	Mr. Garrett Wilson, Q.C. Mr. Jay Watson (2nd)	Standing and Funding
Mr. David Milgaard	Mr. Hersh Wolch, Q.C. Ms. Cheryl Stanley (2nd)	Standing and Funding

PARTY	COUNSEL	STATUS
Ms. Joyce Milgaard	Mr. James Lockyer Ms. Joanne McLean (2nd)	Standing and Funding
Minister of Justice (Canada)	Mr. David Frayer, Q.C. Ms. Jennifer Cox (2nd)	Standing
Royal Canadian Mounted Police	Mr. Bruce Gibson Ms. Rochelle Wempe (2nd)	Standing
Saskatoon Police Service	Mr. Richard Elson Mr. John Beckman, Q.C. (2nd) Mr. Pat Loran (2nd)	Standing and Funding
Mr. Calvin Tallis	Mr. Alexander Pringle, Q.C. Mr. Marshall Hopkins (2nd) Mr. Dino Bottos (2nd) Mr. Daniel Chivers (2nd)	Standing and Funding
Mr. Eugene Williams	Mr. Ken McLeod	Standing

Parties were allowed one designated counsel but approval was given to alternates to act when needed. They are listed as well, but funding was allowed for only one counsel performing a given service.